We have noted the State Department's contention that, should the Soviet government reject—or even accept—this proposal in the name of the Ukrainian and Byelorussian governments, this would bolster the fiction of their independence and consequently nullify one of the propaganda benefits mentioned above. This is a patently groundless objection. It is common knowledge among the captive peoples themselves that these governments are no more independent of the dictates of Moscow than are the governments of Poland, Hungary and so forth. Therefore, a refusal through such means, regardless of all the fabrications surrounding it, would have rather affirmative effects.

* * * * *

9. *Wait now, wouldn't the presence of two more Communist missions in the U.S. increase our internal danger?*

Not really. As a matter of fact, when the U.N. Assembly is in session, the delegations of Ukraine and Byelorussia establish themselves as separate missions in New York. Any opportunity they might have to engage in espionage in a sense already exists. On the merits of the case one cannot compare two additional American embassies in the Soviet Union, situated in Kiev and Minsk, with two more Iron Curtain embassies in Washington, certainly not from the viewpoint of impact on and importance to the specific peoples involved. The environments of the respective embassies are not in the least similar. The area of contacts for American missions in Ukraine and Byelorussia is virtually virgin territory, while that of a Ukrainian or Byelorussian embassy in Washington has surely been exploited well beyond the point of diminishing returns by the USSR embassy. Moreover, espionage is a two-way street. The argument implied by this question seems to suggest American inferiority in the art, a thesis one would find difficult to accept.

* * * * *

NOTHING TO LOSE, EVERYTHING TO GAIN

By now, in thinking through the Smith resolution, you are probably of the feeling that actually there was nothing for us to lose, everything to gain. You are not alone in this feeling. For example, serious-minded students of the Georgetown University International Relations Club had this feeling, and addressed a number of questions on the subject to the Ukrainian and Byelorussian delegates at the U.N. Result?—as anticipated, no reply. These "independent" spokesmen could not decide whether their "independent" countries are open to American diplomatic representation. In a sense, unofficially we zigged and they couldn't even zag. Many others viewed the resolution in the same favorable light. As one editor emphasized at the time, "It deserves a better fate than to be laid on the shelf. It should be studied on its merits."

* * * * *

In the spring of 1958, Congressman Leonard Farbstein of New York revived the resolution and inquired about the long-awaited study by the State Department. The letters received from the Department indicated that no written study had been made. Assistant Secretary William B. Macomber stated "The Department has no record of a study such as you described having been made subsequent to this time." He also enclosed a copy of the March 13, 1953 letter, containing the old arguments of the Department. Macomber's reply confirmed a discussion this writer had in 1956 with Undersecretary of State Robert Murphy, who admitted that State had not pursued any study of the matter since the 1953 hearing. Later, Congressman Barratt O'Hara of Illinois also introduced a similar resolution. For some unknown reason the Committee on Foreign Affairs had not acted on these resolutions. The proposal, however, has remained very much alive and will again be legislatively formalized, so that an American zig can precipitate a Russian zag in the advancement of our own cold war interests.

* * * * *

Over ten years ago, a diplomatic correspondent for *Newsweek* emphasized that "serious American thought also must be given to the nationally conscious Soviet components such as the Ukraine and Byelorussia. The fact that these two nations have their own representatives in the U.N. has never been properly utilized by the United States. To encourage their independence and to strive for the decentralization of the Soviet Union into its separate though not necessarily unfriendly components, is likely to become one of the chief United States objectives." If we were to wait for the State Department to study this, another glorious opportunity would be lost. Fortunately, the proposal remains very much alive and will be acted upon so that an American zig can precipitate a Russian zag in the advancement of our own Cold War interests. How this can be done was demonstrated again in 1960, an interesting episode to which we now turn.

KANSAS BEEF MONTH

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 16, 1968

Mr. WINN. Mr. Speaker, May has been officially declared as Kansas Beef Month, and because of the importance of the beef industry to the Kansas economy, the Kansas Cattlemen's Association and the Kansas Farm Bureau urges everyone to support May beef month by eating Kansas beef daily.

Kansas, because of its climate, topography, and soil conditions, is becoming increasingly important as a beef producing State. As of January 1, Kansas ranked seventh in the number of cattle on feed with a total of 610,000 head. The number of commercial feedlots, those with a capacity of 1,000 head or more, is growing each year.

The Farm Bureau is participating in numerous activities in Kansas designed to call attention to the importance of the Kansas beef industry.

SENATE—*Friday, May 17, 1968*

The Senate met at 12 noon, and was called to order by the President pro tempore.

Rev. Edward B. Lewis, D.D., pastor, Capitol Hill Methodist Church, Washington, D.C., offered the following prayer:

O God, the hope of all nations, we have sinned against Thee and each other as a country and a world. Help us, through this prayer of repentance of our sins, to find a new life of love, opportunity and peace for all men.

Give wisdom to those negotiating for peace now meeting in Paris. We pray for a just peace in Vietnam and throughout the world.

We pray for brotherhood, understanding, and sound minds in our cities. We know that death, destruction, and hate must not reign in our streets.

Cause us to ponder what we have done and are doing to ourselves. Give us the inner resource to find a just solution to a feeling of injustice and persecution.

Implant within us a right spirit through the power of Thy Holy Spirit. We pray in the name of Him who can give us life abundant in peace, strength for trying hours, and guidance in ways we must follow. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, May 16, 1968, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

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

REPORT ON OPERATION OF THE AUTOMOTIVE PRODUCTS TRADE ACT OF 1965—MESSAGE FROM THE PRESIDENT

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

To the Congress of the United States:

I am pleased to transmit to the Congress the second annual report on the operation of the Automotive Products Trade Act of 1965. By this Act Congress authorized implementation of the United States-Canada Automotive Products Agreement.

The Agreement was designed to create a broader U.S.-Canadian market for automotive products to obtain for both countries and both industries the benefits of specialization and large-scale production. We have moved far toward this goal.

Automotive trade between the United States and Canada was $730 million in 1964, the year before the Agreement went into force. Trade in 1967 was over $3.3 billion. The Agreement has also stimulated trade in allied products.

Industry, labor and consumers in both countries continue to benefit from this growth in commerce and from the increased efficiency made possible by the Agreement. It is dramatic proof of what

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can be accomplished when friends and neighbors choose the path of cooperation.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *May 17, 1968.*

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 the bill (S. 1004) to authorize the construction, operation, and maintenance of the central Arizona project, Arizona-New Mexico, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

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

ORDER FOR RECESS FROM 12:30 P.M. UNTIL 2:30 P.M. TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at 12:30 p.m. the Senate stand in recess subject to the call of the Chair, but not later than 2:30 p.m.

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

AMENDMENT OF DISTRICT OF COLUMBIA POLICE AND FIREMEN'S SALARY ACT OF 1958

Mr. MANSFIELD. Mr. President, yesterday the Senate adopted the conference report on H.R. 15131, the District of Columbia Police and Firemen's Salary Act of 1958.

I ask unanimous consent that the Senate recede from its amendment to the title of that bill.

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

ORDER FOR RECOGNITION OF SENATOR STENNIS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, immediately upon the reconvening of the Senate after the recess today the distinguished Senator from Mississippi [Mr. STENNIS] be recognized for up to 30 minutes, on the pending business.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

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

U.S. AIR FORCE

The assistant legislative clerk read the nomination of Col. William T. Woodyard to be dean of the faculty, U.S. Air Force Academy, with rank of brigadier general.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

U.S. ARMY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Army.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

U.S. NAVY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Navy.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

U.S. MARINE CORPS

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Marine Corps.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—THE AIR FORCE, THE ARMY, AND THE NAVY

The assistant legislative clerk proceeded to read sundry nominations in the Air Force, the Army, and the Navy, which had been placed on the Secretary's desk.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

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

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

EXECUTIVE MESSAGE REFERRED

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States submitting the nomination of David S. King, of Utah, now Ambassador Extraordinary and Plenipotentiary to the Malagasy Republic, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary to Mauritius, which was referred to the Committee on Foreign Relations.

LEGISLATIVE SESSION

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

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures on the calendar beginning with Calendar No. 1107.

The ACTING PRESIDENT pro tempore (Mr. METCALF). Without objection, it is so ordered.

REPAYMENT OF GARDEN STATE PARKWAY FEDERAL-AID FUNDS

The Senate proceeded to consider the bill (S. 1558) to provide for the repayment of certain Federal-aid funds expended in connection with the construction of the Garden State Parkway which had been reported from the Committee on Public Works, with an amendment, on page 2, line 11, after "(b)" strike out "Upon" and insert "When the New Jersey Highway Authority shall have constructed toll-free highway facilities in the vicinity of said sections of the Garden State Parkway adequate to service local traffic, pursuant to an agreement between the Authority and the State of New Jersey, acting by and through its State House Commission, concerning the financing and construction of such facilities, then upon"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the amount of all Federal-aid highway funds paid on account of those sections of the Garden State Parkway in the State of New Jersey referred to in subsection (c) of this section shall, prior to the collection of any tolls thereon, be repaid to the Treasurer of the United States. The amount so repaid shall be deposited to the credit of the appropriation for "Federal-Aid Highways (Trust Fund)". At the time of such repayment the Federal-aid projects with respect to which such funds have been repaid and any other Federal-aid project located on said sections of such parkway and programed for expenditure on any such project, shall be credited to the unprogramed balance of Federal-aid highways funds of the same class last apportioned to the State of New Jersey. The amount so credited shall be in addition to all other funds then apportioned to said State and shall be available for expenditure in accordance with the provisions of title 23, United States Code, as amended or supplemented.

(b) When the New Jersey Highway Authority shall have constructed toll-free highway facilities in the vicinity of said sections of the Garden State Parkway adequate to service local traffic, pursuant to an agreement between the Authority and the State of New Jersey, acting by and through its State House Commission, concerning the financing and construction of such facilities, then upon the repayment of Federal-aid highway funds and the cancellation and withdrawal from the Federal-aid highway program of all projects on such sections of the Garden State Parkway, as provided in subsection (a) of this section, such sections shall become and be free of any and all restrictions contained in title 23, United States Code, as amended or supplemented, or in any regulation thereunder, with respect to the imposition and collection of tolls or other changes thereon or for the use thereof.

(c) The provisions of this section shall

apply to the following sections of the Garden State Parkway:

(1) That section of the parkway near Cape May Court House from interchange numbered 8 to interchange numbered 12 at route United States 9—a distance of approximately four and twenty one-hundredths centerline miles;

(2) That section of the parkway from a point near its connection with route United States 9 north of Toms River to Dover Road in South Toms River—a distance of approximately two and fifty one-hundredths centerline miles.

(3) That section of the parkway from route United States 9 in Woodbridge to the Middlesex-Union County line—a distance of approximately six and thirty-seven one-hundredths centerline miles.

(4) That section of the parkway from a point near its connection with the Middlesex-Union County line to a point near its connection with route United States 22 in Union Township—a distance of approximately seven and ninety-two one-hundredths centerline miles.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1124), explaining the purposes of the bill.

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

PURPOSE OF THE LEGISLATION

S. 1558 would permit the State of New Jersey under certain conditions to repay Federal-aid funds received in connection with the construction of certain portions of the Garden State Parkway so that those portions may be reconstructed and tolls placed on them. The Garden State Parkway runs, as a toll facility, the length of New Jersey from the New York-New Jersey boarder on the north to Cape May on the south with the exception of four sections involving approximately 20 miles of road. These 20 miles were constructed some 20 years ago as part of a proposed free road designed to serve the area now served by the Garden State Parkway. In 1952, following the original legislative authorization for the highway's construction, the State of New Jersey through its legislature, recognized the need for accelerated construction of this facility. It, therefore, established the New Jersey Highway Authority, which was authorized to complete the Garden State Parkway by the sale of revenue bonds financed by tolls imposed upon the users.

At the present time the toll-free sections of highway which make up the original 20 miles carry heavy traffic composed both of local and through travelers. The current inadequacy of the present stretches has created certain safety and convenience problems which can be solved through the reconstruction of these sections and the imposition of tolls to pay for such improvements, while at the same time constructing parallel toll-free facilities to serve local traffic.

The committee conducted a hearing on S. 1558 at which time the Department of Transportation of the State of New Jersey, the New Jersey Highway Authority, and the U.S. Department of Transportation testified in favor of the enactment of this legislation. During the course of the hearing, testimony was received from a representative of one of the communities involved regarding the necessity for the provision of alternate toll-free facilities for local service.

ANALYSIS OF THE BILL

The legislation would authorize the State of New Jersey to repay to the Treasurer of the United States for deposit in the highway trust fund, funds equivalent to the amounts received by the State of New Jersey for construction of the enumerated sections of highway as Federal-aid highways. The amount so repaid will be credited to the account of the State of New Jersey and will be used in the construction of other Federal-aid highways.

The committee, in reporting S. 1558, recommends the amendment of the bill to require the construction of toll-free highway facilities in the vicinity of the enumerated sections as may be necessary to adequately serve local traffic. Facilities will be constructed pursuant to an agreement between the New Jersey Highway Authority and the State of New Jersey acting through its State House Commission. This commission is a bipartisan group of elected officials headed by the Governor and who will most certainly be in a position to adequately protect the local interests while insuring that the needs of the State are properly met.

Upon construction of the toll-free facilities and repayment of the Federal-aid funds expended in connection with the construction of sections of the Garden State Parkway enumerated in the bill, the New Jersey Highway Authority will be able to impose tolls on the heretofore free sections of highway.

Legislation of this type has been considered and passed by the Congress on other occasions. The most recent two examples were: (1) The authorized repurchase by the State of Connecticut of mileage constructed with Federal aid pursuant to provisions of section 22(a), Public Law 350, 83d Congress and (2) a similar repurchase by the States of Maryland and Delaware pursuant to section 6(a) of Public Law 86-657.

BILL PASSED OVER

The bill (S. 2276) to amend the Watershed Protection and Flood Prevention Act to permit the Secretary of Agriculture to contract for the construction of works of improvement upon request of local organizations was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The ACTING PRESIDENT pro tempore. The bill will be passed over.

ROBERT S. KERR MEMORIAL ARBORETUM

The bill (H.R. 15822) to authorize the Secretary of Agriculture to establish the Robert S. Kerr Memorial Arboretum and Nature Center in the Ouachita National Forest in Oklahoma, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1126), explaining the purposes of the bill.

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

This bill provides for establishment of the Robert S. Kerr Memorial Arboretum and Nature Center in the Ouachita National Forest in Oklahoma, to be administered under national forest laws and regulations so as to promote learning about nature and forest land management. Cooperation with, and receipt of contributions from, public and private sources is authorized. The boundaries would be determined by the Secretary of Agriculture, published in the Federal Register, and shown on a map in the office of the Chief of the Forest Service. The Department of Agriculture recommends enactment, and advises that the center would consist of about 350 acres on the Talimena Scenic Drive containing numerous game and song birds. Total annual visits to the area are expected to exceed 400,000 by 1976. The Department estimates that the total cost of planning and development over a 3-year period will be about $1.5 million. Operating costs will probably build up to about $150,000 per year.

BILL PASSED OVER

The bill (S.J. Res. 168) to authorize the temporary funding of the emergency fund was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The ACTING PRESIDENT pro tempore. The bill will be passed over.

FROZEN CONCENTRATED ORANGE JUICE

The bill (S. 3143) to amend the Commodity Exchange Act, as amended, to make frozen concentrated orange juice subject to the provisions of such act was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the third sentence of section 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2), is amended by striking out "and livestock products" and inserting in lieu thereof ", livestock products, and frozen concentrated orange juice".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1128), explaining the purposes of the bill.

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

This bill would amend the Commodity Exchange Act to add frozen concentrated orange juice to the list of commodities subject to regulation under that act. The effect of the bill is further explained in the attached report from the Department of Agriculture recommending enactment of the bill.

CRADLE OF FORESTRY

The bill (S. 2837) to authorize the Secretary of Agriculture to establish the Cradle of Forestry in America in the Pisgah National Forest in North Carolina, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to preserve, develop, and make available to this and future generations the birthplace of forestry and forestry education in America and to promote, demonstrate, and stimulate interest in and knowledge of the management of forest lands under principles of multiple use and sustained yield and the development and progress of management of forest lands in America, the Secretary of Agriculture is hereby authorized to establish the Cradle of Forestry in America in the Pisgah National Forest, North Carolina. As soon as possible after this Act takes effect, the Secretary of Agriculture shall publish notice of the designation thereof in the Federal Register to-

gether with a map showing the boundaries which shall be those shown on the map entitled "Cradle of Forestry in America" dated April 12, 1967, which shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

SEC. 2. The area designated as the Cradle of Forestry in America shall be administered, protected, and developed within and as a part of the Pisgah National Forest by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to national forests in such manner as in his judgment will best provide for the purposes of this Act and for such management, utilization, and disposal of the natural resources as in his judgment will promote or is compatible with and does not significantly impair the purposes for which the Cradle of Forestry in America is established.

SEC. 3. The Secretary of Agriculture is hereby authorized to cooperate with and receive the cooperation of public and private agencies and organizations and individuals in the development, administration, and operation of the Cradle of Forestry in America. The Secretary of Agriculture is authorized to accept contributions and gifts to be used to further the purposes of this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1129), explaining the purposes of the bill.

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

This bill provides for establishment of the Cradle of Forestry in America in the Pisgah National Forest in North Carolina, to be administered under national forest laws and regulations so as to promote knowledge about forestry education and forest land management. Cooperation with, and receipt of contributions from, public and private sources is authorized. The boundaries would be shown on a map published in the Federal Register and would be the same as those shown on the map entitled "Cradle of Forestry in America" dated April 12, 1967. The area consists of about 6,800 acres around the site of the Biltmore Forest School, the first technical forestry school in America.

The Department estimates that the cost of planning and development will be about $10.5 million. Operating costs will probably build up to about $400,000 per year.

AMENDMENT OF THE FOOD STAMP ACT OF 1964

The bill (S. 3068) to amend the Food Stamp Act of 1964, as amended, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 16 of the Food Stamp Act of 1964, as amended, is amended by deleting the phrase "not in excess of $255,000,000 for the fiscal year ending June 30, 1969;" and inserting in lieu thereof the phrase "not in excess of $245,000,000 for the fiscal year ending June 30, 1969;".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1130), explaining the purposes of the bill.

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

This bill is needed to permit orderly growth of the program. In December 1967 the number of areas designated under the program totaled 1,239. By June 30, 1968, total participation in these areas is expected to be about 2,750,000 persons, which will take the full $225 million authorized for fiscal 1969, leaving no room for expansion.

In order to assure proper administration of the food stamp program the committee recommends that the Department make clear to dealers and food stamp recipients, through written statements furnished to them, store display signs, and otherwise, the purposes for which food stamps may be used and the penalties for misuse of stamps, or other violations of the act.

Mr. MANSFIELD. Mr. President, that concludes the call of the calendar.

ADDRESS BY SENATOR MANSFIELD AT ST. JOHN'S UNIVERSITY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a speech I delivered at St. John's University, Jamaica, N.Y., on May 15, 1968, be printed at this point in the RECORD.

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

A TIME OF TROUBLE

(Remarks of Senator MIKE MANSFIELD, Democrat, of Montana, at St. John's University, Jamaica, N.Y., May 15, 1968)

These are difficult times in which to meet with a student body. There is still Viet Nam. There is still the volcanic condition of the nation's cities. The questions on your minds, I know, are many. The answers, I regret to say, are few. I cannot tell you what I do not know.

I can tell you that we have come to a point of deep trouble in this nation. We have come to it for many reasons. Most of all, we have come to it because we have indulged for a long time in the luxury of ignoring or tinting the nation's problems. For too long, we have downgraded their immensity and their intensity.

It is a measure of our plight at home that we tend to drift with our difficulties rather than confront them. We drift until an assassination or bonfires of metropolitan dimensions or some such abomination shocks us into the recollection that they are still there. It is a measure of our plight abroad that it has taken three years and many thousands of lives from the President's first call for a negotiated end to the war in Viet Nam to the first uncertain touching of the antennas of the negotiators in Paris.

We are in a time of trouble. Yet it does have the virtue that it may be convertible into a time of awakening. Let me consider with you, therefore, some of the sources of the difficulties which confront us both within the nation and in our relations with the rest of the world.

In recent weeks, as you know, many of the nation's cities have erupted in showers of violence. Some of us reside in these cities. Some of us have our homes in quiet places a few miles away or many hundreds of miles away. Yet, can any of us be truly isolated from the violence of the cities? Can we be insulated from these immense social heavings? Can we be impervious to tremors which shake the ideals and institutional foundations of the American experience in freedom?

To say the least, it is alien to witness, within our borders, displays of massive disorder. It is disturbing to live in the eerie stillness of curfews which are enforced by federal troops. It is awesome to contemplate the possibilities of more violence patterned after that which occurred in mid-1967 and then, once more, a few weeks ago.

If outbreaks occur again, let there be no doubt that they will be suppressed; that is inevitable. Responsible government must act to ensure the security of persons and property. In any given situation, it is possible to quarrel with how the domestic tranquility is maintained. In any given situation, it is possible to find fault with the use of the police power; some may say excessive and others inadequate. In the end, however, there can be little debate that it is counter-violence which will be invoked in the face of violence.

