tion to refute the charge, many Congressional offices are still receiving such communications.

The one-page circular points out, truthfully, that Social Security retirement benefits are fixed by law and that the Social Security Administration "has no discretionary powers to alter the amount." However, it adds:

"There is a bill before Congress that would destroy the Social Security Act and channel the money you have paid, and will in the future, into welfare programs with the administrator empowered to determine what retirement benefit, if any, you would receive, based on his determination of your need.

"If, in his opinion, you did not need it, he could reduce the amount or deny you entirely".

The circular says "only a flood of mail from all over the country will stop this outright steal." It suggests "letters and cards written in longhand, signed with your name and address," as the most effective. The origin of the circular is unknown.

It then gives the names of Representatives and Senators from the state in which each circular is distributed.

Actually, House Bill 5710 was the original version of the Johnson Administration's bill for an across-the-board increase in Old Age, Survivors and Disability benefits and various other changes in the Social Security Act.

The measure was revised extensively by the House Ways and Means Committee, which even changed its number to 12080. Neither the original version nor the final text signed by President Johnson last Jan. 2 called for alteration of the law's basic principles, as charged by the anonymous circular.

Under the final version, as under House Bill 5710, a worker's right to benefits and the amount of his benefits continue to be based on his record of work under Social Security. Benefits are still paid as a matter of earned right without any test of need.

At one point last June, so many inquiries were received from other members of Congress by Representative Wilbur D. Mills of Arkansas, chairman of the Ways and Means Committee, that he drafted a form letter to assure prompt replies.

In it, he characterized charges in the circular as "a complete misrepresentation" of the bill's provisions.

THE POLITICS OF COERCION

HON. DEL CLAWSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 8, 1968

Mr. DEL CLAWSON. Mr. Speaker, the generation gap may not be as wide as sometimes assumed. There is a distinct resemblance between the tactics employed by students leading the spate of violent demonstrations gripping our universities and some "protesters" further along in years. There are the same angry threats, the same strident demands. Under unanimous consent, the following editorial which appeared in the Los Angeles Times of May 3 commenting on the destructive nature of "political coercion" is hereby included in the RECORD:

THE POLITICS OF COERCION

Politics, which involves getting things done, is by definition activist. But what has been taking place recently on the campuses of the nation's colleges and universities has not been simply politics to promote legitimate change.

Instead we have been seeing what might be called the politics of coercion, a process which, however rationalized, is inescapably totalitarian in methods and goals.

One of the ugliest manifestations of these direct efforts at physical intimidation aimed at imposing the will of a tiny but well-organized minority on the majority has come at Columbia University, where a few hundred students supported by some off-campus sympathizers succeeded in paralyzing the functioning of an entire campus.

For a time it appeared that the young authoritarian clique, which early made clear its refusal to reason or compromise with its proclaimed antagonists in the university administration, had been soundly rejected by other students and by a responsible faculty.

But then the fractional minority was able, by giving university administrators no other choice, to provoke what it had sought from the beginning, a major confrontation with "the system."

Irrationally, the tide of opinion shifted.

When after days of delay, police were summoned to Columbia so that the legitimate business of the university could go forward, a counter-reaction among students and faculty was evoked that probably surpassed the greatest expectations of those young militants whose guiding dictum is Mao Tse-tung's idea that the way to learn revolution is by making revolution.

Almost immediately, the illegal and obscene excesses of the radical few were forgotten in an unreasonable explosion of horror at the intervention—not necessarily the actions—of the police.

Now we find escalating calls for the resignations of university authorities, support for the basic demand of the student lawbreakers that they not be punished for their crimes, and threats of continuing and larger efforts to permit an anti-democratic handful to dictate the operations of the university.

That these views are being given voice by a fairly large number of students is discouraging; that they are also being supported by some supposedly responsible faculty members is virtually incomprehensible.

The politics of totalitarian minority coercion may yet triumph at Columbia, as earlier it has elsewhere, with an exemplary effect that is all too clear. Just the other day at San Francisco State College, for example, a handful of students and nonstudents sought through actual physical intimidation to bypass legitimate channels and force impossible action on its narrow demands. Each unpunished transgression unquestionably has a multiplying effect.

Grievances, to be sure, differ from campus to campus, and in some cases may be well-founded. In no case, however, can recourse to carefully planned coercion be tolerated, or allowed to go unpunished.

Those among the majority student body and especially the faculty who would compromise or dissimulate on this issue—let there be no mistaking it—contribute inescapably to a process that can only lead to the destruction of their university as an intellectual center and as a source of freedom in the world.

That is a high price indeed to pay for the emotions of the moment.

SENATE—*Thursday, May 9, 1968*

(Legislative day of Tuesday, May 7, 1968)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

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

Eternal God, Father of our spirits, with a faith that will not shrink though pressed by every foe, we would this day climb the altar steps which lead through darkness up to Thee. For our greatest need is of Thee.

In the crises of our times join us with those who, across the waste and wilderness of human hate and need, preparing the way of the Lord, throw up a highway for our God.

With minds burdened for the Nation and for the world, we turn to Thee in this baffling hour, praying that in this fear-haunted earth the flame of our faith may not grow dim.

We would share that sacred fire until tyranny everywhere is consumed and thus all the nations of the earth be blessed.

We ask it in the name of the dear Redeemer, who is the light of the world. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Wednesday, May 8, 1968, be approved.

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

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 948. An act for the relief of Seaman Eugene Markovitz, U.S. Navy;

S. 1147. An act for the relief of Mariana Mantzios;

S. 1180. An act for the relief of Ana Jacalne;

S. 1395. An act for the relief of Dr. Brandia Don (nee Praschnik);

S. 1406. An act for the relief of Dr. Jorge Mestas;

S. 1483. An act for the relief of Dr. Pedro Lopez Garcia;

S. 1490. An act for the relief of Yang Ok Yoo (Maria Margurita);

S. 1828. An act for the relief of Susan Elizabeth (Cho) Long;

S. 1829. An act for the relief of Lisa Marie (Kim) Long;

S. 1909. An act to provide for the striking of medals in commemoration of the 100th anniversary of the completion of the first transcontinental railroad;

S. 1918. An act for the relief of Dr. Gabriel Gomez del Rio;

S. 1968. An act for the relief of Dr. Jose Ernesto Garcia y Tojar;

S. 2005. An act for the relief of Dr. Anacleto C. Fernandez;

S. 2022. An act for the relief of Dr. Mario Jose Remirez DeEstenoz;

S. 2023. An act for the relief of Virgilio A. Arango, M.D.;
S. 2078. An act for the relief of Dr. Alberto De Jongh;
S. 2132. An act for the relief of Dr. Robert L. Cespedes;
S. 2139. An act for the relief of Dr. Angel Trejo Padron;
S. 2149. An act for the relief of Dr. Jose J. Guijarro;
S. 2176. An act for the relief of Dr. Edgar Reinaldo Nunez Baez;
S. 2193. An act for the relief of Dr. Alfredo Jesus Gonzalez;
S. 2256. An act for the relief of Dr. Margarita Lorigados;
S. 2285. An act for the relief of Gordon Shih Gum Lee;
S. 2301. An act for the relief of Dr. Francisco Guillermo Gomez-Inguanzo;
S. 2381. An act for the relief of Dr. Jesus Adalberto Quevedo-Avila;
S. 2403. An act for the relief of Dr. Teobaldo Cuervo-Castillo;
S. 2404. An act for the relief of Dr. Heriberto Jose Hernandez-Suarez; and
S. 2489. An act for the relief of Dr. Jesus Jose Eduardo Garcia.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Montana is recognized for 15 minutes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, the time to be taken out of the time allocated to me.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

TAX INCREASE AND BUDGET REDUCTION PROPOSALS

Mr. MANSFIELD. Mr. President, the conferees of both Houses have evidently agreed on a 10-percent surcharge on income tax for those having an income of $5,000 or more, and also on a $6 billion reduction in Federal expenditures for the next fiscal year. I would hope that before the conferees reached final agreement on this matter, they would furnish the membership of both Houses with a bill of particulars as to where they think these reductions should be applied.

As the Senate is aware, the President has said that he would be willing to accept a $4 billion reduction in expenditures—though reluctantly—but that if the cut went to $6 billion, grave difficulties would be created. I assume that what he would have to consider in the latter case would be appropriations dealing with the most difficult social problems which affect urban centers, and also public works projects under the jurisdiction of the Bureau of Reclamation and the Corps of Engineers. The latter would affect almost every State in the Union; the former would affect almost every city in the Nation.

I myself have suggested where I think expenditures ought to be cut or reduced. For the RECORD I will state them again:

I have said that an area which could—and should—be given the most serious consideration is the research and development program of the Department of Defense, for which almost $8 billion was authorized a few weeks ago, an amount 10 percent above the amount of last year. This program operates under a division of the Department of Defense having contracts with individuals, corporations, universities, and the like, and covers such subjects as population control. It has included, also, such subjects as Camelot—a social science study—civic projects in Korea, social behavior studies elsewhere, and others numbering not into the hundreds but into the thousands, even millions, of dollars.

I also stated that I anticipated, as was the case over the last several years, that there would be further cuts in foreign aid this year.

I also mentioned the space program. In my opinion, it could stand some reduction and thus provide for the needs of the people living on this planet and in this country rather than enable us to be the first to reach the moon.

Then I said there was the possibility of a reduction in public works, and also the possibility of a sharp reduction in the 600,000 troops and dependents who now comprise U.S. forces in Western Europe at a cost, I understand, in excess of $2.5 billion a year.

Another potential area is the field of defense expenditures in relation to Vietnam—when and if deescalation takes place and there is a possibility of an honorable settlement; but not, however, so long as the need is apparent for the protection of our men who are stationed there in the carrying out of policy.

Also, I see no reason why the luxury taxes which were removed only a few years ago should not be reinstituted.

I see no reason why we should not consider the raising of corporate income tax from the present level of 48 percent to the old level of a few years ago—52 percent—because, as I read the Wall Street Journal, the profits of most corporations this year are much improved compared with last year—and last year the earnings were not peanuts.

These are some categories which I believe should be considered.

Also, if need be, regulation W could be restored so as to circumscribe consumer credit buying, which at this time totals, I understand, in excess of $115 billion and is sharply increasing. I believe that figure is conservative.

If the economy is in such dire straits, consideration should be given to the reimposition of wage and price controls.

Mr. President, I must say that any one Senator cannot and should not make this decision. It is up to the committees which represent the rest of us, in their wisdom, to provide a bill of particulars. They should specify—for the consideration of the two Houses—where, how, and when the cuts in expenditures should be made.

If we do not face up to this responsibility, which is basically ours, it will mean that we are throwing the burden to the President and placing on him an additional responsibility, one that is rightfully ours. If we continue to operate on this basis merely because the job is difficult and unpleasant, we should make no complaints about centralization of power in the White House or in the hands of the President. In my opinion, such centralization is the natural result of a failure on our part to live up to the responsibilities which are ours under the Constitution.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). Without objection, it is so ordered.

Under the previous order the Senator from Kentucky is recognized for 15 minutes.

THE NATIONAL DIVIDEND PLAN

Mr. MORTON. Mr. President, it is becoming more and more evident that we must develop a fresh, new philosophy of economic opportunity if we are to successfully solve the many serious problems confronting our Nation today.

This need has grown over the years as the complexity of our society has increased. Having served on the Senate Finance Committee for many years, I have become deeply concerned and disturbed by current trends in our economic machinery.

The problems of fiscal stability, poverty and welfare in a land of abundance, economic thrust for our free enterprise system and equal opportunity for all segments of our population have become more pronounced. I recently had an opportunity to study in some depth a most interesting and intriguing proposal which challenges each of us to study and consideration as a possible solution.

There is much convincing evidence at hand that we can no longer delay in coming to grips with the problems through bold, imaginative action.

For example, the stock market has been going up and down like a yoyo, because prices have been entirely dependent on speculation, instead of the stability of earnings.

Our balance-of-payments deficit increased $1.8 billion during the fourth quarter of 1967. That brought the deficit for the full year up to $3.6 billion, as opposed to an average of $2.1 billion for the last 6 years. Mr. President, you will recall that it was not too long ago when we took for granted an average annual balance of $5 billion in our favor.

The very foundation of our monetary system, along with that of the remainder of the free world, was shaken only a few weeks ago by an unchecked drain on our gold reserve.

And, more recently, many of our cities, including this National Capital, have been ravaged by shocking civil disorders by a segment of our population protesting the social and economic conditions which entrap them.

All these things, and they represent

only a fraction of the total, are the results of efforts to saddle the country with an economy managed and controlled by the Federal Government.

The new breed economists, who have held sway in high levels of our Government in recent years, should realize now, as most Americans do, that their crystal balls do not always work. Their fanciful theories have succeeded in distorting our economic structure to a perilous degree and, at the same time, intensifying and compounding many of our social problems.

It was these people who, in the face of mounting signs of trouble, pushed the President into an attack on the wrong front. They urged solving the problem not by earning more but by spending and investing less.

Nondefense spending has increased 97 percent since 1960. Health and welfare spending alone has increased 21 percent. However, during that same period, the Nation's population increased only 10 percent.

The 89th Congress alone passed 136 new domestic welfare programs. Yet, today thousands of burned out, looted and smashed businesses and dwelling units in scores of American cities stand as mute testimony to the futility of the effort to solve the problems at which those programs were aimed.

The time has come to restore our economy to a sound, businesslike basis. Ruinous Government attempts to manage it must be halted. We must return to the basic principles of the free enterprise system.

The late Sir Winston Churchill once said:

> Some people regard free enterprise as a tiger to be shot. Others look at it as a cow they can milk. Not enough people see it as a healthy horse pulling a sturdy wagon.

Consider it what you will—tiger, cow, or horse—free enterprise is the system that we Americans have chosen as our own. No one has ever claimed that it is perfect. It would not even be interesting if it were. But the fact remains that free enterprise is what has made this country great. From it have come products and wealth to give us the highest standard of living civilization has ever known.

It has developed and produced consumer goods for our comfort and well-being in such quantity and at low enough cost that we accept them as commonplace. But to those millions living under government-controlled economies such as the theoreticians would impose upon us, these goods are cherished luxuries, far beyond the reach of most.

The most significant and compelling feature of the free enterprise system is that its success has been achieved without loss of personal liberties by the American people.

As it has flourished, the basic principles of individual freedom, the right to private property and human dignity have been maintained and perpetuated. It is these fundamentals that a government-controlled economy demands must be sacrificed as the individual and his efforts are consigned to a great, gray sea of anonymity and mediocrity.

An intriguing idea has been developed by John H. Perry, Jr., a prominent Florida businessman, which would utilize the free-enterprise system to return the economy to a sound, businesslike basis, improve the general welfare and enhance the freedom of the individual citizen.

Byproducts of Mr. Perry's proposal would be a sharp increase in citizen participation in Government affairs through voting; a nationwide purging of voting lists and elimination of voting frauds; an irrefutable argument that would overcome the Communist hoax and halt Marxist and Socialist attacks on capitalism and the free enterprise system.

Mr. Perry's proposition, which he calls the national dividend plan, has been subjected to close scrutiny by some of the Nation's foremost economists. So far, none has found a fallacy in its fiscal projections, deductions and conclusions.

It has been brought to the attention of many of the Nation's business and industrial leaders and has won wide acceptance and support.

It has been the subject of numerous newspaper and magazine articles and it has been discussed in television and radio appearances.

An independent research firm tested it for voter acceptance with scientifically selected, cross-section audiences in Miami, Fla., in October 1966, and in Cincinnati, Ohio, in January 1968. An impressive majority of both audiences said they would vote for it.

It is a simple, understandable plan. It calls for bold, forthright action in its refreshingly new approach toward solving old problems.

Mr. Perry heads a firm which publishes 28 newspapers, two magazines, operates commercial printing plants and manufactures small submarines and other deep-diving craft for the rapidly developing field of oceanography. His sole motive in developing his national dividend plan is patriotic concern for his country's welfare.

I feel very strongly that all levels of government from local to Federal should draw upon the talents and brainpower of our business leaders in solving the problems of these troubled times. So, I am pleased to bring this explanation of the national dividend plan to the attention of the Senate.

The key to economic stability is full employment and adequate consumer buying power to absorb its output of goods. As we move further into the technological revolution with its automation and other labor-saving devices, maintaining full employment could become our No. 1 problem.

The solution is investment in development of new products, plants, services and jobs. The new jobs, in turn, will provide the consumer buying power for the increased production.

The capital for this is available in the private sector now but existing conditions offer few incentives to put it to work.

The national dividend plan cuts through to the core of this problem. It is based on a constitutional amendment which would:

First, place a 50-percent ceiling on corporate income taxes;

Second, exempt corporate dividends from Federal personal income taxes; and,

Third, distribute all corporate income tax collections on a per capita basis—and free of Federal personal income taxes—to all who had legally voted in the Federal general elections every 2 years.

The plan would be phased into operation over a 5-year period and it would be suspended in time of war.

The investment incentives in the national dividend plan are the 50-percent ceiling on corporate income taxes and elimination of the Federal income tax on corporate dividends, thus removing present double taxation.

You may ask how a 50-percent corporate tax ceiling would be an investment incentive when the present rate is only 48 percent. The ceiling, when imposed by constitutional amendment, would provide a stable base for planning both large and small corporate investments in research, expansion, and modernization of existing facilities, or in new plants. The worry and the danger involved in projecting these long-range investments of stockholders' money on a corporate tax rate of say, 48 percent, and then seeing the Congress increase the rate to 50 or 52 percent within a year or two to finance vast new spending programs, would be removed. America's investors would be assured of keeping at least one-half of their earnings.

Removal of Federal personal income taxes from corporate dividends would have a stabilizing effect on the stock markets. Private citizens would invest in companies on the basis of their earning rates. The present speculative game of musical chairs to take advantage of the capital gains tax rate would be replaced by solid, long-term investment in earnings and growth.

Payment of corporate income tax collections directly to the Nation's voters on a per capita basis would provide a perpetual, built-in buying power. As corporate production, sales and earnings increased, so would voter payments and consumer buying power increase.

The payments would be made quarterly by machinery now in existence, and would assure an even, sustained flow into the economy.

The American people spend their income at the rate of 94 cents on the dollar and invest the remainder. Since the national dividend payments would be based on actual corporate earnings, not on burdensome new or increased taxes, they would provide realistic, permanent pump priming for the economy. This would eliminate any need for artificially warming up and cooling off the economy, as we do today.

Diversion of the corporate income tax collections from the Treasury's general fund would not deprive the Federal Government of funds needed for its necessary functions.

Corporate income taxes amount to about 26 percent of the current administrative budget or 18 percent of the total budget. With its 5-year phase-in pro-

vision, the national dividend would require only one-fifth of that amount for its funding the first year. The second year would require two-fifths and so on. However, since 1959, four factors built into the economy have resulted in about a 6-percent-per-year increase in Federal cash receipts, considerably more than enough to fund the national dividend, without tax increases.

The factors responsible for this annual increase in cash receipts, which is expected to continue, are: 1 percent from the annual growth of the labor force; 3 percent from the annual increase in output per man-hour; 1½ percent from annual price inflation resulting from the spread between wage increases and production increases; one-half percent from taxpayers' annual advance into higher income tax rates because of wage and income gains.

While the Federal Government could continue existing programs and fund the national dividend simultaneously during the phase-in period, no new, major spending programs could be undertaken.

The ultimate aim is for the national dividend to substitute for most of the welfare and subsidy programs now in existence. These could be eliminated as quickly as the national dividend payments became large enough to replace them and as the viability of the expanding economy removed any need for them.

This, in turn, would bring about the decentralization of Federal Government, a sharp reduction in Federal controls, regulations and intervention in the lives of individual citizens, and a great strengthening of the principles of the free enterprise system.

As I understand it, the national dividend is tied firmly to the American free enterprise system. It does not call for new taxes or tax increases. It would be funded entirely from corporate earnings instead of tax increases proposed in other income maintenance plans. This feature alone sets it far apart from the present hodge podge of welfare and subsidy band-aid programs we now have, and such proposed innovations as guaranteed annual income and the negative income tax.

Based on an estimated 90 million voters and a total corporate income tax of $45 billion at the end of the 5-year phase-in period, the national dividend would pay $500 to each voter per year, $1,000 to a voting couple.

This would be net, Federal tax free, take home income. And it would only be the beginning because voter dividends would increase as the free enterprise system grew with new vigor generated by the national dividend program.

The national dividend would get us back to the laws of supply and demand.

It would make every American voter a living, sharing, integral part of our dynamic, spiritually based free enterprise system.

The national dividend could do much to help the overall civil rights program. Negro families alone would benefit by an estimated $5 billion per year. This would mean an income floor of nearly $3 per day—tax free—for every man and wife who vote. And the same amount would be paid to every white man and wife who vote. No more, no less, assuring complete equality without regard to race or social status.

Through the creation of new jobs, the national dividend plan would go far toward meeting one of the most pressing demands of the civil rights movement.

With its voting requirement, the national dividend encourages full voter participation in the Nation's affairs. It would automatically purge and update voting lists throughout the land. This would eliminate tombstone votes and rampant voting frauds of the past and present. And it would make the Congress and the State legislatures responsive to all the voters rather than the pressures of special interest groups as we have today.

Voting lists and the banking systems in each State could be used for distribution of national dividend payments, thus eliminating any need for creation of a huge, new Federal agency to administer the program.

The national dividend could play a vital role in alleviating the financial distress today's conditions have brought to those Americans living on fixed incomes, such as senior citizens, retirees, widows, and the disabled.

The national dividend would be a program of inestimable value to have ready to go into operation immediately after the fighting in South Vietnam ends—and we all hope it will end soon. Cessation of the hot war will bring immediate, sharp cutbacks in the billions now being spent. The national dividend could pick up the economic slack by putting a steady flow of money directly into the spending stream, without the brokerage of sending the money to Washington.

It should be noted that the national dividend plan, in effect, accrues a ready supply of billions of dollars which could be tapped to finance any war effort which might arise in the future. Since the payments to voters would be suspended in time of war, these funds would be readily available without imposition of any immediate, new taxes.

The national dividend would be an effective weapon in the continuing cold war with communism, from which, God forbid, a hot war could erupt. Even the simplest peasant could understand the free American voter's role as owner sharing on a per capita basis one-half the profits of the Nation's corporations and would prefer it to anything Marxism could offer.

In my remarks today I have attempted to explain the national dividend plan and its potentials to the Senate in the same manner its sponsors and supporters have explained it to me. I have not gone into great detail because it is apparent that much careful thought, study, and work have gone into every detail of the proposal by its author, Mr. John H. Perry, Jr., a Florida businessman, Perry Publications, Post-Times Building, West Palm Beach, Fla. 33402.

I believe the national dividend plan merits equally as thoughtful study and consideration by the Senate.

Mr. President, I ask unanimous consent that a report from the First Research Corp., a column by Clayton Fritchey, two columns by John Chamberlain, and a column by Ralph De Toledano, of the King Features Syndicate, be made a part of my remarks in the RECORD.

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

[From the First Research Corp.]

COMPARATIVE ANALYSIS OF STUDIES OF VOTER OPINIONS ON THE NATIONAL DIVIDEND IN MIAMI, FLA., OCTOBER 1966, AND CINCINNATI, OHIO, JANUARY 1968

A high degree of comprehension of the national Dividend Plan is indicated by the cross-section studies of voters in these two cities.

Methodology employed in both surveys was identical. The audiences were about the same in number, Cincinnati having a few more.

After seeing the film: 86.7% in Miami and 85.2% in Cincinnati said they understood the plan; 73.8% in Miami and 66.9% in Cincinnati said they generally favored the plan; 93.3% in Miami and 96.9% in Cincinnati said they believed the plan would stimulate more voters to cast ballots in federal general elections; 65.9% in Miami and 60.3% in Cincinnati said they believed the plan would increase the general welfare; 58.1% in Miami and 58.2% in Cincinnati said they believed the plan would enhance the freedom of the individual American citizen; 56.8% in Miami and 52.5% in Cincinnati said they believed the plan would help overcome attacks made on capitalism by Communists and Socialists.

Asked whether they would vote for or against the plan if given an opportunity in the next general election, 59.5% in Miami and 62.5% in Cincinnati said they would vote for it.

Only 13% in Miami and 11.3% in Cincinnati favored centralization of federal government, while 78% in Miami and 60.1% in Cincinnati felt that more responsibility should be given to the individual citizen. The remainder—9% in Miami and 28.6% in Cincinnati—expressed no opinion.

One question in Cincinnati was not included in the Miami survey. It asked whether the voter was familiar with the Negative Income Tax. Only 18.5% were. Those responding affirmatively were asked whether they favored the Negative Income Tax (9.1%); the National Dividend Plan (59.1%), or the present tax structure (27.3%). The remaining 4.5% expressed no preference.

[From the New York Post, Mar. 13, 1968]

THE GUARANTEED INCOME

(By Clayton Fritchey)

WASHINGTON.—It was inevitable that the report of the President's Commission on Civil Disorders would arouse criticism, which it certainly has, but it is significant that perhaps its most revolutionary recommendation seems to have inspired no adverse reaction at all.

Stripped of elaborate circumlocutions, the commission recommended, in effect, that the government aim for a guaranteed minimum income, which would insure that no families had to subsist below the recognized poverty level, currently put at $3,335 a year.

The fact that even the most conservative critics have so far swallowed this doctrine without complaint may be owing in part to the cautious way the idea was proposed in the report, but possibly a better explanation is that the idea no longer seems very radical or visionary.

Some members of the commission (reportedly a majority) wanted to recommend guaranteed income without mincing words, but in deference to their more conservative colleagues, who went along on so many liberal proposals, the language was watered down. Even so, there is no mistaking the intent.

The reader has to digest about 200,000 of

the report's 250,000 words before coming to the proposal of putting a floor under poverty, but it is there, and it recommends that "the federal government seek to develop a national system of income supplementation . . ." It acknowledges that such a program "would involve substantially greater federal expenditures than anything now contemplated." But it also estimates that "the return on this investment will be great indeed."

It is this latter factor that has won over some of the nation's outstanding business leaders to the concept of the government guaranteeing a basic income in one form or another. It is dawning on the business community that the present U.S. welfare system, with its costly, topheavy bureaucracy, is wasteful and impractical.

There is the further possibility that the elimination of raw poverty by guaranteed income would stimulate the economy to such a degree that it would largely pay for itself. In his economic message last year, President Johnson launched a two-year study "to examine the many proposals that have been put forward," some of which, he noted, are advocated by the "sturdiest defenders of free enterprise."

One variation of a guaranteed income is the so-called negative income tax (NIT), which would give rather than take for those below the poverty level. It is supported by Arjay Miller, president of Ford, and also by economist Milton Friedman, a Barry Goldwater man. The National Automation Commission (including IBM's Tom Watson and Polaroid's Edwin Land) not only favored consideration of NIT, but also of guaranteed employment of all.

Besides these there are plans for universal family allowances (which most other countries already have) and guaranteed annual wages. One of the most ingenious of the newer proposals is the "National Dividend" plan conceived by John Perry, the Florida publisher, which introduces a novel idea of promoting free enterprise in the process of serving a social end.

National Dividend would divert corporate income tax money away from the U.S. Treasury and distribute it equally to all qualified voters. At present tax levels this would mean about $1,000 a year per couple. The plan calls for a ceiling of 50 per cent on corporate income taxes and the abolition of personal income tax on corporate dividends.

National Dividend is intended as a substitute for welfare and subsidy programs at a lower cost to the taxpayer.

Before the President's study panel reports back, any number of plans will have been thoroughly scrutinized. It is hard to predict what form guaranteed income will finally take, but it's on its way.

JOHN PERRY'S NATIONAL DIVIDEND PLAN PROVIDES WELFARE; PROTECTS INITIATIVE

(By John Chamberlain)

When the government begins appropriating money, "them as has, gits." We have seen it in the farm subsidy program, which started in the Nineteen Thirties with the professed aim of saving the poor farmer.

Today, there is a total of twenty-five billion dollars invested in farm equipment as compared to three billion in the Thirties. But, instead of thirty-two million people living on our farms, there are now only twelve million. So who got the government money?

There seems to be some malign law governing this sort of thing. Six billion dollars in urban renewal has made money for architects, city planners, contractors—yet when the totals were reckoned recently by Professor Richard Cloward of Columbia University it was discovered that 250,000 more low-income housing units had been destroyed than had been built.

Billions have been appropriated for education, but only a smidgen goes to train the sort of teacher who can give a slum kid in the first, second and third grades a command of the language that will keep him from being a drop-out in the high school years. The government guarantees mortgages, but the middle class benefits and the banks get the mortgage interest.

Because of the law that says "them as has, gits," I put no trust in programs designed to bring a Marshall Plan to the slums. The money will finance political machines, and subsidize social workers who speak of the poor as their "clients." The percentage of the money that actually trickles down to the poor will be just enough to rivet them in their places as wards of an arrogant elite which has assumed the prerogative of thinking for them.

From the perspective of 1967, in this year of "the fire next time" that was aimed at "whitey" yet has only succeeded in burning up Negro homes and cigar stores, the whole historical spiral has the flavor of a poem written by a mad surrealist.

Subsidy money given to farmers to buy machinery has enabled them to dispense with their tenant field hands. The displaced field hands have gone to the city slums where, after a couple of decades of "urban renewal" they find themselves with 250,000 fewer dwelling units than they might have found a few years ago. The kids grow up in a steadily tightening squalor which turns them into meanaces to teachers. So the ambitious teachers put in for jobs in suburbia. Could any sequence of events be crazier?

Because the whole welfarist program of the past thirty years has so badly misfired, some people have begun to agitate for a new approach. The idea of guaranteeing an annual income directly to everybody to spend as he or she sees fit without letting the urban renewal contractors and the social workers in on the deal is growing. Ad hoc committees have been set up in some seventy U.S. colleges to talk about the effect of an income guarantee. The U.S. Chamber of Commerce recently held a symposium on guaranteed income which was attended by some four hundred of our biggest industrial corporations.

And Professor Milton Friedman of the University of Chicago, who calls himself a conservative, is preaching the idea of a negative income tax designed to bring everybody up to an agreed-upon minimum income line.

The danger of a direct income guarantee is that it would reward idleness and so might tend to decrease the amount of goods available for sharing. But there is one scheme of income guarantee that would avoid the temptation to loaf.

It is the scheme elaborated by John Perry, the West Palm Beach, Florida, publisher, for a national dividend, to be paid to every voter out of a treasury fund drawn from dividends already earned by private enterprise. To keep the corporations docile and cooperative, Perry would place a fifty per cent limit on all corporate income taxes. Voters getting their share of the dividend would not want to hurt the free enterprise system, for if they did there would be less of a national profit to share.

Perry's idea, like Professor Friedman's sounds queer and revolutionary to those who have been brought up on "Puritan ethic" economics. But it has an order and clarity that are totally absent from our Great Society welfare programs, and there is a good chance that it might work a whole lot better.

[From the Palm Beach Times, Aug. 24, 1966]

NATIONAL DIVIDEND PROFIT-SHARING PLAN

(By John Chamberlain)

John H. Perry Jr., the West Palm Beach, Florida, publisher who also builds small submarines, was in New York City last week with a moving picture adaptation of his book, "The National Dividend." The showing was at the Waldorf-Astoria, and a goodly number of people, including some quite orthodox financial men, turned out to see something which, by the standards of other years, would have scared the life out of any conservative thinker. But, against the background of the cost of the Great Society, the pillars of orthodoxy who happened to be within eavesdropping distance of me were having a hard time trying to dismiss Perry's proposition as a scheme for rewarding lazy men.

Perry's idea of making every American voter a profit-sharing partner in the free enterprise or profit-and-loss—system to the extent of taking down a "national dividend" of $500 a year per person, or $1,000 per man and wife, brought some pie-in-the-sky comments as the pre-luncheon drinks went round. But the moving picture itself quickly served to put Perry into the company of the conservative Professor Milton Friedman of the University of Chicago, who recently offered his idea of a "negative income tax" as a money-saving way of cleaning up our current jungle of incredibly wasteful welfare programs.

Friedman's theory is that if you were to keep every family up to the $3,000-a-year mark by making up for deficiencies in income as shown on annual tax reports, you could drastically cut down on the tabs for antipoverty programs, urban renewal, crop and non-crop subsidies, federal aid to schools, and all the rest of the rigmarole that requires $25,000-a-year administrators by scores and $10,000-a-year men by the hundreds. The virtue of the Friedman approach is that it would permit the dismantling of the Washington bureaucracies without causing hunger in the streets.

Perry goes Professor Friedman one better from the standpoint of simplicity. He would simply divert existing corporate profit taxes from the general treasury fund to voting citizens. Perry insists that the voting qualification is necessary in order to make people responsible for maintaining the system of free enterprise that creates profits. Since the "national dividend" could not very well be paid out of a profitless business system, he considers that voters would soon see the connection between a flourishing free market and their share of its fruits. This perception, says Perry, would encourage them to work harder to make the system even more profitable.

Perry obviously satisfied the Keynesians in his audience, for the flow charts in the moving picture showed money flowing into consumption in a way to keep "aggregate demand" at a proper job-maintaining pitch. The picture quieted some murmurs of "perpetual inflation" by showing an uninflated supply of money going round and round. And, quite obviously, direct payments of a national dividend would cut the cost of government overhead.

Back in the Nineteen Thirties, the English economist, Major Douglas, championed something which he, too, called the national dividend. But Major Douglas accompanied his proposal with some highly fallacious mathematics purporting to prove that a "leakage" of annual purchasing power from the system made government consumer subsidies a necessity. Perry's own contention is that investment keeps creating more jobs for consumers to work at, so there is no "leakage" in the productive cycle. But when the government takes too much money from people through personal income taxes, excise taxes and social security taxes, the dollars thus siphoned off do not return to the channels of enterprise swiftly enough to keep the free market in a bouncy state, And when the government overhead is high, inflation results.

Former Vice President Richard Nixon, former New York Herald Tribune financial editor Don Rogers, and U.S. Senator George

Smathers find Perry a convincing thinker. Did he also convince the Big Town by his Waldorf-Astoria moving picture showing? Well, not far away, in Harlem and the Bedford-Stuyvesant region of Brooklyn, the murmurs have been rising. If you believe that "something's gotta be done," Perry's idea commends itself by virtue of a clarity and directness that the Great Societarians have never managed to provide.

[From King Features Syndicate, New York (N.Y.), Mar. 30–31, 1968]

THE NATIONAL DIVIDEND INCOME PLAN—CAN IT WORK?

(By Ralph de Toledano)

To the average voter, the Federal government's money troubles are complex to the point of being meaningless. The papers are full of deficit talk, of administration budgets as opposed to national budgets, of a negative income tax, of a guaranteed annual income plan. Even projections of a $20 billion deficit this year and next only stun the mind. They are almost too monstrous to grasp.

But however little the man in the street may know about these matters, or care about the polemical division of the New Economists and the old, something has to be done before the economy falls apart at the seams. Conservatives who predicted this in the past were laughed at and told that we were only spending our own money so that, say, a hypothetical trillion-dollar national debt was unimportant. Today, even the fiscal radicals are worried.

But if something has to be done to put our fiscal house in order, what is it? The highly respected American Enterprise Institute reports that if the Federal government embarked on no new programs, it would accumulate a $30 billion surplus in seven years and begin to move down the long road to wiping out the dangerous national debt. As if in response to this, the Johnson Administration added 136 new programs during the lifetime of the 89th Congress alone.

A solution has now been proposed by a Florida businessman, John H. Perry, Jr., to halt the deterioration in the buying power of the dollar and to provide a cushion for all Americans. He calls it the National Dividend Plan, and it is stirring up interest throughout the country.

Mr. Perry proposes that his National Dividend Plan be incorporated into a Constitutional Amendment, thereby nailing it down so that the politicians will not be able to tamper with it as they have tampered with all economic legislation. The Amendment would provide that no income tax in excess of 50 percent be levied on any corporation. All funds raised by the corporate income tax would be distributed on an equal basis each year to those persons who had voted in the previous national election. These sums would not be taxable.

Mr. Perry believes that this national dividend on business profits would provide an incentive for all Americans to strengthen and enhance the free enterprise system. Obviously, the more industry made, the larger would be the individual's share of profits. Those who think that treating industry and business in this manner has no personal economic consequences would change their minds.

One condition, of course, for making this plan feasible would be the imposition of a cut-off on further expansion of Federal spending programs. By giving every couple in the United States what in the first years of the plan would amount to $1,000, there would be no excuse for the current costly boondoggles or the equally costly efforts at eliminating poverty by institutionalizing it under the Office of Economic Opportunity.

As a by-product, there would be an incentive to all Americans to take part in national elections. Mr. Perry emphasizes that this is not the primary aim for making voting a requisite. Voter rolls are the most practical roster of recipients. To use them would also compel the Federal government to keep voter lists up-to-date and this in turn would prevent corrupt politicians from "voting the cemeteries."

The National Dividend Plan could be administered almost automatically, without requiring the top-heavy bureaucracies that other programs demand—and get! In wartime, the plan would be suspended. The government, therefore, would have all corporate taxes for the prosecution of the war, making the levy of higher taxes much less likely.

There are those who oppose the Perry National Dividend Plan as just another handout. It may be that this is so, but it merits serious study. Those who are interested can write to Hal Allen (Perry Publications, 2751 South Dixie Highway, West Palm Beach, Florida 33402) for more details. Many businessmen are giving the Perry plan their backing. But the final arbiter is the voter. To pass judgment, he must know the facts. This writer, for one, would like to know what his readers think about the plan.

CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, would the Senator from Connecticut [Mr. DODD], who is next to be recognized, yield to me a few minutes, without losing his right to the floor?

Mr. DODD. Mr. President, I am very happy to yield.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1086, and that the rest of the calendar be considered in sequence.

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

COMMITTEE ON LABOR AND PUBLIC WELFARE

The resolution (S. Res. 276) authorizing additional committee funds for the Committee on Labor and Public Welfare was considered and agreed to, as follows:

S. RES. 276

Resolved, That the Committee on Labor and Public Welfare is hereby authorized to expend from the contingent fund of the Senate, during the Ninetieth Congress, $20,000 in addition to the amount, and for the same purpose, specified in section 134(a) of the Legislative Reorganization Act approved August 2, 1946.

U.S. CONSTITUTION

The concurrent resolution (H. Con. Res. 770) to authorize printing of updated pocket-size U.S. Constitution for congressional distribution was considered and agreed to, as follows:

H. CON. RES. 770

Resolved by the House of Representatives (the Senate concurring), That there shall be printed as a House document the Constitution of the United States (pocket-size edition), as amended to February 10, 1967, and that one hundred sixty-one thousand two hundred and fifty additional shall be printed, of which one hundred nine thousand seven hundred and fifty shall be for use by the House of Representatives and fifty-one thousand five hundred for use of the Senate.

FEDERAL FIREARMS ACT AMENDMENTS

The concurrent resolution (S. Con. Res. 68) to print additional hearings on amendments to the Federal Firearms Act was considered and agreed to, as follows:

S. CON. RES. 68

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Committee on the Judiciary four thousand additional copies of the hearings before its Subcommittee To Investigate Juvenile Delinquency during the Ninetieth Congress, first session, on proposed amendments to the Federal Firearms Act.

RIOTS, CIVIL AND CRIMINAL DISORDERS

The resolution (S. Res. 277) authorizing the printing for the use of the Committee on Government Operations of additional copies of its hearings entitled "Riots, Civil and Criminal Disorders" was considered and agreed to, as follows:

S. RES. 277

Resolved, That there be printed for the use of the Committee on Government Operations one thousand additional copies of part 5 of the hearings before its Permanent Subcommittee on Investigations during the Ninetieth Congress, second session, entitled "Riots, Civil and Criminal Disorders."

MINERAL AND WATER RESOURCES OF MONTANA

The resolution (S. Res. 279) authorizing the printing of the report "Mineral and Water Resources of Montana" as a Senate document was considered and agreed to, as follows:

S. RES. 279

Resolved, That the compilation entitled "Mineral and Water Resources of Montana," a report by the United States Geological Survey, prepared at the request of Senator Lee Metcalf of the Committee on Interior and Insular Affairs, be printed with illustrations as a Senate document; and that there be printed one thousand three hundred additional copies of such document for the use of that Committee.

PLANNING-PROGRAMING-BUDGETING: SELECTED COMMENT

The resolution (S. Res. 280) authorizing the printing of additional copies of the committee print entitled "Planning-Programing-Budgeting: Selected Comment" was considered and agreed to, as follows:

S. RES. 280

Resolved, That there be printed for the use of the Committee on Government Operations five thousand additional copies of the committee print entitled "Planning-Programing-Budgeting: Selected Comment", issued by that committee during the Ninetieth Congress, first session.

REVIEW OF U.S. GOVERNMENT OPERATIONS IN SOUTH ASIA

The resolution (S. Res. 282) to print as a Senate document a report by Senator ELLENDER entitled "Review of U.S. Government Operations in South Asia" was considered and agreed to, as follows:

S. RES. 282

Resolved, That a report entitled "Review of United States Government Operations in South Asia", submitted by Senator ALLEN J. ELLENDER to the Senate Committee on Appropriations on April 2, 1968, be printed as a Senate document; and that two thousand

two hundred additional copies of such document be printed for the use of that committee.

NATIONAL FOREST RESERVATION COMMISSION REPORT

The resolution (S. Res. 285) to print as a Senate document the annual report of the National Forest Reservation Commission was considered and agreed to, as follows:

S. RES. 285

Resolved, That the annual report of the National Forest Reservation Commission for the fiscal year ended June 30, 1967, be printed with an illustration as a Senate document.

MARY N. BELL

The resolution (S. Res. 287) to pay a gratuity to Mary N. Bell was considered and agreed to, as follows:

S. RES. 287

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Mary N. Bell, widow of Frank Bell, an employee of the Architect of the Capitol assigned to duty in the Senate Office Building at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

BILLS PASSED OVER

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the next two bills, Calendar No. 1095, S. 3465, and Calendar No. 1096, H.R. 15190, be passed over.

The PRESIDING OFFICER. Without objection, the bills will be passed over.

BOSTON INNER HARBOR AND FORT POINT CHANNEL

The bill (H.R. 14681) to declare a portion of Boston Inner Harbor and Fort Point Channel nonnavigable was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I wish to thank the distinguished Senator from Connecticut for his patience and his usual courtesy.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut [Mr. DODD] is recognized.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. DODD. Mr. President, as agreed yesterday afternoon, I want to give the distinguished Senator from Wyoming [Mr. HANSEN] an opportunity to ask questions. I ask his indulgence for 2 or 3 minutes. I should like to make a brief statement.

WAR HERO SLAIN BY TEENAGE GUNMEN

Mr. President, this debate on S. 917, omnibus crime bill, was to begin on Tuesday. It was postponed by a daylong discussion of the forthcoming Poor People's March on Washington.

There is some fear that as the march nears Washington, its leadership may lose control.

There is fear that a sincere civil protest will be turned into a massive riot.

The discussion here Tuesday reflected that fear in a lengthy discussion of how to control thousands and possibly hundreds of thousands of demonstrators run amuck.

And so discussion of the omnibus crime bill began on Wednesday. I hope the result will be a law remembered for its wisdom and effectiveness.

But even if S. 917 succeeds it will be no comfort to three people shot to death in Washington Tuesday afternoon by guns in the hands of the wrong people at the wrong time.

The three killings are a profile of what the Juvenile Delinquency Subcommittee found to be happening each day across the country.

A cheap, mail-order type, small-caliber gun in the hands of teenagers in a drugstore holdup. They panicked and shot to death a 59-year-old war hero, a holder of the Distinguished Flying Cross. That happened at 3:35 p.m. Tuesday.

In the second case, a marriage of 22 years came to an end at 3:30 p.m. Tuesday, when a Washington husband shot to death his wife as she worked behind a drugstore soda fountain in Palmer Park, Md. The husband then put a bullet through his own head.

Generations ago we should have ruled in favor of the public interest and devised a way to keep guns out of the hands of frightened teenagers and distraught husbands.

It is a strange Government we have that is ready to send a man to the moon but is not ready to keep guns from known killers, certified lunatics, and irresponsible juveniles; that will endlessly debate technique while principle goes by the boards.

Perhaps the 90th Congress in 1968 will fail to do what Congress failed to do in 1938.

Perhaps the 90th Congress will pass a law geared to the needs of a 20th-century urban society where the pursuit of happiness and the common good is secured by the law, and not by a gun.

Mr. President, there is no adequate expression of sympathy for the survivors of these three needless murders on Tuesday while the Senate pondered the imponderables of the Poor People's March.

I want to express my personal regrets to the families of the victims and hope that the attention of the Senate will be focused on the need for a firearms law that could prevent similar incidents sometime in the future.

I ask the grace of the families of these victims and unanimous consent of the Senate to have printed in the RECORD at this point the news accounts of these tragedies.

Both stories are from the inside pages of the May 3, 1968, Washington Star.

I commend them to the attention of my colleagues.

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

WAR HERO DIES TRYING TO FOIL BANDITS

(By Barry Kalb)

Charles (Sarge) Sweitzer was a hero again yesterday, but it cost him his life.

He was shot to death trying to rescue his boss, the hostage of a drugstore bandit.

Sweitzer was a master sergeant in the Air Force until he retired in 1960 and went to work at Brinsfield's Rexall Drug Store, 3939 South Capitol St. He was in charge of the camera counter.

Sweitzer had made it through World War II, earning the Distinguished Flying Cross, one of the Army Air Corps highest honors. But after he went to work at the drugstore, his 21-year-old son, Clarence, said yesterday, "I always wondered if something would happen." Sweitzer would have been 59 on May 31.

FOUR GUNMEN ENTER

Yesterday at 3:35 p.m., four young men, at least one of them wearing a red mask, entered the drugstore and drew guns.

According to police, two young boys in the store, seeing the guns, ran across the street to where Pvt. Daniel E. Keller of the 11th Precinct was guarding the polling place in the Washington Highlands Library.

Keller ran into the side door of the drugstore, police said, where he found three of the robbers with their guns drawn. He told them to put their hands up, but the fourth, who was in the back of the store with the owner, William S. Brinsfield, fired a shot at the 23-year-old policeman. The shot missed.

At this, the four broke for the front door, the one who had fired the shot pushing Brinsfield ahead of him and trying to carry a white sack with several hundred dollars loot at the same time.

"He grabbed me by my white coat and was pushing me out with the gun in my back," Brinsfield, 63, said later.

"As we passed the cigar counter, Charles grabbed him from behind. He took his gun away. He tried to shoot—he pulled the trigger a few times—but nothing happened."

The robber dropped the sack with the money, but one of the other bandits shot Sweitzer in the abdomen.

A customer, John R. Wheatley, said Sweitzer "staggered and fell into the doorway." Brinsfield was unharmed.

When the bandits ran out the front, police said, Keller ran back out the side door and around to the front, where he seized a 17-year-old youth.

Asst. Chief of Police George Donahue said Keller fired three shots at the robbers who were running away, but it was not known if Keller hit anybody.

Two of the fleeing bandits ran into a wooded hollow surrounding Oxon Run Creek, in the area of Valley and Wayne Streets SE.

THREE STILL AT LARGE

Additional police officers arrived quickly, and a helicopter was called in, but the three were still at large today.

The 17-year-old was charged with murder. Lt. Patrick Burke of the homicide squad identified him as Walter Howard Jr. of the 1300 block of D Street NE.

Sweitzer was pronounced dead at D.C. General Hospital.

Sweitzer lived with his wife, Mazie, his son, and his daughter, Margaret, 20, at 2514 St. Clair Drive, Hillcrest Heights.

His was the third man slain by holdup men in eight days in the metropolitan area.

Benjamin Brown, 58, of 1900 Lyttonsville Road, Silver Spring, was shot in his liquor store at 1100 9th St. NW. Emory E. Wade, 41, of Woodbridge, Va., manager of the A&P store on Southern Avenue in Oxon Hill, was shot as he knelt to open a safe at the demand of two robbers. Arrests have been made in both slayings.

WIFE SLAIN, DISTRICT MAN SHOOTS SELF

A Southeast Washington man walked into a Palmer Park drug store yesterday, shot his estranged wife in the face while she was working behind the fountain, and then shot himself in the head, Prince Georges County police reported. The wife died today.

Both Perry Woodrow Skeen, 44, of 747 Alabama Ave. SE., and his wife Dolly, 37, of 7631 Goodland Drive, Kentland, were admitted to Prince Georges General Hospital in critical condition. Mrs. Perry died this morning.

The shooting occurred about 3:30 p.m. in the People's drug store, 8101 Barlowe Road, Palmer Park.

Skeen, a bakery worker at St. Elizabeths Hospital, and his wife separated last October, police said.

They were married 22 years ago, according to a son-in-law, Samuel W. Arbogast. Mrs. Skeen has been living with the Arbogast family.

Besides Mrs. Arbogast, the couple has two other children: a son Jerry, 15, a Kent Junior High School student, who also lives with the Arbogasts, and a second married daughter who lives in West Virginia, Mr. Arbogast said.

Police said no charges have been filed, pending completion of their investigation.

Mr. DODD. Now I am happy to yield to the distinguished Senator from Wyoming for whatever questions he desires to ask, which I trust I will be able to answer.

Mr. HANSEN. Mr. President, I thank the distinguished Senator from Connecticut for his courtesy, and I appreciate also his willingness to appear here early today, after an extremely arduous day yesterday.

Section 923(a) of title IV, which appears on pages 97 and 98 of S. 917, appears to require that all persons engaging in business as firearms manufacturers, importers, or dealers, must have a license for each place of business. At least, that appears to be the plain meaning of the language in the bill. Also, the report, on page 116, indicates the same.

My question is, Do manufacturers and dealers whose business is solely within the borders of a single State have to be federally licensed—in other words, those who deal only in intrastate commerce?

Mr. DODD. Yes; all dealers have to be federally licensed.

Mr. HANSEN. As I read it, section 923(a) sets a fee schedule for the various categories of licenses to be issued under the act. The fee for those who make, import, or deal in destructive devices is $1,000 a year. The fee for manufacturers and importers of firearms other than destructive devices——

Mr. DODD. Mr. President, will the Senator yield? Is he reading from the report or from the bill? I have tried to follow it. I think it is from the bill.

Mr. HANSEN. It could be. Let me check here just a moment.

I think in a number of instances the bill and the report are quite similar.

Mr. DODD. They are. Perhaps I could help the Senator. Is he reading from Report No. 1097?

Mr. HANSEN. I am reading from the bill.

Mr. DODD. Go ahead. I do not think it makes too much difference. In some places, there is a little different language.

Mr. HANSEN. Yes.

If I may, then, I will repeat what I started to ask. As I read it, section 923(a) sets a fee schedule for the various categories of licenses to be issued under the act.

The fee for those who make, import, or deal in destructive devices is $1,000 per year. The fee for manufacturers and importers of firearms other than destructive devices is $500 per year. The annual fee for pawnbrokers is $250. The fee for firearms dealers is $25 the first year, and $10 for each renewal.

Have I interpreted title IV and the report correctly?

Mr. DODD. Yes. As I read it, that is exactly right. I see no difference at all.

Mr. HANSEN. The Federal Firearms Act presently, in section 903(a), prescribes a fee of $25 for manufacturers and importers per year, and $1 for dealers. This proposal increases the fees for manufacturers and importers quite significantly, from $25 to $500 and $1,000. Is there any testimony in the hearing record to justify such an increase?

Mr. DODD. We had some testimony on some of these increases in license fees. There was testimony, I recall clearly, with respect to the pawnbroker's license. My best recollection is that those manufacturers, who appeared, said they had no objections. I would have to search the record to see if there was any further testimony with respect to the destructive devices. I do not recall offhand.

Mr. HANSEN. In my search, I might state to the distinguished Senator, I have found no testimony in support of it.

Mr. DODD. I think the Senator will find I am right about the pawnbrokers and the manufacturers. I am not so sure about the destructive devices.

Mr. HANSEN. I would not imagine that the large manufacturers would be particularly bothered by a $500 or a $1,000 license fee per year, but what about the small businessmen? Would not the proposed fee schedule be hard on them?

Mr. DODD. I do not think so. It would apply only to the local merchant who sells firearms, and the first year it would be $25 and afterwards $10. I do not think that is hard on merchants.

If we are to enforce this law, I think these license fees have to be raised, in order to even partially do the job. Even at this rate, it will not be adequate enough but it will help.

I do not think it is too much to ask, in the face of the growing crime rate by gun. It is a dangerous weapon. It is a dangerous commodity. It is a dangerous thing to have around; and it seems to me we have got to ask those who deal legitimately in these weapons to help enforce the law.

Mr. METCALF. Mr. President, will the Senator from Wyoming yield to me for a moment?

Mr. HANSEN. I yield.

Mr. METCALF. In the State of Montana, we have a quota system and a drawing system for licenses to hunt moose and antelope, for example. Suppose a man is fortunate enough to get an opportunity to go moose hunting. He goes down to the store and tries to get a different type of rifle than he has used for deer hunting or antelope hunting. He finds, in that small community of Twodot or Sweetgrass, or one of the other towns of 250 or less, that nobody can afford a license to sell him the kind of gun he wants.

Is this not prohibitive for the small businessman, in a community such as that, to carry out and perform the necessary services for a legitimate hunter in that community?

Mr. DODD. May I reply?

Mr. METCALF. Surely. The Senator from Connecticut has the floor.

Mr. DODD. I do not wish to interfere.

Mr. HANSEN. I yield to the Senator from Connecticut.

Mr. DODD. It seems to me that if a man wants to hunt moose, wherever it is, he would not find a $10 license for the dealer in the kind of gun he requires prohibitive or burdensome.

Mr. METCALF. If he finds such a $10 license fee prohibits some businessman of that area from carrying that kind of gun?

So that then he has to go into one of the cities, 100 miles away, perhaps, or he has to order it from Sears, Roebuck, or one of the mail-order suppliers, and go through all the process the Senator has set forth in this bill, and get a permit, and all of that?

Mr. DODD. Mr. President, let me say to my friend, the very able Senator from Montana, that I just do not think it is that burdensome. Again, I come back to what I have said over and over again: We are in a critical situation in this country. People are being killed every day with firearms of one type of another. It just will not do to go on as we have been going.

It is going to be burdensome, more so than it has been, of course; but we are all burdened. Our whole society is burdened by the use of guns in the commission of crime.

Mr. METCALF. If the Senator will permit me, however, I believe he is burdening the wrong people.

Mr. DODD. Well, everybody is going to be burdened. It will not rest on just one segment of society. We have all got to give up something in order to obtain a better situation. I wish it were not so. I do not know how else we can do it.

How can we adequately enforce this law if we do not have some money coming from licensees? Ten dollars really, at this hour in our history, is not, I think, too much to ask from any legitimate dealer. They will find ways, I am sure, to pass on the increased cost burden to the purchaser; and if they spread it out, and sell enough merchandise—it would seem to me it would not be any great burden. Here and there it may be a little more harsh on one than another, but that is the way we have to operate. I cannot give the Senator any better answer than that.

Mr. METCALF. I thank the Senator for the answer.

I am grateful to the Senator from Wyoming for yielding.

Mr. HANSEN. Mr. President, I should like to make the observation to the distinguished Senator from Connecticut that, as I understand it, my question regarding the burden that would be imposed by a $500 or even a $1,000 fee could apply to a small manufacturer.

We have a small gunsmith in my hometown of Jackson, Wyo. He is in business for himself. I do not think he ordinarily employs anyone else. It is a small business; he does not turn out very many guns a year, and yet, as I read the bill, it is my understanding that he would be required to purchase at least a $500 license, and under certain circumstances possibly even a $1,000 license. Is that not true?

Mr. DODD. No; I think the Senator is mistaken. The gunsmith, under this title, is considered a dealer and not a manufacturer.

Mr. HANSEN. No; this fellow is a manufacturer. He makes the guns. He is not a dealer.

Mr. DODD. I thought the Senator said he was a gunsmith.

Mr. HANSEN. He is a gunsmith. He manufactures his guns.

Mr. DODD. Well, we tried to protect against that kind of thing by saying that a gunsmith would be considered a dealer and not a manufacturer.

A gunsmith is not, in the general sense of the term, a manufacturer. He does not employ a lot of people, or have a lot of machinery. The average, usual type of gunsmith, as I understand, works at it himself, with his own hands.

Mr. HANSEN. How many guns would you have to make before you became a manufacturer, under the bill as drawn?

Mr. DODD. I do not think it is a question of how many guns you would have to make. It is what kind of business you are in. For example, is he a lone individual?

Mr. HANSEN. He is in the business of making guns.

Mr. DODD. If he were an individual working his own hours in his shop and did not employ anybody else, he would clearly not be a manufacturer in the usual sense of the term. He would be an individual craftsman, making special kinds of weapons. He would not be making a Remington rifle, a Winchester rifle, or any of the well-known brands of rifles. He would be making a specialty because he is a highly skilled craftsman. It would be unfair to consider him a manufacturer in the usual sense of the term, and it was never my intention to so consider it.

Mr. HANSEN. I refer to page 97 of the bill. Under section 923, "Licensing," subsection 1 reads:

(1) if a manufacturer—

(A) of destructive devices and/or ammunition a fee of $1,000 per year—

What about the person who loads ammunition?

Mr. DODD. They are excluded under this title. The loaders of ammunition would not be included.

Mr. HANSEN. Was it the purpose of the Senator in fixing these fees to regulate firearms, or was it to produce revenue. I think, if I understood the Senator correctly, he said that it was necessary to have fees to create enough revenue effectively to enforce the act.

Mr. DODD. To help enforce it. That is one of the reasons. The other reason is to get a more reasonable Firearms Control Act.

To explain it a little further, I believe that raising the fee from the present $1 fee to $10 would tend to drive out the fringe operators that I discussed yesterday, the people who travel in trucks or cars from Delaware to California and have the weapons in the trucks or in the trunks of the car. They sell these weapons along the way. These people have no place of business other than their vehicles.

Many of these $1 licensees have weapons in the trunk of a car and they take out a license so that they can buy at lower prices firearms which they want for one reason or another. I would like to see that trade stopped so that we might have a more legitimate trade or business in firearms with responsible people selling them.

I think this is one way of doing it. Increasing the license fee would help, I think, to get a better firearms control law.

Mr. HANSEN. It is the feeling of the Senator then, as I understand him, that the difference between the $1 fee and the $10 fee would exclude the fly-by-night operators and permit the continuation only of reputable people.

Mr. DODD. That is part of it. And the bill sets up standards. The people must have a place of business. For example, a large percentage of the present licensees do not have any place of business.

Mr. HANSEN. The Senator feels that the $9 differential would effectively weed out the poor or the bad operators from the good ones.

Mr. DODD. I think it will help. It will allow the law enforcement people to have more money with which to check these licensees to be sure that they are complying with the law. I think it is a healthy thing to do.

I keep saying, and I cannot say it too often, that we are dealing with highly dangerous items when we deal with firearms of any kind. We ought to take the matter very seriously.

If one can get a Federal license for $1, he is just about as free as he can be with respect to buying and selling firearms. I do not think that a $10 fee is very high. It was suggested in the hearings that it should be higher. I did not want that. I hope that the $10 fee will be a deterrent to the fringe people who should not be in the gun business.

Mr. HANSEN. If the Senator were to exclude from the application of the $500 or the $1,000 license fee, these small, independent gunsmiths and manufacturers to which I alluded some few moments ago, how many manufacturers do we have in the country today to whom this license fee would apply?

Mr. DODD. My recollection is that there are about 82. I do not have the exact figure, but it is in the neighborhood of 70 or 80.

Mr. HANSEN. Let us assume that it is 82 and assume that the full, maximum fee is applied to all of them.

Mr. DODD. The Senator is talking about the manufacturers?

Mr. HANSEN. That is correct. Would it then be fair to assume, in the judgment of the Senator, that a substantial part of the enforcement cost of the legislation would be provided by the $82,000 that would be collected in fees?

Mr. DODD. I think so. It would be a very helpful part of it, anyway, because the cost collected from each manufacturer would be far in excess of the $10 fee collected from each dealer licensee. Taken together, it would be a sizable amount of money. I believe that there are some 100,000-odd licensees in the country.

In further answer to the Senator's question about why we recommend an increase in license fees from $1 to $110, it is because it would have a deterrent effect on juveniles, many of whom get a $1 license. I do not think they are as likely to get a $10 license. I do not think they should have a license, but they do have licenses now.

Mr. HANSEN. However, if I understand section 923(c) of title IV correctly, persons under 21 would be barred from obtaining Federal firearms licenses—even if they had $25, $500 or $1,000 to pay. Now, to another question. Section 923(b), on page 98 of the bill, states:

(b) Upon the filing of a proper application and payment of the prescribed fee, the Secretary may issue to the applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce—

In examining this provision and comparing it with section 3(c), of the existing law, title 15, United States Code 903(b) and in the section-by-section analysis of the report on page 116, some questions come to mind.

The existing law says that the Secretary "shall" issue a license. Title IV says that the Secretary "may" issue a license.

Why is there different wording used?

Mr. DODD. That is to give the Secretary discretion. All cases are not alike. In my judgment, he should have discretionary power to decide that in this case it should be granted and in another case it should be denied.

Mr. HANSEN. The sectional analysis indicates that a licensee would be specifically restricted to interstate shipments and receipts in accordance with the provisions of title IV.

There is a commentary on page 116 of the report, if the Senator would be interested in referring to it. Does this mean that the licensee's intrastate shipments and receipts do not have to be in accord with the title?

Mr. DODD. What part of page 116?

Mr. HANSEN. There is a commentary on page 116 of the report. May I read it to the Senator?

Mr. DODD. Yes, please.

Mr. HANSEN. It reads as follows:

Section 923(b).—This subsection authorizes the Secretary to issue a license to one who has filed a proper application and paid

the prescribed fee and provides that such license shall, subject to the provisions of the title and other applicable law, entitle the licensee to transport or receive the firearms and ammunition covered by the license in interstate or foreign commerce for the period stated. The subsection is comparable to 15 U.S.C. 903(b) of the present Federal Firearms Act except that no specific provision is made for revocation. However, it should be noted that the provisions of the proposed subsection specifically restrict the licensee to interstate shipments and receipts in accordance with the provisions of the title. Thus, for example, a licensee finally convicted of a felony could not continue to engage in business under the title.

Does this mean that the licensee's intrastate shipments and receipts do not have to be in accord with the title? The Senator has spoken about interstate and foreign commerce. What about intrastate shipments?

Mr. DODD. I believe that under this title he would have to comply with the law with respect to intrastate as well as interstate. All that is required with respect to intrastate shipments, as the Senator may recall, is the requirement that age, name, and address be obtained and that sales may not be made to felons and other criminals who could not buy the gun under the State or local law.

I might say to the Senator that yesterday we discussed these requirements, and I explained what I thought a dealer should do—ask for identification.

Mr. HANSEN. I beg the Senator's pardon?

Mr. DODD. The dealer should ask for identification, for example, an automobile license, or a social security card. I expect that that would be the prudent thing to do. But, actually, under the title, of course, he is required only to ask for age, name, and address. I would like to see it stronger, but I found it impossible to get stronger language agreed to by the Judiciary Committee. I believe it is a very mild requirement.

Here, again, this is all tied into the general principle of this title—to get more responsibility into the traffic in firearms. I believe the good businessman, the good dealer in firearms, will want to do more than get the age, the address, and the name of the individual. He will want to make a check. And in many States there is a waiting period. He will know the law pretty well in his own State.

So I believe it fits in at least with my concept of what we need.

Mr. HANSEN. Section 3(b) of the Federal Firearms Act provides that no license shall be issued to any applicant within 2 years after the revocation of a previous license. I do not see that this provision is carried forward in the new bill. Why has it been omitted?

Mr. DODD. To what section is the Senator referring?

Mr. HANSEN. Section 3(b) of the Federal Firearms Act.

Mr. DODD. I believe that the Senator is talking about section 903 of the act.

Mr. HANSEN. I am talking about the act presently on the books.

Mr. DODD. Yes, I know. The Federal Firearms Act.

Mr. HANSEN. Yes.

Mr. DODD. The Senator is referring to the fact that title IV does not include language that is now in section 903(b) of the act relating to revocation and reissuance of a license. Is that correct?

Mr. HANSEN. In the new bill.

Mr. DODD. I believe the answer is that we have section 925, the title of which is "Exceptions, Relief from Disability." I believe a reading of that section will make clear that it precludes the need for the provision to which the Senator refers.

To explain it a little more clearly: Under the new section, he can reapply at any time. There is no time limit. And that seemed to us more fair and more reasonable.

Mr. HANSEN. The reference that the Senator has just made, I understand, already is contained in existing law. It is section 10 of the Federal Firearms Act (15 U.S.C. 910), at least that is what the report on page 118 indicates. Is my understanding correct?

Mr. DODD. The Senator's understanding is correct.

Mr. HANSEN. The Senator from Connecticut believes, then, that there is no further necessity or requirement to carry this one specific provision into the new bill—the provision that no application shall be issued within 2 years after the revocation of a previous license?

Mr. DODD. No; I do not believe so. I believe our section clears that up.

Mr. HANSEN. I fail to see how one section of the existing law can be used to justify the removal of another section. Now, another question. Section 923(c) of title IV, which appears on pages 98 and 99 of the bill, sets forth six requirements or standards for the obtaining of a Federal firearms license. These six standards are incorporated into the five subparagraphs of the section. Subsection (2) appears to contain two separate standards, the second standard in subparagraph (2), beginning at line 13, page 99, and carrying through line 17.

In comparing this with Senator HRUSKA's substitute bill, amendment 708, I see that section 903(b), on pages 11 and 12, appears to contain four of the six standards which are in title IV. I ask the Senator whether I am correct in my conclusion.

Mr. DODD. The Senator will have to indulge me a moment while I check.

As I understood the Senator, he referred, first, to the language beginning on line 13, page 99.

Mr. HANSEN. Yes; and carrying through line 17.

Mr. DODD. This is the part that reads:

> The applicant * * * is prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under the provisions of this chapter; or is, by reason of his business experience, financial standing, or trade connections, not likely to commence business operations during the term of the annual license applied for or to maintain operations in compliance with this chapter.

That seems entirely reasonable to me.

The Senator then referred to another section—I do not recall the number of it—on page 11 or 12. That must be of the report.

Mr. HANSEN. I was speaking of Senator HRUSKA's bill, the substitute bill, amendment No. 708.

Mr. DODD. Pages 11 and 12 of his bill?

Mr. HANSEN. Yes. Section 903(b), pages 11 and 12, appears to contain four of the six standards which are in title IV.

Is that correct?

Mr. DODD. I have a chart which we have drawn up which I believe is correct. We have the following standards. Under title V a license would be denied to first, a person under 21 years of age; second, a felon or a fugitive or person under indictment for felony; third, a person who violated any provision of the title; fourth, a person not likely to conduct operations in compliance with the title's provisions; fifth, a person who has no business premises; and sixth, a person who falsified his application.

The proposal of the Senator from Nebraska [Mr. HRUSKA], amendment No. 708, would deny licenses, as I read it, to the following: First, a person under the age of 21; second, a felon, a fugitive, or a person under indictment for a felony; third, a person who violated any provision of the act; fourth, a person who falsified his application.

I think the two differences are, first, denial to a person not likely to conduct operations in compliance with the title; and second, for a person who has no business premises. Those are the differences. I do not believe there is a conflict here. I tried to go a little further. We had experience during the course of the hearings where we found a man who did not have a place of business. My impression is that he has one room, a loft, or something of that sort.

I think these people should have an identifiable place of business such as a store, a shop, or some place that everybody knows is his place of business so that they would not have to go searching around in some second- or third-story loft to find it. That is one of the differences, but I do not see any real conflict.

The Senator from Nebraska [Mr. HRUSKA] thinks that his four provisions are sufficient. I think the requirement of having a place of business is important. The point that no one should be granted a license who is not likely to conduct his business in compliance with the title's provisions seems to me to be important.

That is the best answer I can give.

Mr. HANSEN. I appreciate the responses of the Senator.

After having prefaced the question with what I have said, I was going to ask how the Senator would interpret the language of section 923(c) of title IV: "or is, by reason of his business experience, financial standing, or trade connections, not likely to commence business operations during the term of the annual license applied for or to maintain operations in compliance with this chapter."

What criteria would be used and how would it be determined that one is not likely to commence business operations during the term of the annual license applied for?

I have found nothing in the bill nor in the report, which contains practically the same words of the bill to clarify this requirement. It seems to me that the language left a lot to be desired to be used in the way of criteria to answer the questions. It seems that this would allow

the Secretary of the Treasury or his delegate virtually unlimited discretion to approve or deny an application for a license.

Mr. DODD. The normal and usual criteria would be used. We must remember that the executive department of the Government is going to enforce the law, and that the provisions of the Administrative Procedure Act would be fully applicable in all such cases, which also gives a degree of protection to the applicant. The applicant would have to be given notice of the contemplated denial, he would have to have a chance to be heard, and he would have all rights of appeal under that act.

We have to leave to the executive department some area of establishing reasonable regulations. I am sure the Senator is aware that it is difficult for us to write out in every detail how this law or any other law will be enforced by the executive department. We do the best we can. I think that a general criteria, which we have set up, is as well as we can do.

Obviously, a ne'er-do-well person, who has a bad record in his community such as an habitual misdemeanant, a person who has been in another business and made a complete flop of it and abused it such as the two mail-order dealers I investigated who had been in the mail-order pornography business, these would not be the kind of persons to whom the Senator from Wyoming would want to give a license. In addition, I think that the person's record and reputation among his neighbors and fellow citizens is something which should be considered, as well as whether or not he has had any significant association with the criminal element in the community.

This is what I would do if I were sitting on the case of an applicant for a license. I think these are some of the things I would look for. That is what is meant by this language.

Mr. President, I do not know whether we are under a strict limitation of time or not.

Mr. BYRD of West Virginia. Yes; we are.

Mr. DODD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. McGOVERN in the chair). The Senator has 19 minutes remaining.

Mr. DODD. I thank the Presiding Officer.

Mr. METCALF. Mr. President, I shall not need 19 minutes.

The inquiries directed by the Senator from Wyoming related to problems about which I was also concerned. I do wish to say that the distinguished Senator from Connecticut has made a great contribution to law enforcement in America. I feel the efforts the Senator has made in controlling the indiscriminate traffic in guns and destructive devices has acquainted the people of America to many problems that many of us in the West, where this is not a real problem, were not aware of. I compliment the Senator for his contribution.

I also want the Senator to understand a problem we have in our area. The greatest business in Montana, Wyoming, Utah, and Idaho is the tourist business. People come into our areas to hunt and they do use the high-powered rifles and destructive weapons that the Senator has been talking about. In addition, the local people go out and everybody has weapons, everybody has shotguns, and everybody has long guns. We do not use them in riots and we do not use them in civil disturbances such as the Senator spoke of in the beginning of his presentation. This is what concerns the people of my area.

The Senator has moved the business of sporting rifles and the business of legitimate weapons over into the same area as gangster weapons and the destructive devices. I wish to ask the Senator why he has changed this division we have had heretofore and placed sporting rifles and sportsmen in the same category as weapons used for destructive purposes and people who are gangsters.

Mr. DODD. Let me respond to the Senator, first of all, by thanking him for his generous remarks which, I am sure, I do not deserve but for which I am truly grateful, particularly coming from as distinguished a Member of this body as is the Senator from Montana. I have tried to do my best on this subject.

In answer to the Senator's specific question, I have never, and I do not now, lump together legitimate sportsmen and criminals, the mentally incompetent, or the child who is now able to get guns. I know what the Senator says about his great State of Montana and other States such as Wyoming, Idaho, and others. I know that there is a great tourist business there and a great engagement in the use of sporting guns in those States. I am not trying to stop that. If anything, I am trying to encourage it. I want guns in the hands of decent, responsible people.

I stated yesterday that my experience has been that sportsmen are among the best of our people. I have known many of them. Unfortunately, the guns they use for legitimate sporting purposes have gotten into the hands of criminals, nuts, and chlidren. That is what I want to prevent and put a stop to. In that sense, one could say that they are mixed together but I do not see how we can separate them other than to do something about it as strongly as we can. They are not the same people, but they are the same weapons. A good weapon can be used, and frequently is, for a bad purpose. So that we have to talk about the weapon and about those undesirables who get their hands on those weapons.

How would the Senator feel about a provision in this title which allowed the States, by option, to be included or to be left out?

Mr. METCALF. I feel that would be a very important provision. The problems of Montana and the problems of the West on this subject are different from the problems in urban areas of the East. I am convinced that we in Montana could take care of this business of criminal operations in both handguns, long guns, and destructive devices.

But the Senator has not quite answered by question. I used to train men in the use of the .37-millimeter cannon. I have some nostalgia about that. I was once a weapons instructor and know something about the operations of a Thompson submachinegun. One can buy a Thompson submachinegun in some areas.

Mr. DODD. And buy an antitank gun as well.

Mr. METCALF. I see no reason at all why there should be any civilian use of a .37-millimeter cannon, a .75-millimeter cannon, a Thompson submachinegun, or a hand grenade. I compliment the Senator from Connecticut on trying to control that kind of traffic in destructive devices on which there should be civilian control. But why should that be lumped with a .30-caliber sporting rifle.

Mr. DODD. They are not lumped together. Why should they not be in the same bill?

Mr. METCALF. Because it would place the purchaser of a high-powered .22, or a 30–30, in the same category as the purchaser of a Thompson submachinegun.

Mr. DODD. No. Destructive devices are controlled much more stringently than are the sporting rifles. Anyway, as I see it, it is a vastly different thing. It seems to me that these terrible devices are not truly sporting weapons.

Mr. METCALF. We are in complete accord on that. I say to the Senator I am delighted he is saying to the Senate as a part of the RECORD that he sees sporting rifles as an entirely different thing.

Mr. DODD. I do. That is why I prohibit their importation under this bill. That is why I apply stricter controls to them than I do rifles and shotguns.

Mr. METCALF. I concur in the control of handguns. I feel that that will place some burden upon Montana. For example, someone may want to go out to Montana on a camping trip and he will bring along a rifle he recently purchased or has owned for several years, and the Montana guide would say to him, "Why don't you buy a .22, which is a sporting gun if ever there was one?" He would not be able to buy that gun under this bill; nevertheless, as a result of the control of handguns——

Mr. DODD. He can buy it where he lives.

Mr. METCALF. But he lives in Connecticut.

Mr. DODD. He should buy it before he goes to Montana.

Mr. METCALF. Perhaps he would not even know that he could use it there.

Mr. DODD. Well, so that places a small hardship upon him. If he is a true sportsman and knows the law and he wants to buy that kind of gun and he really wants that particular gun, he can arrange for its purchase through his dealer in Connecticut.

Mr. METCALF. As I have said to the Senator, I concur in that. We will take care of that in Montana and live with that kind of thing. Let me ask another question about destructive devices——

Mr. DODD. If the Senator will let me answer him further, first, this point has been raised time and again, that destructive devices should be covered in the National Firearms Act rather than the Federal Firearms Act. Contention has been

made that the Federal Firearms Act covers only sporting arms while the National Act covers the gangster type of weapon. This is a concept that the gun lobby and others, as well as honest and well-intentioned people, have foisted on the public for the past 30 years, I tell the Senator, and I think I am right about that.

Mr. METCALF. I do not like the word "foisted" so far as the Senator from Montana is concerned.

Mr. DODD. Of course, I do not include the Senator from Montana. I said many honest and well-intentioned people. The gun lobby has used that argument time and again. The answer to it is that, as I have tried to think it out, the Federal Firearms Act, by virtue of the definition of firearms in the act, covers all firearms including sporting and gangster-type weapons. that is one reason. A second reason is clear, that if one reads the legislative history of both acts, Attorney General Homer Cummings, who was the chief proponent, tried to have all firearms included in both acts during the years he pressed for strong Federal control. A third reason, is that the proscriptions on a felon or a fugitive from shipping or receiving firearms are contained in the Federal Firearms Act but are not contained in the National Firearms Act. I think that is a very important point.

That is another reason for specifically including destructive devices within the purview of the Federal Act which title IV, as the Senator knows, transfers to title XVIII. It seems to me there is no objective rationale for excluding destructive devices from title IV. That is why we have included it.

I should like to see one, strong Federal Firearms Act that covers just about everything in this field.

I do not want to repeal or do anything to the National Firearms Act. I do not think that is necessary. It is very limited anyway, but it is the law and the best law we have. It is not very good, in my judgment, and that is why, I think, we should put everything in the Federal Firearms Act, which I would transfer to title XVIII. I think that is where it belongs.

Mr. METCALF. Many millions of sportsmen dislike being lumped in with gangsters.

Mr. DODD. I know that, I am sure that is true of people in many areas of activity. I drive a car and I do not like to be lumped in with car thieves, but the laws enacted to prevent a car thief from stealing other people's property affect me just the same. So it goes.

One other point I overlooked about the National Firearms Act. All it does is require that one who transfers a machinegun, a sawed-off shotgun, a sawed-off rifle, or gadget guns, as I call them, pay a tax. If he pays his tax, nothing else will happen to him. If he does not pay it, he can be punished for not paying it. But I think that is a very ineffective law with respect to destructive devices. It seems to me we ought to have it in a strengthened and updated Federal Firearms Act. Who is going to be hurt by it?

Mr. METCALF. I hope the Senator understands that the Senator from Montana is not critical. In fact, the Senator from Montana is complimentary to the Senator from Connecticut for the effort to control Thompson submachineguns, burp guns, or 75-millimeter cannons, that no civilian should have any legitimate use for.

Mr. DODD. I thank the Senator.

Mr. METCALF. But why lump those with the legitimate sportsman who does have legitimate use for a .22 rifle or a .30 caliber rifle?

Mr. DODD. Because there are many people today who have Federal licenses and these destructive devices are on the sales counters.

Mr. METCALF. Let us get rid of the destructive devices.

Mr. DODD. I am trying to.

Mr. METCALF. Let us not get rid of other things which are legitimate articles of commerce and necessary as part of the sporting life of America.

Mr. DODD. Under this title, the importation of such weapons is prohibited. This is new. I truly do not understand those who argue that it ought to be under the National Firearms Act instead of the Federal Firearms Act, for the reasons I have given. The question I always ask is, Who is going to be hurt if we write one good, strong Federal Firearms Act that everybody can live with?

Mr. METCALF. A whole lot of legitimate sportsmen.

Mr. DODD. How are they going to be hurt? If they use the dreadful devices and handle them for sporting purposes, they should be stopped. I do not believe many sportsmen, have antitank guns, mortars, bazookas, and all these other weapons. So I do not think any good sportsman is going to be hurt.

Mr. METCALF. The Senator from Montana is in complete accord with the Senator from Connecticut.

Mr. DODD. I know. I take it the Senator would place destructive device coverage under the National Firearms Act rather than the Federal Firearms Act because to do otherwise might cast a shadow on the legitimate sportsman.

Mr. METCALF. Yes.

Mr. DODD. My view is I do not think that is true.

Mr. METCALF. Let me ask a question before our time runs out. The Senator has included explosive devices under the destructive portions of the act.

Mr. DODD. Yes.

Mr. METCALF. Does that mean that dynamite for mines or construction companies, and so forth, is included?

Mr. DODD. No, it does not, Senator. What I had in mind was things like hand grenades and other types of mines and bombs.

Mr. METCALF. Antipersonnel mines.

Mr. DODD. Yes.

Mr. METCALF. So that a legitimate prospector——

Mr. DODD. He is not included under the provisions at all.

Mr. METCALF. He could get dynamite?

Mr. DODD. This provision has nothing to do with that type of business. It specifically excludes such items which would be used in commercial construction or business activities.

Mr. METCALF. I was anxious to make that record, because there is much concern and interest in that.

Mr. DODD. Yes.

Mr. METCALF. I am very grateful to the Senator from Connecticut. Of course, he and I disagree about long guns. As far as sporting rifles and legitimate shotguns are concerned, I am glad they are left out of the bill, and I hope they continue to be left out of the bill. Nevertheless, we are in accord on many provisions of the bill. The Senator from Connecticut has made a great contribution in closing the door and protecting the legitimate sportsman.

Mr. DODD. I thank the Senator. I think, whatever happens, we are going to get a better law with respect to firearms. I fear it will not be as good as it should be.

Mr. METCALF. I hope it is not as good as the Senator wants.

Mr. DODD. I was beaten in the committee vote. I offered the option provision, and that was turned down.

Mr. METCALF. It would seem to me that the option would take care of many of the problems.

Mr. DODD. I though it would, but I could not convince my colleagues in the committee, and so it is not in the bill. Because I value the Senator's judgment, I wondered what his thinking was.

Mr. METCALF. I would take the Senator's view with respect to the purchase of rifles, and so forth, in the State of Connecticut; and I am sure he would respect my opinion as to the needs for a rural area.

Mr. DODD. Of course; the Senator knows that.

Mr. METCALF. And the option provision would take care of that.

Mr. DODD. It seemed to me it would.

The PRESIDING OFFICER. The time of the Senator from Connecticut has expired.

Mr. DODD. I want to thank the Senator from Montana for his kindness.

Mr. METCALF. I thank the Senator from Connecticut.

WILDLIFE GROUPS SUPPORT HRUSKA GUN BILLS

Mr. HANSEN. Mr. President, Members of the Senate have received copies of correspondence from national groups addressed to Senator DODD which explains their positions regarding title IV of the Omnibus Crime Control and Safe Streets Act which is pending before the Senate today.

The endorsement by these national wildlife groups is particularly significant to me because I have worked on numerous occasions with these groups and I can attest to their dedication and high sense of responsibility which they carry to the many issues on which they take a stand.

On the issue of gun control which faces us today, I believe that these wildlife groups accurately and intelligently reflect the wishes of the vast majority of sportsmen and conservationists in my home State. Therefore, I will take the liberty of asking that the position of these groups be made fully clear to the entire Senate and that the text of their letters be printed in the RECORD following my remarks.

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

(See exhibits 1 and 2.)

Mr. HANSEN. Mr. President, I have always felt that the privilege of law-abiding citizens and sportsmen to own and bear arms is one that should not be infringed upon. My own State of Wyoming has thousands of hunters and gunowners who have demonstrated a high regard for the law and who are well aware of the responsibilities incumbent upon those owning firearms. Such is indeed the case with the majority of Americans who own guns. The rights of these individuals must be protected.

However, it is also my feeling that, in the light of the rash of crimes involving guns, some action must be taken to insure safe streets, homes and places of business for all citizens.

Because of the necessity for a careful balance between striking back at crime in America and guaranteeing the right of law-abiding citizens to legally bear arms, I have, in the past, supported two gun control bills introduced by Senator ROMAN HRUSKA, of Nebraska. The provisions contained in his proposals would require those convicted of violent crimes, fugitives and youngsters to purchase handguns in person, rather than anonymously, thereby assisting local police officials in the enforcement of local gun laws. These provisions would also tighten control over machineguns, hand grenades, bazookas, and other such weapons.

I believe that such provisions would adequately accomplish the ends sought by all Members of Congress without infringing upon the constitutional rights of our law-abiding citizenry. It is my belief that the handgun control provision in the bill as reported out by the Judiciary Committee would destroy the balance between combating crime and insuring the rights of the American people. Thus I will continue to follow the lead of the able Senator from Nebraska in attempting to restore this balance.

EXHIBIT 1

NATIONAL WILDLIFE FEDERATION,
Washington, D.C. May 1, 1968.

Hon. THOMAS J. DODD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DODD: This will acknowledge receipt of your letter of April 26 sent via certified mail to request our opinion and position on Title IV of S. 917, the Omnibus Crime Control and Safe Streets Act, as approved by the Senate Committee on the Judiciary.

Time does not permit a thorough study of this proposed legislation by the National Wildlife Federation's officers, directors, and affiliated organizations prior to Senate debate which you have indicated will begin May 2-4.

The position of the National Wildlife Federation on firearms control has been made clear, however, in previous public hearings conducted by the Committee. In brief, we favor, (1) strict regulation and control of concealable weapons (pistols and revolvers); (2) we support existing regulations prohibiting the sale or interstate shipment of firearms to persons under indictment or convicted of a crime punishable by imprisonment for a term exceeding one year or is a fugitive from justice or is prohibited by state or local law from owning or possessing firearms; and (3) we firmly believe the importation, sale, shipment, use or ownership of destructive devices (such as bombs, bazookas, grenades, and other military type weapons or devices) by private citizens should be completely prohibited; not regulated as your amendments provide.

As we understand your proposal, it would repeal the Federal Firearms Act of 1938. We firmly believe this Act should *not* be repealed. If properly enforced, this Act could have been used to solve most of the current problems involved in the interstate sale and shipment of firearms to persons not legally entitled to possess them. Rather than repealing what we consider to be a very sound, workable law, we believe further amendment is necessary to assist local and state enforcement agencies in further regulating and controlling mail-order sales of concealable weapons to residents, or over-the-counter sales to non-residents, along the lines proposed in Senate Amendment 708.

Thank you for this opportunity to offer these comments and opinions. As you well know, the National Wildlife Federation has always supported adequate control, coupled with strict enforcement, over the sale, use, and possession of firearms by our citizens. We believe the basic answer to the crime problem in the United States is to resolve our current social problems and to educate all law abiding citizens on the proper, safe use of firearms and to severely punish those persons who deliberately misuse firearms or other weapons in the commission of criminal acts.

Sincerely,

THOMAS L. KIMBALL,
Executive Director.

EXHIBIT 2

WILDLIFE MANAGEMENT INSTITUTE,
Washington, D.C., May 2, 1968.

Hon. THOMAS J. DODD,
Chairman, Subcommittee To Investigate Juvenile Delinquency, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR DODD: We have your letter of April 26 and the enclosures concerning your amendment which appears as Title IV of the Omnibus Crime Control and Safe Streets Act, S. 917.

In your letter soliciting our views, you state that "It would be helpful to the public in understanding this issue if you would forward to me your views on my proposed legislation.

"When this comes to debate in the Senate, I want to effectively present all positions to my colleagues for consideration before they vote on this measure.

"It is essential that the Congress understand the position taken by your organization before voting on this measure."

We are pleased to respond and do so in the expectation that this letter will be presented in full context to the Senate. This reply sets forth the views of conservationists who long have recognized the problems resulting from the misuse of certain firearms and destructive devices. Our recommendations for the revision and enforcement of existing laws are a matter of record in the printed hearings of the Subcommittee To Investigate Juvenile Delinquency.

We support strict controls over the interstate shipment of handguns as proposed in S. 1853, by Senator Hruska and others, that would strengthen the Federal Firearms Act. We prefer the provisions of that bill which require notification to local law enforcement officers and an adequate waiting period before a dealer may make delivery of a handgun. We also favor the provision in S. 1853 that would prohibit the interstate shipment of any firearm contrary to state laws.

We believe that the provisions of your Title IV which would prohibit completely, rather than regulate, interstate commerce in handguns discriminate against law-abiding persons. Such a prohibition holds maximum inconvenience for all sections of the country rather than focusing attention where it is required.

We have been advocating that grenades, bazookas, crew-served weapons and similar destructive devices should be regulated rigidly. This desirable control should be achieved by amendment of the National Firearms Act as contemplated in S. 1854, by Senator Hruska and others.

Sportsmen everywhere have asked the committee not to link sporting firearms with destructive devices. They have urged repeatedly that sporting firearms continue to be handled through the Federal Firearms Act and destructive devices through the National Firearms Act. Your Title IV treats them together and puts them in the criminal code.

We are hopeful that the corrective legislation that the sportsmen have been seeking will be enacted during this session. We believe the Senate should do this by adopting S. Amendment No. 708 that was offered on April 29, 1968, as a substitute for Title IV in S. 917. That amendment incorporates the widely supported features of S. 1853 and S. 1854.

Sincerely,

C. R. GUTERMUTH,
Vice President.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Post Office and Civil Service.

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

ORDER OF BUSINESS

The PRESIDING OFFICER. Pursuant to the previous order, the Senator from North Carolina [Mr. ERVIN] is recognized for 2 hours.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. ERVIN. Mr. President, I am glad to yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there may be a brief quorum call and that following the quorum call there may be a period of 5 minutes, prior to beginning the speech of the senior Senator from North Carolina [Mr. ERVIN], the 5 minutes to be allotted to the majority leader.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDERS FOR ADJOURNMENT UNTIL 12 NOON TOMORROW AND 10 A.M. MONDAY

Mr. MANSFIELD. Mr. President, under the unanimous-consent agreement heretofore entered, the distinguished Senator from North Carolina [Mr. ERVIN] is to be recognized. If he will yield to me, I should like to take not more than 5 minutes.

The PRESIDING OFFICER. Unanimous consent has been granted for that purpose.

Mr. MANSFIELD. Very well.

Mr. President, for well over a year—almost a year and a half—the President has been speaking in behalf of a safe streets and omnibus crime control bill.

After long and arduous labor, under the chairmanship of the distinguished senior Senator from Arkansas [Mr. MCCLELLAN], a bill was reported by the committee. The bill is now before the Senate, and has been since a week ago Tuesday.

Up to this time, there has been nothing but conversation on the floor of the Senate, nothing in the way of action seeking to face up to the issues which confront us under the various titles. I hope that before too long we will be able to begin to vote on amendments, to the end that we can face up to our responsibilities and dispose of the bill one way or the other.

Therefore, Mr. President, I ask unanimous consent that upon the completion of its business today, the Senate stand in adjournment until 12 noon tomorrow.

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

Mr. MANSFIELD. Also, Mr. President, I ask unanimous consent that upon the completion of its business tomorrow, the Senate stand in adjournment until 10 o'clock Monday morning next.

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

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. MANSFIELD. Mr. President, it is the hope of the leadership that, if possible today, hopefully tomorrow, certainly by Monday, the Senate will be able to get down to brass tacks and begin to face up to some of the differences which exist in this body. It appears to me that much time has been spent already in discussion and debate. In some respects, I think too much time. But if we are to depart Washington by August 2, as I hope, but certainly cannot guarantee, I think it is up to all Senators to spend as much time in the Chamber as possible, to forego outside engagements as much as possible, and to work together with the leadership on both sides to try to bring this debate to a head.

I have received from the President of the United States a letter relative to the pending bill. I should like to bring it to the attention of my fellow Senators. The letter, dated May 8, 1968, and addressed to me, reads as follows:

DEAR MIKE: The Senate is approaching a moment of decision for America, as debate proceeds on the Crime Control and Safe Streets Act of 1968.

I would hope that three facts—three crucial facts—can illuminate that debate.

First, a harsh reality faces the most affluent Nation on earth. Crimes of violence threaten to turn us into a land of fearful strangers. The triple-lock door and the street that empties quickly at nightfall are unhappy symbols in modern America. The rapist and the mugger, the racketeer and the robber leave heavy scars on our society.

Second, the key to effective crime control is effective law enforcement—at the local level. As I have repeatedly stressed, crime is a local problem. It must be defeated in the community it corrodes.

Third, the machinery of local law enforcement all across the Nation must be strengthened before it can carry out its mission effectively. Far too many local police forces are ill-paid, ill-equipped, and ill-trained.

Fifteen months ago, based on a study I had conducted by the President's Crime Commission, which was composed of the most carefully selected and outstanding experts in the field—the most authoritative study of crime in America ever conducted—I then urged the Congress to immediately launch a massive effort to revitalize local law enforcement—from crime prevention to the apprehension of criminals to the system of corrections.

That proposal—the Safe Streets program—is now embodied in Title I of the bill before the Senate.

Through federal *grants* to *local* communities and states, it will put new strength into the entire network of crime control and criminal justice. It will give the policeman on the beat—who risks his life to protect our homes and families—better training and equipment for his job. It will reward him with better pay for his service. It will put the resources of modern science behind his efforts.

I urge the Senate to pass Title I. It is long overdue and urgently needed. Delay will be a victory for the criminal—from the petty thief to the kings or organized crime. The losers will be the American people.

The pending bill also addresses itself to another urgent national concern—the need for gun control legislation.

I have sought a proper and strong gun control bill for as long as I have been President.

Title IV takes a long step toward public safety, by helping to keep pistols and other hand guns away from the dangerous and the deranged.

But it does not go far enough.

It fails to provide the same protection against weapons which are just as deadly in criminal hands—the rifle and other long guns.

Now, it is time to stand up and show we are not a Government by lobby but a Government of law.

Has not the high powered mail order rifle brought tragedy enough to America? What in the name of conscience will it take to pass a truly effective gun control law?

The issue of immediate importance is to bring safety to our streets.

We can best do this by:

Strengthening the Gun Control Law.

Writing the provisions of Title I (the Safe Streets Program) into the statute books without delay.

Not encumbering the legislation with provisions raising grave constitutional questions and which might jeopardize the prompt passage of Title I.

In the clear and compelling interest of 200 million Americans, I urge the Senate to enact Title I—now.

The mugger and the murderer will not wait.

Neither must we.

Sincerely,

LYNDON B. JOHNSON.

Several Senators addressed the Chair.

Mr. MANSFIELD. The Senator from North Carolina [Mr. ERVIN] has the floor.

Mr. MCCLELLAN. Mr. President, I should like to have 5 minutes, if I may.

Mr. ERVIN. Mr. President, I ask unanimous consent that I may be permitted to yield not to exceed 5 minutes to the Senator from Arkansas [Mr. MCCLELLAN] and not to exceed 5 minutes to the Senator from New York [Mr. JAVITS] without losing my right to the floor and without having the time thus yielded count as a part of the time allotted to me.

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

Mr. MCCLELLAN. Mr. President, I was seeking the time in my own right. I did not want to have the time charged to any other Senator.

Mr. MANSFIELD. Mr. President, the Senator's time will be extended if needed.

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

Mr. MCCLELLAN. Mr. President, the President of the United States very kindly sent to me a copy of the letter that he addressed to the distinguished majority leader. I appreciate the courtesy of the President in letting me know of the message he was sending to the Senate.

I very much appreciate a cover letter addressed to me, which the President attached to the copy of the letter sent to the distinguished majority leader.

I read it into the RECORD:

THE WHITE HOUSE,
Washington, D.C., May 8, 1968.

DEAR JOHN: I wanted you to have a copy of a letter I sent to Mike Mansfield this afternoon. I know, as do all Americans, how you have devoted your life to leading the fight against crime in our Nation. I hope you will be able to add another success in your fight on crime with the passage of the Safe Streets bill I submitted to the Congress.

Sincerely,

LYNDON JOHNSON.

Mr. President, I have fought and worked diligently to try to get the crime bill on the floor.

I have largely supported the President's recommendations with respect to title I. It has some provisions in it now that it would not have in it, but which the President wants, except for my vote. My one vote made the difference in committee.

I felt that I would be completely derelict in meeting my responsibility had I not, during the processing of the measure that the President recommended, taken into account other areas in which legislation was needed in order to effectively wage a war on crime. We were successful in having some of these provisions incorporated in the bill.

Since the President of the United States in his message to the majority leader refers to his Crime Commission which made a study and upon which the President based his recommendations, I remind my colleagues and the country that that same Commission

recommended legislation with regard to wiretapping and electronic surveillance in line with and designed to meet the same objectives as are contained in title III of the pending bill. So, I am, also, to that extent, following the recommendations of the President's Crime Commission.

Mr. President, with respect to title II, particularly some provisions of it relating to confessions, from my viewpoint—and I think it is from the viewpoint of a great majority of the people of this country, and I am basing that upon the information that comes to me from the citizens by mail, telegram, and communications from learned judges, prosecutors, district attorneys, and officials who have the responsibility for law enforcement—if Congress fails to enact legislation dealing with some of the Supreme Court decisions that are responsible today for the self-confessed murderers and the rapists and the muggers out on the streets, to which the President refers, we will fail the American people; we will fail our Government; we will fail in our responsibility. And these people will still be encouraged to go out and violate the law with a feeling of security and impunity from punishment that they deserve.

We cannot ignore the fact that the crime rate is spiraling upward every hour. Why is this so? It is not because we do not have enough laws on the books. It is because we are not enforcing those laws. That is our trouble.

We can spend all the money we want to spend. It will help some. However, we could spend billions of dollars and it would only be a drop in the bucket. We could train all the people that we wanted. However, unless the courts will enforce the law, unless the courts will sustain the convictions of self-confessed criminals—he who admits, "I killed her"; he who admits, "I robbed her"; and he who admits, "I raped her"—and unless the Supreme Court will come around to punishing criminals, we will never have effective law enforcement in the United States.

ORDER FOR RECOGNITION OF SENATOR McCLELLAN TOMORROW

The PRESIDING OFFICER. Under the previous order, the senior Senator from New York is recognized.

Mr. McCLELLAN. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. JAVITS. Mr. President, I yield to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that on tomorrow, immediately after the close of routine morning business, I be granted 1 hour in which to discuss the pending measure. I may not need a full hour.

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

ORDER FOR RECOGNITION OF SENATOR MILLER ON MONDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Iowa [Mr. MILLER] be recognized for one-half hour at the conclusion of morning business on Monday next.

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

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from New York is recognized.

POOR PEOPLE'S MARCH ON WASHINGTON—REALITY OF THE SITUATION

Mr. JAVITS. Mr. President, as a member of the Senate Permanent Subcommittee on Investigations, I feel it is my duty to comment, both on the executive session hearings held by the subcommittee on April 25, and on the comments of other members of the subcommittee relative to the proposed Poor People's March on Washington.

On Wednesday, the chairman of the subcommittee, the Senator from Arkansas, and the ranking Republican member of the subcommittee, the Senator from South Dakota voiced their concern that the proposed march could lead to violence and serious civil disorder. Certainly, the Senators have every right to counsel caution, and indeed, I would agree that there is always a potential for violence in such a demonstration which must be recognized by a prudent Federal Government.

I believe it is unfortunate, however, to await this event with an apprehension which in some quarters borders on hysteria. Surely, let us give thoughtful consideration to the fears which are rational—fears, for example, that extremists committed to violence for its own sake will make an effort to take over the march—and let us take steps to see that this does not happen.

I stand with what I feel is the unanimous opinion in the Congress that we will brook no violence, no anarchy and no immobilization of the Federal or District Governments or of the community. But let us remember that the leaders of this march are committed to nonviolence and let us do all we can to reinforce their positions as leaders and help them channel this great outpouring of the poor into creative and constructive petition for redress of grievances.

We would be unrealistic if we did not recognize the posibility of disorder during the march. But what many of the most fearful critics of the march seem to forget is that the city and the Federal Government also see what is evident to us. First, there are appropriate statutes on the books to arrest any participant who incites or participates in violence or conspires to do so. Specifically, I call attention to title I of the recently enacted Civil Rights Act of 1968 which makes it a Federal crime to travel in interstate commerce with the intent to incite or participate in a riot, and title X of that act which penalizes the manufacture, use or instruction for use of firearms or explosive devices in a civil disorder. The text of these sections are submitted as an appendix to these remarks.

Second. Testimony at the closed hearing by General Yarborough of U.S. Army Intelligence, by Attorney General Ramsey Clark and by Public Safety Director Patrick Murphy indicate clearly that the police, the FBI, and the Department of Defense are coordinating information on the participants' of the march and are making plans to protect the city from any attempt to turn the march into a violent demonstration. In fact, when the chairman asked General Yarborough if he had heard certain threats of violence made in connection with the march, the general's reply was:

> The implication to me is that the people who made these statements would like to carry these things out, but I see no hard organizational structure at this point, or any indications of actual numbers . . . or time-space factors that would permit these things to happen to the degree that those statements would indicate.

When the chairman cited specific instances of such threats he was asked at least four times during the course of the hearing by Attorney General Clark to make his information available to the FBI. I believe it is only prudent for any of us who have such information—whether or not it is rumor or fact—to notify the proper authorities.

Third. Government witnesses appearing before the subcommittee made it quite clear that they intend to preserve law and order and that they have made plans to do so. To quote the Attorney General, for example:

> There will be no blocking of the bridges and there will be no obstruction of Government buildings. . . . If people sit on the bridges, they will be removed. If people endeavor to unlawfully enter Federal buildings they will be prevented from entering Federal buildings.

We would be foolish, indeed, if we did not make such preparations and prepare ourselves for any contingency; but, I am sure also that Reverend Abernathy and the organizers of the march will be equally grateful if law and order are maintained.

Now that we have outlined the steps to be taken in case there is violence, let us consider what we can be doing now to see that violence does not occur. The march, after all, has been conceived and executed by men dedicated to nonviolence. We are under an obligation, I believe, to reinforce their position of nonviolence, to assist them in preserving order, and to listen to their grievances and act with justice.

First. We can turn our attention to legislation entitled to priority such as the measure referred to by Reverend Abernathy in his testimony before the Poverty Subcommittee. These are, the housing bill, the manpower employment bills, and Federal welfare reform. Congress should deal with the Senate-passed supplementary appropriations for summer employment of youth, for added Head-start and for remedying malnutrition. These measures could be considered and passed within weeks—not out of fear, but because they are just and necessary—and such an expression of good faith on the part of the Congress would give great support to leaders of non-violence.

Second. I believe our best course of ac-

tion is to support and encourage in any way that we can the efforts of the leaders of the Poor People's Campaign to control their own people. There is some precedent to indicate that discipline is better imposed from within a campaign such as this, or from within a ghetto community, rather than from the outside community.

In 1963, in the stirring march on Washington conducted by the civil rights leadership, effective use was made of marshals employed by the movement itself. In 1966, when Sargent Shriver opened the Watts festival, held on the first anniversary of the riots which wracked that district, the community used its own youth to keep order and to prevent fresh outbreaks—and they succeeded in that job. In fact, when the second Watts festival was held in 1967 and the community patrol idea was again used, these young people actually prevented Stokely Carmichael from driving his car, uninvited, into the automobile procession.

There are steps that the Federal Government can take to help the marchers police themselves along the lines of these precedents. For example, the OEO and the Labor Department could encourage antipoverty organizations and youth engaged in youth programs to engage in this kind of security activity in cooperation with the leaders of the march. Government agencies could review their contracts with such groups to insert added flexibility, where needed, to allow the grantees to take on such assignments. Some funding might also be made available to appropriate community-based groups to mount such security programs.

I am pleased to say that this general approach of using community people to maintain law and order has been endorsed by over 80 Republicans in the House and Senate in the form of a provision of the National Manpower Act of 1968, introduced on March 28 of this year. In that bill, particular encouragement is given to the Secretary of Labor to fund public service employment programs in the field of public safety, including programs which would create jobs for ghetto residents in such occupations as community escort and patrol and police support activities.

Third. We in Congress certainly have the obligation to exercise legislative oversight respecting the executive branch and, if appropriate, to express our concern about the preparations for the march. But we should not, by hasty laws enacted on the spur of the moment, deprive the Federal departments that are trying to deal with the march the flexibility and adaptability to do so. Nor should we give ultimatums to Americans who are poor and who are seeking to protest to the Congress if they do so in a lawful manner, anymore than we, ourselves, would propose to legislate under ultimatums. The question of which area of parkland should be used for construction of temporary dwellings, for example, is best decided by the Department of the Interior which is in touch with the leaders of the march. It would be unfortunate, in my judgment, if Congress assumes this prerogative because it confuses flexibility with incompetence, especially as there is proof that the Federal Government departments and the District government are moving actively in the situation.

In August of 1963 a historic and most peaceful civil rights march occurred in Washington. It was preceded by many of the same warnings of disaster, some panic on the part of private citizens who rushed to arm themselves, and even a few pleas to suspend the Bill of Rights and prevent the petition from taking place. The dignity and solemnity of that demonstration was an example of American government at its best. It impressed the Congress, the Nation and it inspired the world. Far from necessitating the suspension of the first amendment, it serves today as a classic example of a free people petitioning for the redress of grievances. Many of us participated in that march—I did. Our job is to do our best to see that the spirit of 1963 will pervade this city in the coming weeks, that the demonstration will be of such a character that all the participants will say—as I do of 1963—"I am proud that I was there." And I hope and pray that the objectives of the 1968 march—economic dignity for all Americans—will be achieved with the overwhelming support which the 1963 civil rights march generated for the landmark Civil Rights Act of 1964.

Mr. CURTIS addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina has the floor.

Mr. CURTIS. Mr. President, will the Senator from North Carolina yield me 3 minutes, with the unanimous-consent request that he not lose the floor?

Mr. ERVIN. Mr. President, I ask unanimous consent that I may be permitted to yield to the Senator from Nebraska, without losing my right to the floor, and without the time he uses being deducted from the time alloted to me.

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

Mr. CURTIS. Mr. President, I wish to say something about the proposed march of the poor on Washington.

I was present at the hearing of the Permanent Subcommittee on Investigations at which the military, the Mayor, the Secretary of the Interior, and the Attorney General were called in to advise on what preparations they had made.

Last night I watched on television a news report concerning these preparations. Yes, there are plans to protect the Capitol. There are plans to protect the White House. There are plans to protect the foreign embassies. All of this should be done. But they do not have an immediate plan to protect the poor people of Washington.

Mr. President, if arson or violence breaks out, it is less likely to be in suburbia or in the financially secure sections of Washington than where the poor people live. It will be the people of both races, but it will be predominantly the colored people. Those people have a right to be secure in their homes. Those people have a right to be secure on the street. Those people have a right to be secure in their neighborhood. Those people have a right to be secure in going to and from their work.

Too much attention is being paid to noisy people, and too little attention is being given to finding out what the poor people really think about this march. And I am talking about poor people who are colored, who live in the Nation's Capital. They do not want the march to occur—great numbers of them, and I would guess a majority of them are of that opinion. They know that if a fire is set, it will endanger their homes. They know that if more lives are lost, it will be in their neighborhood.

The police and the military should be brought in in time; not against the poor, but in favor of the poor—to protect them and to make them secure in their homes.

All this is taking place in a political year, when there seems to be a contest among some politicians to cater to the noisy few and to promise them a great deal. There is an attempt to equate the need for law and order with a lack of sympathy toward the problems of great cities. Nothing could be farther from the truth. The people most needing help with respect to law and order are the poor people of our great cities.

I say now that the Attorney General, the Secretary of the Interior, the Mayor, his subordinates in the safety department, the chief of police, and the entire executive branch are not prepared to move in and protect the poor people of Washington from fires or looting or killing—accidental or otherwise—as a preventive measure, before it happens.

Mr. President, that is what the poor people want. Let us forget about the politicians, both rich and poor, who are making an issue of this, and let us give the poorest, the most humble citizen in the Nation's Capital, the safety that he wants in his home, safety in front of his home, safety in his neighborhood, and safety going to and from work.

I thank the distinguished Senator from North Carolina for yielding to me. I yield the floor.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the distinguished Senator from North Carolina may yield to me for a period of not to exceed 5 minutes, in order that the Senate may consider nominations on the Executive Calendar, without the time being charged against the time of the Senator from North Carolina.

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

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate go into executive session to consider various nominations on the Executive Calendar; and I ask that the Senate consider first the nomination of William M. Drennen, of West Virginia.

The PRESIDING OFFICER. Is there objection?

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

TAX COURT OF THE UNITED STATES

The assistant legislative clerk read the nomination of William M. Drennen, of West Virginia, to be a judge of the Tax Court of the United States.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 293 on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination will be stated.

The assistant legislative clerk read the nomination of Wilbur J. Cohen, of Michigan, to be Secretary of Health, Education, and Welfare.

Mr. CURTIS. Mr. President, in order that we might have some information concerning possible future proposals in the field of social security, I obtained consent of the Committee on Finance to submit certain questions to Mr. Wilbur J. Cohen, the nominee for Secretary of the Department of Health, Education, and Welfare. These questions were submitted in writing and Mr. Cohen has made his replies thereto in writing.

I am aware of the fact that the answers are not as informative as they might be if the questions had been asked orally, so that followup questions might be asked in those cases where the answers appear to be unclear. I cite question 14 and the answer thereto as such an instance.

Mr. President, I ask unanimous consent that the questions and answers be printed in the RECORD at this point.

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

Question 1. Mr. Cohen, to which additional groups would you favor extending Medicare? How many people are involved? What would be the cost in dollars and in payroll tax?

Answer. Last year I endorsed extending Medicare to the disabled recipients of social security. The proposal made to the Senate Finance Committee would have extended hospital insurance protection to about 1.7 million totally disabled beneficiaries and to future disabled beneficiaries at a level-cost estimated at that time by Mr. Robert J. Myers, Chief Actuary of the Social Security Administration, at .30% of taxable payroll and a first year cost of $790 million. The proposal made to the House of Representatives also involved extending coverage to these beneficiaries under Part B of the program (physicians' and related services). If all 1.7 million beneficiaries were covered, Mr. Myers now estimates the first year cost at $490 million.

The Congress has since directed the Department to appoint an Advisory Council to study this entire matter (Section 140 of the Social Security Amendments of 1967). The Council is required to submit its report and recommendations by January 1, 1969 and, will also review and provide advice on cost estimates in this area.

Question 2. Mr. Cohen, what government action, if any, would you favor which might relate to existing shortages of doctors, nurses, and hospital beds?

Answer. I favor strengthening and expanding existing legislation relating to health manpower. I support S. 2095, the Health Manpower Act of 1968, currently pending before the Senate Committee on Labor and Public Welfare.

With respect to hospital and other medical facilities, I believe there should be some modifications in the existing Hill-Burton Act which expires on June 30, 1969. A special National Advisory Commission on Health Facilities is now in the process of examining various proposals. I believe it would be desirable to await the recommendations of the Commission before any decision is made on specific amendments.

Question 3. What additional medical benefits would you favor extending to the recipients of Medicare? What would be their cost in dollars and in payroll tax?

Answer. The Congress directed the Department to study the feasibility of inclusion of certain additional services under the Medicare law. (Section 141 of the Social Security Amendments of 1967). The Congress also directed the Department to study the coverage of drugs under the Medicare program. (Section 405 of the 1967 amendments). I believe it would be desirable to await the results of these studies before making any recommendations.

Question 4. Mr. Cohen, if the law is not changed further, how much will the Federal government be spending on Medicaid five years from now?

Answer. At the time of the Joint Senate-House conference last year on the Social Security Amendments of 1967, the cost of the Medicaid programs to the Federal Government under the 1967 amendments was estimated at approximately $1.7 billion for the fiscal year 1972. While there are no new estimates yet available, experience during this fiscal year indicates that the estimate for the fiscal year 1972 is likely to be about $2½ billion to $3 billion. There has not been any actual experience with the limitations imposed by last year's legislation since these do not begin to become effective until July 1, 1968.

President Johnson directed me to establish a joint Federal-State task force to bring about improvements in reporting and estimating the costs of Medicaid. The group held its first meeting on May 6. The Task Force consists of State budget directors and health and welfare officials. We are working on refining our estimating process in cooperation with these officials.

Question 5. Do you favor any expansion, additions, or additional coverage of Medicaid? If so, will you enumerate them and give their costs?

Answer. The Social Security Amendments of 1967 authorized the establishment of an Advisory Council on Medical Assistance. (Section 226 of the amendments which created Section 1906 of the Social Security Act.) I believe a reappraisal of the Medicaid, Medicare and other relevant programs with the help of the several advisory groups is essential before any further changes are proposed in the Medicaid program.

Question 6. On March 28, 1968, you were quoted as saying that we could further expand the Social Security program in raising the level of benefits, applying them to more individuals, improving the disability coverage, a number of other matters, and raising the minimum benefit to $70.00. Would you particularize what you favor doing in each of these particulars within the next four or five years? Please give the dollar cost and the payroll cost.

Answer. I favor increasing the minimum monthly social security benefit to $70 for all beneficiaries. I also believe the across-the-board level of benefits could be increased, and disability protection improved but I have not yet completed the studies necessary to make a specific recommendation. Mr. Robert J. Myers, Chief Actuary, has informed me that the level cost of increasing the minimum benefit to $70 would be .18% of taxable payroll and the first year cost $600 million. Examples of costs associated with a $70 minimum and an across-the-board increase are: $70 min. and 5%—level cost .57% of taxable payroll, first year $1.8 billion; $70 min. and 10%—level cost 1.00% of taxable payroll, first year $3.0 billion.

Question 7. Mr. Cohen, in your recent press release you stated that we have 8 million on welfare and we have 26 million people in poverty, making 18 million people in the poverty class who are not receiving welfare. Do you propose to place these 18 million people under a welfare program in which the Federal government participates? If so, what will be its dollar costs, both immediate and long range?

Answer. I have made no proposal to place 18 million additional people under a welfare program. I believe this would be impractical and undesirable.

Question 8. Mr. Cohen, do you believe that the war on poverty, about which we hear a great deal, should be dealt with within the framework of the various titles of the Social Security law? I am not asking you to criticize or condemn another Federal agency. My question is, "Do you think the Social Security program could adequately discharge the Federal government's responsibility in eliminating poverty?"

Answer. I do not think the Social Security program by itself could adequately discharge the Federal government's responsibility in eliminating poverty. I think that many approaches need to be taken to the problem of eliminating poverty, and I do not think they can all come within the framework of the various existing titles of the Social Security Act. We need, for example, job training for people without marketable skills. We need better education for the disadvantaged. Information on family planning should be available to the poor as well as to others. But I think more can be done under social security to eliminate poverty. Just increasing the minimum benefit to $70 a month would take about a million people out of poverty.

Question 9. Mr. Cohen, do you favor the guaranteed annual income?

Answer. I have not expressed myself in favor or opposed to "the guaranteed annual income." The President's Commission on Income Maintenance (the Heinemann Commission), of which I am a member, will be studying such plans, but of course it is too soon to say what conclusions it will reach or what my own opinions will be as a result of the study.

Question 10. Have you made any expressions concerning the guaranteed annual income for any portion of our population limited to such a group as our aged?

Answer. I have stated that the aged could be provided sufficient income to make it possible that no aged person would fall below the poverty line. There are several ways in which this could be accomplished. In any case the social security program would play a major role, as it does now. I have not yet come to any conclusion as to the modification of present programs or new provisions that might best accomplish such an objective.

Question 11. In your opinion, if a program of a guaranteed annual income were to be adopted, should it be part of our Social Security system? How would it operate? How would it be financed? And what would be the immediate and the long range costs?

Answer. I have not taken any position in favor or opposed to including a guaranteed annual income as part of the Social Security system.

Question 12. Mr. Cohen, under present law what will be the maximum annual wage base subject to the Social Security tax? Do you

favor increasing this? If so, how much and in what steps? Have you expressed favor for a wage base of as much as $15,000 a year?

Answer. The present maximum annual wage of earnings base in the Social Security law is $7,800. I believe the base should be increased. Last year, the President recommended increasing it to $10,800 by 1974 and I was in agreement with that recommendation. Based on increasing earnings, I would think a higher sum, say $12,000 or even $15,000 would not be unreasonable by the mid-seventies. I believe it would be desirable over a period of time to increase it in steps so it would ultimately have a relationship to earnings under the social security program in any year closer to the relationship which existed in 1935–39 under the original Social Security Act. In 1959 I expressed the view that the maximum earnings base should be fixed so that about 90% to 95% of the men aged 25–44 working four quarters a year would have their full earnings covered by the program. I have not had the opportunity to re-examine this view in the light of recent wage and employment developments.

Question 13. Mr. Cohen, as to the Social Security tax rate under existing law, what will the maximum be and when will we reach it? When the maximum is reached, what will be the maximum annual tax in dollars for an employee? And for a self-employed person?

Answer. Under existing law the maximum contribution rate for the whole social security program—old age, survivors, disability and hospital insurance—is 5.9 percent for employees and employers, each, and that rate will be reached in 1987. For the self-employed the maximum rate, to be reached in the same year, is 7.9 percent. The maximum dollar amount of tax in that year for employees will be $460.20; for the self-employed it will be $616.20.

Question 14. Do you favor an increase in the Social Security tax rate? If so, how much and when?

Answer. I do not favor an increase in the Social Security tax rate unless it appears necessary to finance needed improvements in the programs which require additional income. An increase in the maximum earnings base, which I favor, would support some additional improvements in benefits. Also, as earnings levels rise in the future, the present financing structure will generate additional revenue in excess of the benefits arising from the higher earnings. These additional revenues would be available to finance increased benefits.

Question 15. Do you favor financing from general funds any part of the Social Security program which is now financed entirely by payroll taxes? If so, how much and in what proportions?

Answer. I have not expressed myself in favor or opposed to additional general revenue financing beyond what is authorized in existing law.

Question 16. Mr. Cohen, at one time you favored the Murray-Wagner-Dingell bill, which was a Medicare program not limited to the aged but for all our citizens. Prior to the adoption of our present Medicare program you stated that you no longer favored Medicare for all Americans. What is your present position on some kind of government universal health care for all Americans?

Answer. My present position with respect to "some kind of government universal health care for all Americans" is that I am not proposing any such plan. I would want to see the details of any such proposal before endorsing or opposing it. I would expect any future developments aimed at bringing a broader and more uniform scope of health benefits to the American people to be a combination of provisions and actions—private as well as public—that would build on the strengths and capabilities of existing voluntary and public programs.

Question 17. In your personal opinion, what should be the maximum Social Security old age benefit?

Answer. In 1959 I stated that the maximum old age benefit should be at least four to five times the minimum benefit. I have not had the occasion to review or revise that view. I would want to reexamine the actual situation affecting the aged and all the conditions of the program before expressing a current opinion. At present, the maximum benefit specified in the law for a retired worker alone is $218, and for a couple, $323. Under the President's proposals last year the maximum would have been $288 for a retired worker and $378 for a couple. I support such maximums now. If a higher wage base were enacted by the Congress, these amounts should be appropriately increased.

Question 18. Again in your personal opinion, what do you think should be the percentage of income replacement for a primary old age benefit—50%? 75%?

Answer. I have not favored a uniform percentage of income replacement but believe the percentage replacement should vary, being higher for lower earners than for those with higher earnings, as it does under existing law. Under present law the individual at the top of the scale—with earnings of $650 a month—receives a benefit of about 33½ percent of his average monthly earnings; at earnings of $208 a month the worker receives a benefit of 50 percent and below $208 receives more than 50 percent. I would want to reassess the amounts and the percentage from time to time depending on the changed situation as earnings rise.

Question 19. What do you personally feel about extending Medicare to those receiving Social Security disability benefits? To all beneficiaries? To all who are working and are covered by Social Security?

Answer. See my answers to questions 1 and 16.

Question 20. Mr. Cohen, have you taken a position indicating that you favored a Social Security tax wherein the amount levied on the employer might be more than the amount levied on the employee? If so, will you elaborate upon it?

Answer. I have not made a specific recommendation as to a change in the proportion of the tax levied on the employer.

Question 21. Do you regard the proposal for a negative income tax as one way of providing a maximum guaranteed income? If so, do you favor it?

Answer. While a negative income tax is one way of providing a guaranteed income, I do not now favor or oppose either that or any other method of providing a guaranteed income; I think the whole subject needs more study. As I have said, I am a member of the President's Commission on Income Maintenance (the Heinemann Commission). I expect that that Commission will study the negative income tax as well as other approaches to the problem of income maintenance. At present I have an open mind on all alternatives.

Question 22. Mr. Cohen, with reference to higher education, I believe that you stated that about 1½ million college students out of 6 million are receiving some type of Federal grant or loan at the present time and that within 5 years this group receiving financial aid would be about 2 or 3 million. What do you anticipate this would cost?

Answer. Present Federal student aid programs will assist approximately 1½ million students in the fiscal year 1969 at a cost of about $600 million. Projections for both the institutionally administered programs (Educational Opportunity Grants, College Work-Study, National Defense Student Loans) and the Guaranteed Loan Program indicate that the number of students to be aided in 5 years (FY 1973) will be about 2.7 million students out of a total student population of approximately 8.4 million. Cost to the Federal Government at this projected level of support would be approximately $1,343 million or about $750 million more than 1969.

Question 23. Mr. Cohen, do you favor any change in the Medicare program with respect to the selection of doctors, fee schedules, and manner of payments?

Answer. No. I do not now propose any change in Medicare or Medicaid to select doctors, to establish a national fee schedule, or to change the present methods of payment for doctors' services. I think we should have more experience with the provisions of the existing program and work on problems of cost and utilization with the cooperation of the profession before deciding whether it is necessary to propose any major changes relating to the three factors mentioned.

Question 24. Mr. Cohen, do you favor any changes in the Medicare law with respect to the reimbursement of hospitals and the methods used for the same?

Answer. Third party reimbursement formulas represent an area which offers possibilities for supporting improvements in efficiency. Reimbursement experimentation was authorized by Section 402 of the 1967 Social Security Amendments. This provision grew out of the concern that reimbursement on a cost basis in itself provides no incentive for participating hospitals and other organizations to furnish health care economically and efficiently since they gain no advantage under the program by lowering costs. We have proposed legislation which would permit immediate application of reimbursement methods that may be proved effective through experimentation. This provision is included in Senator Russell Long's bill, S. 3323. It would be desirable to have the results of some experimentation and of studies now underway before deciding whether basic changes are necessary in reimbursement methods.

Question 25. Mr. Cohen, in the fiscal year which begins next July 1, what are the estimated total expenditures, including both trust funds and general funds that will be made under the various titles of our Social Security law? To how many beneficiaries will this money be paid? How many of these beneficiaries are in what you would define as the poverty class? How many individuals would you estimate are in the poverty class that are not beneficiaries under some title of the Social Security law?

Answer. The fiscal 1969 budget provides for expenditures of $39 billion for the programs under the Social Security Act. This includes $33 billion from the four social security trust funds (Titles II and XVIII); and the Federal grants for public assistance (Titles I, IV, X, XIV, XVI, XIX), for maternal and child health programs (Titles V, XVII), cooperative research and demonstration grants (Title XI) and the Federal grants for adminstration of unemployment insurance (Title III). If the State withdrawals from the Unemployment Trust Fund were to be included, this would add $2.4 billion to the total.

Cash payments will be made to about 25 million social security beneficiaries and about 8.8 million public assistance recipients (a little over 1 million persons will get both OASDI and PA). About 15 million of the total 33 million will be poor.

In addition, it is estimated that about 7.6 million aged persons will get some benefits under Medicare—most of these persons will also be drawing cash social security benefits. It is estimated that 2.5 million persons will get some services under the several maternal and child health programs. Most of the latter are likely to be poor or in the very low income class.

With no major changes in programs or policies there will probably still be some 26 million persons with incomes below the poverty line as of January 1969. This suggests that there will be about 10–11 million poor

persons not getting cash benefits under the programs established by the Social Security Act.

Question 26. In your recent press release, you stated that the American people, out of all public and private funds, Federal, State and local, are spending $146 billion a year on health, education, and welfare, and that amounted to about 18 or 19 percent of the gross national product. My question is "In your opinion how much should this be increased in the next 5 years and how much of this increase should be borne by the Federal government?"

Answer. Our population is still growing, the number and proportion of our young people who want and should go to college is increasing, the average pay of teachers, hospital employees and others who provide services is still below that of other occupations and undoubtedly will rise. I am sure that medical technology and new medical discoveries have not come to an end.

The increase in total expenditures for health, education and welfare in the last 5 years has reflected also several major new Federal programs—Medicare and Medicaid, Federal support for education and the programs under the Economic Opportunity Act. The expenditures for these programs will undoubtedly rise.

It would seem to me reasonable to think of a continuing increase during the next five years at about the same rate as that of the past 5 to 10 years. I would hope and expect, however, that the States, the localities and the private sector would be expanding their efforts and that the Federal share would be approximately the same as at present. If the non-Federal share does not increase to meet the needs then it may well be that the Federal share will increase.

Mr. THURMOND. Mr. President, I prepared a letter under date of May 6, 1968, and it was delivered by hand to the Honorable Wilbur J. Cohen, on the morning of May 7, 1968. The letter reads as follows:

MAY 6, 1968.

Hon. WILBUR J. COHEN,
Acting Secretary, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. COHEN: The State Newspaper, Columbia, South Carolina, of April 25, 1968, in an editorial entitled, "Freedom of Choice," stated: "In short, the mutual acceptance of partial integration by both the white folk and the black folk of a community is not acceptable to HEW. Freedom of choice is permissible only when the choice leads directly to the full-scale mixing that obsesses the Washington bureaucracy now guiding the destinies of all Americans.

"Under these circumstances, the term 'freedom of choice' is a fraud and a farce. There is no freedom where only one choice is available. And where there is no freedom, tyranny reigns—as is rapidly coming to be the case in the public school systems of America."

Is your policy going to be a true freedom of choice or is it going to be a subterfuge freedom of choice which will only be approved when it leads to integration?

In other words, can a child freely choose the school he wishes to attend or will such child be compelled to attend a school not of his choice?

Please wire reply.

With best wishes.

Sincerely,

STROM THURMOND.

Mr. President, as I said, this letter was delivered to Acting Secretary Cohen on the morning of May 7. We have received no reply; neither a wire, a letter, nor a verbal reply.

Mr. Cohen's office was contacted within the last hour and we were informed that he was not there, that he had not dispatched a reply, and, in fact, none had been prepared to this communication.

Mr. President, this nomination has been pending for several days and it looks as if he has been delaying a reply to this communication until after action has been taken on his confirmation. It seems to me that I asked him a very simple question: Whether he favored a true freedom of choice for school children, or was he going to adopt a subterfuge freedom of choice which would only be approved when it leads to integration.

I might say, Mr. President, that in my State all the schools have been open to all the children; no school refuses any child of any race, color, or national origin attending such schools.

However, there has been tremendous pressure brought upon some of the schools in my State, upon the trustees and school officials, to transfer children from one school to another school in order to bring about a greater mixing.

In some cases the teachers did not prefer to transfer, and in other cases the children and the parents of the children did not prefer them to transfer.

The PRESIDING OFFICER. The time allotted to the Senator from West Virginia has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time be extended for 2 minutes.

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

Mr. THURMOND. Mr. President, although some did not wish to transfer, these children have been forced to transfer anyway. The Supreme Court decision of 1954 provided there should be no discrimination in the matter of children attending school. It did not provide—and I repeat "did not provide"—for forced integration; but merely provided that there should be no discrimination. In other words, any child of any race could attend any school. Mr. President, our State has followed that practice and is following it today.

The Civil Rights Act of 1964 went no further than that, but despite the fact that the Supreme Court decision went no further and the Civil Rights Act went no further, the Department of Health, Education, and Welfare today has adopted its own rules and is going further than the decision of 1954, the Civil Rights Act of 1964, or any other law.

I challenge anyone to show me any law on the statutes today that gives the Department of Health, Education, and Welfare the authority to force children to go to a school they do not want to go to. In fact, that is just the opposite from the holding of the Supreme Court decision. If they are going to be forced to go to a school they do not want to go to, then, that is discrimination in reverse and it is diametrically opposite from the result of that decision of 1954.

Mr. President, in view of the failure of Acting Secretary Cohen to reply to my message, hoping, I presume—and I do not know of any other reason—that he would wait until after this confirmation, I ask that I be recorded against his confirmation as Secretary of Health, Education, and Welfare.

WILBUR COHEN GREAT CHOICE FOR SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. PROXMIRE. Mr. President, my State is very proud today as the Senate confirms the first Wisconsonite to hold a Cabinet post in the Johnson administration. Secretary of Health, Education, and Welfare Wilbur Cohen is a native of Milwaukee who has gone far in the Nation's service. He first came to Washington in 1934 as research assistant to the Executive Director of President Roosevelt's Cabinet Committee on Economy Security which drafted the original Social Security Act. And more than 30 years later he played a key role in the passage of the revolutionary medicare program—the most basic change in socil security since its inception.

But he is not simply Mr. Social Security. He has fought long and hard for sweeping changes in the Federal approach toward education—a fight that culminated in the Elementary and Secondary Education Act as well as the Higher Education Act. His concern over air pollution, occupational health, and, most recently, comprehensive health care, is a key to the significant advances the Federal Government has made, and is making in these fields.

It is most appropriate that Secretary Cohen, who has labored in the vineyard of social welfare for most of his lifetime is now to receive the recognition which must go with his cabinet post. His appointment and confirmation are a tribute to his tremendous contributions to the fabric of our society over the past 30 years.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Wilbur J. Cohen to be Secretary of Health, Education, and Welfare? [Putting the question.]

The nomination was confirmed.

Mr. THURMOND subsequently said: Mr. President, on May 9 the Senate confirmed the nomination of Mr. Wilbur Cohen as Secretary of the Department of Health, Education, and Welfare, and I was recorded in opposition to this appointment. At that time I had not received an answer to my letter to Mr. Cohen and made a statement about his failure to respond. However, since this nomination was confirmed, I have received two letters from Mr. Cohen.

The first letter was an attempt to justify the guidelines recently propagated by the Department of Health, Education, and Welfare to carry on their policy of forced integration even against the will of the children and parents involved. Here we are not talking about eliminating discrimination or even desegregation as such, but we are dealing with a bureaucratic policy of forced integration to bring about a type of racial balance which is deemed advisable by the Office of Civil Rights.

Contrary to the position taken by the Department of Health, Education, and Welfare, there is no firm legal precedent for their policy of forced integration by busing children, pairing schools, and gerrymandering school districts. Neither the Civil Rights Act of 1964 nor the decisions of the Supreme Court require

forced integration; the present law only requires the elimination of discrimination so that every student has an unrestricted choice to enroll in the school he prefers to attend.

HEW has seized upon a single court of appeals decision of the fifth circuit to justify its unlawful policy of reverse discrimination; this decision is contrary to a number of decisions in other circuits which have affirmed the principle that the Constitution does not require forced integration but only prohibits racial discrimination. The 10th circuit court of appeals in *Downs* v. *Board of Education of Kansas City* (336 F. 2d 988 (1964), cert. den., 380 U.S. 914), upheld the proper interpretation of the Brown decisions and rejected the policies espoused by the Department of Health, Education, and Welfare. In that case the circuit court said:

Appellants also contend that even though the Board may not be pursuing a policy of intentional segregation, there is still segregation in fact in the school system and under the principles of *Brown v. Board of Education*, supra, the Board has a positive and affirmative duty to eliminate segregation in fact as well as segregation by intention. While there seems to be authority to support that contention, the better rule is that although the Fourteenth Amendment prohibits segregation, it does not command integration of the races in the public schools and Negro children have no constitutional right to have white children attend school with them.

In his second letter, Mr. Cohen makes the request that his response be made a part of the permanent RECORD of May 9, 1968. I believe a fair reading of my letter indicates that I submitted the questions in connection with his nomination and that an immediate response was desired. However, if we assume that Mr. Cohen did not know why I took the trouble to ask him two very specific questions and requested an answer by wire, then I feel compelled to grant his request.

In conclusion, I might also point out, as I did at the time of my previous remarks, that when we contacted Mr. Cohen's office, we were given no indication that an answer was on its way or was even being drafted.

Mr. President, I remain opposed to the policy of forced integration; I am opposed to the HEW guidelines which go beyond the law to enforce this policy; and I sincerely hope that the Supreme Court does not condone this policy when it hands down the opinion in the New Kent County, Va., case pending before the Court.

Mr. President, I ask unanimous consent that these two letters be printed in the RECORD.

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

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., May 9, 1968.

Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: This is in response to your letter of May 6 concerning the use of freedom of choice in desegregating schools under Title VI of the Civil Rights Act of 1964. I appreciate this opportunity to explain the Office for Civil Rights policies.

I want to assure you that these policies are based in both substance and procedure on relevant Federal court decisions. We believe they are consistent with provisions of the Civil Rights Act.

The Fifth Circuit Court of Appeals in March 1967 upheld the validity of the Department's school desegregation policies or guidelines. The court said the guidelines "comply with the letter and spirit of the Civil Rights Act of 1964, and meet the requirements of the United States Constitution." A copy of the decision is enclosed. As you know, the Supreme Court rejected a petition for a writ of certiorari.

The Department's position in this matter is in accord with the Solicitor General's Memorandum filed with the Supreme Court in three pending school desegregation cases involving freedom of choice in Virginia, Tennessee, and Arkansas. A copy of the memorandum is enclosed.

The Department's new School Compliance Policies (copy enclosed) make it clear under Subpart C, Section 12a on page 8 that freedom of choice is only one method of eliminating the illegal dual system. If it fails to achieve this objection, local school officials have the obligation to use an alternative, more effective plan.

In short, as the enclosed legal memorandum accompanying the Policies points out, the issue in the affirmative constitutional duty of local school officials to bring about promptly a unitary, non-racial system by whatever method can best accomplish this purpose. The responsibility for preparing and carrying out such a plan rests with local school authorities.

Sincerely,

———— ————,
Acting Secretary.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., May 10, 1968.

Hon. STROM THURMOND,
U.S. Senate, Washington, D.C.

DEAR SENATOR THURMOND: I have just read your remarks in the *Congressional Record* of May 9 concerning my nomination and your presumption that my "failure" to reply to your letter of May 6 (received on May 7) was that I would "wait until after this confirmation."

In all fairness, Senator, you gave me no indication whatsoever that you wanted this information in connection with my nomination. I worked for three days to prepare the answers to the 26 questions which Senator Curtis asked me and which he specifically said to me he wanted before the Senate acted on my nomination and which appear in the *Record* immediately prior to your remarks. If you had done likewise I would have worked the evening of May 8 to get you the reply.

At the time your office called on May 9 for my reply I was preparing for a 2:00 p.m. session with the House and Senate Conference Committee on the Tax Bill. I interrupted my work on that matter and signed the letter and sent it to you by special messenger and notified your office by telephone, which I learned later was a few minutes after the Senate had acted on my nomination.

Under these circumstances I deeply regret that you imputed to me a presumption that was incorrect. I value deeply my working relations and reputation with the members of Congress over the past 34 years and do not want my many Congressional friends on both sides of the aisle to believe the presumption you stated on page S5203. Hence, in fairness, I trust you will ask permission to include this letter in the *Congressional Record* and that it will be included in the permanent *Record* immediately following action on my nomination.

Sincerely yours,

WILBUR J. COHEN,
Acting Secretary.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that Calendar Nos. 294, 296, 297, 298, and 300 be considered en bloc.

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

The assistant legislative clerk read the following nominations:

DEPARTMENT OF THE TREASURY

John R. Petty, of New York, to be an Assistant Secretary of the Treasury.

TAX COURT OF THE UNITED STATES

William M. Fay, of Pennsylvania, to be a judge of the Tax Court of the United States for the term of 12 years from June 2, 1968.

C. Moxley Featherston, of Virginia, to be a judge of the Tax Court of the United States for the term of 12 years from June 2, 1968.

Charles R. Simpson, of Illinois, to be a judge of the Tax Court of the United States for the term of 12 years from June 2, 1968.

DEPARTMENT OF STATE

Frank E. McKinney, of Indiana, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Spain.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that these nominations be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

DIPLOMATIC AND FOREIGN SERVICE

The assistant legislative clerk read the nominations beginning Donald C. Bergus, to be a Foreign Service officer of class 1, and ending Miss Joanna W. Witzel, to be a Foreign Service officer of class 6 and a consular officer of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 12, 1968, and which had been placed on the Secretary's desk.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that these nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Aeronautical and Space Sciences be permitted to meet during the session of the Senate today.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I want to thank the distinguished Senator from North Carolina [Mr. ERVIN] for his usual courtesy and patience. I know that there have been many impositions upon him today. He has now waited 50 minutes to begin his speech, and I hope that there will be no more interruptions for him.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. ERVIN. Mr. President, I rise for the purpose of urging the Senate to approve certain sections of title II of S. 917.

Specifically, I refer to section 3502 which reads as follows:

> Neither the Supreme Court nor any inferior court ordained and established by Congress under article III of the Constitution of the United States shall have jurisdiction to review or to reverse, vacate, modify, or disturb in any way, a ruling of any trial court of any State in any criminal prosecution admitting in evidence as voluntarily made an admission or confession of an accused if such ruling has been affirmed or otherwise upheld by the highest court of the State having appellate jurisdiction of the cause.

I am prompted to urge the adoption of this section because of the decision of the Supreme Court in the Miranda case, reported in 384 U.S. 436.

I also urge the Senate to approve section 3503 of title II of S. 917, which reads as follows:

> The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States; and neither the Supreme Court nor any inferior appellate court ordained and established by the Congress under article III of the Constitution of the United States shall have jurisdiction to review, reverse, vacate, modify, or disturb in any way a ruling of such a trial court or any trial court in any State, territory, district, commonwealth, or other possession of the United States admitting in evidence in any criminal prosecution the testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is tried.

I urge the Senate to approve this section because of the decisions of the Supreme Court of the United States in the *Escobedo* case, 378 U.S. 478; the *Wade* case, 388 U.S. 218; the *Gilbert* case, 388 U.S. 263; and the *Stovall* case, 388 U.S. 293.

In the course of my remarks, I shall necessarily have to make some comments upon the decisions of the majority of the Supreme Court in the cases which I have just cited.

In making these remarks, I exercise the right vouchsafed to every American citizen by the statement of Chief Justice Harlan F. Stone when he said:

> Where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon them.

Mr. President, I expect to make such fearless comment upon these decisions. I conceive it to be my duty to the American people to do so.

I take the position I do because of this truth: enough has been done for those who murder, rape, and rob.

It is time for Congress to do something for those who do not wish to be murdered, raped, or robbed.

Let me say this about each of these decisions: In each of the decisions, the majority of the Court added to the Constitution something which is not in the Constitution, something which not only is not in the Constitution, but which is also contrary to the words of the Constitution.

In saying that, I wish to assert that I am not questioning the good intentions of the majority of the Justices who concurred in the opinions.

I concede their good intentions. I am satisfied that in joining in the majority opinions in these cases the justices who concurred in them thought they were doing something for the American people and thought they were improving upon the Constitution of the United States. I do not question their good intentions, but I do wish to call to the attention of the Senate, in this connection, what Daniel Webster had to say concerning public officers who substitute their good intentions for constitutional principles and rules of law. Daniel Webster said this:

> Good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

The decision in the Escobedo case is allegedly based upon the right-to-counsel clause of the sixth amendment.

It was handed down 174 years after the right-to-counsel clause was inserted in the sixth amendment. The Wade case, the Gilbert case, and the Stovall case profess to be based upon the same clause, which had been inserted in the sixth amendment on June 15, 1790, 177 years before these three cases were decided.

However, there is no doubt that the Escobedo case, the Wade case, the Gilbert case, and the Stovall case are contrary to the words of the sixth amendment and are contrary to every decision construing those words handed down during the more than 170 years since those words became a part of the sixth amendment.

The Miranda case is professedly based upon the self-incrimination clause of the fifth amendment, and is contrary to the words of the self-incrimination clause and to every decision handed down by the Supreme Court construing those words from the day they became a part of the Constitution on June 15, 1790, down to the day the Miranda case was handed down on June 13, 1966.

Mr. President, these are strong assertions. I would like to call attention to the point that I am not a lone voice crying in the constitutional wilderness in saying these things. A majority of the Supreme Court as now constituted was charged with making interpretations of this kind as far back as the days of Justice Robert Jackson. He said, in his concurring opinion in Brown against Allen, 344 U.S. 443, 553, these words:

> Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law, but is guided in these matters by personal impressions which from time to time may be shared by a majority of the Justices. Whatever has been intended, this Court has also generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles.

I could cite many remarks similar to those made by Justice Jackson, in which he said that the impression had been generated in much of the judiciary that words no longer mean what they have always meant. And in no decisions ever handed down by the Supreme Court of the United States is this truth better exemplified than in the Miranda, the Escobedo, the Wade, the Gilbert, and the Stovall cases.

Before I come to discuss these cases with particularity, I would like to say the following to those opponents of subsections 3502 and 3503 who assert that these subsections are unconstitutional: These sections are in perfect harmony with the provisions of the third article of the Constitution, and they are in perfect harmony with every decision of the Supreme Court of the United States I have been able to find in the books dealing with the constitutional power of Congress to regulate the appellate jurisdiction of the Supreme Court of the United States.

Article III of the Constitution is so plain that it really interprets itself. The article says:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

That is section 1, in part.

Section 2 provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands

under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The portion of the second section of article III which I have just read states the cases to which the judicial power of the United States extends. Thus article III makes it crystal clear that while the Constitution says that the Supreme Court and other Federal courts may exercise jurisdiction in these cases enumerated, the actual jurisdiction, the actual power to take jurisdiction in these cases—except for a limited number which are said to be in the original jurisdiction of the Supreme Court—is dependent upon legislation enacted by Congress. This original jurisdiction is set out in these words:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction.

That is the clause which gives the Supreme Court the only jurisdiction which it can exercise without the authority of Congress. I say this because the next clause says:

In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The good and wise men who drafted the Constitution could not have used plainer words than those; and those words state in unmistakable language that Congress has the constitutional power to define the appellate jurisdiction of the Supreme Court.

There are a multitude of decisions to this effect. I shall call attention to only three of them. One of them is the case of Daniels against Railroad Co., which was reported in 3 Wall. 250. I read the pertinent portions of that decision:

To come properly before us, the case must be within the appellate jurisdiction of this court. In order to create such jurisdiction in any case, two things must concur: the Constitution must give the capacity to take it, and an act of Congress must supply the requisite authority.

The original jurisdiction of this court, and its power to receive appellate jurisdiction, are created and defined by the Constitution; and the legislative department of the government can enlarge neither one nor the other. But it is for Congress to determine how far, within the limits of the capacity of this court to take, appellate jurisdiction shall be given, and when conferred, it can be exercised only to the extent and in the manner prescribed by law. In these respects it is wholly the creature of legislation.

That decision holds that article III of the Constitution means exactly what it says, that the Supreme Court has appellate jurisdiction in the cases specifically enumerated only if such jurisdiction is allotted to it by the Congress.

The next case I cite is the Francis Wright case, which was handed down in 1882 and is reported in 105 U.S. 381. I quote from that decision:

The language of the Constitution is that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make." Undoubtedly, if Congress should give an appeal in admiralty causes, and say no more, the facts, as well as the law, would be subjected to review and retrial; but the power to except from—take out of—the jurisdiction, both as to law and fact, clearly implies a power to limit the effect of an appeal to a review of the law as applicable to facts finally determined below. Appellate jurisdiction is invoked as well through the instrumentality of writs of error as of appeals. Whether the one form of proceeding is to be used or another depends ordinarily on the character of the suit below; but the one as well as the other brings into action the appellate powers of the court whose jurisdiction is reached by what is done. What those powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control. Authority to limit the jurisdiction necessarily carries with it authority to limit the use of the jurisdiction. Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to re-examination and review, while others are not. To our minds it is no more unconstitutional to provide that issues of fact shall not be retried in any case, than that neither issues of law nor fact shall be retried in cases where the value of the matter in dispute is less than $5,000. The general power to regulate implies power to regulate in all things. The whole of a civil law appeal may be given, or a part. The constitutional requirements are all satisfied if one opportunity is had for the trial of all parts of a case. Everything beyond that is matter of legislative discretion, not of constitutional right.

The most celebrated case of this kind is the case of ex parte McCardle, 6 Wall. 318. In that case, a Mississippi editor wrote an editorial criticizing the military occupation of Mississippi in the days following the Civil War. Mind you, this Mississippi editor did not violate any law in so doing, because the first amendment to the Constitution guaranteed to him the freedom of the press.

This Mississippi editor was arrested under the authority of a military commission for exercising his constitutional rights under the first amendment. And it was proposed that he should be tried before a military commission rather than a civil court, despite the fact that under the Constitution he had the right to be tried by a jury in a civil court, being a civilian.

Furthermore, he had a right under the due process clause not to be held in custody by a military commission for exercising a right guaranteed to him by the first amendment. And so he applied to the Circuit Court of the United States for a writ of habeas corpus to release him from confinement that was clearly in violation of the Constitution. The confinement was clearly in violation of the due process clause, in violation of the first amendment, and in violation of the provisions of the original Constitution guaranteeing the right of trial before civil courts and before juries.

This Mississippi editor appealed an adverse ruling of the circuit court to the Supreme Court of the United States under a statute which gave him the right so to appeal. His case reached the Supreme Court, was argued before the Supreme Court, and was taken under advisement by the Supreme Court.

Congress then passed a statute repealing the statute under which the appeal was taken, and specifying that the Supreme Court should not have jurisdiction to decide the case the Court had already heard.

In a unanimous opinion rendered by Chief Justice Chase, it was held that the Court could do nothing whatever in the case except to dismiss it for want of jurisdiction because Congress had deprived it of jurisdiction by this statute.

In the course of his opinion, Chief Justice Chase had this to say:

It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make."

The exception to appellate jurisdiction in the case before us, however, is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of *habeas corpus* is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

I digress momentarily from reading the decision to remark that Congress passed this law to keep the Supreme Court from inquiring into the constitutionality of the Reconstruction Acts which undertook to authorize the trial of civilians before military commissions.

The Court concludes by saying this:

It is quite clear, therefore, that this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

In order that it may appear that I have read these passages correctly and not lifted them out of context, I ask unanimous consent that copies of the decisions in the Daniels, the Francis Wright, and the McCardle cases be printed at this point in the RECORD.

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

THE "FRANCIS WRIGHT"

1. The act of Feb. 16, 1875, c.77, whereby the appellate jurisdiction of this court in admiralty causes is limited to the determination of questions of law arising on the record is constitutional.

2. Where the court below, when thereunto requested, refuses to give any finding upon an ultimate disputed fact, established by competent evidence and which is involved in the cause, and material to its determination, or where, against remonstrance, it finds such a fact, in the absence of all evidence, the ruling, if excepted to at the time, and incorporated in a bill of exceptions which states the alleged error and the ground relied on below to sustain the objection presented, may, as a question of law, be reviewed here.

3. The court condemns the practice of drawing up bills of exception, which, so far from being "prepared as in actions at law," are framed as, if possible, to secure here a re-examination of the facts.

4. The court, upon the facts found, affirms the decree below.

APPEAL from the Circuit Court of the

United States for the Southern District of New York.

Duncan & Poey, the libellants, entered into the following charter-party with Woodhouse & Rudd, the claimants:—

"This charter-party, made in the city of New York this thirteenth day of September, in the year one thousand eight hundred and seventy-two, between Messrs. Woodhouse & Rudd, owners of the steamer 'Francis Wright,' of New York, of the burthen of 600 tons or thereabouts, now lying in the harbor of New York, of the first part, and Messrs. Duncan & Poey, merchants of Philadelphia, of the second part, witnesseth:

"That the said party of the first part, in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, does covenant and agree on the freighting and chartering of the said vessel to the said party of the second part for the term of six months, to run between Philadelphia or New York and Galveston, or any intermediate safe port in the United States, or any foreign port not prohibited by the insurance.

"It is further understood and agreed, that the said parties of the second part are to have the privilege of cancelling this charter at the expiration of three months, upon giving the parties of the first part fifteen days' notice, and the payment of fifteen hundred dollars bonus on the terms following, viz.:

"*First*, The said party of the first part agrees the said vessel, in and during the said voyage, shall be kept tight, stanch, well fitted, tackled, and provided with every requisite for such a voyage.

"*Second*. The said party of the first part further agrees the whole of the said vessel (with the exception of the necessary room for the sails, cables) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid.

"*Third*, The said party of the first part further agrees to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and mercandise as the said party of the second part, or their agents, may think proper to ship.

"And the said party of the second part, in consideration of the convenants and agreements to be kept and performed by the said party of the first part, do covenant and agree with the said party of the first part to charter and hire the said vessel, as aforesaid, on the terms following, viz.: To man, coal, and victual steamer, and pay all expenses of every nature (including port charges, &c.) connected with running of the steamer, except insurance on vessel and repairs, and to pay to the said party of the first part, or their agent, for the charter or freight of said vessel, during the voyage aforesaid, in manner following, viz.: Eighty-five ($85) dollars per day, United States currency, due daily, but payable at the expiration of each and every month, in New York; vessel to be returned to the owners at the expiration of this charter, in the same order and condition as she is now in, less the ordinary wear and tear. Charterer to take and deliver the steamer at New York; owners to nominate and charterers to appoint chief engineer, to be paid by charterers at rate of one hundred and twenty-five ($125) dollars per month. Charterers to appoint captain subject to the approval of the owners. It is also agreed that this charter shall commence at New York on the 18th of September, 1872.

"If from any derangement of machinery steamer is delayed, the time lost is not to be paid for by charterers, and in case such derangement, if any, owners to have privilege of cancelling charter. In case of any wreckage, towage, or salvage, accruing to the vessel whilst under this charter, one-half of said earning to be paid to the owners of the steamer. To the true and faithful performance of all the foregoing covenants and agreements the said parties do hereby bind themselves, their heirs, executors, administrators, and assigns, and also the said vessel, her freight and appurtenances, and the merchandise to be laden on board each to the other in the penal sum of estimated amount of this charter.

"In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

"WOODHOUSE & RUDD.
"DUNCAN & POEY.

"Sealed and delivered in presence of "W. H. STARBUCK, witness to both signatures."

The libel filed in the District Court alleges that, in accordance with the terms of the charter party, Sherman was appointed chief engineer of the steamer, and Denison her captain; that the libellants took her to Philadelphia, where they fitted her with refrigerators and other appliances for bringing a cargo of fresh beef from Galveston to Philadelphia, and then despatched her to Galveston; that on the outward voyage the vessel gave signs of unseaworthiness in the blowing and leaking of some of her boiler-tubes, by which the time of the voyage was fourteen instead of ten days, the usual time; that at Galveston the chief engineer was notified by the libellants to make repairs, &c., but he refused, whereby she, having taken a cargo of about seventy tons of fresh beef, was, Oct. 31, 1872, being then four hours at sea, out of the port of Galveston, compelled to put back there for repairs by reason of the boiler-tubes again blowing out and leaking, and was detained at Galveston seven days for repairs, leaving there again Nov. 7, 1872, and was fifteen days making the passage to Philadelphia, owing to the unseaworthy and defective condition of the boiler; and that by reason of these detentions and of the unseaworthy condition of the boiler, and also of the hot water which escaped from the boiler-tubes and was negligently allowed to run into the steamer's bilge and melt the ice in the refrigerators where the fresh beef was stowed, the beef became spoiled and entirely lost, to the damage of libellants $30,000, which they claim to recover.

The steamer was attached, but was subsequently released, upon the claimants entering into the usual stipulations conformably to the rules and practice of that court. The claimants answered, admitting the making of the charter-party, the appointment of the chief engineer and captain, and the libellants' taking possession of the steamer. They deny all the other material allegations of the libel, and aver that she, as far as they were bound to do, was kept as required by the contract.

The District Court dismissed the libel, and the Circuit Court entered a decree of affirmance. The libellants excepted to certain of the findings of fact and to the refusal to find certain facts by them requested and to the conclusions of law. They thereupon appealed here. The bill of exceptions is incorporated in the record.

The remaining facts appear in the opinion of the court.

Mr. Robert D. Benedict and *Mr. Benjamin Harris Brewster* for the appellants.

Mr. William Allen Butler, contra.

Mr. CHIEF JUSTICE WAITE delivered the opinion of the court.

Three questions have been presented on the argument of this appeal:—

1. Whether Congress has the constitutional power to confine the jurisdiction of this court on appeals in admiralty to questions of law arising on the record;

2. Whether, upon the bill of exceptions, the court below erred in refusing to find certain facts which, as is claimed, were established by uncontradicted evidence, and in finding others which had no evidence at all to support them; and,

3. Whether, on the facts found, the decree below was right.

1. As to the jurisdiction.

If we understand correctly the position of the counsel for the appellants, it is precisely the same as that which occupied the attention of the court in *Wiscart* v. *Dauchy*, decided at February Term, 1796, 3 Dall. 321. There the question was, what, under the Judiciary Act of 1789, could be considered on a writ of error bringing to this court for review a decree in admiralty. The decision turned on the construction to be given the twenty-second section of the act, and Mr. Justice Wilson, in his minority opinion, said: "Such an appeal," that is to say, an appeal in which all the testimony is produced in this court, "is expressly sanctioned by the Constitution; it may, therefore, clearly, in the first view of the subject, be considered as the most regular process; and as there are not any words in the judicial act restricting the power of proceeding by appeal, it must be regarded as still permitted and approved. Even indeed, if positive restriction existed by law, it would, in my judgment, be superseded by the superior authority of the constitutional provision." Mr. Chief Justice Ellsworth, however, who spoke for the majority of the court, said: "If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it. The question, therefore, on the constitutional point of appellate jurisdiction, is simply whether Congress has established a rule for regulating its exercise." And, further on: "It is observed that a writ of error is a process more limited in its effects than an appeal; but whatever may be the operation, if an appellate jurisdiction can only be exercised by this court conformably to such regulations as are made by the Congress, and if Congress has prescribed a writ of error, and no other mode, by which it is to be exercised, still, I say, we are bound to pursue that mode, and can neither make, nor adopt, another." And again: "But surely it cannot be deemed a denial of justice that a man shall not be permitted to try his cause two or three times over. If he has one opportunity for the trial of all the parts of his case, justice is satisfied; and even if the decision of the Circuit Court has been made final, no denial of justice can be imputed to our government; much less can the imputation be fairly made, because the law directs that, in case of appeal, part shall be decided by one tribunal and part by another—the facts by the court below, and the law by this court. Such a distribution of jurisdiction has long been established in England."

This was the beginning of the rule, which has always been acted on since, that while the appellate power of this court under the Constitution extends to all cases within the judicial power of the United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe. As was said by Mr. Chief Justice Marshall in *Durousseau* v. *United States* (6 Cranch, 307, 314), "The appellate powers of this court are not given by the judicial act. They are given by the Constitution. But they are limited and regulated by the judicial act, and by such other acts as have been passed on the subject." The language of the Constitution is that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make." Undoubtedly, if Congress should give an appeal in admiralty causes, and say no more, the facts, as well as the law, would be subjected to review and retrial; but the power to except from—take out of—the jurisdiction, both as to law and fact, clearly implies a power to limit the effect of an appeal to a review of the law as applicable to facts finally determined below. Appellate jurisdiction is invoked as well through the instrumentality of writs of error as of appeals. Whether the one form of proceeding is to be used or an-

other depends ordinarily on the character of the suit below; but the one as well as the other brings into action the appellate powers of the court whose jurisdiction is reached by what is done. What those powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control. Authority to limit the jurisdiction necessarily carries with it authority to limit the use of the jurisdiction. Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to re-examination and review, while others are not. To our minds it is no more unconstitutional to provide that issues of fact shall not be retried in any case, than that neither issues of law nor fact shall be retried in cases where the value of the matter in dispute is less than $5,000. The general power to regulate implies power to regulate in all things. The whole of a civil law appeal may be given, or a part. The constitutional requirements are all satisfied if one opportunity is had for the trial of all parts of a case. Everything beyond that is matter of legislative discretion, not of constitutional right. The Constitution prohibits a retrial of the facts in suits at common law where one trial has been had by a jury (Amendment, art. 7); but in suits in equity or in admiralty Congress is left free to make such exceptions and regulations in respect to retrials as on the whole may seem best.

We conclude, therefore, that the act of Feb. 16, 1875, c. 77, is constitutional, and that under the rule laid down in *The Abbotsford* (98 U.S. 440), and uniformly followed since, our inquiries are confined to questions of law arising on the record, and to such rulings, excepted to at the time, as may be presented by a bill of exceptions prepared as in actions at law.

2. As to the questions arising on the bill of exceptions.

It is undoubtedly true that if the Circuit Court neglects or refuses, on request, to make a finding one way or the other on a question of fact material to the determination of the cause, when evidence has been adduced on the subject, an exception to such refusal taken in time and properly presented by a bill of exceptions may be considered here on appeal. So, too, if the court, against remonstrance, finds a material fact which is not supported by any evidence whatever, an exception is taken, a bill of exceptions may be used to bring up for review the ruling in that particular. In the one case the refusal to find would be equivalent to a ruling that the fact was immaterial; and in the other, that there was some evidence to prove what is found when in truth there was none. Both these are questions of law, and proper subjects for review in an appellate court. But this rule does not apply to mere incidental facts, which only amount to evidence bearing upon the ultimate facts of the case. Questions depending on the weight of evidence are, under the law as it now stands, to be conclusively settled below and the fact in respect to which such an exception may be taken must be one of the material and ultimate facts on which the correct determination of the cause depends.

In the present case the ultimate fact to be determined was whether the loss for which the suit was brought happened because of the insufficient refrigerating apparatus, or the unseaworthiness of the vessel. It is found in express terms that the loss was "caused by the defective construction and working of the refrigerating room and apparatus connected therewith, either from inherent defects in said apparatus, or from not using a sufficient quantity of ice, and not by any fault of the claimants." As to this both the Circuit and District Courts agree. This fact being established, it was unimportant to inquire whether the vessel was seaworthy or not. If the unseaworthiness was not the proximate cause of the loss, it is not contended the vessel can be charged with the damages.

But if it be conceded that the case depended on the seaworthiness of the vessel, we think the exceptions which have been taken cannot be considered here. The only unseaworthiness alleged was in respect to the boiler, and as to this the court has found that the boiler was a tubular one; that tubular boilers are liable to leakage in the tubes; that such leakage does not necessarily interfere with the capacity or fitness of the boiler for the purposes of navigation; that this particular boiler had one hundred and forty-four tubes; that some of these tubes gave out from time to time and were plugged up; that when the vessel arrived at Philadelphia at the end of her voyage, twenty-six of the tubes had been plugged up, but that the boiler was still efficient and seaworthy. It was also found that the voyage from Galveston to Philadelphia was two days longer than was usually occupied by well-equipped steamers, and that the vessel put back for repairs, by which an additional week's time was lost at Galveston.

The complaint now made is, that the court refused to state in its findings that there was leakage in the tubes and stoppage for repairs while the vessel was on her voyage from Philadelphia to Galveston, and while she was lying in the harbor at Galveston taking in her cargo, and that when the vessel put back to Galveston the engineer had not sufficient tools with which to make his repairs. All these are mere incidental facts, proper for the consideration of the court in determining whether the boiler and the vessel were actually seaworthy or not. It is not pretended that the question at issue was to be determined alone by the probative effect of these circumstances. They were part only of the evidence on which the ultimate finding depended, and occupy in the case the position of testimony rather than of the facts to which the law is to be applied by the judgment of the court. The refusal of the court to put such statements into the record, even though established by uncontradicted evidence, cannot properly be brought here by a bill of exceptions, unless it also appears that the determination of the ultimate fact to be ascertained depended alone upon the legal effect as evidence of the facts stated. Such, clearly, is not this case.

There is another equally fatal objection to this bill of exceptions. An evident effort has been made here, as it has been before, to so frame the exceptions as, if possible, to secure a reexamination of the facts in this court. The transcript which has been sent up contains the pleadings and all the testimony used on the trial below. The bill of exceptions sets forth that at the trial the pleadings were read by the respective parties, and the testimony then put in on both sides. This being done, the libellants presented to the court certain requests for findings of fact and of law. These requests were numbered consecutively, sixteen relating to facts and three to the law. Afterwards, six additional requests for findings of fact were presented. It is then stated that the court made its findings of fact and of law and filed them with the clerk, together with an opinion in writing of the circuit justice who heard the cause. The libellants then filed what are termed exceptions to the findings and the refusals to find. In this way exceptions were taken separately to each and every one of the facts found and the conclusions of law, and to the refusal to find in accordance with each and every one of the requests made. The grounds of the exceptions are not stated. Many of the requests of the libellants are covered explicitly by the findings as actually made, some being granted and others refused.

We have no hesitation in saying that this is not a proper way of preparing a bill of exceptions to present to this court for review rulings of the Circuit Court such as are now complained of. A bill of exceptions must be "prepared as in actions at law," where it is used, "not to draw the whole matter into examination again," but only separate and distinct points, and those of law. Bac. Abr., Bill of Exceptions; 1 Saund. Pl. & Ev. 846. Every bill of exceptions must state and point out distinctly the errors of which complaint is made. It ought also to show the grounds relied on to sustain the objection presented, so that it may appear the court below was properly informed as to the point to be decided. It is needless to say that this bill of exceptions meets none of these requirements. From anything which is here presented no judge would be presumed to understand that the specific objection made to any one of his findings was that no evidence whatever had been introduced to prove it, or to one of his refusals, that the fact refused was material and had been conclusively shown by uncontradicted testimony. No ground whatever is stated for any one of all the exceptions that have been taken. To entitle the appellants to be heard here upon any such objections as they now make to the findings, they should have stated to the court that they considered the facts refused material to the determination of the cause, and that such facts were conclusively proven by uncontradicted evidence. Under such circumstances it might have been permissible to except to the refusal and present the exception by a bill of exceptions, which should contain so much of the testimony as was necessary to show that the fact as claimed had been conclusively proven. And so if the exception is as to facts that are found, it should be stated that it was because there was no evidence to support them, and then so much of the testimony as was necessary to establish this ground of complaint, which might under some circumstances include the whole, should be incorporated into the bill of exceptions. In this way the court below would be fairly advised of the nature of the complaint that was made in time to correct its error, if satisfied one had been committed, or to put into the bill of exceptions all it considered material for the support of the rulings.

From this it is apparent we cannot on this appeal consider any of the rulings below which have been presented by the bill of exceptions.

3. As to the sufficiency of the facts found to support the decree.

Upon this branch of the case we have had no more difficulty than upon the others. The case made may be generally stated as follows:—

The libellants, being about to engage in the business of transporting fresh beef by the use of a newly patented process, applied to the claimants for a charter of their steamer for six months, to be put into that trade. The claimants knew for what business the vessel was engaged, and the libellants knew that she was furnished with a tubular boiler. Such boilers are liable to leak, but that does not necessarily interfere with their capacity or fitness for the purposes of navigation. The charter-party contained this clause:—

"*First*, The said party of the first part agrees the said vessel, in and during the said voyage, shall be kept tight, stanch, well fitted, tackled, and provided with every requisite for such a voyage."

The charter-party makes no mention of the special business in which the vessel was to be engaged. She was chartered generally for six months to run between Philadelphia and New York and Galveston, or any intermediate safe port in the United States, or any foreign port not prohibited by the insurance. The only complaint made as to her seaworthiness, is in respect to her boiler, and about this it is found that though to some extent leaking, as boilers of that class are liable to be, it was still efficient and seaworthy. The libellants fitted the vessel with the necessary apparatus for the use of their

patented process, and with a full knowledge that her boiler was apt to leak, put a cargo of fresh beef on board to be taken from Galveston to Philadelphia. The vessel was twenty-three days in making that voyage instead of fourteen, which was the usual time of well-equipped steamers. The beef was spoiled before it got to Philadelphia, but it is expressly found that this was because of the defective construction and working of the refrigerating room, and the apparatus and machinery connected therewith, for which the claimants were in no respect responsible.

Upon these facts the court below dismissed the libel, which we think was clearly right. That the vessel was in fact seaworthy is settled by the findings. All the claimants covenanted for was, that she was provided with every requisite for safe navigation. While they knew that her charterers intended to use her in connection with their contemplated business, it is neither found nor insisted that any higher degree of seaworthiness was required for that kind of transportation than any other, much less that the claimants knew it. Under these circumstances the language of the charter-party is to be construed only as an agreement that the vessel was seaworthy for the purpose of navigating such a voyage as she was chartered to make, without any regard to what she was to carry. The claimants did not contract that their vessel was in a condition to make her voyages in any particular time, but only to make them safely. They were not applied to for a vessel suitable for carrying fresh beef, but for one suitable for navigation generally between the designated ports and places. Such a vessel according to the findings they got. It was their fault alone if they did not apply for what they wanted. They took all the risks of the undertaking, except such as arose from the general unseaworthiness of the vessel when she was delivered into their possession, for after they got her she was to be subject to their entire control within the terms of the charter. If repairs were necessary to keep her in a seaworthy condition, while under the charter the claimants might be chargeable with the expense of making them, it would be the duty of the charterers to see that they were made, or to notify the claimants of what was required. The provision that the claimants were to nominate and the charterers appoint the engineer, and that the appointment of the captain by the charterers should be subject to the approval of the claimants, did not affect the relation of the parties in this particular. Delays growing out of derangement in the machinery were to be deducted from the charter time, and the pay for the use of the vessel correspondingly reduced, but beyond that the owners were not to be bound if the vessel was actually seaworthy when delivered into the possession of the charterers under the charter.

Affirmed.

DANIELS *v.* RAILROAD COMPANY

STATEMENT OF THE CASE

Under the act of April 29, 1802 (§ 6), providing "that whenever *any question* shall occur before a Circuit Court upon which the opinions of the judges shall be opposed, *the point* upon which the disagreement shall happen shall . . . be certified . . . to the Supreme Court, and shall by the said court be finally decided"—the court will not even by consent of parties take jurisdiction, unless the certificate of division present in a precise form, a point of law upon a part of the case settled and stated. Hence where the record stated certain facts, and with this statement presented the testimony of numerous witnesses which was directed to the establishment of others,—the whole case being, in fact, brought up with a purpose, apparently, that this court should decide both fact and law—and the question certified was whether in point of law upon the facts as stated and *proved* the action could be maintained,—the court dismissed the case as not within its jurisdiction.

The sixth section of the act of Congress of 29th April, 1802,[1] provides:

"That whenever *any question* shall occur before a Circuit Court upon which the opinions of the judges shall be opposed, *the point* upon which the disagreement shall happen, shall, &c., be stated under the direction of the judges and certified . . . to the Supreme Court . . . and shall, by the said court, be finally decided."

With this act in force Daniels brought a suit in the Circuit Court for the Northern District of Illinois against the Rock Island Railway Company for injuries done him by a collision on its railroad; there being a special plea to one of the counts of the declaration—of which there were several, denied generally—that the collision referred to was brought about by the carelessness of the defendant's servant, and without the knowledge or consent of the defendant, and that at the time of the injury the plaintiff himself was a servant serving as a fireman on the locomotive. The record went on:

"On the trial it was proved that the defendant was a common carrier of passengers; that at the time alleged the plaintiff was on the engine of the defendant, for the purpose and *in the manner hereinafter stated*, proceeding over the road of the defendant, when by the negligence and carelessness of the engineer of the locomotive (the said engineer being at the time a servant of the defendant), upon which the plaintiff was riding, a collision took place, which resulted in great personal injury to the plaintiff. The circumstances connected with the plaintiff's trip and the manner and purpose of his firing the engine, as well as some conversation of his after the injury, are detailed by the witnesses as follows."

Then followed the testimony of seven witnesses—two on one side, five on the other—examined and cross-examined. These witnesses testified that the plaintiff *had* been, a week previously to the accident, a fireman on the railroad, but had been—as some signified it might be—"dismissed"—though, as it rather appeared, possibly—"suspended;"—that is to say, owing to the diminished business of the road at that exact season, had been taken off the pay-list; as the company did continually with its hands on the decrease of its business at particular times in the year, and put on a list of persons who would be preferred when, with the increase of business, the company would again require more aid. "Its business was unsteady." Such persons, it was testified, were under no obligation to come back, nor was the company bound to employ them again, but it was a custom if they were at hand to set them to work again as soon as there was work. Daniels, it was testified, had been inquiring two or three days previously to the day of the accident when he should be employed again, and was told that it might be in one, two, three, or four weeks; that it would depend on the business of the road.

On the day of the accident he came to the master mechanic, within whose business it was to employ and discharge firemen, and asked, as some witnesses testified, for "a pass"—though others heard nothing about "a pass"—to go to a place called Peru to get his clothes. The master, according to his own testimony, told him that the company was going to send an extra engine down that night or the next, and that he could "fire" that engine down; though according to the testimony of another witness, the master told him that if he would fire that engine down he would give him a pass: "that was the understanding between them." The master himself swore that there was no agreement that he should fire the engine in consideration of his passage on it. The company, it was sworn to, was not in the habit of making that sort of agreement, and the master mechanic had no right to make such arrangements or to give "passes." He supposed, according to his own testimony, that a subofficer whose duty it would be, unless directed to the contrary, to put the man's name on the payroll when he saw him serving on the engine, would put his name on the roll accordingly.