Whatever view is taken of the recent outbursts, one message which they conveyed was clear. It tells us, in terms which cannot be put aside, that there are highly combustible substances gathered in our society. These substances, to be sure, are compounds of racial inequities, frustrations, and arrogances. They also include, however, the inadequacy of a whole range of public services. They also contain the problems of concentrated poverty with its retinue of human disabilities and brooding discontents.

This is the stuff of urban violence.

At the moment, the racial factor may concern us most deeply. Racial tensions, however, are but one manifestation of the social combustibility in this nation. The fact is that a high level of violence has been endemic since the beginning and in recent years it has been on the rampage.

It would, perhaps, be a path of least resistance for me, and the Montanans whom I represent in the Senate of the United States, to turn our backs on the crisis of the great cities. Montana is a spacious and beautiful place with a scant and scattered population. Many of the problems which assume hugh proportions elsewhere affect Montana hardly at all. In Montana there is plenty of room. The water is pure. So is the air. Our largest city has a total population of 55,000 a fraction of the slum populations of some of the great metropolitan centers. Yet, we are one nation and Montana is part of it. If cities in other states of the Union lose their habitability, the nation loses, and Montana loses with them.

The problems of the urban areas arise from developments of many years. Most significant, perhaps, have been the vast migrations to these centers in response to an evolving economic technology and a great growth in the population. The process of human concentration, at first, attracted little notice. For a long time it aroused little concern. Now, we find three-quarters of the nation's people in the cities and adjacent suburbia.

If these areas are already caught up in a maze of problems, it is not hard to imagine what the situation could be like by the year 2000. During the next three decades, the nation's population count is expected to rise from its present 200 million level to 350 million.

The shape of the cities of the next century is still only dimly seen. What is already only too painfully visible, however, are the imperatives for the survival of the cities in the final years of the 20th century. There is, today, a plethora of urgent needs. To cite but a few, there is a need for jobs and a need for manpower training and development. There is a need for public health, housing, and recreation. There is a need for sufficient means of transportation. There is need for fully complemented, proficient, and professional police, fire, and other protectional departments of government. There is a need for educational systems which are enlightened and excellent. There is a need for an assured supply of clean water and air.

Relentless effort is going to be required to meet these complex and ever-growing needs.

It will take imagination, skill, and labor. It will take a dedicated leadership and the combined effort of existing institutions and others which have yet to be devised. Money alone will not supply the answer. But make no mistake, it is going to take money—a great deal of money—to cope with the problems of urban habitability.

The responsibility for the cities cannot rest on government alone—much less on the federal government alone. Nonetheless, the role of government cannot be minimized. Responsible government must be responsive to the concerns and requirements of all of its citizens. It must care about the nation's safety and its health. It must care about the youth of the nation and the old. It must care about the jobless, the ill-housed, the poverty-stricken—all those too powerless to help themselves. And it must concern itself, too, with those too powerful. In the final analysis, government must care about the content and caliber of the total environment in which the life of the nation is lived.

Within that framework, the role of the federal government is, of necessity, a substantial one. It can be a source of inspiration, leadership, and direction. It can be a source of action—planned, balanced, and well-knit. It can be a channel of resources of a scope sufficient to have a constructive and durable impact on the localities.

During the Administration of President John F. Kennedy, it began to be realized that the federal government would have to assume a significant role in solving the multiplying problems of the cities. During the present Administration of President Lyndon B. Johnson, these beginnings have been augmented. Together, the Administration and the Congress have formulated a number of programs and plans directed specifically towards the transformation of city life. There come to mind, for example, the establishment of the Departments of Housing and Urban Development, of Transportation, the Model Cities Program, Rent Supplements, and the Safe Streets and Crime Control Act.

Innumerable measures which can bring to bear a constructive impact—direct or indirect—on the urban areas have been approved by Congress in recent years. The package is not perfect but it is a good beginning. As a member of the Senate, I say this, undoubtedly, with a measure of subjectivity. Nevertheless, by any measure, it seems to me that the Senate has passed a range of inaugural legislation of great relevance to the problems which are posed by the progressive urbanization of life in the United States. Taken together, these measures put into place a foundation on which to build anew the regions into which the preponderance of the nation's people is moving. What is most needed now is the will, skill, money, and responsibility to adjust and to engage this basic legislation in effective action.

In this connection, we face the grim fact that the war in Viet Nam has been siphoning off federal fiscal resources at a rate in excess of $25 billion a year, in an overall military budget which in the coming fiscal year will probably reach $80 billion. By contrast, federal spending which is earmarked specifically for problems of the cities is likely to amount to less than $3 billion.

The fact is that urban needs compete for federal funds with the requirements of Viet Nam, and other defense costs, and they compete with many other domestic undertakings of the federal government. Both the President, largely through the Bureau of the Budget, and the Congress, largely through its committees, are weighing these competing requirements. The choices of priority and emphasis are no easier now than they have ever been. Nor will the choices which are likely be all wise choices. However, each has his own view of wisdom in these matters and I accept the fact that my own view is but one of many. Nevertheless, I happen to regard as of fundamental significance to the future of the nation the critical situation which exists in and around the cities. What is most important, I believe, is that we do not mislead ourselves into thinking that we have acted adequtaely when, in truth, we have scarcely begun to scratch the surface of this difficulty.

To rebuild the disintegrating fabric of these cores of population throughout the United States will require far more than the present efforts of the federal government. It is also going to require far more than the present efforts of state and local governments. It is also going to require far more than the present efforts of private initiative and enterprise.

To be sure, there are questions as to our capacity—financial and otherwise—to meet the requirements. We must ask ourselves, however, what is the alternative? What of the mounting costs of police, fire, and military protection in cities which can be kept in an uneasy peace only by tear gas, clubs, firearms, and curfews? What of the quality of American life in that setting?

What of the costs of the immense property losses from riots? What of the loss of economic momentum which follows a wave of destructiveness in cities? What of the toll of the injured and the dead? *What of the extremisms which are born in the wastelands of a nation's fears?* If violence and counterviolence are to become the arbiters of the inner life of this nation, what of the future of freedom?

There is no blinking the fact that the war in Viet Nam has hampered our ability to respond to the troubles in the cities. *That is the fact.* What has been done, however, cannot be undone. The problem is to try to bring the war in Viet Nam to an honorable conclusion. Now, at the first contacts for peace, it may be helpful to recall the origins of the involvement in Viet Nam. It may serve to put into better perspective whatever transpires in Paris in the days, weeks, or months ahead.

One aspect of the tragedy of Viet Nam is that our involvement began in the most well-intentioned actions. This nation went into Viet Nam a decade and a half ago out of a desire to help the people of Viet Nam. When I visited what was then French Indo-China in 1953, it was one political entity. It was a colony in ferment, on the verge of independence. It is now several independent nations, but the region, except for Cambodia, is still in ferment.

A decade and a half ago, there were scarcely 200 Americans in all of Viet Nam, and they were welcomed in the North as well as in the South. They were in Cambodia as well as Laos. So slight was this nation's contact with the region that the presence of myself and an associate for a few days doubled the U.S. population in Laos. At the time, only two Americans were to be found in the entire country.

It was not realized, then, what would come from what was an essentially limited effort at "foreign aid" in Indo-China. It was still little realized even as late as 1962, when the level of aid, and notably military aid, was already high but Americans were still not directly involved in the conflict.

We know now. In the past few years, the war service lists have reached into almost every American community. There are 526,000 U.S. servicemen in Viet Nam alone, not to speak of those in Thailand or the forces of the 7th Fleet off the coast as well as the back-up forces in Okinawa, the Philippines, and Guam. In this year, as of April 20th, 5,688 Americans have already been killed in the war. That total—for a third of a year—is already over four times the number of American deaths in all of 1965, more than the total number of deaths in all of 1966, and more than half the number killed in 1967. What has been suffered by this nation in the rising tempo of the conflict has also been suffered *and far more,* by the people of Viet Nam—North and South, civilian and military, friend and foe.

The changing intensity of our involvement ought not to obscure the purposes which took this nation into Viet Nam in the first place. As at the beginning, the only valid purposes today are limited purposes. There is not now and there has never been a mandate to take over the responsibility for Viet Nam from the Vietnamese. Whatever commitment we have had, has been to support not to supplant. It is not now anymore than it ever was an American responsibility to win Viet Nam for any particular group of Vietnamese.

There is no doubt that the immense military effort which we have made in the past three years has gone a long way to alter the character of what was once an inner struggle among Vietnamese. Nevertheless, in the end, the future of Viet Nam depends not on us but on the Vietnamese themselves. It is their country; they live in it. They will be living in it long after we are gone from it.

Let us be clear on this point: This nation cannot and will not lighten its commitment easily or casually, at Paris or anywhere else. Let us be equally clear, however, that there is no obligation to pour out the blood and resources of this nation until South Viet Nam is made safe for one Vietnamese faction or another. On the contrary, there is a profound obligation to the people of the United States to conserve that blood and those resources and, to the people of Viet Nam, there is an obligation to avoid the destruction of their land and society even in the name of saving them.

There is an obligation to try to establish with all Vietnamese a basis for bringing together the struggling forces in South Viet Nam. There is an obligation to help end the war, to bind up the wounds of war and to rebuild the ravages of war. In short, there is a deep obligation to try to bring about a restoration of a just peace.

That is what the present Paris meeting is all about. President Johnson has repeatedly stated that this nation's objective is "... only that the people of South Viet Nam be allowed to guide their own country in their own way." He has stated that we are prepared to begin to move out in a matter of months after a satisfactory settlement is achieved.

It is not at all certain that the negotiations at Paris will bring the conflict to an honorable conclusion in the near future. In the end, negotiations may prove no more effective than military escalation has been in bringing the war to an acceptable conclusion. But the effort which is being made is of the utmost importance to this nation, to the people of Viet Nam, and to the world. That should be borne in mind in the difficult days ahead.

The President has taken the political content out of the issue of Viet Nam by taking himself out of the Presidential campaign. It would be my hope that the rest of us would avoid putting the issue of Viet Nam into a political context. The efforts of the President and his negotiators, at this time, should receive every possible understanding and support.

The dimensions of what is at stake in Paris are illustrated by the fiscal problems which confront us. In recent years, the cost of the Vietnamese conflict has contributed greatly to a steep rise in national expenditures. There has not been, however, any tax rise, or wage and price controls, or rationing, or, in fact, any of the economic restraints which have been associated with past wars.

For a long time, the economic barometers have been trying to tell us that we were attempting too much, especially abroad, with too little in the way of national sacrifice. For too long, we have tended to ignore the warnings. Piled high, now, is an accumulation of huge budgetary deficits. Piled high are great annual deficits in the balance of international payments.

We have arrived at a moment of reckoning.

Even though we may devoutly wish it, we

cannot count on a prompt settlement in Paris. We cannot even count on a slackening in the tempo of the war; witness, for example, the renewed offenses against Saigon and other cities of the past few days. In the circumstances, we cannot anticipate any prompt reduction in the costs which arise from the war. It is imperative, therefore, to take the fiscal measures which the President has urged and which, hopefully, may act to keep a measure of stability in the nation's economy.

Congress is only now coming to grips with the ten percent surcharge on income tax which the President requested as a matter of urgency, more than a year ago. A tax increase is an inevitability of the war; Congress is trying to weave into the surcharge a reduction of several billion dollars in federal expenditures. It seems to me that if the Congress is going to insist upon a $6 billion reduction, as a current bill proposes, then the Congress has a responsibility which it ought not to shirk. It has a responsibility to say where these reductions should be made.

I have my own ideas on that question but, I hasten to add, no assurance that they will prevail. I do not believe, for example, that wholesale cuts can be made with impunity in those parts of the budget which affect the domestic difficulties of the nation. What is possible, in my view, is to single out for curtailment less pressing fields of government activity. As an illustration, there is the multi-billion dollar space program.

That program is a fascinating and mind-expanding adventure for the nation. As far as I am concerned, however, there is no persuasive reason why we cannot take our far-out adventures in more modest doses. It seems to me, too, that many public works projects can also be held in abeyance, however much they may delight one particular locality or another.

Insofar as military expenditures are concerned, there cannot be any stinting on expenditures which are necessary for the forces in Viet Nam. The men who are there have gone not by choice but by virtue of the policies of the government. What can be provided to them to enhance their chances of survival and to carry out their responsibilities under those policies will be supplied.

However, the Vietnamese expenditures are probably less than a third of the expenses of the Department of Defense. The Department's overall costs, in turn add up to almost half of all present outlays of the federal government. Apart from Viet Nam it is not at all unlikely that there are hutches of waste and extravagance in the labyrinth of the immense defense budget.

At the very least, the closest scrutiny ought to be given by the Congress to new and far-reaching proposals which may be proposed in the name of national defense. There is one now, for example, which calls for the creation of logistic ships which would be more or less permanently stationed in the various oceans of the world. The basic concept of the proposal is that these ships would be ready to supply and support, in an instant, a U.S. military action anywhere in the world. Whatever the technical virtuosity of this concept, the ability to move armed forces quickly is not always a virtue in international relations. To act in haste with military power in foreign policy may well bring a long aftermath of repentance at leisure. Unless we presume to play policeman to the world, therefore, such projects are more than wasteful; they can be downright dangerous to the security of this nation.

If the careful screening of defense expenditures is necessary in this time of fiscal straits, it seems to me that there is also a great need to cut back obsolete overseas programs of questionable value. Over the years since World War II, we have put over $128 billion into grants and loans of aid to 121 countries abroad. It is debatable whether these massive infusions of economic and military assistance, particularly in recent years, have always served either the fundamental interests of the people of other nations or our own. The great effectiveness of the Marshal Plan in the preservation of freedom in Western Europe, two decades ago, has had only the faintest of echoes elsewhere in the world. Aid in Africa and Asia and elsewhere has not necessarily spurred progress or strengthened freedom. Indeed, on occasion, it appears to have offered a means for evading the one and stunting the other.

I would point out, too, that for 17 years, six divisions of United States troops have been assigned to Europe in pursuance of our commitment to the North Atlantic Treaty Organization. The accumulated costs of this deployment runs into many billions of dollars. Its debilitating effect on the foreign exchange resources of the nation in recent years has also been very substantial. It has long seemed to me—long before the nation began to experience its current financial difficulties—that of the six U.S. divisions in Western Europe, four with their accompanying dependents, could be redeployed to this nation. That has been my view, not on the basis of penury, but on the basis of principle and policy.

It is true, nevertheless, that a redeployment of a substantial number of the U.S. forces would fit into the fiscal needs of the nation at this time. In my judgment, this redeployment would not alter the significance of our pledge of mutual assistance under NATO to the peace of Europe. It would bring our policies in Europe into line with the realities of Europe, almost a quarter of a century away from World War II. Indeed, it would not be out of step with the NATO policies of the Europeans themselves. They have made only the most limited commitments of military forces to NATO and even these commitments have been drastically reduced in recent years. At the same time, the Europeans have gone far in economic, cultural, and even political rapprochement with the nations of Eastern Europe and beyond.

A reduction of our forces in Europe, in sum, would reverse what I believe has been a most undesirable tendency in the long-standing European policies of this nation. It is almost as though we have regarded only ourselves in step on the question of supplying forces for the defense of Western Europe. That is a dangerous tendency which could lead us, first, to a position of isolated internationalism. From that, it is but a short distance to national isolation. And, in my judgment, there is no place for either isolated internationalism or national isolation in our foreign policies, if the fundamental interests of this nation and world peace are to be served.

I would end these remarks on the same note with which I opened them. We are, indeed, in a time of trouble. The convergence of the problem of the cities and the problem of Viet Nam brings us to the opening of, perhaps, the most critical era in the history of the nation.

If it is a time of trouble, however, it is also a time of testing. We will find, I am confident, within this nation and, more and more, among the young people of this nation, the resources of intelligence and integrity to define the evolving problems of our times. We will find, I profoundly believe, the courage, the conviction, and the concern to face them and to resolve them.

JOHN E. FOGARTY BUILDING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1105, S. 3363.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 3363) to designate the U.S. Customs House Building in Providence, R.I., as the "John E. Fogarty Building."

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Public Works, with amendments, on page 1, line 5, after the word "Fogarty" insert "Federal"; and on page 2, line 3, after the word "Fogarty" insert "Federal"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Customs House Building in Providence, Rhode Island, is hereby designated as the "John E. Fogarty Federal Building" in memory of the late John E. Fogarty, a distinguished Member of the United States House of Representatives from the State of Rhode Island from 1945 through 1967. Any reference to such building in any law, regulation, document, record, map, or other paper of the United States shall be deemed a reference to such building as the "John E. Fogarty Federal Building".

Mr. PASTORE. Mr. President, the purpose of this bill is to designate the U.S. Customs House building in Providence, R.I., as the "John E. Fogarty Federal Building." This is the building in which John Fogarty had his office for many years as a Representative from the State of Rhode Island.

In my State, John E. Fogarty is a political legend, revered and remembered as a great humanitarian. I recall vividly the Democratic State convention in 1940, when John Fogarty, as a very young man—hardly more than a boy—was chosen to be the Democratic nominee to the House of Representatives. He was elected in that year, reelected and reelected, serving his country with distinction for almost 26 years. On January 10, 1967, in his congressional office, waiting to go on the floor to be sworn in for a new term in the House of Representatives, he suffered a severe heart attack and died.

John Edward Fogarty was born in Providence, R.I., March 23, 1913; attended LaSalle Academy and Providence College; apprenticed as a bricklayer in 1930; served as president of Bricklayers Union No. 1 of Rhode Island; elected as a Democrat to the 77th and 78th Congresses and served from January 3, 1941, until his resignation on December 7, 1944, to enlist in the U.S. Navy; reelected to the 79th and to 11 succeeding Congresses serving from January 3, 1945, until his death on January 10, 1967.

The universal sorrow on his death is evidenced in the volume of eulogies—the 250 pages of which form part of our congressional history.

I would like to include here the preface to that historic and human document as symbolic of this genuine public servant, ideal American, distinguished statesman, and valued personal friend:

More perhaps than anything else, the career of John E. Fogarty symbolizes the strength and magnificent vitality of American democracy. Through all his labors in a quarter century of public service there runs a common thread: Jeffersonian faith in the capacity of ordinary men to govern themselves and to do a better job in the long run than a ruling elite.

John Fogarty's approach to public service was based upon a simple belief in demo-

cratic processes as a means for improving man's lot and enriching his life. He knew well that a stunted mind or deformed body represented formidable obstacles to that goal. He also knew that man's capacity to attack disease and poverty and ignorance had been enormously strengthened by modern science technology. This knowledge and the determination to use it productively constituted his special strength as a congressional leader. Characteristically, his deepest concern was of the young. Here, the inroads of disease and deprivation are the deepest, and the need for marshaling all resources of help the most pressing. For his efforts to aid handicapped children—particularly the mentally retarded—and to enlist the Nation's conscience in their behalf, John Fogarty will be remembered with gratitude. The work that he started will stand as a monument to his vision and insight and restless energy.

The Impact of this man on the cause closest to him—the support of medical research—is impossible to exaggerate. If the National Institutes of Health is today the world's most powerful and influential force for the support and conduct of medical research, it is in large part because John Fogarty early perceived its promise and fought tenaciously for its programs. Thus his influence touches not only the lives of Americans but all who are beneficiaries of medical advances throughout the world.

It seems fitting that this estimate of the Congress should be expressed in this legislation—that the building in Providence, R.I., where this great man met his constituents and labored for them should be designated as the "John E. Fogarty Federal Building."

Mr. President, in conclusion I wish to thank the distinguished Senator from West Virginia [Mr. RANDOLPH], who is the chairman of the committee that approved this legislation, for his expeditious treatment of the matter; and also the distinguished Senator from North Carolina [Mr. JORDAN], and the members of the full committee for the excellent work they did in reporting the bill as quickly as they did.

Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the amendments are considered and agreed to en bloc.

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

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

The title was amended, so as to read: "A bill to designate the United States Customs House Building in Providence, Rhode Island, as the 'John E. Fogarty Federal Building.' "

PARTIAL REVISION OF RADIO REGULATIONS, GENEVA, 1959, WITH FINAL PROTOCOL—REMOVAL OF INJUNCTION OF SECRECY

Mr. BYRD of West Virginia. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from Executive F, 90th Congress, second session, a partial revision of the Radio Regulations, Geneva, 1959, with a final protocol, dated at Geneva, November 3, 1967, transmitted to the Senate today by the President of the United States, and that the revisions, together with the President's message, be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message from the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the text of a Partial Revision of the Radio Regulations (Geneva, 1959), with a Final Protocol, dated at Geneva November 3, 1967.

I transmit also, for the information of the Senate, the report of the Secretary of State, with enclosure, with respect to the Partial Revision.

The English texts of the Partial Revision and Final Protocol, as certified by the Secretary-General of the International Telecommunication Union and transmitted herewith, are contained in a volume designated Final Acts. The volume also includes texts of certain documents in respect of which no action with a view to ratification on the part of the United States is necessary, namely, a Partial Revision of the Additional Radio Regulations (Geneva, 1959), to which the United States is not a party, and resolutions and recommendations of the World Administrative Radio Conference to Deal With Matters Relating to the Maritime Mobile Service, Geneva, September 18–November 3, 1967.