There was other testimony, all directed to the fact whether or not the man was actually reinstated or whether he was hanging on only, expecting to be, and had now, in consideration of "firing" the engine on a particular trip, been given the privilege of a passage on it to go and get his clothes.

The record, after mentioning certain facts that were proved, thus went on:

"This was all the evidence bearing upon the case, and thereupon it occurred as a question whether, in point of law, upon the facts *as stated and proved*, the action could be maintained, and whether, consequently, the jury should be instructed that under the facts as proved the plaintiff could not recover; upon which questions the opinions of the judges were opposed. Whereupon, &c., the foregoing points upon which the disagreement has happened is ordered by the judges to be stated and certified to the Supreme Court of the United States, &c., for its decision."

The case came here accordingly by a certificate that the opinions of the judges were opposed on the points set forth, and was argued by *Messrs. Hurd and Booth, for the plaintiff, and by Messrs. Cook and Winston, contra*, on the questions of law and fact presented;—questions, however, which this court did not consider; their opinion going to the matter of jurisdiction only.

OPINION OF THE COURT

Mr. Justice SWAYNE delivered the opinion of the court.

This case is brought before us by a certificate that the opinions of the judges of the Circuit Court below were opposed upon the points set forth; the proceeding having been taken under the sixth section of the act of the 29th of April, 1802.

To come properly before us, the case must be within the appellate jurisdiction of this court. In order to create such jurisdiction in any case, two things must concur: the Constitution must give the capacity to take it, and an act of Congress must supply the requisite authority.[2]

The original jurisdiction of this court, and its power to receive appellate jurisdiction, are created and defined by the Constitution; and the legislative department of the government can enlarge neither one nor the other. But it is for Congress to determine how far, within the limits of the capacity of this court to take, appellate jurisdiction shall be given, and when conferred, it can be exercised only to the extent and in the manner prescribed by law. In these respects it is wholly the creature of legislation.[3]

The section referred to of the act of 1802 mentions several particulars, all of which must appear in the certificate. They are jurisdictional, and a defect as to either is fatal.

The one which has most frequently been the subject of discussion, and which it is necessary to consider in this case, is "the point upon which the disagreement of the judges" occurs.

It must be a question of law, and not of fact.[4]

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[1] 2 Stat. at Large, 159.

[2] Marbury *v.* Madison, 1 Cranch, 137; Sheldon *v.* Sill, 8 Howard, 448.

[3] Durousseau *v.* United States, 6 Cranch, 314; United States *v.* Moore, 3 Id. 159; Barry *v.* Mercein, 5 Howard, 119.

[4] Dennistoun *v.* Stewart, 18 Id 565.

It must arise in the progress of the cause, and not incidentally, or in relation to a collateral matter, after the rendition of the judgment or decree. Where the question certified was as to the amount of the bond to be given upon the allowance of a writ of error, and where it was as to the retaxation of costs after the principal of the judgment had been collected, this court held that it could not take jurisdiction.[5]

It cannot arise upon a motion for a new trial, the decision resting in the discretion of the court, and not being subject to exception.[6]

It may arise upon a special verdict, or a motion in arrest of judgment.[7]

The question, whether a demurrer shall be sustained? is not sufficiently definite. The precise legal point involved, upon which the judges were divided in opinion, should be stated. The court is not bound to look beyond the certificate to ascertain the point.[8]

Nothing which may be *decided* according to the discretion of the court can be made the subject of examination here in this way.[9]

But if in connection with the discretion which the court below is asked to exercise, questions are presented which involve the right of the matter in controversy, this court will entertain them.[10]

Except under peculiar circumstances, this court will not take cognizance of a question certified upon a division *pro formâ*.[11]

The determination of the question certified does not affect the right to bring up the whole case, by a writ of error or appeal, after it is terminated in the court below.[12] When a certificate of division is brought into this court, only the points certified are before us. The cause remains in the Circuit Court, and may be proceeded in by that court according to its discretion.[13]

Where the question certified was, whether a letter written by a cashier without the knowledge of the directors was binding on the bank, this court declined to answer, because the solution of the question depended in part upon facts not stated in the certificate.[14]

The *whole case* cannot be transferred to this court. Chief Justice Marshall says:[15] "A construction which would authorize such transfer, would counteract the policy which forbids writs of error or appeal until the judgment or decree be final. If an interlocutory judgment or decree could be brought into this court, the same case might again be brought up after a final decision; and all the delays and expense incident to a repeated revision of the same cause be incurred. So if the whole cause, instead of an insulated point, could be adjourned, the judgment or decree which would be finally given by the Circuit Court might be brought up by writ of error or appeal, and the whole subject be re-examined. Congress did not intend to expose suitors to this inconvenience; and the language of the provision does not, we think, admit of this construction. A division on a point, in the progress of a cause, on which the judges may be divided in opinion, not the whole cause, is to be certified to this court."

[5] Devereaux *v.* Marr, 12 Wheaton, 213; Bank United States *v.* Green, 6 Peters, 26.

[6] United States *v.* Daniel, 6 Wheaton, 545.

[7] Somerville Executors *v.* Hamilton, 4 Id. 230; United States *v.* Kelly, 11 Id. 417.

[8] United States *v. Briggs*, 5 Howard, 208.

[9] Davis *v.* Braden, 10 Peters, 288.

[10] United States *v.* The City of Chicago, 7 Howard, 185.

[11] Webster *v.* Howard, Id. 54; United States *v.* Stone, 14 Peters, 524.

[12] Ogle *v.* Lee, 2 Cranch, 33; United States *v.* Bailey, 9 Peters, 273.

[13] Kennedy et al. *v.* The Bank of the State of Georgia, 8 Howard, 610.

[14] United States *v.* The City Bank of Columbus, 19 Howard, 384.

[15] United States *v.* Bailey, 9 Peters, 278.

Where it appears the whole case has been divided into points—some of which may never arise, if those which precede them in the certificate are decided in a particular way—the case will be dismissed for want of jurisdiction.[16]

The questions must be separate and distinct, and each one must be particularly stated with reference to that part of the case upon which it arose. They must not be "such as involve or imply conclusions or judgment by the judges upon the weight or effect of the testimony or facts adduced in the cause.[17]

The question must not be general nor abstract, nor a mixed one of law and fact. If it be either, this court cannot take jurisdiction.[18]

SYLLABUS

In the case before us the questions certified are, "whether, in point of law, upon the facts as stated and proved, the action could be maintained; and whether, consequently, the jury should be instructed that, under the facts as proved, the plaintiff could not recover?"

Upon looking into the record, we find a body of facts stated as having been proved, and the testimony of numerous witnesses set forth at length, as respectively given. The entire case is brought before us, as if we were called upon to discharge the twofold functions of a court and jury. At the threshold arises an important question of fact, not without difficulty. It is, whether the plaintiff is to be regarded as a passenger, or a servant of the defendant, at the time he received, upon the locomotive, the injury for which he sues? Upon the determination of this question depend the legal principles to be applied. They must be very different, as the solution may be one way or the other.

The Constitution wisely places the trial of such questions within the province of a jury, and it cannot be taken from them without the consent of both parties. Here, such consent is given; but it is ineffectual to clothe us with a power not conferred by law. In the light of the authorities to which we have referred, it is sufficient to add that the questions certified are not such that we can consider them.

According to the settled practice, the case will, therefore, be dismissed for want of jurisdiction, and remanded to the Circuit Court, with an order to proceed in it according to law.

DISMISSED, AND ORDER ACCORDINGLY.

[See *infra*, p. 294, *Havemeyer* v. *Iowa County*, 2.—REP.]

EX PARTE MCCARDLE

STATEMENT OF THE CASE

1. The appellate jurisdiction of this court is conferred by the Constitution, and not derived from acts of Congress; but is conferred "with such exceptions, and under such regulations, as Congress may make;" and, therefore, acts of Congress affirming such jurisdiction, have always been construed as excepting from it all cases not expressly described and provided for.

2. When, therefore, Congress enacts that this court shall have appellate jurisdiction over final decisions of the Circuit Courts, in certain cases, the act operates as a negation or exception of such jurisdiction in other cases; and the repeal of the act necessarily negatives jurisdiction under it of these cases also.

3. The repeal of such an act, pending an appeal provided for by it, is not an exercise of judicial power by the legislature, no matter whether the repeal takes effect before or after argument of the appeal.

4. The act of 27th of March, 1868, repealing that provision of the act of 5th of February, 1867, to amend the Judicial Act of 1789, which authorized appeals to this court from the decisions of the Circuit Courts, in cases of *habeas corpus*, does not except from the appellate jurisdiction of this court any cases but appeals under the act of 1867. It does not affect the appellate jurisdiction which was previously exercised in cases of *habeas corpus*.

Appeal from the Circuit Court for the Southern District of Mississippi.

The case was this:

The Constitution of the United States ordains as follows:

"§ 1. The judicial power of the United States shall be vested *in one Supreme Court*, and in such inferior courts as the Congress may from time to time ordain and establish."

"§ 2. The judicial power shall extend to all cases in law or equity arising *under this Constitution, the laws of the United States*," &c.

And in these last cases the Constitution ordains that,

"The Supreme Court shall have appellate jurisdiction, both as to law and fact, *with such exceptions, and under such regulations, as the Congress shall make.*"

With these constitutional provisions in existence, Congress, on the 5th February, 1867, by "An act to amend an act to establish the judicial courts of the United States, approved September 24, 1789," provided that the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdiction, in addition to the authority already conferred by law, should have power to grant writs of *habeas corpus* in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States. And that, from the final decision of any judge, justice, or court inferior to the Circuit Court, appeal might be taken to the Circuit Court of the United States for the district in which the cause was heard, and *from the judgment of the said Circuit Court to the Supreme Court of the United States.*

This statute being in force, one McCardle, alleging unlawful restraint by military force, preferred a petition in the court below, for the writ of *habeas corpus*.

The writ was issued, and a return was made by the military commander, admitting the restraint, but denying that it was unlawful.

It appeared that the petitioner was not in the military service of the United States, but was held in custody by military authority for trial before a military commission, upon charges founded upon the publication of articles alleged to be incendiary and libelous, in a newspaper of which he was editor. The custody was alleged to be under the authority of certain acts of Congress.

Upon the hearing, the petitioner was remanded to the military custody; but, upon his prayer, an appeal was allowed him to this court, and upon filing the usual appeal-bond, for costs, he was admitted to bail upon recognizance, with sureties, conditioned for his future appearance in the Circuit Court, to abide by and perform the final judgment of this court. The appeal was taken under the above-mentioned act of February 5, 1867.

A motion to dismiss this appeal was made at the last term, and, after argument, was denied.[19]

Subsequently, on the 2d, 3d, 4th, and 9th March, the case was argued very thoroughly and ably upon the merits, and was taken under advisement. While it was thus held, and before conference in regard to the decision proper to be made, an act was passed by Congress,[20] returned with objections by

[16] Nesmith et al. *v.* Sheldon et al. 6 Id. 41.

[17] Dennistoun *v.* Stewart, Id. 18, 565.

[18] Ogilvie et al. *v.* The Knox Insurance Company, Id. 577.

[19] See Ex parte McCardle, 6 Wallace, 318.

[20] Act of March 27, 1968, 15 Stat. at Large, 44.

the President, and, on the 27th March, repassed by the constitutional majority, the second section of which was as follows:

"*And be it further enacted,* That so much of the act approved February 5, 1867, entitled 'An act to amend an act to establish the judicial courts of the United States, approved September 24, 1789,' as authorized an appeal from the judgment of the Circuit Court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court, on appeals which have been, or may hereafter, be taken, be, and the same is hereby repealed."

ARGUMENT AGAINST THE OPERATION OF THE ACT

The attention of the court was directed to this statute at the last term, but counsel having expressed a desire to be heard in argument upon its effect, and the Chief Justice being detained from his place here, by his duties in the Court of Impeachment, the cause was continued under advisement. Argument was now heard upon the effect of the repealing act.

Mr. Sharkey, for the appellant:

The prisoner alleged an illegal imprisonment. The imprisonment was justified under certain acts of Congress. The question then presents a case arising under "the laws of the United States;" and by the very words of the Constitution the judicial power of the United States extends to it. By words of the Constitution, equally plain, that judicial power is vested in one Supreme Court. This court, then, has its jurisdiction directly from the Constitution, not from Congress. The jurisdiction being vested by the Constitution alone, Congress cannot abridge or take it away. The argument which would look to Congressional legislation as a necessity to enable this court to exercise "the judicial power" (any and every judicial power) "of the United States," renders a power, expressly given by the Constitution, liable to be made of no effect by the inaction of Congress. Suppose that Congress never made any exceptions or any regulations in the matter. What, under a supposition that Congress must define when, and where, and how, the Supreme Court shall exercise it, becomes of this "judicial power of the United States," so expressly, by the Constitution, given to this court? It would cease to exist. But this court is coexistent and co-ordinate with Congress, and must be able to exercise the whole judicial power of the United States, though Congress passed no act on the subject. The Judiciary Act of 1789 has been frequently changed. Suppose it were repealed. Would the court lose, wholly or at all, the power to pass on every case to which the judicial power of the United States extended? This act of March 27th, 1868, does take away the whole appellate power of this court in cases of *habeas corpus*. Can such results be produced? We submit that they cannot, and this court, then, we further submit, may still go on and pronounce judgment on the merits, as it would have done, had not the act of 27th March been passed.

But however these general positions may be, the case may be rested on more special grounds. This case had been argued in this court, fully. Passing then from the domain of the bar, it was delivered into the sacred hands of the judges; and was in the custody of the court. For aught that was known by Congress, it was passed upon and decided by them. Then comes, on the 27th of March, this act of Congress. Its language is general, but, as was universally known, its purpose was specific. If Congress had specifically enacted "that the Supreme Court of the United States shall never publicly give judgment in the case of McCardle, already argued, and on which we anticipate that it will soon deliver judgment, contrary to the views of the majority in Congress, of what it ought to decide," its purpose to interfere specifically with and prevent the judgment in this very case would not have been more real or, as a fact, more universally known.

Now, can Congress thus interfere with cases on which this high tribunal has passed, or is passing, judgment? Is not legislation like this an exercise by the Congress of judicial power? *Lanier* v. *Gallatas* [21] is much in point. There a motion was made to dismiss an appeal, because by law the return day was the 4th Monday in February, while in the case before the court the transcript had been filed before that time. On the 15th of March, and *while the case was under advisement,* the legislature passed an act making the 20th of March a return day for the case; and a motion was now to reinstate the case and hear it. The court says:

"The case had been submitted to us before the passage of that act, and was beyond the legislative control. Our respect for the General Assembly and Executive forbids the inference that they intended to instruct this court what to do or not to do whilst passing on the legal rights of parties in a special case already under advisement. The utmost that we can suppose is," &c.

ARGUMENT FOR THE OPERATION OF THE ACT

In *De Chastellux* v. *Fairchild,*[22] the legislature of Pennsylvania directed that a new trial should be granted in a case already decided. Gibson, C. J., in behalf of the court, resented the interference strongly. He said:

"It has become the duty of the court to temporize no longer. The power to order new trials is judicial. But the power of the legislature is not judicial."

In *The State* v. *Fleming,*[23] where the legislature of Tennessee directed two persons under indictment to be discharged, the Supreme Court of the State, declaring that "the legislature has no power to interfere with the administration of justice in the courts," treated the direction as void. In *Lewis* v. *Webb,*[24] the Supreme Court of Maine declare that the legislature cannot dispense with any general law in favor of a particular case.

Messrs. L. Trumbull and M. H. Carpenter, contra:

1. The Constitution gives to this court appellate jurisdiction in any case like the present one was, only with such exceptions and under such regulations as Congress makes.

2. It is clear, then, that this court had no jurisdiction of this proceeding—*an appeal from the Circuit Court*—except under the act of February 5th, 1867; and so this court held on the motion to dismiss made by us at the last term.[25]

3. The act conferring the jurisdiction having been repealed, the jurisdiction ceased; and the court had thereafter no authority to pronounce any opinion or render any judgment in this cause. No court can do any act in any case, without jurisdiction of the subject-matter. It can make no difference at what point, in the progress of a cause, the jurisdiction ceases. After it has ceased, no judicial act can be performed. In *Insurance Company* v. *Ritchie,*[26] the Chief Justice, delivering the opinion of the court, says:

"It is clear, that when the jurisdiction of a cause depends upon the statute, the repeal of the statute takes away the jurisdiction."

And in that case the repealing statute, which was passed during the pendency of the cause, was held to deprive the court of all further jurisdiction. The causes which were pending in this court against States, were all dismissed by the amendment of the Constitution denying the jurisdiction; and no further proceedings were had in those causes.[27] In *Norris* v. *Crocker,*[28] this court affirmed and acted upon the same principle; and the exhaustive argument of the present Chief Justice, then at the bar, reported in that case, and the numerous authorities there cited, render any further argument or citation of cases unnecessary.[29]

4. The assumption that the act of March, 1868, was aimed specially at this case, is gratuitous and unwarrantable. Certainly the language of the act embraces all cases in all time; and its effect is just as broad as its language.

The question of merits cannot now, therefore, be passed upon. The case must fall.

OPINION OF THE COURT

The Chief Justice delivered the opinion of the court.

The first question necessarily is that of jurisdiction; for, if the act of March, 1868, takes away the jurisdiction defined by the act of February, 1867, it is useless, if not improper, to enter into any discussion of other questions.

It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make."

It is unnecessary to consider whether, if Congress had made no exceptions and no regulations, this court might not have exercised general appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the first Congress, at its first session, was the act of September 24th, 1789, to establish the judicial courts of the United States. That act provided for the organization of this court, and prescribed regulations for the exercise of its jurisdiction.

The source of that jurisdiction, and the limitations of it by the Constitution and by statute, have been on several occasions subjects of consideration here. In the case of *Durousseau* v. *The United States,*[30] particularly, the whole matter was carefully examined, and the court held, that while "the appellate powers of this court are not given by the judicial act, but are given by the Constitution," they are, nevertheless, "limited and regulated by that act, and by such other acts as have been passed on the subject." The court said, further, that the judicial act was an exercise of the power given by the Constitution to Congress "of making exceptions to the appellate jurisdiction of the Supreme Court." "They have described affirmatively," said the court, "its jurisdiction, and this affirmative description has been understood to imply a negation of the exercise of such appellate power as is not comprehended within it."

The principle that the affirmation of appellate jurisdiction implies the negation of all such jurisdiction not affirmed having been thus established, it was an almost necessary consequence that acts of Congress, providing for the exercise of jurisdiction, should come to be spoken of as acts granting jurisdiction, and not as acts making exceptions to the constitutional grant of it.

The exception to appellate jurisdiction in the case before us, however, is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of *habeas corpus* is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the

[21] 13 Louisiana Annual, 175.
[22] 15 Pennsylvania State, 18.
[23] 7 Humphreys, 152.
[24] 3 Greenleaf, 326.
[25] 6 Wallace, 318.
[26] 5 Wallace, 544.
[27] Hollingsworth *v.* Virginia, 3 Dallas, 378.
[28] 13 Howard, 429.
[29] Rex *v.* Justices of London, 3 Burrow, 1456; Yeaton *v.* United States, 5 Cranch, 281; Schooner Rachel *v.* United States, 6 Id. 329; United States *v.* Preston, 3 Peters, 57; Com. *v.* Marshall, 11 Pickering, 350.
[30] 6 Cranch, 312; Wiscart *v.* Dauchy, 3 Dallas, 321.

motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

Several cases were cited by the counsel for the petitioner in support of the position that jurisdiction of this case is not affected by the repealing act. But none of them, in our judgment, afford any support to it. They are all cases of the exercise of judicial power by the legislature, or of legislative interference with courts in the exercising of continuing jurisdiction.[31]

On the other hand, the general rule, supported by the best elementary writers,[32] is, that "when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed." And the effect of repealing acts upon suits under acts repealed, has been determined by the adjudications of this court. The subject was fully considered in *Norris* v. *Crocker*,[33] and more recently in *Insurance Company* v. *Ritchie*.[34] In both of these cases it was held that no judgment could be rendered in a suit after the repeal of the act under which it was brought and prosecuted.

It is quite clear, therefore, that this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Counsel seem to have supposed, if effect be given to the repealing act in question, that the whole appellatee power of the court, in cases of *habeas corpus*, is denied. But this is an error. The act of 1868 does not except from that jurisdiction any cases but appeals from Circuit Courts under the act of 1867. It does not affect the jurisdiction which was previously exercised.[35]

The appeal of the petitioner in this case must be

DISMISSED FOR WANT OF JURISDICTION.

Mr. ERVIN. Mr. President, sometimes some of our friends in construing the Constitution agree with the Constitution where the words of the Constitution are in harmony with their ideas. But when the Founding Fathers say something in the Constitution which they do not like, they try to attribute to the plain words of the Constitution a meaning which is wholly incompatible with those words.

Some of them seek to evade the plain consequences of the words of the Constitution which say in substance, in section 2 of article III, that the Supreme Court shall have appellate jurisdiction both as to fact and law with such exceptions and under such regulations as the Congress shall make.

They say that while Congress can define the appellate jurisdiction of the Supreme Court, Congress cannot pass any law which would deny any citizen the right to have any constitutional right such as due process of law.

However, in the McCardle case Congress did not give process at all—no due process, no process. Many acts of Congress, deny jurisdiction to the courts—both original jurisdiction to the Federal trial courts and appellate jurisdiction to the Supreme Court of the United States. One of them is the Norris-La Guardia Act.

About the only power a court of equity really has is the power to issue injunctions. Yet, under the Norris-La Guardia Act, Congress enacted a law, which has been sustained by the Supreme Court, denying the Federal courts, sitting as courts of equity, virtually all of their power to issue injunctions in cases involving labor disputes. Congress did this before enactment of the Taft-Hartley Act and before the enactment of the Wagner Act in order to prevent Federal district courts from ruling labor controversies by injunctions.

(At this point Mr. BYRD of Virginia assumed the chair.)

Mr. ERVIN. The Wagner Act, as amended by the Taft-Hartley Act constitutes the National Labor Relations Act. This act denies Federal courts jurisdiction in respect to all unfair labor practices—that is, original jurisdiction—and gives all that jurisdiction to a board.

As a matter of fact, Congress denied Federal courts of the major portion of the jurisdiction allowable to them in respect to civil cases of a civil nature. It did this by an act which has long been upon the statute books and which was amended a few years ago, with respect to the jurisdictional amount, by the vote of an overwhelming majority of the U.S. Senate.

I cite title 28, section 1331, of the United States Code:

> The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

That statute is a recognition of the fact that Congress can define the jurisdiction of Federal courts, in respect to both the original jurisdiction of the inferior courts and the appellate jurisdiction of the Supreme Court. The great majority of cases and controversies which arise in the United States under the Constitution, under the laws, and under the treaties of the United States involve $10,000 or less, exclusive of interest or costs; and this statute denies the Federal courts of jurisdiction of those cases.

One of my colleagues delivered a speech on the floor of the Senate a few days ago in which he cited the case of United States against Klein—a decision reported in 13 Wall. 128—as an authority for the proposition that the two sections I have read into the RECORD are unconstitutional insofar as they attempt to withdraw certain appellate jurisdiction from the Supreme Court of the United States. I am compelled to say that United States against Klein holds exactly the contrary.

United States against Klein declares that if it had been a case in which appellate jurisdiction had, in fact, been denied to the Supreme Court by Congress, the statute would have been a valid enactment of Congress, and the Court would have had to dismiss the case for want of jurisdiction.

The Klein case is very interesting. During the Civil War, Congress passed several statutes providing for the seizure of property. A statute provided, in substance, that any property which was used in the carrying on of the war should be forfeited to the United States. It did not undertake, however, the confiscation of private property. Although it provided for the seizure of private property, it provided that any person who was loyal to the United States—that is, to the Union—could recover any private property seized by the Government; and if the property had been sold by the Government, he could recover the proceeds which had been deposited in the Treasury of the United States.

One of the acts provided that, in furtherance of the purposes of the war, the President could grant pardons upon such conditions as he saw fit, and that the grant of such pardons would in essence entitle a person who had adhered to the Confederacy the right to reclaim his property or the proceeds of his property, in case it had been sold and the proceeds had been paid, as the law required, into the U.S. Treasury.

When Congress created the Court of Claims as an inferior court under article III, it gave the Court of Claims original jurisdiction of cases involving contract claims against the Federal Government and expressly provided that the Supreme Court should have appellate jurisdiction to review the decisions of the Court of Claims. Upon an appeal, the Supreme Court of the United States held that although he had adhered to the Confederacy, Padelford had been pardoned by the President on condition that he should take an oath of loyalty to the United States and abide by that oath. The Court held that the pardon of the President had the effect, from a legal standpoint, of wiping out all the consequences of the man's offense in adhering to the Confederacy, and that consequently he was entitled to the proceeds which the Government had received from the sale of his property and paid into the Treasury.

This decision displeased Congress which passed a law providing, in substance, that a pardon should not have that effect, and that any claimant who had allegedly adhered to the Confederacy would have to prove his case otherwise than by a pardon. Also he would not be entitled to his property where he relied on a pardon because the pardon would be construed to be evidence of his offense unless he had protested at the time he received the pardon that he had not committed the offense and did not need the pardon. The law further provided that wherever a man relied upon a pardon as blotting out his offense, and entitling him to restoration of his property or its proceeds, that the pardon should be construed as evidence of the man's guilt,

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[31] Lanier *v.* Gallatas, 13 Louisiana Annual, 175; De Chastellux *v.* Fairchild, 15 Pennsylvania State, 18; The State *v.* Fleming, 7 Humphreys, 152; Lewis *v.* Webb. 3 Greenleaf, 326.

[32] Dwarris on Statutes, 538.

[33] 13 Howard, 429.

[34] 5 Wallace, 541.

[35] Ex parte McCardle, 6 Wallace, 324.

and, when that appeared, the court should dismiss the case for want of jurisdiction.

The Supreme Court held that the statute was unconstitutional, but not because it denied the Court appellate jurisdiction. The Court said it did not deprive the Court of appellate jurisdiction. The Court said that Congress created the Court of Claims as an inferior court and had expressly given the Supreme Court appellate jurisdiction to review its decisions.

I wish to call attention to the portion of the Klein opinion which expressly recognizes the power of the Congress to deprive the Supreme Court of appellate jurisdiction. I read these words from page 145:

The Court of Claims is thus constituted one of those inferior courts which Congress authorizes, and has jurisdiction of contracts between the government and the citizen, from which appeal regularly lies to this court.

Undoubtedly the legislature has complete control over the organization and existence of that court and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient.

But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have.

The Court proceeded to hold further that Congress had not withheld appellate jurisdiction but on the contrary had given the Supreme Court appellate jurisdiction to review decisions of the Court of Claims.

With respect to the act under consideration in the Klein case, the Court said:

It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

Then, it proceeded to hold that Congress had left the Supreme Court with its appellate jurisdiction of claims originating in the Court of Claims but it attempted to require the Court to make decisions conforming to the will of Congress instead of to the evidence in the case.

The Supreme Court held, in essence, in the Klein case that Congress had expressly given it appellate jurisdiction to review decisions of the Court of Claims when it created that court and had recognized the continued existence of such jurisdiction in the statute whereby it undertook to circumvent the ruling made in the Padelford case by providing that the Court should dismiss the appeal for want of jurisdiction to entertain it if, and only if, it found on its consideration of the appeal that the claimant was entitled to the relief he sought under the law announced in the Padelford case because he had received a Presidential pardon granting him amnesty for adhering to the Confederacy.

So, Mr. President (Mr. TYDINGS in the chair), the Supreme Court condemned the statute, not because it deprived the court of appellate jurisdiction but because it tried to tell the court what kind of decision it could make and required the court to give a false interpretation to a Presidential pardon. The Court said that the statute was unconstitutional because it violated the principle of separation of powers which leaves making of the laws to the Congress and deciding of cases to the Court.

It said on page 147:

The court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary.

We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power.

Then, the Court proceeded further to say that the statute not only violated the doctrine of separation of powers by trying to tell the court what kind of decision it should make, but also said it violated the provision of the Constitution which gives the President the power to grant pardons.

The Court said:

It is the intention of the Constitution that each of the great co-ordinate departments of the government—the Legislative, the Executive, and the Judicial—shall be, in its sphere, independent of the others. To the executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offence pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration of property was expressly pledged, and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath.

Now it is clear that the legislature cannot change the effect of such a pardon any more than the executive can change a law. Yet this is attempted by the provision under consideration. The court is required to receive special pardons as evidence of guilt and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority and directs the court to be instrumental to that end.

Mr. President, I ask unanimous consent that a copy of the decision of United States against Klein be printed in the RECORD.

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

UNITED STATES *v.* KLEIN

"1. The act of March 12th, 1863 (12 Stat. at Large, 820), to provide for the collection of abandoned and captured property in insurrectionary districts within the United States, does not confiscate, or in any case absolutely divest the property of the original owner, even though disloyal. By the seizure the government constituted itself a trustee for those who were entitled or whom it should thereafter recognize as entitled.

"2. By virtue of the act of 17th July, 1862, authorizing the President to offer pardon on such conditions as he might think advisable, and the proclamation of 8th December, 1863, which promised a restoration of all rights of property, except as to slaves, on condition that the prescribed oath be taken and kept inviolate, the persons who had faithfully accepted the conditions offered became entitled to the proceeds of their property thus paid into the treasury, on application within two years from the close of the war.

"3. The repeal, by an act of 21st January, 1867 (after the war had closed), of the act of 17th July, 1862, authorizing the executive to offer pardon, did not alter the operation of the pardon, or the obligation of Congress to give full effect to it if necessary by legislation.

"4. The proviso in the appropriation act of July 12th, 1870 (16 Stat. at Large, 235), in substance—

"That no pardon or amnesty granted by the President shall be admissible in evidence on the part of any claimant in the Court of Claims as evidence in support of any claim against the United States, or to establish the standing of any claimant in said court, or his right to bring or maintain suit therein; and that no such pardon or amnesty heretofore put in evidence on behalf of any claimant in that court be considered by it, or by the appellate court on appeal from said court in deciding upon the claim of such claimant, or any appeal therefrom, as any part of the proof to sustain the claim of the claimant, or to entitle him to maintain his action in the Court of Claims, or on appeal therefrom, . . . but that proof of loyalty (such as the proviso goes on to mention), shall be made irrespective of the effect of any executive proclamation, pardon, amnesty, or other act of condonation or oblivion. And that is all cases where judgment shall have been heretofore rendered in the Court of Claims in favor of any claimant on any other proof of loyalty than such as the proviso requires, this court shall, on appeal, have no further jurisdiction of the cause, and shall dismiss the same for want of jurisdiction:

" 'And further, that whenever any pardon shall have heretofore been granted by the President to any person bringing suit in the Court of Claims for the proceeds of abandoned or captured property under the act of March 12th, 1863; and such pardon shall recite, in substance, that such person took part in the late rebellion, or was guilty of any act of rebellion against, or disloyalty to, the United States, and such pardon shall have been accepted, in writing, by the person to whom the same issued, without an express disclaimer of and protestation against such fact of guilt contained in such acceptance, such pardon and acceptance shall be taken and deemed in such suit in the said Court of Claims, and on appeal therefrom, conclusive evidence that such person did take part in and give aid and comfort to the late rebellion, and did not maintain true allegiance or consistently adhere to the United States, and on proof of such pardon and acceptance the jurisdiction of the court in the case shall cease, and the court shall forthwith dismiss the suit of such claimant'—

is in conflict with the views expressed in paragraphs 1, 2, and 3, above; and is unconstitutional and void. Its substance being that an acceptance of a pardon without a disclaimer shall be conclusive evidence of the acts pardoned, but shall be null and void as evidence of rights conferred by it, both in the Court of Claims and in this court; it invades the powers both of the judicial and of the executive departments of the government."

This was a motion by *Mr. Ackerman, Attorney-General,* in behalf of the United States, to remand an appeal from the Court of Claims which the government had taken in June, 1869, with a mandate that the same be dismissed for want of jurisdiction as now required by law.

The case was thus:

Congress, during the progress of the late rebellion, passed various laws to regulate

the subject of forfeiture, confiscation, or appropriation to public use without compensation, of private property whether real or personal of non-combatant enemies.

The first was the act of July 13th, 1861.[1] It made liable to seizure and forfeiture all property passing to and fro between the loyal and insurrectionary States, and the vessels and vehicles by which it should be attempted to be conveyed.

So an act of August 6th, 1861,[2] subjected to seizure and forfeiture all property of every kind, used or intended to be used in aiding, abetting, or promoting the insurrection, or allowing or permitting it to be so used.

These statutes require judicial condemnation to make the forfeiture complete.

A more general law, and one upon which most of the seizures made during the rebellion was founded, is the act of July 17th, 1862.[3] It provides for the punishment of treason, and specifies its disqualifications and disabilities. In its sixth section, it provides that every person who shall be engaged in or be aiding the rebellion, and shall not cease and return to his allegiance within sixty days after proclamation made by the President of the United States, shall forfeit all his property, &c. The proclamation required by this act was issued by the President on the 25th day of July, 1862.[4] The sixty days expired September 23d, 1862.

On the 12th of March, 1863, Congress passed another species of act—the one entitled "An act to provide for the collection of abandoned property, &c., in insurrectionary districts within the United States." The statute authorized the Secretary of the Treasury to appoint special agents to receive and collect all abandoned or captured property in any State or Territory in insurrection: *"Provided,* That such property shall not include any kind or description which has been used, or which was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other watercraft, and their furniture, forage, military supplies, or munitions of war."

The statute went on:

"And any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims; *and on proof to the satisfaction of said court* of his ownership of said property, of his right to the proceeds thereof, and *that he has never given any aid or comfort to the present rebellion,* to receive the residue of such proceeds after the deduction of any purchase money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

Some other acts, amendatory of this one or relating to the Court of Claims, required proof of the petitioner's loyalty during the rebellion as a condition precedent to recovery.

By the already-mentioned confiscation act of July 17th, 1862, the President was authorized by proclamation to extend to persons who had participated in rebellion, pardon, and amnesty, with such exceptions, and at such times, and on such conditions as he should deem expedient for the public welfare.

And on the 8th of December, 1863, he did issue his proclamation, reciting the act, and that certain persons who had been engaged in the rebellion desired to resume their allegiance and reinaugurate loyal State governments within and for their respective States. And thereupon proclaimed that a full pardon should be thereby granted to them, with restoration of all rights of property, except as to slaves, and in property cases where rights of third parties shall have intervened; and upon condition that every such person shall take and subscribe a prescribed oath of allegiance, and thenceforward keep and maintain said oath inviolate, &c.

Under this proclamation, V. F. Wilson, who during the rebellion had voluntarily become the surety on the official bonds of certain officers of the rebel confederacy, and so given aid and comfort to it, took, February 15th, 1864, this oath of allegiance, and had kept the same inviolate.

He himself having died in 1865, one Klein, his administrator, filed a petition in the Court of Claims, setting forth Wilson's ownership of certain cotton which he had abandoned to the treasury agents of the United States, and which they had sold; putting the proceeds into the Treasury of the United States, where they now were, and from which the petitioner sought to obtain them. This petition was filed December 26th, 1865.

The section of the act of 1862, by which the President was authorized to extend pardon and amnesty on such conditions as he should deem expedient for the public welfare, was repealed on the 21st of January, 1867.[5]

The Court of Claims, on the 26th May, 1869, decided that Wilson had been entitled to receive the proceeds of his cotton, and decreed $125,300 to Klein, the administrator of his estate. An appeal was taken by the United States June 3d, following, and filed in this court on the 11th December, of the same year.

Previously to this case of Klein's the Court of Claims had had before it the case of one Padelford, quite like this one; for there also the claimant, who had abandoned his cotton and now claimed its proceeds, having participated in the rebellion, had taken the amnesty oath. The Court of Claims held that the oath cured his participation in the rebellion, and so it gave him a decree for the proceeds of his cotton in the treasury. The United States brought that case here by appeal,[6] and the decree of the Court of Claims was affirmed; this court declaring that although Padelford had participated in the rebellion, yet, that having been pardoned, he was as innocent in law as though he had never participated, and that his property was purged of whatever offence he had committed and relieved from any penalty that he might have incurred. The judgment of this court, to the effect above mentioned, was publicly announced on the 30th of April, 1870.

Soon after this—the bill making appropriations for the legislative, executive, and judicial expenses of the government for the year 1870–71, then pending in Congress—the following was introduced as a proviso to an appropriation of $100,000, in the first section, for the payment of judgments in the Court of Claims, and with this proviso in it the bill became a law July 12th, 1870;[7]

"Provided, That no pardon or amnesty granted by the President, whether general or special, by proclamation or otherwise, nor any acceptance of such pardon or amnesty, nor oath taken, or other act performed in pursuance or as a condition thereof, shall be admissible in evidence on the part of any claimant in the Court of Claims as evidence in support of any claim against the United States, or to establish the standing of any claimant in said court, or his right to bring or maintain suit therein; nor shall any such pardon, amnesty, acceptance, oath, or other act as aforesaid, heretofore offered or put in evidence on behalf of any claimant in said court, be used or considered by said court, or by the appellate court on appeal from said court, in deciding upon the claim of said claimant, or any appeal therefrom, as any part of the proof to sustain the claim of the claimant, or to entitle him to maintain his action in said Court of Claims, or on appeal therefrom; but the proof of loyalty required by the Abandoned and Captured Property Act, and by the sections of several acts quoted, shall be made by proof of the matters required, irrespective of the effect of any executive proclamation, pardon, amnesty, or other act of condonation or oblivion. And in all cases where judgment shall have been heretofore rendered in the Court of Claims in favor of any claimant, on any other proof of loyalty than such as is above required and provided, and which is hereby declared to have been and to be the true intent and meaning of said respective acts, the Supreme Court shall, on appeal, have no further jurisdiction of the cause, and shall dismiss the same for want of jurisdiction.

"And provided further, That whenever any pardon shall have heretofore been granted by the President of the United States to any person bringing suit in the Court of Claims for the proceeds of abandoned or captured property under the said act, approved 12th March, 1863, and the acts amendatory of the same, and such pardon shall recite in substance that such person took part in the late rebellion against the government of the United States, or was guilty of any act of rebellion against, or disloyalty to, the United States; and such pardon shall have been accepted in writing by the person to whom the same issued without an express disclaimer of, and protestation against, such fact of guilt contained in such acceptance, such pardon and acceptance shall be taken and deemed in such suit in the said Court of Claims, and on appeal therefrom, conclusive evidence that such person did take part in, and give aid and comfort to, the late rebellion, and did not maintain true allegiance or consistently adhere to the United States; and on proof of such pardon and acceptance, which proof may be heard summarily on motion or otherwise, the jurisdiction of the court in the case shall cease, and the court shall forthwith dismiss the suit of such claimant."

The motion already mentioned, of the Attorney-General that the case be remanded to the Court of Claims with a mandate that the same be dismissed for want of jurisdiction, as *now* required by law, was, of course, founded on this enactment in the appropriation bill of July 12th, 1870.

Mr. Ackerman, Attorney-General, Mr. Bristow, Solicitor-General, and Mr. C. H. Hill, Assistant Attorney-General, in support of the motion:

The United States as sovereign are not liable to suit at all, and if they submit themselves to suit it is *ex gratiâ,* and on such terms as they may see fit.

Accordingly the right of the Court of Claims to entertain jurisdiction of cases in which the United States are defendants, and to render judgments against them, exists only by virtue of acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to *parties* and to the *cause of action,* as Congress has prescribed, which body may also define *the terms on which judgments shall be rendered against the government,* either as to classes of cases or as to individual cases.

Rules of evidence are at all times subject to legislative modification and control, and the alterations which are enacted therein by the legislature may be made applicable as well to existing as to future causes of action. In prescribing the evidence which shall be received in its courts, and the effect of that evidence, the state is exercising its acknowledged powers.

From the foregoing propositions it follows:

1. That Congress may prescribe what shall or shall not be received in evidence in sup-

[1] 12 Stat. at Large, 257.
[2] Ib. 589.
[3] Ib. 319.
[4] Id. 1266.
[5] 14 Stat. at Large, 377.
[6] United States v. Padelford, *v.* Wallace, 531.
[7] 16 Stat. at Large, 235.

port of a claim on which suit is brought against the government, or in support of the right of the claimant to maintain his suit, and, on the other hand, may declare what shall be the effect of certain evidence when offered in behalf of the government.

2. That it may withdraw entirely from the consideration of the court evidence of a particular kind in behalf of the claimant, even after the same has been submitted to and received by the court.

3. That it may, upon the presentation of proof of a certain description in behalf of the government, determine the jurisdiction of the court over the particular subject.

4. That it may, even in cases where judgment has been rendered in favor of the claimant on certain proof, and not withstanding the proof was competent at the time of the rendering of the judgment, interpose when such cases are afterwards brought before the appellate court and require the same to be dismissed by the latter.

These different things are what are done, and no more is done by different parts of the proviso in question.

Messrs. Bartley and Casey, P. Phillips, Carlisle, McPherson, and T. D. Lincoln, arguing in this or similar cases against the motion.

The Chief Justice delivered the opinion of the court.

The general question in this case is whether or not the proviso relating to suits for the proceeds of abandoned and captured property in the Court of Claims, contained in the appropriation act of July 12th, 1870, debars the defendant in error from recovering, as administrator of V. F. Wilson, deceased, the proceeds of certain cotton belonging to the decedent, which came into the possession of the agents of the Treasury Department as captured or abandoned property, and the proceeds of which were paid by them according to law into the Treasury of the United States.

The answer to this question requires a consideration of the rights of property, as affected by the late civil war, in the hands of citizens engaged in hostilities against the United States.

It may be said in general terms that property in the insurgent States may be distributed into four classes:

1st. That which belonged to the hostile organizations or was employed in actual hostilities on land.

2d. That which at sea became lawful subject of capture and prize.

3d. That which became the subject of confiscation.

4th. A peculiar description, known only in the recent war, called captured and abandoned property.

The first of these descriptions of property, like property of other like kind in ordinary international wars, became, wherever taken, *ipso facto*, the property of the United States.[8]

The second of these descriptions comprehends ships and vessels with their cargoes belonging to the insurgents or employed in aid of them; but property in these was not changed by capture alone but by regular judicial proceeding and sentence.

Accordingly it was provided in the Abandoned and Captured Property Act of March 12th, 1863,[9] that the property to be collected under it "shall not include any kind or description used or intended to be used for carrying on war against the United States, such as arms, ordnance, ships, steamboats and their furniture, forage, military supplies, or munitions of war."

Almost all the property of the people in the insurgent States was included in the third description, for after sixty days from the date of the President's proclamation of July 25th, 1862,[10] all the estates and property of those who did not cease to aid, countenance, and abet the rebellion became liable to seizure and confiscation, and it was made the duty of the President to cause the same to be seized and applied, either specifically or in the proceeds thereof, to the support of the army.[11] But it is to be observed that tribunals and proceedings were provided, by which alone such property could be condemned, and without which it remained unaffected in the possession of the proprietors.

It is thus seen that, except to property used in actual hostilities, as mentioned in the first section of the act of March 12th, 1863, no titles were divested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings. The government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private property of non-combatant enemies from capture as booty of war. Even the law of confiscation was sparingly applied. The cases were few indeed in which the property of any not engaged in actual hostilities was subjected to seizure and sale.

The spirit which animated the government received special illustration from the act under which the present case arose. We have called the property taken into the custody of public officers under that act a peculiar species, and it was so. There is, so far as we are aware, no similar legislation mentioned in history.

The act directs the officers of the Treasury Department to take into their possession and make sale of all property abandoned by its owners or captured by the national forces, and to pay the proceeds into the national treasury.

That it was not the intention of Congress that the title to those proceeds should be divested absolutely out of the original owners of the property seems clear upon a comparison of different parts of the act.

We have already seen that those articles which became by the simple fact of capture the property of the captor, as ordnance, munitions of war, and the like, or in which third parties acquired rights which might be made absolute by decree, as ships and other vessels captured as prize, were expressly excepted from the operation of the act; and it is reasonable to infer that it was the purpose of Congress that the proceeds of the property for which the special provision of the act was made should go into the treasury without change of ownership. Certainly such was the intention in respect to the property of loyal men. That the same intention prevailed in regard to the property of owners who, though then hostile, might subsequently become loyal, appears probable from the circumstance that no provision is anywhere made for confiscation of it; while there is no trace in the statute book of intention to divest ownership of private property not excepted from the effect of this act, otherwise than by proceedings for confiscation.

In the case of Padelford we held that the right to the possession of private property was not changed until actual seizure by proper military authority, and that actual seizure by such authority did not divest the title under the provisions of the Abandoned and Captured Property Act. The reasons assigned seem fully to warrant the conclusion. The government constituted itself the trustee for those who were by that act declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled. By the act itself it was provided that any person claiming to have been the owner of such property might prefer his claim to the proceeds thereof, and, on proof that he had never given aid or comfort to the rebellion, receive the amount after deducting expenses.

This language makes the right to the remedy dependent upon proof of loyalty, but implies that there may be proof of ownership without proof of loyalty. The property of the original owner is, in no case, absolutely divested. There is, as we have already observed, no confiscation, but the proceeds of the property have passed into the possession of the government, and restoration of the property is pledged to none except to those who have continually adhered to the government. Whether restoration will be made to others, or confiscation will be enforced, is left to be determined by considerations of public policy subsequently to be developed.

It is to be observed, however, that the Abandoned and Captured Property Act was approved on the 12th of March, 1863, and on the 17th of July, 1862, Congress had already passed an act—the same which provided for confiscation—which authorized the President, "at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such time and on such conditions as he may deem expedient for the public welfare." The act of the 12th of March, 1863, provided for the sale of enemies' property collected under the act, and payment of the proceeds into the treasury, and left them there subject to such action as the President might take under the act of the 17th of July, 1863. What was this action?

The suggestion of pardon by Congress for such it was, rather than authority, remained unacted on for more than a year. At length, however, on the 8th of December, 1863,[12] the President issued a proclamation, in which he referred to that act, and offered a full pardon, with restoration of all rights of property, except as to slaves and property in which rights of third persons had intervened, to all, with some exceptions, who, having been engaged in the rebellion as actual participants, or as aiders or abettors, would take and keep inviolate a prescribed oath. By this oath the person seeking to avail himself of the offered pardon was required to promise that he would thenceforth support the Constitution of the United States and the union of the States thereunder, and would also abide by and support all acts of Congress and all proclamations of the President in reference to slaves, unless the same should be modified or rendered void by the decision of this court.

In his annual message, transmitted to Congress on the same day, the President said "the Constitution authorizes the Executive to grant or withhold pardon at his own absolute discretion." He asserted his power "to grant it on terms as fully established." and explained the reasons which induced him to require applicants for pardon and restoration of property to take the oath prescribed, in these words: "Laws and proclamations were enacted and put forth for the purpose of aiding in the suppression of the rebellion. To give them their fullest effect there had to be a pledge for their maintenance. In my judgment they have aided, and will further aid, the cause for which they were intended. To now abandon them would not only be to relinquish a lever of power, but would also be a cruel and astounding breach of faith . . . For these and other reasons it is thought best that support of these measures shall be included in the oath, and it is believed the Executive may lawfully claim it in return for pardon and restoration of forfeited rights, which he has clear constitutional power to withhold altogether or grant upon the terms which he shall deem wisest for the public interest."

[8] Halleck's International Law.

[9] 12 Stat. at Large, 820.

[10] Ib. 1266.

[11] Ib. 590.

[12] 13 Stat. at Large, 737.

The proclamation of pardon, by a qualifying proclamation issued on the 26th of March, 1864,[13] was limited to those persons only who, being yet at large and free from confinement or duress, shall voluntarily come forward and take the said oath with the purpose of restoring peace and establishing the national authority.

On the 29th of May, 1865,[14] amnesty and pardon, with the restoration of the rights of property except as to slaves, and that as to which legal proceedings had been instituted under laws of the United States, were again offered to all who had, directly or indirectly, participated in the rebellion, except certain persons included in fourteen classes. All who embraced this offer were required to take and subscribe an oath of like tenor with that required by the first proclamation.

On the 7th of September, 1867,[15] still another proclamation was issued, offering pardon and amnesty, with restoration of property, as before and on the same oath, to all but three excepted classes.

And finally, on the 4th of July, 1868,[16] a full pardon and amnesty was granted, with some exceptions, and on the 25th of December, 1868,[17] without exception, unconditionally and without reservation, to all who had participated in the rebellion, with restoration of rights of property as before. No oath was required.

It is true that the section of the act of Congress which purported to authorize the proclamation of pardon and amnesty by the President was repealed on the 21st of January, 1867; but this was after the close of the war, when the act had ceased to be important as an expression of the legislative disposition to carry into effect the clemency of the Executive, and after the decision of this court that the President's power of pardon "is not subject to legislation;" that "Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders."[18] It is not important, therefore, to refer to this repealing act further than to say that it is impossible to believe, while the repealed provision was in full force, and the faith of the legislature as well as the Executive was engaged to the restoration of the rights of property promised by the latter, that the proceeds of property of persons pardoned, which had been paid into the treasury, were to be withheld from them. The repeal of the section in no respect changes the national obligation, for it does not alter at all the operation of the pardon, or reduce in any degree the obligations of Congress under the Constitution to give full effect to it, if necessary, by legislation.

We conclude, therefore, that the title to the proceeds of the property which came to the possession of the government by capture or abandonment, with the exceptions already noticed, was in no case divested out of the original owner. It was for the government itself to determine whether these proceeds should be restored to the owner or not. The promise of the restoration of all rights of property decides that question affirmatively as to all persons who availed themselves of the proffered pardon. It was competent for the President to annex to his offer of pardon any conditions or qualifications he should see fit; but after those conditions and qualifications had been satisfied, the pardon and its connected promises took full effect. The restoration of the proceeds became the absolute right of the persons pardoned, on application within two years from the close of the war. It was, in fact, promised for an equivalent. "Pardon and restoration of political rights" were "in return" for the oath and its fulfillment. To refuse it would be a breach of faith not less "cruel and astounding" than to abandon the freed people whom the Executive had promised to maintain in their freedom.

What, then, was the effect of the provision of the act of 1870[19] upon the right of the owner of the cotton in this case? He had done certain acts which this court[20] has adjudged to be acts in aid of the rebellion; but he abandoned the cotton to the agent of the Treasury Department, by whom it has been sold and the proceeds paid into the Treasury of the United States; and he took, and has not violated, the amnesty oath under the President's proclamation. Upon this case the Court of Claims pronounced him entitled to a judgment for the net proceeds in the treasury. This decree was rendered on the 26th of May, 1869; the appeal to this court made on the 3d of June, and was filed here on the 11th of December, 1869.

The judgment of the court in the case of Padelford, which, in its essential features, was the same with this case, was rendered on the 30th of April, 1870. It affirmed the judgment of the Court of Claims in his favor.

Soon afterwards the provision in question was introduced as a proviso to the clause in the general appropriation bill, appropriating a sum of money for the payment of judgments of the Court of Claims, and became a part of the act, with perhaps little consideration in either House of Congress.

This proviso declares in substance that no pardon, acceptance, oath, or other act performed in pursuance, or as a condition of pardon, shall be admissible in evidence in support of any claim against the United States in the Court of Claims, or to establish the right of any claimant to bring suit in that court; nor, if already put in evidence, shall be used or considered on behalf of the claimant, by said court, or by the appellate court on appeal. Proof of loyalty is required to be made according to the provisions of certain statutes, irrespective of the effect of any executive proclamation, pardon, or amnesty, or act of oblivion; and when judgment has been already rendered on other proof of loyalty, the Supreme Court, on appeal, shall have no further jurisdiction of the cause, and shall dismiss the same for want of jurisdiction. It is further provided that whenever any pardon, granted to any suitor in the Court of Claims, for the proceeds of captured and abandoned property, shall recite in substance that the person pardoned took part in the late rebellion, or was guilty of any act of rebellion or disloyalty, and shall have been accepted in writing without express disclaimer and protestation against the fact so recited, such pardon or acceptance shall be taken as conclusive evidence in the Court of Claims and on appeal, that the claimant did give aid to the rebellion; and on proof of such pardon, or acceptance, which proof may be made summarily on motion or otherwise, the jurisdiction of the court shall cease, and the suit shall be forthwith dismissed.

The substance of this enactment is that an acceptance of a pardon, without disclaimer, shall be conclusive evidence of the acts pardoned, but shall be null and void as evidence of the rights conferred by it, both in the Court of Claims and in this court on appeal.

It was urged in argument that the right to sue the government in the Court of Claims is a matter of favor; but this seems not entirely accurate. It is as much the duty of the government as of individuals to fulfill its obligations. Before the establishment of the Court of Claims claimants could only be heard by Congress. That court was established in 1855[21] for the triple purpose of relieving Congress, and of protecting the government by regular investigation, and of benefiting the claimants by affording them a certain mode of examining and adjudicating upon their claims. It was required to hear and determine upon claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States.[22] Originally it was a court merely in name, for its power extended only to the preparation of bills to be submitted to Congress.

In 1863 the number of judges was increased from three to five, its jurisdiction was enlarged, and, instead of being required to prepare bills for Congress, it was authorized to render final judgment, subject to appeal to this court and to an estimate by the Secretary of the Treasury of the amount required to pay each claimant.[23] This court being of opinion[24] that the provision for an estimate was inconsistent with the finality essential to judicial decisions. Congress repealed that provision.[25] Since then the Court of Claims has exercised all the functions of a court, and this court has taken full jurisdiction on appeal.[26]

The Court of Claims is thus constituted one of those inferior courts which Congress authorizes, and has jurisdiction of contracts between the government and the citizen, from which appeal regularly lies to this court.

Undoubtedly the legislature has complete control over the organization and existence of that court and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient.

But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have. The proviso declares that pardons shall not be considered by this court on appeal. We had already decided that it was our duty to consider them and give them effect, in cases like the present, as equivalent to proof of loyalty. It provides that whenever it shall appear that any judgment of the Court of Claims shall have been founded on such pardons, without other proof of loyalty, the Supreme Court shall have no further jurisdiction of the case and shall dismiss the same for want of jurisdiction. The proviso further declares that every pardon granted to any suitor in the Court of Claims and reciting that the person pardoned has been guilty of any act of rebellion or disloyalty, shall, if accepted in writing without disclaimer of the fact recited, be taken as conclusive evidence in that court and on appeal, of the act recited; and on proof of pardon or acceptance, summarily made on motion or otherwise, the jurisdiction of the court shall cease and the suit shall be forthwith dismissed.

It is evident from this statement that the denial of jurisdicion to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending, prescribed by Congress. The court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.

It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

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[13] 13 Stat. at Large, 741.
[14] 13 Stat. at Large, 758.
[15] 15 Id. 699.
[16] Ib. 702.
[17] Ib. 711.
[18] 14th January, 1967.
[19] 16 Stat. at Large, 235.
[20] United States *v.* Padelford, 9 Wallace, 531.
[21] 10 Stat. at Large, 612.
[22] Ib.
[23] 12 Ib. 765.
[24] 2 Wallace, 561.
[25] 14 Stat. at Large, 9.
[26] 14 Stat. at Large, 44, 391, 444.

The court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court. We are directed to dismiss the appeal, if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it?

We think not; and thus thinking, we do not at all question what was decided in the case of *Pennsylvania* v. *Wheeling Bridge Company*.[27] In that case, after a decree in this court that the bridge, in the then state of the law, was a nuisance and must be abated as such, Congress passed an act legalizing the structure and making it a post-road; and the court, on a motion for process to enforce the decree, held that the bridge had ceased to be a nuisance by the exercise of the constitutional powers of Congress, and denied the motion. No arbitrary rule of decision was prescribed in that case, but the court was left to apply its ordinary rules to the new circumstances created by the act. In the case before us no new circumstances have been created by legislation. But the court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary.

We must think that Congress has inadverently passed the limit which separates the legislative from the judicial power.

It is of vital importance that these powers be kept distinct. The Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress shall from time to time ordain and establish. The same instrument, in the last clause of the same article, provides that in all cases other than those of original jurisdiction, "the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Congress has already provided that the Supreme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because and only because its decision, in accordance with settled law, must be adverse to the government and favorable to the suitor? This question seems to us to answer itself.

The rule prescribed is also liable to just exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive.

It is the intention of the Constitution that each of the great co-ordinate departments of the government—the Legislative, the Executive, and the Judicial—shall be, in its sphere, independent of the others. To the executive alone is entrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offence pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration of property was expressly pledged, and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath.

Now it is clear that the legislature cannot change the effect of such a pardon any more than the executive can change a law. Yet this is attempted by the provision under consideration. The court is required to receive special pardons as evidence of guilt and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority and directs the court to be instrumental to that end.

We think it unnecessary to enlarge. The simplest statement is the best.

We repeat that it is impossible to believe that this provision was not inserted in the appropriation bill through inadvertence; and that we shall not best fulfill the deliberate will of the legislature by DENYING the motion to dismiss and AFFIRMING the judgment of the Court of Claims; which is ACCORDINGLY DONE.

Mr. Justice MILLER (with whom concurred Mr. Justice BRADLEY), dissenting.

I cannot agree to the opinion of the court just delivered in an important matter; and I regret this the more because I do agree to the proposition that the proviso to the act of July 12th, 1870, is unconstitutional, so far as it attempts to prescribe to the judiciary the effect to be given to an act of pardon or amnesty by the President. This power of pardon is confided to the President by the Constitution, and whatever may be its extent or its limits, the legislative branch of the government cannot impair its force or effect in a judicial proceeding in a constitutional court. But I have not been able to bring my mind to concur in the proposition that, under the act concerning captured and abandoned property, there remains in the former owner, who had given aid and comfort to the rebellion, any interest whatever in the property or its proceeds when it had been sold and paid into the treasury or had been converted to the use of the public under that act. I must construe this act, as all others should be construed, by seeking the intention of its framers, and the intention to restore the proceeds of such property to the loyal citizen, and to transfer it absolutely to the government in the case of those who had given active support to the rebellion, is to me too apparent to be disregarded. In the one case the government is converted into a trustee for the former owner; in the other it appropriates it to its own use as the property of a public enemy captured in war. Can it be inferred from anything found in the statute that Congress intended that this property should ever be restored to the disloyal? I am unable to discern any such intent. But if it did, why was not some provision made by which the title of the government could at some time be made perfect, or that of the owner established? Some judicial proceeding for confiscation would seem to be necessary if there remains in the disloyal owner any right or interest whatever. But there is no such provision, and unless the *act* intended to forfeit absolutely the right of the disloyal owner, the proceeds remain in a condition where the owner cannot maintain a suit for its recovery, and the United States can obtain no perfect title to it.

This statute has recently received the attentive consideration of the court in two reported cases.

In the case of the *United States* v. *Anderson*,[28] in reference to the relation of the government to the money paid into the treasury under this act, and the difference between the property of the loyal and disloyal owner, the court uses language hardly consistent with the opinion just read. It says that Congress, in a spirit of liberality, constituted the government a trustee for *so much* of this property as belonged to the faithful Southern people, and while it directed that *all* of it should be sold and its proceeds paid into the treasury, gave to *this class* of persons an opportunity to establish their right to the proceeds. Again, it is said, that "the measure, in itself of great beneficence, was practically important only in its application to the *loyal Southern* people, and sympathy for their situation doubtless prompted Congress to pass it." These views had the unanimous concurrence of the court. If I understand the present opinion, however, it maintains that the government, in taking possession of this property and selling it, became the trustee of all the former owners, whether loyal or disloyal, and holds it for the latter until pardoned by the President, or until Congress orders it to be restored to him.

The other case which I refer to is that of *United States* v. *Padelford*.[29] In that case the opinion makes a labored and successful effort to show that Padelford, the owner of the property, had secured the benefit of the amnesty proclamation *before* the property was seized under the same statute we are now considering. And it bases the right of Padelford to recover its proceeds in the treasury on the fact that *before the capture* his *status* as a loyal citizen had been restored, and with it all his rights of property, although he had previously given aid and comfort to the rebellion. In this view I concurred with all my brethren. And I hold now that as long as the possession or title of property remains in the party, the pardon or the amnesty remits all right in the government to forfeit and confiscate it. But where the property has already been seized and sold, and the proceeds paid into the treasury, and it is clear that the statute contemplates no further proceeding as necessary to divest the right of the former owner, the pardon does not and cannot restore that which has thus completely passed away. And if such was not the view of the court when Padelford's case was under consideration I am at a loss to discover a reason for the extended argument in that case, in the opinion of the court, to show that he had availed himself of the amnesty before the seizure of the property. If the views now advanced are sound, it was wholly immaterial whether Padelford was pardoned before or after the seizure.

Mr. ERVIN. Mr. President, I now read this passage from volume I of the commentary on the Constitution of the United States written by Bernard Schwartz, on page 375:

What the appellate powers of the Supreme Court shall be, declares Chief Justice Waite (in what has been termed the Court's strongest pronouncement on the extent of Congressional control over its appellate jurisdiction), "and to what extent they shall be exercised are, and always have been, proper subjects of legislative control. Authority to limit the jurisdiction necessarily carries with it authority to limit the use of the jurisdiction. Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to re-examination and review, while others are not." Under this approach, it is for the Congress to determine how far appellate jurisdiction shall be given and, when conferred, it can be exercised only to the extent and in the manner prescribed by statute. In Justice Frankfurter's words in a more recent case: "Congress need not give this Court any appellate power; it may withdraw appellate jurisdiction once conferred and it may do so even while a case is *sub judice*."

Mr. President, Mr. Schwartz does an excellent job in commenting upon the Constitution when the words of the Constitution are in harmony with Mr. Schwartz' ideas.

But sometimes when the words of the

[27] 18 Howard, 4299.

[28] 9 Wallace, 65.

[29] 9 Wallace, 532.

Constitution are incompatible with what Mr. Schwartz thinks the Constitution ought to have said, he unconsciously falls into the error of assigning to a judicial opinion an erroneous significance.

For example, he cites United States against Klein as authority for the proposition that Congress cannot deprive the Supreme Court of appellate jurisdiction in some cases which he does not define. In so doing, he directly contradicts his own correct analysis of what the Constitution says.

Mr. President, I have said that the Escobedo, Miranda, Wade, Gilbert, and Stovall cases were rather startling decisions, that they were contrary to every decision the Supreme Court handed down prior to the time they were handed down, and that they were incompatible with the words of the Constitution itself. In commenting on the opinions of the Supreme Court, I ignore Mark Twain's advice, "Truth is very precious; use it sparingly."

Let me point out that the decisions in the Escobedo and Miranda cases were 5-to-4 decisions. I suggest to anyone who thinks that the judicial aberrations of five Supreme Court justices should be regarded as sacrosanct, the reading of the dissenting opinions in each of these cases.

When the Supreme Court is divided 5 to 4, one cannot be on one side of a question exclusively and say it is sacrosanct and the other is not.

Human experience has shown what are the two most convincing kinds of evidence which can be produced in courts of law. The decisions which I am discussing, and which give rise to the two sections of the pending bill which I have read, attempt either to end or to place severe limitations upon the two most convincing kinds of evidence of guilt which exist—voluntary confessions of the accused and statements of eyewitnesses or victims of crimes.

The Escobedo case and the Miranda case are efforts to put an end to the use of voluntary confessions in the courts of our land. I am not alone in making that assertion. That assertion was made by Justice White in his dissenting opinion in the Escobedo case and also in the Miranda case.

To my mind, the most convincing evidence of the truth of a criminal charge is the voluntary confession of the accused that he committed the crime with which he stands charged. Innocent men do not go around making voluntary confessions that they have committed crime. And yet the Escobedo case and the Miranda case are attempts to place limits upon the admission of a voluntary confession made by a suspect to an officer while the suspect is in custody.

The Miranda case says that no confession, though it may be absolutely voluntary in nature, made to an officer by a suspect in custody can be received in evidence in any court, Federal or State, unless the officer first tells the suspect that he has a right to remain silent, that anything he says derogatory to his cause can be used against him, that he does not have to answer any questions until he has a lawyer present, that if he does not have a lawyer of his own present, the court will provide him with a lawyer before he can be questioned, and that the suspect cannot waive these warnings unless he does so expressly.

Justice White asked a question which I think may be designated both pertinent and impertinent. He said Miranda is not very logical; that when a suspect is asked by an arresting officer if he wants a lawyer, and he says that he does not want one, how is one to say his negative answer is not as tainted as his voluntary confession would be supposed to be.

The Wade, Gilbert, and Stovall cases attempt to limit by an impossible condition the next most convincing evidence available to establish the guilt of a defendant; namely, the positive testimony of an eyewitness that he saw the accused commit the crime with which the accused stands charged, even in cases where the witness is also willing and ready to testify positively on oath that he bases his identification of the accused solely upon what he saw at the time the crime was committed.

As I have stated before, these decisions were handed down 170-odd years after the fifth and sixth amendments had become parts of the Constitution, and were contrary to every decision of the Supreme Court construing those amendments handed down at any time before the decisions themselves were made. And, furthermore, they are absolutely inconsistent with the fifth and sixth amendments.

If we are to understand the impact of these decisions on law enforcement in the United States, we should ponder for a moment the fundamental purpose of the criminal law of the United States and the criminal law of the 50 States. The overall purpose of the criminal law is to protect society against criminals. Its fundamental purpose is to promote the general security of the people of this Nation in their persons and in their property.

I assert, as Justice White did on pages 537 to 539 of his dissent in the Miranda case, that society's interest in general security is at least of equal weight as the assigned reason for placing limits upon interrogation of suspects in custody is to the dignity of the suspect.

How does the criminal law undertake to protect society? It does so in three ways. These are set forth in Justice White's dissenting opinion in the Miranda case, at pages 539 to 541, in a very eloquent manner. He points out in these passages that, in the first place, the criminal law undertakes to protect society by confining in prison those who commit serious offenses and preventing them while so confined from repeating their offenses.

Manifestly, this purpose of criminal law is thwarted by rulings which say self-confessed murderers and self-confessed rapists and self-confessed arsonists and self-confessed burglars and self-confessed thieves must be freed, notwithstanding their voluntary confessions, if the warnings enumerated in the Miranda case are not given to them by the officer having them in custody and to whom the confession is made.

Before any Senator ought to vote against these sections, he should read the record of the hearings of the Subcommittee on Criminal Laws and Procedures, headed by the Senator from Arkansas [Mr. MCCLELLAN]. There are 1,205 pages in that record.

During the hearings, I put this question to judges, to prosecuting attorneys, to law enforcement officers, and to lawyers:

> What percentage of persons charged with serious crimes do not already know that they have the right to remain silent, that anything derogatory they may say will be used against them, and that they have a right to a lawyer?

Those witnesses, without exception, said that in their opinion, based upon long experience in law enforcement, in presiding over courts, and in prosecuting and defending criminals, virtually every person taken into custody for a serious crime already knows all of these things.

Then I put this question to those witnesses:

> Then is it not true that under the Miranda case, every day, in Federal and State courts throughout the length and breadth of this land, self-confessed murderers, rapists, robbers, burglars, arsonists, and thieves are being freed, to prey again on society, simply because a police officer did not tell them something they already knew?

The witnesses agreed.

That shows how absurd these decisions are.

Justice White points out in the same dissent, in the Miranda case, that the criminal laws undertake to protect society by deterring others from emulating the example of criminals and violating the laws. Any decision which allows self-confessed criminals to escape punishment and to walk the streets has no deterrent effect upon others, but, on the contrary, tends to encourage others to violate the law also.

Justice White points out that the third great purpose of the criminal laws is to reform the offender; and that when an offender is given freedom rather than punishment for his offense because an arresting officer does not tell him something he already knows, he is not likely to be reformed.

Prior to these cases, both the Federal courts and the State courts had good laws to make it as certain as possible that no innocent person should ever be convicted of a crime. The fundamental purpose of the criminal law is to protect society against criminals. The law desires, however, to avoid the conviction of any innocent man. To this end, it erects, in favor of any person charged with crime, the presumption of innocence. It requires the prosecution to establish every essential element of his guilt beyond a reasonable doubt, secures to him the services of a lawyer, gives him compulsory process to obtain the attendance of witnesses in his behalf, and secures to him the right of cross examination, through the agency of his lawyer, of the witnesses against him.

These things are as they should be, and they make it just as certain as it can be made in this uncertain world that no innocent person shall be convicted of a crime that he did not commit.

In addition to these rules, we have a rule of law, which has been the law in

the Federal courts since the time this country was established, that the only confessions of guilt made by the accused which can be used against them in their trials are voluntary confessions.

Under that rule, a voluntary confession is admissible in evidence against an accused, and an involuntary confession is not admissible in evidence. The test of whether a confession is voluntary or involuntary under that rule was laid down in a very understandable and practical fashion by Justice White in his dissenting opinion in the Miranda case. This is what he said:

> The test has been whether the totality of circumstances deprived the defendant of a free choice to admit, to deny, or to refuse to answer, and whether physical or psychological coercion was of such a degree that the defendant's will was overborne at the time he confessed.

As the judges in the dissenting opinions in the Miranda case so well state, this rule was effective to give a suspect in custody every protection he is entitled to receive.

This rule was not only controlling in the Federal courts, but, ever since the case of *Brown* v. *Mississippi*, 297 U.S. 278, it has also been the rule in the State courts. As a matter of fact, it was a rule in the State courts under State law from the time of the foundation of the States to the present; but it became a rule by virtue of the due process clause of the 14th amendment in the Brown case, and was enforced by the U.S. Supreme Court when it reviewed appeals from State courts thereafter.

When the Court handed down the Escobedo case and the Miranda case, it invented a new rule governing voluntary confessions. In the Escobedo case, it undertook to base the rule upon the right to counsel clause of the sixth amendment. And in doing so, it not only acted contrary to every decision of the court construing that clause, but it also acted in direct violation of the words in which that clause is couched.

The right to counsel clause is as follows:

> In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.

The words "in all criminal prosecutions" mark the time when the right to have counsel for one's defense accrues. That was the plain purport of these words. That was the interpretation placed upon these words by the Supreme Court from 1790 down to 1964.

In 1964, however, the 5-to-4 decision in the Escobedo case was made, and the majority of the court held that the right to counsel accrued not when a criminal prosecution is initiated by someone having authority to initiate a criminal prosecution, but when an officer has a suspect in custody and begins to suspect somewhere in the innermost recesses of his mind that the suspect may have committed a criminal offense.

So no human being now has any objective standard by which to tell when the right of counsel accrues under the majority decision in the Escobedo case. That is true because no human being can invade the mind of an arresting officer and determine when a suspicion arises in that mind. An arresting officer has no authority to institute a criminal prosecution.

Under all of the decisions antedating Escobedo, the criminal prosecution did not begin until some officer or some agency authorized by law to prefer a charge made a formal accusation of the commission of crime by a warrant, a bill of indictment, an information, or some other formal proceeding authorized by law.

Justices Clark and Harlan and White and Potter asserted in substance in the Escobedo case and also in the Miranda case that the Court was inventing new rules under a power which the Court is forbidden by the Constitution itself to exercise.

The requirement in the Miranda case that the officer must give a warning, as enumerated, to a suspect in custody before he can interrogate the suspect and before the suspect can be permitted to say anything to the officer prescribes a rule of conduct for all law enforcement officers, Federal and State.

A rule of conduct is nothing in the world but a law, and a law is nothing in the world but a rule of conduct prescribed by the lawmaking power of the Government.

The Court has no power to make laws.

Section 1 of article I of the Constitution says:

> All Legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

I think, although I do not affirm so absolutely, that this is the only place in the Constitution where the word "all" is used. It says that all of the power to make law on the Federal level belongs to Congress and that none of it belongs to the Supreme Court.

Then again, in section 8 of article I, the Constitution provides that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

As Justice Harlan said, at page 509 of his dissent in the Miranda case:

> The limitations imposed by Miranda were rejected by necessary implication in case after case, the right of warnings having been explicitly rebuffed in this Court many years ago.

So we find new rules created; rules which had been rejected by the Supreme Court itself time and time again in the past; rules which were inconsistent with all prior holdings of the Supreme Court; rules which were inconsistent with the words of the Constitution, under which the Court professed to be acting.

I wish to say something about the voluntary confessions which the majority of the Supreme Court made in these cases; although I do not know whether they were really voluntary. They might have been made under compulsion, because the Court knew it had no power to make law, although it recognized that it was doing so.

Mind you, Mr. President, these words, the words on which these cases were based by the majority, had been in the Constitution for more than 170 years. The writer of the majority opinion in the Miranda case and the writer of the majority opinion in the Wade case recognized that they were exercising lawmaking power, because they said, in substance, that the reason they were doing so was because Congress had not seen fit to pass laws on the subject.

They said that Congress could pass laws on the subject in the future, provided the laws that Congress passed were at least as stringent as the new rules invented by the court. But the court did make a voluntary confession. It made the voluntary confession that it was making law and was amending the Constitution. The writer of the majority opinion in Miranda made such voluntary confessions twice, once on page 476 and again on page 477. He referred to the principles announced today and to the warnings enumerated today, which was a recognition of the fact—a voluntary confession—unless the writer of the opinion was acting under some kind of compulsion, that he was creating some laws, some alleged constitutional principles, on the 13th day of June 1966, instead of expounding the words of the Constitution which became effective on June 15, 1790.

But there is a confession by the writer of the majority opinion in the Wade case which constitutes even a more complete and unequivocal confession that the court in the Wade case was making law and amending the Constitution rather than interpreting the Constitution. I will read that confession. The reason why that confession was made by the writer of the opinion in the Wade case, when he wrote the opinion for the majority in the Stovall case, was that a question arose as to whether the new rule, limiting the right of a jury to hear the positive testimony of an eyewitness that he—the eyewitness—saw the accused commit a crime with which the accused stood charged, should apply to offenses in cases which originated before the day the decision was announced, June 12, 1967.

Now, if this new rule announced in the Wade case and in the Gilbert case was rightfully a part of the Constitution, then it should have been applied in every case which was tried between the 15th day of June 1790, and June 12, 1967. But the Court said the new rule, which allegedly originated on the basis of words put in the Constitution, the sixth amendment, on June 15, 1790, does not have any application to any case which arose before the 12th day of June 1967.

I read from page 299 of the report in the Stovall case, which appears in volume 388 of the U.S. Supreme Court reports. This is a most startling confession by a majority of the Court which fashioned these new rules.

> The law enforcement officials of the Federal Government and of all 50 States have heretofore proceeded on the premise that the Constitution did not require the presence of counsel at pretrial confrontations for identification. Today's rulings will not foreshadow our cases; no court announced such a requirement until Wade was decided by the Court of Appeals for the 5th Circuit, 358 Fed. Second 557.

In other words, to depart from the quotation for a moment, the writer of the majority opinion was stating, in substance, that none of the law-enforcement officials of the Federal Government or of any of the governments of the 50 States had any idea that the rule in the Wade case had any place in the Constitution. The writer of the majority opinion said that there is nothing in any of the cases, any of the decisions of the Supreme Court, which could have made them anticipate that any such rule was implicit or explicit in the sixth amendment right-to-counsel clause.

Now I wish to read further from pages 299 and 300 of the majority opinion in the Stovall case:

> The overwhelming majority of American courts have always treated the evidence question not as one of admissibility but as one of credibility for the jury.

I digress for a moment from the quotation to say that that is a statement of the law, and that is a statement of the meaning assigned to the right-to-counsel clause of the sixth amendment by the overwhelming majority of American courts from June 15, 1790, until June 12, 1967, a period of 177 years.

Now I continue reading the voluntary confession of the majority of the Court in the Stovall case:

> Law enforcement authorities fairly relied on this virtually unanimous weight of authority now no longer valid in conducting pretrial confrontations in the absence of counsel. It is, therefore, very clear that retroactive application of Wade and Gilbert would seriously disrupt the administration of our criminal laws.

Mr. President, that is the end of the voluntary confession. However, I am going to make an assertion that the future application of the rule announced in Wade and Gilbert for the first time in American legal history on June 12, 1967, will seriously disrupt the administration of our criminal laws in the future.

This is a voluntary confession by Supreme Court justices that they are making new law which they are forbidden to make by the Constitution in two sections, and they are amending the Constitution which they have no power to amend except by usurpation. Why should Congress be asked to treat the words of five out of nine Justices as sacrosanct when they themselves confess they had no authority under the Constitution to utter those words?

Mr. President, these new rules, according to Justice Harlan, are contrary to the thinking of the people of the United States. I do not wish to lift anything out of context, so I shall read the words of Justice Harlan. However, before doing that, I wish to read what Justice Harlan said about the Miranda decision. Justice Harlan set out his views in the Miranda case on page 518 of his dissenting opinion in volume 384, U.S. Supreme Court Reports. I quote from the dissenting opinion of Justice Harlan:

> On March 3, 1963, an 18-year-old girl was kidnapped and forcibly raped near Phoenix, Arizona. Ten days later, on the morning of March 18, petitioner Miranda was arrested and taken to the police station. At this time Miranda was 23 years old, indigent, and educated to the extent of completing half the ninth grade. He had "an emotional illness" of the schizophrenic type, according to the doctor who eventually examined him; the doctor's report also stated that Miranda was "alert and oriented as to time, place, and person," intelligent within normal limits, competent to stand trial, and sane within the legal definition. At the police station, the victim picked Miranda out of a lineup, and two officers then took him into a separate room to interrogate him, starting about 11:30 a.m. Though at first denying his guilt, within a short time Miranda gave a detailed oral confession and then wrote out in his own hand and signed a brief statement admitting and describing the crime. All this was accomplished in two hours or less without any force, threats or promises and—I will assume this though the record is uncertain, *ante*, 53–54 & nn. 66–67—without any effective warnings at all.
>
> Miranda's oral and written confessions are now held inadmissible under the Court's new rules. One is entitled to feel astonished that the Constitution can be read to produce this result. These confessions were obtained during brief, daytime questioning conducted by two officers and unmarked by any of the traditional indicia of coercion. They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed by the Court's own finespun conception of fairness which I seriously doubt is shared by many thinking citizens in this country.

It is not to be wondered that Justice Harlan proclaimed he was astonished that the Constitution could be read to accomplish that result. Now, Congress is asked to make it possible under newly prescribed rules, which Justice Harlan said thinking people of America do not countenance, to continue to permit criminals to go unwhipped of justice notwithstanding the fact that they have voluntarily confessed their crimes.

Not only is this decision out of harmony, or at least as Justice Harlan said, not shared by many thinking citizens of our country, but also it is opposed by the overwhelming majority of law-enforcement officers of the Federal Government of the United States and the States.

Justice Harlan states at pages 520 and 521 of his dissenting opinion that the U.S. Government and 30 of the States had intervened in the Miranda case and opposed the creation of a new rule by the Court.

Virtually everything which I have had to say by way of criticism of the Escobedo, Miranda, Wade, Gilbert, and Stovall cases, is in complete harmony with what was said by three or four of the Justices of the Supreme Court in their dissents in these cases.

I wish to call the attention of the Senate to the assertion by Justice Harlan at pages 515 and 517 of his dissent in the Miranda case; the statement of Justice Clark on pages 499 and 500 of his dissent in the Miranda case; and the statement of Justice White on pages 533 to 535 of his dissent in the Miranda case, that there is no factual basis for the rule which five of the justices invented for the first time in our history on June 13, 1966, in that Miranda case. The same would apply to the Wade case.

Justice White added, in substance, on page 532 of his dissent in the Miranda case that

> The majority of the Supreme Court was engaged in formulating a fundamental policy based on speculation alone.

Justice Harlan said, in essence, on page 517 of his dissent in the Miranda case that

> The court was exaggerating the evils of normal police interrogation.

One is not only astounded, as Justice Harlan was, by the decision of the court in the Miranda case, he is even more astounded by——

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. ERVIN. Mr. President, I ask that I be recognized independently of the time limitation.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object—and I would have to object to that kind of request—would the Senator indicate how much additional time he needs?

Mr. ERVIN. Well, it is rather difficult to indicate. I still have to analyze the Miranda case.

Mr. BYRD of West Virginia. The distinguished Senator from Nebraska [Mr. HRUSKA], who was to be recognized under the previous order at this time, has indicated his desire to relinquish the time, which was 1 hour under the order.

Mr. ERVIN. I would be glad to relinquish the floor to the Senator from Nebraska and anyone else who wants it because then I would have the privilege of getting the floor in my own right at a later time to complete my arguments.

Mr. BYRD of West Virginia. What I was about to ask was, in view of the fact that the Senator from Nebraska has indicated his desire to relinquish his time, whether this 1 hour would be sufficient for the Senator from North Carolina?

Mr. ERVIN. I would hope so.

The PRESIDING OFFICER (Mr. TYDINGS). The Chair, in his capacity as a Senator from the State of Maryland, suggests the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. 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. BYRD of West Virginia. I ask unanimous consent that the time allotted to the Senator from Nebraska under the previous order be vacated, and that that time be allotted to the distinguished Senator from North Carolina [Mr. ERVIN].

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

Mr. ERVIN. I wish to thank the assistant majority leader.

Mr. President, prior to the expiration of the time allotted to me under the unanimous-consent agreement, I had analyzed the right-to-counsel clause of

the sixth amendment. I would point out the fact that the right-to-counsel clause, under the words of the sixth amendment, does not accrue until there is a criminal prosecution, and that a criminal prosecution does not begin until a formal charge has been preferred in an authorized manner by some official or agency having authority to make such charges under law, in the form of a warrant. or a bill of indictment or information, or some other authorized legal charge.

Justice Harlan, in a great dissenting opinion in the Miranda case, pointed out that the Miranda case was faulty for two reasons. He said there was no warrant in the Constitution for the ruling in the Miranda case. Further, he said the Miranda case, in addition to being unconstitutional, represented the adoption of an unwise policy in respect to law enforcement.

The Miranda case is allegedly based on the words of the self-incrimination clause of the fifth amendment, which states:

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

In a multitude of cases antedating the Miranda case, it had been pointed out, in sound and well-considered opinions, that the words which I have just read from the fifth amendment—that is, the so-called self-incrimination clause—have no possible relevancy or reference to voluntary confessions.

As Justice Harlan and Justice White pointed out in their dissenting opinions in the Miranda case, the words of the fifth amendment have no possible application to voluntary confessions, because voluntary confessions are voluntary, and not compelled, confessions.

Justice Harlan stated, on page 510 of his dissent in Miranda, that, historically, the privilege against self-incrimination did not bear at all on the use of extra-legal confessions. That is obvious, because not only does the self-incrimination clause apply to testimony which is given under compulsion, but it applies to testimony given by a witness; and a witness is a person who testifies in court or before some tribunal in obedience to some statute or some rule of court.

So it is absolutely inconsistent with the words of the self-incrimination clause to say that they apply to voluntary confessions when the words themselves apply only to compelled testimony. And it is ridiculous to assert that a voluntary confession made to an arresting officer is forbidden, directly or indirectly, by the fifth amendment, because what a suspect says to an arresting officer is not testimony in a criminal case or any other kind of case.

So the court does violence to language, and distorts words from their plain and obvious meaning, to accomplish a result which the Constitution does not authorize.

As Justice Harlan says, in substance, in his dissent in the Miranda case that

> The Court by the Miranda decisions reads something into the Constitution and for that reason it has no place in constitutional law.

Another criticism that is made in the dissents in the Miranda case, the Escobedo case, and the Wade case is that the new rules which the majority of the court invented in those cases are insupportable as a matter of public policy and are not workable in this practical world in which we live. The truth of it is that the majority opinions in those cases attempts to wrap up law enforcement officers into some kind of judge-made cellophane and isolate them from the realities of the world in which human beings live, move, and have their being. So the fact is that Justice Harlan was speaking correctly when he said of the Miranda decision:

> I believe the decision of the court represents poor constitutional law and entails harmful consequences to the country at large. How serious these consequences may prove to be only time can tell. But the basic flaws in the court's justification seem to me readily apparent now once all the sides of the problem are considered.