The Radio Regulations (Geneva, 1959), as amended, to which the United States is a party, are further amended by the Partial Revision transmitted herewith in regard to matters relating to the maritime mobile service, with particular reference to radiotelegraphy and radiotelephony. Among the principal objectives are the allocation of radio frequencies for a worldwide oceanograph data transmission system and the establishment of an effective basis for improved maritime communications.

The Final Protocol contains statements and declarations made by delegations of certain signatories at the time of the signing of the Partial Revision. Inasmuch as "the United States of America" and Territories of the United States of America" are, under the terms of the International Telecommunication Convention, separate voting Members of the Union, the Partial Revision was signed separately for each.

The Partial Revision will come into force on April 1, 1969 for Governments which, by that date, have notified the Secretary-General of the Union of their approval thereof.

It is desirable that the necessary actions be taken to enable the United States to become a party to the Partial Revision.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *May 17, 1968.*

PETITION

The PRESIDING OFFICER laid before the Senate a resolution adopted by the Municipal Council of the Township of Woodbridge, N.J., remonstrating against the enactment of legislation to liberalize truck size and weight limits on interstate highways, which was referred to the Committee on Public Works.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

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

H.R. 15004. An act to further amend the Federal Civil Defense Act of 1950, as amended, to extend the expiration date of certain authorities thereunder, and for other purposes (Rept. No. 1134).

By Mr. BYRD of Virginia, from the Committee on Armed Services, without amendment:

H.R. 15863. An act to amend title 10, United States Code, to change the name of the Army Medical Service to the Army Medical Department (Rept. No. 1135).

By Mrs. SMITH, from the Committee on Armed Services, without amendment:

H.J. Res. 1224. A joint resolution to authorize the President to reappoint as Chairman of the Joint Chiefs of Staff, for an additional term of 1 year, the officer serving in that position on April 1, 1968 (Rept. No. 1132).

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

H.R. 15348. An act to amend section 703(b) of title 10, United States Code, to make permanent the authority to grant a special 30-day period of leave for members of the uniformed services who voluntarily extend their tours of duty in hostile-fire areas (Rept. No. 1133).

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. PEARSON:

S. 3509. A bill to amend the Labor Management Relations Act, 1947, to provide improved procedures for the settlement of national emergency labor disputes, and for other purposes; to the Committee on Labor and Public Welfare.

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

By Mr. EASTLAND:

S. 3510. A bill for the relief of Dr. Mustafa Salih Abdulrahman; to the Committee on the Judiciary.

By Mr. McGOVERN:

S. 3511. A bill to prohibit a State from imposing a tax on the transfer of corporate securities held by a nonresident if the transfer of such securities can be effected only in that State; to the Committee on Banking and Currency.

By Mr. SCOTT:

S. 3512. A bill for the relief of Tiruvadi N. Balasubramanian (T. N. Bala), his wife, Susila Balasubramanian, and their two children, Canapathiram and Chadraseknar Balasubramanian; to the Committee on the Judiciary.

By Mr. MONDALE:

S. 3513. A bill to promote the foreign policy and best interests of the United States by directing the President to negotiate a commercial agreement including a provision for most-favored-nation status with Czechoslovakia; to the Committee on Finance.

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

By Mr. RIBICOFF:

S. 3514. A bill to authorize the use of the vessel *Mouette* in the coastwise trade; to the Committee on Commerce.

By Mr. LONG of Louisiana:

S. 3515. A bill to modify the comprehensive plan for flood control and improvement of the lower Mississippi River; to the Committee on Public Works.

By Mr. BYRD of West Virginia (for Mr. MONTOYA):

S. 3516. A bill for the relief of Cecilio Benitez-Cabot; and

S. 3517. A bill for the relief of certain civilian employees and former civilian employees of the Bureau of Reclamation; to the Committee on the Judiciary.

By Mr. CHURCH:

S. 3518. A bill for the relief of Mostafa Tarkeshian; to the Committee on the Judiciary.

By Mr. ANDERSON (for himself, Mr. FULBRIGHT, and Mr. SCOTT):

S.J. Res. 171. Joint resolution to provide for the appointment of Robert Strange McNamara as Citizen Regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

S. 3509—INTRODUCTION OF COLLECTIVE BARGAINING ACT

Mr. PEARSON. Mr. President, I introduce for appropriate reference, a bill entitled "The Collective Bargaining Act of 1968." Its purpose is to improve and strengthen existing machinery for dealing with strikes and lockouts which threaten our national health and safety.

The problem of national emergency strikes has long been with us, but the solutions devised to date have failed to provide a lasting answer.

This does not mean, however, that no progress whatsoever has been made. Congress has wrestled with this challenge many times and has gradually increased our ability to protect the public interest in continued service without violating the rights of labor and management. It has passed legislation authorizing the seizure of industrial property on at least sixteen separate occasions, for example, the most familiar being the Transportation Act of 1916 which permits the President to seize the railroads in time of war.

In 1926, the Railway Labor Act, which stresses mediation and a brief prohibition against striking, was also enacted. To date, the 60-day provision against striking embodied in this bill has been invoked approximately 170 times. Yet Congress still found it necessary last year to enact special arbitration legislation to protect the public against a nationwide railroad strike.

The Taft-Hartley Act was passed in 1947 in an endeavor to restrict for 80 days the right to strike or lockout in industries whose continued operation was also essential to the national health and safety. Time has since proven that this measure too has several serious weaknesses. For although it has been invoked approximately 28 times since its passage, it has not succeeded in fully protecting the public interest in vital services.

The public also suffers from the simple fact that one set of emergency strike regulations applies to the railroads and airlines while a different set applies to other industries. This separation of coverage provided by the Taft-Hartley and Railway Labor Acts is historically understandable. But the record of the past 20 years indicates that it is now time to develop uniform standards that will apply equitably to all types of disputes—from steel to airlines.

Mr. President, we must be careful in developing more effective emergency strike legislation to preserve the free spirit of the American economy, while recognizing that in our highly industrialized and interdependent society the public interest in the maintenance of essential services cannot be subordinated to any private concerns.

The administration has often expressed its awareness of this problem, but has failed completely in its responsibility to meet it. On January 12, 1966, for example, the President said in his state of the Union address:

> I also intend to ask the Congress to consider measures which, without improperly invading state and local authority, will enable us effectively to deal with strikes which threaten irreparable damage to the national interest.

But to date nothing has been done. In fact, nothing has even been officially suggested.

The administration's inaction, however, has not prevented the advancement of a large number of proposals by scholars and legislators who recognize the critical need to at least begin a productive dialog. For convenience and ease of understanding these suggestions may be grouped into six categories: First, ad hoc congressional intervention; second, compulsory arbitration; third, labor courts; fourth, fractionalized collective bargaining; fifth, seizure; and sixth, civil penalties.

Mr. President, I have carefully examined these various alternatives and for a number of reasons have found them wanting. I ask unanimous consent that my analysis be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

OUTLINE OF THE BILL

Mr. PEARSON. Mr. President, the Collective Bargaining Act, which I propose today, represents an attempt to combine the strength of the best of these proposals while avoiding the pitfalls and gimmicks exposed by time and long usage. Thus, first and most importantly, it leaves the primary responsibility for agreement where it belongs—with the parties involved. If the improved machinery it contains fails to produce a workable settlement, however, the bill still gives the President and Congress the final authority they might need as a last resort to solve the dispute in question.

It is fitting and proper that this ultimate burden rest with the elected representatives of the people whose common interests would be so severely threatened by any national emergency strike. But while the public interest may demand such intervention in the last extremity, it is important to be absolutely certain first that every other avenue to agreement has been thoroughly explored. It is equally important that the machinery used for this exploration be designed to encourage a private and not a public settlement of the issues in dispute. And the methods employed must avoid the pitfall of creating a dependence on externally imposed agreements if they are to achieve their purpose. I believe the Collective Bargaining Act meets this standard.

Mr. President, in discussing the bill, I wish to point out that it is not designed to limit every labor-management dispute that arises, but only those which affect our vital national interests. We must never forget that only a few of the 140,000 labor-management agreements attained each year are of national significance and that still fewer ever reach the crisis stage.

In addition, it needs to be emphasized that the provisions of the Collective Bargaining Act take effect only after the grievance procedures embodied in existing labor law have been completely exhausted. Thus, only the emergency sections of the Taft-Hartley and Railway Labor Acts are amended and their proven utility in less than absolutely critical situations is not affected.

Mr. President, the Collective Bargaining Act would first allow the President to appoint a special board to investigate the issues in dispute and to simultaneously seek a 110-day injunction to prevent any strike or walkout which, in his judgment, might imperil the national health or safety.

This provision represents a modification of the current Taft-Hartley procedure which requires the appointment of a Board of Inquiry and the submission of its report before the President may instruct the Attorney General to apply for an injunction. In my opinion this practice unnecessarily risks the interruption of essential production.

Under the Collective Bargaining Act, no such risk need be run. The President would be able to seek an emergency injunction immediately if the situation required it. In addition, emphasis on mediation by the Board would be strengthened by instructing it "to make every effort to aid the parties to settle the dispute through mediation."

Mr. President, it is important that the emphasis be placed on mediation and conciliation rather than on the mere quasi-judicial determination of fact now engaged in by emergency labor panels—for these are the flexible and persuasive techniques most likely to bring the parties together, particularly when they are coupled with adequate time and effective bargaining levers.

By the 80th day, as under the current Taft-Hartley Act, the Board would have to file a report with the President. This report would include not only the position of each party and the facts surrounding the dispute, but also recommendations for settlement if the President requests them. The Taft-Hartley Act does not give the Board authority to make any such recommendations. Thus, no focus is provided for public opinion and a critical bargaining lever is denied the President. The Collective Bargaining Act remedies this flaw.

In addition, it would allow the President to publicize as much of the report as he felt would contribute toward achieving a settlement.

The injunction would continue for 30 days following the filing of the Board's report and during this period the President would be given discretionary authority to direct the parties to bargaining

on the basis of any recommendations which might have been made. Such a step could well provide both labor and management with a profitable new direction of thought at the very time when they are most likely to be stalemated.

Some students of labor management relations have advocated that this process be taken a step further and that the parties be required to accept the recommendations of a board for at least a temporary period. Such a requirement, in my judgment, smacks of compulsory arbitration and is almost certain to fail in producing a lasting agreement. For not only are the parties sure to resent a Government-imposed decision, but they are also unlikely to find the basic economic issues which have divided them substantially changed after any such trial period has elapsed.

The Collective Bargaining Act also eliminates the last offer ballot required under the present Taft-Hartley law. Currently, between the 60th and 75th day of the 80-day injunction, the employees are balloted by the National Labor Relations Board on their employer's last offer. This process is not only useless, but actually tends to encourage management to make this last offer artificially low in order to allow them to keep some concessions in reserve. Employees are naturally well aware of this maneuver and thus have always voted "no" every time such a ballot has been taken.

Finally, the provisions of the Collective Bargaining Act would take effect 180 days after the bill becomes law. This 6-month delay is designed to encourage a full understanding of the bill before it is implemented and also to avoid any legal complications resulting from labor disputes in contention when the law is enacted.

Thus, the Collective Bargaining Act seeks to build upon decades of experience with existing emergency strike legislation. The hinderances of a last offer ballot and the failure to provide for board recommendations are corrected. The President is given several new bargaining levers, such as his ability to publicize or keep confidential any recommendations which may have been made. He also is given the authority to request the parties to bargain on the basis of these recommendations for 30 days. And, if all else fails, the President may still go to Congress for a solution if Congress is willing to intervene.

CONCLUSION

In sum, Mr. President, this proposal has a very simple purpose; namely, to encourage labor and management in critical industries to face their responsibilities squarely. It is further designed to create sound economic settlements by allowing the parties to reach agreement on their own terms.

The Senate Committee on Labor and Public Welfare said in a report issued July 2, 1952:

We earnestly believe that government interference should be at a minimum so that the terms on which a dispute is settled approximate what the parties would have done for themselves under normal conditions. This maximizes the acceptability of the outcome, thereby providing a measure of stability to the relationship.

Mr. President, I believe the principle laid down by the committee is sound and that the Collective Bargaining Act falls fully within the framework of that principle. It does not cast aside the many provisions of the Railway Labor Act and the Taft-Hartley Act which have proven successful in resolving disputes before they reach the crisis stage. It merely attempts to improve those procedures which take effect once the crisis arrives.

I ask unanimous consent that the Collective Bargaining Act be printed in the RECORD.

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

The bill (S. 3509) to amend the Labor Management Relations Act, 1947, to provide improved procedures for the settlement of national emergency labor disputes, and for other purposes, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3509

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Collective Bargaining Act."

SEC. 2. It is the purpose of this Act to reduce industrial strife and to encourage settlement of labor-management disputes by providing a more flexible method of preserving the collective bargaining process.

SEC. 3. (a) Section 206 of the Labor Management Relations Act, 1947, is amended to read as follows:

"SEC. 206. Whenever the President, after consultation with the Director, determines that a threatened or actual strike or lockout or other labor dispute in an industry affecting commerce will, if permitted to occur or to continue, imperil the health or safety of the Nation, he may appoint a Special Board (hereafter in this title referred to as the "Board") to investigate the issues involved in the dispute, to make every effort to aid the parties to settle the dispute through mediation, and to submit a written report to him not later than eighty days after the issuance of an order under section 208 or on such earlier date as the President directs. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its own position and shall, if the President determines that it will not impede a settlement of the dispute, and so directs, make recommendations in such report or in a supplemental report for the settlement of some or all of the issues in dispute. Each party to the dispute, for the purpose of the preceding sentence, shall furnish to the Board a statement of its own position. The President shall file a copy of such report with the Service or, in the case of a carrier subject to the Railway Labor Act, with the National Mediation Board, and shall make so much of the contents of such report available to the public as he determines will contribute to achieving a settlement of the dispute. The President may, if he determines that it will contribute to achieving a settlement of the dispute, direct the parties to the dispute to bargain on the basis of the recommendations, if any, of the Board."

(b) Section 207 of the Labor Management Relations Act, 1947, is amended by striking out "board of inquiry" wherever it appears in such section and inserting in lieu thereof "Board".

SEC. 4. Section 208(a) of the Labor Management Relations Act, 1947, is amended to read as follows:

"SEC. 208. (a) Upon the appointment of a Board under section 206, the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuing thereof, and if the court finds that such threatened or actual strike or lockout—

"(1) is an industry affecting commerce; and

"(2) if permitted to occur or to continue, will imperil the health or safety of the Nation

the court shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof which imperils the health or safety of the Nation and to make such other orders as may be appropriate."

SEC. 5. Section 209 of the Labor Management Relations Act, 1947, is amended to read as follows:

"SEC. 209. Whenever a district court has issued an order under section 208 enjoining acts or practices which will imperil or threaten to imperial the health or safety of the Nation it shall be the duty of the parties to the labor dispute giving rise to such order to continue bargaining and to make every effort to adjust and settle the dispute, with the assistance of the service created by this Act or in the case of a carrier subject to the Railway Labor Act, the National Mediation Board. The Secretary of Labor, the Service, and in the case of a carrier subject to the Railway Labor Act, the National Mediation Board, shall render assistance to the parties and engage in mediatory action directed to achieving a settlement of such dispute."

SEC. 6. Section 210 of the Labor Management Relations Act, 1947, is amended to read as follows:

"SEC. 210. If the parties to the labor dispute subject to an order under section 208 do not resolve the dispute within one hundred and ten days after the issuance of the first such order under section 208, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings under this title, including recommendations of the Board, together with such recommendations as he deems advisable for considerations and appropriate action."

SEC. 7. Section 212 of the Labor Management Relations Act, 1947, is amended by adding a comma and "except sections 206 through 210 inclusive," immediately after the word "title".

SEC. 8. Section 10 of the Railway Labor Act is amended to read as follows:

"SEC. 10. If a dispute between any carrier and its employees is not resolved under the foregoing provisions of this Act, and if the President determines that a strike or lockout has occurred or threatens to occur as a result of such dispute and that such threatened or actual strike or lockout will imperil the health or safety of the Nation he may initiate proceedings under Title II of the Labor Management Relations Act, 1947, and the provisions of section 206 through 210 of such Act shall apply to such dispute."

SEC. 9. The amendments made by this Act shall take effect one hundred and eighty days after the date of enactment of this Act.

EXHIBIT 1

AN OUTLINE OF THE COLLECTIVE BARGAINING ACT

(Introduced by Senator JAMES B. PEARSON)

The purpose of the bill is to create a uniform method of treating emergency strikes that is more flexible and effective than the present formulae. Thus, the bill amends *both*

the Taft-Hartley and Railway Labor Acts so that the procedures for dealing with disputes that threaten the national health and safety, regardless of the industry in which they occur, are exactly the same.

Under the Collective Bargaining Act the President would appoint a Special Board *and* seek a 110-day injunction whenever he felt a strike or lockout imperiled the health and safety of the country. Thus he would be able to request an injunction immediately in order to protect the public interest without having to wait for the Board to file an interim report as is currently the case under the Taft-Hartley Act. The Board would investigate the dispute and attempt to aid the parties to settle their differences through mediation. At the end of 80 days the Board would submit its report to the President. If he felt it would help bring a settlement, he could ask the Board to make recommendations for solving some or all of the questions in dispute. As an additional option he could make these recommendations public if he chose and he could ask the disputants to continue bargaining on the basis of the recommendations for 30 days.

In any event, 30 days after the Board submits its report, even if the parties had not come to an agreement, the injunction would be discharged and the President would transmit the Board's report, including any recommendations (thus making them public), to the Congress together with any suggestions he might have for appropriate action.

The bill also eliminates the "last offer" ballot section of the Taft-Hartley Act which requires that the workers be balloted by the National Labor Relations Board on their employer's last offer. This is a notably unproductive procedure as the employees have always voted against this "last offer" on the assumption that management is withholding concessions as a bargaining technique. And management, well aware of the workers' voting history, usually does hold some concessions in reserve. As a result, nothing is accomplished by the vote except to delay the settlement further.

In sum, the Collective Bargaining Act removes several obstacles to negotiation that time has uncovered and replaces them with more flexible alternatives such as mediation and the judicious use of optional bargaining levers by the President. It is designed to insure that Congressional intervention will only take place as a last resort after every avenue to private agreement has first been explored.

AN OUTLINE OF EMERGENCY STRIKE LEGISLATIVE ALTERNATIVES

(By Senator JAMES B. PEARSON)

The number of proposals in the field of emergency strike legislation is truly staggering. Yet most are possessed of certain common characteristics which enable them to be grouped into approximately 6 alternative approaches to the problem: (1) Ad Hoc Congressional Intervention; (2) Compulsory Arbitration; (3) Labor Court; (4) Fractionalized Collective Bargaining; (5) Seizure; (6) Civil Penalties.

The first alternative of ad hoc Congressional intervention is the course which has been followed so many years and which has proved so unsatisfactory to so many. It has been claimed that the chief advantage of this approach is uncertainty. This thesis is based on the assumption that when the parties in any given dispute cannot predict exactly what action, if any, Congress will take, they are more likely to settle their differences themselves.

But this argument is weakened by the record of the past which indicates Congress is almost certain to intervene in stalemated labor disputes which threaten the national health and safety and that this intervention will invariably take the form of some type of compulsory arbitration.

This approach is also hampered by the fact that it assumes a dispute will arise when Congress is in session. Even if Congress is in session, it is not equipped to thoroughly examine all the issues in dispute without spending an enormous amount of time—time which it can ill-afford when it is confronted with so many other critical national issues.

The second alternative of compulsory arbitration is often mentioned as the most certain method of achieving lasting agreements. But while it may succeed in providing a solution to specific dispute, it does so at the expense of the collective bargaining process. Moreover, experience has shown that such an approach does not ensure industrial peace, neither does it necessarily further the economic and social policies of the government using it. Use of compulsory arbitration in the recent railroad dispute, for example, resulted in an award of wage increases as high as 11 percent. Surely if we are threatened with ruinous inflation as the Administration would have us believe, then an award of this magnitude is hardly in keeping with the government's supposed economic policy of restraint.

Experience with compulsory arbitration in other countries suggests that industrial strife is encouraged, not inhibited. For under a system of compulsory arbitration, the party most convinced of the righteousness of his cause is tempted to create an artificial emergency by being intransigent. Bargaining tends to stop and both sides wait for the stalemate they have created to let the arbitration machinery settle their dispute for them. Not surprisingly, under such a system more disputes reach the critical stage than when the parties must determine the settlement for themselves. As Senator Robert Taft once observed, "If such a remedy is available as the route remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process, than it would receive in collective bargaining."

In sum, compulsory arbitration often results in encouraging strikes. In addition, such a procedure is time-consuming and costly to the government and frees the parties from facing the economic consequences of their inability to settle their differences.

As Herbert R. Northrup, an experienced labor-management relations analyst and author of "Compulsory Arbitration and Government Intervention in Labor Disputes" once said, "The settlement process under compulsory arbitration becomes embroiled in a bureaucratic maze of delay, confusion and backlog, with resultant unrest, illegal stoppages, disrespect for the law and contrived political solutions, usually in favor of the party which can bring the most political weight to bear. To change our system of not completely free collective bargaining for such a system is to move to an entirely new system, but one which has already been found wanting and less desirable."

Third, a system of labor courts has been advocated by those who essentially favor compulsory arbitration, but who are opposed to the use of ad hoc panels. This approach is based upon the opinion that quasi-judicial arbitration, cloaked in courtroom procedure and built upon precedent and case law, is more equitable and effective than the present methods of imposing settlements. Unfortunately, whether or not such a system were built upon the existing National Labor Relations Board or an entirely new structure, the results would likely be the same as with any other type of compulsory settlement.

For example, the country of Australia, which has a comprehensive and long established labor court system, suffered 1,334 strikes involving a total of 545,628 workers in 1964. In the United States during the same year we suffered 3,655 strikes involving 1,640,000 workers. In other words, we had roughly 3 times as many strikes affecting 3 times as many workers. But the United States has a population approximately 17 times that of Australia and a work force 20 times as large. Thus, Australia suffered proportionally 6 times as many strikes, with a labor court system in full operation.

Even if the jurisdiction of the labor court were initially restricted to emergency disputes, pressures to expand its authority would surely prove severe and perhaps irresistible.

Furthermore, while the more valid argument can be brought forth that a labor court would be a simple and equitable method of handling relatively minor disputes, the fact remains that the National Labor Relations Board is proving quite effective in this regard.

A fourth alternative calls for a prohibition upon industry-wide bargaining by either labor or management. This system of "fractionalized collective bargaining" is thought by many to provide a balanced long-term answer to the problem of emergency strike legislation. Such an approach is essentially founded upon the assumption that if there is no industry-wide bargaining, there can be no industry-wide strikes.

This assumption is incorrect. It is wrong because it ignores the phenomenon of price and wage leadership. This phenomenon is the result of certain inevitable pressures generated by our economic system. The national and local unions are usually unwilling and politically unable to accept a substantially lower settlement from one company than they have already been granted by a competitor. Thus, even where no industry-wide bargaining exists, the final settlements are usually quite smiliar, with any wage differentials being compensated for by paid holidays and other fringe benefits.

In the 1952 petroleum dispute, for example, at least 200 major companies bargained individually with the various unions involved. Yet, within a few months, simultaneous strikes closed almost all these firms. After the wage stabilization board announced the limits for a settlement with one employer, all the remaining employers settled on essentially the same terms.

Fractionalized collective bargaining, therefore, is based on an illusion. As the Senate Committee on Labor and Public Welfare said in its report of July 2, 1952, "A ban on industrywide bargaining is a cure for a fictional condition."

The fifth alternative is seizure. This approach is advocated by those who wish to assert government pressure while maintaining essential services. Thus, it is not surprising that a number of different seizure proposals are now before the Congress. Some would allow special boards to adjust wages and working conditions while the facilities were seized. Others would instruct the compensation boards to take into consideration the fact that the firm would have been struck had it not been operated by the government. Some would seize only the financial assets of the firm, while others would physically occupy the premises.

No matter what assortment of procedures is written into seizure legislation, however, the concept itself remains seriously flawed.

The administrative costs to the government are considerable. The legal procedure required is intricate and time-consuming. And since this approach results in the taking of private property for public use, the government is under a constitutional requirement to provide full, fair and reasonable compensation. This requirement invariably results in a repayment to the company of most of its profits.

In the long run, therefore, this approach imposes very little hardship on industry and almost none on labor. In addition, it bears the brand of extremism, for it seeks to substitute government control for the pressures of the marketplace.

An amalgam of all these approaches is available in the popular "multiple weapons" approach which is advocated by those who feel the President should be given a wide variety of options. Though they may combine

a number of techniques, most of these proposals are merely variants on the compulsory arbitration theme. For no matter how many gimmicks they employ, the majority of these bills ultimately give the President authority to impose a decision on the parties.

All these proposals suffer from the basic inequity of an indiscriminate application of pressure. As Donald E. Cullen, a careful student of labor relations, once observed:

"What then is . . . [the] President to do when events force him to make a choice? If the answer is that there is some secret combination of these alternatives which is fair to all, it would seem wiser public policy to require the President to use only that combination. If instead the answer is that all possible courses of action in this area are equally unjust, then the President should by all means be given the choice of several, on the slim hope that by successful bluffing he will never have to resort to any of them. But surely it is too soon to reach the dismal conclusion that all known forms of government intervention in emergency disputes are on the same dead level of hopelessness."

In addition to these weaknesses, the multiple weapons approach also suffers from a tendency to inhibit collective bargaining. As A. H. Raskin, in his contribution to the book, *Challenges to Collective Bargaining*, expressed it:

If you give the President an infinite range of things he may or may not do in a crisis, most of the bargaining by the parties will not be with one another but with the White House on what route to choose."

A *sixth* option is to devise a system of civil penalties which would be levied on both sides of the dispute at some time during the injunction period in order to bring added financial pressure to bear for a settlement. Such an approach has the advantage of increasing the leverage of the public interest concept in collective bargaining while at no time giving the government the power to dictate the precise terms of the contract.

Such civil penalties could take the form of a levy against the companies based on profit, payroll, or some other index of their size and wealth, or it could embrace a combination of several such options with the largest being applied. The latter method would insure that artificially low profit figures or a small work force would not allow the company in question to avoid pressure equal to that which would be applied to the union, or unions, involved.

A civil penalty against the unions could be based on the salary of the members involved in the dispute, its treasury, some per capita assessment, or again, some combination thereof.

The use of civil penalties would avoid the requirement in seizure cases for full, fair, and just compensation, and would thus be a far more effective method of financial punishment.

While such an approach is superficially attractive and may, in the long run, have considerable promise, it nonetheless has several grave flaws. The first of which is that any formula is likely to be too rigid to meet every contingency equitably. In many cases the penalties would probably damage one party more severely than another. Therefore, the penalties might inadvertently be used to bring about the very thing they would hopefully prevent—a costly battle resulting in an uneconomic settlement.

In addition, they would be difficult to enforce because the calculation of the payment figures could prove to be quite complex and the court procedure would undoubtedly be time-consuming.

S. 3513—INTRODUCTION OF BILL TO BE KNOWN AS CZECHOSLOVAKIAN TRADE ACT OF 1968

Mr. MONDALE. Mr. President, today I introduce a bill to provide the President with the authority necessary to negotiate a commercial agreement with Czechoslovakia. The agreement should include a provision for most-favored-nation status and an arrangement for the return of the Czechoslovak gold held by the Tripartite Gold Commission.

Two years ago President Johnson proposed the East-West Trade Relations Act of 1966. He asked for the authority to negotiate most-favored-nation agreements with Communist countries, excepting only China, North Vietnam, North Korea, Cuba, and East Germany. In his words:

With these steps, we can help gradually to create a community of interest, a community of trust, and a community of effort.

Today, the steps of seeking most-favored-nation arrangements can be of more value than ever before. Czechoshovakia is putting unprecedented emphasis on economic reform and welcoming Western investment.

Yugoslavia and Poland receive the advantages of trade under a most-favored-nation agreement; it is imperative that we grant such concessions to Czechoslovakia. The most-favored-nation clause has been extended to most of the Eastern countries by a large number of Western countries. Refusal to apply it may be regarded as an exception except in the case of the United States.

The restrictions on the President's power to negotiate most-favored-nation agreements with certain Communist countries are presently contained in section 321 of the Trade Expansion Act of 1962.

The effect of the prohibition is to prevent the extension of nondiscriminatory tariff treatment to Czechoslovakia, including the more favorable tariff rates and duty-free treatment which may have been granted by the United States to other nations since 1930 under reciprocal trade agreements legislation. When the tariff cuts of the Kennedy round go into effect, the gap between the level of new duties for most of the world and the general tariff, the prohibitively high Smoot-Hawley rates paid by Communist products, will increase. In effect, the relative increase in tariff rates will prohibit trade between Czechoslovakia—with the exceptions of Poland and Yugoslavia—and the United States.

Another step the United States could take to demonstrate our interest and sympathy for the developments in Prague would be to reduce the settlement claims our negotiators demand Prague meet before the United States releases the Czechoslovak gold held by the Tripartite Gold Commission since World War II. The $22 million in gold originally seized by the Nazis during the occupation of Czechoslovakia has been held by the Tripartite Gold Commission, composed of representatives from Britain, France, and the United States, in Brussels since the war.

The members of the Tripartite Gold Commission acknowledge that the gold belongs to Czechoslovakia, but it has been withheld pending agreement by the Czechoslovaks to pay for seized American, British, and French property. In 1961, a draft agreement initialed at referendum by the U.S. Ambassador to Czechoslovakia and the Czech Foreign Ministry officials set out proposals for an agreement to settle the claims at $12 million and return the gold. Such a draft agreement is subject to change or rejection by the U.S. Government.

In 1964 a State Department review of the draft agreement found it inadequate. Pressure for this determination came from the American business claimants whose property had been seized by the Czech Government in the aftermath of World War II. The claimants with small claims were paid off with Czech funds retained in payment for a steel mill ordered from the United States and never delivered. In November of last year, the United States presented a new proposal that the Czechoslovaks, instead of paying $12 million, should pay $45 million, but with a credit of $17 million for the steel mill subtracted. If the Czechoslovaks agreed to the settlement, the United States would release its claim on the $22 million in gold. The Czechs turned the offer down on May 2.

Meanwhile, in 1963, Britain and France reached equitable settlements with Czechoslovakia. In return for a claim settlement or a deposit against an agreement, the British and the French agreed to release their holds on the gold. It now remains for the United States to reach an agreement. The changes in Czechoslovakia constitute sufficient political reasons for a modification of American demands.

Every day for the past few weeks, the newspapers have been filled with the details of changes in Czechoslovakia and suggested American responses. I ask unanimous consent that an article from the Washington Post of May 17, 1968, and an editorial from the New York Times, May 16, 1958, be inserted in the RECORD at this point in my remarks.

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

[From the Washington (D.C.) Post, May 16, 1968]

CZECHS UNFLINCHING AT MOMENT OF TRUTH

(By Dan Morgan)

PRAGUE, May 16.—An experienced Czechoslovak journalist sat in his apartment one evening this week reflecting on the tumultuous political situation in his country.

"This is not something we are accustomed to—being free and independent and in command of our future. We Czechs are used to being suppressed, to being threatened, to looking over our shoulders. What is happening here is very out of character."

Menaced by reports of Russian troop movements, threatened by Soviet ideologists and generals, attacked by the press of East Berlin, Warsaw and Moscow, Czechoslovakia's new leaders are still going their own way; taking a step further each day.

Last night Communist Party ideologist Josef Smrkovsky declared firmly:

"I once again state emphatically that no force, whether international or internal, can force us to digress from the path leading to a humanist, democratic, socialist state."

On Tuesday night, in a foreign broadcast on Radio Prague, commentator Irena Petrinova struck back at East German propagandists who are making a final effort to scare the Czechoslovak liberals.

She spoke of "demagogy that takes the breath away."

On Wednesday, the newspaper Lidova Democracie attacked Soviet press allegations that Thomas G. Masaryk, the first president of the republic, conspired to murder Lenin.

The paper said this was a gross falsification and an offense to the Czech nation.

Many private citizens, in and out of politics, have been angered by the Soviet attacks, not cowed by them. Czechoslovak observers note rising hostility to the Soviets.

In 1939, the Czech nation submitted without a fight to the Nazi occupation and to the infamous Reich protectorate. Today, the Czechoslovak reformers are acting not in the spirit of 1939, but of the 15th century church reformer Jan Hus.

This is the spirit in Prague at what is widely thought to be the moment of truth that is to decide whether the Czechoslovak experiment in democratic socialism is to become a turning point in socialist history, or another East European tragedy.

Four months after the young Slovak moderate Alexander Dubcek took control of the Czechslovak Communist Party, beginnings have been made in the reforms, but nothing has been settled.

It is still unclear even if the Russians will allow the experiment to go on, although the arguments against interference are powerful. This government is committed to socialism. The Warsaw Pact has close ties with Moscow, and there is not a single progressive Communist in Prague who wants to change this.

The progressive Smrkovsky warned this week that the Communist Party "will not allow either responsibility or the possibility of seeing things through to be taken out of its hands . . . If there is anyone who wishes to make a frontal attack against the Party, then he is making a grave mistake."

Czechoslovakia is not known for excesses, but whether this pledge is enough for the Soviets remains an open question, though both Smrkovsky and Premier Oldrich Cernik said this week the Russians had promised not to interfere.

Internally, nothing has been settled, either.

No real check on the absolute power of the Communist Party has yet been devised, and the old-line conservatives on the 110-member Central Committee are still the most effective opposition to the reformers.

Private groups such as the Club for Engaged Non-Party Persons want the election law now under revision to provide for a direct electoral challenge to the Communist Party, both in the National Assembly and in the national committees which run the districts and regions.

But the Party leadership has let it be known that opposition is to be allowed only within a "national front" made up of Communists, socialists, the Catholic People's Party and non-Party members.

It is also unclear whether the coalition in the Central Committee which ousted dogmatist Antonin Novotny as Communist Party leader in January still hangs together.

The 70 people who voted against Novotny were Slovaks, Czechs, moderates and progressives whose interests suddenly coincided.

Whether this was more than a historical accident remains to be seen. The conservatives, including Novotny, remain on the Committee.

The Russian menace, domestic tensions and the Czechslovak tradition of caution and rationality have caused almost daily speculation that the brakes are about to be applied.

Nothing of the kind has happened. Instead, this week:

The Interior Ministry announced it intends to ease restrictions on travel to foreign countries this summer.

The Finance Ministry said a new private-enterprise law would be drafted, to allow more individual and family businesses.

The Party Presidum declared that the Party paper, Rude Pravo, must react more promptly to daily events and ordered it to draft a report on itself.

The paper printed an unprecedented public opinion questionnaire earlier in the week.

Premier Cernik announced the formation of a committee to study a constitutional change providing for federalization of the Czech and Slovak nations on an equal basis.

Cernik proclaimed that the rehabilitation and compensation of all persons who suffered for political reasons in the last 20 years would be the first task of the government.

Czechoslovak journalists attending Cernik's press conference dropped their pencils and applauded this week when the Premier said, "We must show effective results of the new program in a short time."

"Up until January, our young people read the works of Kafka because his philosophy of no exit was relevant," said a young man this week. "Now it is no longer so relevant."

Would the Czechoslovak experiment end in success, or in another tragedy? he was asked.

He had doubts. His wife thought it would work "because it must." Faith is in great demand in Czechoslovakia this May.

[From the New York Times, May 16, 1968]

PRAGUE'S ECONOMIC NEED

Moscow's disgraceful attack on the memory of Thomas G. Masaryk and the angry reply in the Prague press testifies vividly to the worsening of Soviet-Czechoslovakia relations. This heightened tension is particularly important now because it darkens the outlook for the large hard currency loan the new Czechoslovak regime has asked of Premier Kosygin. Receipt of such economic aid—whether from the Soviet Union or elsewhere—is essential if Czechoslovakia's new rulers are to have any hope of giving their people material dividends as well as greater freedom.

There is no secret about Czechoslovakia's central economic problem. After two decades of Communist mismanagement, the once advanced industry of Czechoslovakia is plagued by technological obsolescence and high costs that make it a very weak competitor in many international markets. To remedy the situation, Prague's industry needs a major transfusion of advanced machinery and technology from the the West. But Czechoslovakia does not have the hard currency to pay for the needed large scale importation of equipment and knowledge.

This background helps explain why Premier Cernik, at his unprecedented press conference a few days ago, put so much emphasis on economic reform and on Czechoslovakia's interest in welcoming Western foreign investment. The change to a more market-oriented economy, begun last year, was sabotaged by the Novotny faction. Now the competitive pressures on enterprises will be increased, to cut costs and modernize output.

If Western investment can be obtained, it would of course bring with it advanced technology.

The balance-of-payments problem of the United States, not to mention concentration on Vietnam, makes it unlikely that this country will play a major role soon in helping Czechoslovakia meet its economic needs. Nevertheless the Administration could take some useful steps to demonstrate the interest and sympathy it recently expressed for the developments in Prague. It could ask Congress to extend most favored nation tariff privileges to Czechoslovakia.

And it could reverse this country's harsh position on the $20 million of Czechoslovak gold that has been denied Prague since World War II. The gold, in American hands, has been withheld from the Czech Government in an effort to force compensation for American property confiscated in 1948 and afterward. The moral case for using the gold in this way has always been weak. The political case for a reversal of attitude now is overwhelming.

Mr. MONDALE. Mr. President, in introducing a bill today, I want to make clear that I believe in the broader approach taken by the President 2 years ago in asking for authority to grant most-favored-nation status to all the Eastern European Communist states. Rumania has expressed an interest in joining the International Monetary Fund and the World Bank. And when I visited Moscow in January of this year, the Soviets expressed interest in arranging most-favored-nation status. At the present time, however, I believe that Congress should immediately clear the way for granting most-favored-nation status to Czechoslovakia.

I ask unanimous consent that the bill be printed in the RECORD.

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

The bill (S. 3513) to promote the foreign policy and best interests of the United States by directing the President to negotiate a commercial agreement including a provision for most-favored-nation status with Czechoslovakia, introduced by Mr. MONDALE, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 3513

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SHORT TITLE

SEC. 101. This Act may be cited as the "Czechoslovakian Trade Act of 1968."

STATEMENT OF PURPOSES

SEC. 102. The purposes of this Act are—

(a) to use peaceful trade with Czechoslovakia, to respond to changes in the countries and to maintain United States objectives in building a peaceful, democratic world;

(b) to promote constructive relations with Czechoslovakia and to provide a framework helpful to private United States firms conducting business relations in Czechoslovakia by instituting regular government-to-government negotiations concerning commercial and other matters of mutual interest; and

(c) to increase peaceful trade and related contacts between the United States and Czechoslovakia, and as assistance in meeting United States balance-of-payments problems, to expand markets for products of the United States in Czechoslovakia by creating similar opportunities for the products of Czechoslovakia to compete in United States markets on a non-discriminatory basis.

AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS

SEC. 103. The President may make commercial agreements with Czechoslovakia, providing Most-Favored-Nation treatment to the products of Czechoslovakia whenever he determines that such agreements—

(a) will promote the purposes of this Act,

(b) are in the national interest, and

(c) will result in benefits to the United States equivalent to those provided by the agreement to the other party.

BENEFITS TO BE PROVIDED BY COMMERCIAL AGREEMENTS

SEC. 104. The benefits to the United States to be obtained in or in conjunction with a commercial agreement made under this Act may be of the following kind, but need not be restricted thereto:

(a) satisfactory arrangements for the protection of industrial rights and processes;

(b) satisfactory arrangements for the settlement of commercial differences and disputes;

(c) arrangements for establishment or expansion of United States trade and tourist promotion offices, for facilitation of such efforts as the trade promotion activities of United States commercial officers, participation in trade fairs and exhibits, the sending of trade missions, and for facilitation of entry and travel of commercial representatives as necessary;

(d) most-favored-nation treatment with respect to duties or other restrictions on the imports of the products of the United States, and other arrangements that may secure market access and assure fair treatment for products of the United States; or

(e) satisfactory arrangements covering other matters affecting relations between the United States and Czechoslovakia, such as the settlement of financial and property claims, including the return of the Czechoslovak gold by the Tripartite Gold Commission, and the improvement of consular relations.

EXTENSION OF BENEFITS OF MOST-FAVORED NATION TREATMENT

SEC. 105. (a) In order to carry out a commercial agreement made under this Act and notwithstanding the provisions of any other law, the President may by proclamation extend most-favored-nation treatment to the products of Czechoslovakia.

(b) Any commercial agreement made under this Act shall be deemed a trade agreement for the purposes of Title III of the Trade Expansion Act of 1962 (19 U.S.C. sec. 1901 et seq.).

(c) The portion of general headnote 3(e) to the Tariff Schedules of the United States that preceded the list of countries and areas (77A Stat. 11; 70 Stat. 1022) is amended to read as follows:

"(e) Products of Certain Communist Countries. Notwithstanding any of the foregoing provisions of this headnote, the rates of duty shown in column numbered 2 shall apply to products, whether imported directly or indirectly, of the countries and areas that have been specified in section 401 of the Tariff Classification Act of 1962, in sections 231 and 257(e)(2) of the Trade Expansion Act of 1962, or in actions taken by the President thereunder and as to which there is not in effect a proclamation under section 5(a) of the "Czechoslovakian Trade Act of 1968."

(d) Nothing in this Act shall be deemed to modify or amend the Export Control Act of 1949 (50 U.S.C. App. Sec. 2021 et seq.) or the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. sec. 1611 et seq.)

SEC. 106. The President shall submit to the Congress an annual report on the commercial agreements program instituted under this Act. Such report shall include information regarding negotiations, benefits obtained as a result of commercial agreements, the texts of any such agreements, and other information relating to the program.