These cases have had terrific effect on the administration of criminal justice in the United States. No one will dare to assert the contrary if he will read the testimony which was given in the hearings before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, which covers 1,205 pages.

We received testimony from many prosecuting attorneys and a number of judges to the effect that the Miranda decision has increased the number of acquittals and has made it impossible to get convictions in many cases.

Arlen Specter, district attorney for the city and county of Philadelphia, testified, as shown at pages 205 and 206 of the hearings, that prior to the Escobedo case only 10 percent of the persons arrested on criminal charges in his jurisdiction refused to make statements, but that since the Miranda decision was handed down the percentage of those who refused to make statements has increased from 10 to 59 percent.

We received similar testimony from the district attorney of Kings County, N.Y. We had testimony to the same effect from other district attorneys and law enforcement officers.

The evidence established that self-confessed criminals who voluntarily confessed their guilt are now walking the streets of the land and, in many cases, are repeating their offenses because of the newly made, unrealistic rule in the Miranda case.

As pointed out in the dissenting opinions of Justice Clark and Justice Harlan in the Miranda case, the questioning of suspects constitutes an essential tool of effective law enforcement and is a practice which has always been recognized. But it was pointed out in the testimony taken by the subcommittee on Criminal Laws and Procedures that it is impossible to bring many criminals to justice unless they can be interrogated. This is because many crimes are committed in secret or are committed by persons who are not known to their victims.

If the wisest man on earth had studied for a thousand years to devise a rule to prevent criminals from confessing, he could not have perfected a more effective one for that purpose than the decision in the Miranda case.

The Miranda case says, in effect, that a suspect being held in a police stationhouse is entitled to a lawyer, and the rule was extended this week by the Supreme Court in the Mathis case to include a convict in a penitentiary.

It now appears that the decision in the Miranda case is not confined to suspects in the custody of police. It now applies to a revenue officer who does not have an accused in custody; he may merely go to a penitentiary to make inquiries of an inmate about an income tax return.

If Horace Greeley were on earth today and were to read the recent extension of the Miranda case, I think that instead of saying to a young man—who happened to be a lawyer—"Go west, young man, go west," he would say, "Go to the penitentiary, because there is plenty of opportunity for an enterprising young man to practice there, and you will be compensated by the Government."

Even a revenue agent, must give the Miranda warnings to an inmate of a Federal penitentiary before he can constitutionally question him about his income tax returns.

This is a remark which Justice White makes in the Miranda case, in his dissent, at page 541. Speaking of the decision, he says:

> It is a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty and to increase the number of trials.

Justice White proceeds further, on pages 542 and 543 of his dissent in the Miranda case, to say that the effect of the Miranda decision is to return self-confessed criminals to the streets to repeat their crimes, and to cause those who have heretofore relied on public authority for protection against violence to rely on self-help; and he further says that it will cause the criminal law to lose its deterring effect, and that it will result in injury to the accused himself, because, if the accused is stopped in his criminal course instead of being freed, he is likely to be, to some extent, reformed by the law.

Justice White also points out that the effect of the Miranda case is injurious to innocent suspects, in that it not only applies to confessions of guilt, but applies equally to exculpatory statements made by persons in custody. The dissenters point out what is undeniable: That many innocent people are freed without the necessity of a trial, without the necessity of employing counsel, and without the necessity of being put to trouble, by being interrogated by officers, because the officers check on their statements and find they are innocent, and turn them loose without trial. Thus these rules do great injury to society, in that, if officers can interrogate suspects, and if eyewitnesses to crimes can look at suspects in custody, they can determine in many cases that the suspects in custody are innocent; and it is highly important to the innocent as well as to society for these matters to be determined at the earliest possible moment.

Now I wish to talk just for a few minutes about the holding in the Wade case.

The Wade case holds, in effect, for the first time in our history, that an eye witness to a crime, even though the eyewitness may be the sole surviving victim of the crime, and even though, as the sole surviving victim of the crime, he may be at the point of death, the eyewitness cannot look at a suspect in custody for the purpose of determining whether the suspect is or is not the person he saw commit the crime, unless a lawyer representing the suspect is present.

Senators may inquire, "What can a lawyer do under those circumstances"?

I have mentioned the Stovall case. The Stovall case was the case in which the Supreme Court held that the appellant had to go to his death, although his rights were violated by the newly invented constitutional principle, because he committed the crime before the 12th day of June, 1967.

When the Stovall case was before it sitting en banc, the U.S. Court of Appeals for the second circuit had this to say on page 734 of 355 F. 2d:

> Thus, the only issue upon this appeal is: can the police, following an arraignment at which the person arraigned advised the court that he was going to get his own lawyer, continue their identification efforts by taking such person to the hospital room of the victim to ascertain whether or not she recognized him as her attacker? Obviously the victim of the crime, if he or she has had an opportunity to see the attacker at the time of the attack, is the person most likely to be able to confirm or refute the identity of the person arrested.

The case involved the admissibility of the testimony of Mrs. Behrendt. She was living with her husband on Long Island. Someone entered their house at midnight and killed her husband, and, when she attempted to prevent her husband from being killed, the intruder stabbed her 11 times.

She was taken to a hospital and was operated on in an effort to save her life. They arrested the accused on suspicion, and took him before the magistrate, and he said he wanted to get a lawyer of his own choice.

Then they took him by her hospital room, not knowing whether Mrs. Behrendt would live or die, so she could determine whether he was or was not the person who had murdered her husband and stabbed her 11 times.

She identified him, and when the case was tried, she testified positively as a witness on the trial that she identified the accused as the man she saw murder her husband and stab her 11 times, and that she based her identification, in substance, upon what she saw at the time the crimes were committed.

Yet the rule that was adopted in the Wade case and recognized but not applied in the Stovall case was asserted to bar her testimony.

In rejecting the contention of Stovall's counsel that Mrs. Behrendt's testimony was inadmissible under the self-incrimination clause because Stovall had no lawyer present, the Court of Appeals for the second circuit made some commonsense observations which the majority opinion in the Wade case ignores.

I read from page 736 the opinion of the U.S. Court of Appeals for the second circuit:

> [7, 8] The law has made and continues to make a definite distinction between testimonial evidence and identification. And for good reason. Physical characteristics such as facial features, color of hair and skin, height, weight and even manner of walk may be observed by all who may be present at the scene of a crime. A person does not become a witness against himself merely by possessing these individual characteristics. When it was discovered that the fingerprints of persons differed one from the other, this form of identification was added to the list of reliable distinguishing features which the police and the prosecution may, without violating the privilege, compel a defendant to reveal. Thus for generations it has been legal to require the accused to stand up in court for purposes of identification, State v. Carcerano, 238 Or. 208, 390 P.2d 923 (1964); People v. Oliveria, 127 Cal. 376, 59 P. 772 (1899). However, the opportunity for courtroom identification may well first be presented many months after the occurrence of the crime. Interests of the accused and society alike demand that this opportunity be afforded at the earliest possible moment. When this "moment" exists will of necessity be dependent upon the facts and circumstances of each particular case. No ironclad rules can be or should be laid down. But what better guides can there be than common sense?

Mr. President, I appeal to the Senate to say that there is no better guide than commonsense and that there is no commonsense in the Escobedo, the Miranda, the Wade, the Gilbert, and the Stovall cases.

It was also urged when the Stovall case was before the court of appeals that he was denied the right to counsel under the sixth amendment. And the court asked some very pertinent questions on that point. They were:

> If Stovall had had counsel, what could counsel have done to thwart the identification? He could not have demanded Stovall's immediate release so that no one might see him. He could not have arranged to have Stovall continuously wear a hood or mask over his face to avoid identification, nor could he have ordered the police forthwith to halt their identification activities. Counsel would not have said "Cease further efforts at identification; Stovall has admitted his guilt" because Stovall had not done so.

The court rejected the claim that there is any prejudice to a party in letting an eyewitness to a crime look at a suspect in custody in the absence of his lawyer for the purpose of identifying or exonerating him as the perpetrator of the crime.

When all is said, the decisions of the majority in these cases are based on the assumption that society needs little, if any, protection against criminals; but criminals need much protection against law-enforcement officers. This assumption is unjust to the overwhelming majority of law-enforcement officers, who have no desire to do anything except to perform their duty and enforce the criminal law against those who are guilty.

The Wade case is clearly based on the assumption that not only are law-enforcement officers disreputable men who seek the conviction of the innocent, but that eyewitnesses are also sadly lacking in character, and that if they are permitted to look at a suspect in custody in the absence of the suspect's lawyer, the police officer may suggest to the eyewitness that the eyewitness should identify the suspect as the guilty party regardless of whether he is the real party to the crime, and that the eyewitness is so disreputable that the eyewitness will either testify falsely that the suspect is the person he saw perpetrate the crime when the eyewitness knows that is not the truth, or that the eyewitness is willing to assert something which the eyewitness does not know to be true.

I have a higher opinion of law-enforcement officers than that. Every day and every night they jeopardize and, in many cases, lose their lives in order that other people might live and in order that other people might sleep in peace in their habitations and in order that other people might enjoy their property.

As the dissenting Justices say, there is no factual support for such low esteem of law-enforcement officers; there is no factual support for such low esteem of the character of people who are witnesses in courts.

The majority seem to suggest in the Wade case that a woman who has been raped may be so desirous of getting vengeance that she will succumb to the temptation to identify the wrong party in order to get somebody convicted.

I have been associated for many years with the administration of the criminal law both as a practicing lawyer and as a judge. It is my experience that nobody desires to wreak vengeance upon anyone other than the person committing the actual or fancied wrong.

I cannot accept the theory that there is danger that someone who has been raped may falsely identify an innocent suspect in custody as the guilty party merely to wreak a supposed vengeance if she takes a look at the suspect in custody in the absence of the suspect's lawyers.

As Justice White so well declares in his dissent in the Wade case, the opinion of the Court in their cases is far reaching. I quote his words.

> The Court has again propounded a broad constitutional rule barring use of a wide spectrum of relevant and probative evidence, solely because a step in its ascertainment or discovery occurs outside the presence of defense counsel. This was the approach of the Court in *Miranda* v. *Arizona*. I objected then to what I thought was an uncritical and doctrinaire approach without satisfactory factual foundation. I have much the same view of the present ruling and therefore dissent from the judgment and from Parts II, IV, and V of the Court's opinion.
>
> The Court's opinion is far reaching. It proceeds first by creating a new *per se* rule of constitutional law: a criminal suspect cannot be subjected to a pretrial identification process in the absence of his counsel without violating the Sixth Amendment. If he is, the State may not buttress a later courtroom identification of the witness by any reference to the previous identification. Furthermore, the courtroom identification is not admissible at all unless the State can establish by clear and convincing proof that the testimony is not the fruit of the earlier identification made in the absence of defendant's counsel—admittedly a heavy burden for the State and probably an impossible one. For all intents and purposes, court-

room identifications are barred if pretrial identifications have occurred without counsel being present.

The rule applies to any lineup, to any other techniques employed to produce an identification and a *fortiori* to a face-to-face encounter between the witness and the suspect alone, regardless of when the identification occurs, in time or place, and whether before or after indictment or information. It matters not how well the witness knows the suspect, whether the witness is the suspect's mother, brother or long-time associate, and no matter how long or well the witness observed the perpetrator at the scene of the crime. The kidnap victim who has lived for days with his abductor is in the same category as the witness who had had only a fleeting glimpse of the criminal. Neither may identify the suspect without defendant's counsel being present. The same strictures apply regardless of the number of other witnesses who positively identify the defendant and regardless of the corroborative evidence showing that it was the defendant who has committed the crime.

The premise for the Court's rule is not the general unreliability of eyewitness identifications nor the difficulties inherent in observation, recall, and recognition. The Court assumes a narrower evil as the basis for its rule—improper police suggestion which contributes to erroneous identifications. The Court apparently believes that improper police procedures are so widespread that a broad prophylactic rule must be laid down, requiring the presence of counsel at all pretrial identifications, in order to detect recurring instances of police misconduct.[1] I do not share this pervasive distrust of all official investigations.

It will be a rare case when a trial judge can penetrate the recesses of an eye witness' mind and hold that the evidence establishes by clear and convincing proof that the eye witness was not influenced in any way in his conviction that he saw the accused commit the crime charged against him by his view of the accused when his lawyer was not present. This is true simply because his memory of what he saw when the crime was committed is likely to be reinforced by such view.

It is just as impossible to unscramble a mental egg as it is a hen's egg.

These are serious matters. I had intended to say something about the incidence of crime. I had intended to recount the facts in the case which was mentioned in the editorial of the Washington Star entitled, "Justice and a Dead Child," and recount how the mother who had murdered her own child and had voluntarily confessed to her guilt had to be turned loose in a New York court because the arresting officers had not told her she was entitled to have a lawyer.

I was going to review the facts in a New York case in which a man murdered his common law wife, their three children, and two other children. They had to turn him loose because of the Miranda case.

I will support these sections.

I do not like to deprive the Supreme Court of jurisdiction, but when the Supreme Court takes the words of the Constitution and attributes to them a meaning which allows self-confessed murderers and rapists and arsonists and burglars and thieves to go free of justice, then I think it is time for us to do something because we are the only power on earth which can do anything to protect American people against decisions like this, decisions which constitute a usurpation of power denied to the majority of the Supreme Court by the very instrument they profess to interpret.

Mr. President, enough has been done for those who murder and rape and rob. It is time for Congress to do something for those who do not wish to be murdered or raped or robbed. And the only way Congress can do this is to enact title II of the pending bill.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Maryland, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SPONG in the chair). Without objection, it is so ordered.

Mr. MURPHY. Mr. President, as a coauthor of amendment No. 715 to S.917, I congratulate the distinguished minority leader for his leadership in this matter. Certainly, this is one of the most important policy decisions that the Senate will have to make in connection with this bill. S. 917, as reported by the Senate Judiciary Committee, recommends a program of direct grants-in-aid to local governments. This amendment offers the Senate an alternative, one which was endorsed by the full House of Representatives—namely, a system of block grants giving the States an important and necessary role in the war against crime.

Those who believe in the federal system cannot help be concerned with the trend and the tendency of Federal programs to bypass the States. Nearly every Member of this body and leading students of this subject have spoken on the need to restore and strengthen the States' role. All too often actions of Congress do not match our expressions. The result has been a proliferation of Federal grant-in-aid programs, many of which bypass completely the proper function of the States. The States must once again be given the opportunity to provide leadership as was intended by our federal system. States must be the program head, not the tail chasing the body of Federal grants to the cities and local communities. The practice of the Federal Government to detour the States and deal directly with local governments must be ended, if for no other reason than the practice provides, in the words of former Gov. Terry Sanford, of North Carolina, "overlapping, duplication, triplication, conflicting goals, cross purposes, lack of consistency, and loss of direction." Even more important, partly because of these problems, Federal programs are falling far short of their objectives. No better example can be found than in the area of manpower policy, where numerous Federal agencies create even more numerous programs, each with a laudable objective, but none knowing or frequently even caring what the other is doing. This organizational nightmare must not be permitted to creep into the law enforcement area.

Mr. President, no one questions the need to embark an all-out war on crime. The question is, how? The spiraling crime rate and the disrespect for law and order are national disgraces. The FBI reports that a murder takes place every 48 minutes, a rape every 21 minutes, a robbery every 3½ minutes and a burglary every 23 seconds. Every 10 minutes that the clock ticks, a serious crime is committed in America. A survey conducted by the National Crime Commission shows that 43 percent of a representative sample of all Americans fear it is unsafe to walk alone at night. This is a shocking indictment of our society. The same survey indicated that 30 percent keep watchdogs for protection and that 20 percent would like to move to another neighborhood because of the fear of crime.

That we must provide the resources to assure the American people the "domestic tranquility" promised in the preamble of the Constitution is undebatable. But, to win this battle against lawlessness, I am convinced that the States, the local communities, and the Federal Government must be mobilized. I am also convinced the States are in the best position to direct this total attack on crime within their borders, and I hope that the Senate will adopt the block grant approach.

Some of the cities have indicated concern that the States will not respond to the crime problem in the metropolitan areas. I do not believe this to be the case, and safeguards built into this amendment requiring that 75 percent of the action-grant funds going to a State must go to local agencies should remove these concerns.

Mr. President, the National Council on Crime and Delinquency recently argued persuasively for this amendment. I ask unanimous consent that this statement be printed in full at this point in the RECORD.

Also, I ask unanimous consent that a letter from Mayor A. Fredric Leopold, of Beverly Hills, Calif., supporting the block grant approach, be printed in the RECORD.

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

[From the National Council on Crime and Delinquency]

STATE RESPONSIBILITY IN LAW ENFORCEMENT AND CRIMINAL JUSTICE

The major result of House action on the Law Enforcement and Criminal Justice Assistance bill (H.R. 5037/S. 917) was to change the emphasis of the program from Federal-local to Federal-state-local. Before the Senate acts on the bill, it might be useful to examine the law enforcement and criminal justice system which this program would attempt to improve.

Responsibility for crime control is shared by state and local governments, with the role of the state expanding steadily. The growth of inter-county and interstate crime,

[1] Yet in *Stovall* v. *Denno*, —, U.S. —, the Court recognizes that improper police conduct in the identification process has not been so widespread as to justify full retroactivity for its new rule.

the inability of local governments to provide services, and the complexity of local crime control have demanded greater state and Federal involvement. Local agencies cannot meet the problem because effective law enforcement, as well as courts and corrections, cannot be operated by individual communities acting alone.

Eighty-three per cent of crime is committed in the 212 Standard Metropolitan Statistical Areas. These 212 SMSA's include 313 counties and 4,144 cities. Each of these 4,457 jurisdictions has its own police department, and their effectiveness suffers from overlap, inadequate communication, and incomplete cooperation. A sound program, even one purely of assistance to police, would not encourage this fragmentation by giving funds to local agencies, since as the President's Commission on Law Enforcement pointed out, one of the major problems of law enforcement is its diffusion.

"The machinery of law enforcement in this country is fragmented, complicated, and frequently overlapping. America is essentially a nation of small police forces, each operating independently within the limits of its jurisdiction. The boundaries that define and limit police operations do not hinder the movements of criminals, of course. They can and do take advantage of ancient political and geographic boundaries, which often give them sanctuary from effective police activity."

A serious program of law enforcement assistance will promote at least pooling of police departments in the major metropolitan areas. The President's Commission recommended this, and there really cannot be a question of doing it. Regionalization, sharing of facilities and services, and realistic planning are going to occur. The real question is who will decide how and which combinations will take place. Cities, even those with a population of 50,000, cannot do it. Metropolitan areas are beyond the jurisdiction of cities. It must be done either by the state or Federal governments.

The Administration's new bill would leave this decision to the Attorney General and the 331 cities with populations over 50,000. For the law enforcement agencies serving the other 58 per cent of the population, state governments would make the decisions. The bill passed by the House would leave to the state planning body the decision in all jurisdictions. To choose between these it is necessary to look beyond the law enforcement, narrowly construed, to see it as what it is, part of a larger system.

Few believe that effective police action and vigorous prosecution alone deter crime. Equally important in crime control is improving the institutions which are responsible for preventing convicted criminals from committing crimes again. This fact—that law enforcement and criminal justice agencies do not exist in isolation, but are part of a system—is the central theme of the multivolume report of the President's Commission. It can be illustrated easily.

When a crime is committed and the police called, the major responsibility for investigation and apprehension belongs to the local police department. It may ask for laboratory and criminal identification assistance from the state police, and assistance in apprehension if it believes the suspect may have fled the city. But even if the arrest is made by the city police, if the crime committed violated a state law (and all felonies and most misdemeanors are state law), the suspect will be prosecuted by a state prosecutor in a state court. If convicted, he may be committed to a state institution, and given occupational training by the state education system. (Or if placed on probation, he will be in a state system.) When his term ends, he will be released into the state parole system, and the state employment service will help him find a job. The Federal government cannot possibly supervise all these agencies. The city does not have jurisdiction over all of them. But the state does.

It is widely argued that the states have no responsibility or experience in law enforcement, and are not equipped to plan and administer such programs. But if law enforcement is seen as part of a larger system, the importance of state government becomes clearer. All states run prison and parole systems. Forty-five states operate or subsidize adult courts and probation, and fifty control the bail and justice-of-the-peace systems. Juvenile and criminal courts are state courts. All fifty states have systems of prosecution. In forty-seven states the Attorney General is the chief law enforcement official, and has broad authority.

The possibilities for productive state action are unlimited. Where as funds given directly to cities or counties might permit them to build new jails, a state-operated regional detention center would meet the needs both of that city and other towns nearby. Whereas assistance directly to cities can reinforce the disparity of sentencing within states, funds to states can be used to establish state training institutions for judges and local probation staff to attack the disparity, and to increase use of non-institutional services. State administration of jails can free local law enforcement personnel to do law enforcement work. State administration permits construction of small correctional centers near communities with industries and colleges to develop training, education, and work release programs both for people confined and people on probation or parole.

Even in law enforcement, narrowly confined, the states have great responsibility. They determine the division of police responsibilities among jurisdictions and agencies, and decide what will be done by the state police, county sheriffs, and city, township, borough, and village police. They define by law the permissible behavior of police dealing with suspects. Moreover it is not true, as many contend, that the direct law enforcement responsibility of states is limited to traffic control. Twenty-eight states have programs of police training. In Connecticut, the State Municipal Police Academy trains all police. Increasing numbers of states are adopting the Model Police Standards Code, and, as in Oregon, are setting standards for local forces in the state. The Governor of Maryland, concerned about local inability to solve growing problems and support new programs developed a state assistance program for local police. Thirty-one states operate criminal identification bureaus and laboratory facilities, which provide assistance in crime scene and other analysis to local police. The Michigan Attorney General and State Police are developing a cooperative attack on organized crime. Both have created special units, and their jurisdiction includes Detroit. New York has established a state criminal identification and intelligence system to make information instantly available to local police. The California Department of Justice has operated a similar system for many years. State responsibility in law enforcement is growing steadily and rapidly.

As the state role in law enforcement has expanded, so has interstate cooperation. All fifty states have long belonged to the Interstate Compact for the Supervision of Patrolees and Probationers. Nearly all the states have now joined a similar compact for juvenile offenders. Twenty states have ratified an agreement on detainers lodged against prisoners in other states, making possible speedy trials for multiple offenders. Twelve western states and all six New England states are members of regional corrections compacts. Four of the New England states have formed a police compact to provide for central collection of police intelligence and mutual aid. New England also has a well-developed cooperative program for advanced training of state police officers.

The development of interstate cooperation in law enforcement should be encouraged by the Federal government. Some sparsely populated states, for example, do not need individual criminal intelligence bureaus. But regional bureaus to which all could belong by computer would be economically feasible and professionally desirable. The list of productive interstate cooperation is endless; and none of it would be possible in a program which gives primary emphasis to cities.

So the states do have a strong role in law enforcement, as well as courts and corrections; and their role is constructive and should be encouraged. Some say that the states are ill-prepared to plan law enforcement and criminal justice assistance programs. In many cases, states *are* less prepared than large cities, which have far more planning experience. (It should be pointed out that the smaller cities, those of 50,000 to 250,000, have little capacity to do high quality planning because they have difficulty competing for trained personnel, their problems are not as serious, and they are not as experienced.) But the fact is that in law enforcement and criminal justice, few governments are really prepared now to plan.

CITY OF BEVERLY HILLS, CALIF.,
September 11, 1967.

Subject: Law Enforcement Assistance Act (S. 917, H.R. 5037).

Hon. GEORGE MURPHY,
U.S. Senate,
Washington, D.C

DEAR SENATOR MURPHY: California's leadership in programming actions to raise the capability of local law enforcement agencies is nationally known and emulated. Our program, conducted by the State Commission on Peace Officer Standards and Training, was inaugurated in 1960. The creating statute charges the Commission with establishing and securing compliance with minimum standards for recruitment and training of Peace Officers. State funds pay to local government one-half the cost of administering 200 hours of basic training to recruit Police and Deputy Sheriffs, and advanced training for supervisory and administrative levels within Police and Sheriff Departments.

Our State's Commission has recently undertaken use of a small federal grant, through the Federal Crime Commission, toward broadening the field for Peace Officer acquisition by local jurisdictions.

Subject bill seeks a result which California and other states have long sought. Since crime recognizes no political boundary and its causes can't be attributed to politically defined areas, there rests within the concept of federal grant-in-aid programs ample justification for federal assistance in upgrading law enforcement capability throughout the United States.

With this, we hold that the most orderly method of distribution of federal assistance to local government is through the respective state governments. I recognize that this principle may be more effectively supported in such states as California, which honors the home rule principle and whose local agencies are effective and continuous participants in the decision-making processes of state government. The Commission to which I refer, for example, comprises exclusively elected and principal administrative officials of cities and counties. Only one member, in ex officio capacity, represents the State Department of Justice.

The House modifications of the Senate's bill, expressed in H.R. 5037, coincide with our opinion of the best method for federal assistance to local law enforcement. They provide for direct grants to local government *only* where a state government has not contributed to the non-federal share of the local program, and where a state government hasn't taken initiative such as California's.

I assure you that a bill which would provide this urgently-needed federal aid di-

rectly to local government, administered exclusively by regional functionaries of federal departments, is not compatible with the situation in California. I admit that it may be the only available course in states whose governments are laggard.

For these reasons, we urge your aggressive support for the Law Enforcement Assistance Act, as amended and passed by the House, in H.R. 5037.

Yours sincerely,

A. FREDRIC LEOPOLD,
Mayor.

TITLE II—ABOLITION OF SUPREME COURT APPELLATE JURISDICTION

Mr. TYDINGS. Mr. President, on Friday, May 3, and again on Monday, May 6, I discussed in some detail those provisions of title II of S. 917 which are intended directly to overrule the Supreme Court's decisions in the Miranda, Mallory, and Wade cases. I presented the reasons why I believe those provisions should not be adopted—the fact that the provisions are directly contrary to Supreme Court decisions based on the Constitution and are thus patently unconstitutional; and the importance of the constitutional rights recognized in those decisions to safeguard our historic rights against self-incrimination and guard against the shocking abuses in police interrogation which have been revealed in Federal courts since at least Brown against Mississippi in 1935.

Today I wish to discuss another provision of title II which attempts to achieve the same result—to overrule Miranda, Mallory, and Wade—but by a means which, I believe, is even more threatening to our fundamental scheme of government. This provision would deny the Supreme Court any jurisdiction to review State criminal cases in which confessions or eyewitness testimony had been admitted in evidence. In a single stroke, this provision would overturn 150 years of our constitutional history—from the Supreme Court's decision in Martin against Hunter's Lessee, and even earlier—and would abolish the historic role of the Supreme Court as ultimate guardian of the supreme law of the land.

This abolition of jurisdiction is, I believe, patently unconstitutional. The controlling language of the Constitution on this question is article III, section 2, which reads, in pertinent part:

> The judicial Power (of the United States) shall extend to all cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their Authority.

Then other classes of cases, such as those affecting ambassadors, admiralty and maritime cases, and so forth, are enumerated. And the section continues:

> In all cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make.

The proponents of title II argue that this last-quoted language gives the Congress authority to deprive the Supreme Court of jurisdiction over State cases admitting confessions and eyewitness testimony; that this is simply an exception to and regulation of the Supreme Court's appellate jurisdiction which Congress is authorized to make. I submit that this argument is totally incorrect.

By depriving the Supreme Court of appellate jurisdiction of these State cases—and, in addition, by removing any postconviction review of State criminal cases in any Federal court through the writ of habeas corpus—title II flies directly in the face of the first sentence of article III, section 2—that "the judicial power" of the United States "shall extend"—and I emphasize the word "shall"—"to all cases"—and I emphasize the word "all"—"arising under this Constitution." If title II is adopted, this clear language of the Constitution would be violated; the judicial power of the United States would not extend to all cases arising under the Constitution.

My reading of this constitutional provision is not novel. In fact, this interpretation of the Constitution has been established doctrine since at least 1816, when the great case of Martin against Hunter's Lessee was decided.

In that case, Mr. Justice Story in the opinion for the Court, stated:

> If some of these cases [arising under the Constitution, laws and treaties of the United States] might be entertained by state tribunals, and no [Federal] appellate jurisdiction as to them should exist, then the appellate power would not extend to *all*, but to *some*, cases. If state tribunals might exercise concurrent jurisdiction over all or some of the other classes of cases in the constitution, without control, then the appellate jurisdiction of the United States might, as to such cases, have no real existence, contrary to the manifest intent of the constitution (14 U.S. at 339).

I believe that this statement by Mr. Justice Story, speaking for the Supreme Court in 1816, conclusively establishes the unconstitutionality of the provisions of title II which would deny individuals any Federal review of claims that confessions or eyewitness were admitted in violation of the Constitution of the United States.

Because of the central importance of Martin against Hunter's Lessee in establishing the central role of the Supreme Court in upholding the supremacy of the Constitution, I think it is important to consider the background of this case in detail.

Martin against Hunter's Lessee was the culmination of years of litigation involving the 300,000-acre estate of Lord Fairfax in the Northern Neck of Virginia. The opinion was Justice Story's first substantial exposition of constitutional law and closely resembles the views of the Chief Justice, John Marshall. That Marshall did not himself deliver the opinion or participate in the decision was due to the circumstance that his brother, James M. Marshall, was involved in the controversy, as a real party in interest. This, together with the personal hatred of Marshall by the head of the Virginia Republican organization, had much to do with the agitation which surrounded disposition of the controversy.

At the time of the events which gave rise to the decision, the head of the governing Republican organization in Virginia was Spencer Roane, president of the court of appeals, the highest court in the State of Virginia. Jefferson had intended to appoint Roane Chief Justice of the United States, but before Jefferson took office, Chief Justice Ellsworth resigned and President Adams appointed Marshall. Roane's highest ambitions were thus thwarted by the appointment of the man for whom he had nurtured lifelong disdain.

Five years before the Marshall syndicate made its investment in the lands in controversy, one David Hunter had secured from the State of Virginia a grant of 788 acres. The grant was made pursuant to confiscatory acts by the Virginia Legislature passed during the Revolution. These acts had not been effectuated prior to the grant, however, and in 1783 the treaty of peace put an end to subsequent proceedings under them.

Denny Martin, the devisee of Lord Fairfax, denied the validity of Hunter's grant on the ground that Virginia did not execute her confiscatory statutes during the war, and that all lands and property to which those acts applied were protected from confiscation by the treaty of peace, signed in 1783. In 1794 the Virginia trial court gave judgment for Martin. Hunter appealed. But proceedings in the case were halted after the passage of the Act of Compromise in the Virginia Legislature. That act provided that in exchange for the relinquishment by the Fairfax claimants of any rights to unappropriated waste lands, Virginia would give up its claims to such lands as had been specifically appropriated by Lord Fairfax. The case slumbered in the court of appeals until it was reargued 13 years later and decided in 1810 by Judges Roane and Fleming in favor of Hunter.

The Fairfax claimants appealed and the U.S. Supreme Court issued a writ of error to the Virginia Court of Appeals. Justice Story, writing for the Court, reversed the Virginia court, holding that title had not passed to Hunter because there had been no inquest of office to divest title from those claiming under Lord Fairfax and that the property title which remained in Martin was protected from subsequent State action by the anti-confiscation clause of the Jay Treaty. The U.S. Supreme Court remanded the case to the Virginia Court of Appeals. On reconsideration the Virginia Court of Appeals raised the issue of the Supreme Court's power to review judgments of State courts. The issue was joined.

The decision caused much concern in the Old Dominion. The case was soon set down for argument and members of the bar generally were called to argue the question. The issue was argued for 6 consecutive days in the spring of 1814. Although the opinions were ready shortly thereafter, they were not published until December 16, 1815. The unfavorable attitude in New England toward the war with England had led to the calling of the Hartford Convention and talk of secession; the Virginia court, although strongly in favor of State's rights, did not want to encourage such extremism.

The Virginia court's decision was unanimous that section 25 of the Judiciary Act of 1789 which conferred the power on the Supreme Court to review

State court decisions was unconstitutional. Judge Roane's opinion was lengthy and discussed in detail all phases of the controversy.

He held that section 25 of the Judiciary Act of 1789 was invalid for national courts could not be allowed to control State tribunals. It would, said Judge Roane, be a "plain case of the judiciary of one government correcting and reversing the decisions of that of another."

The Virginia Court of Appeals—

He continued—

is bound, to follow its own convictions . . . anything in the decisions, or supposed decisions, of any other court in the contrary notwithstanding.

Thereupon the Virginia trial court was instructed to execute the mandate of the State court of appeals.

Immediately the case was taken to the U.S. Supreme Court by writ of error. Again, Chief Justice Marshall did not sit, but, as it was later reported, he "concurred in every word" of the opinion rendered for the Court by Justice Story and restated the principles of the decision in McCulloch against Maryland 3 years later.

The Supreme Court, as I have indicated, overruled the Virginia Court of Appeals, and held that the U.S. Supreme Court did have authority to review the interpretation which State courts made of the Constitution, laws, or treaties of the United States.

The reasons underlying the Court's decision in Martin against Hunter's Lessee—that Federal review necessarily exists over State court decisions on Federal questions—is rooted in the essential framework of our institutions of government. As Justice Story indicates, in his opinion:

The Constitution has presumed . . . that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice (14 U.S. at 345).

As we have seen in the cases I discussed earlier where shocking coercion of confessions by State law enforcement officials was overlooked by State courts, and constitutional rights against coercion were only upheld by Supreme Court review—this constitutional principle noted by Justice Story is justified by historical experience.

Let me recall the facts of some of these cases. In Brown against Mississippi, 1935, three ignorant Negroes were beaten with leather straps, one was hung from a tree by his neck and whipped, let down, and then hung again, all three were threatened with mob vengeance, and finally confessions were extracted. The State supreme court ruled that these confessions were voluntary, and that the defendants' rights to due process of law under the U.S. Constitution had not been violated. But, because the judicial power of the United States extended to all cases arising under the Constitution—under article III, section 2—the defendants could appeal to the Supreme Court of the United States.

Our rights under the Fourteenth Amendment to the Constitution of the United States were violated—

They said.

We were deprived of due process of law.

The Supreme Court took the case and reversed this shocking and brutally obtained conviction. But title II of this bill purports to deprive the Supreme Court of this review authority—and would leave Brown and his codefendants to the tender mercy of the State courts.

Can anyone deny that Federal review of State court decision in Ward against Texas, 1942, was vitally necessary? In that case, the defendant was taken alone by the local sheriff from one town to another, over 100 miles from his home where he was arrested, he was whipped and beaten by the sheriff and burning cigarettes were snubbed out on his bare skin. Finally a confession was extracted, and the State supreme court ruled this voluntary. The U.S. Supreme Court reversed, of course. In all of the other shocking and brutal cases which I described in this Chamber on Monday, the State supreme courts found confessions to be "voluntary" and only review by the U.S. Supreme Court saved this country from the blights on its conscience which those State decisions would have represented.

Justice Story's words in Martin against Hunter's Lessee were not idle concerns. The history of this country clearly establishes that Federal review of constitutional claims is necessary to protect essential liberties under the Constitution.

I wish I could tell you that this was not the case—that these instances of official misconduct by police, that shocking and unjust interrogation practices, are things of the past. But this is not the case. Let me remind you of just one case which occurred in New York City a few short years ago.

At 7:30 a.m. on April 24, 1964, George Whitmore, a slow-witted 19-year-old Negro drifter with no previous arrest record, was ushered into the back room of a Brooklyn police station. Within 22 hours, he had confessed to an attempted rape and two murders—the double killing of career girls Janice Wylie and Emily Hoffert, New York's most sensational crime in recent years.

Six weeks after Whitmore had confessed, the Supreme Court issued its decision in the case of Escobedo against Illinois. That ruling, which was the direct precursor of the Miranda decision, sent shock waves through the Nation's prosecutors and is one of the major Supreme Court decisions that, like Miranda, the proponents of title II now seek to overrule.

When the Escobedo decision was announced, the prosecutors took to the press. From public platforms and in private interviews, they charged that the Court was "coddling the criminal element" and "swinging the pendulum too far" in favor of defendants' rights as against the public's safety.

In a long harangue directed at a reporter, one of the top assistants of Manhattan District Attorney Frank S. Hogan explained the connection between the Escobedo and Whitmore cases.

Let me give you the perfect example of the importance of confessions in law enforcement—

He said—

This, more than anything else, will prove how unrealistic and naive the Court is.

Whitmore: The Whitmore case. Do you know that we had every top detective on the Wylie-Hoffert murders and they couldn't find a clue. Not a clue.

I tell you, if that kid hadn't confessed, we never would have caught the killer.

Yet, in January 1966, 6 months after this passionate statement by his top assistant, District Attorney Hogan dropped the charges against Whitmore for the Wylie-Hoffert murders. Shortly after Whitmore's confessions, another man, a drug addict named Richard Robles, was arrested for minor offenses and he volunteered information about the Wylie-Hoffert murders which demonstrated that he alone was the killer. Then it was learned that Whitmore was prompted in the details of the crime by the police officers who questioned him in isolation for 22 hours.

If Whitmore's tragically false confession could have been obtained in the office of Frank Hogan, one of the great district attorneys in the Nation, it could have been obtained anywhere. Yet, title II preaches that George Whitmore and others like him must be sacrificed in the greater interest of the needs of law enforcement.

In the development of our liberty—

Wrote Justice Brandeis—

insistence upon procedural regularity has been a large factor.

And this is especially true in the realm of criminal justice, where loss of liberty, or loss of life itself, may turn on the integrity of the inquiry made into the charges preferred against the accused. The accused's general bad character, or even his probable guilt, is not an acceptable excuse for the shoddy administration of justice. As Judge Cuthbert Pound of the New York Court of Appeals once put it:

The defendant may be the worst of men, but [t]he rights of the best of men are secure only as the rights of the vilest and most abhorrent are protected.

The community that fails to insist on scrupulous observance of high standards by its police, by its prosecutors, and by its judges and juries, has surrendered responsibility for its own most awesome institutions. Such a community has lost track of the purposes that brought it into existence.

We cannot close our eyes to the fact that in interrogation and line-up practices, State and local officials have in the past—and may be expected in the future—to violate the constitutional rights of some of our citizens. We cannot escape the further fact that State courts have not in the past always been scrupulous in vindicating these Federal constitutional rights. And, as Justice Story said, the presumption rooted in our Constitution is that State institutions—because of "State attachments, State prejudices, State jealousies, and State interests, might sometimes obstruct or control the regular administration of justice." Federal review of cases arising under the Constitution is thus essential—and the Constitution, in article III, section 2,

assures this. But title II of this bill would ignore this overriding constitutional principle.

This is not the only argument which supports Federal review of State court decisions where constitutional rights are at stake. In Martin against Hunter's Lessee, Justice Story continued with another equally compelling argument:

> A motive of another kind, perfectly compatible with the most sincere respect for state tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret the statute, or a treaty of the United States, or even the constitution itself: if there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different, in different states, and might, perhaps, never have precisely the same construction, obligation or efficiency, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed, that they could have escaped the enlightened convention which formed the constitution. What, indeed, might then have been only prophecy, has now become fact; and the appellate jurisdiction must continue to be the only adequate remedy for such evils.

It is this great constitutional principle which title II throws to the wind, by abolishing any Federal review of claims that confessions or eyewitness evidence had been admitted as evidence in State cases in violation of the U.S. Constitution.

As Alexander Hamilton eloquently stated, in Federalist No. 80:

> The mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

Title II carries Hamilton's example to a nightmare extreme: a 50-headed hydra, with each State court having final jurisdiction to interpret the Constitution in its State regarding confessions and eyewitness evidence.

These arguments are, I believe, conclusive that the provision of title II, withdrawing Supreme Court jurisdiction over confession and eyewitness cases, is unconstitutional and unwise.

The power to regulate and make exceptions to the jurisdiction of Federal courts may and has been used for diverse legitimate purposes. Certainly as was the framers' intent, it is important that the Federal judiciary be arranged so that it can conduct its business in an expeditious and efficient manner. This should be the primary purpose to which the power is put. For example, there should be a sufficient number of Federal district courts to handle the case load present in their respective areas. It has been found desirable to establish specialized Federal courts like the Tax Court or the Court of Claims to more efficiently handle discrete categories of cases.

The Congress, by providing the Supreme Court with discretionary jurisdiction over cases which arise through certiorari jurisdiction has made it possible for the Court to stay relatively current with its docket. These are all legitimate exercises of the power vested in Congress to "regulate and make" exceptions to the jurisdiction of Federal courts. But the power to "regulate and make" exceptions to Federal court jurisdiction does not—and cannot, under article III, section 1—extend to abolishing all Federal jurisdiction over the claims arising under the Constitution. Title II of this bill attempts to do this, and therefore is not a legitimate exercise of the "exception and regulation" power.

THE M'CARDLE CASE: NO PRECEDENT FOR ADOPTION OF TITLE II

Proponents of title II have argued that one clear precedent does exist to justify the extreme exercise in removing Federal review from State confession and eyewitness cases; that precedent is, they assert, the Supreme Court decision in Ex parte McCardle, handed down immediately following the Civil War. In that case, briefly stated, the Congress abolished the Supreme Court's appellate jurisdiction over habeas corpus cases while McCardle's habeas corpus appeal—challenging the constitutionality of the Reconstruction Act—was in the Supreme Court. The Court thereupon dismissed McCardle's appeal, ruling that Congress could validly withdraw its jurisdiction. But the crucial aspect of the Court's holding, which was made evident a few years after McCardle in Ex parte Yerger, was that the Court retained under the Judiciary Act of 1789 the power to issue an original writ of habeas corpus, and McCardle could obtain Federal court review of his claims under the U.S. Constitution by using this route. In title II, defendants would be deprived of any Federal court review of constitutional claims in confession and eyewitness identification cases; and McCardle clearly does not authorize the extreme abolition of Federal review power.

That, in brief, is the holding of the McCardle case. And this summary indicates why the case cannot be used by the proponents of title II either to justify removal of Supreme Court appellate review over State confession and eyewitness cases, or the abolition of all Federal habeas corpus review over State criminal convictions. I think we should review the history of the McCardle case in greater detail, however, because it is the most notorious instance in the history of our country in which the Congress tried to intimidate the Supreme Court and undermine the Constitution by depriving the Court of jurisdiction.

I believe this case serves as a present-day warning to us. I believe that, if title II is enacted, historians will view it as just as notorious—and potentially destructive to our institutions of government—as the actions of Congress which gave rise to the McCardle case.

The McCardle case arose out of the punitive and oppressive legislation enacted by the Reconstruction Congress immediately after the Civil War. In March 1867, Congress enacted, over the constitutional objections of President Andrew Johnson's veto, a series of statutes providing for military governments over the Southern States. These statutes raised constitutional questions of enormous magnitude, posing as they did the question of the validity of military government in time of peace in a democratic nation. Needless to say, Congress was extremely apprehensive as to the attitude of the Supreme Court toward the legislation.

The constitutionality of the reconstruction legislation was brought promptly before the Court in December 1867. The manner in which it reached the Court, however, was bizarre. As a procedural part of the reconstruction legislation, Congress had enacted the Habeas Corpus Act of February 5, 1867. This statute was intended to protect Federal officials and other loyal persons against antagonistic action by the courts or officers of the Southern States. Under the act, appeals from the Federal trial courts to the Supreme Court in habeas corpus cases, which until that time had been authorized in only a limited category of cases, were extended to "all cases where any person may be restrained of his or her liberty, in violation of the Constitution or any treaty or law of the United States.

By a supreme irony, this procedural statute, designed to help enforce the substantive reconstruction legislation, was seized upon by the opponents of Reconstruction as a weapon to test the constitutionality of the legislation.

McCardle himself was an editor in Mississippi who had been arrested and held for trial by a military commission in the State, under the authority of one of the first reconstruction acts. Before his trial, McCardle petitioned for a writ of habeas corpus in the Federal trial court. The writ was denied by the court, and McCardle filed an appeal with the Supreme Court under the terms of the 1867 statute.

On January 10, 1868, McCardle's lawyer moved in the Supreme Court that the case be advanced for speedy hearing. According to the contemporary press, the argument by McCardle's lawyer was "an extremely bitter Copperhead harangue on States rights and the unconstitutionality of the reconstruction laws. He evidently argued the McCardle case con amore."

The Attorney General of the United States, Henry Stanbery, told the Court that he had already advised President Johnson that the Reconstruction laws were unconstitutional and that he could not act on behalf of the Government to defend the laws in the Supreme Court. Stanbery also informed the commanding military officers in Mississippi and Washington of his decision.

On January 17 the Supreme Court granted the motion for speedy hearing and set the case for argument on the first Monday in March. The radical Republican newspapers boasted that the decision would not disturb the Reconstruction program in Congress, since the Reconstruction members intended by the time of the Court's decision to have affairs in such a condition in the States of Mississippi and Alabama that even if the Court held the Reconstruction Acts unconstitutional, the decision would not seriously impede the work in those States.

The press reported that the Justices of the Court were divided 5 to 3 in favor of granting the speedy hearing. The newspapers believed that the result would be the same on the question of the constitutionality of the laws. Chief Justice Chase himself was one of the three dissenting justices.

In a short time, however, rumors increased that the Court intended to hold the reconstruction laws invalid. In order to avoid an adverse decision by the Court, the Judiciary Committee of the House of Representatives reported a bill to require that, in any decision against the validity of an act of Congress, two-thirds of the Justices must concur in the holding. In the debate on the bill Congressman Samuel Marshall of Illinois stated:

> The bill is revolutionary and dangerous. It is one of the worst of the revolutionary measures brought forward to subvert and destroy the institutions of our country, which have caused such widespread gloom and despondency. The measure is a confession of guilt on the part of the majority. It is evident that they feel and know in their hearts that their legislation will not bear investigation by a legal tribunal.

The bill passed the House by a vote of 116 to 39, and was warmly supported by the radical Republican press. These views, however, were not shared by the country at large. The general public and much of the press were opposed to so bald an attempt to interfere with the judiciary. A leading newspaper in the West, the Chicago Republican, said:

> The Supreme Court is the judicial bulwark against tyranny and justice on the part of either the President or Congress. It will never permit this safeguard against oppression to be swept away.

The Senate, after some hesitation, declined to adopt the House bill. It appears that the reconstructionists in the Senate believed that, even with a two-thirds requirement, the Reconstruction laws would be held unconstitutional.

On February 3, 1868, one week before the argument began on the merits in the McCardle case, the Supreme Court rendered a decision upholding its jurisdiction to hear the case, and on March 2 arguments in the case were begun before the Court. The case was argued for the Government by Senator Matthew Hale Carpenter, who spoke 2½ hours and told his wife that he had been "praised nearly to death" for the eloquence of his argument. When he had finished, Secretary of War Stanton, with tears in his eyes, exclaimed fervently, "Carpenter, you have saved us."

Meanwhile the impeachment trial of President Johnson had begun. On March 5, in the midst of the McCardle argument, Chief Justice Chase was withdrawn from the bench in order to preside over the impeachment proceedings in the Senate.

Several days later, shortly after the end of the oral argument in the case, Congress decided to intervene to render any decision in the case impossible, in spite of the fact that, because of the absence of the Chief Justice, the Court was expected to postpone a decision until the following year. On March 12, 1868, the House added on to a harmless and unimportant Senate bill an amendment entirely repealing the appellate jurisdiction of the Supreme Court under the Habeas Corpus Act of 1867 and specifically prohibiting the exercise of jurisdiction by the Court over appeals in pending cases. At the time, unanimous consent had been obtained in the House for consideration of the Senate bill, and the amendment was passed without any explanation or debate.

When the bill as amended by the House went back to the Senate the moderate Republicans and Democrats in the House awoke to the fact that they had been deceived. Congressman BOYER, of Pennsylvania charged that the amendment had been smuggled through to prevent a test of the constitutionality of the Reconstruction Acts. However, on March 12, 1968 the Senate concurred in the amendment, again with no explanation or debate, by a vote of 32 to 6.

Within a few days, but only after both Houses of Congress had passed the bill, the country was aroused to the fact that Congress had been tricked into passing without debate a measure of the utmost importance to the Nation. The radical Republican press was exultant, however. One newspaper said:

> The passage of that little bill which put a knife to the throat of the Supreme Court was a splendid performance. Congress will not abandon its Reconstruction policies to please any Court. The safety of the nation demands that Congressional Reconstruction will be successful, and if the court interferes, the Court will go to the wall.

Although his impeachment trial had already begun, President Johnson did not hesitate, even at this most desperate moment in his career, to challenge the congressional attack upon the Court with a powerfully worded veto. The President declared that the bill would clearly be regarded by a large portion of the people as an admission of the unconstitutionality of Reconstruction legislation, and predicted that the attempts to evade the wisdom and impartiality of the Supreme Court in an area affecting the liberty of the citizens would agitate the country and provoke grave consequences.

The Senate finally heard a full debate on the question of passing the bill over the President's veto. The debate was replete with vicious attacks upon the Court and its motives, but equally strenuous defenses of the Court were made by the moderates. The bill passed the Senate, however, on March 26, 1868, by a vote of 33 to 9, and it passed the House on March 27 by a vote of 115 to 57.

During the period of debate on the bill, the Supreme Court had delayed its final decision in the McCardle case. When the bill was finally passed over the President's veto, the Court was squarely confronted with the necessity of deciding whether Congress had the power to limit its appellate jurisdiction. McCardle's lawyer moved that the question be set down for argument, and the Court agreed to do so on April 2. Shortly thereafter, however, a majority of the Justices decided that the issue should be postponed until the next term of the Court in the following year.

With the passage of the act limiting the Court's jurisdiction, however, Congress reached the limit of its attacks upon the Supreme Court. Public reaction in favor of the Court arose throughout the country. The acquittal of President Johnson in the impeachment proceedings in May 1868 broke the power of the radicals, and the country at large acquired a cooler and saner point of view. Many of the Southern States accepted reconstruction as an inevitable fact, ratified the 14th amendment and were admitted to participate in the National Government.

On March 19, 1869, the McCardle case was again reached, and argument was held on the validity of this regulation of the Court's jurisdiction by the Congress. On April 12, by unanimous decision, the Court held that the statute repealing the Court's appellate jurisdiction under the 1867 Habeas Act was constitutional. Accordingly, the Court did not reach the merits on the case.

The decision in McCardle, however, must be viewed in context. Although the legality of McCardle's incarceration could not be tested in the Supreme Court through the exercise of its appellate jurisdiction conferred by the 1867 act, the Court retained the power to issue original writs of habeas corpus. This was made clear in Ex parte Yerger, decided on October 15, 1869, a short time after the McCardle decision. The Yerger case arose from the denial of a petition for a writ of habeas corpus filed in a trial court in Mississippi. Yerger, like McCardle, was a newspaper editor who had been imprisoned by military authorities pursuant to Reconstruction Legislation. Unlike McCardle, however, Yerger took his appeal to the Supreme Court under the provisions of the Judiciary Act of 1789, not under the Habeas Corpus Act of 1867. The jurisdiction issue was argued first.

Only 1 week after oral argument in Yerger, Chief Justice Chase rendered a decision which exhaustively reviewed the powers of the Supreme Court under the various habeas statutes and thereupon upheld the Court's jurisdiction over the appeal in the Yerger case under the 1789 act. Before the Court could reach the merits of the case, Yerger was released. Thus, the hotly contested question of the validity of the Reconstruction laws was mooted without any express decision, and more importantly, without lasting harm to the fundamental role of the Supreme Court in our tripartite system of government.

This examination of the history of McCardle makes clear that the case does not support the view that the Congress may tell the Supreme Court how to decide those cases which properly come before it; the McCardle case does not offer a precedent for the legislation proposed today.

These, then, are the essential reasons why this provision of title II depriving the Supreme Court of jurisdiction over State cases must be rejected. Because this provision is so clearly directed at overruling the Supreme Court's decisions in confession and eyewitness identification cases, and because Congress has no power to act by simple statute to amend the Constitution and change Supreme Court rulings based on the Constitution, it is clear that this backhanded jurisdictional attempt to reverse the Supreme

Court and change the Constitution will be held unconstitutional. In addition, this provision is flatly contrary to article III, section 2 of the Constitution, and it would undermine the historic role of the Supreme Court as the ultimate tribunal to vindicate and establish uniform interpretations of Federal constitutional rights. Justice Oliver Wendell Holmes stated, more than 50 years ago:

> I do not think the United States would come to an end if we (the Supreme Court) lost our power to declare an Act of Congress void. I do think the Union would be imperilled if we could not make that declaration as to the laws of the several States.

By depriving the Supreme Court of the power to review State court decisions based on the U.S. Constitution, title II would, in Justice Holmes' words, "imperil the Union." We must not take that disastrous step. We must reject title II.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CLARK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Pursuant to the previous order, the Chair recognizes the Senator from Pennsylvania [Mr. CLARK] for 1 hour.

Mr. CLARK. Mr. President, few countries have a history as closely tied to the gun as America. No country has contributed as much to the development of the small arms gun as our own. America invented the revolver and developed the first breech-loading rifle. America is indebted to them both.

It was the small arms gun which protected our pioneers, won us independence, preserved our independence, won the West, and helped deter invaders from our shores for 150 years.

Few States have produced as many successful gunsmiths as my own great State of Pennsylvania.

It was the immigrant German armorers of Pennsylvania who invented the first distinctly American firearm in the 18th century—the Kentucky rifle—the rifle which outshot and outgunned the inferior muskets of the British and German mercenaries in the War of Independence.

Another Pennsylvanian, Christian Sharps of Philadelphia, more than 100 years after the invention of the Kentucky rifle, produced the first breech-loading rifle. Sharps' breakthrough led to such famous weapons as the Winchester and Springfield rifles.

American weapons, the Winchester, the Springfield, the world's first revolver, the Colt .44, and many others, were copied by gunsmiths around the world but rarely if ever improved. American armorers have led the world in the development of the small arms gun.

The gun has played a dramatic and constructive role in American history. It has played an equally dramatic and destructive role.

The problem with having our history so intrinsically tied to the gun, and having been so supremely successful in the manufacture of guns, is that it is difficult now to be objective about the gun. The rifle and the revolver have been romanticized. The gun stands today as a symbol of manhood. It is not beyond criticism but it has a loyal and powerful lobby to protect it.

But the gun is only as safe as its owner. It is only as wise as its user. It is only as useful as the hands in which it is held. It has a potential for good and evil, but its owner or user is the only person who can determine which potential will be realized.

The lesson we can learn from the past is that in irresponsible hands, the gun is a threat to our very existence. Four times a gun has been used to commit the gravest crime in our country—the assassination of the President, and only a few weeks ago, a gun was used to murder this country's greatest apostle of nonviolence, Martin Luther King. These last two gun murders—that of Dr. King and President Kennedy, throw a cruel spotlight on the state of gun control in America in the sixties.

President Kennedy's murder was committed by a man with an established record of defection and mental instability, but who, by renting a post office box under an assumed name, was able to buy both the rifle with which he shot the President and a pistol, with which he killed a police officer only minutes after his murder of the President.

The rifle which killed John Fitzgerald Kennedy in 1963 was one of 1 million small arms guns purchased that year through mail-order firearms dealers.

From the information we have thus far, it appears that Dr. King was killed by an escaped convict with a gun bought over the counter in another State. No one knows just how much damage was perpetrated by the million mail-order guns sold in 1963—or for that matter the hundreds of thousands of small arms guns sold over the counter in the same year.

But we do have figures on the damage wreaked by all 50 million guns in this country. We do have statistics which point to a correlation between multiplying gun sales and the massive increase in crime. We can demonstrate the degree to which uncontrolled gun sales encourage crime. And we have positive proof of the effectiveness of gun control as a means of cutting down crime.

An estimated 2 million guns are sold in America every year. In one State alone, California, sufficient guns are sold each year to equip two military divisions. But too many of the guns have been falling into the wrong hands. For $10, any juvenile can write off to a mail-order firm and purchase a rifle, a shotgun, or a pistol. Many mail-order dealers have pistols as cheap as $5.

Teenage gang warfare has been a menace to the safety of our society for some time, but the savagery of the warfare in this last decade as the gangs have become armed with guns, poses a threat to the essential stability and security of our social system.

Teenage terrorism in Philadelphia was described in detail to a Senate subcommittee by Philadelphia Police Commissioner Howard Leary 2 years ago. More than 200 juveniles were arrested in Philadelphia in 1 year and charged with crimes involving firearms. The charges included homicide, robbery, assault, and carrying a concealed weapon. More than 200 firearms were confiscated from Philadelphia teenagers in a year, but in 1964 the confiscations came too late to save two 17-year-olds, one 18-year-old, and one 20-year-old who died in teenage gang clashes.

The mail-order dealers' cache of weapons, most of them surplus World War II firearms discarded by foreign governments, is not available merely to juveniles. Even bigger spenders with the mail-order dealers have been criminals—both the smalltown crook and the bigtown gangster.

There are more than 400 mail-order firearms dealers. The sales of just three firms to just one city, Chicago, were investigated 2 years ago. The investigators discovered that over a period of 3 years, 4,000 people bought weapons from the dealers—and that almost one-fourth of the purchasers had criminal records. The notorious fourth included 13 who had been arrested for murder, 58 for robbery, 42 for burglary, 111 for various types of assaults, 83 for carrying concealed weapons, and 426 for disorderly conduct. All 950 of them had been able to purchase guns with as much ease as a Book-of-the-Month Club member orders the latest best seller. This is only one city, Chicago.

The sales in Chicago are not an exception, as testimony to a Senate subcommittee by the police commissioners of New York, Washington, Atlanta, and Philadelphia only too clearly established.

The tragedy of our present gun control system is that juveniles and criminals are not just limited to mail-order dealers when shopping for weapons. Loose Federal, State, and local laws have allowed over-the-counter dealers to compete with the mail-order companies for the sale of arms to juveniles, crooks, and an assortment of other customers. Other customers have included psychopaths and homicidal maniacs, thugs, drunks, spurned lovers, irate spouses, and depressed neurotics—a whole host of people whose lack of stability, once armed with a gun, places everybody in our society in danger.

Only a few miles from where President Kennedy was assassinated, an ex-marine named Charles Whitman, accumulated sufficient weapons in 1966 to fill a footlocker. Under the law there was no obligation for Whitman to register his lethal weapons. No police officer knew of the cache until one tragic day Whitman first killed his wife and mother with a gun and then climbed to the top of a tower at the University of Texas where, in less than an hour, he fatally shot 13 people and wounded 30 others.

There is a long list of victims shot and killed by the deranged and disturbed, but in an even more poignant category are the people—many of them children—killed in shooting accidents. An average of six people a day are unintentionally killed by guns. Some of the victims are hunters who have been mistaken for deer, bear, or other wildlife, by their col-

leagues. But the majority of the victims are children. Hardly a day passes without some news story of the death of a young boy or girl who was playing with an old family rifle or revolver. The tragedy is made more poignant by the similarity of the circumstances. Father thought the rifle was unloaded. Mother did not even know the children were playing with the gun. Neither was aware of the reality until the report of the gun shattered the laughter of the children and the illusions of the parents—but by then it was too late.

Just as sad, and even more cruel, have been the accidents in which the family rifle or revolver has been used to defend the home only to discover that the suspected burglar was, in fact, a member of the family.

One typical tragedy was reported by Associated Press from Indianapolis:

A high-school girl who arose before dawn to quiet the family dog was shot to death when her father mistook her for a burglar. Larna Kay Wilson, 18, cried "Oh, Daddy," then collapsed and died. Her father, Jack Wilson, 45, was sobbing beside the body when police arrived.

Nowhere in the civilized world is a gun as easy to obtain as in America. Guns are at hand for any and all purposes—for the pursuit of sport such as in hunting and rifle club shooting but also for the purposes of homicide, suicide, fratricide, or patricide.

What is the result? A procession of expert witnesses before a Senate subcommittee investigating the problem of gun control testified to the rising role of guns in the overall crime picture of America and to a spiraling death toll from accidental and criminal shootings.

What are the facts? Let us take a look at some of them:

Last year more than 100,000 Americans were shot—more than 19,000 of the shootings proved fatal.

Every year more than half the 10,000 murders in the United States are committed with guns; more than half the 20,000 suicides are carried out with guns; and over 2,000 accidental deaths are caused by guns.

Every day more than 50 Americans die in a civilian shooting incident. Since 1900, more Americans have been killed by privately owned guns than have died in battle in all the wars in which this Nation has fought. Think of the slaughter of the Civil War, the two World Wars, the Korean and Vietnam wars and then remember that the carnage caused by civilian guns is greater than the bloodshed of all these terrible wars.

Civilian shooting casualties are increasing year by year as the sales of guns rise. Even more alarming, a similar increase in the incidence of crime is also recorded.

Last year guns were used in more than 40,000 aggravated assaults and 50,000 robberies. More and more bank robbers are now armed with guns; more and more burglars are using guns; more and more street assaults involve guns.

In the first 5 years of this decade, more than 200 policemen were murdered with firearms. Only nine were killed by other means. More than four law officers continue to be killed every month in this country while attempting to preserve law and order.

The coldblooded murder of Detective David McCann in Philadelphia in 1964 is a typical example of the dangers to which our policemen are exposed in carrying out the most ordinary police duties. The 37-year-old police lieutenant, a father of three, was called to a bar in Philadelphia to evict a woman who had been annoying the customers. The detective evicted the woman, but outside the bar, she murdered him with a .38-caliber pearl-handled revolver. The detective was defenseless. He didn't stand a chance. The murder was cold, stark, and brutal. But it is a murder which is repeated, with a few variations, almost every week in America. Almost every week a policeman in some American city is shot down and killed in cold blood. Almost every day some policeman in some American city is shot at. Almost every day, some policeman in some American city is wounded by a gun fired by an assortment of thugs, crooks, criminals, teenage toughs, and deranged individuals, all of whom have been able to purchase their firearms with less difficulty than it takes to buy a car. Lieutenant McCann's killer, a former resident of a correctional institution, had no trouble buying her pistol in a local gunshop just a few minutes before the murder.

The situation was critical when Congress first began to attempt to tighten the control of gun sales in 1960. Eight years later, with still no new Federal gun law in the statutes, the crisis has become acute.

Last summer guerrilla warfare raged in the streets of America. Tanks and armored cars rolled down the main streets of Detroit. Troops or police armed with rifles or machineguns were called out in more than 100 cities. Riots in 75 cities were hit by outbreaks of violence. At least 117 people were killed—more than 2,000 were injured. Most of the deaths and the majority of the serious injuries stemmed from the pitched gun battles between police and snipers in Newark and Detroit. In the bloodiest battles in America since the Civil War, police, national guardsmen, and Federal troops lined up on one side against angry, frustrated, and belligerent rioters on the other. Snipers from the cover of shop doorways and upstairs windows, blasted away at police and firemen attempting to subdue the riot and put out the blazing fires. In Detroit 43 people were killed. In Newark 26 people died.

In January of this year, U.S. News & World Report, after an extensive survey of our cities, declared the summer of 1968 could be worse. The news magazine told of organized groups of Negroes plotting new tactics of violence.

The magazine quoted a message sent by a militant Negro leader to police departments, predicting a violent and bloody revolution in America this year. The message said in part:

Battle lines are being drawn. A condition of open warfare between the police and the black community and certain white allies is developing. Let there be no mistake, gentlemen. We are no longer talking about bricks and bottles. We are now talking about a state of total, hostile and aggressive guerrilla warfare carried out on streets and highways of our communities.

What law is there to stop these militants from arming? There is none.

What law is there to stop them purchasing cannons and bazookas which still continue to pour into this country from overseas? There is none.

What law is there to stop the militants purchasing antitank guns and flamethrowers which are still stocked by many dealers? There is none.

What law is there to stop the purchase of mortars and mines and grenades? There is none.

How difficult is it for a militant group to arm itself in America in 1968? What would a group have to do?

The task is a simple one. It merely has to walk to its nearest newsstand, pick up any of a dozen magazines in which the mail-order firearms dealers advertise, and send off its request with the necessary amount of money.

This was the means by which the Minutemen, a fanatical rightwing organization attempting to establish an underground guerrilla army in America, began arming its cadres.

A Senate investigator who infiltrated the Minuteman organization, received extensive training in weaponry by the organization's officers. Later to demonstrate how easy it is to equip a private army in America, the Senate investigator went out and bought a Finnish mortar, a bazooka, a rifle with grenade launcher, grenades, and mortar and bazooka ammunition.

There is nothing in our present laws to prevent leaders of private armies setting themselves up as gun dealers in order to arm their units.

What, if anything, do the present laws prevent and preserve? There are only two Federal laws. Both passed in the 1930's, but each contains such glaring loopholes that even their weak restrictions can be ignored with impunity.

The National Firearms Act of 1934, the so-called Machinegun Act, is limited to controlling the sales of bazookas, rockets, heavy field artillery, and similar heavy-arms weapons. The law expressly exempts pistols and revolvers from its control. Its restrictions amount to a $200 transfer tax on the sale of each weapon, and a national registration system for all weapons. As the Senate investigator so clearly demonstrated, the law can be easily bypassed.

The only Federal law which covers small arms is the 1938 Federal Firearms Act. The law fixes licensing requirements for those who trade in firearms, and prohibits the shipment of guns in interstate commerce to persons under indictment, ex-felons, and fugitives of the law. It does not forbid the sale of guns to criminals within a State. Its license provisions are completely inadequate. The license fee is so low that almost 100,000 people registered themselves as dealers in 1964 to buy guns at wholesale prices. The law is without teeth. No conviction has ever been secured under its provisions.

State gun control laws vary enormously but most of the laws are inadequate. Only one State, New York, requires a permit

to possess a handgun. Only four States require registration of handguns. More than 20 States do not require a license to sell guns. More than 20 States do not require a license to carry a gun. More than 40 States do not require a permit to purchase a gun.

Even in the few States with strict provisions, the laws become ineffective when the people of the State need only to cross a border to deal with unrestricted gun dealers in a neighboring State.

The situation is so critical that some stores have stopped selling guns. Sears and Roebuck, one of the country's largest chainstore corporations, has withdrawn its stock of guns and ammunition from many of its big city stores. But it should not be left to individual corporations to provide adequate gun protection. If all stores and firearms dealers were to follow Sears' example there would be no firearms left for the sportsmen.

What we need is a fair but strict Federal law covering the sale and purchase of all firearms in all parts of the United States. Philadelphia has demonstrated that not only is such a law feasible, but also that it can play a significant role in cutting down the crime rate.

A local gun control ordinance was passed in Philadelphia in 1965—the first ordinance in the United States to regulate the purchase of all types of handguns. In the very next year, the number of murders in the city dropped 17 percent below the corresponding figure for 1965. In the Nation as a whole, murders increased by 9 percent.

In the first 18 months of its existence, the Philadelphia law prevented 110 convicted criminals from purchasing guns locally—among the 110 were two murderers, four people convicted of assault with intent to kill, two rapists, five dope addicts, 13 robbers, 22 people with convictions for aggravated assault, and 25 burglars.

Last year a strong gun control bill, S. 1, was introduced and referred to the Committee on the Judiciary. The bill, which I cosponsored, was backed by the administration. It would have attacked gun sales on three vital fronts—firearm imports; mail-order gun sales; and over-the-counter sales.

The bill would:

First. Prohibit interstate mail-order sales of all firearms.

Second. Prohibit over-the-counter sales of handguns to nonresidents of the State in which the dealer is situated.

Third. Provide for the stringent control over such destructive devices as antitank guns, bazookas, and mortars.

Fourth. Prohibit the sale of handguns to anyone under 21 and the sale of rifles or shotguns to anyone under 18. All purchasers would have to identify themselves and provide the dealer with proof of their age and address.

Fifth. Prohibit the importation of all handguns and most military surplus weapons. Importation of rifles which could be used for hunting purposes would be permitted.

Sixth. Provide new standards and increase the licensing fees of all firearms dealers, importers, and manufacturers.

Let me stress that the rights and interests of the hunters of this country would be fully protected by the bill. Rifles and shotguns could still be bought by the sportsman who could instruct the dealer to ship the rifle to his home. The bill would not prohibit sportsmen from carrying their shotguns or rifles across State lines, and pistols could be carried in conformity with State laws. The bill does not deal with gun permits or registration, leaving it to the States and local communities to decide what local firearms laws, if any, they want. In addition, any State could exempt itself from the total ban on mail-order sales, under an amendment subsequently proposed by the bill's sponsors. This exemption would allow States to permit the mail-order sales of rifles. This amendment was accepted to help the hunters of rural States who might not have a convenient local gun dealer.

President Johnson, in two special messages to Congress and on several other occasions, urged passage of the bill. He described it as "the cornerstone of the Federal anticrime effort to assist local law enforcement." In his message on crime last year, the President declared:

> To pass strict firearms control laws at every level of government is an act of simple prudence and a measure of civilized society. Further delay is unconscionable.

Senator ROBERT KENNEDY, testifying in behalf of the bill last year, stated:

> It is a necessary bill and I urge its immediate enactment. It would save hundreds of lives in this country and spare thousands of families all across the land the grief and heartbreak that may come from the loss of a husband, a son, a brother or a friend. It is past time that we wipe out this stain of violence from our land.

Attorney General Ramsey Clark has asked:

> How long will it take a people deeply concerned about crime in their midst to move to control the principal weapon of the criminal: guns? How long will it take us to realize that times have changed, that indiscriminate traffic in guns needlessly subjects thousands annually to death, injury, fear and property loss?

The Attorney General answered his own questions before a Senate hearing last year:

> We are not the pioneer venturing into the wilderness, dependent on his rifle for food and protection. We are 200 million highly urbanized and interdependent citizens of the most technologically advanced and affluent nation in history. We must control the indiscriminate flow of firearms to those who use them for crime.

Support for gun control legislation has not been limited to leaders of the Democratic Party. Leaders of the Republican Party have also been strong supporters of a gun control law. Mayor John Lindsay, of New York, campaigned for 7 years as a New York Congressman to pass a gun control bill. Appearing before a House hearing last year, Mayor Lindsay said:

> As a Mayor I am even more strongly convinced than ever of the critical need to regulate what I believe to be an irresponsible and dangerous interstate traffic in lethal weapons.
>
> We in New York have a strong bill. The New York State's "Sullivan Law" makes it a criminal offense to purchase or possess a pistol or other concealable weapon without obtaining a police department permit. The law on sales can be easily contravened however, simply by purchasing the gun in another State where the law is not as strict.

In addition to the support of the leaders of both political parties, the gun control bill is also supported by the mass of the people. Opinion polls indicate that as much as 71 percent of the people are in favor of gun control legislation. Yet all attempts to enact gun legislation since 1960 have failed. What has prevented a Federal law being passed?

The blockage has come from one of the country's most effective and most sinister lobbies—the gun peddlers' lobby—a coalition of arms importers, gun manufacturers and dealers, extremist groups like the Minutemen, and the executive council of the National Rifle Association.

At least four gun manufacturers have set up full-time lobbyists in Washington and they have been joined by a covey of lobbyists from the mail-order dealers. The main coordinator of the coalition is the 800,000-member NRA. By blatantly misrepresenting the purposes of gun control legislation, the NRA has won some naive hunters and riflemen to its cause.

On the desk next to me, the desk of my dear colleague, Senator FRANK CHURCH, of Idaho, is a stack of petitions a couple of feet high, indicating the opposition of the petitioners to sensible and strong gun legislation. I suggest that the overwhelming majority of the individuals who signed those petitions have not the remotest idea of what the gun legislation proposed by President Johnson would do; and I suggest further that if they did know, they would not sign the petition. It is the sinister gun lobby is which obfuscating the issue and fooling people all over the United States with false claims about what this legislation is about and the even falser claims that it would adversely limit the right of every American individual who wants to go hunting to own a gun and shoot a deer.

But there are many members within the NRA who do not share the executive council's views. There are many members of the NRA who are disturbed by the uncontrolled sales of firearms. There are many members of the NRA who would like to see the administration's bill passed. Several members of the NRA have written to me supporting the bill. One of the most recent letters was from Weston Tomlinson, of Chester, Pa. Mr. Tomlinson is the immediate past president of the Delaware County Rod and Gun Club, a member and legal counsel of the Delaware County Anglers and Conservationists Association, a member of the Delaware County Federation of Sportsmen Clubs, and a member of the NRA. He wrote to tell me of his support for S. 1 as "a sensible and reasonable step" to preventing crime and violence.

By itself, Mr. Tomlinson's letter could hardly raise the question of the degree to which the NRA reflects its national membership. But there was an important paragraph in his letter. His last paragraph read as follows:

To my knowledge, none of the more than 10,000 sportsmen in Delaware County have been polled or asked their opinion by any national organization in regard to any proposed federal "gun control" legislation.

If anyone in Delaware County is likely to know of an NRA poll, that man would be Mr. Tomlinson. But Mr. Tomlinson knows of no poll.

Meanwhile the national leadership of the NRA continues its propaganda in the name of its 800,000 members. The gun lobby's campaign against meaningful gun control legislation has continued unabated. The sophistry of its arguments continues to show no bounds. Let us take a look at some of its arguments.

It began its campaign with the charge that gun legislation was unconstitutional. It quoted the second amendment:

The right of the people to keep and bear arms shall not be infringed.

By using this quotation out of context, the gun lobby was able to win over a large number of supporters to its side. Indeed, if the second amendment was limited to those words I have just quoted, then gun legislation would be unconstitutional. But the second amendment is not limited to those words. There is an important clause which precedes the words. The full text of the second amendment reads:

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 Supreme Court has put this constitutional issue beyond doubt. It has ruled conclusively that the guarantee of the right to keep and bear arms must have "some reasonable relationship" to the maintenance of a well-regulated militia, which in this day and age means the National Guard and Reserve Forces.

It does not mean the crooks; it does not mean the thugs; it does not mean the people who are mentally deficient; it does not mean the murderers, whether in the country or on the streets of the cities. It never did have any such intention, and it does not have now; and the Supreme Court has made that abundantly clear.

There is no basis in law for the contention that gun control legislation is unconstitutional and finally lobbyists in the gun lobby woke up to that fact, and found they could not sell that argument. So, having failed to win its constitutional argument, the gun lobby next attempted to misrepresent the provisions of the administration bill. It implied that the bill would deny sportsmen the use of guns. It implied the bill would deny citizens the use of guns. As pointed out earlier both suggestions are patently untrue.

The latest move by the gun lobby is to attempt to substitute Senator HRUSKA'S quite ineffective proposals for the compromise version, far too weak, in my personal judgment, reported by the Committee on the Judiciary.

The Hruska proposal makes no attempt to even regulate, let alone stop the importation of foreign weapons.

It makes no attempt to stiffen the standards for licensed dealers.

It leaves the mail-order business virtually untouched. There are no regulations at all over the mail-order sales of carbines, rifles, or shotguns. There are minor regulations over mail-order handgun sales. The regulations amount to an affidavit procedure. The only purpose for replacing an outright ban on mail-order handgun sales as contained in the committee bill, by an affidavit procedure, is to make the ban ineffective. An affidavit system can be ignored by local law enforcement officers. It is unlikely that any check will be made on the accuracy of the information in the affidavit and thus the criminal, the juvenile, and the maniac will still be at liberty to arm themselves with handguns with impunity.

The Hruska bill also provides for an affidavit system for over-the-counter sales of handguns to out-of-State residents. Thus the criminal can drive to a neighboring State, fill out the affidavit with whatever false statements he might wish to make to cover up his record, and walk out with a handgun.

The Hruska bill would simply not do the job. We need strong gun control measures. We need effective gun control measures. Guns must not be denied to hunters under appropriate safeguards, but they must be denied to juveniles and criminals.

The flood of foreign antitank guns, bazookas, and other tools of the infantryman must be stopped.

The tragic toll of shootings in this country must be reduced. Laws cannot end crime but they can make it less prevalent. We must work to end the uncontrolled gun folly. And we must not be afraid to do so, in spite of the shrill and unceasing stream of falsehood, calumny, and vilification poured forth by the gun sellers and their organized allies.

Mr. President, this is a subject on which I speak with personal knowledge, for the gun lobby has been taking out after me. I undertook to state publicly in Pennsylvania, before the late primary election, that I would vote for strong gun control legislation. My opponent took the other position.

I have no doubt that some votes went to my opponent because I spoke in Pennsylvania the way I have spoken on the floor of the Senate today. But I am convinced that I received many more votes from people who know what is happening because of the lack of gun control legislation than I lost from those hunters and marksmen who do not really understand what we are talking about, who are innocent, fine, and generous people, but who are being duped by the gun lobby and the executives, if not the members, of the National Rifle Association.

"Outdoor People," the official publication of the Pennsylvania Federation of Sportsmen's Clubs, which purports to represent 132,374 of my constituents—but does not—contained an advertisement last month suggesting that "If you want to keep your rifles and shotguns, defeat JOE CLARK in the primary on April 23."

Well, they did not, and they will not; and I do not intend to change my stand on this legislation. And I have no doubt that the people of Pennsylvania will support me in that position.

Incidentally, I was not alone. Some of the other objects of this effort at defamation were President Johnson, Senator TYDINGS, Senator KENNEDY of New York, Senator DODD, Representative MCCARTHY, of New York, Representative VANIK, of Ohio, Governor Hughes, of New Jersey, Governor Rockefeller, of New York, Mayor Daley, of Chicago, Mayor Lindsay, of New York, and Mayor Tate, of Philadelphia.

Mr. President, I am happy to stand in the company of those men who put America first, who put safe streets and anticrime legislation first, and who turn their backs on the gun lobby.

There was another advertisement before the primary election, purporting to have been paid for by the Butler County Sportsmen's Conservation Council, in violation of Federal law, containing the name of no individual who was willing to take responsibility for the advertisement.

It reads:

ATTENTION: LAW-ABIDING CITIZENS

It is important to your protection to oppose the re-election attempt of U.S. Senator Joseph Clark on April 23. * * * Crime is on the increase . . . more riots have been promised . . . Ask Joseph Clark how law abiding citizens can protect their families when attacked in their homes.

And so forth. The general purport is that every man in this country should arm himself with a gun. For what purpose, I should like to know? Certainly not to kill a deer. Certainly not to shoot grouse. How does the gun lobby want people to use their guns? Presumably against criminals. But how do we know? It could be an effort to take over the U.S. Government by force—and the Minutemen have such an intention.

Despite the pressures of a vocal, irresponsible, and ill-informed minority, careless of the public welfare, I am confident that the great mass of the American people agree with our leading law enforcement officers that an effective gun control law must be passed if we are to make any headway in our war against crime.

Mr. President, the support of police chiefs and district attorneys for a strong law is unequivocal and overwhelming. Let me cite a couple of samples.

Frank L. Rizzo is police commissioner of my hometown of Philadelphia. I do not know of another man in this country who shares Frank Rizzo's reputation as a tough warrior in the fight against crime. Commissioner Rizzo is 100 percent behind the strong administration gun-control bill which I cosponsored. Here is a quotation from a letter I received from him not long ago:

I wish to commend you for your foresight and initiative in sponsoring this present bill—

S. 1, the administration's gun-control bill—

to control the sale of guns at the Federal level. You are certainly doing a service to the law abiding citizens of our Nation by your support of this legislation and you are giving the police forces of our country great aid and assistance in the suppression of violent crimes.

Mr. President, I ask unanimous consent that the complete text of Commissioner Rizzo's letter, my response, and a memorandum sent to me by Commissioner Rizzo on the operation of the Philadelphia gun control law be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit A.)

Mr. CLARK. Mr. President, the Philadelphia gun control ordinance is a model for all cities.

I hope that the gun lobby spokesmen who have been so casual with their facts about the effect of Philadelphia's law, will give some study to the memorandum. To me, it demonstrates convincingly both the effectiveness of the Philadelphia ordinance and the clear need for a strong Federal law to make it even more effective.

Another instance: Recently I received a letter from Mr. Alvin B. Lewis, Jr., president of the District Attorneys Association of Pennsylvania. Mr. Lewis is also a director of the National District Attorneys Association. In his letter, Mr. Lewis enclosed a number of resolutions adopted by the National District Attorneys Association, which deal with problems of law enforcement, problems which, in Mr. Lewis' words, "are extremely severe, and gravely require the attention of Congress."

Mr. President, in their resolution on firearms control, the Nation's district attorneys clearly state their strong support for "efforts presently being made in the Congress to regulate the interstate and mail-order shipment of firearms, over-the-counter sale of handguns to out-of-State purchasers, and the sale of firearms to minors." I ask unanimous consent that the full text of this resolution may be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit B.)

Mr. CLARK. The International Association of Chiefs of Police are strongly behind the administration bill. Not long ago I received a note from the secretary of the Police Chiefs Association of Southeastern Pennsylvania, Mr. Clarence R. Culp. Mr. Culp—who was kind enough to urge me personally to "keep up the fight" for a strong gun control law, enclosed a copy of an editorial written by Thomas F. McDermott, the president of the Police Chiefs Association of Southeastern Pennsylvania, which was published in the January–February 1967 issue of Police. The editorial is entitled, "Guns: Their Association With Crime." It is sound, it is sensible, and it is written by a man who knows what he is taking about. Mr. President, I ask unanimous consent to have this editorial placed in the RECORD at the conclusion of my remarks.

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

(See exhibit C.)

Mr. CLARK. The Philadelphia Inquirer has consistently given its quite considerable editorial support to the effort to pass a meaningful Federal gun control law. Its editorial of April 26 on this subject clearly states the position on this subject with which I agree, and I ask unanimous consent that the editorial, entitled, "Gain for Mail-Order Gun Ban," be placed in the RECORD at the conclusion of my remarks.

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

(See exhibit D.)

Mr. CLARK. From time to time I have placed in the RECORD communications which I have received from my constituents, who are hunters, indicating their disagreement with the gun sellers' lobby and their support for an effective gun control law. Just recently I received a letter from Mr. Harry P. Frantz, of Merion, Pa., which I think merits the attention of my colleagues. Mr. Frantz writes:

> I want to express my support for your petition in favor of gun control legislation. I own several hunting rifles and belong to a gun club in Pennsylvania but believe me the National Rifle Association does not speak for me.

I would like to know how many of its members it does speak for. I would hazard a bet that it is less than one-third.

Mr. Frantz also suggested in his letter that I place in the RECORD the excellent article in the New Yorker magazine of April 20 on gun control. I agree that this article should be made available to all the readers of the RECORD, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit E.)

Mr. CLARK. Mr. President, I also ask unanimous consent to have printed in the RECORD at the conclusion of my remarks an excellent article from the Titusville, (Pa.) Herald, entitled "For a Strong Gun Control Law," and three editorials entitled "Gun Controls Needed," from the Boston Globe.

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

(See exhibits F and G.)

Mr. CLARK. I hope my colleagues in the Senate will take heart from these words of encouragement from the individuals who are responsible for the material I have had printed in the RECORD. I hoped that my colleagues will give heed to the comments of the men who know most about controlling crime and know what they are talking about—the chiefs of police and district attorneys, and not the lobbyists for the manufacturers of guns who erroneously called themselves sportsmen, a title to which they have no right.

I hope my colleagues will summon the resolve to stand up to the gun lobby and vote for the strongest and most effective gun control law possible, as I am going to do.

Speaking as one Senator, let me say that I intend to stand with Chief of Police Frank Rizzo, the chief of police of Philadelphia, and with the other chiefs of police and the district attorneys of my State and the Nation and with all the decent, law-abiding hunters who agree that a strong, effective gun control law is desperately needed if we are even to call a halt to the spiraling rise of crime.

What is at stake here is not only our own safety, or that of our wives and children. What is at stake is America's place among the nations of the civilized world.

We built a golden calf called the gun. We have knelt before it in worship. Let us throw over this idol and build for ourselves and our children a decent, safe, and sane society.

Mr. President, it is time we grew up.

I yield the floor.

EXHIBIT A

POLICE COMMISSIONER,
Philadelphia, Pa., March 15, 1968.

Hon. JOSEPH S. CLARK,
U.S. Senate, Washington, D.C.

DEAR SENATOR CLARK: I am well aware of the importance of controlling crime in our nation and one important assist that can be given to all law enforcement officers is a federal gun law similar to Philadelphia's gun control ordinance.

This ordinance has been of considerable aid to us in keeping guns out of the hands of undesirables. Almost 300 persons have been denied the ownership of guns through the provisions of this act. Without this law, we would have no way to deny these guns to unqualified persons. However, the Philadelphia Ordinance does not apply outside the city limits, so that an unqualified applicant or a criminal can obtain a gun by going across the city or state line to purchase such a weapon. This is where the need for federal legislation is greatest. Federal legislation controlling the sale of guns would cut off the illicit supply and hamper the actions of those criminals with illegal intentions.

Mayor Tate has led the way in this field with his unqualified support of our local gun control ordinance.

I wish to commend you for your foresight and initiative in sponsoring this present bill to control the sale of guns at the Federal level. You are certainly doing a service to the law abiding citizens of our nation by your support of this legislation and you are giving the police forces of our country great aid and assistance in the suppression of violent crimes.

I have attached information relative to our city ordinance and other statistical material which may be of value to you in support of this proposal.

Sincerely,

FRANK L. RIZZO,
Commissioner.

MARCH 21, 1968.

Mr. FRANK L. RIZZO,
Police Commissioner,
Philadelphia, Pa.

DEAR FRANK: Many thanks for your splendid letter of March 15, 1968, letting me know of your enthusiastic support for the Administration's gun control bill.

I can assure you that your advocacy of this vital legislation willl be a tremendous help in rallying support for it among the public and in the Congress.

Sincerely,

JOSEPH S. CLARK.

FIREARMS REGULATIONS AND CRIMES INVOLVING FIREARMS IN PHILADELPHIA

On March 15, 1965, through the efforts of Mayor James H. J. Tate Bill 560–A, known as the Philadelphia Firearms Ordinance, was signed into law. This Ordinance became effective on April 15, 1965. Philadelphia's Firearms Ordinance makes it mandatory for any person purchasing a firearm (rifle, pistol, revolver, gun or shotgun) in Philadelphia or outside the City, which is brought into the City, to first obtain a license to purchase. This purchase license can be disapproved for the following reasons:

a. Under eighteen (18) years of age.

b. A person convicted of either a crime of violence, any violation of the Uniform Fire-

arms Act, or Carrying a Concealed Deadly Weapon.

c. A person convicted of selling, using or possessing narcotics.

d. A habitual drunkard.

Following are the firearms purchasing statistics from April 15, 1965 to December 31, 1967:

	Applications	Disapprovals
Apr. 15 to Dec. 31, 1965	2,285	7
Jan. 1 to Dec. 31, 1966	3,592	114
Jan. 1 to Dec. 31, 1967	4,175	108
Total	10,052	299

The following are the reasons for disapproving firearms purchase licenses from April 15, 1965, to December 31, 1967:

Homicide	5
Robbery	27
Burglary	55
Assault with intent to kill	16
Rape	11
Aggravated assault and battery	47
Violation uniform firearms act	42
Carrying concealed deadly weapon	27
Narcotics	5
Mental patient	8
Habitual drunkard	3
Wanted person	1
Stolen firearm	1
Alien	2
Falsified application	47
Could not sign application	2
Total	299

In the early summer of 1967, Mayor James H. J. Tate and Police Commissioner Frank L. Rizzo saw a need for further control of firearms in Philadelphia and had the following Ordinances introduced in City Council; they became effective on August 17, 1967.

City Ordinance 9–606—Ammunition: An Ordinance relating to the regulation of ammunition, to require those in the business of selling ammunition to provide for its safe storage.

a. During business hours no ammunition may be displayed on any open counter or in any other place readily accessible to the public.

b. During non-business hours ammunition may not be displayed in windows.

c. A storage space, steel vault or steel safe, approved by the Police and Fire Departments of a sufficient size to hold all the ammunition held for sale in any place in which ammunition is sold shall be provided for use during business and non-business hours whenever ammunition is unattended.

d. No person shall sell any ammunition which can be used in firearms unless the purchaser supplies satisfactory written identification and registers his name and address.

City Ordinance 9–607—Storage of Firearms: An Ordinance relating to security measures in the sale and storage of firearms by those engaged in the business of selling firearms.

a. During the hours that they are not regularly open for business, dealers shall store all firearms in accordance with the following requirements:

1. No firearms shall be displayed in windows.

2. All firearms must be placed in an approved secure storeroom.

City Ordinance 10–818—Firearms in Public Places: An Ordinance relating to safety in connection with individual conduct and activity by prohibiting the carrying of firearms upon the public streets, under certain terms and conditions.

a. Definition: Firearms means any revolver, pistol, gun, shotgun or other weapon capable of propelling a projectile by means of an explosive material or charge.

b. Prohibited Conduct: No person shall carry a firearm upon the public streets or upon any public property at any time unless that person is

1. Licensed by the Commonwealth of Pennsylvania to carry a firearm or license to hunt.

2. Actively engaged in the defense of his life or property from imminent peril or threat; or Police Officer or members of the State or Federal Militia on active duty.

In 1967, information was received by the Philadelphia Police Department that one hundred twenty (120) residents of Philadelphia had purchased firearms outside the Commonwealth of Pennsylvania. Investigation revealed that six (6) of these persons had criminal records that prohibited them from ownership of any firearms; these weapons were confiscated. Since there is no existing requirement that compels out of state distributors to inform local Police Departments of impending sales and delivery of firearms, our information in this area is far from complete.

The following are some case histories involving firearms wherein the source of purchase was unknown or out of state:

1. On Wednesday, December 28, 1966, three (3) men entered a branch office of the Provident National Bank in South Philadelphia and attempted a holdup. These men were met by two (2) Policemen of the Police Stake Out Squad. In the ensuing gun fight, one (1) holdup man was killed and the other two (2) were seriously wounded, these two subsequently died.

The three holdup men were all armed and the origin of these firearms has never been determined. The first holdup man had a total of fourteen (14) arrests with five (5) convictions for Burglary and one (1) for Aggravated Assault and Battery. The second hold up man had a total of nine (9) arrests with four (4) convictions for Robbery and one (1) for Burglary. The third had a total of four (4) arrests with four (4) convictions for Robbery.

All three (3) men were residents of Philadelphia and under our existing laws could not legally purchase any firearms in this City.

2. In April of 1967, we received information that a resident of Philadelphia had purchased a .22 caliber revolver in Norfolk, Virginia. Our investigation revealed that this purchaser, being short of money, had sold the revolver to an acquaintance. The second purchaser and the revolver have never been located.

3. Also in April of 1967, we received information of the purchase of a .25 caliber revolver in Oak Hill, Virginia, by a resident of this City. Our investigation revealed the firearm was purchased in October 1966, brought to Philadelphia and given to a second party who has since died.

In February 1967, a grandson of the second recipient had taken the firearm and in showing it to some friends shot an eight (8) year old and a nine (9) year old boy. A record check on the grandson revealed that he had been convicted of Burglary and could not own or possess a firearm in Philadelphia. This firearm was confiscated and the grandson arrested.

4. In September 1967, a resident of Philadelphia purchased a .22 caliber revolver in Tulsa, Oklahoma. We received information of this purchase in October and our investigation revealed the purchaser had been arrested in Philadelphia and extradited to Cleveland, Ohio, to stand trial for Murder. This firearm has never been located.

5. On December 2, 1967 at 3:00 A.M., two (2) men from Fort Gibson, Oklahoma, forced their way into an apartment in Philadelphia and forced the male occupant at gun point out of the apartment and into a 1959 Pontiac sedan. A third man was driving the vehicle. The abducted man was put into the front seat between the driver and one of the abductors who was armed with a revolver. The third man got into the rear of the vehicle, armed with a shotgun. While they were driving around the city, the abducted man struggled with the armed abductor in the front of the vehicle, took the revolver from him and shot the man in the rear of the car. The man who had lost his revolver reached into the rear seat for the shotgun and he too was shot. There was then a struggle with the driver who was knocked out of the car into the street. One man was killed and one other was paralyzed for life.

The source of the firearms used in this abduction and killing has never been determined.

In 1966 and 1967, a total of 4,363 crimes were committed with a firearm in Philadelphia. The following table represents a statistical analysis in each category.

	1966	1967
Homicide	69	79
Robbery	566	660
Assault with intent to kill	256	255
Aggravated assault and battery	183	129
Aggravated assault and battery on a police officer	2	3
Violation of Uniform Firearms Act	1,056	787
Other firearms violations	198	120
Total	2,330	2,033

In 1966, nineteen (19) juveniles under age eighteen (18) were arrested for Homicide involving a firearm, and in 1967 there were twenty (20) arrests in this category.

In 1966, a total of fifty six (56) firearms were confiscated from persons under eighteen (18) years of age by the Gang Control Unit of the Juvenile Aid Division. In this same year there were ninety six (96) gang clashes, twenty seven (27) of which involved firearms. Twenty seven (27) juveniles were arrested in this year for Violation of the Uniform Firearms Act by the Gang Control Unit. In 1967, a total of seventy nine (79) firearms were confiscated and fifty eight (58) juveniles were arrested for Firearms Violations by the Gang Control Unit. In this same year there were eighty three (83) gang clashes with thirty two (32) of these involving firearms.

Opponents of firearms control regulations repeatedly state that these controls discourage residents from obtaining hunting licenses. A survey of the years 1963 to 1966 revealed there was no appreciable increase or decrease in hunting licenses issued in the City and County of Philadelphia. The below listed totals do not show the total number of hunting licenses issued to Philadelphia residents because a citizen of this Commonwealth may obtain his hunting license in any County.

1963	21,597
1964	22,602
1965	21,759
1966	22,294

COUNCIL OF THE CITY OF PHILADELPHIA, OFFICE OF THE CHIEF CLERK, CITY HALL, PHILADELPHIA

Certification: This is to certify that the following is a true and correct copy of the original Ordinance adopted by the Council of the City of Philadelphia and approved by the Mayor on March 15, 1965.

NATHAN WOLFMAN,
Chief Clerk of the Council.

BILL NO. 560–A

[Explanation: *Italics* indicate new matter added to existing ordinance.]

An ordinance amending chapter 10–800 of the Philadelphia Code, relating to safety in individual conduct and activity, by adding a new section regulating the acquisition or transfer of firearms, under certain terms and conditions, and providing penalties for violations

The Council of the City of Philadelphia hereby ordains:

SECTION 1. Chapter 10–800 of the Philadelphia code, relating to safety in individual conduct and activity, is amended, by adding a new section, as follows:

§ 10–814 Acquisition or Transfer of Firearms

(1) Definition.

(a) Firearm. Any rifle, pistol, revolver, gun or shotgun.

(b) Departmental. Department of Licenses and Inspections.

(2) Prohibited Conduct. No person shall acquire or transfer any firearms in the City, and no person shall acquire a firearm outside of the City, which is brought into the City, unless application has been made to, and license obtained from, the Department.

(3) Application. The applicant for a license shall pay a fee of one (1) dollar, for each transaction of acquisition or transfer regardless of the number of firearms transferred or acquired at that time, and supply the following information on forms provided by the Department:

(a) the name, and any other names by which applicant has been known;

(b) the home address, and any other addresses of which applicant resided within five (5) years immediately prior to application;

(c) the present business or occupation, and any business or occupation, in which applicant has engaged for five (5) years immediately prior to the application;

(d) the date and place of birth of applicant;

(e) the caliber, length or barrel, make, model and, if known, manufacturer's number of the firearm;

(f) a statement by applicant indicating the date, place, nature and disposition of any criminal proceedings brought against the applicant for any offense other than traffic violations;

(g) name, address and occupation, of the person from whom the firearm is to be acquired or transferred; and

(h) a copy of applicant's fingerprints and his photograph.

(4) License.

(a) No license shall be issued unless the Police Department, after due investigation, approves the application. The Police Department shall not approve the application if it finds that applicant is either:

(.1) under eighteen (18) years of age;

(.2) a person convicted of either a crime of violence, any violation of the Uniform Firearms Act or carrying a concealed deadly weapon;

(.3) a person convicted of selling, using or possessing narcotics; or

(.4) an habitual drunkard.

(b) A license shall be issued or refused within thirty (30) days after the filing of an application.

(c) The license shall bear applicant's name, age, place of residence, and a full description of the firearm; and shall also have affixed thereto applicant's photograph, signature, and a copy of his fingerprints.

(d) All persons licensed hereunder carrying a firearm on or about their persons shall carry the license for that firearm on their person as provided herein with the exception of:

(.1) Employees of common carriers, banks or business firms whose duties require them both to protect moneys, valuables or other property in the discharge of such duties, and to carry firearms owned and supplied by their employers, but such employees shall carry a copy of said license; and

(.2) persons less than eighteen (18) years of age accompanied by the parent or guardian licensed to acquire or transfer that firearm.

(e) The Department shall revoke the license of any person who, subsequent to obtaining a license, has either:

(.1) been convicted of a crime of violence, a violation of the Uniform Firearms Act or carrying a concealed deadly weapon;

(.2) been convicted of selling, using or possessing narcotics; or

(.3) become an habitual drunkard.

(5) Duty of Transferor or Vendor.

(a) No transferor or vendor shall give, transfer, sell or deliver possession of any firearm to any person unless the transferee or vendee supplies to the transferor or vendor the required license for the scrutiny of the vendor or transferor.

(b) If no manufacturer's number of the firearm appears on the license, the transferor or vendor shall insert said number in the designated space, and shall forthwith notify the Police Department of the sale or transfer of the particular firearm and advise the Police Department of the manufacturer's number of said firearm which was inserted on the license.

(6) Exclusions. No license shall be required under this section:

(a) by any governmental agency which owns or acquires firearms; or

(b) for transfer of firearms between a manufacturer and a daily licensed dealer, or between one licensed dealer and another dealer, in their usual course of business; or

(c) for licensed pawnbrokers, accepting a firearm as security or pledge for a loan, until the pawnbroker makes a sale or transfer of the firearm pledged to a person other than the owner, at which time a license shall be obtained for the sale or transfer, as provided herein.

(7) Penalty. The penalty for violation of this section shall be a fine of not more than three hundred (300.00) dollars, or imprisonment of not more than ninety (90) days, or both.

SECTION 2. This ordinance will take effect thirty (30) days after enactment.

EXHIBIT B

RESOLUTION 5: FIREARMS CONTROL

Whereas, the easy accessibility to firearms is a significant factor in criminal homicides and other crimes of violence; and

Whereas, federal and state firearms control laws will assist law enforcement in reducing the number of offenses committed with firearms and will aid in the detection, arrest and successful prosecution of persons using firearms in the commission of crimes; now, therefore

Be it resolved, that the National District Attorneys Association supports efforts presently being made in the Congress to regulate the interstate and mail order shipment of firearms, over-the-counter sale of hand guns to out-of-state purchasers, and the sale of firearms to minors; and

Be it further resolved, that we urge the Congress to consider expanding such legislation to prohibit the sale of firearms to convicted criminals and to persons suffering from mental disorders; and

Be it further resolved, that we support legislation at the local level requiring the registration of all firearms.

EXHIBIT C

GUNS: THEIR ASSOCIATION WITH CRIME

(NOTE.—This editorial feature was prepared by Thomas F. McDermott, president of the Police Chiefs Association of Southeastern Pennsylvania.)

To the wavering mind opportunity for successful crime keenly prompts a temptation to the unlawful act. Money or valuables exposed and unwatched or carelessly displayed may, on many occasions, turn an honest person into a thief. The fast automobile and the ready or easily obtained revolvers are in themselves opportunities. These two held in unauthorized possession stimulate in the mutinous imagination possible ventures of unlawful success.

Without the gun most of the great and small of the more daring robberies would never be attempted. Does anyone think the Brinks robberies would have been attempted without guns; can anyone visualize the holdups committed on armored cars, banks, payrolls, and even the small storekeeper without the revolver or shotgun being used.

Millions of instruments, the sole purpose of which was to kill human beings, were manufactured and distributed (scattered would be a better word) throughout the United States last year. The same thing happened the year before and the year before that.

The chief beneficiaries are manufacturers who sell to anyone who has the money, and even to those who do not have the full price. The prospective purchaser can send a down payment, receive his gun—then commit a holdup, and then forward the balance owed.

Believe me, it is just as simple as that; of course, the applicant or purchaser must send a signed statement to the effect that he is twenty-one or over, not an alien, never been convicted of a crime, not under indictment, not a fugitive, or a drug addict. Laughable—isn't it? to even believe that anyone whether he be a convicted felon, drug addict, insane or partly sane, would so state on his request to purchase, when everyone knows there is no check made on the purchaser by the manufacturer.

Many companies advertise for sale every kind of a gun and rifle available from a U.S. 30–06 Springfield and Garand 30–06 automatic rifle; Fleetwood pump shotgun, down to a .22-calibre six shooter magnum for $1.00 down and the balance in twenty-two weeks. All you need is the names of two companies you have had credit with. Surely a convicted thief or drug addict is never going to advise someone from whom he is buying on credit that he is a felon or an addict. All that is needed is to send $1.00, lie like H—, and receive your gun.

My personal opinion is that the dealers handling business of this kind care little whether the guns fall into the hands of criminals or not. The dealers cannot be so naive that they believe the tremendous amount of guns they ship all go into legitimate channels and not into the hands of those who should never possess a gun.

According to crime statistics six of every nine persons slain in the United States last year died from a bullet. These people might still be walking the streets if it were not for these makers and dealers. How many other unfortunates will fall maimed and crippled before something is done to put a stop to this practice.

The methods employed by the gun interests to defeat legislation is crafty. Whenever further regulation of firearms is suggested, usually following on a series of atrocious crimes, there is an equally emotional rebuttal from sportsmen and patriots who like to quote the Bill of Rights. And when this is done as loudly as it is done by all the gun clubs it has a tendency to cause the lawmakers to become afflicted with severe cases of foot-dragging. These same defenders of liberty argue that the reputable householder has a right to protect his home and business. Much care these objectors have for the reputable citizens. A great many persons are injured every year in private homes by "I didn't know it was loaded" accidents. In cases of holdups and burglaries, "Who has the advantage, the armed citizen or the felon?" The felon of course! The storekeeper cannot keep his gun in his hand or treat every customer as a suspect. In the experience of the writer it is better for the citizen not to run if a firearm is ever pointed at him close range, be he in his place of business or his home, and most of all not reach for, or try to get a firearm to protect himself. His best chance is to stand still, and under no circumstances start to run—if he should do so the age-old instinct of the hunter will press the trigger. The revolver is, in itself, an urge to kill.

EXHIBIT D

[From the Philadelphia Inquirer, Apr. 26, 1968]

GAIN FOR MAIL-ORDER GUN BAN

The Senate Judiciary Committee has finally released an anticrime bill for floor action which would provide limited controls on gun sales and in other ways strengthen the hand of law enforcement agencies in fighting crime. However, the measure remains a long way from enactment by Congress as a whole, and at best it is no guarantee against the kind of irresponsible gun peddling that enabled Lee Harvey Oswald to buy a mail-order rifle.

The committee's bill would prohibit interstate mail-order sales of handguns to individuals, but not of rifles and shotguns. It would also ban over-the-counter sales of handguns to nonresidents of a State and to those under 21. Additional curbs would be placed on imports and sale of surplus firearms, antitank guns, bazookas and similar weapons.

It has long been a tradition to draw a line between handguns and rifles on the ground that the smaller weapons may be concealed by holdup men and other criminals, whereas rifles and shotguns are too unwieldy and obvious for most criminal purposes, but suitable for sportsmen who have nothing to hide. The validity of the argument has been undermined, however, by use of rifles by assassins and snipers in riot areas.

Unrestricted distribution of lethal weapons to anyone with the money to pay goes far beyond the intention of the Nation's basic concepts of individual liberty. There are many persons who for one reason or another should not be permitted to possess handguns, rifles or more lethal firearms, if it can be prevented. Children, those with criminal records and the mentally ill are obvious examples. Yet it has been 30 years since any really meaningful gun-control legislation has reached the Senate floor. Possibly at last there is hope for progress toward responsible controls over mail-order gun sales.

EXHIBIT E

[From New Yorker magazine, Apr. 29, 1968]

ANNALS OF LEGISLATION: IF YOU LOVE YOUR GUNS

Nothing renders Congress less capable of action than the need for it. The more urgent the need, the more controversy it is likely to create, and the more controversy it creates, the greater is the danger for any member who takes a stand. Among the many controversies that Congress has been embroiled in during recent years, few have engendered the wrath, the deceit, the frustration, and the stalemate that have attended the controversy over what should be done about one of the most spectacular ways in which this country has for a long while surpassed every other country—our crime rate. In 1960, William H. Parker, the chief of the Los Angeles police department, said, "The United States has the dubious distinction of being the most lawless of the world's nations, and the statistical experts foretell a continued increase." The subsequent rate of increase was steeper than even the most pessimistic experts had predicted. To foreign observers, nothing is more astonishing than our casual recourse to violence in personal disputes, unless it is our failure to restrain it by law—in particular, our failure to control the indiscriminate sale and use of guns, which in recent years has lain at the heart of the controversy and at the same time has made it politically insoluble. "There is an element of violence in American society which the outsider has to learn to comprehend," Henry Fairlie, a British journalist living in Washington, wrote in 1966. "History and character cannot be reversed and changed overnight. But this is no excuse for allowing violence such an easy access to the weapons which it not only needs, but which actually encourage it, tempt it, incite it. However much I may love and admire America, its gun laws come near to ruling it out of civilized society."

In this country, some twenty thousand laws deal with the manufacture, sale, and use of firearms, but most of them are technical provisions that don't amount to much. In forty-one states and the District of Columbia, one can buy either a rifle or a pistol without a license of any kind; in seven states the law requires a permit to buy a handgun that is, a revolver or an automatic pistol); one state (South Carolina) prohibits the sale of handguns; and two states (Hawaii and New Jersey) now require the registration of all guns by description, serial number, and ownership. The only federal laws concerning firearms—"antiquated and impotent legal travesties," according to one commentator—are two in number. One is the National Firearms Act of 1934, which effectively limited the traffic in sawed-off shotguns, sawed-off rifles, and fully automatic weapons such as machine guns by requiring their registration and a two-hundred-dollar tax on their transfer; that is, it was effective until part of the registration system was found un-Constitutional by the Supreme Court a few weeks ago, on the ground that this amounted to a requirement that a man be forced to testify against himself, and it thus violated the Fifth Amendment. The other is the Federal Firearms Act of 1938, which requires anyone making interstate sales of guns to obtain a federal license, and also prohibits interstate shipment of guns by or to convicted felons, persons under indictment for felony, and fugitives.

Laws aside, no one can make even a rough guess at how many guns are in private hands in this country; estimates have ranged from a low of fifty million to a high of two hundred million. But it is known that each year two million domestically made guns and one million imported guns are sold. In other words, in the course of each working day around ten thousand guns reach private hands. And it is also known what toll guns take annually. In 1966, for example, guns were used in an estimated sixty-five hundred murders, ten thousand suicides, and twenty-six hundred accidental deaths—an estimated total of nineteen thousand deaths; in addition, they were used in an estimated forty-three thousand serious assaults and fifty thousand robberies, and they caused an estimated hundred thousand non-fatal injuries. Since 1900, three-quarters of a million people in the United States have been killed by privately owned guns, or a third again as many as have been killed in all our wars.

In his book "The Right to Bear Arms," Carl Bakal points out that since Congress took its last, rather weak, step to control guns, in the nineteen-thirties, a number of bills intended to further regulate the sale, possession, and use of firearms have been introduced, but, because of determined opposition from owners, dealers, and manufacturers of guns, nothing has come of any of them. In later years, he goes on, one of the leading congressional advocates of stricter firearms control was Senator Thomas C. Hennings, Democrat of Missouri, who sponsored several bills providing for such control but finally gave up in despair. "Many members of the House and Senate will vote for construction of dams costing millions of dollars," he remarked in the late fifties. "But they won't vote a nickel to stop the tide of waste and tragedy." Not until after the most shocking of the tragedies—the assassination of President Kennedy—were there signs that Congress might stem, if not stop, the tide, for after the events in Dallas public insistence on federal action to control firearms appeared politically irresistible. As early as 1959, polls had shown that a majority of citizens favored stricter federal gun laws, and after Kennedy's death in November, 1963, that majority had climbed toward unanimity. Early in 1964, a Gallup Poll showed that seventy-one per cent of the men and eighty-five per cent of the women in the country felt that no one should be permitted to own a gun without a police permit.

As it happened, a gun-control bill had been pending before Congress for several months prior to the assassination. Introduced in August, 1963, by Senator Thomas J. Dodd, Democrat of Connecticut—Hennings' successor as chairman of the Subcommittee to Investigate Juvenile Delinquency—the bill was a modest affair that fell far short of what the Gallup Poll indicated the public wanted. Officially designated S. 1975, the measure, drafted after more than a year of investigations and hearings, was aimed at limiting the mail-order sales of handguns, which, according to F.B.I. figures, were used in seventy per cent of the murders committed with guns, and which could be obtained through the mail for as little as three dollars and fifty cents by, among others, minors who were prevented by local ordinances from buying them over the counter. Dodd's bill required the buyer of a handgun by interstate mail order to send the seller a notarized statement to the effect that he was over eighteen, that he was not a convicted felon or under indictment for a felony, and that shipment of the gun would not violate any law in the area where he lived. As for the seller, the bill required him to notify the carrier (normally Railway Express, since federal law had long prohibited the shipment of handguns by mail) whenever he dispatched a package containing a handgun, and the carrier was required to refuse delivery to anyone he knew, or had reason to believe, was under the age of eighteen. Although the bill was glaringly weak—for one thing, a notarized statement that someone has said he is over eighteen means nothing more than that this is what he has said, and, for another, anyone over the age of eighteen could arm a battalion of twelve-year-olds without violating the law—it was the best that Dodd could come up with after months of negotiating with gun manufacturers and representatives of hunters and other gun owners. The manufacturers (so many of whom have plants in Connecticut that it is sometimes referred to as "the arsenal of America") went along with the proposal because it was a protectionist measure, mail-order guns being mostly cheap imports that cut into their business. And the sporting groups were not unduly put out, because it did nothing to limit traffic in rifles and shotguns, which are the arms used in most gun sports, and because the leaders of these groups feared that if they didn't accept a halfway measure then, they would sooner or later—probably sooner—be forced by public demand to accept a much more comprehensive one.

At the time the bill was introduced, there were fourteen million licensed hunters in the country, four or five million members of gun clubs devoted to target and skeet and trap shooting, and a million or so additional gun collectors. For many years, the unofficial but widely acknowledged leader of this assemblage had been the National Rifle Association. Founded in 1871 by some officers of the New York National Guard who were distressed by the sloppy performance of Northern riflemen during the Civil War (the soldiers were said to have hit what they were aiming at only once in a thousand shots), the N.R.A. had as its original purpose "to promote and encourage rifle shooting on a scientific basis." Chartered as a nonprofit organization, the N.R.A. later redefined its aims more grandly, stating that its principal goal was "to promote social welfare"—a statement that, as it happened, rendered it exempt from federal taxation and from any requirement that it be registered as a lobby.

Today, the Association operates from a three-and-a-half-million-dollar, nine-story marble-and-glass Washington headquarters, which houses two hundred and fifty employees, and which, according to the Association, "stands as a symbol of an ideal." It also stands as a reminder that the N.R.A. has more than ten million dollars in assets and an annual income of better than five million; sixty-three per cent of the latter sum comes from dues paid by eight hundred and fifty thousands members, and twenty-six per cent comes from arms and sporting-equipment manufacturers and dealers who buy advertising space in the Association's monthly magazine, the *American Rifleman*. Although the N.R.A. has nowhere near the means or the membership of groups like the American Legion and the A.F.L.–C.I.O., it is far more successful in exerting pressure on Congress. In fact, it is considered to do the most effective lobbying of any non-lobby in Washington, and no one in the government doubts its repeated boast that it can produce within seventy-two hours more than half a million letters, postcards, and telegrams to members of Congress on any gun-bill issue. "I'd rather be a deer in hunting season than a politician who has run afoul of the N.R.A. crowd," a senator from the West remarked not long ago. "Most of us are scared to death of them. They range from bus drivers to bank presidents, from Minutemen to four-star generals, and from morons to geniuses, but they have one thing in common: they don't want *any*one to tell them *any*thing about what to do with their guns, and they *mean* it."

The N.R.A. claims that it always approaches proposed firearms legislation—whether local, state, or federal—with a positive rather than a negative attitude, but the record shows that just about the only firearms legislation that it has approached positively has been legislation that would weaken existing laws. In 1963, for example, a bill was submitted to the Montana legislature that would make it legal for children under the age of fourteen to use guns under certain conditions; for children over fourteen there were no conditions anyway. The N.R.A. labelled the proposal "Good" in a bulletin to its Montana members, and the bill was enacted. To substantiate its claim about its positive attitude, the Association often cites the part it played in getting the 1934 and 1938 federal laws passed. Indeed, it did support both bills—after fighting them to a standstill until provisions in them making it illegal to sell handguns in interstate commerce were dropped. In the eight years preceding the introduction of S. 1975, thirty-five gun-control bills were introduced in Congress and the N.R.A. opposed all of them. (One of them, which was designed to protect the Massachusetts gun industry, was submitted in 1958 by Senator John F. Kennedy and would have prohibited "the importation or reimportation into the United States of arms or ammunition originally manufactured for military purposes." The main target of the bill was the largest-selling import, the Mannlicher-Carcano 6.5, one of which Lee Harvey Oswald bought with a mail-order coupon cut out of the *American Rifleman*.)

After ninety-two years of opposing restrictive firearms bills, the N.R.A. was apparently at a loss for ways in which it might support one, for its endorsement of S. 1975 was possibly the most reticent, and certainly the most ineffectual, act in its long history. The year the bill was introduced, the Association sent out forty-two "legislative bulletins" to several hundred thousand of its members notifying them of impending gun bills in state legislatures and county and municipal councils. It sent out nothing on S. 1975. When the bill was filed in the Senate, the *American Rifleman* described it in detail but did not identify it by number or sponsor, as it always did when it opposed a piece of legislation. Expressing its views in a roundabout fashion that was unprecedented for the magazine, it gave the impression that it was not against the bill but never explicitly stated that the N.R.A. had endorsed it. Instead, after saying in an editorial that "steps must be taken to stop the traffic of mail-order guns into unauthorized hands," it made it appear that it had no particular bill in mind by observing, "It is reassuring that proposed solutions to this particular situation are being directed at irresponsible merchants and purchasers. With this approach, steps can be taken toward a reasonable solution to the problem of mail-order guns."

Four days after President Kennedy's assassination, Dodd amended S. 1975 to include rifles and shotguns. A few days later, he amended it further, to require each buyer of a gun by mail order to list the name and address of the chief law-enforcement officer in his area, and to require the seller to notify that officer by registered mail, before shipping the gun, that the purchase had been made. Alarmed by the public mood following the assassination, the N.R.A. told Dodd privately that it would go along with these changes, but again it did nothing to generate support among its members.

"You keep after that gun bill," Senator Mike Mansfield, the Majority Leader, told Dodd at the beginning of December, 1963. "I'm with you." So, it appeared, were many other senators, including Everett M. Dirksen, the Minority Leader, who agreed that some kind of gun legislation was essential—which meant he agreed that it was inevitable. Warren Magnuson, chairman of the Commerce Committee—which, under Senate rules, had final jurisdiction over the bill—assured Dodd about this time that a majority of the sixteen committee members had told him they were for it, and that he was willing to send it directly to the Senate floor for a vote without holding any further hearings. When about a week had passed after Magnuson's statement and nothing more happened, Dodd got in touch with each member of the committee urging action on the bill; most of the replies were evasive and apologetic. Then, on December 10th, Magnuson unexpectedly announced that his committee would hold hearings on S. 1975 after all. He did not announce that he had reached this decision only after he and other members of the committee had heard from the N.R.A. Better than two-thirds of the committee's members were from so-called hunting states, and nine were coming up for reelection the following year.

When the hearings opened, on December 13th, it was clear that just about everyone on the committee had taken fright. Magnuson himself didn't appear at all the first day but sent in a statement opposing the bill on the ground that it might appear to be a solution but was too weak to be really effective. Although Magnuson could presumably have remedied its defects by conducting rigorous hearings and then proposing strong amendments, he rarely attended the sessions, which ran on and off until March, 1964. Apparently, the chairman's seat was considered a hot one, for no one seemed to want to occupy it, and finally the job of chairing the hearings fell to the lowest-ranking Democrat on the committee—Howard Cannon, of Nevada. Although by this time more than eighty per cent of the people polled by Gallup on the subject wanted the strictest gun law possible, of the thirty-seven witnesses who were invited to testify before the committee only seven, including Dodd, gave S. 1975 their outright support.

Most of those who opposed all or parts of the bill tirelessly reiterated arguments that the N.R.A. had tirelessly reiterated for years, until they had acquired the force of incantations. The first, and most sacred, of these was that S. 1975—and, for that matter, any bill that controlled guns in any way—was un-Constitutional, because the Constitution guaranteed every citizen "the right to keep and bear arms." The reference was to the Second Amendment, which states, "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." Usually, the N.R.A. quotes only the last half of the sentence. The courts, on the other hand, have always been more interested in the first half and have consistently interpreted the amendment to mean that the states have the right to maintain armed citizen militias. Attorney General Nicholas deB. Katzenbach, testifying before the Subcommittee to Investigate Juvenile Delinquency, said that "the Supreme Court of the United States long ago made it clear that the amendment did not guarantee to any individuals the right to bear arms." Although the N.R.A. has asserted that it "takes the bedrock stand that law-abiding Americans are Constitutionally entitled to the ownership and legal use of firearms," it has never been confident enough of its footing to carry a test case to the Supreme Court, which has yet to knock down any local, state, or federal law regulating firearms—with the exception of part of the 1934 federal law, which it faulted on the basis that it was an infringement of the Fifth, not the Second, Amendment. In the Court's own words, in its 1939 decision in the case of the United States v. Miller, the Second Amendment applies only to those arms that have a "reasonable relationship to the preservation or efficiency of a well-regulated militia."

A close second in popularity among gun men is the argument—or slogan—that goes, "Guns don't kill people; people kill people." Like the first one, this has appeared in millions of copies of the *American Rifleman* and in other millions of N.R.A. pamphlets, brochures, leaflets, bulletins, and letters, and, in the form of posters and stickers, it has been plastered all over the countryside on gun-club buildings and at firing ranges. Those who are fond of it are endlessly amused by carrying it to its illogical conclusion, which is that if one is going to regulate the use of guns because they are sometimes used to kill people, one should then regulate the use of knives, hammers, baseball bats, rope, fireplace pokers, hands, feet, and on and on. The counter-arguments put forth by gun-bill proponents—that more than half of all the murders committed in this country are committed with guns; that on the basis of the N.R.A. argument the sale of narcotics and poisons should not be regulated, either; and that although the other lethal instruments mentioned have a variety of legitimate uses, guns have only one use, which is to destroy something, whether a target, a clay pigeon, an animal, or a person—have been utterly without effect. One witness at the Commerce Committee hearings, Senator Bourke B. Hickenlooper, Republican of Iowa, made a favorite N.R.A. point when he testified, "I am perfectly aware that tens of thousands of people are killed in this country every year by automobiles . . . I don't think anyone proposes to make it impossible to buy an automobile because tens of thousands of people are killed." The analogy was very popular in gun circles, even though no one had proposed to make it impossible to buy a gun. Moreover, as the backers of the bill, repeatedly pointed out, again without effect, automobiles are essential to modern life, whereas guns aren't, and, in any event, the increasing death toll from automobile accidents has led to increasingly strict regulation.

An inevitable corollary of the contention that people, and not guns, kill people, is that people, and not their guns, must be more strictly regulated. Ultimately, a plea for harsh penalties against anyone using a gun criminally became the gun lobbyists' sole

alternative to any proposal for new gun laws. One of the many witnesses to advance this alternative proposal during the hearings was William H. Beers, outdoor editor of the Prescott, Arizona, *Evening Courier*. He asked for "a broadening of the search and seizure laws, an enlargement of the powers of arrest so police officers can make arrests without fear of reprisal, and, above all, mandatory penalties for crimes committed with firearms—that is, five years without parole for the first offense, ten years without parole for the second offense, and up to life on subsequent conviction." Senator Ralph W. Yarborough, a liberal Democrat from Texas, the only member of the committee who was anything but courtly to the bills' opponents, heard Beers out and then said, "A number of witnesses have stressed 'No more laws, but tough penalties. Send them to the penitentiary longer, or do away with their rights of defense, anybody that is charged with crime.' Some of the testimony has assumed you have two classes of citizens: the law-abiding and the non-law-abiding. There are, but the only way you tell which is which is after trial. . . . Many of the witnesses here have offered what seemed to me harsher alternatives than the things we propose."

To a man, the gun people lined up behind Representative Bob Casey, a conservative Democrat from Texas, when he later filed a bill in the House to make any serious crime committed with a firearm a federal offense carrying a mandatory sentence of twenty-five years in prison. The proposal had some drawbacks. For one, it would have usurped the states' jealously guarded police powers. (Even so, a number of states'-rights states, such as Alabama and Louisiana, were sufficiently influenced by the gun men to pass resolutions in their legislatures supporting the Casey bill.) For another, it would have converted the hundred thousand and more crimes that are committed each year with guns into federal crimes—a change that would have required the creation of an immense federal police force, of the kind that has heretofore been known only under dictatorships. And, for still another, it would have produced the largest federal construction program since the public-works days of the Depression, since the present capacity of the federal prison system is only twenty-one thousand. Such legal and economic aspects of the proposal aside, the notion that stiff penalties deter criminals has few defenders among criminologists today. That approach has often been tried, they say, and it has always failed. For example, as recently as the early eighteen-hundreds in England, when more than two hundred offenses were capital crimes, one of them, picking pockets, was most frequently practiced during public hangings. Instead of making a criminal hesitate to use a gun, the criminologists say, the most probable effect of a bill like Casey's would be to make an armed marauder hesitate to let the witness to his crime live.

Still another N.R.A. argument against restrictive firearms legislation is that laws of this sort "disarm the law-abiding citizen without affecting the criminal." Of course, S. 1975 would not have disarmed anyone. Even its most fervent backers saw the bill as little more than a means of making it slightly harder for the young and the deranged to get hold of guns. As its proponents repeatedly explained, always without effect, their hope was that the law would deter some of those who couldn't buy a gun over the counter from trying to buy one by mail, simply because it made mail-order purchases somewhat more difficult to carry out. As they also explained, the bill would certainly not prevent a determined criminal from getting hold of a weapon, but it might well dissuade a boy or someone who was unbalanced from going to the trouble of ordering one by mail if he had nothing more in mind than the notion that it would be fun to have a gun—a notion that has far too often led to accidents and mayhem. In addition, they noted, the business of sorting out the law-abiding was far from an easy task when it came to murder. They cited F.B.I. figures showing that eighty-two per cent of all murders were committed within families or among acquaintances—generally by people who had been law-abiding citizens until the murder occurred.

Although the N.R.A. officially conceded again and again in congressional hearings that there was an urgent need to do something about making guns less available to felons, addicts, mental incompetents, and minors it hotly contested at the same time the idea that the general availability of guns had anything to do with the crime problem. "Much has been said in public and in the press about the part that firearms play in the commission of crime," John M. Schooley, who had recently stepped down as president of the N.R.A., asserted in the hearings that followed the Kennedy assassination "Some persons have gone so far as to maintain that the accessibility of firearms plays a major part in the increasing crime rate." Indeed, some had including most of the country's leading law-enforcement officers and criminologists. Unable to outweigh this body of opinion, the N.R.A. did its best to outtalk the proponents of S. 1975 on this point, depending, as usual, on frequent repetition. Here, it relied on two arguments One, which Schooley brought up at the hearings, consisted of a quotation from a book called "Patterns in Criminal Homicide," by Marvin E. Wolfgang, a professor of sociology at the University of Pennsylvania, which went, "It is the contention of this observer that few homicides due to shootings could be avoided merely if a firearm were not immediately present, and that the offender would select some other weapon to achieve the same destructive goal." The statement was constantly quoted by the N.R.A. and its allies, and it still is, even though it was repudiated by Dr. Wolfgang in March, 1964, in a letter to former U.S. Bureau of Prisons Director James V. Bennett: "I am one of those persons who believe that violence and instruments of violence breed violence. Legislation which makes more restrictive the manufacturing, sale and distribution, and licensing of firearms is, I think, desirable in almost any form. If pushed to the wall, I would probably support the Japanese ruling that no one except a police officer should be allowed to possess or carry a pistol." The second N.R.A. argument was that the F.B.I.'s annual *Uniform Crime Reports*, which is the most comprehensive statistical and analytical compilation of information on crime in this country, did not list among the factors contributing to the crime rate the availability of guns. At one hearing on S. 1975, a member of the N.R.A.'s board of directors cited the 1963 F.B.I report to substantiate this point. A staff member pointed out to him that the list he was referring to was in the introduction to the report, and that on page 7 of the body of the report was a full analysis of murder by guns, which concluded, "The easy accessibility of firearms and the lethal nature of the gun are clearly apparent in these murder figures." The witness retorted, "Director Hoover is entitled to his opinion, and you are entitled to yours, and I am entitled to mine." J. Edgar Hoover has, on various occasions, taken an even stronger position on this subject, saying, among other things, "Those who claim that the availability of firearms is not a factor in murders in this country are not facing reality," and "A review of the motives for murder suggests that a readily accessible gun enables the perpetrator to kill on impulse," and "The spotlight of public attention should be focussed on the easy accessibility of firearms and its influence on willful killings," but the N.R.A. has continued to cite the supposed omission in the *Uniform Crime Reports*.

Another of the N.R.A.'s arguments against any legislation designed to control guns is that it would have no effect on the use of guns in crimes because, as one of the Association's pamphlets has put it, "most weapons used by criminals are stolen guns." Since the criminals in the country have never been polled on how they got their guns, no one knows what their usual source of weapons is. However, statistics submitted during the Senate hearings indicated that many of them bought guns legally. According to a study made in 1965 by the commissioner of the Massachusetts Department of Public Safety, only six guns out of forty-five hundred and six recovered from criminals in that state during the previous eight years had been stolen. Nearly eighty-seven per cent of the weapons, the commissioner added, had been obtained not in Massachusetts, which has had fairly strict firearms laws since 1957, but by over-the-counter purchases in Maine, New Hampshire, and Vermont, which have lenient laws. According to the Newark police, eighty per cent of the guns confiscated from criminals there in recent years were found to have been bought outside the state. New Jersey's Attorney General, Arthur J. Sills, reported during the hearings on S. 1975—in rebuttal of a claim by members of the gun fraternity that strong gun laws would delight criminals, because the laws would create a nation of helpless citizens—that when he proposed that New Jersey adopt very strict firearms regulations, he checked on the writers of three hundred and thirty-five of the thousands of letters he got in opposition and found that twenty-five of them had been convicted of crimes ranging from highway robbery to manslaughter.

As part of the N.R.A. campaign to prove that restrictions on guns are irrelevant, the organization has repeatedly attacked what it invariably calls "the vicious" or "the notorious" Sullivan Law, which for fifty-odd years has made it illegal for New York State residents to buy or own a handgun without a police permit. (The law is so sternly administered that out of New York City's population of about eight million people only seventeen thousand hold permits.) According to one of the N.R.A.'s directors who testified at the 1964 hearings, "New York's so-called Sullivan Law is the most restrictive gun legislation on the statute books. Yet it is a complete failure, not only in keeping guns out of the hands of the criminal element but also at reducing the crime rate." This contention has been made thousands of times, in thousands of places, by thousands of people—in fact, by just about everyone except people who have some knowledge of the law and its effect. During Senate hearings held in 1965, Attorney General Katzenbach pointed out that in the country as a whole fifty-six per cent of all murders were committed with guns, and he went on, "In Dallas, Texas, and Phoenix, Arizona, where firearms regulations are practically nonexistent, the percentage of homicides committed by guns in 1963 was 72 per cent in Dallas and 65.9 per cent in Phoenix. In cities where there are strong regulations we have the following figures: Chicago, 46.4 per cent; Los Angeles, 43.5 per cent; Detroit, 40 per cent; and Philadelphia, 36 per cent. And in New York City—which has been disparaged in many ways as being thought of by some as the center of crime in America—with its much maligned Sullivan Law, the rate of murder by gun was 25 per cent." Despite New York's fearsome reputation, when compared with the country's nine next-largest cities it turned out to have the fifth-lowest assault rate, the third-lowest murder rate, and the lowest robbery rate. Not the least noteworthy effect of the Sullivan Law, Leonard E. Reisman, deputy commissioner of the New York City Police Department, testified, was that it had enabled the police "to make many arrests

for the illegal possession of pistols and revolvers before the possessor has had the opportunity to commit a crime of violence," and he added, "On this score, we have had a substantial degree of success. We have been able to prevent many crimes of violence by such arrests."

Although Dodd had long been known as the Senate's foremost anti-Communist, an astonishing number of gun owners considered his bill prima-facie evidence that he was either a Communist agent or, at least, a Communist dupe. One of the many inexpert witnesses who testified at the hearings in 1964, a physician from Bagdad, Arizona, by the name of William E. Gorder, stated that S. 1975 was patently un-Constitutional, and added, "I further believe the Dodd bill represents a further attempt by a subversive power to make us part of one-world Socialistic government." Taken aback, Senator Yarborough asked him, "You don't really think that Senator Dodd's bill represents any effort by any subversive power to take over this government, do you?" Dr. Gorder nodded. "Yes, sir, I do," he answered firmly. Still unable to believe it, Yarborough repeated his question. Dr. Gorder repeated his answer. His conviction reflected a fear shared by many gun owners that the bill would be used to disarm the populace and render it helpless before an invading army. Senator Yarborough listened as several other witnesses expressed concern over this dire eventuality, and then he finally lost his patience and told one of them, "I was on the staff of an infantry division, and I saw the invasion of Germany. Hitler called on every German to die in his home, at his post, and the first time a sniper fired in a town at an Allied soldier, they learned. [Our] men were trying to be nice to the civilians, and the snipers fired, and after that the towns were simply sawed down. And pretty soon there was total surrender. . . ." The rebuttal had no effect on those who were persuaded that they were about to be turned over, empty-handed, to an invader. In fact, this complaint grew so clamorous that Dodd, forgetting for the moment that his bill wouldn't disarm anyone, asked Secretary of the Army Stephen Ailes for an official opinion on the defense of the nation in the event of an invasion. "I have not seen any contingency war plan where the citizenry was included," the Secretary replied.

Far and away the most persistent complaint about S. 1975 concerned a feature that it did not contain—registration of firearms. Gun registration ordinarily means that anyone who owns a gun registers it with the police, but for many years the N.R.A. has been spreading the idea that a registration system gives the police the power to grant or withhold permits for gun ownership. In one of its pamphlets, entitled "The Pro and Con of Firearms Registration," the Association stated:

"As to the argument that 'you don't object to registering your automobile, why object to registering your gun?', this is a 'smoothy.' In the first place, the registration of an automobile is automatic. The police register the car, the city and state collect their taxes and no one questions the right of the citizen to own the car. The whole essence of gun registration is to permit the police to say WHO may own a gun! The difference is obvious and vital!"

Since the whole essence of gun registration is the same as the whole essence of automobile registration—that is, to let the police know who owns which car or gun—the obvious and vital difference was the false distinction made by the N.R.A. In the opinion of a senator who has been one of the N.R.A.'s leading antagonists, the reason for its misleading statements on this score is fairly simple. "A lot of people wouldn't buy guns if they had to record them, because of the embarrassment that often entails," he explained. "And if there were fewer owners, there would be fewer N.R.A. memberships, fewer guns sold, and fewer of those lucrative, nontaxable ads placed in the *American Rifleman*." Whatever the explanation, the Association has done such a thorough job of terrifying its followers about the perils of registration that the mere mention of the word is enough to make those who own guns reach for them. In addition to equating registration with permits, the N.R.A. has encouraged the fear that a registration system would lead to personal disarmament. A member of the Association's board of directors testified at the hearings, "Gun-registration lists, no matter how subtly obtained nor how intensely desired by law-enforcement agencies, can and will provide the most effective and convenient way of disarming the private citizen should a subversive power infiltrate our police systems or our enemies occupy our country." (A subsequent witness suggested that a simpler way for an occupying power to find out where a lot of the guns were would be to drop in at the N.R.A. office and look at its membership list.) Most of the gun clubs and gun collectors' associations that sent witnesses to Washington at the time of the hearings or submitted resolutions to the committee for the record were convinced that S. 1975 called for the registration of all privately owned firearms. Ben Avery, the secretary-treasurer of the Arizona *Republic* and an officer in the Arizona State Rifle and Pistol Association, read a statement at the hearings expressing his opposition to registration, and then submitted several resolutions adopted by gun clubs in his area.

"Mr. AVERY. The first is a statement by the Mesa Gun Club, in which they oppose the registration and licensing of all firearms. I have another from the Miami—

"Senator CANNON. You say they opposed registration and licensing. That, of course, is not required in the bill. Do they take a position on the bill that we are considering or not?

"Mr. AVERY. Sir, they didn't know what was in the bill. They were honestly trying to express their opinion."

The members of the Mesa Gun Club and millions of other sportsmen around the country didn't know what was in the bill because the N.R.A. had done nothing to inform them and a great deal to confuse them. Besides neglecting to tell its members that it supported the bill, to explain to them what the bill would accomplish, and to urge them to lend their support, the N.R.A. implied during the hearings that the bill contained practically everything it had long taught its followers to fight to the death. On the first day of the hearings, Franklin L. Orth, the Association's executive vice-president and its chief spokesman, devoted most of his opening statement to matters that were not under consideration. After telling the senators on hand that the N.R.A. was "highly respected at all levels of government for fairness, logic, and a wealth of information and experience," he outlined in detail what the Association opposed, including "the registration of the ownership of firearms," "the requirement of a license to purchase or possess a firearm," "police approval" to buy or own a gun, any kind of law that "would have the effect of disarming the honest man," and "discriminatory or punitive taxes or fees on the purchase or ownership of firearms." As for the Association's positive approach to gun legislation, he said that it consisted of support for "increased and mandatory sentences where armed force has been used in the commission of a crime" and, finally, for S. 1975 "as originally introduced." His statement did not mention S. 1975 in the version before the committee.

Ordinarily, reporters who cover congressional heaings base their stories on witnesses' prepared statements, which are distributed to them in advance, so press reports seldom cover the clarifying questions and answers that follow. As a result, many of the stories appearing in newspaper around the country after the first series of hearings on S. 1975 concentrated mainly, and sometimes entirely, on what the N.R.A. objected to. And this, of course, gave newspaper readers the impression that what the Association objected to was what S. 1975 contained. They were not the only ones who were confused about the N.R.A.'s stand. Earlier on the opening day of the hearings, Senator Dodd had taken pains to praise the N.R.A. and to announce its endorsement of his bill. By the time Orth had completed his statement some hours later, however, no one was sure where the Association stood. One member of the committee who was intent on finding out was Senator Philip A. Hart, Democrat of Michigan, who had eight hundred thousand licensed hunters back home to deal with.

"Senator HART. Lest a reader of this record or others present may have any doubt, does the association support the bill in the form introduced this morning by Senator Dodd?

"Mr. ORTH. In the form introduced this morning, the association supports the bill of Senator Dodd. I would like to add, parenthetically, that normally we are opposed to legislation relative to guns of any kind because we don't think that they reach the criminal. We think the criminal gets the gun anyway. You mentioned, Senator Hart——

"Senator HART. Don't leave me hanging there. Is that a 'Yes, but . . .' or——

"Mr. ORTH. No, it is not a 'Yes, but . . .' We support Senator Dodd's bill as presented here this morning."

Senator Dodd and his aides later came to believe that the N.R.A. had only pretended to support S. 1975 and had all along been covertly urging its followers to oppose it—a stratagem that they feel was evidenced by Orth's confusing testimony. It seems more likely, however, that Orth's testimony was confusing because it reflected bitter dissension within the top echelon of the Association, which was said to be split into two factions—one that wanted to take the Dodd bill then rather than risk getting something far worse later on, and one that wanted to fight all gun legislation to the end, whatever the cost. That Orth's testimony was misinterpreted by some reporters and most readers did not prove that Orth had meant this to happen, or even that he could have expected it to happen; the probable explanation is that he devoted most of his testimony to describing what the Association would *always* oppose both as a warning to the committee and as a sop to the hard-liners on his board. If he had, as Dodd thought, purposely misled the N.R.A.'s members into believing the bill contained all the features that the Association had opposed for years, then his subsequent outright endorsement of it, under Senator Hart's cross-examination, could be construed only as executive suicide.

When word got out that Orth had actually appeared before a Senate committee and spoken in support of a gun-control bill, the reaction among sportsmen was much like what the reaction of members of the A.F.L.–C.I.O. would be if George Meany were to come out for the Taft-Hartley Act. A typical response was an editorial that appeared shortly after the hearings in Seattle's weekly Fishing & Hunting News:

"NRA STABS SPORTSMEN IN BACK ON GUN BILLS

"Sometimes your best friends will turn on you . . . so don't turn your back. Fishing & Hunting News has been forging its Postal Protest against proposed anti-gun legislation in Washington, D.C., with the endorsement of the National Rifle Association (NRA) as our fighting brother in the big capital. Our fighting brother just stabbed us and every sportsman who ever belonged or believed in that organization in the back. . . . We don't want the Dodd Bill or any other anti-guns

bill. And if the NRA wants to compromise with politicians and jilt the sportsmen who paid for their big building in Washington, their suites of plush offices and their stuffy ranks of personnel, then we at F & H News say: To hell with NRA—we'll fight this thing from the home front."

A large number of members angrily resigned from the N.R.A., some of them demanding as a condition for their return to the fold that Orth and anyone else who had a hand in the endorsement resign. Others wrote letters or made telephone calls threatening to assassinate Orth and his family. (This was reported to have convinced him that there were indeed some people who should not be allowed to have guns.) Apparently in the hope that the clamor would subside if the issue was ignored, the N.R.A. left matters up in the air by neither repudiating its policy nor asking its members to support it. In the January, 1964, American Rifleman, the Association observed, "The use of a rifle to assassinate our nation's leader is a calamity," and then washed its hands of any responsibility for remedial legislation by saying, "It is important that each gun owner formulate a policy to govern his own thinking and that he accept the responsibility, as well as the privilege, of making his views known to his elected representatives."

Following the abdication of the N.R.A., others quickly moved into the power vacuum with a bid for leadership. Foremost among them were various independent gun magazines, most of which had been frightening their readers with phantom gun legislation for years. *Gun World* ran an editorial mourning the President's death, observing that the assassin had used inferior equipment, and warning its readers, "The enemies of freedom, of our right 'to keep and bear arms,' are not removed by sublime character from seizing opportunity at this time of bereavement." *Guns* offered a "7-Point Program of Action to Stem the Anti-Gun Hysteria," of which the four main points were harsher penalties for the misuse of guns; a thirty-day moratorium on congressional action, because "the country is in a state of hysteria and we cannot hope to get clear thinking;" legislative assurance following the moratorium that the right to keep a gun on hand would "in no case ever be restricted;" and a mass mailing of letters to members of Congress from "responsible individuals and gun enthusiasts." *Guns & Ammo* observed in an editorial, "Congressional hearings have been underway which would seriously hamper all shooters from buying firearms," and added, "It seems imperative that all of us get in touch with as many casual shooters and hunters of our acquaintance as possible and let them know what is happening. The more good, well-written, and factual letters we can get to legislators and the news media, giving our side of the story, the better the chances of educating the general public to the idiotic proposals which will be cropping up for some time to come. This job is up to us. If you value your great Constitutional rights and your sport, now is the time to shed your coat and go to bat."

Immediately after Dodd had submitted his amended bill, in December, 1963, his mail ran eight to one in favor of it. Within weeks, his mail became much heavier—"It was stacked knee-deep all over the subcommittee offices," a member of the staff has recalled—and almost all of it opposed the bill. Over a two-week period around that time, the Commerce Committee received twenty thousand letters, postcards, and telegrams, exactly two of which supported the bill. The Commerce Committee hearings ended on March 4, 1964, and that month *Guns & Ammo* informed its readers that S. 1975 was "virtually assured of passage." The statement would have been familiar to the kind of Washington lobbyist who warns his clients about the imminent passage of an undesirable bill that actually has no chance, so that he can take the credit when it isn't passed. By this time, it was well known in Washington that the Dodd bill was dead for that session, because the negative response had been strong enough to scare most members of Congress in an election year. At the N.R.A. convention, held that April, Frank Daniel, the secretary of the Association, told the delegates, "It would appear that there is little likelihood of our being forced to accept, in 1964, any legislation at either the federal or state level which does violence to the N.R.A.'s announced policy on firearms legislation." Two days later, the board of directors, in a closed session, passed a resolution praising Senator Magnuson for "displaying leadership and calm judgmentment . . . in the face of hysteria" and for thwarting "impulsive attempts to disarm our law-abiding citizens." Magnuson kept the news of the citation to himself until late in June, when his committee was in executive session, to decide what should be done about S. 1975. Then he released the news to the press. As far as the majority of the committee's members were concerned, what was good enough for the chairman was good enough for them, and they agreed to defer action on the bill. According to one of them, "There was an overwhelming sentiment for doing nothing."

In January of 1965, after President Johnson's landslide victory and the convening of the most liberal Congress since the days of the New Deal, there was suddenly an overwhelmingly sentiment for doing everything in sight. Two days after the new Congress convened, Dodd reintroduced his bill, which was numbered. S. 14. But the Administration was in far too ambitious a mood to settle for that measure, which it had felt all along was something less than half a loaf. On March 9th, the President sent Congress a Crime Message, in which he called for stringent firearms legislation, and then, on March 22nd, to show that he meant it, he sent over his own gun bill, of which Dodd became chief sponsor. Compared to S. 14, the new measure, which was designated S. 1592, was a full bakery. It prohibited all mail-order sales of firearms to individuals in interstate commerce and restricted interstate traffic to transactions between manufacturers and dealers, importers and dealers, and dealers and dealers. It prohibited over-the-counter sales of pistols or revolvers to people under the age of twenty-one and to those who were not residents of the state in which the sale was to be made, and it prohibited over-the-counter sales of rifles and shotguns to those under the age of eighteen. (In both cases, parents could buy the guns in question for under-age children.) It prohibited the importation of surplus military arms not suitable for sporting purposes and of all "destructive devices"—a catchall phrase for such heavy arms as bazookas, mortars, and siege guns, which were freely available to anyone who had the price—and, as Dodd's staff had found, thousands of youths and older paramilitary extremists had it. The bill required all firearms dealers to keep detailed records of their sales, which were to be available to the government, so that it could prosecute violators of the federal law and turn violators of local law over to local authorities. It raised the annual license fee for manufacturers of ordinary guns and ammunition (except shotgun ammunition) from twenty-five dollars to five hundred, and for manufacturers of destructive devices from twenty-five dollars to a thousand. Finally, it raised the annual license fee for gun-and-ammunition dealers from one dollar to a hundred dollars. (Under existing law, anyone who went to the nearest federal building, filled out a short application form, and paid his dollar was entitled to a dealer's license. Between fifty and sixty thousand people took advantage of this opportunity every year, though most of them were not legitimate dealers. The licenses enabled them to buy guns at wholesale prices and also rendered them exempt from local firearms laws.)

"The purpose of this measure is simple," said Attorney General Katzenbach, who was responsible for drafting the Administration bill. "It is merely to help states protect themselves against the unchecked flood of mail-order weapons to residents whose purposes might not be responsible, or even lawful." His statement was based on evidence uncovered by field investigators on the staff of the Subcommittee to Investigate Juvenile Delinquency. They had learned, for example, that of slightly more than four thousand guns shipped from two mail-order firms in Los Angeles to buyers in Chicago twenty-five per cent had gone to people with criminal records—an indication that the 1938 federal law was unenforceable. They had also learned that although Chicago law required a permit for a handgun, ninety-five per cent of those who had bought handguns by mail order did not have permits. A similar check made in the District of Columbia revealed that a quarter of the buyers of mail-order guns had criminal records, and, moreover, that in some precincts of the capital with high crime rates the figure rose to eighty per cent. Behind the provision prohibiting over-the-counter sales of handguns to non-residents was another study made by the subcommittee investigators, which showed how easily local gun laws were circumvented. In the District of Columbia, for instance, any prospective buyer of a pistol or a revolver was required by law to give his name and address to the seller and then wait for three days before picking up the gun; the waiting period gave the purchaser time to cool off if he was bent on an impulsive act, and it gave the police time to check on him and make sure that he wasn't an ex-convict or a mental patient. But a few miles away, in Chillum, Maryland, anyone could walk into a hardware or sporting-goods store, buy a pistol or a revolver, and walk out with it. As the staff investigators had learned, that was exactly what many Washington residents did; a check of the Apple Hardware Store in Chillum showed that fifty-eight per cent of all its handgun sales were made to people who lived in the District, and that forty per cent of the buyers had criminal records. Other spot checks and reports from police departments indicated that the situation was much the same elsewhere in the country. If S. 1592 was enacted, Katzenbach asserted, each state would have a far better chance of enforcing the laws on its books, and the states that had not bothered to pass gun laws because they could be so easily circumvented could now enact measures of this sort with some hope of making them stick.

If the Dodd bill had stirred up bitter strife within and around the National Rifle Association, the Administration's bill brought about an immediate truce among the disputants. The gun people again united behind the N.R.A., which, on April 9th, reasserted its leadership by sending a letter, signed by Orth, to all the Association's members (there were then about seven hundred thousand) and its eleven thousand affiliated clubs, which had four hundred thousand additional members. The letter criticized S. 1592 on nine grounds. According to an analysis prepared by the Treasury Department, which would have been responsible for administering the law, all nine were misleading, meaningless, or false. The N.R.A.'s arguments and the substance of the Treasury's rebuttals went as follows:

N.R.A.: "S. 1592, the latest bill, prohibits all mail-order sales to individuals and permits such sales only between licensed importers, manufacturers, and dealers. Thus, it places harsh and unreasonable restrictions upon law-abiding citizens who wish to order

sporting firearms (rifles and shotguns) by mail, especially those citizens who do not have convenient access to licensed dealers for over-the-counter sales."

TREASURY. The inconvenience would have been minimal, because the bill prohibited mail-order sales in interstate commerce only, and did not limit intrastate transactions in any fashion. Further, since large, and reputable, mail-order houses have outlets in each state, anyone who wanted to buy a gun advertised in one of their catalogues could get it from the branch outlet, either by mail or in person. If he wanted a gun from a mail-order concern that didn't have an outlet in his area—say, Abercrombie & Fitch—he could easily obtain the gun by writing to or visiting a dealer in his own state and ordering it through him. In addition to cutting down on gun sales to all comers by mail-order gunrunners, the bill created an incentive for local businessmen to set up their own dealerships, which would have given a small boost to local economies and would have given the states, for the first time, the means to control gun dealers within their jurisdictions.

N.R.A.: "This bill, if enacted, would give the Secretary of the Treasury, or his delegate, unlimited power to surround all sales of guns by dealers with arbitrary and burdensome regulations and restrictions."

TREASURY. The Secretary's power, like the power of anyone in the executive branch who is responsible for administering a law, is strictly limited—by the requirement that all implementing regulations must not exceed the bill itself, as indicated in the intent of Congress; by the strictures of the Administrative Procedure Act, which affords hearings to all interested parties before regulations are put into effect (an opportunity that the N.R.A. had "taken full advantage of" in the past); and by the legal right of anyone affected to take the issue to the courts.

N.R.A.: "Anyone engaged in the manufacture of ammunition would be required to have a thousand-dollar manufacturer's license. Apparently, this would apply to a club engaging in reloading for its members."

TREASURY. First, the fee for manufacturing any ammunition except ammunition to fit destructive devices was, as the bill made eminently clear, five hundred dollars. Second, reloading—that is, putting new shot in old shells—is done largely with shotgun ammunition, which was specifically, and clearly, excluded from the bill's coverage. And, third, a gun club that reloaded for its own members was "not to be construed to be a manufacturer for the purposes of this act."

N.R.A.: "If you transported your rifle or shotgun to another state for a lawful purpose, such as hunting, you would have to comply with burdensome restrictions and red tape . . ."

TREASURY. There were no restrictions in the bill pertaining to a person (other than a felon or a fugitive) travelling in interstate or foreign commerce and transporting his rifle or shotgun for a lawful purpose, such as hunting.

N.R.A.: "A dealer could not sell to a nonresident of his state. This provision, and the restrictions on transporting guns from one state to another, could be unduly restrictive on a great many people who live near state boundaries or those who must go into another state to shop."

TREASURY. As even a casual reading of the bill made clear, the provision applied only to handguns, which are rarely used in hunting.

N.R.A.: "A gun shipped for service repairs could only be shipped under the regulations of the Secretary of the Treasury, and then only for 'authorized' service. Again, burdensome restrictions [are] threatened."

TREASURY. There was no control whatever over guns shipped for repair within a state's borders. As for those shipped outside, the bill contained a specific exemption designed to permit individuals to ship rifles, shotguns, pistols, and revolvers to a licensed importer, manufacturer, or dealer for repair or service.

N.R.A.: "A dealer's license could be refused to an applicant if the Treasury believes that by reason of business experience, financial standing, or trade connections he is not likely to operate in compliance with the Act. What does this mean?"

TREASURY. This meant that the government hoped to keep dealerships out of the hands of those associated with, or reputed to be associated with, the underworld. Anyone who was refused a license would be granted a hearing, and also, if he desired it, a judicial review. This standard for the denial of licenses—for liquor dealerships, among others—had long since been upheld by the Supreme Court.

N.R.A.: "An importer could not bring in any new firearm unless the Secretary deemed that such importation 'would not be contrary to the public interest.' What does this mean?"

TREASURY. This meant that the government hoped to reduce sharply the number of guns imported into this country every year, which amounted to a million or so, the majority of which were surplus military weapons and handguns that were of inferior quality and often defective, and that were of no conceivable use to hunters or sportsmen. In any case, the bill specifically exempted guns that were "particularly suitable for lawful sporting purposes."

N.R.A.: "This bill could conceivably lead to administrative decisions imposing such a burden on the sale, possession, and use of firearms for legitimate purposes as to totally discourage, and thus to eliminate, the private ownership of all guns."

TREASURY. At most, the bill might inconvenice some people, but this was of little importance when weighed against the public interest.

When Orth was later asked about the misleading and downright inaccurate material in the N.R.A. letter, he said that it had been based on a study of the bill made by a committee of the Association's directors, including "two presiding superior-court judges and four prominent practicing attorneys," and that if the committee was "guilty of an error, it was not with any intent to mislead."

A few days later the N.R.A. letter was sent out, the firearms industry and some of its friends rolled up another heavy battery—the National Shooting Sports Foundation. Set up in 1961 to fight any and all gun-control legislation—or, as the magazine *Shooting Times* put it, "to educate the American public, to get across the *facts* about guns and shooting, and counter the Red-inspired propaganda 'scare' articles"—the Foundation had by 1965 acquired eighty-seven high-powered sponsors. Among them were gun manufacturers (Browning Arms, Colt Industries, Daisy, E. I. du Pont de Nemours, Savage Arms, High Standard, Smith & Wesson, O. F. Mossberg, Remington Arms, Sturm-Ruger, Winchester), gun dealers (Abercrombie & Fitch, the Buffalo Gun Center, Firearms International), gun and sports magazines (*Shooting Times, Field & Stream, Sports Afield, Trap & Field, Shooting Industry, Argosy, Guns & Ammo, Guns & Hunting, Gunsport, Gun World, Guns*), and assorted allies (the Amateur Trapshooting Association, the National Sporting Goods Association, the American Trophy & Award Co.). It also had a non-sponsoring ally, the National Police Officers Association of America, which in 1962 joined it in endorsing a resolution condemning firearms legislation. This action was later cited over and over by gun devotees as proof that law-enforcement officers supported their position. "The anti-gun forces make a heap of noise," an outdoor writer for the Arkansas *Democrat* observed. "They discount the fact that all major organizations of police and law enforcement officers in the nation have gone on record as opposing the Dodd bill." He could have had in mind only the National Police Officers Association. According to Carl Bakal, it had been founded in 1955 by a detective in the Chicago Police Department's "homicide-and-sex" unit, and was a semifraternal insurance-benefit organization without a single high-ranking police officer among its members, most of whom were from small towns. The reporter for the *Democrat*, like other members in the gun forces, also discounted the fact that the International Association of Chiefs of Police, the leading outfit of its kind, supported S. 1592, and that sixty-three of the police chiefs of the country's sixty-nine largest cities did, too.

In the process of educating the American public during the spring of 1965, the National Shooting Sports Foundation sent out thousands of copies of various bulletins to individuals and groups across the country. In one, addressed to sportsmen and sporting-goods dealers, it asserted, "A new bill has been entered in Congress which would severely restrict the sale and possession of sporting firearms and ammunition. It would make it difficult for any dealer in America to buy and sell sporting firearms and ammunition. If passed, the bill would mean virtual registration of firearms." "Virtual" soon came to mean "actual." Another bulletin, sent to all farm magazines, declared, "In many regions, 90% of the farm and ranch homes have one or more firearms. . . . A bill has been entered in the U.S. Senate which would allow the Secretary of the Treasury to register all firearms. The history of registration all over the world is that registration finally leads to confiscation." The last statement, which also became a popular rallying cry among gun owners, has never been supported by any evidence—possibly because the only countries in which registration of guns has led to the wholesale confiscation of guns have been dictatorships. In a bulletin to hardware and sporting goods magazines and associations, the N.S.S.F. warned that the bill would "work a hardship on every firearms dealer and distributor in America," whereas actually every retail firearms dealer would have been handed a sizable bonanza under the bill, since it would have eliminated mail-order sales to individuals but not to dealers.

Another bulletin went to outdoor writers, who, if they were not better informed about the bill, were more likely to have access to accurate information about it. This one stated, "Although the word 'registration' is not mentioned, the bill would give the Secretary of the Treasury the power to register all firearms if he so chose, with a central registration bureau in Washington." This bulletin, reinforcing the N.R.A. letter, sent scores of outdoor writers to their typewriters. M'Fadden Duffy, outdoor editor of the New Orleans *Times-Picayune*, wrote in his column, "Although the word 'registration' is not mentioned, the bill would give the Secretary of the Treasury the power to register all firearms if he so chose, and the power to establish a central registration bureau in Washington." John Wootters, of the Houston *Post*, described the situation this way: "Although the word 'registration' is not used in the bill, it would empower the Secretary of the Treasury to register all firearms." Jimmy Jordan, of the Pittsburgh *Post-Gazette*, called the bill's supporters in Congress "ill-informed salons [*sic*]" and notified his readers that it would force "each citizen to register any gun he happens to own." Others, apparently unimpressed by the N.S.S.F.'s misrepresentations of the bill, added some of their own; Grits Gresham, author of a column called "Bayou Browsing" in the Amite, Louisiana, *Tangi Talk*, wrote, "S. 1592 would very definitely give to the Secretary of the Treasury awesome power to govern all transactions of firearms and ammunition. He could insist on such severe and unreasonable requirements of identification, waiting period, finger-printing, photographing, and

reporting on the part of gun buyers and gun dealers that it would virtually end them. He could seize your guns and ammo if he thought that you 'intended' to use them for unlawful purposes."

By this time, Magnuson had agreed to let Dodd's Subcommittee to Investigate Juvenile Delinquency hold hearings on the Administration's bill as long as Dodd sent whatever came out of the hearings on to the Commerce Committee for its consideration. That Dodd was being allowed to conduct hearings on "his own bill" (actually, on both his and the Administration's bills) produced howls of indignation among the leaders of the gun fraternity, even though the practice has long been the rule rather than the exception in Congress. Announcement of the hearings also produced another batch of bulletins from the N.S.S.F.—these being sent to all outdoor writers and broadcasters in the home states of the subcommittee's members. Each bulletin began, "The future of hunting and shooting in America may depend on . . ." and then filled in the name of the subcommittee senator from the state in question. The claim that S. 1592 called for registration was included in all the bulletins except those sent to Hawaii, the home state of Senator Hiram Fong, who was one of the bill's supporters on the subcommittee; at that time, Hawaii was the only state in the Union that required the registration of all guns. For the people of Connecticut, Dodd's own state, the N.S.S.F. prepared a special bulletin, addressed to all daily and weekly newspapers. "Many sportsmen fear this bill would lead to the eventual confiscation of all firearms," the bulletin said without mentioning any cause of such a fear. "If so, the bill would also affect the economy of Connecticut—the leading state in the manufacture of sporting firearms." The bulletin went on to relate a homely history of the Connecticut firearms industry.

In still another special mailing, the Foundation offered to lend a hand to sportswriters across the country, saying, "In the event you decide to do a story on hunting, shooting, or firearms legislation, perhaps we can save you considerable time on research." Not all of those who saved time were sportswriters; the head of an outfit called Washington-Exclusive, which put out canned editorials as "an editor-saving service," included one on gun legislation that was based on N.S.S.F. bulletins. It is not known to what extent Richard Starnes, a top columnist for the Scripps-Howard chain, had been influenced by the N.S.S.F., the N.R.A., or his own imagination when he wrote an article on the gun bill for *Field & Stream*, which is an N.S.S.F. sponsor, and whose advertising revenue from gun and hunting-equipment manufacturers was reported to have come to around half a million dollars that year. "The anti-gun kooks insist they are not trying to disarm the United States," Starnes wrote, and continued, "This, as we are about to demonstrate, is nothing but a plain old garden variety of lie, and the fact that it is uttered in the strident accents of the right-thinker makes it no less so." Included in his demonstration were statements that the bill "flatly prohibits sale of firearms of any description through the mail to individuals;" that it "would give the Secretary of the Treasury, or anyone he delegated, unlimited power to impose any regulations he saw fit regarding retail sales by dealers to individuals;" and that "hunters taking guns from one state to another for hunting or any other lawful purpose would have to comply with regulations and restrictions as burdensome as any future gun-hating Treasury Secretary wanted to make them." Whatever Starnes' source of misinformation, his outlet for it was undoubtedly effective, for *Field & Stream* had a monthly circulation of a million and a half.

Late that April, another prominent outdoor writer, Don Carpenter, whose column "Outdoors" appears in the Washington *Daily News*, which has a circulation of more than two hundred thousand, wrote:

"American sportsmen are being shot at with their own tax dollars by Senator T. J. Dodd, who is trying to ram through Congress gun bill S. 1592. Dodd's subcommittee has an appropriation of roughly $220,000 in taxpayers' money for 1965, and he employs Carl Perian to write propaganda against guns for all public media; staff, paper and postage are paid for by suckers, the taxpayers. Charley Dickey, of Riverside, Conn., reveals this flagrant misuse of Federal funds to lobby a bill right in the halls of Congress. I wonder if Carl Perian is a registered lobbyist? Senator Dodd has harassed sportsmen for four years—his wings need clipping.

Another outdoor writer, Jim Falkner, of the Baton Rouge, Louisiana, *Advocate*, had an audience of only seventy thousand readers but a somewhat similar viewpoint:

"Senator Dodd's subcommittee has an appropriation for 1965 of about $220,000. Dodd has a publicity department run by a Carl Perian, a sociologist, for writing speeches, articles, press releases and other propaganda. [Dodd] doesn't have to pay for his staff, paper or stamps. All is paid for by the American taxpayers. . . . The American sportsman is in the ironic position of having his tax dollars turned against him."

It was true, as Carpenter reported, that Dickey was from Riverside, Connecticut. Carpenter did not report that Riverside was the home base of the N.S.F., of which Dickey was the executive director. In a press release that had been sent to outdoor writers before either Carpenter's or Falkner's column appeared, Dickey wrote:

"Senator Dodd's subcommitte has an appropriation for 1965 of roughly $220,000. Senator Dodd, in his harassment of sportsmen the past 4 years, has had similar amounts at his disposal. Senator Dodd has a publicity department run by Carl Perian, a sociologist, for writing speeches, articles, press releases and other propaganda. Senator Dodd does not have to pay for his staff, paper, or stamps. All of the above is paid for by the American taxpayer. The sportsman is in the ironic position of having his general tax dollars turned against him."

Perian was not head of Dodd's publicity department, for there was no publicity department. He was staff director of the subcommittee. As for Dodd's "flagrant misuse of federal funds to lobby a bill," it was a "misuse" that every committee on Capitol Hill is guilty of, because all of them use the taxpayers' money against the interests of some taxpayers. Perian wasn't registered as a lobbyist because he wasn't one. Dickey and Orth weren't registered as lobbyists, either. When Orth was asked why he didn't consider the N.R.A. a lobby, he answered, "It has nothing to do with monetary or personal profit. It is for the purpose only of the good of the United States." According to the N.R.A.'s operating report for 1965, its outlay that year on "legislative and public affairs" was $171,485.86, which was more than twice what it had spent before the Dodd bill was introduced. That figure did not include the salaries paid to officers who, like Orth, spent much of their time directly or indirectly opposing gun legislation, nor did it include the expenses that the *American Rifleman* incurred in printing sixty-six pages of editorial material on legislative matters that year, or the cost of running the magazine and the publicity department, both of which were largely directed at securing the Association's place as the leading spokesman, in Congress and out, of the country's gun owners. According to the subcommittee staff, if all these expenses were totted up they would come to more than two million dollars a year. That sum seems inflated, but, whatever the costs to the N.R.A., they were tax-exempt, which meant that the eighty per cent of the population that wanted strong gun laws was subsidizing the battle waged against it by the remaining twenty per cent. In some cases, those "being shot at with their own tax dollars," as Carpenter figuratively expressed it, were also being shot at literally.

For a time, it appeared that the N.R.A. and the N.S.S.F. had a corner on the misrepresentation of S. 1592, but before long a number of other operators began trading in the same commodity. One of the first of these was the American Sportsmen's Foundation, of Parlin, New Jersey, which, though it was a small outfit, billed itself as "a national organization for the promotion of shooting sports and wholesale gun legislation." On May 15th, *Shotgun News*, a bimonthly tabloid that billed itself as "the trading post for anything that shoots," ran a banner headline at the top of its usual front-page collection of want ads, asking its readers to "See Important Notice Page 4." The notice turned out to be a full-page advertisement inserted by the American Sportsmen's Foundation, stating, "Attention Sportsmen—Target Shooters—Arms Collectors—Firearms Dealers. This is to alert you to the most serious anti-firearms legislation ever proposed." It went on to list seven adverse provisions of S. 1592, all of which were falsified, and concluded by urging its members to write a million letters to the eight members of the subcommittee, four of whose names it got wrong.

Soon afterward, another comparatively small group moved in—spokesmen for some natural-resource-conservation and wildlife-preservation outfits, who were led by the National Wildlife Federation, representing some two million people, and the Wildlife Management Institute, representing some fifteen thousand. Although one might expect such people to be the first to want strong gun laws, they have long been among the last. One of their chief functions is to keep the wildlife population up high enough so that they can stake out hunting preserves and give hunters something to shoot at. The hunters repay them by spending seventy-two million dollars a year on hunting licenses and twenty-seven million dollars a year in federal excise taxes on guns and ammunition; almost all of this money is used to pay the salaries and underwrite the various projects of state game and conservation departments. On May 28, 1965, the National Wildlife Federation's weekly *Conservation Report* included a feature article with the title "Would Firearms Control Lead to Total Disarmament of Individuals?" The text replied to this question by saying that the Administration's witnesses at the hearings had given testimony that "apparently was based on the belief that the ultimate answer to crime prevention in this country is total disarmament of the public." The Wildlife Management Institute was less given to hedging. "The anti-firearms factions make no effort to mask their intention to disarm the American sportsman," it informed its members. "They call S. 1592 the first step." Conservation leaders around the country passed these remarks on, along with the more outright misrepresentations put out by the N.R.A. and the N.S.S.F., at hundreds of conservation-association meetings and gun-club get-togethers. The result was another round of articles by conservation writers, such as one by Earl Schaeffer, author of a column called "Conservation Close-Ups," in the Columbus, Ohio, *Booster*. Schaeffer took the opportunity, in his report on the annual fish fry of the Clintonville Conservation Club, to lace into S. 1592:

"This bill, while it does not mention registration, means just that. It means that all power, all regulation, all authority, and all ownership rights would be in the hands of one person—the Secretary of the Treasury who is under direct orders from the Presi-

dent. . . . It also definitely means that permission could be given or withheld for the purchase of any type of gun, owning it, transporting it in any way and this be left to the judgment of one person. . . . This is not for sportsmen only—it is of interest and should be the concern of all people who have become accustomed to the American way of life and who love that life. Believe me, if this bill should pass, that life will never be the same."

The agitation stirred up was so extreme that a number of state wildlife and conservation departments immediately produced and sent on to the subcommittee, resolutions and memorials officially opposing S. 1592 and stating, among other things, "This proposed legislation poses a direct threat to the continuation of this traditional form of outdoor recreation and calls for further infringement of the right of Americans to keep and bear arms as guaranteed by the Bill of Rights . . . [and] may lead to total gun registration followed by confiscation and the disarming of the sportsmen of this country" (Louisiana); "It has been shown (as in the case of the Sullivan Law in New York) that restrictive legislation will not prevent criminals from obtaining firearms" (Montana); "Guns don't kill people; people kill people" (Wyoming); "This bill must be viewed as the first fatal step toward registration and complete control of the acquisition, possession, and use for lawful pusposes of all firearms typical of a police state and completely un-American" (New Mexico); "Truly there exists a foul conspiracy to disarm the law-abiding American public" (Virginia). Because state and local conservation organizations ordinarily devote a large part of their newsletters to notes on what those who support them are doing—that is, to gun-club meetings, hunters' reports, gun collectors' awards, and the like—their publications are widely read, and in this case their attacks on the Administration's bill set off still another flood of communications to the subcommittee. One of these, from the Wabash Valley Gun Collectors' Association of Indiana, asked, "Are these bills in the best interest of the honest God-fearing American citizens who value the heritage of their Founding Fathers very highly of their right to keep and bear arms or, are these bills designed by bureaucrats and power-mad politicians for reasons best known to themselves?" Another, from the Sportsmen's Council of New York State, charged that enactment of S. 1592 would create "a substantial and prolonged increase in the rate of violent crime throughout the nation." A third, from the Boone and Crockett Club of New York City, stated that such a law "would be an inconvenience that would be resented."

Most of the people who own guns and frequently use them live on farms or in villages, towns, and small cities. The only newspapers most of them read are their local ones, many of which subsist, in part, on "news" items distributed free by various special-interest editorial services, such as the one the N.S.S.F. provided. In the spring and summer of 1965, hundreds of stories on the contents of S. 1592 appeared in the guise of straight news reports in small papers around the country. For example, the Cold Spring, New York, *News & Recorder* repeated the seven falsified provisions of the bill publicized by the American Sportsmen's Foundation and went on to say, "The present time is regarded as an ideal time for the sporting fraternity to rise up and protest vehemently against more governmental control." Other papers, such as the San Angelo, Texas, *Standard-Times* and the Great Barrington, Massachusetts, *Berkshire Courier*, printed stories quoting at extensive length, and without question, statements made by local gun sportsmen, gun collectors, and gun dealers who were repeating the charges made by the N.R.A. and the N.S.S.F. Other papers went further. One of them, the Gonzales, Louisiana, *Weekly*, ran a news article under the headline "MAIL ORDER GUN BUSINESS," which, except for the deletion of two brief sentences and one clause, was an exact replica of the N.R.A.'s April 9th letter, without quotation marks. And others went further still. For example, the Fort Dodge, Iowa, *Messenger & Chronicle*, in a news story headed "GUN BILL MAJOR THREAT," repeated the N.R.A. letter almost verbatim and, here and there, added some fabrications of its own to make the bill seem even worse. Then, in case any of their readers had missed the point, many of these papers filled their letters-to-the-editor columns with correspondence that again repeated verbatim the material sent out by the N.R.A. and the N.S.S.F.