TITLE II

SEC. 201. It is the sense of Congress that the President shall, at the earliest possible date, make every effort to arrange for the return of Czechoslovak gold held by the Tripartite Gold Commission, in order that this substantial irritant to more amicable relationships be removed in the near future. It is further the sense of Congress that the 1961 Draft Agreement Initialed at Referendum regarding Czechoslovak gold is suitable as the basis for final juridical settlement of this matter.

ADDITIONAL COSPONSORS OF BILL AND RESOLUTION

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from Colorado [Mr. DOMINICK] be added as a cosponsor of S. 3430 to amend the Federal Aviation Act of 1958 in order to provide for certain requirements with respect to the installation of downed-aircraft rescue transmitters on civil aircraft.

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

Mr. McGOVERN. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from Indiana [Mr. HARTKE] be added as a cosponsor of Senate Resolution 281 to establish a Select Committee on Nutrition and Human Needs.

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

SENATE RESOLUTION 290—RESOLUTION TO ASSIST SMALL MEATPACKING COMPANIES IN COMPLYING WITH NEW FEDERAL INSPECTION REQUIREMENTS

Mr. BIBLE. Mr. President, over the next 2 to 3 years, thousands of meat processing and packing plants across the country will come under the Federal requirements of the Wholesome Meat Act of 1967.[1] This legislation amends the basic Federal Meat Inspection Act of 1907[2] and will require all local and intrastate meat plants, which were not previously subject to Federal inspection standards, to conform either with the strict U.S. rules or with an equally strict State system.

The law has one purpose.

Said one observer—

> To protect American consumers by forcing the States to tighten quality safeguards on all meat, wherever processed, wherever sold.[3]

One of the principal sponsors of the 1967 act, the Senator from Minnesota [Mr. MONDALE] characterized it as "one of the most significant pieces of consumer-protection legislation ever signed into law."[4]

What may have been overlooked so far is that the Wholesome Meat Act is also far reaching and significant business legislation.

As a member of the Select Committee on Small Business, I have been pleased to participate in a 3-year study of the overseas market potential for the American beef industry, including its vital meat processing and packing segments.[5] We have been in touch with the associations representing the small business meatpackers and were made aware of their potentials and problems. In many cases they are small or family, independent operations. Typically they have a long record of service to their local communities.

The seriousness of this program to the business community is indicated by the estimate that in mid-1967 there were 14,832 nonfederally inspected facilities—compared with 1,969 federally inspected plants—and of these only 5,555 were subject to some form of State sanitation inspection.[6]

By July 1 of this year, 26 States will have mandatory meat inspection of animals before and after slaughter. Twenty-five States have mandatory inspection of meat processing facilities. Thirteen other States have voluntary inspection programs, while nine States presently have no laws in this area although there are many municipal and county systems in populous areas.

It is thus apparent that approximately 15,000 businesses are vitally affected. These firms are involved in producing a basic commodity. They account for about 15 or 16 percent of our entire commercial meat supply in this country, and an even higher proportion of the product in their localities.

Over the years since 1907 the Meat Inspection Division of the Department of Agriculture has developed a series of requirements that must be met in order to gain Federal approval.[7] In the fields of construction and layout of plants, these are often highly specific and detailed, prescribing such things as the materials that can be used in floors and walls, the heights of ceilings and rails, spacing and disposal systems. Other requirements cover cleaning procedures, and are illustrated by the following excerpts from a recent article in the New York Times:[8]

> Part of the problem is lack of space. Many small wholesalers perform all their functions in one room. They store, cut, age and sell meat in a cooler where the temperature is 50 degrees or lower.
>
> Much of their equipment such as band saws and grinders, cannot be moved easily, and would have to be cleaned in place.
>
> "If he has a cooler full of meat," said an inspector, "I know he's not going to put a 180-degree hose in there to clean his equipment."
>
> Often the floors are wooden and have no drains. There is no place for the waters to go, and the dealers "go in for spring cleaning," according to a Department of Agriculture official, by carrying their tools to the sidewalk and washing them there.
>
> Concrete floors with drains are the best answer, according to the department, but in any case the Federal inspector is required to check for cleanliness each morning before the plant may begin work.
>
> To meat dealers, sanitation means money.

As the newspaper correctly points out: "Sanitation means money."

Where construction or cleaning requirements are at issue, we are often talking about a good deal of money.

This concern prompted the Senate-House Conference on the wholesome meat bill to request assurances from the

[1] Public Law 90–201, Approved December 15, 1967.

[2] 21 U.S.C. 71–91.

[3] "States must plug it by 1980; Despite New U.S. Meat Law, Meat Inspectors Gap Exists", by Paul M. Branzburg, from U.S. Courier-Journal and Times, Reprinted *Daily Congressional Record*, March 21, 1968, page E2103.

[4] *Daily Congressional Record*, March 21, 1968, page E2103 loc. cit.

[5] See "Expansion of Livestock Exports", Report of the Select Committee on Small Business, Senate Report 343, 90th Congress, 1st Session, June 12, 1967.

[6] Testimony of Rep. Thomas S. Foley in Hearings before the Senate Committee on Agriculture on Bills to Clarify and otherwise amend the Meat Inspection Act etc., November 15, 1967 at page 243.

[7] These are contained in the Handbook of the Meat Inspection Division, U.S. Department of Agriculture.

[8] "Meat Plants Here Face U.S. Upgrading", New York Times, March 4, 1968, front page of second section.

Department of Agriculture that this act was not going to be used to put thousands of meatpackers out of business. In a letter to the Senator from Florida [Mr. HOLLAND], Deputy Assistant Secretary Leonard responded:

The only mandatory construction requirements are set forth in general terms in the regulations. . . . For example:

The floors, walls, ceilings, partitions, posts, doors, and other parts of the structure shall be of such materials, construction, and finish as will make them susceptible of being readily and thoroughly cleaned . . . in the light of operating procedures which are to be used in the establishment.[9]

In other words, there is some flexibility in the application of these standards, and this is desirable.

As the Senate Committee on Agriculture observed in its report:

(S)ome of the Federal standards for plant construction may sometimes be unrealistic (for small non-federally inspected plants) and it would be unreasonable to arbitrarily apply them when the operational practices of a small facility (enable them to meet equivalent standards)[10]

However, eventually, with the best faith in the world, decisions will be made and money will have to be invested by our small meatpackers in modifying the features in their buildings, equipment, and procedures that do not now qualify under Federal or equivalent standards.

Furthermore, they must do so in a short period of 2 years, unless an optional 1-year extension is applied for by the company and granted.

For these companies to comply with the standards previously applicable only to large, interstate plants, will involve substantial outlays of capital for new machinery and new construction. If they do not conform to the Federal specifications they will be out of business.

It is apparent to many of us that these firms will need a ready source of funds to finance the purchase of the new equipment and construction. The meatpacking industry traditionally is a low-profit-margin operation, as has been made clear to our Small Business Committee on several occasions.[11]

Many of these companies, of course, are in a position to take care of themselves, and will do so. Others may not be so fortunately situated. They may be in remote areas where banking resources are smaller or already strained—the expenditures may be large in relation to the current income of the firm. Or, the terms on which loans can be granted, might not match the needs created by this legislation.

I feel strongly that the 2-year deadline is a special factor which greatly increases the pressure on our smaller firms. After all, the useful life of meat-processing equipment has been declared to be 12 years.[12] I question whether the great majority of the businessmen affected can get loans on such terms.

In view of the circumstances, Senator SPARKMAN and I (together with Senators DOMINICK, EASTLAND, HATFIELD, HOLLAND, JAVITS, JORDAN of North Carolina, MCGEE, MCGOVERN, METCALF, MONTOYA, MORSE, NELSON, RANDOLPH, and SMATHERS), are submitting the resolution which I now send to the desk and ask unanimous consent that it be printed in the RECORD following my remarks.

It is in the form of a Senate resolution, calling upon the Small Business Administration to make a study of the needs for capital of small firms in the meat processing and meat packing industries as a result of the Wholesome Meat Act.

As a result of such study, we in the Senate could discover the magnitude of the need, how much of it can be met by conventional sources of funds such as local banks, the extent to which the resources of the SBA and other Government agencies could respond to the excess requirements, and what, if any, additional authority or funds the SBA might need.

It is my hope that the major trade associations and their membership, as well as the Agriculture Department and the Library of Congress, will join this preparatory inquiry which will enable us in the Congress to determine what further steps should be taken to protect the interests of small businesses in the meat industry.

A further complication is that this is an era of tight money on the part of agencies such as the Small Business Administration, which are supposed to be the lenders of last resort in emergency situations such as this.

In addition to the impact of the international situation on the budget of SBA, this agency is also being called upon to devise special programs of assistance to the small manufacturers which must meet deadlines for upgrading their equipment and processes because of new water and air pollution standards.

However, the interest of our small firms in the meatpacking industry, and of the communities they service, are also immediate and pressing. It is my hope that, with the information gathered by the Small Business Administration pursuant to this study, we will be able to fashion sound and effective measures to assist industry in meeting these needs.

The PRESIDING OFFICER. The resolution will be received and appropriately referred; and, under the rule, the resolution will be printed in the RECORD.

The resolution (S. Res. 290) was referred to the Committee on Agriculture and Forestry, as follows:

S. RES. 290

Whereas the Wholesome Meat Act requires all meat plants, not previously subject to Federal regulation, to conform to strict standards under Federal or State law; and

Whereas for many small business enterprises compliance with this Act may require substantial outlays of capital for new machinery and plant facilities; and

Whereas meeting such capital needs will be extremely difficult if not impossible for many such enterprises without assistance; and

Whereas Federal assistance to small business concerns in the interest of preserving free competitive enterprise is a declared policy of the Congress: Now, therefore, be it

Resolved, That the Small Business Administration is requested (1) to undertake a study to determine the extent to which financial assistance under statutes administered by it is available to small business concerns in effecting compliance with the requirements of the Wholesome Meat Act, and (2) to report to the Senate at the earliest practicable date, in no event later than 30 days after the approval of this resolution, the results of its study, together with such recommendations for additional legislation as it deems necessary.

[9] Letter to Senator Holland contained in the Conference Report on the Federal Meat Inspection Act, House Report 998, 90th Congress, 1st Session, December 6, 1967, pages 21–22.

[10] S. Rept. 779, 90th Congress, 1st Session, November 21, 1967, page 3.

[11] See "Industry Survey—the Meat Packing Industry etc." prepared by Carl M. Loeb, Rhodes & Co. of New York; contained in hearings on the Expansion of Livestock Exports, May 18 and 19, 1966, pages 40–45. See also 'The Meat Packers" from "The Exchange", magazine of the New York Stock Exchange, Hearings, loc. cit. pages 341–43.

[12] Depreciation, Guidelines and Rules, Revenue Procedure 62–21, Internal Revenue Service Publication 456, page 7.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967—AMENDMENTS

AMENDMENTS NOS. 799 THROUGH 801

Mr. GRIFFIN submitted three amendments, intended to be proposed by him, 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, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 802

Mr. LONG of Louisiana submitted amendments, intended to be proposed by him, to Senate bill 917, supra, which were ordered to lie on the table and to be printed.

(See the remarks of Mr. LONG of Louisiana when he submitted the above amendments, which appear under a separate heading.)

AMENDMENT NO. 803

Mr. HART proposed an amendment to Senate bill 917, supra, which was ordered to be printed.

AMENDMENT NO. 804

Mr. TYDINGS proposed an amendment, in the nature of a substitute for the amendment proposed by Mr. HART (No. 803), to Senate bill 917, supra, which was ordered to be printed.

NOTICE OF HEARINGS ON EAST-WEST TRADE

Mr. MONDALE. Mr. President, the International Finance Subcommittee of the Banking and Currency Committee will conduct hearings on Senate Joint Resolution 169, which is a joint resolution that would express the sense of the Congress that the Export Control Act regulations and the Export-Import Bank financing restrictions be modified to promote the best interest of the United States by permitting an increase in trade in peaceful goods between the United States and the nations of Eastern Europe.

The hearings will commence at 10 a.m., in room 5302, New Senate Office Building, on May 22, 1968. They will continue on June 13, June 27, July 17, and July 24. Persons wishing to testify

or submit statements in connection with this resolution should contact Mr. Hugh H. Smith, Jr., assistant counsel, Senate Committee on Banking and Currency, 5300 New Senate Office Building, Washington, D.C. 20510, telephone 225-3921.

NOTICE OF RECEIPT OF NOMINATION BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. SPARKMAN. Mr. President, as acting chairman of the Committee on Foreign Relations, I desire to announce that today the Senate received the following nomination:

David S. King, of Utah, now Ambassador Extraordinary and Plenipotentiary of the United States of America to the Malagasy Republic, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

In accordance with the committee rule, this pending nomination may not be considered prior to the expiration of 6 days of its receipt in the Senate.

ADDRESS BY WINTON M. BLOUNT AT 56TH ANNUAL MEETING OF CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. DIRKSEN. Mr. President, as the Nation prepares for another long summer of threatened civil disorders, more and more citizens are questioning the road upon which this Nation seems to be traveling. One of these citizens, Winton M. Blount, newly elected president of the Chamber of Commerce of the United States, directly addressed himself to the question of increasing lawlessness in the cities at the annual dinner of the national chamber's recent 56th annual meeting here in Washington.

Because what he suggests may be representative of what thousands of responsible Americans are urging, in the interest of general information I ask unanimous consent to have printed in the RECORD the address of Winton M. Blount.

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

REMARKS BY WINTON M. BLOUNT, PRESIDENT, CHAMBER OF COMMERCE OF THE UNITED STATES, AT THE ANNUAL DINNER, 56TH ANNUAL MEETING, CHAMBER OF COMMERCE OF THE UNITED STATES, WASHINGTON, D.C., APRIL 30, 1968

Thank you, Mr. Chairman, and ladies and gentlemen, for your expression of welcome and encouragement.

The abilities I have to offer are at your service in the year ahead. But whatever significance they gain—the impact we make on the events of our time—will not reflect the efforts of a single individual, but the resolution of the Chamber of Commerce and the business community to make the force of its convictions felt at a time when they are most needed.

I think I can safely say that never before has the leadership of the National Chamber—its officers, directors and staff—been so aware of the responsibility for assuring that the measure of this organization's effort be sufficient to the challenge of our times.

Today we are faced with international problems such as the war in Vietnam; the worth of the dollar in the world markets; national problems related to an economy beset by inflation, urbanization and industrialization; human problems of race and poverty and the spiritual problems of dissension, distrust and violence. These problems must be met and solved.

This is a time for reason and restraint. This is also a time for response—restraint from emotionalism and radicalism . . . but *response* toward finding solutions to these major problems. The climate of unrest and uncertainty have placed, as never before, new demands upon the business and professional community for leadership and constructive action.

Business is responding by bringing its leadership, management and problem solving ability to bear on these matters, invading areas which have been traditionally left to government. We are seeking out dark corners and moving into the social problem backwaters where politicians have been making too many of the decisions. The Chamber must continue to encourage and lead this effort, and determine the most effective channels for its expression.

Government cannot solve these problems alone, as it has sometimes tried to do in the past. Rather, it must be a joint effort of the national government, the local and state governments, business community, other organizations and private citizens—a total effort on the part of all—and business has a key role to play.

I am an optimist—you have to be in my business. And I am optimistic that America *will* solve its problems. Our background and heritage have not prepared us for defeat. Our resiliency as a nation has been demonstrated time and time again.

But as we progress and change and move forward into the exicting world of the future, we must preserve and strengthen the essential institutions and values which have provided the vitality and inner strength of this great nation.

Ladies and gentlemen, it is up to the vast majority of Americans who are responsible, reasonable and restrained citizens to insure that our progress is responsive, sound, and intelligent.

What is our role? I believe the nation needs to hear from us.

It needs to hear from us about preserving the vitality of our economic system. As George Champion pointed out yesterday, we must tell the story to every citizen of the vital role of capital, incentive, and profits in our free enterprise economy.

The nation needs to hear from us a reaffirmation of the democratic process as the proper and most effective expression of the public will. Politics is too important to leave to the politicians; businessmen *must* become involved.

In this regard, I am pleased to announce tonight that Governor Allan Shivers has graciously consented to serve in this important election year as chairman of the new Individual Political Action Program developed by the National Chamber. Let's all join Gov. Shivers to insure the success of this significant program at every level.

And finally, the nation must hear from us a reaffirmation of our moral strengths—our belief in individual rights, and the preservation of those rights through obedience to the law.

Sunday I visited the rubble and destruction of the recent riots in Washington. While I had seen the destruction on television and through other news media, I was utterly shocked and yes, dismayed, by what I saw—parts of our capital laid waste as a Berlin or a London of over two decades ago. This—in the capital of the United States, a nation of dedication to great principles and progress—not to destruction.

I say to you and to all the people of this country that the business community has a deep and compassionate concern for people of all races who live in poverty in the slums of our cities, the disadvantaged, the hard core unemployed and the undereducated. We are deeply concerned over all the problems of the urban areas of our country and the business community must and will redouble its efforts everywhere to open wide the doors of opportunity and to lend a helping hand to those who will take advantage of these opportunities.

While we feel all of these things, it is outrageous to enunciate a policy which essentially encourages and escalates riots and lawless acts.

We cannot abide lawlessness, nor can we justify short-run violations of the law in hope that it will bring about peace in the long-run. Human rights cannot long exist in a chaotic and disorderly society. They are assured and preserved only by prompt and reasonable enforcement of the law.

Riots are started by lawless hoodlums and the disruptive elements in our society. They are not started by the innocent bystanders or the children. But if we have a policy of withholding authority and letting the arsonist burn and the looter steal then you can be certain that seeing this example the surrounding community will join in. We must have a policy that says as soon as riots threaten, at the very first hour there must be an appropriate and overwhelming show of force and determination by all those in authority to insure these criminal acts are stopped in their tracks.

During the important workshop held Sunday afternoon, I heard it said that the business community has lost the initiative in this area. I do not believe this is the case and in fact the matter of who has the initiative is not the point. Rather we must work together with respect and understanding toward successful solutions.

In this regard, I commend to you the Forward America program, developed by the National Chamber, for bringing together all the groups willing to cooperate within the community—business, government, labor, civil rights, religious, educational, and the leaders of the ghetto areas—to establish communications, set goals and priorities, and initiate programs of action. Here is a method for responsible Americans to make themselves heard.

The task for responsible Americans, then, is to help the nation find solutions to the great and compelling problems of our times—and to insure that those solutions are within the context of our beliefs and principles.

Ladies and gentlemen, these are the challenges and promises before us. Let's accept them with new determination, confidence and personal commitment. Your country is in great need of your devotion and your leadership ability.

BEAUTIFUL COLLEGE PARK

Mr. TYDINGS. Mr. President, beauty is good business, but beauty is not an easy thing to demonstrate. It does not just happen. It involves sweat and toil and, above all, the introduction of its concept into all our planning and programs until a militant concern for the values of beauty is developed.

Association with beauty is always costly, but since it adds to the quality of man's life, no one would contend that ugliness is less expensive if it can degrade his existence and demean the people who live among it.

There is much that the government, at every level, can do. But a beautiful community will require the concern and action of individual citizens and of private groups to fight squalid conditions and create beauty for themselves and their children.

Such a challenge, Mr. President, has been met by the Beautification and Improvement Committee of the City of College Park, an integrated part of the citizens advisory planning board, which during the last 3 years of its existence has been observing Thomas Jefferson's remark that communities "should be planned with an eye to the effect made upon the human spirit by being continually surrounded with a maximum of beauty."

The beautification and improvement committee is sponsoring again the Cleanup-Paintup-Fixup Month in May.

Mr. President, 35 groups representing civic clubs, garden clubs, service clubs, fraternities, sororities, the Boy Scouts, Girl Scouts, and the two fire departments have pledged their time and talents to make the city's annual May cleanup-paintup-fixup campaign for 1968 the biggest yet.

The organized activities range from the painting of refuse receptacles at the tot-lots to the demolition of old abandoned houses. In addition to the foregoing the city, through the cooperation of the West Virginia Pulp & Paper Co., had 10,000 litter bags prepared which were passed out through the community by two sororities at the University of Maryland.

The order of the day seems to be that everyone must rake the lawn, clean up old leaves and papers, clean out gutters, clean out the basement and garage, paint where needed, trim bushes and trees, keep the lawn mowed, keep driveways swept and then when everyone has done all that they think can be done at home, *they must put* the frosting on the cake: plant colorful flowers or set out a new tree.

For those in doubt about the need for such a crash program, there is a further message about the duty to beautify. This year, for the second time, the city of College Park is the only community in the State of Maryland availing itself, as a courtesy of the Humble Oil Co., of its gigantic billboard, at Route 1 and Rowalt Drive, to advertise the Cleanup-Paintup-Fixup Month of May campaign. In addition, the Rollins Outdoor Advertising Co. prepared for the beautification and improvement committee a 12- by 20-foot double-faced mobile sign which also carries the campaign beautification message through the courtesy of its company.