Newspapers that helped spread this kind of word about the bill were not unduly energetic about correcting their errors. The Pulaski, Virginia, *Southwest Times*, for instance, published a couple of columns on S. 1592 by Jack Lovett, Jr., who totally misreported the bill's contents. A reader sent Lovett's article on to Senator Dodd and demanded an explanation. Dodd replied, "For your information, Mr. Lovett is in error and I consider his reporting to be irresponsible," and included with his reply a copy of the bill and some material explaining it. The reader passed all this on to the editor of the paper, Dan Rooker, who ran a half-page editorial on the subject, most of which consisted of a reply by Lovett to Dodd's charges. Accusing Dodd of "ruthlessness," Lovett wrote, "Every word I said in my two columns regarding S. 1592 was true and checked." His sources, he wrote, were the N.R.A. ("a fine, patriotic organization"), the N.S.S.F. (whose sponsors included firms that "certainly . . . would not be a party to sending out false and irresponsible information"), and the National Wildlife Federation (which "no one can truthfully call . . . irresponsible").

Dodd had no greater success when he confronted misinformed opponents face to face. During the hearings, he continually ran into the kind of intransigent disbelief that was revealed during a colloquy he had with a witness named Harry R. Woodward, who was director of the Colorado Game, Fish, and Parks Commission:

"Mr. WOODWARD. Colorado is a great hunting state, and this form of outdoor recreation represents a very tangible and important factor in its economy. Last fall, a hundred and fourteen thousand non-residents hunted in Colorado, paying three million, a hundred and seventeen thousand dollars for hunting licenses. This represents sixty-six per cent of all revenues derived from hunting and fifty per cent of total revenues realized by the Colorado game, fish, and parks department in 1964. Since this department is financed entirely by license revenues, fines, and taxes on sporting goods, anything that affects hunting or fishing, and especially hunting or fishing by non-residents, deals a body blow to this department's self-financing ability.

"Senator DODD. Can you point out anything in this bill that will restrict any hunter in Colorado paying his license from doing what he has been doing right along?

"Mr. WOODWARD. Senator, we are concerned with the question of interstate traffic and the permission of an individual to transport his firearms interstate.

"Senator DODD. That is what I am talking about. You point out to me anything in this bill which says he can't carry his shotgun or rifle into Colorado.

"Mr. WOODWARD. We are concerned here that the powers of the Secretary of the Treasury could be construed to the point that regulations, that his regulations, could make it difficult, if not impossible, to do this.

"Senator DODD. You are not serious about that? Are you saying that the Secretary of the Treasury could by regulation write into this legislation something that is not in it?

"Mr. WOODWARD. He could make it most difficult for a man to get a permit.

"Senator DODD. I can say only what the Secretary and the Attorney General said yesterday—that is preposterous. You heard him when you were here yesterday say that the applicant is protected by the Administrative Procedure Act, and that is what our courts are set up for. He has to apply the rule of reason that if the applicant doesn't agree with his judgment, he has an appeal; he has more than one. But, in any event, the most important thing I want to point out here is that you obviously haven't read the bill if you think that any word of that would prevent a sportsman from going to your state with a rifle and shotgun and go hunting. There is just no such thing in the bill.

"Mr. WOODWARD. Well, it is obvious, Senator, that we are anxious about this provision and how it might be implemented in terms of administrative procedure.

"Senator DODD. I know. But you can't implicate a case of legislation that way by regulation; your attorney general will tell you that. Go ahead.

"Mr. WOODWARD. Thank you, sir. To restrict, in any way, the non-resident's ability to bring firearms into Colorado with which to hunt, as S. 1592 proposes to do, poses a serious threat to the financing of this department's work.

"Senator DODD. I want to say again that there is no such restriction in the bill.

"Mr. WOODWARD. In addition, it poses a serious threat to the economy of the whole state of Colorado, for it proposes to tamper with a form of outdoor recreation that provides nearly one hundred and fifty million dollars annually to Colorado's economy, spread out over every county, community, municipality, and hamlet in the state. This is an economic factor that no state can afford to have jeopardized. And it is an economic factor that receives the majority of its stimulus from the non-resident big-game hunter and more specifically the non-resident elk hunter. Stringent restrictions on transporting hunting rifles into Colorado by non-resident big-game hunters would seriously threaten this source of income to Colorado.

"Senator DODD. There is no restriction in this bill. I want this record to be clear on that. There is just no restriction on transporting a hunting rifle into Colorado. I don't know where you got this information from. But if you take the time to read this bill, you would agree with me. There is no such language in the bill.

"Mr. WOODWARD. I am happy to have you assure us of that, Senator.

"Senator DODD. All you have to do is read it. I think you have been reading some of this propaganda. Go ahead.

"Mr. WOODWARD. Economics aside, the restrictions that would cause Colorado to lose its non-resident hunter would seriously impair the game, fish, and parks department's ability to manage its game-animals and birds. The non-resident is a major asset to a state's program for managing its game.

"Senator DODD. Let me interrupt you to say that there is no restriction; the hunter-sportsman can bring his guns in your state. The only restriction you have on him will be your own state law under this bill.

"Mr. WOODWARD. That is reassuring, Senator. I will move on. I realize that time is of the essence.

"Senator DODD. I don't want you to think that I am aggressive about it, but we have been putting up with this information for a long time, and it shocks me that a commissioner of fish and game in Colorado should be thinking that. There is just no such thing in the bill.

"Mr. WOODWARD. Senator, this hunting is, of course, our lifeblood, and we are going to be extremely watchful of all these measures.

"Senator DODD. But lifeblood is not by falsehood."

When Woodward moved on, it was to say

that he objected, in addition, to there being "no limitations written into the legislation that would place any curbs whatever on the regulatory power over firearms to be exercised by the Secretary of the Treasury or his agent."

Once again, Dodd had a try at setting him right: "I would say in answer to that that there are limitations on the regulatory power. We have the Administrative Procedure Act, as I said earlier, and we have the courts. And here again the propaganda has been outrageous about this. We have just the same protection with respect to regulation under this law as you have under every other law of the United States, no less, just as much."

Woodward nodded, and said, "Unlimited power of this nature is inherent only in a dictatorship form of government, never historically in a government that is 'of the people.'"

A little later, the witness got around to another favorite argument, which led to the following exchange:

"Mr. WOODWARD. S. 1592 would infringe on the explicit Constitutional right of the nation's citizens to bear arms. It is our contention that this Constitutional guarantee, provided in the Bill of Rights, was conceived by those who wrote and signed this document, which is everything to all citizens of this country, to guarantee each person the right to bear arms in defense of his liberty and for peaceful pursuits. Any infringement on that right would be met, quickly and with determination, by serious legal challenge.

"Senator DODD. Are you a lawyer, Mr. Woodward?

"Mr. WOODWARD. No, I am not.

"Senator DODD. Have you consulted competent lawyers as to the Constitutionality of this bill?

"Mr. WOODWARD. I haven't at this stage.

"Senator DODD. You have not?

"Mr. WOODWARD. I am sure that we would.

"Senator DODD. I should think you would have done so before you made this statement. I don't think you really know anything about the Constitutional aspects of it, do you?

"Mr. WOODWARD. No. I am concerned about the Constitutional aspects of it.

"Senator DODD. Being concerned about it is something else. Are you in a position to give us advice on the Constitutionality of this bill?

"Mr. WOODWARD. No. I have no legal training.

"Senator DODD. You didn't hear the Attorney General, what he said yesterday about it?

"Mr. WOODWARD. No.

"Senator DODD. Have you read the cases of the Supreme Court, sir?

"Mr. WOODWARD. No, I haven't."

By one recent count, there are in this country fifteen magazines devoted entirely to firearms. The *American Rifleman* is the most widely distributed, but the others have a combined circulation that is twice as large. The leader among these is *Guns & Ammo*, with average monthly sales of close to two hundred thousand copies. From the time it was founded, in 1958, *Guns & Ammo* had built up its circulation in part by periodically bombarding its readers with threats of impending gun legislation, and it had continually warned them that the price of firearms freedom was eternal political vigilance. As the magazine saw it, gun owners faced an uphill fight, because, as it told its readers in 1960, "every do-gooder, pacifist, subversive, pinko, traitor, and gangster misrepresents them." This theme was a favorite at the magazine. "For the most part, the anti-gun tirades have been insidious half-truths, downright lies, with a goodly measure of slander thrown in," Thomas J. Siatos, the publisher and editorial director, wrote in an editorial shortly after S. 1592 was introduced. "We have seen some of our own editorial material completely twisted and taken out of context and used as an illustration of the 'irresponsibility of this country's shooters.' We don't deny it hurts." More recently, the magazine observed editorially that "the gun owners of this country are the subject of one of the most vicious propaganda campaigns ever." No one could have agreed more wholeheartedly with this assessment than the leaders of the movement to enact a gun bill. In their view, *Guns & Ammo* had misled more people more often than any other outlet in the entire campaign. "*Guns & Ammo* has been to truth as guns are to life," one of them said not long ago, and added, "Or maybe I should say, 'Magazines don't lie to people; editors and writers lie to people.'" The editors and writers of *Guns & Ammo* were apparently unprepared for the introduction of S. 1592, for it wasn't until summer that they joined the battle against it. When they did, they made up for lost time. In the July issue, Siatos published an article called "The Real Facts Behind S. 1592," which stated at the outset, If you, as a collector, hunter, target shooter, gun dealer, gunsmith, or small manufacturer wish to lose your rights to own guns, to go hunting, target shoot, deal in firearms, read no further. This bill will ultimately confiscate your guns, make it impossible for you to hunt or stay in business." For those who read further, there was a section-by-section analysis of the bill, preceded by the admonition "It is time consuming, but if you love your guns or want to stay in business, you had better take the time." Almost nothing in the analysis—not even the letters and numbers identifying the sections—was correct. Of the thirty-odd points made, a few of the more blatant distortions were that if S. 1592 was enacted there would be "no more mail order of firearms of any type;" that collectors of antique guns living in states with strict firearms laws would have to take out licenses, which "will probably not be granted . . . and your guns will be confiscated;" that it would be "illegal for any dealer to sell a firearm except to a resident of his state;" that all gun club reloading would require a $500 or $1000 license and "if for any reason they do not like your looks, your politics, your religion, or anything else, you may not be allowed a license in the first place;" that there would "be no more fine foreign sporting guns of any type;" and that the bill constituted "an open demand on the state, cities, counties to impose the true restrictive legislation which, summed up in a few brief words, is registration, then confiscation." When Siatos was asked later about the misrepresentations that the article contained, he replied, "All I can say is this is what we call editorializing."

Siatos was never called upon to characterize the magazine's actual editorials. A typical one, which appeared the following month, concluded, "Summing up, no matter what the proponents may whine in support of restrictive firearms legislation, no matter how they may lie and connive, manipulate and manage news, their efforts can have but only one ultimate result—no firearms in the hands of our citizenry." Although the editors of *Guns & Ammo* often found the language a slippery business, they never entirely lost their hold on it, as some of their competitors occasionally did—for example, *Guns & Game*, whose editorial writer once proclaimed, "It's up to us to convince every legislator, everywhere, that we mean exactly what we say. This means that gun owners, gun clubs, and sportsmen's groups must begin giving active, open support to the avowed enemies of the people's right to bear arms." When it came to vituperation, though, *Guns & Ammo* had few rivals. In that same August issue, the editorial complained about "the wishy-washy legislators and milk-sop news-disseminating media which have stuffed down our throats the kind of insulting drivel we have been subjected to the past year and a half," and added, "It's time we throw up." In that issue, too, the magazine admonished its readers, "In everything we do for this cause, we must approach it with dignity, avoiding any language or intemperate statements which might cause more harm than good."

As any demagogue knows, once a band of followers has been recruited and stirred up, it has to be kept stirred up or its members will lose interest and drift away. *Guns & Ammo* kept its readers stirred up by continuing to print scare editorials and articles about S. 1592, and also by giving its followers specific tasks. In an article entitled "Operation Gun-Law '65," the magazine reproduced a model anti-gun-law advertisement, which, it stated, had been "specifically designed by experts on firearms legislation and by people who know how to persuade readers to *act*," and which, it went on, could be placed "at nominal cost" in local newspapers. A banner headline at the top of the advertisement asked, "Are you a killer?" and the text below answered, "Some lawmakers think so. That is, if you own a gun. Or import, sell, repair, or collect firearms of any size, shape, or caliber. In fact, these *few* lawmakers mistrust you so completely that their anti-gun bill now pending in Congress would ultimately deny you the right to own or buy a gun ever again." The magazine also presented a two-minute script that readers were asked to have recorded by the telephone company (preferably in a woman's voice), so that when a certain number was dialed the record would be played back. "You have probably been aware of the biased anti-gun news coverage," the script began, and it went on, "Buried in the text of the Dodd bill are provisions which would empower the Secretary of the Treasury or his agent to prevent the purchase (or possibly confiscate) guns used for hunting, target shooting, collecting, or other legitimate pursuits." In addition, the magazine began pushing a "promotional kit," consisting of a lapel pin, an embroidered cloth emblem, and five bumper stickers, and selling for two dollars and a half. Each item in the kit was emblazoned at the top with the legend "Guns & Ammo Magazine" and, below that, "Support Your Right to Keep and Bear Arms." Just what it was promoting most was not clear. The magazine urged its readers to buy promotional kits for themselves and their acquaintances, to read *Guns & Ammo* for news of the latest developments on the gun-bill front, to renew their subscriptions to *Guns & Ammo* in order to stay abreast of the issues, and to give their friend subscriptions to *Guns & Ammo*.

The sole purpose of the entire campaign of deception was to persuade all those in the country who owned guns and wanted to keep them that their only hope lay in making their total opposition to S. 1592 known to their lawmakers—preferably in writing. The N.R.A. letter of April 9th concluded by exhorting all members of the Association and their friends to let the President and the Congress know how they felt. "Write now, or it may soon be too late," Orth warned. To make the task easier, he included a page-long list of instructions, headed "How to Write Your Letter" and giving such advice as "Do not send the enclosed letter to your representative," "Do not doubt for one second the effectiveness of your one voice. Something you say may be the one thing to change an opinion," and "Do not leave this to someone else to do. If the battle is lost, it will be your loss and that of all who follow you." The N.S.S.F. invariably included a plea of this sort in its bulletins, too: "It is imperative that you write the President and express your opinion on S. 1592 and ask for public hearings on S. 1592. You should also write the U.S. representatives and senators from your state. . . . *Letters from you and your friends are important!*" And *Guns & Ammo* pounded away at the need for letters several times in each issue. "Nothing impresses an elected lawmaker as much as a massive amount of mail from people who vote in his district," it told its readers in

August. "It is the one *proven* way to persuade a legislator to act."

During the month preceding the campaign set off by the N.R.A., the White House received fifty letters on S. 1592, divided just about equally pro and con. During the following month, it received twelve thousand letters, all but a few opposing the bill. Within two weeks after Orth alerted his followers, the Subcommittee to Investigate Juvenile Delinquency got fourteen hundred letters, forty-seven of them favoring the bill, and the Commerce Committee got over two thousand, four of them favoring it. When the N.S.S.F., the conservationists, the small-town newspapers, and the gun magazines entered the campaign, the mail stepped up so sharply that during the whole spring and summer of 1965 congressional offices were hard put to it to answer it even with form letters and automatic typewriters. "I have received many more letters on this question than any other so far this year," Senator Roman L. Hruska, Republican of Nebraska, said that May. "By actual count, only three letters supporting the bill have been received so far out of more than three thousand." Over the years, Hruska had led so many fights for special-interest groups, including the fight against the earlier gun bill, that he had become known as the Senate's most fearless defender of the strong—a record that prompted H. L. Hunt, the Texas billionaire and *Ur*-rightwinger, at about that time to name Hruska as his choice for the Presidency. This prompted some observers to question Hruska's figures, but, as it turned out, other senators reported similar responses. "I have received an enormous amount of mail, really enormous, almost unbelievable . . . expressing opposition to this bill," announced another Republican, Senator Jacob Javits, of New York, who supported the bill. And the situation across the aisle was the same. "I can recall no issue, either international or domestic, in my tenure in the Senate that has aroused the people of the state of Wyoming as this one," said Senator Gale McGee, who opposed the bill. In most Senate offices, it was reported, mail on S. 1592 was running far heavier than it had in recent years on any other issue—even the Medicare bill, which had been a matter of intense controversy, in Congress and out, for a generation, or the war in Vietnam. And, unlike the mail on these two issues, almost all the letters on S. 1592 opposed it. To those who were involved in the day-to-day struggle to push a workable gun bill through, the overwhelming opposition was as saddening as it was frustrating. "These sportsmen are mostly ordinary, decent fellows," William Mooney, Jr., a field investigator on the subcommittee staff, remarked at one point. "They have no idea that they have been intentionally misled for someone else's personal gain, and that they are indirectly responsible for thousands and thousands of unnecessary deaths and injuries every year. If we could only get the truth across to them, they'd back us all the way."

Though many senators mentioned the number of letters they had received on the gun bill, few of them said anything about what the letters were like. In all probability, this was because no senator who does his job has time to read the mail from constituents—unless they are personal friends or notably influential citizens—and it appears that not many senators have the inclination to. "I tried it for a time when I first came here," one of them remarked not long ago. "I nearly went into another line of work." If he had read his mail on the gun bill, he very likely would have. Ordinary and decent as the grass-roots members of the gun lobby may be, they include a disproportionate number of people who become highly intemperate, or worse, when any kind of gun legislation comes up. Since members of the Senate whose aides had told them about this tendency were unlikely to bring it up, and thereby reflect on their constituents' manners, the subject was left to a couple of outsiders who made statements before the subcommittee in the course of its hearings that year. One of them was Leonard S. Blondes, a member of the Maryland Assembly, who had introduced a bill there some years earlier to require a three-day waiting period between the purchase and the delivery of a hand-gun. Blondes thought that he had the support of the N.R.A., which had helped him draft the bill, but, as it turned out, the N.R.A. sent a special bulletin to all its members and clubs in Maryland telling them about the bill and urging them to get in touch with their assemblymen and express their views. (In the case of unobjectionable proposals like Blondes', the Association seldom advised its members to oppose them, preferring instead to suggest that they "get in touch with" or "make their views known to" the lawmakers involved, which added up to the same thing.) The assemblyman who was got in touch with the most was Blondes, and he testified that he was "deluged with letters, telegrams, and telephone calls in opposition," many of which were "ugly, obscene, and threatening to my wife and children." The second outsider was Rabbi Harold P. Smith, chairman of the legislative committee of the Rabbinical Council of America, who reported to the subcommittee that after he had written several letters to newspapers stating that the Council supported S. 1592 he began getting "fury-saturated letters" that amounted to "a stream of invective." Responses of this sort were clearly no news to the N.R.A., which always asked its members to write "courteous" letters, or to the N.S.S.F., which urged recipients of its bulletins to "avoid abuse," or to *Guns & Ammo*, which, at one time or another, called on its readers to write letters that were "calm," "rational," "sensible," "intelligent," and, finally, "sane."

An examination of some four thousand letters received by several members of the Senate Subcommittee to Investigate Juvenile Delinquency revealed that many of the opponents of S. 1592, or any other gun bill, did not heed the advice. The two following letters—from men in Indiana and New York, respectively—fairly represent about ten per cent of all those received (and perhaps more than fairly, since they, unlike many others, are printable):

"The news paper statement that you crack pot senators were passing your illegal and contemptible gun Laws whether we like the results or not sounds just like crooked cheap two-bit politicians. Particularly one who's state is loaded with gangsters and hoodlums. We all know the number of gang murders you've enjoyed in your state. We wonder why these gangsters have such a haven and protection as they enjoy. Got any ideas? Rifle Association members uphold the law, not violate the law. We are not about to surrender our firearms. Not to you or to your appointed Gestapo. I'll kill anyone who tries to take away my gun.

"I wonder if you scum really know anything about what your talking about or if your just yelling as a smoke screen to cover up some of the dirty work in Washington. The trouble with you scum in office you shirk your jobs and pass it on to others to do so it doesn't get done. I often wonder if you really want to stop crime or if you would rather keep it going just to get the funds that go with it."

Another group, representing perhaps two or three per cent of the correspondents, had clearly gone beyond the point of anger, like a man in Georgia who wrote a fifteen-page letter, part of which went:

"Senator Dodd and Drew Pearson are partners in crime, not enemies, and both are multimillionaires. Both made their millions selling British Fabian ideas and merchandise in this country. They got over a million dollars apiece for selling millions of dollars worth of inferior quality guns made in Communist countries, for the red British Fabian bosses, to the American armed forces."

And like a woman living on upper Fifth Avenue who remarked that she couldn't understand the support for the bill, and added:

"It seems a bit odd because with the Jews so powerful in the U.S. what they did to the Arabs could be done to the American people."

A far larger group demanded that the government, and particularly the Supreme Court, "stop coddling criminals." Many of the letter writers in this group urged passage of the Casey bill, and several went further, among them a man in Massachusetts who wrote:

"A society that attempts to legislate against the gun is a sick society. Obviously the solution is to legislate against the man. Anyone committing a crime of any kind with a gun should be given a mandatory death penalty."

But excerpts from the bulk of the letters—upward of eighty per cent, including many in the categories already listed—indicate how thoroughly the leaders of the gun fraternity had done their job:

"It is your sworn duty to uphold the Constitution. Preserve our sacred right to keep and bear arms. Oppose the Dodd bill. Don't take our guns from us. They are just for target shooting and hunting. Vote against S. 1592."

"I am against the registration of rifles and shotguns. History shows that registration leads to confiscation."

"Please send me a copy of S. 1592 so I can see what's in it. May I urge you to vote against such restrictive measures."

"I understand hunting guns will be confiscated. I am against that and anybody who is for it. Vote no on S. 1592."

"We have seen articles on the LBJ-Dodd bill and advertisements stating that it is a bill to deprive the people of the right to own firearms. Please, please, oppose it."

"Do not pass anti-gun bill S. 1592! We enjoy our hunting and sportsmanship."

"Register Communists, not firearms!"

"I understand that Johnson and the Commies want to pick up our firearms. Don't let them do it. Vote against S. 1592."

"The notorious Sullivan law has never worked, why should Dodd's vicious bill. Vote no.

"S. 1592 will just disarm the law-abiding citizen and not affect the criminal."

"I want to protect my home and loved ones. Stop the Dodd bill."

"The Dodd bill will disarm the people and make them an easy prey to the enemy. Stop S. 1592, the Communist plot."

"Guns don't kill people; people kill people."

Some writers were apparently so lost in the gun lobby's smokescreen that they endorsed what the N.R.A. feared the most:

"The Dodd bill is too strong. Why not just require that every gun owner have a permit for each gun?"

"I am opposed to any gun law other than the registration of all firearms. No on S. 1592."

Difficult as it may be to believe that any senator would be influenced by mail of this sort, the fact that many voters are vicious, nutty, or misguided does not alter the fact that they can vote. And if millions of voters support or oppose a measure for the wrong reasons, they are still millions of voters. "Sometimes large groups of constituents can be ignored, but sometimes they can't," the administrative assistant to a senator on the subcommittee remarked not long ago. "What we try to determine first about our mail on a given issue is whether the writers are

organized. If most of the mail comes down on one side of an argument and makes the same points, valid or not, that's one sign that an organization is behind it all. Another sign is if many of the writers refer to the bill by its number. Newspapers rarely mention bill numbers in news stories, so if a letter does we can be pretty sure that someone put the correspondent up to writing it. For example, we got a lot of flak when the boss supported the consular treaty with Russia. The mail against it was very, very heavy. But the letters were not strikingly similar, few of the writers mentioned the treaty bill by number, and we knew from experience that the total of letters from rightwingers, who were naturally the chief opponents, practically equalled the total of right-wingers. All this made it possible for the boss to support the bill. However, the mail on the gun bill has been a different story altogether. It has been immense in number and obviously coordinated. Besides these factors, we have reason to believe, again from experience, that for every hunter or gun sportsman who has written us there are from fifty to a hundred others who feel the same way but haven't got around to speaking out. So, to see what would happen to us the next time Election Day rolled around if we supported the bill, all we had to do was multiply the number of letters against the bill by fifty or a hundred, because these gun people are the kind of people who never forget. In 1965 alone, we got over five thousand letters opposing S. 1592—or what the writers thought was S. 1592. My boss won by a comfortable margin last time, but I can't imagine that he would intentionally toss a quarter to a half million votes into his opponent's lap next time."

The blizzard of letters that swept through the halls of Congress that year—some say it was the greatest in American political history—prevented the first session of the do-almost-everything Eighty-ninth Congress from doing anything about S. 1592. That August, the bill's supporters were temporarily encouraged when the American Bar Association, at its annual convention, rejected a plea made before it by Orth and endorsed S. 1592 by a vote of a hundred and eight-four to twenty-six. And when the riots broke out in Watts and Cicero later that month, interest in gun legislation flickered again. In the end, though, it appeared that the people who favored strong gun controls as a means of keeping guns out of the hands of Negro rioters were greatly outnumbered by the people who opposed gun controls as a means of keeping guns in the hands of whites living near ghetto areas. "In the final analysis," *Guns & Ammo* noted that fall, "rampaging hoodlumism such as experienced in Los Angeles, Chicago, and other major cities may yet be a blessing in disguise which will do a great deal to preserve our precious right to keep and bear arms." Figures that were gathered later indicated that the magazine's estimate of the riots' effect was probably right. Of the four thousand guns bought in one day in and around Watts during the riot there, only thirty-seven were bought by residents of Watts itself.

Dodd, who was still hoping that some action might be taken, began pressing Hruska, the ranking Republican on the subcommittee, to agree to a date for a vote on the bill—a matter of senatorial courtesy rather than anything required by the rules. Hruska, for his part, displayed little concern for the legislative amenities; he stalled for weeks, and then suggested a date that happened to be two days after Congress was expected to adjourn. Apparently unaware of this fact, Dodd agreed. Congress adjourned on schedule, and the bill was postponed until the next session. Even if the bill had been pried out of the subcommittee—and an informal tally indicated that it would have been, on a full vote—it would have faced a series of other traps: the subcommittee's parent body, the Judiciary Committee, which was controlled by conservatives; the Commerce Committee, most of whose members were from hunting states; the Senate itself, with a similar imbalance; and, finally, the House, which ordinarily suffers from excessive timidity when it is confronted by powerful special-interest groups.

The second session of the Eighty-ninth Congress convened in January, 1966, and in March Senator Dodd amended his bill to meet generally agreed upon valid criticisms made of it during the previous year's hearings, and also to make it conform more closely to the Administration's measure. In the end, the two bills came out much alike, the principal differences being that Dodd's bill retained an affidavit procedure for the mail-order purchase of rifles and shotguns in interstate commerce instead of the outright prohibition of their sale to individuals via mail order; that it raised the license fee for dealers from one dollar to twenty-five dollars instead of to one hundred dollars, as the Administration's measure required; and that it exempted from control the antique arms so popular with collectors. This time, Dodd didn't wait for Hruska to settle on a date for a vote but brought the bill up himself, on March 22nd, and got it through the subcommittee by a vote of six to three. (The number of members on the subcommittee had recently been raised from eight to nine, Senator Edward M. Kennedy, Democrat of Massachusetts, being the ninth.) The victory was a modest one, for now the bill was in the hands of the full Judiciary Committee's arch-conservative chairman, Senator James O. Eastland, of Mississippi—the master among chairmen when it came to keeping legislation in his committee rather than getting it out. He kept S. 1592 there throughout that spring with little difficulty, and most of the summer as well. Then, on August 1st, in Austin, Texas, a student named Charles Whitman lugged an arsenal of weapons to the top of a tower at the University of Texas and proceeded to kill sixteen people and wound thirty-three more. At once, public demand for strict gun laws rose. Although opponents of the two gun bills before the Senate were quite right when they pointed out that nothing in either measure would have hindered Whitman from going on his homicidal spree, the bill's proponents ignored the fact and cited the incident as further evidence of an urgent need for new gun laws. President Johnson said that it was high time to put a stop to the unnecessary toll of human life taken at gunpoint (at the time, the annual civilian casualties from gunfire at home were three and a half times as great as the casualties among American soldiers in Vietnam, though this was a statistic that he did not cite), and Senator Dodd once again called for immediate action on S. 14 or S. 1592.

The gun owners responded quickly, vociferously, and in far greater numbers than before. On August 3d, Scripps-Howard papers around the country ran an article discussing the slaughter in Austin and reporting on the status of gun legislation, under the headline "Gun Control Bill Up To Eastland." Within a few weeks, Eastland's office received over three thousand letters, telegrams, and postcards urging the Senator to sit tight. At the same time, the gun magazines went back into action. "Once again the millions of legitimate, law-abiding citizens across the nation are compelled to try to reason with hysteria, counter half-truths with logic, and stand up to overwhelming opposition from the comparatively few rabid anti-firearms proponents who control most of the nation's press, radio, and television," *Guns & Ammo* stated. "We can be certain that elements such as the Communists are sure to make an issue of this again—and would rejoice to see our nation disarmed." The magazine did not explain why, if that was so, some Communists persisted in dumping their surplus military weapons here. In the course of the hearings the year before, Dodd had brought this fact out while questioning Robert N. Margrave, director of the State Department's Office of Munitions Control. "You know we have warehouses all across this country filled with small-arms ammunition bearing the label 'Made in Russia.' We know all about this. You must know about it, too," Dodd said. Margrave replied, "Yes, indeed, sir." Later evidence revealed that some of the ammunition was for tens of thousands of Tokarevs, semiautomatic rifles, made in the Soviet Union, that had been shipped to the United States, via other Iron Curtain countries, since the end of the Second World War. The largest mail-order firearms concern in the country, Interarmco, which has been said to have more weapons in its warehouses, in Alexandria, Virginia, than all those possessed by the United States military forces, imported forty-five hundred Tokarevs in 1962 alone. A number of these were subsequently found to have been sold to members of the Ku Klux Klan in McComb, Mississippi, and Selma, Alabama. Almost none of them have been traced to hunters, who are not disposed to use semi-automatic weapons, however intent they may be upon getting their quotas. ("Let us sustain abiding faith in the Second Amendment of the Constitution," Interarmco appealed in an advertisement opposing S. 1592. "Let us also not forget what took the Minutemen from Lexington and Concord to Yorktown and the Marines from Guadalcanal to the top of Mount Surabachi on a place called Iwo Jima.") Nor was the arms trade with the Communists restricted to Tokarevs and Interarmco. The Service Armament Company, of Ridgefield, New Jersey, one of the many mail-order firms that have sold Russian weapons, advertised the "M.K.V.D. secret police pistol" for sale at forty-nine dollars and ninety-five cents in its catalogue, saying, "Fantastic Russian Secret Police Agents used these rare revolvers to terrify and kill enemies of the State. These tools could tell of many a bloody tale when being used during the purges of the 1930s. Guns have original Bolshevick markings which identify them as to their ownership." The firm also offered a 120-mm. "colossal Russian siege morter still used by the Red Army" for sixty-nine dollars and ninety-five cents. Some observers wondered whether the rate at which Americans were currently shooting one another down hadn't made disarming them unnecessary. And others pointed out that Americans' resort to the use of guns to commit mass murders was a definite plus, politically speaking, for enemies abroad. As Karl E. Meyer, a columnist for the Washington *Post*, wrote from London, "Not all the gold in Moscow and Peking could have purchased more wretched publicity for the United States than Charles Whitman's salvo of bullets in Austin."

At the end of the summer, S. 14 and S. 1592 were still locked fast in the Judiciary Committee, and their supporters saw little chance of dislodging them. It was rumored that although most of the committee's members didn't want to incur the gun lobby's wrath by approving a bill, neither did they want to be charged with cowardice by their constituents, a majority of whom favored the bills. Apprehensive that the latter sentiment might prevail, Hruska, at the end of August, submitted a new bill, which was much like the one that Dodd had introduced before the Kennedy assassination. This move produced a countermove, led by Senator Edward Kennedy, who proposed that the new measure be voted out at once. Hruska was puzzled by this, until Kennedy announced that he intended to amend the Hruska bill on the Senate floor by replacing it with S. 1592. On September 22nd, the committee voted out the Hruska bill, by a vote of ten to five. Gun owners were alerted at once and asked to appeal to all senators not to amend

the measure. Once again, a storm of mail hit Congress. This time, however, pressure wasn't necessary, for Hruska put off filing the report on the bill until October 19th, and three days later the Eighty-ninth Congress adjourned. Since no bill survives the Congress in which it is introduced, all three measures expired with adjournment.

To prepare for the next round, in the coming Congress, the N.R.A. and its allies continued to mislead their followers, and their followers continued to make their misguided views known to their representatives. That December, the *American Rifleman* ran an editorial entitled "The Big Half-Truth and Smear by Association." The smear turned out to be "a calculated campaign" to associate men and their guns with "a sinister suggestion of illegality," and the big half-truth was that "even distorted facts are now being misquoted by firearms critics." The best example the magazine could come up with was the use made of a recent poll showing that a majority of the people wanted a gun law. The poll itself, the magazine charged, had been "whipped up in part, no doubt, by the tidal wave of phony publicity," and the editorial went on to point out that those who cited the poll "neglected to say that the demand was 5% *less* than in a previous survey 18 months earlier." The editorial neglected to say that at this lower point the demand stood at seventy-three per cent of those polled, and that what they demanded was not a modest law like S. 1592 but a strict one, requiring the registration of all firearms; the magazine also neglected to say that only twelve per cent of those questioned in the later poll wanted no new gun laws.

Next to the ability to deluge Congress with mail, probably the best thing the leaders of the gun fraternity had going for them was the standing of their chief opponent. During his tenure in the Senate, Dodd had not been highly regarded by his colleagues. For one thing, he was something of a loner, and a rather unpredictable loner at that; for another, he often avoided the hard day-to-day work on committees, including the one of which he was chairman (the surest way for a senator to earn the disrespect of his colleagues); and, finally, he had little of the dogged aggressiveness that is needed to get any kind of controversial legislation moving These faults had made Dodd a poor leader inside the Senate, and as 1967 began the columnist Drew Pearson was making him a poor one outside it. By the time the Ninetieth Congress convened and Dodd once again submitted his bill (now numbered S. 1) and the Administration's bill (now numbered S. 1—Amendment 90), Pearson had been accusing Dodd of malfeasance for nearly a year, and the Senate Select Committee on Standards and Conduct had been investigating the charges for several months. Dodd's sponsorship of the gun bill was said to be an acute embarrassment to the White House, but the President was known to be personally fond of him and to value loyalty above all other political virtues. In any event, it was too late to get another sponsor, for in the public mind Dodd's name was ineradicably linked with gun legislation. The increasing burden of Dodd's sponsorship did little to increase the hopes of the bill's supporters in the Senate. Nor did they unequivocally welcome the report by the President's Crime Commission, released in February, 1967, which strongly recommended registration of all guns and a federal Sullivan Law within five years if the states failed to pass such measures themselves. This confirmed the gun lobby's worst fears that its "first-step" theory had been right all along, and aroused its determined opposition to all firearms legislation, including the Hruska bill, which had also been reintroduced. "It's as dangerous politically being for the Hruska bill as it is being for the President's bill. These wildeyed types just don't want any bill at all," Senator Birch Bayh, Democrat of Indiana, who was a member of the subcommittee, remarked. Another reason that hopes for the enactment of a gun law were fading was that many of the liberals who had been flung into Congress on President Johnson's coattails in 1964 were flung out again in the off-year elections of 1966, which put the old coalition of conservative Northern Republicans and Southern Democrats back in control.

At the beginning of April, 1967, ten thousand members of the National Rifle Association gathered in the capital for their annual convention. For the most part, the convention was an open-and-shut affair—open to critics of gun-control legislation and shut to its defenders. Senator Edward Kennedy, who had begun to take over the leadership of the forces pushing for a gun law, was one of the first defenders to find this out. When he asked for an opportunity to address the general assembly of the N.R.A., his request was refused, on the ground that the meeting had been cancelled; instead, he was invited to address a closed session of the seventy-five man board of directors—an N.R.A. move, the *Times* observed, that "showed something less than robust confidence in its position on gun control." Delighted at being given a chance to prove that the Association was more deeply devoted to the Second Amendment than to the First, Kennedy made up for the exclusion of the press from the directors' meeting by distributing advance copies of his speech to reporters. After expressing "the hope that what is said here will eventually be communicated to your membership and to the public," Kennedy launched into a slashing attack on the Association. He cited "the tragic statistics" of deaths from guns, which, he said, "the National Rifle Association is fully aware of;" the support of gun legislation by just about every responsible government official and law-enforcement agency; and the people's demand for it. "And what has been the response of the National Rifle Association?" he asked, and answered, "As the result of your efforts, we in Congress have been flooded by mail, wires, and telephone calls. All too often these communications are abusive and irrational. We have been labelled un-American, Socialistic, and unconcerned with the true causes of crime. We have been described as opposed to the legitimate use of guns for sport and hobby. At worst, these charges are ridiculous and cruel, at best they are simply wrong. And in almost every case it is apparent that nothing is being done by opponents of gun legislation to foster understanding, intelligent debate, and compromise." Moving on, he described the Administration's proposal point by point to demonstrate that it did none of the things the N.R.A. had claimed it did. "Now it is up to you," he concluded. "Millions of Americans want the benefits of [this bill]. If it is passed, you are the ones who will have to bear some slight inconvenience to pursue your hobbies. Is this not a reasonable burden to bear in the public interest? Is this not the true meaning of patriotism and love of country? You are riflemen and pistol shooters and collectors and competitors and hunters, of course. But you are citizens first, and if your fellow-citizens ask you to make these minor concessions, can you really refuse?"

They could, and they did. While passing on the briefest précis of Kennedy's appeal to their members in the following month's *American Rifleman*, they also passed on to them sixteen pages of articles and editorials recommending that more "law-abiding citizens" arm themselves. The worst riots in America since the Civil War were just getting under way, and the magazine's principal message that month was an appeal to its readers to take arms against a sea of troublemakers who were fomenting anarchy. The articles, preceded by a note stating that they did not necessarily represent N.R.A. policy, had such titles as "Is There Any Best Firearm for Home Defense?" and "Teaching Women Defensive Pistol Shooting," and the lead-off editorial observed, "Most of the current crop of firearm 'control' bills . . . are the kind that discourage home ownership of protection guns. There is little indication that their sponsors have given any thought to the fate of citizens who may be trapped and beleaguered by howling mobs and that brush aside police."

Around three-quarters of the country's newspapers and magazines, including all the leading ones, had been pushing for enactment of strong gun laws for years. (One newspaper, the Washington *Post*, did more than push; during 1966 it ran a hundred and sixty-six editorials by Alan Barth calling for a firearms law.) When the May issue of the *American Rifleman* came out, other publications reacted much as Little Rock's *Arkansas Gazette* did:

"The *American Rifleman*, in the nakedest sort of appeal to the darkest sort of fears and prejudices, has seized upon scattered instances of slum rioting and related disorders in the hope of reversing the tide of public opinion that now is strongly in favor of controlling gun sales. . . . It would be harder to imagine a larger public disservice than this deliberate yelling of 'Fire!' in a theater, especially when—let us face it—the N.R.A.'s appeals increasingly are directed to an increasingly unstable audience."

The N.R.A. responded to the charges that the editorial had called for vigilantism by issuing a statement that it had merely "posed an interesting and provocative question" in pointing out that "the present firearms legislation under consideration in the Congress could so disarm the law-abiding citizen that he would be virtually defenseless in any contingency or emergency." As the Association may have known, none of the bills before Congress would have disarmed any law-abiding citizen. As it also had every reason to know, the effect of the Administration's bill would have been to make it harder for many lawbreaking citizens to get hold of guns. Since a number of large cities have ordinances prohibiting anyone with a criminal record from buying a gun, an ex-convict who wants to get hold of one but won't go into a store and furnish his name and address, and sometimes his fingerprints, and have these checked by the police, can always send away to a mail-order house for a weapon. In the Watts area of Los Angeles—a city that has such an ordinance—police found that seventy-two per cent of the rioters there who were arrested with guns in their possession had criminal records. In Detroit, which also has such an ordinance, police found that ninety per cent of the revolvers and automatic pistols taken from rioters there were cheap foreign models—handguns of the kind that are most widely imported and sold by mail-order firearms concerns.

Most readers of the May *American Rifleman* interpreted its vigilante stand as part of the general attempt to block gun legislation. Others interpreted it as a summons to buy, and sell, more guns. One of the latter was Ed Agramonte, a dealer in mail-order guns in Yonkers, New York, who placed a full-page advertisement in *Shotgun News* on June 1st announcing a "Long Hot Summer Special." The special featured .45-calibre thirty-shot semi-automatic Eagle carbines, for $99.95; twelve-gauge six-shot Mossberg riot guns, for $64.95; twelve-gauge five-shot High Standard riot guns, for $69.95; and Belgian F.N. 7-mm. semi-automatic rifles, for $59.50. Although the sale of fully automatic rifles is illegal under existing federal law, most semi-automatic rifles can be easily converted to fully automatic operation, and Agramonte advertised a "conversion kit," for $18.50.

At a dinner held at the National Press Club, in Washington, on June 29th, Senator Joseph Tydings, a liberal Democrat from Maryland, a member of Dodd's subcommittee, and, incidentally, a skilled hunter, de-

livered a speech on the gun bill, which, he said, "was hardly closer to passage now than the day it was introduced." Like Edward Kennedy—whom Tydings had joined in leading the fight for the bill after Dodd was censured by the Senate, on June 23rd—he attributed the stalemate to "a campaign of misrepresentation by the gun lobby, especially by the National Rifle Association." He went on to cite a couple of 1967 examples of "conscious misrepresentation" by the N.R.A., and added that the Association's efforts had "inspired waves of mail, which have inundated many congressional offices." Actually, by now the mail had dwindled to a trickle. "The N.R.A. made it perfectly clear two years ago where it stood and what kind of a response it could generate at the drop of a new piece of legislation," Tydings explained recently. "No one here needs to be reminded of that."

On the grass-roots and asphalt levels, as Senator Tydings and others have pointed out, the contention over bills to control the sale and use of guns has become a matter of country versus city, or West versus East. City dwellers want something done, and done now, about the murders, assaults, and general mayhem being committed on and around them, and rural residents want to be left alone to do as they please. "Take Montana, for instance," Senator Tydings said not long ago in discussing this difference of outlook. "Out there, you have maybe four people per square mile. It's great outdoor country. The life there is a wonderful life, different from anything known by people who live in Eastern cities—or, for that matter, in the Eastern countryside. Every filling station, every drugstore, every little crossroads store sells hunting licenses, guns, bullets. Nearly all the males over the age of fourteen have guns, and most of them read the *American Rifleman*. What the N.R.A. has been able to do is to instill in the minds of the people of Montana the notion that there is a conspiracy back here in Washington to take away a substantial part of the life they know. The N.R.A. has convinced outdoor people—manly people who mean to protect their way of life and what they consider their inalienable rights—that the gun bill would deprive them of their right to hunt, or to shoot a marauding coyote or a human predator. In their minds, this is only the first step in a conspiracy to disarm them altogether. The N.R.A.'s lies have had a very great effect—so great that I don't know whether we can ever reverse it. As things stand, I can't see how any Western senator could possibly support the bill."

None of them has. Last summer, Senator Hruska insisted on holding another set of hearings, even though every conceivable aspect of gun legislation—except why nothing was being done about it—had been discussed at the hearings in 1963, 1964, and 1965. Tydings angrily opposed the new hearings, on the ground that they were an obvious delaying tactic, but Dodd was easily intimidated by Hruska's pugnacity and soon gave in, and then Kennedy, who didn't wish to offend the chairman, gave in, too. (At the first day's session, Hruska, whose twang is so Western that it is almost Chinese, complained at length about how the timing of the hearings had inconvenienced him, until Kennedy reminded him that the date had been selected at his request.) Far more significant than the testimony at the new hearings, which covered the same old ground, was the list of senators from the West who appeared in person or sent statements opposing the Administration's bill. Chief among them was Mike Mansfield, the Majority Leader, who had formerly urged Dodd to push for gun legislation. Another was Senator Frank Church, Democrat of Idaho. In trouble back home because of his strong opposition to the war in Vietnam, Church had become increasingly aware of his constituents' fear that their guns were going to be taken away from them and had distributed hundreds of petitions in Idaho asking support for his stand against *any* gun legislation. Church appeared at the hearings carrying two large stacks of petitions and a handful of envelopes; the petitions bore forty-four thousand signatures opposing gun bills, and the envelopes contained five letters backing them. Obviously, Church appeared not in order to convince the subcommittee members that they should oppose the Administration's bill but to convince his constituents, through newspaper and television coverage of the hearings, that *he* opposed it.

A number of senators, it was reported, found the problem of taking a stand on the bill more unsettling. "The man in the middle," *Guns & Ammo* informed its readers in February, 1966, "is Sen. Philip A. Hart, a Democrat from the hunting state of Michigan, who has been reluctant to anger the gun lobby." Michigan was indeed a hunting state, the number of its licensed hunters having risen from around eight hundred thousand when the first Dodd bill was introduced to well over a million by the summer of 1967. And Hart was indeed reluctant to anger this many constituents. A moderate who is known in the Senate both for his integrity and for his habit of publicly wringing his hands over moral dilemmas (to such an extent that he has been called "the Hamlet of Detroit"). Hart was said to have had tears in his eyes when he voted against the bill in the subcommittee the year before. Last summer, when he faced another roll-call vote in the subcommittee, a reporter asked him if he had changed his mind, and he replied that he hadn't. "I came to a decision on this issue shortly after the assassination," he explained. "When the Dodd bill first came up, I happened to meet a man from Michigan on a plane trip to Detroit. The meeting was quite accidental—he wasn't lobbying me or anything. He practiced law in Lansing and was active in conservation matters. We had a long talk about the Dodd bill, and he expressed his concern about the move to include long guns in it, since they were rarely used in crimes. I heard him out, and he convinced me that he was right. At the end of our talk, I told him that I would oppose any bill covering rifles and shotguns."

"Do the sportsmen in Michigan understand what's in the bill?" the reporter asked.

"No," Hart answered promptly.

"If they came out for the bill, would you?"

"No," he answered, after some hesitation.

"Are you happy with your position?"

"I'm content," he answered, not looking it.

Senator Hart did not mention that between the time he made his decision and this conversation close to six thousand people in the country had been murdered with rifles and shotguns. Nor did he mention that the man he had talked with on the plane was Harold Glassen, who is the current president of the National Rifle Association.

Since the lineup on the subcommittee, without Hart's vote, was thought at that time to be four to four, Hart was very much the man in the middle. However, when the vote was finally taken, on September 20th, his support was not needed, and it was not given. Senator Bayh, who had co-sponsored the 1963–64 Dodd bill but had later climbed on the fence to escape the tidal wave of opposing mail, climbed back down to support it, making the vote five to four in its favor. (Hruska immediately complained that the vote had been recorded when he was not present, but the majority replied that his vote had been included in the minority. When this stratagem failed, he took advantage of the prerogative that permits senators to edit their remarks in transcripts of hearings, and so extensively rewrote and expanded his that at many points the published version of what he said during the hearing bears little resemblance to the original transcript.)

Once more the bill was in the hands of the Senate Judiciary Committee, and once more Senator Kennedy threatened to call for a vote on the Hruska bill. Before he could take that or any other action, the White House, which had done almost nothing to help its bill along, suddenly moved in with a stratagem of its on. On September 28th, it sent Dodd an amendment to its bill that would permit states to exempt themselves from the provision controlling the mail-order sale of rifles and shotguns simply by passing acts to that effect in their legislatures. Senator Dodd dutifully filed the amendment, saying that it did not appreciably weaken the bill. Senator Kennedy dissented, saying that it did, since state legislatures are hopelessly susceptible to pressure, and that the nation would be left with a hodgepodge of conflicting gun laws. Whatever the merits of the amended version, it was not given much of a chance. It still had to be approved by the Senate Judiciary and Commerce Committees, by the Senate, by the House Judiciary Committee, and, if it claimed jurisdiction, by the House Committee on Ways and Means, then by the House itself, and, finally, by a joint Senate-House conference—and time was running out, for adjournment was near.

As predicted, adjournment came without any action on any of the gun bills that were pending before Congress. When it reconvened, on January 15, 1968, the outlook remained much the same, even though President Johnson clearly meant to wage an all-out legislative offensive against crime, which the polls had shown was of even more concern to the voters than the war in Vietnam. At best, it was thought, some sort of law called the Gun Control Act, whose strongest feature would be its title, might be passed, but few believed that anything more than a law in name only would be enacted. On April 4th, less than an hour before a sniper armed with a 30.06 rifle killed Dr. Martin Luther King, Jr., in Memphis, the Senate Judiciary Committee voted eight to five to reject the modified Administration bill and nine to four to reject the Dodd version. In the aftermath of the assassination and the rioting that followed, clamor again rose for passage of a strict gun law, and again the opponents rallied. In a move designed to please both sides, the Judiciary Committee partially reversed itself on April 6th, and approved, by a vote of nine to seven, a proposal to prohibit the sale of handguns by interstate mail order as well as over the counter to anyone not a resident of the state where the sale takes place. At best, it was a halfway measure, but its defenders held that it was better than nothing. Others felt that its passage would give the public false comfort and thereby postpone for another generation necessary action, including action toward finding out where those fifty million to two hundred million privately owned guns are. In the end, the prospects for strict gun-control legislation appeared to be as dim as ever—unless, of course, members of Congress decided to put the public interest above their own.

—RICHARD HARRIS.

EXHIBIT F

[From the Titusville (Pa.) Herald, Apr. 29, 1968]

FOR A STRONG GUN CONTROL LAW

This week for the first time in 30 years a piece of gun control legislation will be debated on the floor of the Senate. All previous bills of this nature have been shot down in committee by the National Rifle Association and the National Shooting Sports Foundation.

These two organizations, aided by other groups of sportsmen, have heretofore prevented a floor debate by their campaigns of distortion, deceit, hysteria and misrepresentation.

Watch out for more of the same, starting immediately.

To set the record straight at the beginning, here is what the proposed legislation would do—and ALL it would do:

Prohibit interstate mail order sales of hand guns—pistols and revolvers—to individuals.

Ban over-the-counter sales of handguns to nonresidents of a state and to persons under 21 years of age.

Curb the imports of surplus military weapons and other firearms and place tighter controls on sales of antitank guns, bazookas, mortars, grenades and other highly destructive weapons.

We believe the bill should go farther. It should prevent not only the mail order sales of pistols and revolvers, but of rifles and handguns. President Kennedy and Dr. King were both killed by mail order rifles.

This ban on the sale of rifles and shotguns will be terribly inconvenient—we can hear the opponents using those very words—to persons in remote areas, far from stores selling merchandise.

True, but our changing ways of national life make necessary certain inconveniences that were unknown to previous generations. Our Pennsylvania grandfathers, for example, didn't have to trot down inconveniently to the sporting goods store and buy a hunting license. And they weren't hemmed in by the inconvenient bag limits.

But the national interest—the interest of hundreds of lives lost annually to rifles and shotguns fired in anger—means that we must put up with the inconvenience of a strict national gun control law.

Let's make it clear right now, in anticipation of the barrage that is sure to be laid down by the NRA and the NSSF, that the measure now before the Senate will not take any person's rifle or shotgun away from him. It will not put any federal restrictions on hunting or other uses of firearms. It will not provide for the registration of any rifles or shotguns—although we think it should make registration mandatory. (We have a dandy semi-automatic .22 that we'll be happy to register).

In short, the legislation presently proposed is mild, too mild. It should be adopted, with the addition of the long provision. Write Senator Scott and Senator Clark and tell them so. Write them before the NRA people start their attempt to convince the public that the present proposal is the most vicious Communist-inspired measure ever to reach the Senate floor. Because, if the past is any guide, that is what the NRA and the NSSF are about to do.

Ignore these special interests, Mr. Senator. Put the lives of Americans first. How many more Kennedys and Kings must die before we get federal gun control legislation with teeth in it?

EXHIBIT G

[From the Boston Globe, Apr. 22, 1968]

GUN CONTROLS NEEDED—I

(First of a series)

Lt. Gov. Francis W. Sargent, himself the owner of a sporting goods store that sells firearms, spoke the truth recently when he bluntly told the convention of the National Rifle Assn. in Boston that its public image is terrible and it had better support serious and sensible gun control legislation.

A Harris poll today shows that 71 percent of Americans favor tight controls over the sale of guns and that, though 51 percent of American homes contain guns, those who own them favor gun control laws by 65 to 31 percent, better than two-to-one.

The N.R.A. bases its case primarily on the Second Amendment to the Constitution, part of the Bill of Rights. And surely few will disagree with this amendment, particularly if they knew how the courts have applied it.

The amendment states: "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." Note that this right is related directly to the need of a well regulated militia.

The amendment has been cited by some as guaranteeing an individual's right to keep and bear arms, but the court decisions do not support this. As early as 1886, in Presser vs. Illinois, the Supreme Court upheld a state statute forbidding men to drill or parade with arms unless authorized by law.

What prompts the present pressure for better gun controls is, of course, the April 4 assassination in Memphis, Tenn., of Dr. Martin Luther King, Jr. The rifle and telescopic sight that killed him were purchased, apparently, in Birmingham, Ala. But this was only the latest of a long series of assassinations with guns.

The nation will not easily forget that the weapon which killed President John F. Kennedy in 1963 had been purchased under a false name by Lee Harvey Oswald from a mail-order firm in Chicago. Guns have also taken the lives of three other American Presidents.

Firearms in 1966 accounted in this country for 6400 murders, 10,000 suicides and 2600 accidental deaths. By contrast, in Japan where no one but a police officer may own a pistol, there were only 37 murders by firearms in 1962.

This is not to say that this country should adopt the sweeping Japanese law. There are many sound reasons for protecting the right to own a gun, but there are even more reasons for controlling and regulating such ownership.

Past and present legislation to control the sale of guns, and the N.R.A.'s powerful opposition to most of this legislation, will be discussed in a later editorial.

[From the Boston Globe, Apr. 23, 1968]

GUN CONTROLS NEEDED—II

(Second of a series)

The story of the long series of efforts to pass adequate gun control legislation in Congress is a sordid one, for the successful opposition to such laws has been marked by unprincipled maneuvering behind the scenes and outright misrepresentation by the National Rifle Assn. and its publication, The American Rifleman.

Anyone doubting this is urged to read an exhaustive account of it in the current New Yorker magazine by Richard Harris.

It took President Kennedy's assassination in November, 1963, to arouse mass interest in gun controls, but a study by a Senate Judiciary subcommittee had shown the need for them in 1961, and had also noted a vast increase since 1955 in the number of foreign military surplus weapons sold in this country—many of them, by the way, Russian made.

A year after the attempted assassination of President-elect Franklin D. Roosevelt in 1933, Congress had passed the National Firearms Act, but it was aimed principally at "gangster" type weapons such as machine guns, and made it a crime to possess such weapons unregistered.

Only last Jan. 29 the Supreme Court voided the section of this law requiring registration, on the grounds that it violated the Fifth Amendment's protection against self-incrimination. But the high court made it clear this did not affect Congress' authority to "regulate the manufacture, transfer or possession of firearms."

The only similar law on the books, the Federal Firearms Law of 1938, requires licenses for interstate dealers (a loophole through which until recently gun fanciers could declare themselves "dealers" and get discounts from wholesale houses), but did not prevent criminals from falsifying statements to dealers in order to buy a firearm.

In 30 years, there has been only one conviction under the section prohibiting the mailing of firearms to private individuals in the eight states that require permits. Yet in 1966 alone, accordng to the government, there were nearly 10,000 "possible violations."

But in 1963 Sen. Thomas Dodd introduced S. 1975 to restrict the mail-order sale of hand guns. About all it did was to require a sworn affidavit from purchasers, with a copy sent to his local law enforcement officer. Later amended to cover rifles and shotguns, it got nowhere, even after President Kennedy was killed.

The N.R.A., which had helped draft its original provisions, never told its members it had done so. It told them instead that it had prevented the bill from being voted out of committee. In 1964 the bill was killed by deferring action on it.

A later editorial will discuss subsequent attempts to control gun sales, the pending legislation, and how to overcome the attempts being made even now to kill it again.

[From the Boston Globe, Apr. 24, 1968]

GUN CONTROLS NEEDED—III

(Third of a series)

For an organization that takes pride in its marksmanship, the American Rifle Assn., has consistently been far off target in its opposition to gun control legislation. It needs badly to adjust its sights, and to allow for its own windage.

Take, for example, its opposition to bills introduced in 1965. They would have prohibited the interstate mail-order sale of all firearms to individuals and over-the-counter sales of handguns to non-residents of the state. But no bill came out of committee, not even one by Sen. Bourke B. Hickenlooper (R.-Ia.), an N.R.A. member, exempting rifles and shotguns.

Instead, the N.R.A. on April 9 sent a letter to its 700,000 members urging them to write their congressmen, and warning that the legislation could end "the private ownership of all guns." This was but one example of what Congressional Quarterly meant recently when it said, "By any accounting, the letter was replete with distortions of the fact," The N.R.A.'s president said he would consider sending another letter with corrections, but it was never sent.

It was the same story in 1966, even after Charles J. Whitman carried a small arsenal to the top of a University of Texas tower and killed 16 persons and wounded 30 before police could kill him. Even a bill filed by Sen. R. L. Hruska (R.-Nebr.) failed to reach a floor vote, and thereby hangs a tale.

The bill would merely have banned interstate shipment of pistols to those under 21. On Sept. 22 the Judiciary Committee ordered it reported out, 10-to-5. But knowing that Sen. Edward M. Kennedy (D.-Mass.) would amend the bill on the floor, Hruska did not report it till Oct. 19, three days before Congress adjourned, when it was too late for action.

Again in 1967, firearms legislation never reached the floor, despite pressure for it from the White House and FBI Director J. Edgar Hoover. The N.R.A. letter-writing campaign continued. Though the N.R.A. had supported the weak Hruska bill in testimony, it did not urge its members to write in favor of it. (It this time would have required handgun purchasers to file an affidavit that they were 21 and eligible, and prohibited shipments violating state laws.)

Instead, the N.R.A. again falsified, claiming the administration bill "would prohibit outright the interstate sale of handguns, rifles and shotguns to individuals." The bill did nothing of the sort.

Not until 1968, and then only after Rev. Martin Luther King Jr. was assassinated, did the N.R.A. get its first real comeuppance. But it may win yet. How to keep it from winning will be discussed in this series' last editorial.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

Pursuant to the previous order, the Senator from Idaho is recognized for a period of 1 hour.

IDAHO'S CASE AGAINST RESTRICTIVE FEDERAL GUN CONTROLS

Mr. CHURCH. Mr. President, the long debate over firearms legislation has become so clouded by emotion that it is difficult to present an objective criticism of the proposals before the Senate. But on one score there can be no doubt: The people of Idaho are overwhelmingly opposed to restrictive Federal gun controls.

The proof is here. Piled high on this desk, within reach of any Senator who may care to examine them, are petitions opposing the enactment of new Federal gun laws, signed by more than 50,000 Idaho residents. In my hand I hold six letters from Idaho favoring stronger Federal gun controls—the total number I have received during the past year. The ratio of proponents to opponents, as registered with my office, is about 8,000 to 1.

If there is a better way to ascertain the opinion of the people of my State on the subject of Federal legislation requiring the purchase of firearms, I do not know it. These petitions are not the work of any lobbying organization. The signatures bear no correlation to the membership of the National Rifle Association or any other organized group.

These signatures come from the rank and file of Idaho citizens—the husbands and housewives, the lawyers and loggers, the farmers, the bankers, the policemen. They are customers who came into the country stores, sporting goods shops, and gas stations throughout Idaho and found this petition on the counter. They volunteered their signatures in such numbers that we simply could not furnish enough petition forms. The torrent of names which came pouring back into my office was so great that we had to call a halt. We lacked the physical capacity to process the returns.

Even though Idaho is a sparsely populated State, I have no doubt, had we left these petitions in circulation another month, I could have come here armed with a hundred thousand signatures.

The wording on these petitions, to which the people of Idaho so strongly subscribe, is as follows:

> I agree with Senator Church that guns are part of the wholesome, outdoor, Western way of life. I also agree with him that if individual states want gun control laws, they have the right to enact them. But I support Senator Church in his opposition to the Dodd bill and all other Federal gun law proposals. I ask that my name, signed below, be submitted to the Senate in support of Senator Church's stand on Federal gun controls.

Mr. President (Mr. HART in the chair), I have already had occasion to present these petitions, or many of them, to the Senate committee which considered the various gun control proposals. I bring them here this afternoon to the Senate Chamber to dramatize the very strong feeling of the people of my State against the enactment of legislation of this kind.

Mr. President, I have opposed Federal firearms legislation as a misconceived attempt to deal with big city crime at the expense of rural areas. I do not deny that crime is a growing menace in our big cities. I think we are finally awakening to its danger. The police need more public support; the courts should be as vigilant in upholding the rights of the accosted as they have been mindful of preserving the rights of the accused.

Indeed, numerous provisions in the pending bill are intended to deal with these very problems by strengthening State and local law enforcement agencies. The underlying philosophy of this anti-crime measure is sound, for it keeps the primary responsibility for the maintenance of law and order where it belongs—in the localities of our land.

We strenuously oppose the establishment of a national police force in this country. The President's Crime Commission itself recognizes the validity of the general principle that law enforcement should remain a local responsibility. Let me quote directly from the Commission's commentary on the American system of justice:

> The entire system represents an adaptation of the English common law to America's peculiar structure of government, which allows each local community to construct institutions that fill its special needs.

But the proponents of the various amendments to graft onto this bill restrictive Federal gun controls urge a course of action in direct contradiction to the underlying philosophy and approach of this legislation. They ask for Federal laws, national in scope, regulating the sale of guns. The mischief is that such laws would have uniform applicability; the restrictions would be as binding in Boise, Idaho, as Newark, N.J.

But conditions are totally different in the two places. We in Idaho are not free of crime, but we do not live in daily fear of violence in the streets. We have many sportsmen, few gunmen. Idaho boys are taught at an early age by their fathers to handle rifles and shotguns. They grow up learning to hunt. Their guns are the implements of a wholesome outdoor life, not the tools of crime or defiance. Why, then, should Preston be treated like Chicago, or Lewiston like Los Angeles?

Apart from the constitutional right of free citizens to "keep and bear arms" which must be scrupulously preserved, I have no quarrel with New York's decisions regulating the sale of firearms. Let the States adopt such lawful controls, or the big cities such ordinances, as local crime conditions may warrant. The Federal Government could then support local law enforcement the way it now supports States that prohibit gambling, simply by outlawing the interstate movement of gambling devices into States where local laws ban them. This avoids the one-mold approach, and leaves it up to each State to decide upon its own needs.

Mr. President, I simply do not believe that any of the amendments being proposed—not even the most restrictive among them—will keep deadly weapons out of the hands of dangerous psychopaths. Anyone determined to do violence can find a way to obtain a gun. We must not make the mistake of fettering law-abiding citizens with blanket Federal controls which are unnecessary in a State like Idaho, and may well prove ineffectual even in the big cities.

I do not claim, by any means, to know all the answers to the spread of crime. But let us seek our solutions in reasoned ways, and in a manner which gives proper recognition to the fact that the problem in Twin Falls, Idaho, is very different from that in Pittsburgh.

Still, it is argued that uniform Federal regulation of the purchase of firearms is justified as a possible means of combatting crime in the big cities, particularly inasmuch as the amendments now contemplated would impose no undue burden on the rural areas. We are asked, in effect, to enlarge the scope of Federal control on the theory that the price to the countryside will be small, while the gains to the cities might be great.

But this argument can be only as valid as the two propositions it rests upon. How small is the price to the countryside of America? If Federal control of firearms becomes our chosen method for dealing with big city crime, do we not stand now at the threshold of the course? Once commenced, who here can foretell how far the pursuit will carry us? Will it really stop with the enactment of the moderate Hruska proposals? Or is this but the opening wedge, the first concession to expanding Federal control which will then grow larger with the passing years? The truth is that, once the process starts, no one here can prophesy, let alone guarantee, what the final price will be.

And what of the other proposition? What are we actually going to buy with the price we finally pay? More effective crime prevention? Where is the proof of it? New York City, with its Sullivan Act, imposes regulations so strict upon the acquisition of firearms that only 17,000 out of a municipal population of 8,000,000 own registered handguns. Yet, in 1965, the city's rate per 100,000 persons for the crimes of murder, robbery, and aggravated assault was 244.2. In Idaho, for the same three crimes most generally perpetrated by a gun, the rate was 65.7. If there are statistics to prove that the strict provisions of the Sullivan Act have diminished crime growth in New York City, I have not seen them.

On the other hand, Alabama and Vermont impose little or no restriction on the purchase of firearms. Proponents of Federal controls point to Alabama, which had the highest homicide rate in the Nation in 1965. But opponents of Federal controls point to Vermont, which had the lowest. Where is the proven correlation between gun laws and existing levels of crime?

A thorough-going empirical study of legislative regulation of firearms was completed last fall by the American Bar Foundation.

I quote from its report:

A fundamental assumption of those who support the drive for stricter regulation of firearms is the belief that easily available weapons are a stimulus to crime, and that absence of these weapons would significantly reduce criminal activity. In our own inquiry, we have discovered no convincing evidence on this question.

Mr. President, I placed this report in the CONGRESSIONAL RECORD on March 6, 2 months ago, and I again invite attention to it. The report shows just how little hard evidence is available upon which any valid case for new Federal gun controls can be based. The American Bar Foundation researchers found affirmative evidence for gun laws so wanting that they were unwilling to take a position on their effectiveness. They concluded that such legislation could be justified as an "experiment with social reform."

I doubt, when the experimenting is finished that crime will have been much affected by all the gun laws combined. It simply stands to reason that a man who wants a gun to commit a crime will find a way to get one. Law-abiding citizens, not criminals, turn out to be people who are regulated by gun laws. As for sudden crimes of passion, they will continue to be committed by whatever weapon is at hand—a club, a gun, a knife, or broken bottle. Logic alone would seem to compel the conclusion that the realistic control of crime depends upon how effectively we track down and deal with the offender, not upon futile attempts to foreclose his choice of weapons.

This, at least, has been our experience in Idaho, where a hunting rifle and a shotgun are implements of outdoor sport, every bit as much as a flyrod and a spinning reel. Idaho boys and girls grow up learning to hunt and fish. Most Idaho families keep guns. The percentage of our people owning guns is much higher than the national average. But our crime rate is much lower. We have not found it necessary to restrict the purchase of firearms.

Idaho does not ask to write the gun laws for California or Illinois. We ask only to be left the master of our own house. We are against new Federal gun controls because they wrap all States, large and small, in the small blanket.

I am fully aware, Mr. President, that uniform Federal firearms legislation is being urged upon the ground that State laws are too easily circumvented. If an objectionable person cannot lawfully obtain a gun in his own State, it is said that he can readily buy one in a neighboring State. Thus lax laws in some States, it is argued, undermines strict laws in others.

I am not persuaded by this argument. A person bent on crime, so determined to get a gun that he will travel into another State to purchase it, will find a way to get hold of one in his own State, if need be. If he cannot do it lawfully, he will devise a means for doing it unlawfully. This is easily done. All of the gun control amendments now pending before us—from the limited Hruska bill to the encompassing Dodd bill—are sieves not shields. Law-abiding citizens will comply with them; criminals will ignore them.

But one must go further. Can we safely base the case for new Federal law upon the argument that State laws differ, one from another? If so, what becomes of the States? The genius of our system is that it has resisted centralized authority, recognizing the diversity which exists within a land of continental dimensions and the consequent necessity for leaving much jurisdiction to State and local governments. Especially has this been so in the field of law enforcement.

The President, himself, recognizes the fact. In his own declaration to the Congress, submitted on February 6, 1967, House Document No. 53, entitled "The War on Crime—Message from the President," Lyndon B. Johnson acknowledges:

Our system of law enforcement is essentially local: based upon local initiative, generated by local energies, and controlled by local officials. But—

He goes on to say—

the Federal Government must help to strengthen the system, and to encourage the kind of innovations needed to respond to the problem of crime in America.

Mr. President, we do not strengthen the system by supplanting State law with Federal law. Every other Presidential recommendation takes the form of Federal aid to State and local law enforcement agencies, the kind of help the Federal Government can give without impairment of States rights. The glaring exception is firearms control, where the President asks Congress for a national licensing system which would, in his words:

Prohibit certain mail order sales and shipments of firearms, except between Federal licensees;

Prohibit over-the-counter sales of firearms, other than rifles and shotguns, to any person who does not reside in the state in which the Federal licensee does business;

Prohibit Federal licensees from selling handguns to any person under 21, and from selling rifles and shotguns to any person under 18.

Mr. President, if amendments embracing controls of this scope and character are written into the pending bill, the disruption of our way of life in Idaho will be real, not imaginary. There are remote parts of my State where hunting is more than just a sport; it is a means for supplementing the family food supply. The mailorder of guns is a common practice, not for the purpose of escaping police surveillance, but because sporting goods stores are a long ways off, particularly those supplied with an adequate inventory. Under these circumstances, many a mountain man relies on a Sears, Roebuck, J. C. Penney, or Montgomery Ward catalog, or some other listing, from which to order needed guns.

As for ammunition, large numbers of Idaho people depend upon the small supply that is regularly kept at general-purpose stores in the mountain regions and rural areas, frequently located long distances from the cities. I should think that most of these dealers, carrying ammunition as a side item only, would find their modest profit from this line so seriously impaired, if not extinguished, by a high license fee, as to cause them to quit stocking ammunition entirely. Again, many people in my State will be seriously inconvenienced.

And to what end? Does anyone really believe that hiking up the license fees for doing business in firearms will deter undesirable dealers from entering the trade? Yes, many a small, country dealer may be eliminated. But not the shady operator. His dealings are much too profitable to be affected by the cost of a license.

There are provisions in the pending bill, and in certain of the proposed amendments, which seek to prevent dealers from selling firearms to persons under indictment, or who have been convicted of crimes of violence, or who are fugitives from justice.

Laudable as this objective is—and certainly I am amenable to the inclusion of such provisions in the law—I nevertheless must wonder how the dealer can be expected to distinguish between the upright and the felonious, among the customers who come to buy, most of whom will be strangers.

Since we stopped branding felons three centuries ago, it escapes me as to why we believe that such provisions will really accomplish their goal.

Unless it is proposed that all guns be sold only through police departments, where every purchaser can be subjected to a thorough investigation beforehand, no effective means is really provided in this legislation, or in any of the amendments that are being proposed, for actually precluding purchases by undesirables. In my judgment, these provisions cannot possibly accomplish their avowed objective. They will be ineffectual—they will be an harassment, nothing more. Requirements being proposed that each purchaser sign an affidavit of qualification to buy a gun under the law, may give some pause to the cautious, conscientious, and honest purchaser, it may indeed provide a cover for the dealer, but I cannot believe that it would constitute any problem for a felon intent upon getting a weapon. There are too many ways to falsify.

Mr. President, I am not unmindful nor insensitive to the grave problems posed by the spreading tide of crime in this country. I believe it entirely proper—indeed, obligatory—for the Federal Government to curb the import of surplus military firearms from abroad which are unsuitable for sporting purposes. Within the United States, I believe the Federal Government has a duty to so regulate interstate commerce as to prevent dangerous traffic in weapons of civil strife and disorder, such as bombs, grenades, cannon, machineguns, and bazookas.

But as for guns which, by their very nature, may be used by private citizens for right, as well as for wrong, purposes, I would leave their regulation to the State and local governments, so that each might adopt such controls as they find suitable to their own situation. If the Federal Government then wants to back up the States by prohibiting the sale or shipment of guns into any State, contrary to its own laws, I would favor that also.

But I oppose the imposition of new Federal controls, written with an eye toward big city crime, but uniformly applicable to the country as a whole. We have a different way of life in Idaho than anything known to the East. We hope to keep it different. There are 700,000 people in Idaho, all told. In 1966, 167,000 resident hunting licenses were sold. In 1965, we had 14 murders. The people of my State do not think we need national gun regulation. Neither do I.

So, Mr. President, in casting my votes on the various amendments which seek to add new Federal gun controls to this bill, I shall be guided by a simple formula. When faced with a choice between one of two proposals, I shall vote for the least restrictive; when given an opportunity to adopt or reject any new expansion of Federal gun controls, I shall vote to reject.

Of course, I cannot now foretell, which, if any, of the proposed gun control amendments will be adopted. Once the voting on amendments has been completed—and the bill has taken its finished form—I shall weigh the good in it against the bad, as best I can judge the matter, and cast my final vote accordingly.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed a joint resolution (H.J. Res. 1268) making supplemental appropriations for the fiscal year ending June 30, 1968, and for other purposes, in which it requested the concurrence of the Senate.

ROUTINE BUSINESS

The following routine business was transacted by unanimous consent:

ENROLLED BILL SIGNED

The PRESIDING OFFICER announced that on today, May 9, 1968, the Acting President pro tempore (Mr. METCALF) signed the enrolled bill (S. 1909) to provide for the striking of medals in commemoration of the 100th anniversary of the completion of the first transcontinental railroad, which had previously been signed by the Speaker of the House of Representatives.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. RANDOLPH, from the Committee on Public Works:

Maj. Gen. Clarence C. Haug, U.S. Army, to be a member of the Mississippi River Commission.

By Mr. PASTORE, from the Committee on Commerce:

Frederic G. Donner, of New York, to be a member of the board of directors of the Communications Satellite Corp.

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

Executive O, 90th Congress, first session, Convention on the International Hydrographic Organization (Ex. Rept. No. 3); and

Executive C, 90th Congress, second session, six amendments to the International Convention for the Safety of Life at Sea, 1960 (Ex. Rept. No. 4).

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. JORDAN of North Carolina, from the Committee on Public Works, without amendment:

S. 3159. A bill authorizing the Trustees of the National Gallery of Art to construct a building or buildings on the site bounded by Fourth Street, Pennsylvania Avenue, Third Street, and Madison Drive NW., in the District of Columbia, and making provision for the maintenance thereof (Rept. No. 1114).

BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. BOGGS:

S. 3466. A bill for the relief of Bartolo Marco Vassallo; to the Committee on the Judiciary.

By Mr. SMATHERS:

S. 3467. A bill for the relief of Dr. Jose A. Suarez-Caabro; and

S. 3468. A bill for the relief of Dr. Miguel Angel Ponce De Leon; to the Committee on the Judiciary.

By Mr. HARTKE:

S. 3469. A bill to suspend for the 1968 campaign the equal-time requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President; to the Committee on Commerce.

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

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

S. 3470. A bill to amend title II of the act entitled "An act to prescribe penalties for certain acts of violence or intimidation, and for other purposes," approved April 11, 1968; to the Committee on the Judiciary.

By Mr. MONDALE (for himself, Mr. CLARK, Mr. HARTKE, Mr. INOUYE, Mr. JAVITS, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of New York, Mr. MCGOVERN, Mr. MORTON, Mr. MOSS, Mr. PELL, Mr. PERCY, and Mr. YOUNG of Ohio):

S.J. Res. 169. Joint resolution on East-West trade; to the Committee on Banking and Currency.

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

By Mr. HARTKE:

S.J. Res. 170. A joint resolution to authorize the temporary funding of the Emergency Credit Revolving Fund; to the Committee on Agriculture and Forestry.

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

S. 3469—INTRODUCTION OF BILL MAKING PRESIDENTIAL CANDIDATE DEBATES FEASIBLE UNDER THE COMMUNICATIONS ACT

Mr. HARTKE. Mr. President, I introduce, for appropriate reference, a bill to suspend for the 1968 campaign the equal time requirements of section 315(a) of the Communications Act of 1934 for nominees for the offices of President and Vice President.

Perhaps the most primary function of Congress is to act in the best interest of the public, and to do for her people what they as individuals cannot do for themselves. Here is a classic case in point.

It is estimated that well over 100 million persons in this Nation will be eligible to vote in the fall for his or her choice for President and Vice President. However, because of one minor section of the 1934 Communications Act, section 315(a), the Nation's entire citizenry is quite possibly going to be denied the opportunity to view through the media of television the various candidates seeking the two highest and most powerful offices in the United States. To provide such an opportunity is a public responsibility which the Congress should assume by adopting the legislation I now offer.

Because of the inhibiting and restrictive law I introduced legislation in 1959 to ease the restrictions imposed upon broadcasters. This was, in fact, the first official recognition by Congress that the communications media are mature enough to make their own public affairs and news judgments.

In 1960, provisions of section 315(a) were suspended as I had proposed, so that the public could see two candidates for the Presidency debate the issues and answer questions from panels of newsmen. Without this suspension, networks and stations would not have given freely of their precious time for the great Kennedy-Nixon debates. Without this suspension, the same privileges would have to be given to an assortment of minor candidates whose position does not warrant such expensive attention.

The bill I am introducing today also directs the Federal Communications Commission to make a report to the Congress within 6 months after the election as to the results of the suspension.

Although I am strongly in favor of completely repealing section 315(a), and have offered a bill for that purpose, I feel that we should at least provide for suspending section 315(a) for the 1968 election. Consequently I would urge that if section 315(a) cannot be entirely erased from the books, that we pass this measure as quickly as possible.

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

The bill (S. 3469) to suspend for the 1968 campaign the equal-time requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President, introduced by Mr. HARTKE, was received, read twice by its titles, and referred to the Committee on Commerce.

SENATE JOINT RESOLUTION 169— INTRODUCTION OF JOINT RESOLUTION RELATING TO EAST-WEST TRADE

Mr. MONDALE. Mr. President, I introduce today, for myself and Mr. CLARK, Mr. HARTKE, Mr. INOUYE, Mr. JAVITS, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of New York, Mr. MCGOVERN, Mr. MORTON, Mr. MOSS, Mr. PELL, Mr. PERCY, and Mr. YOUNG of Ohio, a joint resolution on East-West trade. It is intended to indicate that the Senate favors East-West trade in peaceful goods. Trade relationships do not develop when they are plagued with uncertainties and with financing and licensing restrictions.

Mr. President, nearly 2 years ago President Johnson, in recognition of the vast possibilities for peaceful ties to be found in the development of trade between East and West, said:

> Our task is to achieve a reconciliation with the East, a shift from the narrow concept of co-existence to the broader vision of peaceful engagement. And I pledge you today that Americans now stand ready to do their part . . . We seek healthy economic and cultural relations with the Communist states.

His words increase in timeliness with the recent turn of events in Eastern Europe. Changes in Rumania, Czechoslovakia, and Poland indicate efforts at greater independence within Eastern Europe and better relationships with the West. A central premise of economic reform in these countries is the necessity sooner or later of large Western credits and a sharp increase in trade with the West.

Yet today the American environment for increased East-West trade is far from reliable. In response to the President's leadership, the executive branch of the Government has encouraged American business interest in Eastern Europe; Congress, meanwhile, has done its part to destroy the kind of confidence business and private investors must have to develop a market. This subtle psychological barrier arising from an uncertain Government policy is the worst barrier of all to American participation in East-West trade.

The harshest restrictions coming from Congress have ended Export-Import Bank assistance for exports to Communist countries. Beginning with the Foreign Assistance Appropriation Act of 1964, all foreign aid legislation has included a provision prohibiting the Export-Import Bank from guaranteeing export credits to any Communist country unless the President determines it to be in the national interest to do so. He determined they were.

But the President's discretion ended in February with final passage of the bill to extend the lending authority of the Export-Import Bank. A provision was added to the bill forbidding the use of Eximbank credit to finance sales of American goods to any country whose government trades with nations with which the United States is engaged in armed conflict—North Vietnam. Congress in effect denied credit guarantees to American companies for their exports to the nations of Eastern Europe. The amendment included exports to be used in Communist countries such as the American machinery for the Fiat plant in the Soviet Union.

Another amendment attached to the excise tax bill and intended to limit East-West trade even further narrowly met defeat on the Senate floor in late March. It would have set up an insuperable barrier to such trade by imposing upon any American businessman who engages in export trade with any Communist country supplying material to North Vietnam a tax equal to 20 percent of the total taxable income of the taxpayer for that year.

The presumptions behind the amendments are that the nations of Eastern Europe supply major assistance to North Vietnam and that the nations of Eastern Europe, without nonstrategic foodstuffs and goods from the United States, would have no other sources of supply.

Both presumptions are wrong. Our exports to Eastern Europe are primarily agricultural commodities. In turn, the Eastern European countries trade only to a limited extent with North Vietnam. Their aid tends to be a pro forma commitment, designed to diminish the embarrassment in the Communist world, and not a fundamental or material commitment to North Vietnam.

When Congress prevents American businessmen from supplying certain peaceful commodities to consumers in Eastern Europe, other nations are only too willing to fill the breach. By our actions, either the Eastern Europeans are thrown back into the arms of the Soviets, or the French and other Western Europeans take over all of the growing, consumer-oriented markets of Eastern Europe.

Mr. President, we must prevent efforts in Congress attempting to block the expansion of economic relationships between Eastern Europe and the United States. With this in mind, we intend to begin hearings in the International Finance Subcommittee of the Banking and Currency Committee on problems of East-West trade. As you know, the subcommittee has responsibility for the Eximbank and the export control regulations.

We hope the hearings will provide legislative suggestions for increasing trade in peaceful goods and a hearing record of use in educating Congress and our people about the difficulties our policies are creating for our businessmen, for our diplomatic efforts abroad, and for those Eastern European leaders who are struggling to establish their independence.

I believe that our policy should be aimed at encouraging independence and bringing the United States and the nations of Eastern Europe into a better relationship through increased trade.

I base my views on a 3-week study tour of Europe which I made for the Subcommittee on International Finance in January. I talked with government officials, businessmen, journalists, and our diplomats in Western and Eastern Europe—in Brussels, London, Paris, Geneva, Vienna, Bucharest, Moscow, Prague, and Warsaw—identifying some of the problems and possibilities of expanded trade with Eastern European nations and Russia.

Let me relate a few of the things I learned.

Western Europeans are astonished by the repressive attitude Congress has taken toward trade with Eastern Europe. But they are frank to admit that they benefit from the absence of our competition. The volume of East-West trade in 1966 exceeded $10 billion, and other Western countries accounted for 96 percent of it. In the market experiencing the most rapid growth in world trade, the United States trails behind Sweden and Austria, accounts for less than one-half the volume of Italy and of France, less than one-third the volume of Japan and of Britain, and less than one-sixth the volume of West Germany.

The main effect of our export control policies and restrictions on export credits is the loss of a great deal of business to Western European competitors. Trade with Communist countries is subject to Government control and limitation in the form of quota and licensing restrictions. The Export Control Act of 1949 authorizes the President to prohibit the exportation of commodities which would prove detrimental to the security of the United States. Although the number of items on the export control list was reduced several years ago, American export licensing is still more stringent than COCOM's—the instrument of our allies for assessing the strategic nature of exports. By maintaining uniform export control policies, the United States fails to take account of changes within Eastern Europe. For example, the Czechs are 80 to 100 percent dependent on the Soviet Union for oil and iron ore. We do not prevent them from obtaining oil and iron ore, we only determine the source.

Although Eastern Europeans complain that U.S. export control legislation is an important inhibiting factor in our trade, it is probably more the uncertainty and delay in receiving licenses than the actual restrictions which make this a significant factor in trade relations. While the American businessman is waiting for approval of his proposed contract, his West German counterpart supplies the goods.

Since 1964 the Export-Import Bank has been prohibited from lending its own funds for the financing of American exports to any Communist country and since February, as I mentioned earlier, the Bank has been prohibited from guaranteeing or insuring loans extended by private lenders to finance American exports to Communist countries. Before the Eximbank credits to Communist countries were cut off, Russia and Eastern European countries had to prove their credit worthiness to a greater extent than was required of other nations.

These precautions are needless and counterproductive. There has never been default on any Western transaction with any Eastern European nation. The denial of Export-Import credits prohibits any trade which is not paid for on the spot. Goods and industries normally are bought on terms as long as 8 years and more. Especially for a country such as Rumania engaged in making great investments, cash deals are impossible.

Romania's dramatic increase of trade with the Western nations, her rapid pace of industrialization,and her corresponding economic independence within the Eastern bloc has been made possible by the willingness of Western trading nations to extend substantial medium- and long-term credits supported by Government guarantees or insurance. The American holdback in extending longer credit terms arises from the cold war conviction that the extension of longer credit terms represents an indirect extension of aid to our adversaries.

On the other hand Eastern countries have felt free to extend credit for the sale of hydroelectric or industrial equipment in the West, and the countries of Western Europe and Japan have extended credits in the 10- to 12-year range for sales to the East. In addition the British and Italians guarantee transactions at much lower rates than the Eximbank can.

Export-Import guarantees are vital if American suppliers are to compete in Eastern European markets. The lack of such a guarantee will be a serious barrier to American participation in East-West trade—and as long as this barrier remains in effect, we can expect to see American exports lose ground in their current 4 percent of the market.

I must add that American corporations are trading a great deal more with Eastern Europe and Russia than official figures show. This trade, which may run as high as $300 or $400 million a year, is carried on through American subsidiaries in Western Europe. Thes subsidiaries are eager to expand their trade with the Eastern European nations, and Eastern Europeans are eager to purchase goods of the quality developed with American know-how. Ironically, the balance-of-payments measures which limit American investment in Europe mean that a large increase in the American share of the Eastern European market will not be forthcoming through the mechanism of American subsidiaries.

Eastern Europeans, despite their inclination to favor American quality, are reluctant now to look to the United States for trade. They have learned that they simply cannot depend upon American trade. An Eastern European trade minister may be taking his life in his hands—certainly his job—by committing himself to a trade deal. When we back off, he pays the price. A high official in the Polish Foreign Ministry told me that there is great uncertainty there about U.S. trade policy; he cited the constant threat of the removal of most-favored-nation treatment for Poland—along with Yugoslavia, Poland receives the benefits of lower tariffs under most-favored-nation arrangements with the United States —changes in Public Law 480, and the recent restrictions on the Export-Import Bank.

With the exceptions of Yugoslavia and Poland, Eastern European nations pay the prohibitively high Smoot-Hawley rates for their products. The lack of most-favored-nation treatment, a routine concession to most nations of the world, is a serious barrier to U.S. participation in East-West trade. A high Romanian trade official told me that lack of most-favored-nation treatment by the United States means that Romanian exports are directed to Western Europe, thereby limiting the potential for import of goods from the United States.

The most-favored-nation clause has been gradually extended to most of the Eastern countries by a very large number of Western countries. Refusal to apply it may be regarded as an exception except in the case of the United States. The President submitted an East-West trade relations bill of 1966 to give the Executive authority to negotiate trade agreements extending most-favored-nation treatment to European Communist states; Congress should enact such legislation.

Perhaps the most formidable opposition any American business wishing to trade with Eastern Europe faces is the threat of attacks or an actual campaign by certain groups which fear any contacts at all with Eastern Europe. Despite the State Department's efforts to reassure American businessmen, the groups inject themselves into the operation of our foreign policy through intimidation of individual companies.

Unfortunately, the campaign launched by Young Americans for Freedom against the Firestone Rubber Co.'s proposed synthetic rubber plant, a plant approved by our Office of Export Control—and Firestone's consequent withdrawal of its plans—left Romania with little faith in arrangements with American companies. At a time when Romania is attempting to assert her independence, this lack of faith becomes critical.

The apprehensions about East-West trade center on our participation in the economic advancement of a rival economic system. The presumption is that Eastern European countries cannot achieve economic success without us. The Soviet Union's achievements in space and the growing volume of trade on the part of Western Europeans with Eastern Europe show the weaknesses of that theory.

There is little support in either Western or Eastern Europe, among Government officials, economic and political experts, American diplomatic officers, and American and European businessmen for the fears commonly expressed in the United States that trade with Eastern Europe strengthens communism. Indeed, quite the opposite is felt to be the case—that America's restrictive policies force Eastern European nations to depend on Russia, and therefore strengthen Moscow's failing attempt to keep her former satellites dependent on her.

The time has come when we must deal head-on with the recurring myth of the efficacy of economic warfare. This is no longer a matter of question—hard evidence indicates that economic warfare measures are ineffective even under ideal "laboratory conditions."

In fact, economic warfare may have exactly the opposite effect from that we intend. By withholding trade, we encourage a nation to develop its own resources. Rigid export restrictions result in a denial forcing the creation of new industrial capacity to produce the item denied.

On the other hand, freely encouraged trade creates a certain dependency. Western Europeans today are chafing at the "technological gap" which grew from European overdependence upon U.S. industry and technology.

Internally, Western trade can have a profound effect on the nature of life in Russia and in Eastern Europe. An Italian official pointed out to me the implications of the Fiat contract with the Russians: they will need repairs, gasoline, highways, and insurance, all factors in social change.

As Communist economic policy devolves, producers may become more responsive to market demands. If Eastern European countries are to participate in greater trade with the United States, they will have to pay for their imports with increased exports since credit is difficult to obtain. To export, their products must be competitive with the highly sophisticated Western products and they must develop sales techniques which will meet Western consumer demands.

The United States can assist in a variety of ways. One is by the above-mentioned loosening of restrictions on Export-Import Bank credit. Another is by helping these nations find markets in the United States or elsewhere in the world. In many respects the Eastern European nations are more comparable to the developing nations of the world than to the Western European nations and the United States. A dialog to help the Eastern Europeans find markets is engaged in everywhere except the United States.

Eastern Europe is at an economic crossroads. It is not at all certain that they must move toward Western-type relationships. In chaos and with little encouragement from us they could go back to the older practices.

Changes are coming faster than we can keep track of them in Eastern Europe. A power struggle appears underway in Poland. With a change of government in Czechoslovakia have come astounding liberalizations in the areas of free speech and press. Romania's continued participation in the activities of the Soviet bloc's military and economic alliances is in question. And last week the Soviet Government announced ratification of a consular convention with the United States.

At the moment many of these changes are rebounding to favor the West. The Soviets canceled a quarterly delivery of wheat to Czechoslovakia; the Czechs turned to Canada for wheat to replace the Soviet imports. Instead of wheat shipments, the Russians offered the Czechoslovaks a $400 million loan in hard currency to be paid back with goods which Moscow buys from the West. The Czechs intend to use the loan to buy construction equipment and licenses for the chemical industry in the West, to expand warehouse and transport facilities, and to build hotels for Western tourists.

And while we are watching the current events in Eastern Europe, we must not forget that trade opportunities there provide a chance to add exports which assist a favorable balance of payments. In March, for the first time in 5 years, the United States had a trade deficit—our exports were outstripped by our im-

ports. Now is not the time when we can afford to overlook the fastest growing market in the world—Eastern Europe.

We need to examine the relevancy of our trade policies—their relevancy to the events in Eastern Europe, to our payments problems, and to the competitive position of American business. It is time to dispel the public misconceptions saddling American participation in East-West trade with unnecessary and unproductive restrictions. Most important of all we must indicate that the Senate believes increased East-West trade in peaceful goods to be in the best interests of the United States. Only then will we overcome the subtle psychological barrier to such trade arising from an uncertain Government policy.

Winds of change are blowing across Eastern Europe, but the breezes rarely enter Congress. We must respond to these changes. If we do not, the nations of Eastern Europe and of the West will correctly decide that we have shunned an opportunity to alter the economic dependency with the Communist bloc. History will make the same judgment.

I ask unanimous consent that the joint resolution be printed in the RECORD.

The PRESIDING OFFICER. 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. 169) relating to East-West trade, introduced by Mr. MONDALE (for himself and other Senators), was received, read twice by its title, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S.J. RES. 169

Whereas current export credit and other restrictions on United States trade in peaceful goods with Eastern Europe impede the response of the United States to changes within the Communist world; and

Whereas the changes in Eastern Europe are vital to the maintenance of United States objectives in building a peaceful, democratic world; and

Whereas an increase in United States exports to Eastern Europe will assist in meeting the United States balance of payments problems; and

Whereas public misconceptions plague efforts to expand East-West trade; Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that the Export Control Act regulations and the Export-Import Bank financing restrictions should be examined and modified to promote the best interests of the United States by permitting an increase in trade in peaceful goods between the United States and the nations of Eastern Europe.

SENATE JOINT RESOLUTION 170—INTRODUCTION OF JOINT RESOLUTION TO INCREASE FARM DISASTER LOANS

Mr. HARTKE. Mr. President, we have a serious situation across the country. The Farmers Home Administration is without funds for emergency loans. The Indiana Office of the Farmers Home Administration has $1,250,000 in disaster loan applications. These are from farmers in 76 "disaster" designated counties. The Farmers Home Administration revolving fund cannot meet the financial requirements for $250,000 in loans which have been approved. Another $1 million in applications are in process—with absolutely no hope of funding.

If the situation is so desperate in Indians, then other States are similarly crippled in their financial needs to farmers. Therefore, Mr. President, I introduce a joint resolution to transfer $30 million from the Commody Credit Corporation to the Farmers Home Administration. The funds would be returned by appropriation and when proceeds of other loans are realized.

I urge swift passage of my joint resolution before the lack of funds forces more farmers off the land, creates any more hardships on our farm families and causes serious legal and financial problems for our Nation's farmers.

The very nature of the emergency loan system makes it imperative that we pass my resolution, Mr. President. Many of the farmers in Indiana's 76 counties were ruined by natural disaster—drought and later, by rains which flooded fields. The Federal Government offered a helping hand with the eligibility for loans. Now our people are being told there are no funds to fill these requests for help. It is a sorry state when we renege on our Federal promises.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 170) to authorize the temporary funding of the emergency credit revolving fund, introduced by Mr. HARTKE, was received, read twice by its title, and referred to the Committee on Agriculture and Forestry.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTION

Mr. CLARK. Mr. President, I ask unanimous consent that, at its next printing, the name of the junior Senator from Montana [Mr. METCALF] be added as a cosponsor of the bill (S. 2938) to extend certain expiring provisions of the Manpower Development and Training Act of 1962.

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

Mr. CLARK. Mr. President, also I ask unanimous consent that, at its next printing, the names of the senior Senator from Massachusetts [Mr. KENNEDY] and the junior Senator from Montana [Mr. METCALF], be added as cosponsors of the bill (S. 3083) to provide employment and training opportunities for low-income and unemployed persons.

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

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from South Dakota [Mr. MUNDT], I ask unanimous consent that, at its next printing, the name of the Senator from West Virginia [Mr. RANDOLPH] be added as a cosponsor of the joint resolution (S.J. Res. 165) authorizing the President to proclaim August 11, 1968, as Family Reunion Day.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, May 9, 1968, he presented to the President of the United States the enrolled bill (S. 1909) to provide for the striking of medals in commemoration of the 100th anniversary of the completion of the first transcontinental railroad.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967—AMENDMENTS

AMENDMENT NO. 749

Mr. PERCY. Mr. President, I submit an amendment, intended to be proposed by me, to the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes, and I ask that it be printed.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. PERCY. Mr. President, I will not take the time of my colleague, who has been kind enough to yield briefly to me this afternoon, to discuss the amendment I have just introduced. I would hope tomorrow to have the opportunity to make some extended remarks for the RECORD on my amendment.

The purpose of the amendment is to provide authorization in the bill for the formation and utilization of community service officers under the provisions of title I of the Omnibus Crime Control Act. My amendment parallels the Community Service Officers Act of 1968 which is today being introduced in the House of Representatives by Congressman CHARLES E. GOODELL, of New York.

Mr. President, this amendment is designed to implement the recommendations of two blue-ribbon Commissions appointed by this administration which dealt with the problems of law and order in our cities. The Presidents Commission on Law Enforcement and the Administration of Justice recommended the constitution of community service officer programs in its report published in February 1967. The National Advisory Commission on Civil Disorders made a nearly identical recommendation in March 1968. Mr. President, I would hope that other Senators who are familiar with these reports and who are interested in the sensitive area of police-community relations will join me in both sponsorships and support of this amendment.

AMENDMENTS NOS. 750 THROUGH 768

Mr. HART. Mr. President, I submit 19 amendments to title III of the pending bill, S. 917, and ask that they be received and printed in the RECORD. With each amendment I have also submitted a short explanation which I ask be printed following the amendment.

Mr. President, I hope the Senate will seriously consider these amendments to title III as well as those amendments to title III which have been submitted by the Senator from Missouri [Mr. LONG] and the Senator from Hawaii [Mr. FONG].

The PRESIDING OFFICER. The amendments will be received and printed, and will lie on the table; and, without objection, the amendments and explanations will be printed in the RECORD.

The amendments and explanations are as follows:

AMENDMENT No. 750

On page 68, line 24, insert the following new subsection after subsection (3):

"(4) No order shall be issued under this Chapter if the facilities from which, or the place where, an oral communication is to be intercepted are being used primarily for habitation by a husband and wife."

Redesignate subsections (4)–(10) as (5)–(11), respectively.

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III draws no distinction between homes and other places with respect to wiretapping and eavesdropping. Homes should not be completely immunized, since there is a strong possibility that they may be used for illegal activities. The amendment would permit wiretaps on home telephones, but would prohibit the installation of bugs in homes. The use of bugs presents a far more serious threat to privacy and the sancity of the home than the use of wiretaps. Until we know more about the needs of laws enforcement and the usefulness of bugging, bugs in homes should be banned.

AMENDMENT No. 751

On page 70, line 4, after "days" add the following: "and no order and extensions thereof shall be issued for a total period longer than ninety days, and no series of orders naming the same individual shall be issued for a total period longer than ninety days in a calendar year."

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III authorizes orders for wiretapping and eavesdropping to be issued for periods of up to 30 days in length, with unlimited extensions for additional 30-day periods. The present amendment would place an absolute limit of 90 days on the total period of surveillance. Three 30-day surveillance periods, or their equivalent, is a generous dividing line between legitimate investigation of specific offenses and unconstitutional general intelligence-gathering. The final clause of the amendment prevents evasion of the limitation by prohibiting the use of separate orders naming the same person over a period totaling more than 90 days in any calendar year.

AMENDMENT No. 752

On page 70, line 24, after "exists" insert the following: "that involves a threat of immediate danger to life and".

The explanation presented by Mr. HART is as follows:

EXPLANATION

The provisions of Title III, which authorize emergency wiretapping and eavesdropping with judicial warrants, contain a broad loophole inviting serious evasion of the other safeguards of the title. The amendment would prohibit emergency surveillance except in cases of immediate danger to life, such as investigations involving kidnapping, threats to murder, attempts to apprehend dangerous felons, etc. In other cases, a prior court order would have to be obtained before communications could be intercepted.

AMENDMENT No. 753

On page 72, line 1, amend the phrase "Immediately upon the expiration" to read as follows: "As soon as practicable, and in any event no later than immediately after the expiration".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Section 2518(8)(a) of Title III requires recordings of intercepted communications to be sealed with the issuing judge only after the period of surveillance has ended, regardless of the length of the surveillance period or the number of extensions of the original period that have been granted. The present amendment would require such recordings to be sealed with the judge as soon as practicable during the investigation. In this manner the recordings will receive increased protection from alteration.

AMENDMENT No. 754

On page 73, line 4, after "application," insert "and such other parties to intercepted communications as the judge may determine in his discretion and the interest of justice,".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III requires notice of wiretapping or eavesdropping to be served only on the persons named in the court order. The communications of many other persons, innocent or otherwise, may also be intercepted. The amendment would give the judge who issued the order discretion to require notice to be served on other parties to intercepted communications, even though such parties are not specifically named in the court order. The *Berger* and *Katz* decisions established that notice of surveillance is a constitutional requirement of any surveillance statute. It may be that the required notice *must* be served on *all* parties to intercepted communications. Since legitimate interests of privacy may make such notice to all parties undesirable, the amendment leaves the final determination to the judge.

AMENDMENT No. 755

On page 73, line 15, at the end of paragraph (d), add the following sentence: "The judge may, in his discretion and the interest of justice, require that the contents of intercepted wire or oral communications shall be disclosed to the parties to the communications.".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III merely requires notice to a person named in a court order that his communications were intercepted. The present amendment would allow the judge, in his discretion and the interest of justice, to disclose the contents of the intercepted communications to such person, as well as to the other parties to the communication. It is intended that, in exercising his discretion, the judge shall take into account the legitimate privacy interests of the parties in the nondisclosure of their communications.

AMENDMENT No. 756

On page 52, line 13, after "offenses," add: "but shall not include any legislative or judicial officer.".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III authorizes legislative investigating committees and probation and parole officers to engage in wiretapping and eavesdropping. The amendment would restrict the use of such techniques to officers of the Executive Branch of Federal, State, and local governments. By the operation of Section 2517, the amendment would also prohibit the disclosure of intercepted communications to executive committees.

AMENDMENT No. 757

On page 52, lines 22–25, delete paragraph (b).

On page 61, line 24, delete the word "Federal."

On page 63, line 20, delete the words "State court".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Although Title III places narrow restrictions on the Federal judges who may issue surveillance warrants, the title is essentially open-ended with respect to the State judges authorized to issue such warrants. The amendment would allow wiretapping and eavesdropping by State officers, but would require them to go through a Federal court. Reliance on 50 separate judicial systems would make it extremely difficult to achieve uniform standards. Title III in its present form encourages judge-shopping in the State courts, since applicants for warrants will undoubtedly go to the judge who is most sympathetic to such applications. Wholesale intrusions on privacy are likely to result.

AMENDMENT No. 758

On page 53, line 7, add the following at the end thereof: "or a person against whom the communication, or evidence derived therefrom, is sought to be used.".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Section 2510(11) of Title III gives standing to challenge a surveillance order to any person who was either (1) a party to an intercepted communication, or (2) the person against whom the interception was directed Title III is thus likely to encourage *illegal* electronic surveillance in cases where the parties to a communication are not the real objects of the surveillance. For example, Title III will encourage *illegal* surveillance of petty hoodlums by law enforcement officers to gain intelligence against their bosses, secure in the knowledge that their illegal activities cannot be challenged in court. The proposed amendment gives standing to challenge a surveillance order to any person against whom an intercepted communication is sought to be introduced in evidence.

AMENDMENT No. 759

On page 55, line 10, after the word "employment" insert the following: ", pursuant to such regulations as the Federal Communications Commission shall promulgate,".

The explanation presented by Mr. HART is as follows:

EXPLANATION

The present version of Title III offers a wide loophole for invasion of privacy by switchboard operators and employees of communications common carriers. The present amendment would place such activities under the control of the Federal Communications Commission.

AMENDMENT No. 760

On page 56, lines 1–4, amend paragraph (c) to read as follows:

"(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where at least one of the parties to the communication has consented to the interception."

The explanation presented by Mr. HART is as follows:

EXPLANATION

Although Title III contains broad prohibitions against all non-consensual ("third party") interceptions of wire or oral communications—i.e. interceptions without the consent of at least one of the parties to the conversation—and places strict controls on the use of such interceptions by law enforcement officers, it is totally permissive with respect to the surreptitious monitoring of a conversation by one of the parties to the conversation without the consent of the other parties. Such consensual wiretapping and eavesdropping by private persons is a widespread and insidious practice in our society, and constitutes a serious invasion of privacy. The proposed amendment would expand the prohibitions of Title III to include such consensual eavesdropping by private persons. It would not be applicable to the activities of law enforcement officers, or of private persons acting in cooperation with law enforcement officers. The amendment thus interferes in no way with the legitimate needs of law enforcement. At the same time, it accomplishes a significant protection of the right of privacy.

AMENDMENT NO. 761

On page 56, lines 1–4; amend paragraph (c) by adding the following at the end thereof:

"*Provided,* however, That this exception shall not apply where such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State, or for the purpose of committing any other injurious act."

The explanation presented by Mr. HART is as follows:

EXPLANATION

There are a limited number of situations in which private persons placed in compromising circumstances may legitimately desire to surreptitiously record the statements of other parties to the conversation. The present amendment is designed to prohibit the flagrant abuses that now exist with respect to the practice of consensual wiretapping and eavesdropping, but at the same time to allow private persons to use the technique for lawful purposes. The amendment places no restrictions on law enforcement officers acting in the ordinary course of their duties.

AMENDMENT NO. 762

On page 56, line 23, insert in lieu of the word "reasonable" the following: "authorized or approved by a Federal judge of competent jurisdiction".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Section 2511(b)(3) of Title III authorizes the admission into evidence of communications intercepted in national security cases if the interception was "reasonable." The present amendment is intended to prohibit the use of communications intercepted in the exercise of the national security power in any judicial, legislative or administrative proceeding, unless a court order was obtained authorizing or approving the interception under the probable cause standards of Title III. The amendment in no way restricts the exercise of the national security power. At the same time, it eliminates the danger of potential abuses of the power against private citizens. The requirement of subsequent judicial approval is mild, and can be met if the approval is obtained within a reasonable period after the need becomes apparent for the use of the information in a judicial or other proceeding.

AMENDMENT NO. 763

On page 60, lines 11–12 and 13–14, delete the phrase "or any of the offenses enumerated in section 2516".

On page 107, line 5, substitute S. 677 as a new title V, and redesignate the present title V as title VI.

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III contains a vast and indiscriminate immunity provision that goes far beyond any showing that has been made of the need for such a powerful weapon. Under the present version of Title III, the Federal Government is authorized to grant immunity in connection with the investigation of any of the named offenses for which wiretapping and eavesdropping warrants may be used, however minor the particular offense, and whether or not it is related to organized crime.

The immunity procedure authorizes the Federal Government to grant immunity against criminal prosecution to any witness who claims his Fifth Amendment privilege against self-incrimination, and to thereby compel his testimony on the subject matter of the investigation.

The immunity provision places a powerful weapon in the hands of a prosecutor. To be sure, it has proved extremely valuable in investigations of organized crime. At the same time, however, its use should be carefully circumscribed because of the serious dangers of abuse that it contains.

In the first session of the 90th Congress, the Senate passed S. 677, an immunity bill which was thoroughly considered by this body, and which authorized grants of immunity in four carefully chosen areas directly related to the activities of organized crime: interstate or foreign travel in aid of racketeering enterprises; obstruction of justice by intimidation of witnesses or jurors; bankruptcy frauds; and bribery, graft, and conflict of interest. By contrast, the present broad immunity language of Title III was not included in the version of Title III as reported out by the State Judiciary Subcommittee on Criminal Laws and Procedures, and its inclusion in Title III was not specifically considered by the full Committee when the present version of Title III was reported out.

The House has not yet acted upon S. 677. The present amendment would delete the blunderbuss immunity language of Title III, and would add S. 677 as a new title of S. 917. The amendment would make no change in the use of immunity authorized by Title III for investigation of offenses involving illegal wiretapping and eavesdropping.

AMENDMENT NO. 764

On page 64, lines 17 and 25, after "therefrom" insert "intercepted in accordance with the provisions of this chapter".

The explanation presented by Mr. HART is as follows:

EXPLANATION

Although subsection (3) of Section 2517 of Title III prohibits the disclosure by law enforcement officers of *illegally* intercepted communications in criminal trials or grand jury proceedings, subsections (1) and (2) contain a broad loophole that may permit such communications to be disclosed or used for other purposes. The loophole arises from the fact that the phrase to be added by the amendment to subsections (1) and (2) already appears in subsection (3). Title IV is therefore likely to encourage *illegal* electronic surveillance, especially in cases where the parties to a communication are not the real objects of the surveillance. The amendment would make subsections (1) and (2) of Section 2517 completely parallel to subsection (3), and would prohibit the disclosure or use of illegally intercepted communications in any circumstances.

AMENDMENT NO. 765

On page 66, line 24, after the word "intercepted," add the following: "and the particular time of the day or night at which the communications sought to be intercepted will take place,".

On page 68, line 15, after the word "interception" insert the following: "and that such communications will take place at particular times of the day or night;".

The explanation presented by Mr. HART is as follows:

EXPLANATION

The present version of Title III violates the specific constitutional requirement, established by the Supreme Court in the *Berger* and *Katz* decisions, that judicial warrants for electronic surveillance must *particularly* describe the conservations to be overheard.

The circumstances of the *Katz* case offer a clear example of what the Supreme Court intended by the "particularity" requirement. In *Katz,* the Federal investigating agents obviously had probable cause to believe that particular communications made by the suspect from the public telephone booth would take place at particular times of the day. A judicial warrant for the surveillance in *Katz* could therefore have been obtained that would have satisfied the requirements of the Fourth Amendment, which has long been held to require a precise description of the article to be seized under a search warrant. By contrast, under the present version of Title III, *all* conversations of the person named in the warrant may be intercepted and seized over the entire period of the surveillance, which may be up to 30 days in length. Such a blanket surveillance is nothing but a general search, and is therefore invalid under the Constitution.

AMENDMENT NO. 766

On page 67, line 22, at the end of paragraph (e), add the following new paragraph:

"(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or by a reasonable explanation of the failure of obtain such results."

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III leaves open the possibility that extensions of a surveillance warrant may be obtained merely on the basis of the original showing of probable cause. The amendment requires an applicant for an extension of an order to make a fresh and timely showing of probable cause in order to obtain the extension. If a prior surveillance has been unproductive, a judge should not grant an extension of the order unless a reasonable explanation is given for the failure to obtain results under the original order, even though the original showing of probable cause remains valid.

AMENDMENT NO. 767

On page 68, line 24, insert the following new subsection after subsection (3):

"(4) If the facilities from which, or the place where, a wire or oral communication is to be intercepted are public, an order issued under this Chapter shall be limited to the interception of wire or oral communications of named or otherwise specifically identified persons."

Redesignate subsections (4)–(10) as (5)–(11), respectively.

The explanation presented by Mr. HART is as follows:

EXPLANATION

Title III authorizes blanket monitoring of public telephones and other public facilities. As the facts of the *Katz* case itself make clear, surveillance equipment can easily be activated when, for example, the person named in the warrent enters the phone booth. The amendment would require this procedure.

AMENDMENT NO. 768

On page 68, line 24, insert the following new subsection after subsection (3):

"(4) No order shall be issued under this chapter if the facilities from which, or the place where, a wire or oral communication is to be intercepted are being used professionally by a licensed physician, licensed lawyer, or practicing clergyman."

Redesignate subsections (4)–(10) as (5)–(11), respectively.

The explanation presented by Mr. HART is as follows:

EXPLANATION

By authorizing wiretapping and eavesdropping in circumstances that may involve the interception of communications between attorney and client, doctor and patient, priest and penitent, and husband and wife, Title III carries a drastic potential for the serious disruption of professional relationships. There is no compelling evidence that professional offices are being used as headquarters for criminals. Sound professional relationships require public confidence that such communications will be kept secret. The present amendment would prohibit the use of wiretapping or eavesdropping on premises used professionally by a lawyer, doctor, or clergyman. It would not apply in the case of premises merely listed in the name of such persons. Title III is clearly in the experimental stage. Until professional offices are shown to be used as criminal sanctuaries, the balance in Title III should be struck in favor of privacy.

NOTICE OF HEARINGS ON NOMINATIONS BEFORE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that public hearings have been scheduled for Thursday, May 16, 1968, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

Halbert O. Woodward, of Texas, to be U.S. district judge, northern district of Texas, vice Joe B. Dooley, retired.

William Wayne Justice, of Texas, to be U.S. district judge, eastern district of Texas, vice Joe W. Sheehey, deceased.

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

The subcommittee consists of the Senator from Arkansas [Mr. MCCLELLAN], the Senator from Nebraska [Mr. HRUSKA], and myself, as chairman.

CORPORATION FARM HEARINGS WILL OPEN IN OMAHA ON MAY 20

Mr. NELSON. Mr. President, my recent announcement that the Subcommittee on Antitrust and Monopoly of the Select Committee on Small Business would begin an investigation of corporation farming has stimulated a phenomenal number of inquiries from farm organizations, large and small businesses, and many other individuals and groups concerned about the future of rural America.

Our first hearing will be held in the Federal Building, Omaha, Nebr., at 11 a.m., Monday, May 20. Subsequent hearings will be held in the upper Midwest, the Northeast, the Northwest, and in Washington, D.C., over the coming months.

The subcommittee will initially be developing testimony in four areas—the implications of corporation farming on small businesses in local communities, the consequences regarding the sociological, educational, and moral structure of rural America, the effects on the independent family farm, and how the country's natural resources will be used.

Again, I wish to make it very clear that incorporation by family farmers is not questioned. Instead, it is the rapid movement of large, conglomerate corporations and other absentee nonfarm interests into agriculture that the subcommittee wishes to study.

I ask unanimous consent that an article entitled "Will Corporation Farming Doom the Small Farmer?" published in the April issue of National Grange magazine, be printed in the RECORD.

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

WILL CORPORATION FARMING DOOM THE SMALL FARMER?

Rapidly rising land prices that limit expansion of family farms and entry of young men into farming can be blamed partly on a new and well-financed competitor—the city-based corporation farmer.

"The boom in farmland prices is city-based," a farm writer concludes. He cites tax avoidance, speculation, and investment as major land-buying reasons.

The 60% increase in farm real estate prices in the last 10 years (1967 compared with 1957–59 average) reflects this feverish competition for land.

Non-farm interests, whether incorporated or not, normally buy land quietly through local real estate people. This avoids ruffling local feathers. Occasionally, however, a big purchase makes headlines and stirs public indignation.

This happened when Gates Rubber Co., a Denver-based conglomerate, announced it had options to buy up to 10,000 acres in Yuma County, Colo., for a huge corporation farm. Local people were stunned and angered.

Petitions were signed and a determined delegation called on Gov. John Love to protest. But nothing happened. It soon became clear there was no way to turn out the intruder, no way to fight it.

The company assured local businessmen the "new industry" was a plus and that the loss of business from the 50–75 farms involved would be made up. It told farmers the land buying was in the best interests of their neighbors who had sold out.

"Most of the people we're buying from" a Gates spokesman said, "will in turn buy a small home at the edge of town, put the rest of his money in the bank, cut his 16-hour working day, and live on his rocking chair income."

This conglomerate, typical of many large companies going into farming, announced it probably would start similar operations later in other states. Gates already has a 180,000-acre ranching operation and is one of the nation's biggest egg producers.

Is this wave of the future for agriculture? Is this the community-development answer to out-migration that has sent millions of rural people to the cities? Will the Gates plan be copied by other companies and applied in other farm states?

There are many who insist the answer is "yes" unless action is taken to head off invasion of farming by corporations and other non-farm interests.

It is clear that family farm agriculture, unchallenged more than 100 years as the world's most efficient farming system, is directly threatened by these powerful non-farm interests.

Involved are some of the big-name companies (H. J. Heinz, Del Monte, Gulf & Western, W. R. Grace & Co., Monsanto Chemical, etc.) and a lot of "big money" that has been providing investment capital for oil, shopping centers, and other get-rich-quick ventures. No longer is it limited to "hobby" farmers seeking a home in the country and, if possible, a tax writeoff as well.

The change is coming so fast that the *Wall Street Journal*, the big news magazines, and business publications are sending reporters out to look the situation over.

It's unlikely the trend to corporate farming can be stopped, the *Wall Street Journal* reported. It said economists foresee the day when family farms will fade away and corporations will do the farming as impersonally as they now make vacuum cleaners.

With farm prices down and overproduction a constant downhold on output, farmers wonder why anyone would want to pour a lot of money into agriculture. What's behind this sudden and intense non-farm interest in farming?

Secretary Orville Freeman says one factor is the ability of a diversified corporation to gain by taking heavy losses in farm operations, writing them off against income made in other business ventures.

"In periods of overproduction financial reserves built up from non-farm activities allow such corporations to farm on a very narrow margin or even at a loss, posing a serious and perhaps fatal threat to family-operated farms," he says. "Obviously this is detrimental to farmers."

Freeman ordered studies of the extent of land buying and farming by corporations, industrialists, and other non-farm investors. He indicated the tax laws may be one trouble spot that can be remedied.

Sen. Lee Metcalf (D-Mont.) also sees the tax "shelter" as a major factor in high land prices and the stepped-up move against the family farm system.

"Wealthy people find it pays to buy farms and pour capital into fences, buildings, machinery and stock," he points out. "They claim losses for several years as a credit against their other income, then sell off the farms with all gain taxable at the much lower capital gains rate rather than at rates applying to regular income."

Tax records made public by the Internal Revenue Service confirm Metcalf's claim that wealthy off-farm investors are using "farms" to avoid paying federal income taxes.

An analysis of these records, which cover 1965 income, showed 103 of 119 millionaires filing farm income returns reported a loss on farming. Of 202 with incomes between $500,000 and $1 million, 196 reported a "farming" loss. Loss figures were similar for wealthy taxpayers in lower brackets.

Metcalf, in examining these records, found "farmers in 31 of 85 of our biggest metropolitan areas claimed $141 million more in farm losses than profit. The Los Angeles-Long Beach area, where movie and entertainment people are among the big investors, was the biggest claimant for farm losses in excess of profits—$41.8 million.

A bill to stop this writeoff abuse has been introduced by Metcalf. Other members of Congress are joining this tax fight, which obviously must be waged in Washington.

There's political activity at several state capitals, too, on the corporation farming issue. Some is due to farmer-backed efforts. Some, too, is set off by interest trying to repeal state restrictions on corporation farming.

A typical example is North Dakota, where a drive to wipe that state's anti-corporation farming law off the books succeeded last year. Gov. William Guy vetoed the legislation, but it was re-passed over his protest.

"Our broad prairies with their huge fields and cash grain crops are ideally suited for out-of-state ownership and large-scale machinery which could make a summertime project of cereal grain production . . .," he said in vetoing the bill.

"Perhaps I am being unfair when I suggest that our economy is stronger through direct ownership of land by people than it would be if that ownership of land and property were filtered through corporation stock."

The people of North Dakota are being urged to back their governor's position in this fall's election. A petition drive put the repeal provisions on the general election ballot so corporation farming can be voted up or down by the public.

Similar fights are underway in Kansas (a bill to remove all corporation farm restrictions was killed in January) and in Oklahoma (a drive is underway to remove a constitutional restriction on corporation farming).

Off-farm interests are getting plenty of encouragement from advisers who feel tax benefits, rising land prices, and good long-term prospects for agriculture make farming a sound investment.

"Thinking of buying a farm for weekending and retirement later?" a national magazine asks its business oriented readers. "Handle it right," it advises, "and you can have a good long-term investment, tax benefits—and even some current income."

Economic studies prepared for big investors, it is reported, also urge them to plunge into farming.

Gene L. Swackhamer, farm economist for the Federal Reserve Bank of Kansas City, told a farm audience recently that many investors now are convinced agriculture's future is bright.

He said a feasibility study made on a "conservative basis" by a private consulting firm recently showed that, with good management, a continuous corn farm of about 2,000 acres in Iowa could yield 12.1% on stockholder equity the first year and 18% by the sixth year.

Is the profit-and-loss statement to be the dominant factor in agriculture? What about soil and water conservation? The farm co-ops and Main Street businesses? The schools and churches? The welfare problems created by the seasonal nature of corporate farming? All the displaced rural people?

The investors aren't talking much about these problems but everyone familiar with farming and rural people should be. So should city people, who have a stake in our land and water resources and who will have to pick up the tab for heavy social costs of an industrial agriculture.

Former state Sen. Phil Doyle of Beloit, Kan., has raised these questions repeatedly in recent speeches. Is it sound national policy to permit corporations to control large land areas, he asks, or to put them in charge of a national resource that must be handled from generation to generation?

"You can always replace a factory building when it is rundown or obsolete (or) get away with polluting a river in an industrial area, as every corporate executive knows, or fill the air with soot and smoke," he says. "But the land is too precious to allow it to be exploited."

Finally, there's the intangible called management and the evidence is strong that the farm family is unsurpassed in this category. The independent operator has the incentive of ownership, on-the-spot decision-making authority, and a reservoir of labor that knows no time card.

"When the chips are down," as one farm writer puts it, "the family farmer and his family can put in 18-hour days, 7-day weeks with no fixed charge on the books for time and a half or double time."

Surely this nation can afford the family farmer, who has repeatedly demonstrated his efficiency and productive capacity, and provide him with a decent return for his management, long hours of labor, and growing investment. If it decides it cannot, it had better be prepared for all the consequences and the billions it will cost to underwrite them.

HIGH-SPEED RAIL TRANSPORTATION

Mr. McINTYRE. Mr. President, for many years, now, travelers on the east coast have been looking forward to modern, high-speed rail transportation along one of the busiest travel corridors in the world.

Landing delays at airports, hundreds of near collisions every month along the east coast air corridor, and major ground transportation bottlenecks between busy airports and center-city terminals have created a significant need for better rail transportation between the heavy population centers that make up the megalopolis.

The U.S. Department of Transportation, in a unique venture with private industry, is attempting to satisfy this need by developing two new high-speed trains to operate between Boston and New York and between Washington and New York.

Much criticism has been leveled at the railroads and the two manufacturers who are constructing these new trains because of a 6-month delay in the inauguration of service between Washington and New York.

But I think we have been too hasty in handing out the criticism and somewhat lax in handing out compliments for private industry's excellent cooperation with Government in bringing about this new service.

The two new high-speed trains will be the most advanced trains in the world. Building these new trains required many new advances in technology and electronic circuitry.

It was not merely a question of making a bigger and more powerful engine to make the new trains go faster. Instead, many new advances in electronics, design, and operation and going into making these trains the best ever made.

That is precisely why it has been difficult to meet deadlines set long before anyone really knew what it would require to build the type of high-speed train network that is needed along the east coast.

In fact, the Budd Co. and United Aircraft Corp., manufacturers of the new high-speed trains, should be complimented for their hard work, cooperation, and innovative design techniques, rather than roundly criticized for a 6-month delay in putting their product into service.

America's railroads have been neglected—and neglectful—for some 30 years. So I think that we can be patient for just a few more months.

EXCESSIVE DEFENSE CONTRACT PROFITS

Mr. AIKEN. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Listen to Rickover," published in the Barre, Vt., Times-Argus of May 6, 1968. The article relates to testimony given by Admiral Rickover concerning excessive profits made by many defense contractors.

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

LISTEN TO RICKOVER

Congress, in its decisions about a tax increase and budget cuts at Washington, might give serious thought to the testimony presented last week by Admiral Rickover that many defense contractors are making excessive profits with the acquiescence of an "industry-oriented" Defense Department.

Many taxpayers have suspected that, over the years, and this is not the first time it has been publicly alleged.

It does seem like an opportunity for Congress to improve its reputation.

If defense contracts have been returning profits of 25 per cent, as Admiral Rickover charged in testimony before a Congressional committee, there must be other firms that would like to take over some of the contracts for smaller profits.

EXPENSIVE FARM PROGRAMS

Mr. RIBICOFF. Mr. President, several weeks ago I introduced the Wheat and Feed Grains Act of 1968, S. 3158. At that time I stated that current farm programs are costing American taxpayers billions of dollars each year, but that in spite of those billions, family farms continue to disappear and parity income of farmers stands at depression levels. Too few of us actually know how much of a mess our current farm programs have become.

Direct farm program costs are paid through the Commodity Credit Corporation. This $14.5 billion Government enterprise borrows money from the U.S. Treasury to make price support and diversion payments for such crops as wheat, feed grains, and cotton. These payments appear on CCC books as losses which are reimbursed by congressional appropriations after the payments are made.

Founded in 1933, the CCC had losses of $10,624,936,000 through June 30, 1963, for wheat, feed grains, and cotton programs—slightly more than $10.5 billion during the first 30 years of farm programs. While that is a rather sizable sum, spread over 30 years it is not what one would call staggering.

However, "staggering" is mild in describing what has happened since 1963. In 4 years' time—from June 30, 1963, through June 30, 1967—CCC losses for programs for wheat, feed grains, and cotton were $9.9 billion. In other words, farm program costs over the past 4 years nearly equaled that which was spent during the first 30 years.

And costs continue to rise at a fantastic rate. During the first 6 months of fiscal 1968, CCC losses for wheat, feed grains, and cotton programs were $2,041,095,000. Thus, the cost of farm subsidy programs in the last four and a half

years has surpassed that spent in the previous 30 years. This is too much for too little.

Even if the farmers were faring well under current programs, this outlay of funds would be a subject of concern. But the farmers are in trouble. At the end of 1967 the farm parity ratio stood at 74 and at the end of March it was 73—the lowest since 1933. Even by adding Government payments into the parity tables, the 1967 ratio was only 79—again the lowest level since 1933.

While some would say that per farm net income is up, I say it ought to be. In 1963, 13,367,000 people lived on farms. By 1967 that number had dropped to 11,000,000. With fewer people sharing in net farm income, per farm net would have to go up unless total net had dropped drastically. These fewer farms represent larger investments which require increased per unit income just to stay even.

American agriculture is suffocating in its own regulatory programs. But, the only tangible result, so far as I can see, is that farm population has dwindled by 21 percent and the Department of Agriculture's bureaucracy has expanded by 11 percent. Meanwhile, the taxpayer is paying the tab for the whole mess.

Hearings have been held by the Senate Committee on Agriculture and Forestry and are now being conducted by the House Committee on Agriculture on the subject of extending the Food and Agriculture Act of 1965. The Senator from Louisiana [Mr. ELLENDER], the distinguished chairman of the Senate committee, has repeatedly stated that the present farm programs should be carefully studied before extending them. I commend Senator ELLENDER, for the act in question does not expire until following the 1969 crop year. In my opinion, action is not necessary at this time. To extend now a program which is driving people off farms, driving farm income down, and costing taxpayers billions of dollars each year would be a mistake.

As I stated earlier, I have introduced a bill which I believe would turn this trend around. My proposal is offered as an alternative to what we now have. To fail in our search for an alternative could prove to be an economic disaster for farmers and taxpayers alike.

WHEN LAND IS GONE, WHAT THEN?

Mr. HANSEN. Mr. President, a recent feature article published in the Billings, Mont., Gazette brings into focus some of the questions which must be considered by those who are concerned with preserving portions of the virgin lands of this country in their natural state for this and future generations.

The article, entitled "When the Land Is Gone, What Then?" makes no particular recommendations regarding the uses to which the Nation's undeveloped land areas should be put, but rather seeks to illustrate the myriad of considerations which come into play when the question comes up for specific legislative action.

The author, Sid Moody, raises vital questions such as these:

Should man be allowed to continue changing the land and the course of nature by clearing forests, building dams, causing the extinction of some animal, plant, and bird species, and unearthing treasure from beneath the soil?

If he continues to "meddle" in the affairs of nature, will he someday find himself unable to survive because of it? There are those who contend that by destroying vast areas of plant life, man is removing oxygen-producing green and taking chances on the serious adverse effect such action could have on man and his environment.

Should large portions of our land and the plant and animal life on it be preserved and protected in its natural state for reasons of esthetics or, perhaps, survival?

If so, how much land? Where? Will certain industries be allowed to use these areas "just a little" in order to capitalize on their richness in natural resources?

To what extent will these lands be equipped with the conveniences of humanity in order for the citizenry to enjoy them?

These and other pertinent questions are the same ones which almost daily concern members of the Committees on Interior and Insular Affairs of both Houses, who wrestle with the same problems and choices as they pertain to legislation affecting our lands.

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

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

WHEN THE LAND IS GONE, WHAT THEN?

(By Sid Moody)

In the beginning was the land, all there would be, then and forever: mountain and meadow, forest and prairie.

Man came later.

He humbled the land, mile upon mile, town upon town. The wide spaces narrowed and narrow still. And will it end only when the suffering land, all of it, is gone, rutted and shorn by man's plow and his axe?

The Dust Bowl of the 1930s; the clawed scars of strip mines in the Kentucky hills of yesterday and right now; scummed rivers lethal to life; man has done it all.

Such rape and its consequences, says Stewart Udall, is America's "quiet crisis."

Not just because of its sheer waste, but because man, as he changes the land, is tampering with the very house in which he was created. And no one, none, can say if after millenia of such tampering man will not stand homeless in an alien nature he desecrated. An example:

A young boy desirous of a bike saved up money by trapping skunks around his family's upstate New York farm. The bike finally bought, he pedalled to the pond where he used to enjoy watching wild ducks raising their young. They were gone. Why? The skunks he trapped fed on turtle eggs. No skunks more turtles—who ate the ducks.

SIMPLE STORY

That has the simplicity of a bedtime story. Consider, then, this potential nightmare. In Brazil there is talk of making a reservoir in the Amazon basin as large as Western Europe. "Has any one asked what withdrawing this much oxygen-producing green might mean to mankind?" asks David Brower, outspoken executive secretary of the Sierra Club, a U.S. conservationist group.

Can man, who dams rivers, levels forests and paves the swamp, be so arrogant as to be sure he is no more than that little boy traveling a path whose end he knows not?

Voices have been heard before: keep America's air fresh, her streams pure, her cities clean. Now there are those that warn: save the wilderness while some remains.

They argue for reasons of aesthetics, for traditional reasons of conservation. And for a newer one: that the virgin wilderness may some day be man's ultimate chance for his own survival.

"It is not given man to make a wilderness," said Brower, quoting from author Wallace Stegner. "But he can make a desert. And has."

And cut off in such a desert, having blighted the plant and animal whose destiny he shares, man conceivably could wither. Some day.

SOME FACTS

The land and water area of the 50 states totals 2.3 billion acres.

Of this, about 10 per cent remains as time has made it. The rest: cities, farms, highways, reservoirs, factories.

From this 10 per cent the United States will set aside large areas of wilderness. This was decided by the Wilderness Act of 1964.

But pivotal questions have not been decided: how much wilderness is enough: for aesthetics, for conservation, for, perhaps, survival? And what, to be sure, is a wilderness?

The act defines wilderness as "an area where earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."

But . . .

Congress, confronted with political realities, will permit mining in wilderness areas of the U.S. Forest Service until 1984.

Mining? In a wilderness? What, then is a wilderness? Others wonder.

WAGON TRAIL

A lodge owner who owns land within a Forest Service wilderness is suing because, under the act, the service will only allow him to reach his property by wagon, not a gasoline-powered jeep.

Poachers have all but eliminated the American crocodile in the Everglades National Park to supply the market for ladies' shoes and handbags.

Udall, secretary of the interior, whose department contains the Park Service, battled with Orville Freeman, whose Department of Agriculture contains the Forest Service, over a proposed four-lane highway through Sequoia National Park to open up a skiing center on national forest land.

Trees thunder to the ground daily while the argument goes on whether to create a redwoods national park.

"Every day they constantly chip away more of our resources."

That is a timber industry lobbyist talking of land set aside for conservation.

"They are constantly whittling away our resources."

That is a conservationist talking of the commercial users of the land. Clearly, each does not see each other's forest for the trees.

Some more facts:

The major land holders of the United States are the Bureau Land Management, 452 million acres, about two-fifths of the nation, the Forest Service, 186.3 million acres, two-fifths of the nation's forests, the Fish and Wildlife Service, 28.5 million acres, and the Park Service, 27.5 million acres. The lands of the latter three agencies will be sites of the proposed wilderness areas.

PRIMITIVE AREAS

The Forest Service, which allows multiple use of its lands including mining, grazing and logging, has, nonetheless, set aside 15 million acres as wilderness and primitive areas in a program begun in 1924.

By the act, however, these lands will have to be restudied as well as proposals of the other agencies and receive congressional approval.

The Forest Service has studied wilderness areas totalling 1.9 million acres so far and has designated one million to be presented to Congress. The Park Service is studying 57 areas ranging in size from 5,000 acres, the minimum under the act, to 100,000 acres, including such national parks as Isle Royale in Lake Superior and Lassen in California. Fish and Wildlife is considering about 90 refuges ranging from the huge 1.8 million-acre Kenai Moose Range in Alaska to the 5,900-acres Great Swamp refuge in New Jersey.

Last month President Johnson sent Congress the first actual proposals for official designation: 24 areas in 13 states totalling almost one million acres.

Making a capital "W" wilderness out of a wilderness, is, however, a thorny business. The Forest Service has proposed a 142,000-acres San Rafael Wilderness Forest in California. The Wilderness Society, a conservationist group that treads more softly but as determinedly as the Sierra Club through the nation's forests, claims the wilderness should include several thousand additional acres the Forest Service insists is vital for fire control.

MORE TROUBLE

The Park Service, too, has difficulties with its friends and foes. There are those, even in the department, who feel, stridently, that national parks should remain as primitive as possible. Few roads. Few lodges. None of the mob scenes that descend on Yosemite on summer weekends, littering the valley with trailers, beer cans and film wrappers.

Yet national park attendance, 130 million in 1966, rises about 10 per cent yearly.

What should be the over-all policy of the Park Service which welcomes many thousands to its Washington Monument and tens, if that, to the summit of its Mt. McKinley?

It tries to strike a mean of the greatest good for the greatest number—without impairing the virginity of the park. But does that mean all trails should be blacktopped, as some are, to keep the tourists off the greenery? Should Yellowstone's bears be behind bars looking out, or should the people be, looking in?

As competition for the finite land increases so does the necessity for the American genius for compromise. But can a compromised wilderness be a wilderness? Or even a park?

The Cape Cod and Fire Island National seashores have glittering sandy beaches. And they have the private homes of residents it would have been too costly in time and effort to dislodge.

Assateague Island in Maryland and Point Reyes in California are to become national parks. But land speculation has boomed the cost of their acquisition.

WHICH?

The Glacier Peak Wilderness in Washington has 450,000 acres of virgin land and the Kennecott Copper Co. owns 320 acres of ore-rich land right in the middle. Conservation, or copper?

Canals cut by the Corps of Engineers have cut off natural water flow to the Everglades, endangering its flora and fauna. Wildlife, or waterways?

The Great Swamp in New Jersey, a rare virgin wild only 30 miles from New York City, is the site the Port of New York Authority wants for a mammoth airport. Birds, or jets?

The effort to make Wilderness out of the wilderness creates some fine points, some small, some not.

Fish and Wildlife would like to create a Wilderness in Michigan in a refuge that is the nesting ground for the Kirtland warbler. But to provide optimum nesting characteristics for the little bird, the area must intentionally be burned over periodically. Which contradicts the definition of a wilderness under the act. What to do?

No one has determined even if it can be determined how much camping a wilderness can take and remain pristine. And camping guides are grumbling that they can no longer use power saws to clear trails and cut firewood as are snow gaugers who can no longer fly into the fastness by helicopter to estimate spring runoffs. What to do?

And what to do about intragovernmental competition?

The dispute between the Forest Service, with its multiple use program for national forests, and the Park Service with its creed of minimal interference of the land, reached such a pitch in the 1960s that Udall and Freeman had to sign a peace pact that is now known as the "Treaty of the Potomac."

WHO WINS?

But who is the ultimate winner—or loser? The skiers, who can roam the Rockies for snow? Or the giant sequoias, who have but one home in the world?

On the other hand, if Freeman's assurances prove wrong and the sequoias are harmed, so what? Who really needs sequoias or Kirtland warblers or crocodiles or undammed mountain streams in a West always wondering where tomorrow's drinking water will come from? Who needs wilderness, really?

Surely, said a Forest Service planner, to the average man in the street a drive down the Blue Ridge Parkway in Virginia may be as much wilderness as he will ever see. Or ever want to.

"But at the same time there is a deep personal comfort to almost everyone knowing that somewhere out there is a rugged land that is hard to get to but is there, unspoiled. Maybe some day, he'll go, maybe not, but it's there."

"Man is a part of nature," said Udall. "He needs Great Swamps and Yellowstones and Alaskas. They are his tie to the earth. The more we build a pressure cooker society, the more we need the wilderness as an escape valve."

FIFTY YEARS HENCE

"Maybe 50 years from now we'll be thanked more for what we didn't build than what we did," said an aide.

"More people go to movies than art galleries," said Nadel. "But we don't eliminate art galleries. I don't think anyone can halt what we call progress, but we need these oases where man can get back to himself."

"The wilderness is land that can be found in balance scientifically. It is run by the laws of nature, not man," said Nadel.

Suppose at some future day man finds he has tipped the balance of nature too far. Suppose he finds that he needs the seed, the animal, the unadulterated genetic resources that are the bases of his evolution? And suppose they are gone, or hopelessly distorted?

Then, indeed, may he cry ah, wilderness.

It is to prevent the possibility of such a dead end that a growing number of conservationists are looking to the wilderness as a gene "bank." If, for some reason, man needs a bighorn sheep or a sequoia or the delicate harmony of a forest acre, it will be there, in the wilderness.

The key question, then, as Udall put it, "is whether we can draw laws in these areas (of conservation) with some certainty they won't be changed."

"The wilderness can't be won once and for all," said Brower. "It can only be lost once and for all."

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Mr. CLARK. Mr. President, I am overjoyed by the Senate's unanimous approval of the bill extending the National Foundation on the Arts and the Humanities authorization.

In the 3 years since Congress approved the creation of the National Foundation on the Arts and the Humanities, we who were among the Foundation's early supporters have observed ample justification for our enthusiasm.

With meager funding, the two Endowments which make up the Foundation—the National Endowment for the Arts and the National Endowment for the Humanities—have had a remarkable salutary effect on our society. The funds appropriated to them have been used with imagination and with great economy.

Through grants to individual creative artists and humanists, the Endowments have stimulated new efforts in research and in the actual production of works of art.

Significantly, the Endowment for the Arts has succeeded in creating a far broader, more receptive environment which leads toward greater support of the arts from the private sector.

Even if this were not the case, I would still favor the extension of the arts and humanities program. I believe that an enlightened Federal Government owes as much to the encouragement of the artist as it does to the scientist, the teacher, or the businessman. Each, in his own way, contributes to the lasting greatness of our Nation and its people.

However, I think it is important that we recognze the unique abilities demonstrated by the endowments in their effort to encourage private, local, and State government support for valuable programs.

The Arts Endowment, for example, through the skillful and intelligent use of $10.5 million of Federal funds, has been able to generate $16 million in contributions to the arts from private and local government sources during the past 2 years.

Largely because the Federal Government at long last has recognized the need for encouragement of the arts, local arts organizations have been able to approach private corporations and foundations with modest requests for funds. Today, far more than at any other time in our history, those requests are being given a respectful hearing.

Although the endowments have participated in some projects in which the Federal share has been relatively large, the majority of the grants approved by them have been small in scale and large in impact.

Working with the Woodrow Wilson Fellowship Foundation, the Arts Endownment created a program in which both Negro and white writers were able to visit developing colleges, lecture on writing, give public readings, and conduct sessions on the art of writing in student seminars. The response, from students and faculty members at the colleges, has been overwhelmingly favorable.

In my own State, for example, the Arts Endownment and the Academy of American Poets jointly funded a remarkably successful program which took top-flight poets into the secondary school classrooms for the first time in history. Pittsburgh, where the experiment was

initiated in Pennsylvania, is one of six major areas in which it has been received with great enthusiasm by young men and women who had, until then, never been exposed to the personal work of a modern American writer.

The National Endowment for the Arts has been equally successful in the encouragement of new playwrights and in the production of their work, in the stimulation of renewed interest in the visual arts, and in support of innovative educational techniques and the experimental use of public media.

In Pennsylvania, the arts endowment has approved grants enabling three outstanding teaching artists to take sabbatical leaves and devote their full creative energies to the completion of new work. The endowment has given recognition to six students in the arts and has provided meaningful assistance to three major resident professional theaters, to our State's leading ballet company, and to the city of Philadelphia's urban center through a matching grant for the commissioning of a major work of sculpture.

Through matching grants to the Pennsylvania State Arts Council in both fiscal 1967 and fiscal 1968, the National Endowment for the Arts has made it possible for this agency—newly formed—to initiate broad new programs of benefit to local communities throughout the Commonwealth.

I am delighted that the Senate has passed H.R. 11308 as amended by the Committee on Labor and Public Welfare. It is a measure of great and continued importance to this country, for it will mark the reaffirmation of our belief, as Members of the Senate and as citizens of the United States, in the creative and lasting work of men's minds.

As a part of the declaration of purpose stated by Congress in 1965, we said of this foundation:

> That the world leadership which has come to the United States cannot rest solely upon superior power, wealth and technology, but must be solidly founded upon worldwide respect and admiration for the nation's high qualities as a leader in the realm of ideas and of the spirit.

The need for us to affirm that belief is as strong today as it was 3 years ago.

RUMANIAN INDEPENDENCE

Mrs. SMITH. Mr. President, I invite the attention of Senators to the fact that today the independence of the Rumanian people and the founding of the Kingdom of Rumania are commemorated.

YOUTH CORPS FRAUD

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to insert in the RECORD an article by Mr. William Federici, which appeared in the New York Daily News on May 9, 1968, entitled "Bare Multimillion Youth Corps Fraud."

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

BARE MULTIMILLION YOUTH CORPS FRAUD

(By William Federici)

Millions of dollars have been stolen from the city's Neighborhood Youth Corps program, the News learned exclusively last night.

Despite a tight lid of secrecy—clamped on the investigation by Mayor Lindsay and City Investigation Commissioner Arnold Fraiman—it was learned that eight agencies have been probing the records and questioning top-echelon personnel of the antipoverty program for the last four months.

Charges of payroll padding, using fictitious names, using names of people eligible for jobs but never employed by the multimillion-dollar program, stealing petty cash, and "burying records which would have shown the theft" are reportedly being prepared by the district attorneys of four boroughs.

Although the investigation is "not nearly completed," a source said, "it looks as though the final amount stolen will run well into the millions."

Last year Neighborhood Youth Corps program received $13.1 million in federal funds alone. It also received a large amount of city and state aid.

HOLD UP NEW FUNDING

According to figures released by the Human Resources Administration, which controls the program, the funds were intended to provide 23,900 youths with 30-hour-a-week jobs.

The Federal Office of Economic Opportunity, the News was reliably informed, is delving deeply into this new scandal and is awaiting results before any new funding of this year's $9.9 million allotted to the Youth Corps program.

Since the disclosure of the apparent thefts, new payroll procedures have been incorporated to prevent further thefts.

COMPLAINTS POURED IN

Preliminary investigation four months ago disclosed that the "stealing was on a wholesale basis with the actual thefts taking place in almost as many places as the program had offices," a source revealed.

According to probers, the inquiry began after complaints began pouring into the four district attorney offices, to City Controller Procaccino, City Council President Frank O'Connor and the Office of Economic Opportunity.

At first officials were told of rumors that involved petty thefts and payroll padding. The rumors became fact after a surface investigation, it was disclosed.

Toward the middle of January, hundreds of complaints were lodged with the district attorneys and Controller Procaccino.

Withholding income tax statements had been mailed to thousands and thousands of young people who had officially been on the payroll of the Youth Corps. But the complaints said they had been turned down in their job applications and yet they were supposed to have made X amount of money at the job.

A SIMPLE OPERATION

Investigation disclosed that the operation was simple. The payroll is made up in a central office and mailed to the various field offices.

According to the charges, checks written for nonexistent people and others who were supposedly on the payroll but weren't, were snatched, forged and cashed.

According to investigators, the applicants would give all of the pertinent information about themselves, including social security numbers, and then would be told they would be notified if the Youth Corps could find a job for them.

NONEXISTENT CHINESE

Armed with this information, it became a comparatively easy job of "ghosting the payroll," the source revealed.

In one Negro neighborhood, probers found a list of Chinese names to whom checks were mailed. All the names were fictitious. "There were no Chinese families anywhere in the area," a source said.

An initial audit by the controller's office, sources disclosed, revealed that almost $500,000 had been stolen. All of this information was turned over to Commissioner Fraiman.

PROTEST U.S. CUTBACKS

It was reported Fraiman's office, in turn, has been turning over the results of his investigation to Queens District Attorney Thomas Mackell, Kings District Attorney Aaron Koota, Manhattan's Frank Hogan and Bronx DA Isidore Dollinger.

Revelation of the octopus-like probe came on the heels of heavy criticism by top Human Resources officials of severe cuts in aid from the federal government for the coming summer.

In Washington, spokesman for the Office of Economic Opportunity explained the cutbacks early last week as part of an over-all trend around the nation. The spokesman said that New York City had not used all of the federal money allotted last year.

RICHARD NIXON ENDORSES WIRETAPPING

Mr. HANSEN. Mr. President, yesterday former Vice President Richard M. Nixon released from his New York office a 6,000-word document concerning crime in America. Entitled, "Toward Freedom From Fear," a major portion of the statement was devoted to the question of organized crime and measures to help fight it. One of the major recommendations was for a "limited use of wiretapping after a court order showing probable cause."

Mr. President, organized crime poses a very real danger to the maintenance of law and order in this country. Carefully hidden behind legal businesses and well established fronts, it is well entrenched in many areas of the economy which, on the surface, appear innocent. But behind the innocently appearing businesses, organized crime is busily involved in gambling, narcotics, shylocking, prostitution, extortion, and other activities accumulating takes estimated to be many billions of dollars a year.

While the areas of organized and street crime are separate and the causes for each are entirely different, nevertheless, there is a definite relationship between the two. The example that the young mobster offers to the children of the ghetto is far from a good one. To the youth in the ghetto it appears that the sure path to money and prestige is that of a "soldier" in a Cosa Nostra family.

It is ever to the credit of Mr. Nixon that he has brought this problem to the attention of the American people and has recommended the passage of wiretapping legislation so as to put an end to organized crime.

Because of the highly secretive nature of organized crime, one of the few effective means of combating it is the use of electronic surveillance. As Eliot Lumbard, Gov. Nelson Rockefeller's special assistant counsel for law enforcement, pointed out—

> If wiretapping is lost, we will lose the most important and effective source of information—that we wouldn't get otherwise—in the

most difficult kinds of cases. Without that source, we practically give an immunity bath to the really sophisticated operators.

Mr. Lumbard is not alone. The need for carefully circumscribed electronic surveillance legislation has been endorsed by a number of prestigious individuals and organizations, including the National Judicial Conference, the Association of Federal Investigators, the National Association of Attorneys General, and the National Council of Crime and Delinquency.

I believe it is imperative that this particular provision of the safe streets bill be passed. The need to put an end to organized crime has been well documented. All that remains is for favorable action to be taken by the Members of Congress. In light of the threat that organized crime poses both to our system of government and to our Nation's poor, on whom such crime preys, I hope that this action will be forthcoming.

I ask unanimous consent that an article describing Mr. Nixon's recent statement with regard to crime in America, published in the New York Times, be printed in the RECORD.

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

NIXON DECRIES LAWLESS SOCIETY AND URGES LIMITED WIRETAPPING

(By Robert B. Semple, Jr.)

Richard M. Nixon endorsed yesterday legislative proposals that would authorize some forms of wiretapping and modify Supreme Court decisions that broadened the rights of suspects.

The former Vice President said that the United States had become a "lawless society" and that the Johnson Administration had been "lame and ineffectual" in checking a "staggering 88 per cent" rise in crime in the last seven years.

The charges were made in a 6,000-word document issued by Mr. Nixon's New York office.

Entitled "Toward Freedom from Fear," the document represented Mr. Nixon's blueprint for ending crime in America, restoring safety to the streets and "removing from this nation the stigma of a lawless society."

The statement also represented an attempt to detail what Mr. Nixon has meant by the charge that "some of our courts have gone too far in weakening the peace forces as against the criminal forces."

The charge, which he has made in nearly every speech in six months of campaigning for the Republican Presidential nomination, has always drawn vigorous applause from his listeners.

The statement was divided into four parts. The first dealt with measures to help fight organized crime, the second with measures to deter "street crime," the third with measures to strengthen law enforcement machinery and the fourth with prison reform.

"In the last seven years, while the population of this country was rising some 10 per cent, crime in the United States rose a staggering 88 per cent," the statement said.

"If the present rate of new crime continues, the number of rapes and robberies and assaults and thefts in the United States will double by the end of 1972.

"This is a prospect America cannot accept if we allow it to happen, then the city jungle will cease to be a metaphor; it will become a barbaric reality."

Mr. Nixon, who returned from two days of campaigning in Nebraska for next Tuesday's primary, said that poverty played a heavy role in causing crime.

CONVICTION RATE SCORED

But he said its role had been "grossly exaggerated" by the Johnson Administration. He said that a doubling of the conviction rate—roughly one arrest in eight now results in conviction—"would do more to eliminate crime in the future than a quadrupling of funds of any governmental war on poverty."

To increase the conviction rates and thus deter "street crime," Mr. Nixon recommended Congressional approval of Title II of the omnibus crime bill now pending before the Senate.

This bill, he said, will "correct the imbalance" resulting from two landmark Supreme Court decisions—Escobedo v. Illinois, and Miranda v. Arizona.

In both cases, the Court held that no confession could be used as evidence unless the police had warned the suspect of his right to counsel and to silence.

"From the point of view of the peace forces," Mr. Nixon declared, "the cumulative impact of these decisions has been to very nearly rule out the confession as an effective and major tool in prosecution and law enforcement."

The legislation now before Congress, which the Administration opposes, would permit a case to come to trial and let judge and jury decide whether a confession was voluntary and valid.

Mr. Nixon strongly endorsed a limited use of wiretapping after a court order showing probable cause. The order would be limited to major crime and national security cases.

He described as "puzzling" and "astonishing" the Administration's "adamant opposition to the use against organized crime of the same wiretap and electronic surveillance the Government employs to safeguard the national security."

The former Vice President also recommended the strengthening of the Justice Department's organized crime section, a substantial increase of Customs Bureau officials, legislation making it a Federal crime to invest in legitimate businesses money that had been acquired illegally, a permanent joint Congressional committee on organized crime and the passage of a Republican-sponsored measure to broaden the immunity of witnesses willing to testify on the activities of organized crime.

Mr. Nixon urged higher salaries for policemen. He said this was largely the responsibility of state and local governments, but he did not rule out substantial Federal aid.

"You cannot attract first class men to do the difficult and complex and dangerous job of police work if you simply give them a gun and $100 a week, which is the median beginning salary for patrolmen in our greater cities," Mr. Nixon declared.

He suggested a "major overhaul" of the prison system.

He called for further Federal assistance to the states, a rapid increase in the number of psychiatrists, teachers and others involved in the rehabilitation of prisoners, and the repeal of Federal legislation that "discriminates against prison-made goods" and thus inhibits the development of work-training programs in prisons.

GOLDBERG DISCUSSES THE NONPROLIFERATION TREATY

Mr. CHURCH. Mr. President, last week, at the opening of the resumed session of the U.N. General Assembly, Ambassador Goldberg made a noteworthy statement on the draft nuclear weapon nonproliferation treaty.

In his statement, Ambassador Goldberg asked the following six questions:

1. Does this treaty sufficiently reflect the participation and the ideas of both nuclear-weapon and nonnuclear-weapon states?

2. Will this treaty increase the security of both nuclear-weapon and non-nuclear-weapon states?

3. Will this treaty promote the application of nuclear energy for peaceful purposes, especially in the developing nations?

4. Will this treaty help bring nearer an end to the nuclear arms race, and actual nuclear disarmament, by the nuclear-weapon states, and will it help achieve general disarmament?

5. Does this treaty, in all its provisions, and in its historical setting, contribute to a fair balance of obligations and benefits as between the nuclear and non-nuclear states?

6. Finally, will the interests of all nations be best served by prompt action on the treaty at this resumed session of the General Assembly?

Mr. President, I commend the answers to these questions to the attention of all Senators and ask unanimous consent that Ambassador Goldberg's entire statement be printed in the RECORD.

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

STATEMENT BY AMBASSADOR ARTHUR J. GOLDBERG, U.S. REPRESENTATIVE TO THE UNITED NATIONS, IN COMMITTEE I, ON THE DRAFT TREATY ON THE NONPROLIFERATION OF NUCLEAR WEAPONS, APRIL 26, 1968

This is indeed an important moment in the history of the United Nations. We are now about to consider what may prove to be one of the most significant and hopeful steps toward world peace that we have ever taken together: the Draft Treaty on the Non-Proliferation of Nuclear Weapons.

This draft treaty has been negotiated in response to repeated and overwhelming mandates of the General Assembly. It will serve three major purposes.

First, it is designed to assure that control over nuclear weapons, with their catastrophic power of destruction, shall spread no further among the nations of the earth.

Second, it is designed to facilitate the way for all nations, particularly those in the earlier stages of economic development, to share in the peaceful blessings of nuclear energy—without arousing fear lest that energy be diverted to nuclear weapons.

And third, it is designed to establish a new and solemn treaty obligation, especially upon the nuclear-weapon powers, to press forward the search for nuclear disarmament; and thereby to create a much more favorable atmosphere in which to progress toward our long-sought goal of general and complete disarmament.

This treaty will do more than any treaty of our time to push back the fearful shadow of nuclear destruction. It will brighten the hopes of all nations, great and small, for a more peaceful world.

I do not ask that these assertions be accepted uncritically by any delegation. The United States, as a major participant in the negotiations, is convinced that the substantial new obligations which we shall assume as a party to this treaty are far outweighed by the degree to which it will serve our national security and our national interests. We fully expect that every sovereign state represented here, in deciding its own attitude, will measure the treaty by the same yardstick: its own enlightened national interest and its national security. And we expect that the draft treaty will pass the test of such a measurement, for the purposes it serves are common to the entire world—purposes of peace, with which the fundamental interests of every nation and people are deeply in harmony.

As this process of measurement and evaluation proceeds during the present debate, many points will undoubtedly be raised con-

cerning the detailed provisions of the draft treaty, whose text is contained in the report that lies before us. Other points will likewise be raised concerning the related matter of security assurances, which is also treated in the same report.

In this opening statement I shall concentrate on certain broad questions which are important to us all, and particularly important to the non-nuclear-weapon states which make up the overwhelming majority of the nations of the world. These questions are as follows:

1. Does this treaty sufficiently reflect the participation and the ideas of both nuclear-weapon and non-nuclear-weapon states?

2. Will this treaty increase the security of both nuclear-weapon and non-nuclear-weapon states?

3. Will this treaty promote the application of nuclear energy for peaceful purposes, especially in the developing nations?

4. Will this treaty help bring nearer an end to the nuclear arms race, and actual nuclear disarmament, by the nuclear-weapon states, and will it help achieve general disarmament?

5. Does this treaty, in all its provisions, and in its historical setting, contribute to a fair balance of obligations and benefits as between the nuclear and non-nuclear states?

6. Finally, will the interests of all nations be best served by prompt action on the treaty at this resumed session of the General Assembly?

In this statement I shall present in brief form the considered answers of my Government to these important questions.

1. Does this treaty sufficiently reflect the participation and the ideas of both nuclear-weapon and non-nuclear-weapon states?

The answer is yes.

In tracing the origin of this treaty, the first point to recall is that the General Assembly itself gave us our first mandate for a non-proliferation treaty more than six years ago, in Resolution 1665 (XVI) proposed by Ireland, and adopted unanimously on December 4, 1961.

In that same year, the Assembly also endorsed the creation of a new negotiating forum for disarmament, the Eighteen-Nation Committee on Disarmament or ENDC, comprising not only the then nuclear-weapon powers and certain of their allies in NATO and the Warsaw Pact, but also eight nations which are not in these alliances, which do not possess nuclear weapons, and which represent every region of the world. That representative committee, meeting in Geneva, became the main negotiating forum for disarmament measures, including the present treaty.

In 1964, after the successful conclusion of the Limited Nuclear Test Ban Treaty, nonproliferation became a principal subject of discussion in the ENDC. Despite wide differences of view among the nuclear-weapon powers, the negotiators were encouarged to press on with this project by the widespread concern which a great many nonnuclear nations expressed over the danger of the further spread of nuclear weapons. That concern was manifested, for example, in the Declaration on the Denuclearization of Africa, adopted by the Summit Conference of the Organization for African Unity on July 21, 1964, which reads in part as follows:

"We, African Heads of State and Government, . . .

"1. Solemnly declare that we are ready to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or control atomic weapons;

"2. Appeal to all peace-loving nations to accept the same undertaking;

"3. Appeal to all the nuclear Powers to respect this declaration and conform to it."

The same concern was further manifested in the Declaration by the Second Conference of Heads of State or Government of Non-aligned Countries, issued in Cairo on October 10, 1964, which reads in part as follows:

"The Conference requests the Great Powers to abstain from all policies conducive to the dissemination of nuclear weapons and their by-products among those States which do not at present possess them. It underlines the great danger in the dissemination of nuclear weapons and urges all States, particularly those possessing nuclear weapons, to conclude non-dissemination agreements and to agree on measures providing for the gradual liquidation of the existing stockpiles of nuclear weapons."

Then on June 15, 1965, the same concern was voiced by the United Nations Disarmament Commission when it recommended by a vote of 83 to 1 that the ENDC "accord special priority" to a non-proliferation treaty.

When the General Assembly met in the fall of 1965, the non-aligned eight members of the ENDC offered a resolution calling on the ENDC to meet as early as possible to negotiate a non-proliferation treaty. It also set forth five basic principles to guide the negotiations.

a. The treaty should be void of any loopholes for the direct or indirect proliferation of nuclear weapons in any form;

b. It should embody an acceptable balance of obligations of nuclear and non-nuclear powers;

c. It should be a step toward disarmament, particularly nuclear disarmament;

d. There should be acceptable and workable provisions to ensure its effectiveness;

e. It should not adversely affect the right of states to join in establishing nuclear-free zones.

This important General Assembly Resolution, 2028 (XX) was adopted by a vote of 93 to 0. My Government voted for it, and our representatives in Geneva have kept its principles in mind throughout these two and a half years of negotiation. We believe that the draft treaty fully embodies those principles.

Again in 1966 and 1967 the Assembly addressed itself to this subject in resolutions adopted with virtual unanimity. Most recently, last December 19, Resolution 2346 (XXII) reaffirmed "that it is imperative to make further efforts to conclude such a treaty at the earliest possible date." For this purpose the resolution called on the ENDC "urgently to continue its work" and to report to the Assembly not later than March 15, so that the Assembly could meet in resumed session to give further consideration to this important question.

That timetable was met. On March 14, six weeks ago, the ENDC submitted a full report on the negotiations regarding a draft treaty on the non-proliferation of nuclear weapons, together with the pertinent documents and records. That report lies before us in Documents A/7072 and A/7072 Add. 1, dated March 19, 1968.

The report contains the text of a complete draft treaty, jointly submitted by the United States and the Soviet Union as co-chairmen of the ENDC. This treaty text incorporates a number of views and proposals made by various members of the committee. The report also includes the specific proposals made by various delegations to amend the text, as well as a list of the verbatim records setting forth the views of various delegations, indicating the extent to which they support or remain at variance with the text presented. Finally, the report includes an important related proposal on security assurances, sponsored by the ENDC's nuclear-weapon participants.

It is to consider that report that the Assembly has now resumed its 22nd Regular Session.

Thus it is clear that from its very beginning this treaty project has corresponded to the repeated, virtually unanimous, and increasingly urgent resolutions of the General Assembly, in which the non-nuclear states are of course in the overwhelming majority.

It is equally significant that the non-nuclear states have played a prominent part throughout the actual negotiation of this treaty. This is particularly true of the non-aligned eight members of the ENDC, whose ideas have at many points strengthened the treaty draft and ensured its proper balance of obligations and benefits. This is not to say that all of the suggestions those members made have been incorporated in the treaty text. Indeed, all participants, including the nuclear-weapon states, had to modify some of their concepts as the negotiations developed. The very important changes from the text submitted last August 24 by the United States and the Soviet Union, to the extensively revised text of January 18, and finally to the text of March 11 which is now before us, demonstrate that this is a compromise text to which all participants, nuclear and non-nuclear alike, made their contributions. In addition, many non-nuclear nations not members of the ENDC were able to make important contributions to the present text as a result of intensive consultations by the nuclear powers.

Let there be no mistake: The Non-Proliferation Treaty, in the form in which it lies before us in this Committee today, is not a creation of the United States. It is not a creation of the Soviet Union. It is not a creation of the United States and the Soviet Union. It is the creation of all nations, large and small, which share the knowledge and the determination that man can, and must, and will control these cosmic forces which he has unleashed.

2. Will this treaty increase the security of both nuclear-weapon and non-nuclear-weapon states?

The answer is yes.

The main provisions of the treaty bearing on this question are Articles I, II, and III. The first two articles, taken together, are designed to lock the door to nuclear weapons proliferation for both sides. To this end Article I prescribes for each nuclear-weapon party, and Article II for each non-nuclear-weapon party, certain corresponding prohibitions.

First, Article I forbids each nuclear-weapon party to transfer nuclear weapons, or control over them, directly or indirectly, to any recipient whatsoever—whether that recipient be a party to the treaty or not. Article II locks the same door from the other side by forbidding each non-nuclear-weapon party to receive the transfer of nuclear weapons, or of control over them, directly or indirectly, from any transferor whatsoever—whether that transferor be a party to the treaty or not.

Second, Article I forbids each nuclear-weapon party to assist, encourage, or induce any non-nuclear-weapon state—whether a party to the treaty or not—to manufacture or otherwise acquire nuclear weapons or control over them; and Article II, conversely, forbids non-nuclear-weapon parties to manufacture or otherwise acquire these weapons or to seek or receive any assistance in doing so.

Finally, all that Articles I and II forbid as regards nuclear weapons, they likewise forbid as regards other nuclear explosive devices. This provision is essential because every nuclear explosive device contains the same nuclear components as a nuclear weapon. I shall return to this point in discussing Article V.

These prohibitions are so comprehensive that, in the judgment of my Government, they fully meet the criterion established by the General Assembly in its resolution 2028 (XX) of 1965, that "the treaty should be void of any loopholes which might permit nuclear or non-nuclear powers to proliferate, directly or indirectly, nuclear weapons in any form."

Having thus locked the door to nuclear weapons proliferation from both sides, the treaty then proceeds in Article III to make sure that that door will stay locked. It does this by prescribing international safeguards which have but one function: to verify the treaty obligation that nuclear material shall not be diverted to nuclear weapons. These safeguards are to be governed by agreements to be negotiated and concluded with the International Atomic Energy Agency, which already operates an extensive safeguards system covering peaceful nuclear activities in over 25 countries and is in an excellent position to adapt that system to the requirements of the treaty.

Those are the essential provisions of this treaty in regard to the security of the parties. There are other provisions which are also important to this major goal, notably, Article VII, which gives explicit recognition to the concept of nuclear free zones in which the Latin American States have given the world such an important lead in the treaty recently concluded.

My Government believes that this strict and reliable ban on the proliferation of nuclear weapons will enhance the security of nations, and especially of non-nuclear-weapon states. Let me now submit to the judgment of the members of this Committee the essential reasoning by which we have reached this conclusion.

This reasoning is quite simple and, in my view, incontrovertible. He who acquires nuclear weapons does not thereby gain any lasting security, because the situation which enables him to acquire them also enables his neighbor—perhaps his unfriendly neighbor—to acquire them also. In this way all the points of friction and hostility among nations, large and small, could one after another be escalated to the nuclear level. Thus, at enormous expense, the community of nations would purchase the most dangerous insecurity in human history.

No one knows these truths better than my country, which was the first to develop these awesome weapons. They were born in an age of global war—a tragic age on which, with the establishment of the United Nations, we hope and pray that man has turned his back forever. It is not a privilege to be a nuclear-weapon power. It is a heavy burden—one which my country has sought for 22 years to lay down in safety, by agreement with the other powers that also carry it; and, as I shall show later in this statement, we believe this treaty will help us greatly to move in that direction—a direction which would be welcomed by the whole community of nations.

It would be idle to pretend that the Non-Proliferation Treaty will in itself confer perfect security on any nation. But it will make all of us more secure than we would be in the absence of such a treaty.

If any non-nuclear power still cherishes the theory that the option of some day "going nuclear" somehow gives it additional security, I suggest that that power should consider the sobering report which our Secretary General submitted last fall to the General Assembly "on the effects of the possible use of nuclear weapons and on the security and economic implications for States of the acquisition and further development of these weapons." That report makes eloquently clear, among other things, that the spread of nuclear weapons to still more states "would lead to greater tension and greater instability in the world at large," and that these weapons require a very large and continuous technological and economic investment. And this, on behalf of my Government, I can verify with the greatest certainty. The Secretary General also stated as follows:

"It is hardly likely that a non-nuclear-weapon country, living in a state of hostility with a neighbor, could start to furnish itself with a nuclear arsenal without either driving its neighbor to do the same or to seek protection in some form or other, explicit or implicit, from an existing nuclear weapons power or powers."

Finally, I wish to refer to one other aspect of this matter: the security implications of the relation between non-nuclear and nuclear powers. The United States fully appreciates the desires of the many non-nuclear-weapon states that appropriate measures be taken to safeguard their security in conjunction with their adherence to the non-proliferation treaty. This is a difficult and complicated problem. It is one to which the three nuclear-weapon participants in the ENDC have given their most earnest attention, and as a result they have proposed a solution which we believe to be of major importance. This solution takes the form of a draft resolution on security assurances, to be sponsored in the Security Council by the United States, the Soviet Union, and the United Kingdom. The text of this draft resolution can be found in the report of the ENDC which we have all received, and to which I have already referred.

The matter of security assurances is too important a subject for me to discuss definitively in this statement today. I do wish to emphasize, however, that, in the view of the United States, aggression with nuclear weapons, or the threat of such aggression, against a non-nuclear state would create a qualitatively new situation—a situation in which the nuclear-weapon states which are permanent members of the United Nations Security Council would have to act immediately through the Security Council to take measures necessary to counter such aggression or to remove the threat of aggression in accordance with the United Nations Charter. Later in the course of this debate my delegation expects to set forth in more detail the position of the United States on this highly important subject.

3. Will this treaty promote the application of nuclear energy for peaceful purposes, especially in the developing nations?

The answer is yes.

This aspect of the treaty is covered in Articles IV and V, which reached their present form chiefly as a result of the efforts of several of the non-nuclear and non-aligned members of the ENDC. In addition, the safeguards provisions in Article III have a most important and constructive bearing on this aspect of the treaty, as I shall show in a moment.

Perhaps the most significant provision of Article IV is contained in paragraph 2, which lays a specific, positive obligation on parties to the treaty that are in a position to do so to contribute to the peaceful applications of nuclear energy, especially in the territories of the non-nuclear-weapon parties—among which are notably the developing nations. The promotion of such peaceful applications was one of the major considerations underlying our proposal, 15 years ago, to establish the International Atomic Energy Agency. We are very glad to see this obligation embodied in this multilateral treaty. We are well aware of what its implementation can mean for the building of new industries, the lighting of cities, the manufacture of chemical fertilizers, the desalting of sea water, and many other aspects of economic development requiring large inputs of energy.

On behalf of the United States, and with the full authority of my Government, I pledge unreservedly, in this open forum and before this important Committee of the Assembly, that, in keeping with the letter and spirit of this treaty provision, we will appropriately and equitably share our knowledge and experience, acquired at great cost, concerning all aspects of the peaceful uses of nuclear energy, with the parties to the treaty, particularly the non-nuclear parties. This is not only a promise; when this treaty takes effect it will become an obligation under a treaty which, when approved by our Congress and President, will be, under our Constitution, a part of the supreme law of the land.

However, the importance of this treaty to the peaceful uses of the atom is by no means confined to Article IV. Many people do not realize that there is an extremely practical reason why, when we close the door to the proliferation of nuclear weapons, we thereby also help to open wider the door to the benign use of the atom throughout the world—particularly as a source of peaceful power.

The reason for this is rooted in a basic fact of nuclear reactor technology. It has been estimated that before the end of this century nuclear power stations may be supplying as much as half of the world's fast-growing requirements for electrical energy. But these same power stations would produce as a byproduct plutonium, which can be used in nuclear weapons. And it has been further estimated that long before the end of the century—by 1985, in fact—a date close at hand—the world's peaceful nuclear power stations alone will be turning out as a by-product enough plutonium for the production of 20 nuclear bombs every day.

Faced with this awesome prospect, we have only three choices. First, we could allow this production of plutonium, with its terrible potential for destruction, to grow unchecked and unsafeguarded in nuclear power stations throughout the world. This is clearly an unacceptable choice to people everywhere.