The city of College Park association with beauty is permeated by restoration and innovation. This concern is not with its community alone, but with the total relation between it and the world around it; consequently, the city, in expanding a national concept of beauty, has entered the National Cleanup Contest in competition with other cities nationwide.

In all justice, with such hard work, achievements and objectives, I trust that the beautiful city of College Park will have a fine chance to bring home a trophy that will be a direct contribution to the conscious and active concern for the values of beauty of our beautiful State of Maryland.

A beautiful America, Mr. President, will undoubtedly require the effort of the Federal, State, and local governments, but particularly it will require the cooperation and participation of business, private groups, and of individual members of the community. The city of College Park and its citizens organized as a beautification and improvement committee is a fine example of civic responsibility making its own direct contribution to the enhancement of man's imagination and the revival of his spirit through the road of beauty.

I congratulate them, Mr. President.

MEDICAL PRESS SIFTS NEWS FOR PHYSICIANS

Mr. HART. Mr. President, rather belatedly, I would like to call to the attention of my colleagues an article by the Washington Post writer, Morton Mintz, on the news of medicine as it is presented to this Nation's doctors.

Politicians are always criticizing some element of the press for being unfair in news presentation. This criticism is suspect. Often it means the presentation was balanced—instead of loaded in favor of the critic.

So it is refreshing to see a reporter, and an extremely competent one, taking the press to task for lack of balance. This time it is the medical press for printing only those things complimentary to its biggest advertisers—the major drug companies. The Senator from Wisconsin [Mr. NELSON] is thoroughly familiar with this practice.

As the author of the Medical Restraint of Trade Act, which aims at eliminating the harm to health and economics caused by some doctor-merchants. I am not unaware of the slant of the news in the medical press.

Although representatives of several of the publications kept in close touch with our hearings and took full notes on the practices, some of which were shocking, the inches of coverage were exceedingly sparse.

In fact, as I recall, we were about 3 years into the investigation before the AMA News got around to a small paragraph on the investigation.

Allegations of paying too much attention to advertiser and publisher feelings in selection of stories need not be aimed only at the medical press. But when you consider that this Nation's doctors get the majority of the news of their profession from these journals, we must be concerned about what news is acknowledged.

The theory behind freedom of the press in this country is that although all news may be a bit slanted, the reader can balance one paper's slant against another's and come up with something resembling the straight-up truth.

Mr. Mint's article suggests that in the medical press all slants are the same—and counterbalancing is not possible.

Mr. President, I ask unanimous consent that the Washington Post article of March 31, 1968, be printed in the RECORD.

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

MEDICAL PRESS SIFTS NEWS FOR PHYSICIANS

(By Morton Mintz)

Last January, at the request of the pharmaceutical firm of Chas. Pfizer & Co., Roper Research Associates sampled public opinion in the New York City area. Of the sample polled, 97 per cent were critical of the drug industry in response to one or more of six questions on profits and pricing practices.

But except when a threat of regulation is involved, it is not the layman's view but the doctor's that really counts with makers of prescription drugs. The reason is that these medicines find a market only when physicians prescribe them. And so it is the doctor who must be "sold" on this or that drug product; the patient's role is merely to pay the bill.

Drug firms begin to cultivate a doctor before he is a doctor, while he is still a medical student. He is given black bags, expense-paid trips, scholarships. His school may get donations to the building fund and research grants.

Once entered upon the practice of medicine, the physician is the target of drug advertising and promotional efforts costing about $3000 a year, according to Dr. James L. Goddard, Commissioner of the Food and Drug Administration. The total advertising and promotion expenditure was calculated by Dr. Goddard at between $600 million and $800 million a year—between a quarter and a third of the industry's gross.

A large share of that sum is spent on advertising in dozens of publications generally seen only by physicians. These publications are sometimes distinguished by comprehensive and reliable reporting. But news that touches on a sensitive nerve in the drug industry can receive some unusual handling.

Last November, for example, a big chunk of a Senate hearing on drug prices concerned an eight-page advertising supplement bought by the Pharmaceutical Manufacturers Association in the Reader's Digest. The PMA called the ad a "magazine within a magazine" and a "public service." Sen. Gaylord Nelson (D-Wis.) called it a "calculated deception."

The Digest insertion and the furor about it dominated the stories written by reporters for newspapers and wire services. But the Digest flap was ignored by Medical Tribune, a twice-a-week newspaper supported almost entirely by drug advertising and distributed free to physicians.

Nor was this curious example of news judgment unique. In December, Chas. Pfizer and two other drug manufacturers were convicted of a criminal conspiracy to rig the prices of "wonder" antibiotics and to monopolize their sale. Half of Medical Tribune's account was turned over to company proclamations of intent to appeal, to a complaint by Pfizer that it had been done wrong by a jury which had relied upon "unjustified inference and suspicion," to a suggestion by Bristol-Myers Co. that the jury might have been influenced by inordinate publicity, and to an expression of surprise and regret by American Cyanamid Co.

Not a line in the Medical Tribune story dealt with the guts of the successful prosecution case—the specific of production costs, prices and profits. Thus were physician-readers anesthetized against the shock of the evidence that tetracycline which costs as little as $1.52 to produce was sold to druggists for $30.60 and to consumers for $51, and that manufacturers' pretax profits on investment in antibiotics was sometimes in the 70 per cent range.

TWO CATEGORIES

For profit, advertising-supported publications distributed free to physicians, such as

the 68,000 circulation Medical Tribune, constitute one of the two principal categories of the medical press. Other examples of this group are Medical World News (circulation 230,000) and Modern Medicine (circulation 200,000).

The other major category is the journal or paper published by a professional organization. Examples are the Journal of the American Medical Association, an organization which gets about half its income from advertising, most of it pharmaceutical; Psychiatric News, official newspaper of the American Psychiatric Association, and GP, monthly journal of the American Academy of General Practice.

OPPOSE TOUGHER RULES

Publishers in both categories are united in their opposition to proposals by the FDA to toughen its regulations against deceptive, false and unbalanced advertising of prescription drugs. And the ways in which both categories treat the news can also be quite similar.

The January issue of Psychiatric News—over a third of which was devoted to advertising of drugs used to treat mental illness and anxiety—is a case in point. That issue carried a story headlined " 'Generic Equivalency' Called Myth by Drug Producers." It began:

"Pharmaceutical manufacturers, after enduring seven months of virulent criticism from consumer organizations in testimony before the Senate Small Business Subcommittee, launched a double-barreled counterattack late in November."

About 20 per cent of the story was devoted to a pro-industry statement by Alfred Gilman, a pharmacologist who had not testified. Another 20 per cent was given over to two more nonwitnesses. One's defense of Dr. Gilman was quoted from Hospital Tribune (a sister publication of Medical Tribune). The other was reported "as agreeing with Dr. Gilman's statement." Something over 10 per cent of the story was accorded to actual testimony by the president of the Pharmaceutical Manufacturers Association. That left about half of the story for a summary of the hearings, and two thirds of it consisted of material favorable to the drug industry.

In an interview, associate editor Herbert M. Gant was asked about the unattributed statement that drug makers had been "enduring seven months of virulent criticism." Gant acknowledged that his paper had done no first-hand reporting. Instead, he said, the official newspaper of the American Psychiatric Association had relied on "secondary sources," specifically including the AMA News and "press releases from the Pharmaceutical Manufacturers Association."

"Let me assure you we are not kow-towing to the manufacturers on those hearings," Gant said.

REPRINTS STATEMENT

Another case in point is the handling of an Oct. 13 hearing by the general practitioners' journal, GP. The witness was Richard M. Furlaud, president of E. R. Squibb & Sons. He came before Nelson's Subcommittee with a lengthy prepared statement defending the system of dual prices under which a medicine prescribed by brand name can be very expensive but prescribed under its generic, or chemical, name can be quite inexpensive.

An editorial in the New York Times found Furlaud's case "unpersuasive." But GP was so impressed that it turned over 4½ glossy pages in the February, 1968, issue to excerpts from Furlaud's text.

GP did not, however, tell its 30,000 doctor-readers of a development at the Nelson hearing that was not in Squibb's script. This was the Subcommittee's introduction of documents which the FDA had prepared in recommending criminal prosecution of Squibb. They recited "a long history of mix-ups, recalls and warnings" that indicated, in the agency's view, that the firm had "failed to understand its responsibilities as a drug manufacturer." In March, 1967, Squibb pleaded no contest to the charges in that case, although it has sweepingly rejected the FDA allegations aired at the Nelson hearing.

FDA POLICY CRITICIZED

This same issue of GP carried an editorial condemning the FDA's "new get-tough policy, as it relates to advertising pages in medical publications . . ." There were 145 pages of drug ads in that 280-page issue of GP. Nine of them were for drugs made by E. R. Squibb.

"I didn't know that," said Mac F. Cahal, publisher of GP. The Squibb ads, he said in a phone interview, had "no bearing" on the publication of the testimony by Squibb's president. As to the FDA documents recommending a prosecution, Cahal said, he had not been aware of it.

GP is aware of the importance of advertising, however. To lure ads it has prepared a brochure of reprints of Cahal's "Newsletters" and editorials from GP and American Family Physician, another Academy publication. Captioned "News and Views," the brochure is subtitled ". . . of interest to the pharmaceutical industry."

All of the reprints attack prescribing drugs by generic name and defend prescribing by brand names, such as those that fill the ad pages of both publications. Proponents of generic prescriptions were ridiculed in one editorial as people who "don't know an aspirin tablet from a jelly bean."

BEHIND THE NEWS

Among the commercial publications, McGraw-Hill's Medical World News, a glossy-paper biweekly, is the circulation leader. Its editor is Dr. Morris Fishbein, former editor of the Journal of the AMA. The consulting editor is Dr. Howard A. Rusk. During the past two years, Dr. Rusk has been second on the masthead and has written the "Behind the News" column.

While being paid for his work at Medical World News, Dr. Rusk has continued to contribute a column every Sunday to the New York Times. There he has found occasion to praise to readers of the Times the performance of the industry that is almost the single source of support for Medical World News.

On Oct. 2, 1966, for example, Dr. Rusk's column in the Times commended the prescription-drug manufacturers as a bastion against inflation. With permission from the Times, the Pharmaceutical Manufacturers Association distributed reproductions of the column.

As Associated Press story of Dec. 20, 1966, carried in the Times, called attention to Dr. Rusk's compassionate spirit, although not necessarily to his reportorial detachment. The item said that "a million-dollar gift of Salk polio vaccine for 660,000 South Korean children has arrived from the United States. The vaccine was donated by the maker, Eli Lilly of Indianapolis, at the request of Dr. Howard A. Rusk, chairman of the American-Korean Foundation."

ANONYMOUS AUTHOR

Another eminent physician, heart specialist Irvine H. Page of the Cleveland Clinic Foundation, is editor of Modern Medicine.

But the approximately 200,000 physicians who receive Modern Medicine have not been told who writes its "Washington Newsletter." It is George Connery, whose full-time job is editing and reporting for the PMA's Newsletter, Connery, who says he never has written "an intentional line of public relations or propaganda," gave this advice to Modern Medicine's readers in a "Newsletter" last July about Nelson's drug-price hearing:

"Thus, it might be as late as mid-September before the PMA will have the chance to present its broad, balanced picture of what the industry contributes to health, how it goes about doing so, and why its profit level has to be higher . . ."

INDEPENDENT NEWSPAPER

The Medical Tribune, whose treatment of the criminal price-rigging trial occupied our attention earlier, calls itself "The Only Independent Medical Newspaper in the U.S." But it leaves unanswered the question what it is independent of.

Medical Tribune has extraordinarily close links with William Douglas McAdams, Inc., an advertising agency which claims to be the leader in the field of medical advertising. The American Association of Advertising Agencies forbids ownership of news media by ad agencies, in order to preclude conflicts of interest. But the McAdams agency is not a member of the Association.

The agency's clients, particularly the Roche Laboratories division of Hoffmann-La Roche, Inc., are the dominant advertisers in Medical Tribune.

In the 40-page issue of last Feb. 22, for example, 22 of approximately 27 pages of advertising were for drugs produced by McAdams' clients—Roche Laboratories (14 pages), Warner-Chilcott Laboratories (5), Upjohn Co. (2) and CIBA Pharmaceutical Co. (1).

In the last two years, the publication has undertaken critical, prolonged campaigns against certain drugs, including one for arthritis and one for influenza. But the manufacturers are rarely if ever among those that advertise in Medical Tribune.

The executive editor of the Tribune is Dr. Joseph Gennis, who is simultaneously executive vice president of the McAdams ad agency.

Dr. Arthur M. Sackler, a founder of Medical Tribune, recently retired as board chairman of the McAdams firm, which he joined in 1941.

For many years the relationship between the McAdams agency, Medical Tribune and related Sackler enterprises including the World Wide Medical News Service has been clubby. Employes have shared, at 130 East 59th st. in New York City, office space, a library, other facilities, a single personnel director (James Braunworth), a single employe directory (the one dated Dec. 7, 1965, for example, lists about 280 names) and medical advisers.

There have been joint Christmas parties and social functions at which informal financial reports were given by Drs. Sackler and Gennis on how well "the company"—singular—was doing.

Last year, after the FDA announced proposals to tighten its regulations to assure honesty and balance in ads for prescription drugs, 96 written objections (and zero endorsements) were filed. Drug makers filed 30, medical ad agencies 46, publishers 14, trade groups 4 and individuals 2. For McAdams, Dr. DeForest Ely, president of the ad agency, protested that the regulations would "jeopardize freedom of the press."

THE AUTOMATON SYNDROME

During a hearing held by his subcommittee, Nelson remarked that if he went to any meeting of a local medical society and asked, "What do you think about the drug industry?" he could predict what doctors would tell him: That the industry "has to have high profits because they do a lot of research and it is a very risky business." Doctors who say this, Nelson said, "sound like automatons."

The Senator, who is himself the son of a physician, went on to recall an occasion in Wisconsin when four doctors took him on about his investigation into drug prices.

"I said I will tell you what I will do," Nelson related. "Just let one of the doctors step aside and I will tell him what you are going to tell me and we will come back together. And I did, in some detail; he was outraged."

But the doctor should not have been surprised. The Senator, too, sees the medical press.

ORDER FOR RECOGNITION OF SENATOR THURMOND

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that from the completion of the speech by the distinguished Senator from Mississippi today, the distinguished Senator from South Carolina [Mr. THURMOND] be recognized for not to exceed 30 minutes.

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

Mr. BYRD of West Virginia. 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. BYRD of West Virgina. 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.

MODIFICATION OF ORDER FOR RECESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time for the order to recess the Senate be delayed 7 minutes.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Florida may proceed for an additional 5 minutes in the morning hour.

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

THE PROPOSED TAX INCREASE—IV

Mr. SMATHERS. Mr. President, in my remarks of November 1967, on this subject, I expressed an opinion that:

> If the country is to maintain its economic *health, I feel* that (raising taxes) is one of those hard decisions that our citizens are going to have to make . . . The action of the Congress and the American people in this matter will be a test of our resolve, and of our system of government, equal in severity and significance to the Great Depression and the Cold War.

In similar terms, Secretary of Treasury Fowler addressed the U.S. Chamber of Commerce on April 30, 1968, saying:

> Your national government, your nation, and each one of us, faces the hour of responsibility—the hour of sober, fiscal responsibility. In it we must make a momentous decision.
>
> That decision is whether or not we will pay our bills and order our economic and financial affairs in such a manner as to decisively reduce twin deficits in our federal budget and in our international balance of payments . . . We are facing nothing less than a test of representative government in economic and financial affairs . . . Make no mistake, our economic future and that of the entire free world are at stake in this hour.[1]

Mr. President, the question which I would like to put before this body and before the public is, how much of that hour has ticked away?

On April 2, the Senate approved the Smathers-Williams amendment by a vote of 53 to 35, and then passed H.R. 15414 by an even more decisive 57-to-31 vote, which sent the measure to a Senate-House conference.

This action broke an impasse between the administration and the Congress stretching back more than a year to the initial proposal for the surtax in the President's state of the Union message in January of 1967. During that period, the need for higher taxes was clearly established and clearly recognized by those knowledgeable in financial affairs, and yet action by neither House of Congress was forthcoming.

The lesson which this seems to teach is that to obtain a tax increase in a democracy, not only must the key committees and a majority of both Houses be convinced of the need, but that a number approaching a majority of the voters must also accept these necessities, so that the representatives of the people feel that they can be reelected.

Along the way, of course, we need to educate the reporters and editors of our newspapers, radio, and television, who are the media for informing people of what is at stake on the floor of the Senate and the House of Representatives. It might be well for these organizations to conduct a little self-examination of the extent and quality of their coverage of the trade and budget deficits, inflation, the cost of living, and how they are related to the actions of their elected representatives.

In the interest of furthering this education, I would like to review the developments of the past month and a half since the Senate acted. The financial situation was clear, and Members of Congress cannot complain that the facts have been unavailable. They have been spread upon the pages of the CONGRESSIONAL RECORD with regularity since early October last year.[2]

There is no escaping the fact that the United States has incurred domestic budget deficits for 14 of the last 18 years, during which it has spent more than $60 billion in excess of what it has taken in. Similarly, the overall growth of the Federal budget in the last decade of 125.03 percent—$82.7 billion in 1958 to an estimated $186.1 billion in fiscal year 1969—is substantially greater than the growth of 75.5 percent in gross national product during the comparable period.

In addition, we have experienced deficits in our international payments in 17 out of the last 18 years. As Secretary Fowler observed:[3]

> As all of the experts are aware, this situation has been tolerated in the financial world primarily because of the strength and the competitive capacity of the U.S. economy, which has been capable in each of the last seven years of producing a substantial trade surplus.

In one of the most dramatic and perhaps the most serious financial developments of this decade, this trade surplus, which previously produced 70 percent of U.S. balance-of-payments earnings, and was the anchor of our financial position in the world, has melted away during the last 3½ years. The Senate Small Business Committee, under my chairmanship, has just concluded a series of five regional hearings at which our members pointed out at every opportunity the fact that the trade surplus has been in a continuous decline. From a peak of $7 billion in 1962, it fell to $5.3 billion in 1965 and $3.8 billion in 1966. For 1967, the merchandise exports surplus was listed at $4.1 billion, but fully $3.5 billion of this was Government assisted, leaving a balance on the commercial account of less than $1 billion.

In January and February of 1968, these figures declined further, and in March, as we are all aware, the U.S. trade surplus disappeared completely. This faces us with the prospects of the worst trade performance since before World War II, and the possibility of an overall deficit in our commercial accounts this year.

It is surely not mysterious that foreign central banks, which hold about a quarter of their national wealth in the form of U.S. dollars, should be worried about this performance, and about the continued existence of the international monetary system which has been so laboriously built on the foundations of the Bretton Woods Agreement of 1944 and the value of the American dollar with respect to gold. It does not take great intellectual power to understand that if inflation and payments deficits destroy the value of the dollar, that the international monetary system will be at an end.

The gold rush of the last 6 months bears witness to the fact that when people doubt the value of the dollar, they will scramble to buy into some commodity which they feel is a stable storehouse of value, gold being the most notable. It is also simple arithmetic to calculate the fact that if the foreign central banks and other official institutions sought to cash in all of the $15.3 billion they hold, the United States with only about $13 billion in gold reserves could not meet all of their claims for gold, and the international monetary system would collapse with a shuddering roar.

As the most recent edition of London Economist magazine stated:

> Very gradually it has been brought home to almost everyone that a second consecutive deficit of more than $20 billion in the Budget is wrong and irresponsible. When Americans found that they could not cash their traveler's cheques abroad at the height of the March gold crisis, when the foreign trade surplus disappeared altogether in March, when the Consumer Price Index rose for the eighth consecutive month at an annual rate of almost 4 percent, when interest rates went up to record levels (mostly because of the government's need to borrow heavily), members of Congress had to admit that something was wrong.

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[1] "Fowler Presses Chamber Group for Support of Surtax Measures" by Paul G. Edwards, *Washington Post*, May 1, 1968, Page C8:1.

[2] "The Proposed Tax Increase—I", Remarks on the Senate Floor by Senator Smathers, "Congressional Record, vol. 113, pt. 21, pp. 28336–28339." "The Proposed Tax Increase—II" and "The Proposed Tax Increase—III" Remarks on the Senate Floor by Senator Smathers, Daily Congressional Record, March 25, 1968, pp. 3283 *et seq*. See also the entire debate on HR 15414, Daily Congressional Record, March 25–April 2, 1968.

[3] "Fowler Presses Chamber Group for Support of Surtax Measure" by Paul G. Edwards, *Washington Post*, May 1, 1968, p. C8:1.

On the day that the Senate acted upon this conclusion by passing H.R. 15414, the reaction of business leaders throughout the country was exemplified by Mr. David M. Kennedy, chairman of the Continental Illinois National Bank & Trust Co. of Chicago. Mr. Kennedy, at the April 2 symposium of the American Bankers' Association in Washington, reading from a handwritten script and speaking with a visible show of emotion, stated:

It is the 11th hour—almost past time for us as a nation to put our financial affairs in order.[4]

About the same time, a blue ribbon Treasury Advisory Committee, headed by former Treasury Secretary C. Douglas Dillion, warned that the failure to enact the proposed surtax proposal "would endanger worldwide confidence in the dollar." [5]

Mr. President, I feel that it might be useful to continue this chronology.