Second, we could decide that the non-nuclear-weapon states of the world, despite their fast-growing energy needs, must do without the benefits of this extremely promising energy source, nuclear power—simply because we lack an agreed means of safeguarding that power for peace. This too is an unacceptable choice—indeed, it is unthinkable.

Third, we can agree on safeguards that will help insure against the diversion of nuclear materials into nuclear weapons, yet will not impede the growth of peaceful nuclear power among nations that desire it for their development—on the contrary, will create the very atmosphere of confidence that is so essential to that beneficial growth. This is precisely the course of action embodied in Article III.

I have gone into this point at some length because there has been in some quarters an understandable concern lest the safeguards become an actual obstacle to peaceful nuclear development. As a matter of fact, paragraph 3 of Article III directly meets this concern by stipulating that the safeguards shall not hamper peaceful development. As proof of my country's confidence in this provision, the President of the United States announced last December 2 that when safeguards are applied under the treaty, the United States—above and beyond what the treaty will require of us as a nuclear-weapon-power—will permit the International Atomic Energy Agency to apply its safeguards to all nuclear activities in the United States except those with direct national security significance.

Moreover, for the reasons I have given we believe the safeguards will prove to be a great spur to the spread of nuclear power. We look forward to the day when the International Atomic Energy Agency will not only serve as the responsible agency for safeguards under this treaty, but will also, while performing that function, make a vital conrtibution to the sharing of peaceful nuclear technology.

Turning to Article V, we come to an aspect of peaceful nuclear technology which is still in the development stage: namely, peaceful nuclear explosions. This technique promises

one day to yield valuable results in recovering oil, gas, and minerals from low-grade or otherwise inaccessible deposits in the earth, and also for large-scale excavations. The problem, however, is how to make these benefits available to all parties without defeating the treaty's main purpose of non-proliferation—since there is no essential difference between the technology of peaceful nuclear explosive devices and that of nuclear weapons.

Article V solves this problem by requiring that benefits from this technology shall be made available to the non-nuclear-weapon parties without discrimination, through appropriate international procedures, and at the lowest possible charge—excluding any charge for the very costly process of research and development.

My country has a large and expensive research and development program in the field of peaceful nuclear explosions. Again, on behalf of my Government, and with its full authority, I state categorically to this Committee that the United States will share with the parties to the treaty, in conformity with Article V, the benefits of this program. Insofar as the United States is concerned, when this treaty goes into effect this obligation too will become, under our Constitution, the supreme law of the land.

No country outside the United States, under this commitment, will be asked to pay one cent more for this service than our own nationals. Moreover, all indications are that when this technology is perfected, there will be no scarcity of explosive devices, and therefore that all requests can be handled without raising problems of priority.

Let me add that, whether such services are provided through multilateral or bilateral channels, the United States intends—in order to ensure compliance with Articles I and II of the treaty—that they shall be provided under appropriate international observation.

This entire subject of "programs for the peaceful uses of nuclear energy" is on the agenda of the scheduled Conference of Non-Nuclear States, which will convene this coming August. Last December 18 I gave in this very Committee a categorical assurance that the United States would support that conference. I reaffirm that assurance in the same categorical terms.

Without prejudging any decision of that conference, in my view it could perform a useful service, among others, by giving consideration to the question of the best means of putting Articles IV and V of the treaty into effect so as to meet the needs of the non-nuclear-weapon states which are the beneficaries of them.

4. Will this treaty help bring nearer an end to the nuclear arms race, and actual nuclear disarmament, by the nuclear-weapon states, and will it help achieve general disarmament?

Again, the answer is yes.

Once again, it was chiefly at the initiative of the non-nuclear states that this problem was directly addressed in the operative section of the treaty by the insertion of Article VI. In that article all parties "undertake to pursue negotiations in good faith" on these further measures. This is an obligation which, obviously, falls most directly on the nuclear-weapon states.

Ideally, in a more nearly perfect world, we might have tried to include in this treaty even stronger provisions—even, perhaps, an actual agreed program—for ending the nuclear arms race and for nuclear disarmament. But it was generally realized in the ENDC that if we were to attempt to achieve agreement on all aspects of disarmament at this time, the negotiating difficulties would be insurmountable and we should end by achiving nothing.

However, this treaty text contains, in Article VI, the strongest and most meaningful undertaking that could be agreed upon. Moreover, the language of this article indicates a practical order of priorities—which was seconded in the statement read on behalf of the Secretary General—headed by "cessation of the nuclear arms race at an early date" and proceeding next to "nuclear disarmament" and finally to "general and complete disarmament under strict and effective international control" as the ultimate goal.

Let me point out that further force is imparted to Article VI by the provision in Article VIII for periodic review of the treaty at intervals of five years, to determine whether the purposes of the preamble and the provisions of the treaty are being realized. My country believes that the permanent viability of this treaty will depend in large measure on our success in the further negotiations contemplated in Article VI.

The commitment of Article VI should go far to dispel any lingering fear that when the Non-Proliferation Treaty is concluded the nuclear-weapon parties to it will relax their efforts in the arms control field. On the contrary, the treaty itself requires them to intensify these efforts. The conclusion of it will do more than any other step now in prospect to brighten the atmosphere surrounding all our arms control and disarmament negotiations. Conversely, its failure would seriously discourage and complicate those negotiations—especially if the number of nuclear-weapon powers should increase still further.

Following the conclusion of this treaty, my Government will, in the spirit of Article VI and also of the relevant declarations in the Preamble, pursue further disarmament negotiations with redoubled zeal and hope—and with promptness. And we anticipate that the same attitude will be shown by others.

As President Johnson told Congress last February, in discussing the significance of this pledge:

"No nation is more aware of the perils in the increasingly expert destructiveness of our time than the United States. I believe the Soviet Union shares this awareness.

"This is why we have jointly pledged our nations to negotiate toward the cessation of the nuclear arms race.

"This is why the United States urgently desires to begin discussions with the Soviet Union about the buildup of offensive and defensive missiles on both sides . . .

"Our hopes that talks will soon begin reside in our conviction that the same mutual interest reflected in earlier agreements is present here—a mutual interest in stopping the rapid accumulation and refinement of these munitions.

"The obligations of the non-proliferation treaty will reinforce our will to bring to an end to the nuclear arms race. The world will judge us by our performance."

5. Does this treaty in all its provisions, and in its historical setting, contribute to a fair balance of obligations and benefits as between the nuclear and non-nuclear states?

The answer again is yes.

This question is sometimes asked in a way which seems to assume that the right of a state to possess and further develop nuclear weapons is something greatly to be prized, and that the giving up of that right, or any part of it, is a great loss. As I have already indicated, in view of the burdensome, perilous, and almost self-defeating character of the arms race, and the very tenuous security that nuclear weapons confer, this is at best a dubious premise. But for the sake of argument let me for the moment grant it, and see whether even on that basis the obligations and benefits of this treaty are in or out of balance.

The major obligation which this treaty will impose on the non-nuclear-weapon states is, of course, not to acquire nuclear weapons.

A second obligation is to accept the safeguards procedures in Article III.

Against those obligations by the non-nuclear powers, the nuclear powers will assume—or have already assumed by virtue of treaties already in force—the following obligations:

1. Not to carry out test explosions of nuclear weapons in the atmosphere, in the oceans, or in outer space.

2. Not to place nuclear weapons in orbit around the earth, or on the moon or any other celestial body, or anywhere else in outer space, or in Antarctica.

Those obligations are already in force. Under the Non-Proliferation Treaty the nuclear-weapon powers will assume several further obligations, lengthening the list as follows:

3. Not to transfer nuclear weapons, or control over them, to any recipient whatsoever. This is a most substantial restraint in both the strategic and political terms, and in connection with the sovereignty of the nuclear-weapon states.

4. To contribute to the peaceful nuclear development of non-nuclear weapon states.

5. To provide peaceful nuclear explosion services at prices far below their true cost.

6. To pursue negotiations to divest themselves of large arsenals of existing and potential nuclear and other armaments.

Such is the balance of *obligations*. But we should also bear in mind—indeed, it cannot be emphasized too strongly—that the *benefits* of Articles IV and V, on the peaceful uses of nuclear energy, including peaceful nuclear explosive devices, will flow primarily to the non-nuclear-weapon states.

I have listed these items in order to show that even if we were to look on the negotiation of this treaty as some sort of adversary proceeding, with no element of common interest but only a balancing of opposing interests, then the balance in this text would not necessarily or obviously be in favor of the nuclear-weapon powers. In fact, it would be to the contrary.

But that is not the way in which my country views this treaty. To be sure, the interests of all powers are not identical, and where they differ some equitable balance must indeed be found; and we believe it has been. But in a larger sense, the balance of opposing interests in this great enterprise is of quite minor importance when it is placed beside the overriding common interest of all nations in the sheer survival of the human race. Make no mistake, members of this Committee; sheer human survival is the elemental common interest that imperatively requires us all to work together to bring the nuclear arms race under control. This treaty is a great step in that vital effort. If we are to go forward toward the goal of general and complete disarmament, this step must be taken and taken now; and we can only take it together. Our common interest in doing this outbalances all other considerations.

6. Will the interests of all nations be best served by prompt action on the treaty at this resumed session of the General Assembly?

Again my answer is yes, definitely yes.

Time is not on our side. As we at the United Nations well know, this is a dangerous world with many points of international tension and conflict. Many nations possess the technical expertise necessary to develop nuclear weapons; and, in a world without treaty restraints and safeguards, they may soon be tempted to do so, notwithstanding the extraordinary drain on their resources which this effort would impose.

There is a further reason which impels us urgently to endorse this treaty at this very session. At this moment this troubled world needs above all to be reassured that detente, rather than discord, will be the prevailing atmosphere in the world affairs, in order that other points of conflict may be resolved by the preferred Charter means of negotiated peaceful settlements. The endorsement of this treaty now will be a major contribution to this detente, and will im-

prove the atmosphere for peaceful settlement of other conflicts, the resolution of which brooks no delay.

Time indeed is not on our side. Every addition to the number of nuclear weapon powers will multiply once again the difficulties of stopping this step-by-step proliferation. The longer we wait, the more difficult our task will become—until, perhaps, a day arrives when it will have become impossible.

We must master our fate—or fate will master us.

My country is deeply convinced that this treaty will accomplish its great purposes—if we act in time.

The immediate necessity is that we should take the next step: the endorsement of the treaty by the General Assembly at this session. In this resumed session, as I said at the beginning of my statement, we stand at an historic point of decision. From this point we survey not merely the immediate subject matter of this treaty, but a much wider vista, embracing the long struggle of modern man to conquer the demon of fratricidal war among the nations of the earth. It is a point at which we cannot stand still, for events will not permit us to stand still. From this point we must move either forward or back.

If we insist upon a perfect treaty—each member with its different ideas of perfection—then we shall be unable to move forward, for there is no perfection in this world.

If after careful deliberation we insist that the last grain of uncertainty be removed, then we shall be unable to move forward, for there is no complete certainty in this world.

We are at the moment when all of us, united by our common interest in peace and sheer human survival, must together summon the courage to take this long stride forward. We must always remember the excellent advice given by the greatest of British poets, a poet who is the property of all mankind:

"There is a tide in the affairs of men;
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life,
Is bound in shallows and in miseries."

Fellow representatives, this fateful tide is at the flood now. Let us take it now while we have the opportunity. It may never recur.

STOKES AWARD FOR JOURNALISTS OF WATERTOWN, N.Y., TIMES

Mr. JAVITS. Mr. President, three journalists of the Watertown, N.Y., Times have just been designated as the 1968 recipients of the coveted Thomas L. Stokes Award for excellence in public service journalism.

Reporters, columnists, and editors on every newspaper in the United States and Canada are eligible for the award, and it is a source of great pleasure to me that the recipients this year are all associated with the Watertown Times, one of the finest and most complete newspapers in the Nation. The winners are Alan Emory, Washington correspondent of the Times and a past member of the Standing Committee of Correspondents of the Congressional Press Galleries; news Editor Frank Augustine; and John B. Johnson, editor and publisher of the Watertown Times.

Mr. President, it is appropriate that the three New York newsmen have been honored in this way: First, because the award tends to highlight the outstanding journalistic work being done every day on some of the smaller newspapers in this country—work that is often overlooked when such awards are made; and second, these New Yorkers received the Stokes award for their work on a very complex issue, an issue which they examined from every angle and presented with such clarity and conviction that public opinion in my State was interested and made articulate far beyond the circulation area of the Watertown Times itself.

The award winners established that a proposal made in the New York State Legislature which would have allowed only private utility companies to borrow money from a State agency to finance atomic power production would have made it impossible for New York's public power organization to get into this vital field. Within the past week, following the suggestion of a State task force, the Governor recommended to the legislature that the State power authority should be authorized to build a nuclear powerplant.

Mr. President, I publicly commend these newsmen for their efforts. They have not only won an award but have earned the gratitude of all New Yorkers for clarifying the elements of this important debate, the outcome of which could greatly affect the supply and cost of electric power in our State for many years.

VICTORY AT KHESANH

Mr. BREWSTER. Mr. President, the last week of March and the first week of April were exciting times in the history of this country. But due to domestic events, one of the most remarkable victories of the Vietnam war, which took place during this time, received only routine coverage in many American news media.

This, of course, was the victory of American forces at Khesanh.

The story of the North Vietnamese withdrawal from Khesanh deserves to be retold. A brief but informative account was published in U.S. News & World Report on May 6. I ask unanimous consent that the article be printed in the RECORD.

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

HISTORY-BOOK BATTLE: THE RED DEFEAT AT KHESANH

(NOTE.—Here is a real story of a misunderstood battle: Despite prophecies of disaster, Marines at Khe Sanh were never in serious danger. From the outset of the 71-day siege, it was a case of pitting massive firepower against manpower. Victory was won by guns, bombs and logistics.)

The full story of what historians will call "the 71-day siege of Khe Sanh" can now be told. By any military standards, it was a clear U.S. victory.

At the end, the North Vietnamese not only failed to achieve their objectives, but abandoned the battlefield, leaving behind mounds of supplies and piles of unburied dead—a rare and, in Asian eyes, particularly disgraceful act.

Despite reports to the contrary, the 2-square-mile outpost, manned by 6,000 Marines, 500 South Vietnamese Rangers and 50 Navy Seabees, was never in danger of being overrun.

ACCORDING TO PLAN

Khe Sanh was a textbook example of what the military calls "occupying terrain by firepower." It was planned that way.

In the course of the operation, Navy, Air Force and Marine pilots flew 24,449 combat sorties, including 2,500 by B-52 strategic bombers. They dropped 103,500 tons of bombs on the North Vietnamese troops, who were also hammered by 104,741 rounds of artillery and mortar fire. Only 21 aircraft were lost to enemy fire, three in the air.

Army and Air Force estimates of enemy casualties range from 6,000 to 20,000 dead, although the Marines, who are sweeping the hills to the north, west and south of Khe Sanh, are inclined to the lower figure. So far the Marines have found 600 bodies. Undoubtedly, however, hundreds of bodies were carried into Laos for burial.

Some Air Force enthusiasts are referring to Khe Sanh as history's first victory of air power over ground forces. A more balanced view, now emerging, is that, while air power played the major role, it was by no means the only pressure that forced the enemy to flee the battlefield.

As much as anything, Khe Sanh was a classic example of combined operations spread over thousands of square miles in which the prime objective of 250,000 U.S. soldiers, sailors, airmen and marines and South Vietnamese troops was support of the beleaguered outpost.

There are officers in each of the services who maintain that Khe Sanh was the least-understood military operation of the Vietnam war.

From the outset, correspondents with little or no military experience predicted disaster. The Marines say this caused unnecessary anguish among the families of the men at Khe Sanh.

Most of the top military men, on the other hand, were completely calm and confident about the outcome from the start.

During the operation, the outpost received only 10,800 rounds of enemy artillery and mortar fire, the maximum in any one day being 1,300 rounds. During the Korean War, one tiny outpost covering 275 square yards received 14,000 rounds in a 24-hour period.

Marine casualties at Khe Sanh and its environs during the siege were 199 killed and 830 wounded seriously enough to require evacuation. By Korean and World War II standards, these are "light" casualties for 71 days of active operations.

By Marine reckoning, the siege of Khe Sanh began January 19 and ended March 31. Operations of this magnitude do not normally develop in a vacuum—and Khe Sanh was no exception.

HOW THE SIEGE BEGAN

The Khe Sanh operation actually had its origin in September, 1967, when the North Vietnamese attempted to punch through the Marine positions along the Demilitarized Zone (DMZ) by attacking at the outpost called Con Thien.

The enemy objective during the 24-day battle at Con Thien, as at Khe Sanh, was to open an invasion route into the Quang Tri River valley and thus outflank the Allied defense positions along the DMZ.

Failure to hold at either Khe Sanh or Con Thien would have forced an Allied withdrawal of nearly 50 miles to the south—the next defensible ground—and delivered nearly 100,000 South Vietnamese civilians to the Communists.

The attack by the North Vietnamese at Con Thien was beaten back. Shortly thereafter, Allied intelligence discovered the North Vietnamese were side-slipping three divisions westward to the mountains where North and South Vietnam meet Laos.

About 15 miles south of this junction is the east-west Highway 9, which runs from Laos through part of the Quang Tri Valley and meets Highway 1, the main north-south artery, north of Quang Tri City.

Intelligence concluded that the North Vietnamese had not abandoned the idea of outflanking the DMZ, and that the next logical point of attack was at the Khe Sanh, then held by 1,000 Marines.

THE 3-MONTH CYCLE

Further, intelligence calculated the attack would develop in mid-January. This was not guesswork. North Vietnamese military operations run in measurable cycles. After a major operation, it normally takes the Red units three months to regroup, resupply and obtain replacements.

After consultation with the Marines, Gen. William C. Westmoreland, the U.S. commander in Vietnam, ordered Khe Sanh reinforced. Early in January, three additional Marine battalions were moved to the outpost. They immediately began fortifying the enlarged perimeter around the airfield, maintained by the Seabees, and the high group to their front.

At the same time, General Westmoreland began shifting two Army divisions into the Marine sector.

By January 19, it was apparent to the Marines that the North Vietnamese had at least 2½ divisions and an artillery regiment—20,000 men—in the hills around them.

From the outset, the Marines were confident Khe Sanh could be held, for they were supported by more than 30,000 troops within immediate striking distance, plus enormous air power and artillery.

The Marines were actually hoping the enemy would attempt to take Khe Sanh, for to do so the Reds would have had to mass their forces in the open. The Marines were anticipating a "turkey shoot." So were Air Force, Marines and Navy pilots.

Contrary to widespread reports, the Marines were never completely "buttoned up" inside their main perimeter. Throughout the 71 days, they maintained hill outposts and even kept the Second Battalion of the 26th Marine Regiment "outside the wire" along high ground overlooking an enemy approach route from the north. It was supplied entirely by truck. Even the Marines' main water supply point was outside the perimeter and was never in jeopardy.

During the time Khe Sanh was supposedly "sealed off" by the enemy, the Air Force proceeded calmly to airlift 1,000 mountain-tribe refugees from the perimeter.

THE ROLE OF LOGISTICS

Behind the Marines a sort of minor miracle in logistical support was taking place. Armchair strategists often ignore logistics, but professional military men note that battles are won principally on the supply routes.

Good logistics is the art of delivering the right material to the right place at the right time.

During the Khe Sanh operation, the Allied forces along the DMZ needed more than 3,000 tons of goods daily. Khe Sanh itself needed only 200 tons—roughly the cargo capacity of 10 Air Force C–130 aircraft. There was always a 21-day supply of food, ammunition and medicine on the ground at Khe Sanh.

There are three ports of entry for supplies into the five northern Provinces known as I Corps—the 8,000-man naval support activity at Da Nang, and the small ports at Hue and Cua Viet. The latter is just below the DMZ.

During the 71-day siege, there was actually more fighting along the supply routes than at Khe Sanh.

From January 19 to March 31, the North Vietnamese lost 5,373 men in I Corps operations.

During this period, the Marines elsewhere in I Corps, outside Khe Sanh, had 384 killed, while the South Vietnamese lost 215 and the U.S. Army 11.

Every day, 500 tons of supplies moved northward from Da Nang by truck over Highway 1. Between Da Nang and Hue there are 110 bridges, 23 of which had been destroyed by saboteurs. The Navys' Seabees rebuilt 17 and bypassed the others, losing 12 men killed and 105 wounded in the process.

The bulk of the supplies were delivered by small Navy boats up the rivers and canals. What didn't move by truck or boat went by air.

VICTORY BY FIREPOWER

In mid-March, just when the predictions of disaster were most widespread, the Marines learned that the enemy was withdrawing, unable to withstand the pounding from the air and artillery.

There is little doubt that the victory at Khe Sanh was achieved by massive firepower. Prisoners picked up later by the Marines reported that, at the end, their rice ration had been cut to one sixth of an ounce a day instead of the normal two pounds.

One enemy group reported they had been part of a 270-man patrol which was hit by the B–52s near the hamlet of Ba Lai. Only 60 survived.

Still other prisoners estimated that 10 men in every unit suffered concussion, which was evidenced by uncontrolled bleeding from the mouth, ears, nose and intestines. All such cases had to be evacuated, they said.

Already the Marines have found 193 crew-served weapons abandoned. Two mounds of mortar shells, totaling 11,000 rounds, have been found along with crates of rocket shells and 50 cases of 50-caliber ammunition.

All this indicates to the Marines that the enemy withdrawal may have been less than orderly.

ANOTHER TRY?

In the aftermath of Khe Sanh, the evidence is accumulating that the North Vietnamese have not abandoned the idea of outflanking the DMZ, this time further south at the A Shau Valley, which juts into South Vietnam between Hue and Da Nang. One of the divisions mauled at Khe Sanh has been sent toward the A Shau Valley.

Even so, the Marines and Army are freed from the Khe Sanh operation and, like the enemy, they have regained their mobility.

Intelligence looks for another attempt to outflank the DMZ to develop in May, although it is reasonably certain that the divisions involved at Khe Sanh will not be in shape to contribute much.

A Marine briefing officer summed up the end of Khe Sanh:

"Matters are back to normal. We are conducting routine sweep operations."

THE MARCH ON WASHINGTON AND CRIME IN THE DISTRICT OF COLUMBIA

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD the following articles:

"District Planning To Aid Marchers and Cope With Any Civil Disorders," written by Carl Bernstein, and published in today's Washington Post.

"March Means New Life in District of Columbia to Delta Youth," written by Charles Conconi, and published in today's Washington Evening Star.

"He'll Be Tough, Abernathy Says," written by Ron Speer, and published in today's Washington Evening Star.

"District of Columbia Police Patrols Boosted Up to 20 Percent," written by Paul Delaney, and published in today's Washington Evening Star.

"Man Is Charged in Arson Threat," published in today's Washington Evening Star.

"District of Columbia Guards To Train Nearby This Summer," published in today's Washington Evening Star.

"Seven More Fires Set Here, Catholic University Art Building Burns," written by Walter Gold, and published in today's Washington Evening Star.

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

[From the Washington Post, May 9, 1968]

DISTRICT PLANNING TO AID MARCHERS AND COPE WITH ANY CIVIL DISORDERS

(By Carl Bernstein)

Despite an official "hands-off" policy, the District government is reluctantly mapping plans to make the Poor People's Campaign feel at home here.

At the same time, city officials are vigorously updating plans to cope with a civil disturbance should the campaign trigger new violence in the Capital.

Military authorities are also preparing for the Campaign and have ordered specially designated troops in the Washington area put on standby alert. The District National Guard has informed its men they will not leave the city for annual two-week tours of active duty this year, but instead will spend summer camp at nearby Army posts in a "readiness state."

The District's planning for the Campaign falls into three categories: police and fire protection, which is being coordinated by Public Safety Director Patrict V. Murphy; arrangements to feed the demonstrators and make community services available to them, a task being handled by the Health and Welfare Council and quietly coordinated with the city, and emergency operations for all city departments should the gathering evoke disorder.

Although the city government is not expecting the Poor People's Campaign to produce violence, it is "taking all the eventualities into account and planning for any eventuality," as Mayor Walter E. Washington told a Senate subcommittee last month.

Because of the city's official position of noninvolvement with the marchers, plans to provide assistance to the demonstrators are being coordinated by the Health and Welfare Council, a nongovernment agency.

However, the effort to make community services available is being supervised by both HWC and Julian R. Dugas, director of the Department of Licenses and Inspections and one of the Mayor's chief troubleshooters. Dugas also has been chosen by the Mayor to supervise the city's emergency planning for the Campaign, exclusive of police and fire operations.

Explaining the city's link with HWC, one District official said yesterday that "if we had our druthers we'd prefer that the marchers stay away, not because of the merits of the Campaign, but because this is a particularly bad time for the city. But since they are coming, we feel they should be made welcome and assisted, like other visitors to the city. That's where HWC comes in."

Glenn Watts, president of the Health and Welfare Council, said, "The city has pretty much said, 'You're our agent.' "

Watts said that the Council has arranged to provide up to 4000 meals a day to the demonstrators for at least four weeks, if necessary. A committee representing the city's retail food industry has agreed to supply provisions, Watts said.

Other HWC plans, including emergency housing and health services, are still indefinite, he added.

Like city officials, Watts is concerned that the Southern Christian Leadership Conference, which is sponsoring the Campaign, has

provided virtually no information about what the marchers plan to do when they reach Washington later this month.

City authorities say SCLC has told them the site they want for their tent city is on the Mall—in an area bounded by the Washington Monument, 17th Street and Independence and Constitution Avenues.

"If SCLC's style is to keep everybody else off balance said Watts, "they're certainly succeeding."

One city official who has been in touch with SCLC's leadership described the group's planning for the Campaign as "basically nonexistent." March leaders, he said, "are just beginning to think of what you do about sanitation and water and health problems."

Some of Mayor Washington's closest aides have expressed anger at the move by some members of Congress to prevent the demonstrators from getting a permit to camp on the Mall and speculate that the vocal discontent on Capitol Hill has contributed to SCLC's secrecy about plans for the Campaign.

In his role as chief emergency planner, Dugas has received detailed reports from city department heads in the past week listing the services that agencies would perform in the event of another disorder in the city.

Although Dugas has refused to comment on the reports, sources in several city agencies said yesterday that their emergency plans have been considerably altered on the basis of lessons learned from last month's disorders. Changes include:

Arrangements to reserve special telephone circuits for virtually all city departments during an emergency. In the April outbreak, several agencies were unable to maintain contact with their employes because of busy circuits.

Abandoning Welfare Department plans to use several public schools and—if necessary—D.C. Stadium to house persons displaced in a disorder. From last month's experience, it was determined that the Department had overestimated the number of persons likely to be displaced and that use of public schools was inefficient. In the altered plans, displaced persons would be housed at Welfare Department institutions, where food and medical services are regularly available.

Health Department plans to move—if necessary—teams of physicians and nurses to a central location near the staging area of the Campaign and preparations to make food inspections and maintain sanitation standards at the camp site.

Police plans to use a new arrest form, similar to a traffic ticket, that would enable policemen to remain on the streets while their suspects are taken to jail and arraigned.

Arrangements to photograph suspects at the scene of their arrest with Polaroid cameras and eliminate identification procedures at cellblocks.

Plans to segregate prisoners by offenses with which they are charged to eliminate confusion in cellblocks.

[From the Evening Star, May 9, 1968]

MARCH MEANS NEW LIFE IN DISTRICT OF COLUMBIA TO DELTA YOUTH

(By Charles Conconi)

MARKS, MISS.—The lanky 17-year-old wearing a red baseball cap had made up his mind—if everything goes right, he could complete school in Washington, get a good job and send for his mother and seven sisters and brothers.

Joseph Freeman, a painfully serious youth, left home yesterday for a bus ride to the Nation's Capital and, as he sees it, perhaps the opportunity for a new life.

Behind him in the Mississippi Delta roadside town of Crenshaw, some 18 miles from here, his family lives on $99 a month in a small sharecropper's home.

Joseph, the oldest of his family, is like many youths who joined the Poor People's Campaign caravan here—he is talking about staying in Washington or somewhere in the North "because there is no work here to do."

TALK OF OPPORTUNITIES

It is impossible to estimate how many of the thousands of demonstrators converging on Washington this month will stay there. But many are talking about the opportunities in the North and the chance to get a free ride there by joining the Southern Christian Leadership Conference campaign.

SCLC field organizers have not discourged this idea and some, like the fiery Rev. James Bevel, have said at mass rallies how easy it is to get on welfare in Washington, which pays considerbly more than do similar programs in this state.

Joseph is not interested in welfare. He is interested in finishing school and finding a job.

"When you find work," the youth related, nervously rubbing his nose, "you are not getting nothing for it. You kill yourself driving a 40-20 (a big tractor) all day because there is nothing but tractor driving, and when you come home you is so tired you just lay around."

Joseph, who dropped out of the 10th grade nearly two years ago when his stepfather died, said he had only one steady job since—one for four months running a chainsaw for a tree service at $1.55 an hour.

The rest of the time, Joseph has had jobs driving tractors for brief stints, wheeling the heavy machines across the dusty fields from sunrise to sunset for an average wage of $82 a week.

Joseph, whose father deserted his mother before he was born, is the kind of person SCLC was looking for when it decided to bring representatives of the poor to Washington.

REPRESENTS POOR

In his quiet, careful way of unemotionally talking about what he wants for himself and his family, Joseph is the Mississippi poor.

He represents the poor of this state who sit in sagging tarpaper shacks, without plumbing, on the back acres of grand plantations that their ancestors helped farm and build.

"I am going (to Washington) because I think every person should have an opportunity for himself to take care his own people for his own way of living," he explained.

"Maybe when I get to Washington, maybe I can pick up where I left off (in school). Two years isn't too much," he said almost trying to convince himself. "And maybe then I can find a better job or something."

Then, looking a little frightened and a little sad for the first time, Joseph added: "Maybe I can send back money and bring my mother and family up."

[From the Washington Evening Star, May 9, 1968]

HE'LL BE TOUGH, ABERNATHY SAYS—KING ONLY ROCKED BOAT, MARCH TOLD

(By Ron Speer)

BIRMINGHAM, ALA.—The Rev. Ralph D. Abernathy, flexing his muscles as the head of the Southern Christian Leadership Conference, says he "won't be nice the next time I go to Washington."

The successor to the late Rev. Dr. Martin Luther King, Jr. as head of the civil rights organization said last night that he won't rely on violence when he leads the Poor Peoples Campaign into Washington.

"I won't be violent—but I'm going to tell them that time has run out," Abernathy said, wrapping up a day of Alabama marches on the Southern leg of the campaign.

"A STEP FARTHER"

"I was in Washington last week, and I was nice," Abernathy said. "But I won't be nice the next time."

Abernathy told about 1,000 Negroes in the Sixth Avenue Baptist Church that he plans "to go a step farther" than King.

"Under Dr. King, we were just going to rock the boat," Abernathy said. "The white people didn't know him, and they killed him.

"But under the leadership of Dr. Ralph Abernathy, I'm going to go a step farther.

"We're going to turn this nation upside down and rightside up," he said, "because we are sick and tired of poverty, and our babies dying in Mississippi, Alabama, and Georgia.

"We're tired of them getting all the money," he added. "When my grandfather was freed they promised him 40 acres and a mule.

"I'm going to Washington to collect those 40 acres and that mule—and I want the interest, too."

Abernathy, Dr. King's lieutenant since the SCLC was founded, said he turned down a request in Atlanta yesterday that he pay a visit to his former chief's grave.

"I haven't got the time to go to his grave," he said. "I served him when he was alive." Abernathy, pointing out that King was a man with a dream, said that "I've got some dreams, too," and he added that he plans to name a campsite to house the poor in Washington "Resurrection City, U.S.A."

Abernathy said he would be in Boston today to kick off the Northeast leg of the campaign, but he called on the campaigners in Alabama to "make one more march before you go to Georgia."

"I think you folks ought to march through the 16th Street Baptist Church," he said, pointing out that five years ago four young Negro girls died there when the church was bombed.

REGROUP FOR GEORGIA

The campaigners, who were halted by authorities in Montgomery earlier yesterday when a march was ruled in violation of parade regulations, spent the evening in Birmingham listening to speeches and regrouping for the advance into Georgia today.

Children were fitted to used shoes donated to the campaign. Teen-age girls grabbed fresh frocks from a pile. And everyone searched for friendly residents willing to provide a bed for the night.

Campaigners also bowed their heads in a minute's silent prayer for Alabama Gov. Lurleen Wallace who died Tuesday. And Hosea Williams, one of the SCLC leaders, chastised them for buying badges, buttons and books about Dr. King from "white people selling this stuff who hated Dr. King."

"A million dollars is being squandered for this stuff—and not a dime goes to the SCLC," said Williams, who is in charge of the upcoming activities in Atlanta.

INDIANAPOLIS RALLY

The first campaign contingent from the Midwest, including people from Milwaukee and St. Paul, arrived in Indianapolis by bus late last night after a rally in Chicago. Their plans called for a downtown rally in Indianapolis today.

About 400 travelers spent the night in Nashville, Tenn. About 300 of them rode air-conditioned buses from Marks, Miss., to Nashville yesterday.

Another group leaves from Marks today in a mule train, led by the Rev. Andrew Young, an SCLC leader and longtime associate of King.

About 400 marchers from Alabama and Mississippi plan to arrive in Atlanta by bus by noon today.

In Atlanta, plans call for a march to the Auburn Avenue home where King was born and the placing of a memorial plaque there.

TO HEAR MRS. KING

The group will gather this evening at Atlanta's plush new civic center where they will hear King's widow, Coretta, speak.

Also planned for the civic center gathering is a benefit performance by some of the top names in the recording business, an SCLC spokesman said, including Harry Belafonte and the Supremes.

Marchers in Nashville leave for Knoxville, Tenn., today. They plan then to go on to Danville, Va., and to Washington where they will build the shantytown, probably in a park location.

[From the Washington Evening Star, May 9, 1968]

DISTRICT OF COLUMBIA POLICE PATROLS BOOSTED UP TO 20 PERCENT

(By Paul Delaney)

The District government last night took another step—authorizing extra police parols on an overtime basis—to try to curb the rising crime rate in the city.

Safety Director Patrick V. Murphy said in a statement that the extra overtime will permit up to 20 percent more policemen on the streets than "the normal complement." He said that policemen working a normal five-day week will be permitted to earn extra overtime.

"This action is being taken immediately, and additional patrols will be on the streets of the District within 24 hours," Murphy said.

He said the action came after consultation with Mayor Walter E. Washington. It is the third move in nine days in an attempt to deal with the continuing problems of arson, looting and holdups. Last Friday, Murphy added extra uniformed and plainclothes patrolmen to riot areas, and on April 29 he ordered additional patrols within the special operations division.

The safety director said he doesn't know how much the extra overtime will cost the city, saying: "We didn't stop to check the cost. The mayor made the authorization and we weren't thinking about the cost."

RIOTS ENDED IMPROVEMENT

Murphy indicated that officials, with the announcement, were responding to growing concern and pressure from citizens and business groups. In his statement he noted that the District's crime picture had been looking better earlier in the year, before last month's riots.

"The rate of increase of major crimes for the first three months of the year had been less than the rate of increase for the same period the previous year," he said. "Then the tragic civil disturbances took place early last month."

Murphy reported that major crimes averaged 875 per week the first 13 weeks prior to the riots. These included housebreaking, robbery, stolen automobiles and larceny. He said only one week since the disturbances has the figure topped that average—the week of April 15 to 21, with 951.

"In the week immediately following the disturbances (April 8 to 14) 498 major crimes were reported," Murphy said, "and in the last week of the month the figure was 797.

"The average for those last weeks in April—after the troops left the city—was 894, which is virtually on par with the 875 average of the 13 weeks preceding the civil disturbances."

Murphy said city officials are very concerned with the crime rate, "and we plan to utilize all of our resources in protecting our citizens."

"However, we point to these figures as strong indication of the continued effectiveness of our law enforcement efforts," he stated, "we are taking these additional measures now being announced to further strengthen those efforts."

The additional men will be assigned to foot and motor patrols as well as special surveillance points, the safety director said.

CITES CITIZENS INFORMATION

"As a result of the recent appeal to businessmen and citizens to respond and cooperate in the strict enforcement of law and order, police have received additional information and assistance.

"They are thus able to place additional patrols in areas of the city which appear to be high incidence areas. The deployment of men based upon the valuable information and cooperation being received daily will significantly aid the crime preventive measures now being taken."

Murphy termed this as a "difficult period" and said the mayor and Police Chief John B. Layton have joined him in commending the men on the force "for their untiring efforts in maintaining law and order during this difficult period."

"It has not been overlooked that careful and courageous police work has resulted in the past few days in the arrest of suspects now charged in connection with the murders at three business establishments located in the District and in nearby Prince Georges County," he said.

"We urge all our citizens not to react to false rumors. The response by citizens in the last few days to facts has permitted the department to act more effectively in apprehending criminals and enforcement of the law."

[From the Washington Evening Star, May 9, 1968]

MAN IS CHARGED IN ARSON THREAT

A 21-year-old man has been charged with threatening to burn down three downtown Washington restaurants if the owners did not have the words "soul brother" written on their windows by May 14.

Bernard O. Read of the 1300 block of Kalorama Rd. NW was arraigned in the Court of General Sessions yesterday on a charge of making threats. Bond was set at $500, and the case was continued for a jury trial on June 7.

Two restaurant owners in the 1900 block of Pennsylvania Ave. NW and another in the 2100 block reported to police Tuesday that they had been threatened.

All said they were instructed to write the words on the display windows and that if they did not their places would be burned down.

Police said Reid was arrested on a description provided by the owners.

[From the Washington Evening Star, May 9, 1968]

DISTRICT OF COLUMBIA GUARDS TO TRAIN NEARBY THIS SUMMER

The D.C. National Guard, more than 1,800 of whose members were activated during last month's riots, will train at nearby military posts this summer on a split schedule instead of as a unit in past years at Indiantown Gap, Pa.

A Guard spokesman today said the reason for this summer's schedule was "the obvious one," and said that no decision yet had been made whether summer training would be at Ft. Myer, Ft. Belvoir or Ft. Meade.

The D.C. Guard, primarily a military police unit, for many years has taken summer training at Indiantown Gap, 125 miles away, although last summer some units received training in halting civil disorder at Ft. Meade and at Camp Picket, below Richmond.

The Guard spokesman said the schedule this summer would involve subunits undergoing training at various times instead of the Guard, as a whole, taking the annual two-week session.

MARCH PLANS PUSHED

Meanwhile, preparations for the arrival of the Poor People's Campaign in the Washington area proceeded on several other fronts.

In the District, officials of the United Planning Organization met yesterday with representatives of the Poor People's Campaign to discuss ways of cooperation. The National Council of Churches has opened an office to coordinate activities of religious groups over the nation wishing to assist in the campaign.

Maryland Attorney General Francis B. Burch met with law enforcement and military officials to map strategy for handling the marchers passing through the state next week.

SCHOOL USE UNCERTAIN

But the Northern Virginia Committee for the Poor People's Campaign which applied a week ago for permission to use the Hayfield Elementary School in Franconia for an 8 p.m. meeting but was told yesterday its application has not yet been granted.

Werner E. Petterson, a committee member and pastor of Gethsemane Methodist Church in Franconia, said the group had no trouble in obtaining permission to use the Mark Twain Intermediate School near Springfield for a meeting last week.

He said the organization, which has mostly white members, wants to explain the march to Northern Virginia residents to ease their fears and "bridge the gap between the people in the march and residents of the suburbs."

Petterson said he was told yesterday by Mrs. Dorothy Hoge, Hayfield principal, that the school had not received notification from the Fairfax County school administration that the application had been granted.

The clergyman added that he had been told last week by the office of Samuel J. Coffey, associate superintendent of schools, that the request was granted.

Coffey claimed last night that no decision about the application has been made but said he would make one today.

UPO OFFERS HELP

The meeting with UPO officials was held at the invitation of Wiley A. Branton, UPO executive director, who said in a telegram to Anthony Henry, Washington coordinator for the Southern Christian Leadership Conference:

"The United Planning Organization's Board of Trustees has adopted a resolution supporting the aims of the Poor People's Campaign. Our staff is vitally concerned about your efforts, and believes that your success is important to our nation and to the program we operate."

Branton explained at the meeting attended by some 30 UPO division heads and neighborhood center directors that UPO community organizers could work with neighborhood groups wishing to participate, and that UPO staff members had expressed interest in volunteering their services after working hours.

BREWSTER ASKS PROTECTION

Sen. Daniel B. Brewster, D-Md., told the Bowie Democratic Club yesterday that the entire Washington community has a legitimate concern about the march and what may happen when the demonstrators arrive.

Residents and marchers alike, he said, "have the right to be assured by the proper government officials that life and property will be protected, the law obeyed and order maintained."

[From the Washington Evening Star, May 9, 1968]

SEVEN MORE FIRES SET HERE, CATHOLIC UNIVERSITY ART BUILDING BURNS

(By Walter Gold)

Arsonists set at least seven more fires in riot-torn sections of Washington during the night, bringing the number of arson cases here to 19 since Monday.

An eighth fire of suspicious origin heavily damaged an old arts building on the Catholic University campus around midnight. Al-

though arson was a possibility in that blaze, fire officials were reluctant to link it with the string of vandalism-type fires that has plagued the city since the riots here in early April. It was the third CU fire in a week, however.

Damage from the other seven blazes was light and there were no injuries. No suspects were picked up in connection with any of the fires.

SOME PAINTINGS SAVED

The university fire was reported at 11:54 p.m. in the Salve Regina Building, a long split-level structure that was being used for art studios and classes. When firemen arrived, flames were coming from one end of the building and students were trying to save an exhibit of their paintings, which only this week went on display.

More than two dozen pieces of fire equipment were used to bring the blaze under control within 20 minutes. About half of the interior of the building was either destroyed or heavily damaged, fire officials said.

Hundreds of student paintings and sketches were lost in the fire, along with art equipment. Some of the contents was saved by students and faculty members, hundreds of whom witnessed the fire.

The blaze started in a janitor's storage closet on the west side of the mid-campus building, according to the fire marshal's office. Cause of the blaze was under investigation today.

Still under investigation also is a case early Monday morning where someone threw a fire bomb into a room of the university's new law school, causing about $50 in damage. Attached to the broken gasoline-filled bottle was a note which read, "You should help too," officials said.

University spokesmen said the third fire occurred earlier in the week in another university building, a warehouse at 9th and Kearney Streets NE, where clothing donated for the Poor People's Campaign is stored. Some clothing was burned, but damage was slight.

OTHER 7 BLAZES

Last night's seven other fires, in order of the time they started, were:

At 5:03 p.m., arsonists believed to have been youngsters set fire to a pile of debris and trash in a burned-out dime-store at 2008 14th St. NW, causing minor damage.

Five minutes later, another group of youths set fire to a pile of trash in the basement of a vacant house at 1941 16th St. SE, causing little damage.

At 9 p.m., arsonists set fire to a furniture warehouse door in the rear of 919 9th St. NW, causing about $100 in damage.

Fourteen minutes later, trash behind a house at 1006 Massachusetts Ave. NW was set on fire, causing minor damage.

At 12:59 a.m., trash was set on fire in the basement of a market at 3005 14th St. NW, which previously had been burned, causing little damage.

At 1:11 a.m., two empty garages were set on fire behind 1326 Irving St. NW, drawing a small crowd of spectators and causing moderate damage.

And at 1:48 a.m., several trash cans were set ablaze in the basement of 80 New York Ave. NW, a four-story apartment building. Some of the tenants left the building but later returned. Damage was minor, fire officials said.

While firemen were kept busy throughout the night, police rounded up several young looting suspects who were caught inside business establishments, including a High's dairy store at 2804 14th St. NW.

CIVIL RIGHTS AND GOVERNMENTAL ACTION

Mr. NELSON. Mr. President, the time has long passed merely for lending a sympathetic ear; men of conscience are all agreed that the cause of America's poor must be acted on and resolved. Ten million Americans suffer from hunger and nutritional problems; decent housing is unknown to many of our citizens; educational opportunities are virtually nonexistent to some. But at the heart of the problem is our attitude—the failure to realize that all men are human beings and deserve equal treatment and understanding.

Recently, the Southern Wisconsin Council of the B'nai B'rith Youth Organization passed a resolution on civil rights and governmental action. The statement articulates the concern that is felt by all of America's responsible citizens. Accordingly, I ask unanimous consent that it be printed in the RECORD.

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

A RESOLUTION OF THE SOUTHERN WISCONSIN COUNCILS OF BBYO ON CIVIL RIGHTS AND GOVERNMENTAL ACTION

Whereas there are twenty million Negroes and members of other minorities in America relegated by birth to second class citizenship, forced into substandard living in decrepit ghettos, prohibited from engaging in activities that all Americans are entitled to, shunted into low quality schools which educate them for low quality jobs, and are still de facto slaves in a country where they were freed 100 years ago

And whereas there is tension, hatred, repression, and frustration among the black people of America which leads some or them to looting, arson, sniping, and other destructive actions because they see no other direction for them to go

And whereas the death of the Rev. Dr. Martin Luther King, Jr. and outbursts of civil disorder in Newark, Detroit, Milwaukee, Washington, Chicago, Baltimore, Harlem, Pittsburgh, Cincinnati, Memphis and over 110 other cities in America have brought to light the crisis not of the riots but of the living conditions in the riot areas, the crisis not due alone to action by ghetto dwellers but due also to inaction by the American populace, the crisis that threatens every citizen of this country and places America in its greatest danger since the Civil War.

And whereas to alleviate these problems and give the ghetto resident a reason and a purpose for his life will require an all out effort by all Americans to at last show that men are equal and all men are entitled to live

Be it resolved that the members of the Southern Wisconsin Councils of the B'nai B'rith Youth Organization urge the congressional and executive branches of the United States government to act immediately and positively on all civil rights, poverty, and ghetto aid legislation that has been proposed to the congress so that a moral and just internal peace can be established in America

And be it resolved that the members of the Southern Wisconsin Councils of the B'nai B'rith Youth Organization pledge to commit themselves to the cause of freedom, justice, and equal opportunity for all in the United States through their actions as individuals and as a council.

THE PROTECTION RACKET

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to insert in the RECORD an excerpt from a column by Don Maclean, which appeared in the Washington Daily News, on May 8, 1968.

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

We are now entering the second phase of law and order. The first phase, of course, was the riots and looting. The second phase: The protection racket has re-emerged in the ghetto and elsewhere.

It had to happen. When the Government fails to provide protection the forces of lawlessness will.

Listen to this nightmarish account by a person who runs, or is trying to run, a liquor store located within walking distance of the White House:

"We are still cleaning up the mess here, trying to get stock back on our shelves. Our plate glass windows are gone. We have boards there now, with the word 'Open' written on them. Of course, you can't see that at night; it's not like the big neon sign I once had. The other day we were stacking rubble, broken glass, empty cases, etc., in the big cans in the alley. A gang of tough boys came around, watched us for awhile and laughed. 'That's right, Whitey, get some more booze. We're almost out. We'll be back for it one night soon.'

"We try to ignore them. That gang leaves and another comes around. A friend of ours, he runs a liquor store, too, calls and says a gang of hoodlums were just in his store, 'looking around,' they said. Finally one of them says, 'You know, I can keep this gang from wrecking your place again. For only $500.' Our friend said he didn't have it. The gang left, the spokesman said, 'We'll be back.' Right after our friend's call, the phone rings again. A voice says, 'Got your place fixed up? Want to keep it that way? We're going to send someone in to see you. You'd better take care of him.' We called the police. They said, 'Pretend you'll pay. Try to make an appointment with the collection man. Tell us and we'll grab him.' Sure they will. Just like the police 'stopped' the looters who cleaned us out.

"A man walked in here yesterday and asked us if we wanted to buy a picture of Martin Luther King. 'Put it in your window and they won't hit you next time. It's a special picture, it has our mark on it.' He wanted $25 for the picture. We told him we didn't have a window to put it in any more. He said he'd be back when we did. Another friend, he bought the picture. Has it in his store window right now. He figures his taxes don't get him protection, maybe the $25 will."

CRISIS AND RESPONSE

Mr. NELSON. Mr. President, today the American people are being challenged by the problems of the Negro and of the poor. We must neither shy away from nor shirk our responsibility to respond posititvely to this national emergency. All of our resources must be mobilized to attack the conditions which have polarized our society.

Now is not the time to hesitate; rather it is the moment for action. We can no longer be content with stop-gap measures, but must level a comprehensive attack against poverty and the conditions which breed despair for many of our citizens. If tomorrow morning every American—black and white—awoke with the determination to work together honestly toward his mutual betterment, the tragedy of the first days of April would never again be repeated.

The crisis created by racial discord, while being reprehensible, is understandable in many respects. Recently, the eminent Chancellor J. Martin Klotsche, of the University of Wisconsin—Milwaukee, delivered an excellent talk entitled "Crisis and Response," in which he comprehensively surveyed this problem.

Chancellor Klotsche displays great insight, and his observations should be considered by all Senators. I ask unanimous consent that his speech be printed in the RECORD.

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

CRISIS AND RESPONSE

(By Chancellor J. Martin Klotsche, University of Wisconsin—Milwaukee, April 5, 1968, Wisconsin Anti-Tuberculosis Association)

This country is faced with the most serious crisis in its history. If there are any doubts about this, they were removed as the result of the tragic death of Martin Luther King.

We all recall the happenings of the summer of 1967: 164 disorders in 128 cities, 25 cities with two or more disturbances and eight major riots including the one in Milwaukee. The results of the summer were 83 persons killed, 2000 injured, 16,000 arrested and property damage estimated at more than $150 million.

Yet the physical destruction of last summer was the least sordid part of the story. Property that is destroyed can be replaced and buildings can be repaired.

What was tragic about last summer's riots was not that buildings were gutted and leveled. More important was the damage to the common spirit. For the summer of 1967 saw class warfare and social strife threaten to tear a whole society apart. This is why the summer of 1967 was a turning point in our history.

And what of the future? Reports from city after city indicate that the seeds of major outbreaks for the coming summer already have been planted. Dr. John Spiegel, director of the center for the study of violence at Brandeis university, reports that conditions have not changed since last summer and that there has been virtually no substantial improvement in the situation since then. Some facts are worth reciting to underscore the urgency of the problem which now faces us.

FACT 1

The population of our ghetto is growing at an alarming rate.

There will be 500,000 more people living in the ghettos of American cities in 1968 than was the case a year ago. In Chicago three blocks a week are changing from a predominantly white to a predominantly black population.

FACT 2

It has been estimated that by 1985 the Negro population in our central cities will increase by 72%.

We now already have several major cities in the north with a Negro population in excess of 50%. Within 5 years there will be five such major cities and within 15 years, 15 such cities.

FACT 3

The Negro age group between 15 and 24 will grow faster than the Negro population as a whole and faster than the white population in the same age group.

Yet this is where the highest school dropout rate is to be found as well as the highest incidence of unemployment.

In Milwaukee we too have a serious situation. But there are some elements of hope. Compared to other cities, the number of Negroes is smaller. Twelve percent of the city population is Negro and the percentage is even smaller for the whole metropolitan area. So we still have a manageable problem in Milwaukee compared to other cities.

Yet this very fact may cause us to pause, to delay and to procrastinate. For us to pursue such a course would be folly and could only lead to disaster. What we now need is a genuine and areawide commitment to remedy the major problems of our urban ghettos.

There are a number of myths that need to be exploded in analyzing the urban crisis now facing us.

MYTH 1

Riots are the work of outside agitators and subversive trouble makers.

The University of California-Los Angeles study of riots in Watts revealed these interesting facts. Fifteen percent of the Negro adult population was active at some point during the riots, while an additional 30 to 40% were active spectators at the riots. Support for the riots was as great among the well educated and economically advantaged as among the poorly educated and economically disadvantaged. Thirty-four percent of the people interviewed in the riot were favorable to what had taken place. Thirty-eight percent felt the riots would help the Negro cause while only 20% felt the riots would be harmful. It is the favorite pastime to blame outsiders. Yet no conspiracy theory can explain four summers of rioting in more than 1000 cities.

MYTH 2

Strong arm methods and repressive measures will solve the problem of our cities.

Violence and disorder must, of course, be met with firmness in order to bring about restoration of law and order. Without order no society is viable. But after order is restored, then what? Unless the causes of disorder are removed there will be even more disorder. There is danger that improved riot control will be uppermost in the minds of some this coming summer with only minimum interest in social change and in a fundamental attack on the problems that cause riots and violence.

MYTH 3

Immigrants from Europe rose from the ghettos; why is it not possible for Negroes to do likewise?

The parallel is not a valid one. When immigrants came to this country in the last century there were many unskilled jobs available and work for everyone. Most important, these immigrants were white and could be absorbed by the larger society. They often left the ghettos of the inner city and moved to outlying neighborhoods in order to get better housing and schooling.

MYTH 4

We have made progress in recent years and therefore should not be too impatient.

It is true we have made some headway in the war against poverty, social discrimination and urban blight. Some people are bewildered when they see that the response to such progress is hatred and violence. Yet one of the important facts of history is that when people begin to improve and are on the way up, they become impatient and rebellious. It is when they see a way out that they become militant.

Democracy is a never ending quest for a better way of life. The eminent jurist, Oliver Wendell Holmes, has expressed it this way: "A man's mind once stretched to a new idea never returns to its former dimensions." It is precisely because some progress has been made that Negroes have achieved a new militancy.

Those who think we have made progress point to improved industrial opportunity for Negroes, passage of civil rights legislation in recent years and the growing size of our Negro middle class. Yet Negroes view the situation quite differently.

It is recently reported, for example, that no state school system in the south was any longer completely segregated. But this statement does not really impress Negroes. What does impress them is that 90% of the Negroes are still in segregated schools more than a dozen years after the supreme court desegration decision.

Again, it is hard for Negroes to cheer when two Negroes were admitted to a southern university with an enrollment of 4,500 a few years ago. These admissions changed the racial composition of the university from an all white student body to 99.95% white. And it took the army, the FBI, the national guard, the justice department, the White House staff and the Chief Executive to accomplish this task.

Negroes do not buy the "progress thesis" when inferior schools still persist, ghetto life continues, when there are double standards of justice and limited employment opportunities. And the gains which are made by some Negroes and the great majority of whites only make the burden of poverty heavier for those who have not shared in that improvement.

The only conclusion we can then come to is that we are in grave trouble. We have underestimated the magnitude of the crisis. We have not adequately measured the degree of hatred and prejudice that has been generated. We have failed to sense the fact that our society is in danger of being torn apart. Because both our assessment of the crisis and our response to it have been inadequate, we are now faced with difficulties—grave and complicated ones.

Our alternative is not to follow a course of blind repression, nor is it to capitulate to lawlessness and vigilante methods. Rather we need to realize that there are common opportunities for all within a single society.

This means a national commitment to action which is massive and substantial. This will require new attitudes, new understandings and a new will. Only in this way will the nation be saved from splitting into two societies—black and white—with continued violence and retaliation resulting finally in an urban apartheid society.

There can be no higher priority for national action. It must be placed first on our national agenda. This will mean a reordering of our present priorities. There must be an escalation of the war against poverty and discrimination at home, even if it means a de-escalation of our efforts in Vietnam.

In reordering our priorities, let's put the matter in perspective. Last year we spent $75 billion for defense, but only $7 billion for welfare programs. We spent $17 billion for tobacco and liquor, but only a little more than $1½ billion on our poverty program. We spent $3½ billion dollars on cosmetics and toilet articles but only $400 million for training our adult unemployed. We spent almost $4 billion for new highways, which is as much as we spent on the poverty war, public housing, rent supplements and our model cities program combined.

In our personal lives too we have been obsessed by the quest for affluence and have continuously catered to our own personal enjoyments. A second summer home, elaborate vacation travel, sports cars for our children, a second color TV set, all have had higher priority than the need for sharing our affluence with others.

We cannot solve our domestic problems unless we give the plight of the disadvantaged the same sense of urgency we give to foreign obligations abroad, and are at the same time willing to share some of our affluence with others less advantaged than we. In short, we need a greater sense of urgency and a more realistic allocation of our resources.

Our approach must be a comprehensive one. We need to attack all problems related to the human and physical deterioration of our cities. We must rebuild and revitalize our slum and blighted areas, expand housing, enact open housing legislation to cover the sale and rental of all housing, expand job and income opportunities, create new jobs both in the public and private sector, develop on the job training by both public and private employers, improve educational facilities and programs, combat disease and ill health, enhance recreational and cultural opportunities, reduce the incidence of crime and delinquency and in general improve the quality of urban life.

The President's National Advisory Commission on Civil Disorders has addressed itself to all of these matters. While we may not agree with all of its proposals, it does chart a course and set guidelines that are significant and worthy of study.

It we expect to achieve our goals we will need to make a concentrated and coordinated effort—federal, state, local and public as well as private. Increased federal funds will be essential, but local initiative is also paramount.

Some resources can only be generated by the National government, but we also need a coordinated effort involving all levels of government and including the private sector. State and local governments can do a great deal at a minimum cost and without delay. There are many state, county and metropolitan agencies responsible for programs in health, education, planning, employment, welfare, pollution control, recreation, that can make major contributions to local programs.

The role of private enterprise also is critical. The assistance of the private sector needs to be enlisted, including both profit-motivated and community-oriented nonprofit organizations. The advice and consultation of business leadership needs to be sought. We need to work with employers and unions in developing and training manpower programs.

Widespread citizen participation is also essential. City-wide and metropolitan-wide citizen groups should be encouraged to participate, while the views of slum area residents in policymaking and program development is critical in planning and carrying out our program.

Our society is in danger of being polarized and split apart unless we set our house in order and make a massive and sustained attack on the root causes of disorder resulting from discrimination in employment, education and housing against great numbers of Negro Americans.

We need to make a breakthrough in our thinking and in the commitment of our resources comparable to the one we made in December of 1941 when the Japanese attacked us at Pearl Harbor, when faced with a national crisis we were prepared to make any sacrifice to preserve our way of life.

In another time of national crisis, a great president, Abraham Lincoln, said to congress in an annual message, "The dogmas of the quiet past are inadequate to the stormy present. The course is piled high with difficulty and we must rise with the occasion. As our course is new, so we must think anew and act anew."

This, I believe, is the best response we can give to the crisis which now confronts us.

THE COMMUNITY PHARMACY—A VITAL HEALTH RESOURCE

Mr. LONG of Louisiana. Mr. President, there have been efforts to blame the local pharmacy for the high cost of drugs. I do not think that the local pharmacy is at all to blame.

Recently, I received from a member firm of the Pharmaceutical Manufacturers Association a letter recommending that the way to bring about lower cost prescriptions is to "eliminate" the wholesaler and the pharmacist and to encourage dispensing of drugs by physicians.

There is no question in my mind that some doctor-dispensing is necessary—particularly in rural areas where no local pharmacies are available. Beyond that, however, there are a whole host of problems, as Senator HART's Subcommittee on Antitrust and Monopoly has so ably reported to the Senate.

Simply stated, I told the drug manufacturer that I would not be party to any effort designed to "eliminate the wholesaler and the pharmacist" in supplying and dispensing drugs under the public programs. The community pharmacy is a vital local health resource manned by a health professional. That pharmacist and that pharmacy should not be bypassed as recommended by that member of the Pharmaceutical Manufacturers Association. To the contrary, it is my intention to do everything possible to encourage greater reliance on local pharmacies.

THE DIRKSEN BLOCK-GRANT AMENDMENT

Mr. PERCY. Mr. President, I am happy to join my distinguished senior colleague, the able Senator from Illinois [Mr. DIRKSEN], and other Senators in cosponsoring amendment No. 715 to the Omnibus Crime Control and Safe Streets Act of 1967. The purpose of the amendment is to make Federal financial assistance provided by the act available to the States in the form of block grants. These administrative revisions would replace the provisions of the bill as reported by the committee, which contemplate that the grants be made directly by the Department of Justice to individual local law enforcement agencies.

The block-grant approach has the endorsement of at least 47 State Governors, including my own, Gov. Otto Kerner, of Illinois, and also a Republican candidate for Governor and now president of the Cook County Board of Commissioners, Hon. Richard Ogilvie. The Association of Attorneys General has passed a resolution of approval. The President's Commission on Law Enforcement and the Administration of Justice, in recommending additional Federal assistance for local law-enforcement efforts, emphasized the need for the unified statewide planning and implementation capability that this amendment would permit and encourage. The overwhelming approval of the House of Representatives is indicative of the merit of this proposal.

The block-grant amendment would shift the responsibility for the administration of both planning grants—title I, part B—and law enforcement or "action" grants—title I, part C—to the law-enforcement planning agencies in the several States. The agency would be created or designated by the Governor and subject to his jurisdiction. Under the amendment, each State is entitled to $100,000 for the purpose of planning, upon formation of a planning agency. Increments of additional funds are awarded to qualifying States according to the population of the State. The planning agency develops a comprehensive statewide plan for the improvement of law enforcement, correlates and coordinates the programs throughout the State and establishes the priorities for the execution of the plan.

Once the State plan is formulated, and after it has been approved by the Law Enforcement Assistance Administration under the guidelines of the amendment, 85 percent of the action grant money is allocated according to population. Fifteen percent of the total appropriated is to be disbursed at the discretion of the administration. In special cases where a State fails to apply to file a comprehensive plan within the allotted 6 months, a procedure is available so that an individual municipality or group of municipalities can secure a grant direct from the administration. Acting under this special procedure, the local governmental unit of general jurisdiction can only receive a grant for not more than 60 percent of the cost of the project or program.

These alternatives have immediate advantages over the procedures of the bill as reported by the Judiciary Committee. As even this brief analysis shows, the amounts available to the State for planning assistance will be predictable upon passage of the bill. For instance, in the case of my own State of Illinois, authorities could count on at least $27 million over the next 3 years in Federal assistance to ongoing State law enforcement programs.

Under the amendment, planning can be put on a predictable, businesslike basis. The availability of the Federal assistance will not depend upon the whims of the administrative application process—quite aptly referred to as "grantsmanship" in the minority views in the report. It would assure immediate, widespread allocation of the financial stimulus to improved law enforcement.

The amendment proposes to continue the development of the "creative Federal partnership" called for by the President when he signed the Law Enforcement Assistance Act of 1965. Under the stimulus of that program—as we are instructed by the recent annual report to the President and the Congress of activities under the Law Enforcement Assistance Act—some 27 States have formed State planning committees on criminal administration. This progress reflects—in the words of the report—"a growing desire on the part of many States to establish such planning agencies and thereby prepare for intensive crime control programs." It recognizes the primacy of State court jurisdiction, and the efficiency of Federal tax collecting prowess. The block-grant amendment proposes that we take advantage of these capabilities of the States, rather than ignore them.

The amendment would encourage the increase and broadening of this State capability as well as stimulate and enable other States to exercise the same initiative. I ask unanimous consent that the list of States who have already taken this action together with the report explanation of this progressive program be printed in the RECORD, immediately following my remarks.

It is a basic principal of our constitutional government that State and local government is charged with the basic responsibility for law enforcement. As the President said in his message on crime in February 1967:

> Our system of law enforcement is essentially local: based on local initiative, generated by local energies and controlled by local officials.

The President's call for a "creative Federal partnership," in view of the constitutional role of the States in law en-

forcement is hardly consistent with the bypassing of State Governors in projects designed to improve the system of law enforcement in his State. The preference expressed in the committee bill for initial direct approval by an appointed Federal official or officials over the duly elected State Governor may be understandable, in view of this administration's policies on law enforcement. But it is basically unsound national policy.

The Federal Government has no monopoly on the expertise or the judgment required to upgrade law enforcement in the States. A review of the number of recommendations of the President's Crime Commission—implemented by the Department of Justice—particularly insofar as legislative proposals are concerned—would indicate they are either very busy with other matters, or that they do not agree with conclusions of the experts on the Commission. The block-grant approach of this amendment will maximize the opportunity for the expertise of the States to play its full and important role in developing new methods, techniques and programs for the improvement of law enforcement.

The Federal Government can and should provide financial stimulus and reinforcement in the improvement of law enforcement. But the leadership and initiative must come from the States. As our experience under the Law Enforcement Assistance Act has clearly shown, the States are already on the move to meet the demands of their individual jurisdiction. The block-grant amendment provides necessary funds and encouragement to speed up progress.

For those Senators who find the increasing size of the Federal Government of great concern, as I do, let me commend the example that can be set by the adoption of this amendment. Under the Law Enforcement Assistance Act, the Department of Justice has authorized 330 separate projects for a total amount of $19 million. Obviously, they have reviewed more than that number of applications for grants during that period.

The pending bill contemplates expenditures of $100 million for fiscal years 1968 and 1969 and $300 million for fiscal year 1970. Can Senators imagine the number of Federal employees that will be required to review and supervise this increased program?

Aside from the disruptive infusion of funds to individual localities on an ad hoc basis, the bill as written will only contribute to the burgeoning bureaucracy, to no demonstrable advantage to law enforcement. I would suggest that the Federal effort in the Justice Department be directed to Federal problems—of which there are a great number—and let the States exercise their responsibilities with the added incentive of these additional revenues.

I urge the adoption of the amendment.

I ask unanimous consent that a statement on this subject be printed in the RECORD.

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

State Planning Committees in Criminal Administration. The goal of this program, announced in March of 1966 by letter to each of the State Governors, is to further the establishment of state committees or bodies to assess local problems and plan integrated law enforcement and crime control programs spanning all areas of criminal justice activity. The need for such coordinated study and planning has long been recognized and was stressed by the President's Crime Commission as a necessary first step for effective criminal justice improvement. LEAA funds—up to $25,000 in grant aid matched by equal state contributions in funds, services, or facilities—have thus far helped support the establishment and operation of 27 such committees. Applications are under development in two other states.

Activity during the report year was considerable. Notwithstanding the modest support involved, particularly for larger states, the number of state planning committee grantees increased from 10 on April 1, 1967 to 27 on April 1, 1968, reflecting a growing desire on the part of many states to establish such planning agencies and to thereby prepare for intensive crime control programs. State commissions now in existence and receiving LEAA support include Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Utah, Washington, Wisconsin, West Virginia.

Three state committees, in existence for more than one year, have qualified for and have received continuation support.

A ROUTINE(?) WEEKEND IN WASHINGTON

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to insert in the RECORD an excerpt from Bill Gold's column "The District Line," which appeared in the Washington Post on May 7, 1968.

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

THE DISTRICT LINE—SO WHAT ELSE IS NEW THESE DAYS?

(By Bill Gold)

There may have been unrest and violence elsewhere in the world, but here at home it was a routine weekend.

A Georgia Avenue drug store that had been burned during last month's riot was finished off completely this time. Four bus drivers were held up at gunpoint and in one instance the robbers fired three shots into the bus as it drove away. Near 14th and Park Road, a woman was shot dead and a man suffered gun wounds. An Arlington man was seriously wounded in a shooting at a party.

On Monroe Street ne., a gang of 20 teenagers threw rocks and bottles through the windows of a motel, tried to force their way into a room, upset a soft drink machine and broke plumbing connections, thereby causing water to flood through several rooms.

Then the gang went out on the street, beat up a lone pedestrian, cut him with a knife, hit him on the head with a soft drink bottle, and took $74 from his pocket.

If it hadn't been for the shocking news from D.C. Stadium where the Baltimore Orioles did violence to our beloved Nats, we might have considered this a placid, routine and thoroughly enjoyable weekend.

But we must face reality, and waste no time on "ifs." Remedial action is urgently needed. Facts are facts. The Nats need more hitting—and quickly.

DISCLOSURE BY SENATOR JAVITS UNDER NEW SENATE CODE OF ETHICS

Mr. JAVITS. Mr. President, a new code of ethics has been adopted by this body; its provisions are mainly prospective in effective dates. Nonetheless, I am today pursuing my practice of many years of filing a report which follows the precedent of the disclosure laws of the State of New York; and includes additional information about contributions and honorariums which are referred to in the code.

ANNUAL DISCLOSURE OF FINANCIAL INTERESTS

I hereby publish this list of companies subject to regulation by the Federal Government, in each of which I have an interest—direct or indirect—in an amount exceeding $5,000.

These are normal investments in publicly owned corporations and constitute no element of control alone or in combination with others, directly or indirectly: American & Foreign Securities Corp., Cities Service Corp., Corinthian Broadcasting, Criterion Insurance Co., General Telephone & Electronics, Government Employees Corp., Government Employees Financial Corp., Government Employees Insurance Co., Government Employees Life Insurance Co., South Carolina Electric & Gas Co., Southern Co., Transamerica Corp. of Delaware, First National City Bank of New York, Trans World Airlines.

CONTRIBUTIONS FOR CALENDAR YEAR 1967

In connection with my campaign for reelection to the Senate, I have authorized two fundraising efforts, one entitled "JAVITS in 1968"—chairman: John A. Wells; treasurer: Irving Mitchell Felt; address: 45 East 45th Street, New York, N.Y.—and the JAVITS dinner committee—testimonial dinner held on December 11, 1967—chairman of the finance committee: Armand Erpf, 42 Wall Street, New York, N.Y.

In each of the above cases, a list of contributors and the amount each has contributed will be made part of my report to the authorities of the State of New York and to the Secretary of the Senate, as required by law.

HONORARIUMS FOR CALENDAR YEAR 1697

The aggregate amount of honorariums received for the year 1967 is $9,850. This includes fees for articles and lectures.

HUMAN RIGHTS YEAR OFFERS HOPE FOR MANKIND

Mr. PROXMIRE. Mr. President, the International Human Rights Year Conference, meeting now in Tehran, Iran, is seeking methods to advance the cause of humanity throughout the world.

The profound truth of our age—the indivisibility of peace and human rights—is being forged into what, hopefully, will become a new legal order, dedicated to the dignity of man.

A well-written article published in the spring issue of Odyssey, the Journal of the U.S. Experiment in International Living, accurately gages the keen efforts of the International Human Rights Year to unite mankind.

I ask unanimous consent that the article, entitled "Year 1968: International Human Rights Year," be printed in the RECORD.

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

YEAR 1968: INTERNATIONAL HUMAN RIGHTS YEAR

The General Assembly of the United Nations has designated 1968 as International Human Rights Year. This particular year was selected because it marks the twentieth anniversary of the adoption of the Universal Declaration of Human Rights. In recognition of its importance in the promotion of peace, the General Assembly has called upon all its members and agencies to undertake appropriate activities throughout the year.

When the U.N. Charter was drafted in San Francisco in 1945 there was considerable discussion over the inclusion of an international bill of rights, but limited time prevented the spelling out of separate articles. The conference concluded, moreover, that such provisions would be considered separately and subsequently adopted as an appendix to the Charter or by other means.

At the closing session in San Francisco, President Truman expressed this expectation in these words:

"Under (this Charter) we have good reason to expect the framing of an International Bill of Rights, acceptable to all nations involved. That Bill of Rights will be as much a part of international life as our own Bill of Rights is a part of our Constitution. The Charter is dedicated to the achievement and observance of human rights and freedom, and unless we can attain these objectives for all men and women everywhere—without regard to race, language or religion—we cannot have permanent peace and security."

Some three years after the adoption of the Charter, the General Assembly, meeting in Paris, adopted the Universal Declaration of Human Rights. It is not of itself a treaty. It was intended as a statement of principles and it does not have binding effect although legal implications are suggested by the comments in two concurring opinions by four justices of the U.S. Supreme Court.

Political organizations, at best, are not eternal. The nobly inspired United Nations could disintegrate some day. But ideas never die. If nothing else comes of the attempt in our time to unite mankind, the Universal Declaration of Human Rights will stand as a record that men of goodwill recognized that rights came into existence for every man by the very fact of his birth.

RICHARD NIXON'S POSITION ON THE CRIME PROBLEM

Mr. THURMOND. Mr. President, this morning's Washington Post contains an article outlining the views of former Vice President Richard Nixon on the crime crisis facing this Nation. Mr. Nixon's position was outlined in a paper entitled "Toward Freedom From Fear." Among his recommendations are: Strong endorsements of legislation overturning recent Supreme Court decisions which place limitations on the use of voluntary confessions; endorsement of legislation permitting the use of wiretapping in criminal investigations under court order; an endorsement of the block grant approach to Federal aid for law enforcement.

The former Vice President also strongly disagreed with the contention that crime is caused by poverty. Mr. Nixon pointed out that crime has increased about three times as fast as the national wealth. He also criticized those in public life who "excuse" crime and sympathize with criminals because of past grievances the criminal may have against society.

I believe the statement of Mr. Nixon is particularly relevant to the debate we are now having concerning the omnibus crime control and safe streets bill, and I believe it deserves the attention of all of us in this body. Mr. Nixon is to be commended for his forthright statement on this vital subject.

Mr. President, I ask unanimous consent that the article, entitled "Nixon Hits Rise in Crime" by Chalmers M. Roberts, which appeared in the Washington Post on May 9, 1968, be printed in the CONGRESSIONAL RECORD.

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

NIXON HITS RISE IN CRIME—CITES LAWLESS SOCIETY IN POLICY PAPER

(By Chalmers M. Roberts)

Richard M. Nixon yesterday castigated the Johnson Administration for the massive increase in crime while it has been in office.

In a lengthy policy paper, the frontrunning Republican presidential candidate declared the United States to be a "lawless society" in which crime has skyrocketed 88 per cent in the last seven years while population was rising only 10 per cent.

Nixon strongly criticized Supreme Court decisions limiting interrogation of suspects and the use of confessions. He also called for legislation permitting use of wiretapping.

If the crime rate continues, he said, "the number of rapes and robberies and assaults and thefts" today will double by 1972, "a prospect America cannot accept."

"If we allow it to happen," said Nixon, "then the city jungle will cease to be a metaphor. It will become a barbaric reality, and the brutal society that now flourishes in the core cities of America will annex the affluent suburbs.

"This Nation will then be what it is fast becoming—an armed camp of 200 million Americans living in fear."

It was Nixon's first major position paper on the crime issue, which may well be the preeminent domestic concern of the presidential campaign. He has touched the crime question repeatedly in his stump appearances.

Nixon characterized as a "myth" for which the Johnson Administration "bears major responsibility" the idea that crime can be charged off to poverty.

"The role of poverty as a cause of the crime uprise in America," he said, "has been grossly exaggerated" and "we would not rid ourselves of the crime problem even if we succeeded overnight in lifting everyone above the poverty level."

The former Vice President charged that the Johnson Administration "seems to have neither an understanding of the crisis which confronts us nor a recognition of its severity. As a result, neither the leadership nor the necessary tools have been provided to date to enable society's peace forces to regain the upper hand over the criminal forces in this country."

At one point Nixon declared that "the forces of peace are in disorganized retreat" in Washington where since 1960 crime has increased by 100 per cent. The national capital, he said, "should be a model city as far as law enforcement is concerned—a national laboratory in which the latest in crime prevention and detection can be tested and the results reported to a waiting nation. The record, however, is otherwise."

The Nixon statement, entitled "Toward Freedom From Fear," was strongly critical of several Supreme Court decisions, especially those in the Miranda and Escobedo cases. He said those two decisions had the effect of "seriously ham-stringing the peace forces" in favor of the criminals.

He called for legislation to "redress the balance" and went on to say that if such legislation would not satisfy the Supreme Court then consideration should be given to amending the Constitution.

The two decisions lay down limitations on interrogation of suspects and the use of confessions. Nixon also criticized other decisions dealing with a prisoner's right to have a lawyer present during interrogations.

Nixon called for legislation permitting use of wiretapping under safeguards which he outlined. Here he was critical of President Johnson's opposition to the use of such devices.

In effect, Nixon was calling for approval of two highly controversial sections of the omnibus crime bill now before the Senate. One section would overturn some Court decisions while another section would authorize wiretapping under court order. Both are opposed by the Administration.

Nixon also called for block grants of Federal funds to the states for law enforcement assistance, a GOP proposal already approved by the House but opposed by the Administration which wants the money to go direct to the cities.

Other measures proposed by Nixon would make it a Federal crime to invest criminally-gained money in legitimate businesses, creation of a permanent Joint Congressional Committee on Organized Crime, more Federal personnel to fight crime and a GOP bill to jail witnesses who refuse to testify once they have been granted immunity.

Nixon said that he was not dealing in this statement with the "special problem" of urban riots but only with "the crisis of daily crime in America."

In downgrading the link between poverty and crime, Nixon said crime has increased about three times as fast as the national wealth.

"The success of criminals in this country," he said, "plays a far greater role in the rising crime rate than any consideration of poverty. Today, an estimated one-in-eight crimes result in conviction and punishment.

"If the conviction rate were doubled in this country, it would do more to eliminate crime in the future than a quadrupling of the funds for any governmental war on poverty. In short, crime creates crime—because crime rewards the criminal. And we will reduce crime as we reduce the profits of criminals."

Nixon added that another "attitude that must be discarded" is the "socially suicidal tendency—on the part of many public men—to excuse crime and sympathize with criminals because of past grievances the criminal may have against society. By now Americans, I believe, have learned the hard way that a society that is lenient and permissive for criminals is a society that is neither safe nor secure for innocent men and women."

Nixon also called for strengthening the Nation's police forces, which he called undermanned and underpaid, for use of more modern crime detection techniques for lifting bars to the sales of prison-made goods, for reforms in the Federal and state prison systems and for speedier disposition of criminal cases in the courts.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there is no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 39 minutes p.m.) the Senate adjourned until tomorrow, Friday, May 10, 1968, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate May 9 (legislative day of May 7), 1968:

POSTMASTERS

The following-named persons to be postmasters:

ALABAMA

Lynwood Junkins, Kennedy, Ala., in place of Felton Jones, retired.

ARIZONA

Willard W. Tolman, Avondale, Ariz., in place of L. F. Skubitz, retired.

ARKANSAS

Rollie H. Rea, Caraway, Ark., in place of F. S. Tucker, retired.

William H. Hundhausen, Jr., West Memphis, Ark., in place of D. W. Hall, retired.

COLORADO

Roscoe H. Dotter, Jr., Genoa, Colo., in place of W. D. Kaufman, removed.

GEORGIA

Hyman C. Miller, Cherrylog, Ga., in place of L. R. Miller, retired.

IDAHO

Acel L. Leaf, Cascade, Idaho, in place of T. R. Bowlden, removed.

ILLINOIS

Robert H. Robke, Germantown, Ill., in place of J. G. Robben, retired.

Ted L. Dickman, Meredosia, Ill., in place of E. E. Harbert, retired.

IOWA

Charles J. Seda, Cedar Rapids, Iowa, in place of W. C. Anawalt, deceased.

Anita A. Walgenbach, Hospers, Iowa, in place of D. W. Stover, transferred.

KANSAS

Margaret L. Albright, Pretty Prairie, Kans., in place of P. J. Voran, deceased.

KENTUCKY

Terry C. Watkins, Cadiz, Ky., in place of W. H. Cundiff, deceased.

MICHIGAN

Jack Lee Kelly, Olivet, Mich., in place of L. W. Church, deceased.

Carl Wudarcki, Ortonville, Mich., in place of F. A. Leece, retired.

Paul S. Sinnott, Owosso, Mich., in place of G. A. Gale, retired.

MINNESOTA

Gerald W. Strem, Fertile, Minn., in place of Elmer Reseland, deceased.

James C. Kuchera, South St. Paul, Minn., in place of A. C. Tweit, deceased.

NEW MEXICO

Mary S. Martinez, Abiquiu, N. Mex., in place of Joe Ferran, retired.

NEW YORK

Marion L. Pontello, Brewerton, N.Y., in place of N. M. McKinney, retired.

John J. Sullivan, Rock Hill, N.Y., in place of E. C. Yaple, retired.

OHIO

Ruth F. Weaver, Kansas, Ohio, in place of A. M. Schoendorff, retired.

Eugene J. Crusie, Lyndon, Ohio, in place of G. L. Taylor, transferred.

James E. Weiher, Rio Grande, Ohio, in place of W. D. Wickline, transferred.

SOUTH DAKOTA

Harry L. Nelson, Scotland, S. Dak., in place of H. W. Grace, retired.

TENNESSEE

Linus L. Sims, Memphis, Tenn., in place of A. L. Moreland, retired.

Oren W. Johnson, Parrottsville, Tenn., in place of E. S. Dawson, retired.

Arthur J. Robinson, Sherwood, Tenn., in place of J. S. Maxwell, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 9 (legislative day of May 7), 1968:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Wilbur J. Cohen, of Michigan, to be Secretary of Health, Education, and Welfare.

DEPARTMENT OF THE TREASURY

John R. Petty, of New York, to be an Assistant Secretary of the Treasury.

TAX COURT OF THE UNITED STATES

The following-named persons to be judges of the Tax Court of the United States for the term of 12 years from June 2, 1968:

William M. Drennen, of West Virginia.
William M. Fay, of Pennsylvania.
C. Moxley Featherston, of Virginia.
Charles R. Simpson, of Illinois.

DEPARTMENT OF STATE

Frank E. McKinney, of Indiana, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Spain.

IN THE DIPLOMATIC AND FOREIGN SERVICE

The nominations beginning Donald C. Bergus, to be a Foreign Service officer of class 1, and ending Miss Joanna W. Witzel, to be a Foreign Service officer of class 6 and a consular officer of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 12, 1968.

HOUSE OF REPRESENTATIVES—*Thursday, May 9, 1968*

The House met at 12 o'clock noon.

His Holiness Vasken I, Supreme Patriarch and Catholicos of all Armenians, Etchmiadzin, Armenia, offered the following prayer:

In the name of the Father and of the Son and of the Holy Spirit. Amen.

We thank You, O Lord, our God, for granting us the opportunity of standing at this time in the midst of this venerable legislative assembly, as the humble spiritual head of the Armenians and a servant of Your church.

As we visit this wonderful land, we offer You our gratitude for the peace and prosperity that the children of our church, the descendants of the world's most ancient Christian state, have found in this hospitable country.

We fervently implore, O Lord, that You guide the minds and wills of all legislators everywhere, to bring about justice and peace, love, and happiness in this strife-torn and restless world of ours.

You, O Lord, who are the true destiny of men and of nations, grant, we beseech You, Your wisdom and guidance to these distinguished Representatives of the people of the United States of America that they may lead this country with courage and compassion toward purposes pleasing to You. We ask Your blessings in Christ's name and we glorify Him together with You and the Holy Spirit now and forever. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 1234. Joint resolution to provide for the issuance of a gold medal to the widow of the late Walt Disney and for the issuance of bronze medals to the California Institute of the Arts in recognition of the distinguished public service and the outstanding contributions of Walt Disney to the United States and to the world.

The message also announced that the Senate agrees to the amendments of the House to a bill and joint resolution of the Senate of the following titles:

S. 1909. An act to provide for the striking of medals in commemoration of the 100th anniversary of the completion of the first transcontinental railroad; and

S.J. Res. 129. Joint resolution to authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 12639) entitled "An act to remove certain limitations on ocean cruises," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MAGNUSON, Mr. BARTLETT, Mr. BREWSTER, Mr. COTTON, and Mr. GRIFFIN to be the conferees on the part of the Senate.

THE CARMEL, N.Y., HIGH SCHOOL BAND

Mr. OTTINGER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. OTTINGER. Mr. Speaker, the marvelous music that my colleagues heard as they entered the Capitol today was presented by the Carmel, N.Y., High School band, led by band director, Dan Mooney, and band president, Nick Chapis. I think everyone will agree that they gave a superior and exciting performance.

Seventy-six members of the 85-member band came to Washington from Putnam County. This fine musical organization was formed in 1960 and has given 10 concerts each year since then. They performed at the New York State Teachers Association Conference and at the New York State World's Fair in 1964 and 1965. The band toured upstate New York, Canada, and New England, also.

The band's performance today opened with a very thrilling rendition of the "Star Spangled Banner" and continued with selections by George Gershwin and a march composed by Dan Mooney.

It was my very great privilege to have arranged this concert. Here is a group of young people who typify the very best in America's youth. They are proud of their country and proud to display their