Mr. Kennedy's theme was quoted in a widely read Washington newsletter of that week, as follows:

Will action come in time to halt another gold panic? Don't know. The efforts to speed a new system of Special Drawings Rights may cool off the speculators for a while. But they know it will take a year at least before the SDR system is established. And they also know that it is based on a guarantee in gold. So unless action is taken to stem inflation here, speculators may still bet that U.S. will be forced to raise the gold price.

It's a dangerous game that is being played here . . . time is short.[6]

Financial analyst Peter S. Nagan predicted that—

If Congress doesn't act, this week's record (interest rates) will be just the launching pad for still further surges in interest rates . . . (and) brutally tight money and mortgage rates as high as 9 percent.[7]

On April 4, the hopes of the Nation rose when it was reported that the conferees from the Senate and the House of Representatives had met for the first time on the surtax measure, and there was an absence of absolute opposition on the part of Members of the other body.[8]

Another article on the same day by financial analyst Hobart Rowen asserted:

At the moment, the need for the tax increase as a symbol of U.S. willingness to restrain inflation and protect the dollar is stressed increasingly by our trading partners and other friends abroad. . . . The European suggestion that back-to-back budget deficit . . . in excess of $20 billion could inspire a new gold rush seems to have had more impact on the Congress than the Administration's repeated warnings of price inflation at home.[9]

The clock ticked on through the early weeks of April.

On Thursday, April 18, the Federal Reserve acted for the third time in 5 months, raising the discount rate to 5½ percent and also raising ceilings on large denomination certificates of deposit.[10]

The explanation for these actions was made by William McChesney Martin, Chairman of the Federal Reserve Board, at the annual meeting of the American Society of Newspaper Editors at the Shoreham Hotel in Washington on April 19. Chairman Martin, who is perhaps the most experienced and respected financial manager in the United States, if not in the world, told his audience:

The nation is in the midst of the worst financial crisis since 1931. . . . In 1931 the problem was deflation. . . . Today it is inflation and equally intolerable. . . . The nation cannot tolerate price rises almost twice the gains in production. . . . Nor can it ignore the warnings of its foreign friends.[11]

Chairman Martin's plea for a tax rise was the lead story in the New York Times the following day, and was accompanied by a White House announcement that tighter money was inevitable in the absence of the enactment of the surtax proposal.[12]

In the wake of this announcement, the Federal Reserve on April 26, tightened the reserve positions of U.S. banks to the most stringent levels since the "crunch" of September 28, 1966.[13]

On that day also, the Washington Post editorialized on the urgency of congressional action. In its view:

It would be far better to eliminate the budgetary deficit by raising taxes now, then making a more deliberate and careful attack on the problem of expenditure control, one that would shift money from less urgent programs and proposals and channel it to those which would fulfill the country's most pressing needs. But there is no longer sufficient time to take that course. In order to break the deadlock over the surtax, the Administration will have to submit proposals for cutting its own budget.[14]

On the following day, the March figures revealed that living costs had posted their sharpest increase in 8 months, "producing new fears as to the competitiveness of U.S. goods in world markets and underscoring concern that the economy is overheating." [15]

On April 28, Mr. Rowen reported that:

It now appears at long last that there is activity on the tax front. . . . A tougher fiscal policy is clearly needed, so that Treasury borrowing needs won't send interest rates (already steep) sky-high.[16]

As the readiness to take this action was maturing, Monday morning's headlines disclosed that the gross national product, in the first 3 months of 1968, exhibited the largest quarter-to-quarter gain on record—$20 billion, and an upward trend at an unusually large 10-percent rate. Commented columnist Harold B. Dorsey:

Congressional dallying with fiscal policy delegation has already done a lot of damage. It has permitted an inflationary boom to get under way. . . . It has already caused the monetary authorities to lay the base for severe tension in credit markets. It has caused one gold crisis, and something near chaos in the international money area is impending unless proper fiscal action is taken very soon.[17]

An Assistant Secretary of Commerce contributed further statistics, including the fact that of the 20 economic indicators tabulated for the month of March, 16, or 80 percent, rose from February, an unusually high proportion.[18]

About a week later, financial columnist J. A. Livingston performed a signal service by canvassing the opinions of bankers, businessmen, and government officials in the finance centers of Germany and Switzerland. From Zurich, he addressed an open letter to the Congress of the United States summarizing these views. The message was: "Raise taxes." Typical were the words of Alfred Hartmann, general manager of the Union Bank of Zurich, the largest commercial bank in Switzerland:

Things are out of the hands of the central banks. The situation is fragile. Investors and speculators forced the abandonment of the gold pool. Now the urgency is to restore confidence because things can go out of control.

Europeans are disappointed. The U.S. government has not cut expenditures sufficiently and the President has not been able to get through Congress a tax increase which has been obviously necessary for a long time. And so, we doubt that the U.S. is able to balance its payments and we wonder if it is willing.

We are sitting in an American boat and it's leaking.[19]

A companion piece pointed out that our inflation in this country was sucking in imports at a rate too high to be sustained, making the United States, in the words of Chief Economic Adviser Arthur Okun, "the fat lady of international trade." Harold Dorsey predicted that these forces might produce a commercial trade deficit for 1968 of up to $1.6 billion, a deterioration which "is one of the numerous reasons why Congress may finally enact legislation to reduce significantly the huge budget deficit which has been fueling the flames of inflation." [20] The clock ticked on.

A restatement of the arguments in favor of the proposed surtax was laid before the Congress in the CONGRESSIONAL

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[4] "Bankers Hear Plaza for Tax Surcharge", by Hobart Rowen, *Washington Post*, April 3, 1968, Financial Section.

[5] "Faith in Dollar Hinges on New Tax, U.S. Told", *Washington Post*, March 13, 1968.

[6] *The Kiplinger Washington Letter*, March 29, 1968, page 1.

[7] "Fed Is Determined to Brake Boom if Surtax Plan Fails," by Peter S. Nagan, *Washington Post*, March 29, 1968, p. D8:1.

[8] "Hopes Rise for Tax-Cutback Package as Mills Falls to Issue a Flat 'No'", by Frank C. Porter, *Washington Post*, April 4, 1968, p. A21:6

[9] "Peace Hopes Don't Dim Need for Tax Increase", by Hobart Rowen, *Washington Post*, April 4, 1968, p. A21

[10] "Discount Rate Increased to 5½ from 5% to Slow 'Intensifying' Inflation, Aid Dollar", *Wall Street Journal*, April 19, 1968, p. 3:1

[11] "Martin Sees Crisis in U.S. Inflation; Urges a Tax Rise", by H. J. Maidenberg, *New York Times*, April 20, 1968, p. 1:1

[12] "White House Says Tax Rise is Vital", *New York Times*, April 20, 1968, p. 18:5

[13] "Bank Reserves Tightest Since Crunch of 1966", *New York Journal of Commerce*, April 26, 1968, p. 1:7

[14] "Unjamming the Surtax", *Washington Post*, April 26, 1968, p. A24:1

[15] "Living Costs Up Sharply in March", by Frank C. Porter, *Washington Post*, April 27, 1968, p. A1:6

[16] "Rep. Mills Appears Ready to Permit Surtax Action", by Hobart Rowen, *Washington Post*, April 28, 1968, p. G1:4

[17] "2d Quarter Gain in GNP May Approach Record", by Harold B. Dorsey, *Washington Post*, April 29, 1968, p. D11:1.

[18] "Tax Increase Held Vital to Economy", by Frank C. Porter, *Washington Post*, April 29, 1968, p. A3:2.

[19] "A Message to Congress: 'Raise Taxes'", by J. A. Livingston, *Washington Post*, May 6, 1968, p. D8:1.

[20] "Long-Run Dangers of Inflation Have Now Become Short-Run", by Harold B. Dorsey, *Washington Post*, May 6, 1968, p. D9:I.

RECORD of May 6 by way of a comprehensive memorandum from the Chairman of the Council of Economic Advisers,[21] and a letter from President Johnson dated May 4.[22]

Time is fast running out on one of the most crucial legislative measures of the decade—the tax surcharge—

The President said—

Further delay is a ticket to disaster.

On May 10, we learned that the conferees of the Senate and the House had agreed upon the compromise measure containing the 10-percent surtax and imposing a $6 billion spending cut for fiscal year 1969, in a manner similar to the Smathers-Williams package of April 2.[23]

The following day the Washington Post editorialized that the surtax had passed "an important hurdle," and that while "none of the extravagant claims made on behalf of the surtax are likely to be realized, the passage of a tax increase will place federal finances on a more orderly basis, a goal that should be achieved with a minimum of delay."[24]

More recent advice is contained in a further review of the necessity to reduce deficits in order to forestall a new gold rush;[25] a renewed plea for the approval of the tax proposal;[26] reports that gold prices in London have hit all-time highs for the past 2 days,[27] and an editorial in the Washington Evening Star which concludes as follows:

The surtax should be passed—now. The budget should be trimmed wherever possible—now. We cannot afford to wait and to drift until after the elections. For unless the U.S. starts now to show some sense of financial responsibility, the piper may not even accept dollars in payment by November."[28]

Mr. President, I should very much like to end on a note of hope.

I will do so in the words of the London Economist magazine, which I find to be of consistently high quality in these matters. The most recent edition of this publication states:

It has often been said of the United States Congress that it acts very foolishy much of the time but that on the major issues, in the end, it acts responsibly. . . . At this writing, the tax increase is not yet assured of passage. . . . The members, a clear majority, do know that it must be done, though even now the final vote in the House is not a sure thing.

All through this agonizing struggle a strange combination of forces has held up the tax bill . . . Against this combination the views of foreign central bankers, not to mention those of the Secretary of the Treasury and even the President, have seemed to make little headway. And yet the facts have apparently sunk in. When the vote was taken in the Senate in early April, and then again this week in the House Ways and Means Committee, the majority for higher taxes was decisive.[29]

Mr. President, a month and a half ago the clock stood at the 11th hour. Perhaps now it is just a few minutes before the final hour.

I hope that the legislative institutions of my country will rise to this challenge. I do not wish the 90th Congress to be known in history as the assembly where democracy failed the test of financial responsibility and ushered in the decline of another civilization. If our form of government cannot preserve its stability and afford to exercise its leadership in the world, I hesitate to think what powers will replace it.

Mr. President, I earnestly hope that the Congress will respond upon this historic occasion and immediately approve the surtax proposal together with responsible controls on Federal spending.

If we do not do this now, I fear that the hour will strike, and because of those who have not been counted, our Nation will be weighed in the balance and found wanting.

Mr. President, I ask unanimous consent to include in the RECORD at this point the following: an article by Mr. J. A. Livingston, which appeared in the Washington Post on May 6, 1968, and which is entitled "A Message to Congress: 'Raise Taxes'"; the remarks of Secretary of the Treasury Henry H. Fowler before the Chamber of Commerce of the United States on April 30, 1968; and an article from the Economist magazine of May 11, 1968, entitled "Congress Faces the Tax Facts":

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

[From the Washington Post, May 6, 1968]

A MESSAGE TO CONGRESS: "RAISE TAXES"

(By J. A. Livingston)

ZURICH.—This is a message to Congress—not from the gnomes that supposedly reside here and cause ebbs and flows in international confidence, but from sober, hopeful bankers, businessmen and government officials in Frankfurt, Bonn, Bern and, of course, Zurich. It's "Raise taxes."

Only in that way will the United States demonstrate that it means to stop stuffing the central banks of Europe with unwanted dollars.

Whether diplomatically phrased or impatiently outspoken, the message is unmistakable. Here it is in direct quotes:

Otmar Emminger, a director of the German Budesbank, Frankfurt, one of the architects of the special drawing rights agreement at Stockholm: "We have to assume that the United States will do the right things until all hope is gone. Will Americans take the right measures to restore confidence?

"The dollar is not overvalued in spite of wage, price and cost increases in the last 18 months. To devalue the dollar would open a Pandora's box which no responsible central banker wants to deal with. It would be a far greater problem than that which now confronts the U.S.

"A clear tendency toward improvement in the U.S. balance-of-payments position is necessary. Then confidence in the dollar and the international monetary system would increase."

Franz-Josef Trouvain, director of the economics department of the Deutsche Bank, Frankfurt, largest commercial bank in Germany: "We trust the dollar. Basically, it is the strongest currency because the U.S. is the strongest nation in resources. We recognize that you have special burdens—the Vietnam war, foreign aid and capital exports—investing abroad.

"However, the U.S. bears a special responsibility for international economic development and international monetary stability. It is quite clear in Europe, that without a cut in federal expenditures and an increase in taxes, the present international monetary difficulties can't be solved."

Kurt Richebacher, general manager of the foreign department, Dresdner Bank, Frankfurt, second largest in Germany: "The U.S. is messing up the world. Every country has to accept the rules of the game—to expand or slow down—according to its balance-of-payments position. America is not yet remedying its budgetary deficit. It is relying on monetary policy. And it is forcing up interest rates all over the world."

John P. McCardle, vice president for European operations, Honeywell, Inc., Frankfurt: "European businessmen are worried that the U.S. will not correct its balance-of-payments deficit and that will cause a crisis. We have had to give up one project—a merger—because of U.S. controls. We could not be sure of the financing."

Guenther Harkort, German deputy secretary of state for foreign trade and development, Bonn: "All we can do is wait and see. We want to do everything we can to help the United States. We are following an expansionist policy for internal reasons. This is good for the dollar and the pound. The crucial question is: 'What is Congress going to do?'"

Bruno Muller, vice director of the Ministry of Finance, Bern: "My personal opinion is that there are reservations about the dollar. I wouldn't buy dollars at the moment because I wouldn't sleep quietly. I would do it later, if the balance-of-payments deficit were better.

"Three stages are necessary—first a reduction in the deficit; second equilibrium; third a small surplus. Then you could sleep nights with dollars in your pockets."

Alfred Hartmann, general manager, Union Bank, Zurich, largest commercial bank in Switzerland: "Things are out of the hands of the central banks. The situation is fragile. Investors and speculators forced the abandonment of the gold pool. Now the urgency is to restore confidence because things can go out of control.

"Europeans are disappointed. The U.S. government has not cut expenditures sufficiently and the President has not been able to get through Congress a tax increase which has been obviously necessary for a long time. And so, we doubt that the U.S. is able to balance its payments and we wonder if it is willing.

"The dollar is still considered to be one of the strongest currenices. It is foolish to think it is overvalued. Devaluation of the dollar is a nonsense. Other European countries can't allow it for competitive reasons.

"We are sitting in an American boat and it's leaking."

Edwin Stopper, president of the Swiss National Bank, Zurich: "We are not in a comfortable monetary environment. These are times of financial tension. I can't predict

[21] "Talking Points on the Tax Increases", Remarks on the Floor of the House by Speaker John McCormack, *Daily Congressional Record*, May 6, 1968, p. H3392.

[22] "Tax Surcharge—Communication from the President of the United States (H. Doc. No. 305)", *Daily Congressional Record*, May 6, 1968, pp. H3334 and H3335.

[23] "Tax Package Wrapped Up by Conferees", by Richard L. Lyons, *Washington Post*, May 10, 1968, p. A1:5.

[24] "The Tax Bill Advances", *Washington Post*, May 11, 1968, p. A16:1.

[25] "Reduction in U.S. Spending Deficits Necessary to Escape New Gold Rush", by Harold B. Dorsey, *Washington Post*, May 13, 1698, p. D8:5.

[26] "Tax Bill Approval is Urged by Fowler", by Richard L. Lyons, *Washington Post*, May 14, 1968, p. A1:5.

[27] "London Gold Prices Hit All-Time High", *Washington Post*, May 16, 1968, p. K11:4; "Gold Prices Continue to Climb in London Mart," by Karl E. Meyer, *Washington Post*, May 17, 1968, page D9:7.

[28] "No Time to Lose", *Washington Evening Star*, May 14, 1968.

[29] "Congress Faces the Tax Facts", by *The Economist*, May 11, 1968, p. 17.

See also "Tax Bill Moves in Tense Drama," by Marquis Childs, *Washington Post*, May 15, 1968, p. A14: rt. lead.

what will happen to the dollar. I am not a prophet.

"It is our wish and our hope that the dollar remains the leading currency. The U.S. balance-of-payments deficit has gone on too long. As a result, there are too many dollars and holdings of dollars are regarded as a loan to the most powerful country in the world.

"If the U.S. were to demonstrate that it can reduce substantially its deficit, the problem would change and attitudes would change. Now, the U.S. is regarded as a debtor country because of its persistent deficit. A surplus once or twice would be excellent. Even a reduction in the deficit would be useful.

"It would cause people to think that the dollar once again would be scarce. The dollar once again would become desirable. And if the U.S. then ran a deficit, the leading country would be extending credit—in people's minds—instead of borrowing."

And how do Europeans feel the U.S. can demonstrate its earnestness, its intention? In two words: Raise taxes.

THE HOUR OF FISCAL RESPONSIBILITY

(Remarks by the Honorable Henry H. Fowler, Secretary of the Treasury, before the Chamber of Commerce of the United States, Washington, D.C., April 30, 1968)

It is always an honor for me to meet with this distinguished group of business leaders who convene here at this season out of their concern with our national economic and financial problems and policies.

The timing of our meeting together is particularly propitious—for you because you escape a much more detailed speech since I must participate later today in a meeting with conferees of the House and Senate, a group of some of the most distinguished members of Congress designated from the tax-writing Committees. The conference will seek to resolve the differences between the Tax Adjustment Act as passed by the House continuing certain excise taxes and the Senate Act called "Balance of Payments and Domestic Economy Act of 1968" which does that and a great many more things, including increasing income taxes and reducing Federal expenditures.

This week you will be meeting your representatives in the Congress, and this morning's session gives me an opportunity to share with you my views on a topic which is at the top of the legislative agenda—what to do about taxes and appropriations. Let me say in advance that my remarks on this topic are meant to be calm, deliberate, unexcited and unemotional—and in prepared text—and not intended to give offense. In the spot I am in I cannot afford to be mad at anybody and I need help from all—particularly you and the Congress.

For in the month ahead, indeed the week ahead, in fact today, and in this very hour, your national government, your Nation, and each one of us faces the hour of responsibility—the hour of sober fiscal responsibility. In it we must make a momentous decision.

That decision is whether or not we will pay our bills and order our economic and financial affairs in such a manner as to decisively reduce the twin deficits in our Federal budget and in our international balance of payments.

These deficits rose to such proportions in 1967 that, unless reversed and sharply reduced in 1968, they threaten to halt the tremendous economic progress the United States has made over the past seven and a half years and the remarkable accomplishments achieved by the free world economy over the past twenty years.

These twin deficits menace the continued strength and stability of the American economy, the future of the economies of many other nations whose destinies are closely linked to ours, and the viability of the international monetary system, which depends so heavily on a strong U.S. dollar as the world's principal reserve and business transaction currency.

The deficit in the U.S. balance of payments has been persistent for a number of years. It has caused a heavy loss in the liquid reserves behind the dollar. Although each year has seen an increase in our overall net asset position, including long-term as well as short-term assets and liabilities, our liquidity position as the world's banker has steadily weakened because of this increasing imbalance in our short-term position. This situation has been tolerated in the financial world primarily because of the strength and competitive capacity of the U.S. economy which has been capable in each of the last seven years of producing a substantial trade surplus.

But, in the last six months a sharp increase in our balance of payments deficit has been accompanied by a serious deterioration in our trade surplus, resulting from an economy that is growing at too fast a rate of speed, growth that is accompanied by an unacceptable rate of inflation, a wage-price upward spiral, and work stoppages, real or threatened, affecting key sectors of foreign trade.

A major contributing factor to the current balance of payments situation with its declining trade margin, and one that threatens our future prosperity and the stability of our domestic economy, is the coincidence of a highly stimulative deficit in our internal Federal budget this fiscal year with a period of expanding economic activity.

And what is more frightening is the massive deficit—in excess of $20 billion—projected for the next fiscal year—unless in the weeks immediately ahead the U.S. Congress—whose members you will be meeting this week—adopts a legislative package of fiscal restraint that combines a substantial income tax increase with a reduction in the expenditures and appropriations projected in the January budget.

Given our high employment economy with heavy defense expenditures some inescapable increases in the civilian costs of government, and a private economic sector that is advancing sharply on a wide front, the acceptance of enlarged deficits in the budget and the balance of payments is contrary to sound economic and financial policy—against all the wisdom either of conventional or the so-called new economics. Accordingly, it is the inescapable responsibility of the Government to use fiscal and monetary policy to reduce these deficits and to brake the economy to a safe cruising speed.

We are facing nothing less than a test of representative government in economic and financial affairs.

The ability of the United States to sustain strong, stable and non-inflationary growth is now being severely challenged and tested. The manner in which we respond to this test will determine our national capacity to avert the swings of feverish inflation, as well as the despair of recession or stagnation, by the intelligent use of a flexible fiscal policy conjoined to appropriate monetary policy. Make no mistake. Our economic future and that of the entire free world are at stake in this hour of fiscal responsibility.

The strength of the world economy and the continuance of a viable international monetary system depend to a large extent on a sustained level of stable economic growth in the United States and the maintenance of a sound dollar—sound in terms of prices and exchange rates.

This is true at all times, but particularly at a time when confidence in that system has been shaken, as it was last November by the devaluation of the British pound and a number of other lesser currencies, and the speculative buying of gold that cost the United States more than $2 billion of its gold reserves in these last six months.

We simply cannot—must not—under these circumstances continue to accept these twin deficits in our balance of payments and internal Federal budget. To do so is to forsake prudence, take intolerable risks, and refuse to exercise the fiscal discipline required for the preservation of a balanced prosperity. And without such a balanced prosperity, we can never hope to achieve our national goals of peace and progress abroad and domestic tranquility at home born of shared opportunities and benefits of our free private enterprise system.

That is not just the view of the Secretary of the Treasury. It is shared by the President, Chairman William McChesney Martin and the entire Federal Reserve Board, the Council of Economic Advisers, and the vast preponderance of economic and financial authorities, private and public, here and in other lands.

It is a view shared by many members of Congress of both parties including a substantial majortiy of the Senate, reflected in the voting in late March and early April on the Act referred to earlier.

But as yet, that sentiment has not been translated into the decisive legislative actions that is necessary.

What are the principal measures the Nation is asked to accept temporarily so that we can assure a safe passage through these financial shoals to continuing prosperity and security, while meeting our urgent national responsibilities at home and abroad? They are these:

1. A temporary increase in personal income taxes amounting to an average of one penny on every dollar of income we earn and a temporary ten percent surcharge on corporate tax liabilities.

2. A cut in Government expenditures and appropriations usable in the next fiscal year beginning July 1 for Federal programs of lesser priority and urgency. Some of these are identified on pages 20 and 22 of the President' January Budget Message.

3. Appropriate monetary policy which in this period calls for moderation in the provision of additional credit and money supply.

4. Avoidance of highly inflationary wage-price decisions and crippling work stoppages, real or threatened, that induce an increase in imports and interfere with export expansion.

5. Reductions in our expenditures overseas, both governmental and private, except where they are absolutely essential to our national commitments.

Having earlier recommended the tax increase and additional measures of expenditure control and reduction in his Message on August 3, 1967, President Johnson incorporated these proposals, together with a broadened and more stringent series of balance of payments measures, in his New Year's Day Message to the Nation.

This program includes unwelcome and unpleasant measures. It involves temporary sacrifices by the American people, our businesses and our banking institutions. We do not like to ask them—we cannot afford to ask less at this point of our history. Too much is at stake for us to rely on halfway, business-as-usual measures, hoping that they will suffice, thinking that we still have lots of time to come to grips with our financial problems. The simple fact is that—we are running out of time—and neither the United States nor other nations can wait much longer for us to bring our financial affairs much closer to balance.

Fiscal restraint is even more urgently required today than it was when the President recommended it to the Congress nine months ago. A tax increase on the scale recommended then, coupled wtih reductions in Federal expenditures, has been and continues to be the single most decisive and important action we can take to protect our economic security and strengthen the dollar.

At the direction of the President, my colleagues in the Administration and I, and the Chairman of the Federal Reserve Board,

have sought this tax increase and effective measures of expenditure control diligently and persistently—last August, again in late November, again in January. We pressed hard again in mid-March in the midst of the gold crisis.

It is now clear that the case presented then, and challenged by some, has been abundantly confirmed by developments.

Last August and on these later occasions, we urged that a tax increase, along with expenditure control, was necessary if the 1968 budget deficit then projected in excess of $20 billion was to be substantially reduced, thereby

(a) avoiding a coincidence of a highly stimulative deficit with a rapidly expanding private economy which would make the combination increasingly inflationary.

(b) minimizing the Federal credit demands which would otherwise induce substantially higher interest rates and tighter credit.

(c) protecting our trade surplus from the decline that invariably accompanies an excessively exuberant economy.

(d) maintaining confidence in the ability of the U.S. Government to put its financial house in order.

But there were those who insisted that a tax increase was not necessary, if only expenditures were reduced. In the field of expenditures, there was much talk and some action.

From August through November, appropriation bills for the entire range of Federal activities were enacted by the Congress. Upon the recommendation of the Administration, Congress enacted a law providing an omnibus, cross-the-board cut in all controllable expenditures. As a result of these actions there were specific reductions in expenditures for many budgeted items totaling $4⅓ billion.

But there was no tax increase.

What was the result?

Today the 1968 budget deficit is still running as high as it was last August.

Why?

Because while *controllable* expenditures were being reduced, others *less controllable* such as Vietnam war costs, interest on the public debt, and matching payments to states required by law were *increasing*.

Last August there were those who opposed the tax increase because they doubted the economic forecast of a fast-rising economy after the slow start of early 1967. What happened?

The gross national product increased more than $16 billion per quarter in the second half of 1967 in contrast with less than $6.5 billion per quarter average in the first half. And the increase in the first quarter of 1968 was an extraordinary $20 billion, exceeding all previous records. Inventory accumulation in the first quarter of 1968 was unusually low, so that final sales were up by an enormous $25 billion.

Last August there were some who doubted there would be an inflationary trend in the absence of a tax increase.

In the hot-house atmosphere of excessive demand, prices and wages were bound to rise sharply. The evidence that this is already happening is as plain as can be. In the first quarter, the GNP deflator rose at more than 4 percent at an annual rate. The consumer price index has advanced about 3¾ percent in the past year, and wholesale prices recently have shown very rapid advances. Wage settlements have become more inflationary. All of these developments, of course, create serious burdens and inequities at home and are a major detriment to our international competitive position.

The view is sometimes expressed that the inflationary pressures that we are now experiencing should largely be ascribed to "cost-push" rather than "demand-pull". The fact is that in recent quarters, the advance in over-all demand has accelerated sharply and that over the same period, there has also been a very substantial step-up in prices.

It simply is not reasonable to assume that these developments are unconnected. It is true that part of the present push for higher wages is based on a desire to catch up with prior increases in the cost of living. It is also true that if fiscal measures taken now should succeed in reducing over-all demand pressures, cost-push elements will still represent a substantial problem for the economy for some time to come. But this in no sense implies that there is no connection between over-all demand developments and price pressures. Indeed, if proper fiscal action is taken now, we will still have a fighting chance to move the economy gradually back toward price stability, both by reducing demand pressures on prices and by creating a better environment for coping with cost-push. If, on the other hand, we fail to take steps to contain excessive demand, the prospects of finding any effective ways of coping with upward price pressures from the cost side are virtually nil.

Last August we spoke about a continuance of the Federal deficit at a $20 billion level resulting in heavy burdents on the credit markets. I don't have to tell this audience what has happened to interest rates and credit. Rates have increased in all categories and credit is getting tighter—and the end may not be in sight unless there is a tax increase.

Last August we said our balance of payments position would be serious without a tax increase. It did become serious largely because of a sharp deterioration in our trade surplus that accompanied a too-rapid advance of aggregates of economic activity.

Action on the tax proposals has become the symbol all over the world of our willingness to manage our financial affairs as befits the country which provides the world's leading reserve and transaction currency. It has been the matter of gravest concern to my fellow Finance Ministers in every international gathering I have attended since August and in innumerable bilateral exchanges here in Washington. America is on trial on the issue of fiscal responsibility. More is expected of us—because ours is a reserve currency country. We are the world banker and the foreign holders of our dollars are, in effect, owners of demand deposits in our bank.

Confidence in the dollar has suffered somewhat because of the failure, up to now, of the United States to increase taxes and pay its bills in a manner conducive to the health of the economy and stability of the currency.

But happily this is not the end of the story.

It is the duty of the Secretary of the Treasury to speak plainly on these matters. And I have done so in the past as I do now.

But it is also his duty to keep trying, to retain hope, and to have confidence in the ultimate capacity of representative government to do what is plainly right, even in an election year.

It was out of this confidence that I said in mid-March, during the week of the last climactic run on the London gold market, to the Senate Finance Committee:

"In the light of all these factors, it seems to me that all reasonable men who want to preserve their country's economic and political viability ought to come together and put a tax bill on the books and do that promptly, and I hope the Congress will manage to do that within the next 30 days."

Let us review what has happened since that expression of hope.

On the following week-end, the Governors of the central banks of the seven participating gold pool countries met in Washington and took historic decisions to divorce the exchange of gold reserves among monetary authorities from the non-monetary markets, giving rise to a two-price system.

Two week-ends later the Finance Ministers and Central Bank Governors of the Group of Ten, the major financial powers, met at Stockholm. Except for the representatives of France, they reached agreements that enabled the Executive Board of the International Monetary Fund to conclude and release its Report on the Amendment of the Articles of Agreement of the International Monetary Fund providing for the deliberate and orderly creation of Special Drawing Rights, as new reserve assets to supplement gold and dollars. This will be the subject of a Presidential Message to Congress later today.

These significant decisions, however important to preserve and improve the workings of the international monetary system, are no final answer to the inadequacies of that system that stem from the deficits in our balance of payments and the waning confidence in the holdings of reserve currencies such as the dollar.

In their recent Communique on March 17th the Central Bank Governors noted that an underlying premise for the measures taken was their belief that "it was the determined policy of the United States government to defend the value of the dollar through appropriate fiscal and monetary measures and that substantial improvement of the U.S. balance of payments is a high priority objective."

This was but a realistic recognition of the fact that, without the maintenance of stability of the dollar as a reserve currency, all efforts to preserve, maintain and improve the international monetary system are endangered.

Because of intervening developments in both the Senate and House, I was able to say to my colleagues at Stockholm on March 30:

"Fortunately I am able to report to you that there is a rising tide of feeling in the Congress that the time for decisive action on the fiscal front is approaching. There is a growing sense of urgency that our financial situation must be corrected if representative government is to perform its function in meeting the necessities of the people rather than satisfying wishful thinking."

I did not give these assurances lightly. Before leaving for Stockholm I had noted, as you must have, that a bi-partisan coalition, led by Senator Smathers of Florida and Senator John Williams of Delaware, supported by both Senate Majority Leader Mansfield and Minority Leader Dirksen, had registered the clear conviction of a sizable majority of that body favoring a legislative package that combined in a single bill the President's tax proposals with specific and concrete measures for reductions in budgeted expenditures for fiscal 1969.

Moreover, as a result of extended consultations with members of Congress, I had concluded and had publicly stated that it was my belief that a responsible majority in the Congress is coming to the inescapable conclusion that we must increase taxes temporarily, and that if taxes are to go up, the increase must be made temporary by conjoining it in a procedural form yet to be determined with a reduction in the financial outlays and obligations projected in the January budget.

I said on March 26, while speaking in Philadelphia, "The procedure by which a formula for combining spending reductions and a tax increase is to be devised and enacted is a matter for decision by the Congress, its tax writing Committees, its Appropriations Committees, and its leadership."

May I add only that everything that has happened since that time has confirmed these views and this confidence.

On March 31 the President of the United States set country above self—and above all

personal partisan causes—by foregoing any plans to continue in the Presidency beyond next January 20. In so doing he said:

"The Congress is now considering our proposals, and they are considering reductions in the budget that we submitted. As part of a program of fiscal restraint that includes the tax surcharge, I shall approve appropriate reductions in the January budget when and if Congress so decides that that should be done.

"One thing is unmistakably clear, however. Our deficit just must be reduced. Failure to act could bring on conditions that would strike hardest at those people that all of us are trying to help."

On April 2 the Senate adopted the Williams-Smathers amendment providing for the tax increase and a cut in expenditures. On April 5 the House and Senate conferees began their deliberations; they were continued on April 10 and resumed on April 24 after the Easter recess, and will continue today.

Given the Government's serious financial situation now recognized on all sides, I am confident that the men of wisdom, experience and patriotism who are involved will not permit disagreements over details or procedures, or marginal differences as to the degree of expenditure reduction required, to prevent decisive action to reduce our twin deficits to manageable proportions.

And that decisive action should be early and soon. Additional delay only increases the risks.

It continues to be my hope and expectation that appropriate modifications can be developed which will satisfy the conferees on the substance of the bill; and that suitable procedures satisfying the rules and prerogatives of both Houses can be devised so as to permit early and favorable consideration of the agreed-upon measure by both Houses.

In this process the individual Congressman or Senator will not get just what he would prefer for his constituents or for the nation. Nor will the President, given the special constitutional power of the Congress over the purse. Neither will you or I. But acting together we can do what needs to be done—take care of our essential needs at home and abroad in a manner that will keep our economy stable and the dollar strong.

In this hour of national fiscal responsibility I ask for your help and I am confident of the result.

[From the Economist, May 11, 1968]

CONGRESS FACES THE TAX FACTS

WASHINGTON, D.C.—It has often been said of the United States Congress that it acts very foolishly much of the time but that on the major issues, in the end, it acts responsibly. The current question of a tax increase can be seen in this light. Very gradually it has been brought home to almost everyone that a second consecutive deficit of more than $20 billion in the Budget is wrong and irresponsible. When Americans found that they could not cash their traveller's cheques abroad at the height of the March gold crisis, when the foreign trade surplus disappeared altogether in March, when the consumer price index rose for the eighth consecutive month at an annual rate of almost 4 per cent, when interest rates went up to record levels (mostly because of the government's need to borrow heavily) members of Congress had to admit that something was wrong.

At this writing, the tax increase is not yet assured of passage. But after nine months of dawdling (which followed a much longer period of indecision on the part of the President), the Ways and Means Committee of the House of Representatives has voted 17 to 6 in favour of higher taxes. This committee has always been the primary hurdle and the way round it has been almost Byzantine. The Senate added the tax increase to a relatively non-controversial Bill extending certain excise taxes. So the fiscal potentates from the House of Representatives found themselves dealing with the matter in conference with the Senate, despite the constitutional provision that revenue measures must originate with the House.

On Wednesday the conference approved a tax increase in much the terms asked by the Administration—a surcharge of 10 per cent retroactive to April 1st on personal income taxes and to January 1st on corporate ones. Thus the House is now faced with the necessity of accepting or rejecting a conference report on a Bill which it has not itself passed; the procedural consequences should it reject the report are somewhat intimidating. But the conference's decisions have probably brought some Republicans in the House round to support the Bill, by insisting on a bigger cut in the Administration's spending than the majority of Democrats, and the Administration itself, had said that they would accept.

A wag has suggested that Mr. Mills, the chairman of the Ways and Means Committee, should be designated by the President instead of Mr. Averell Harriman to negotiate with Hanoi. He has been, over the nine months of indecision, a combination of mystery and stubbornness, shiftiness and public spirit. There is still much discussion of whether he did or did not agree at a secret White House meeting on April 30th to support the tax increase of $10 billion as part of a compromise package; it included a reduction of $4 billion in government expenditure in the new fiscal year starting on July 1st and even larger reductions—amounting to $18 billion—in commitments for future spending. For a while the President felt bitterly that Mr. Mills had misled him: then Mr. Mills permitted his committee to vote at last and the vote was favourable.

The President evidently believed that he had persuaded at least the Democrats in Congress, including many of the relatively conservative ones, that reductions in spending in the next fiscal year of more than $4 billion were positively not feasible. But the upshot of Wednesday's proceedings was that the Republicans stuck to their guns and insisted on the Bill's provision for cuts of $6 billion.

This is a bitter pill for Liberal Democrats, who now see their social and urban programmes threatened just when these are most urgent, and for Mr. Johnson himself, who has not concealed his opinion that a cut of even $4 billion would do definite harm. (The details of the cuts are not clear to anyone yet.) But the Democrats in the conference found themselves forced to agree to a reduction of $6 billion in spending in order to get the tax increase. In return, they have got the increase in full measure unless, against expectation, one or the other chamber balks. To many economists, of course, and perhaps to many citizens, it is an odd world when Congress will vote for higher taxes only as government expenditures are reduced, rather than when they are increased. But Mr. Mills sensed rightly all along that in the current mood the budgetary deficit must be attacked from both ends.

Mr. Johnson had accepted the $4 billion reduction in expenditure, which will not be easy, only reluctantly. The amounts—and the differences—seem small in a budget of $186 billion, but what is at issue is only some $39 billion that is in any way "controllable" in the fiscal year immediately ahead. Men can differ on what is right in the way of priorities, but that is precisely the problem; a majority cannot be mustered for massive reductions in spending on anything, whether it be agriculture or space, highways or urban works.

In an unusual outburst, Mr. Johnson insisted on May 3rd that the members of Congress "stand up like men" and vote for a tax Bill that they knew was "what ought to be done for the country." At first this seemed counter-productive, but once again Congress, and Mr. Mills in particular, has proved unpredictable. The members, a clear majority, do know that it must be done, though even now the final vote in the House is not a sure thing.

All through this agonizing struggle a strange combination of forces has held up the tax Bill—opponents of the war in Vietnam, conservatives who insisted that the problem was too much spending, economic sophisticates who denied that demand in the economy was excessive, a group that simply opposed Mr. Johnson on everything and, not least, a wide public revulsion against higher federal taxes at a time when state and local taxes have been rising steadily. Against this combination the views of foreign central bankers, not to mention those of the Secretary of the Treasury and even the President, have seemed to make little headway. And yet the facts have apparently sunk in. When the vote was taken in the Senate in early April, and then again this week in the House Ways and Means Committee, the majority for higher taxes was decisive.

TRIBUTE TO IRVING BERLIN

Mr. MURPHY. Recently, Mr. President, one of the world's greatest musical composers, Irving Berlin, observed his 80th birthday anniversary.

For millions of Americans, the mere mention of his name is enough to start them humming the strains of "Easter Parade," "Cheek to Cheek," "White Christmas," or one of the other immortal creations which sprang from his musical genius.

Today, however, I would like to direct my comments particularly to his great patriotic songs—"God Bless America," "Any Bonds Today," and the rest.

If ever a cliché were appropriate, it is surely accurate to note that they do not, indeed, write songs like that any more.

More significantly, however, there sometimes seems today to be a serious decrease in the type of fervent patriotism which flowed so freely and proudly from such Irving Berlin compositions.

His was a patriotism to be proclaimed unashamedly, accompanied by blares of trumpets and ruffles of drums, to all lands.

His was a patriotism neither too sophisticated to shed tears nor too faint-hearted to shed blood.

His was a flag-waving, parading type of patriotism which combined unrestrained emotion and deep dedication.

It is the kind of patriotism which the purveyors of alien philosophies among us try by ridicule and innuendo to stifle and kill.

Such patriotism, as I mentioned, seems to find less acceptance in these strange days of ultrasophistication, noninvolvement, and dissent.

But, thanks to men like Irving Berlin, it is not dead; and I can prove it. Just listen, once again, to "God Bless America."

You will see what I mean.

SMALL BUSINESS WEEK

Mr. BAYH. Mr. President, throughout the history of the United States, the small businessmen has played a significant role in our economy. The more than 5 million enterprises which are classified within the category of "small busi-

ness" employ nearly 40 percent of all workers, and account for about one-third of all goods and services.

Recently, it came to my attention that the Honorable Roger D. Branigin, Governor of the State of Indiana, has proclaimed the week of May 12 to 18 as Small Business Week in honor of the small firms in my State. This is a tribute which is richly deserved and should receive greater recognition. I ask unanimous consent that the official proclamation issued by Governor Branigin be printed in the RECORD.

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

PROCLAMATION FOR SMALL BUSINESS WEEK, MAY 12 TO 18, 1968

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

Whereas, the United States now contains more than five million small businesses which produce more than one-third of our goods and service and provide nearly forty per cent of the total employment; and

Whereas, small business firms are an indication of personal independence and today, more than ever before, the small business field is one of innovation and opportunity; and

Whereas, small firms, which have aided in advancing living standards of the nation, have made vast contributions to our national economic success:

Now, therefore, I, Roger D. Branigin, Governor of the State of Indiana, do hereby proclaim the week of May 12–18, 1968, as Small Business Week in Indiana in recognition of the many outstanding people in the field of small business.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of the State of Indiana, at the Capital, in the City of Indianapolis, this 25th day of April 1968.

ROGER D. BRANIGIN,
Governor.

EDGAR D. WHITCOMB,
Secretary of State.

TWO MORE VICTORIES FOR RICHARD M. NIXON

Mr. HRUSKA. Mr. President, Richard M. Nixon this week took two more long strides toward the Republican nomination for President and the White House.

On Tuesday of this week, the Republicans of my State of Nebraska added their votes to the impressive string of primary victories which Mr. Nixon has piled up across the country. The triumph was a smashing 70-plus percent of the vote, and he outpolled the combined votes of Senators KENNEDY and MCCARTHY.

At the same time, on a separate ballot, Nebraska Republicans elected an entire delegation of Nixon supporters. I am pleased that I was among those so honored.

Then on Thursday, the able Senator from Tennessee [Mr. BAKER] relinquished his own "favorite son" position in favor of Dick Nixon, placing the Volunteer State in the Nixon ranks at the Republican National Convention next August.

I heartily commend Senator BAKER for his leadership in this effort, and I congratulate him on the splendid statement he made at yesterday's press conference.

I have had occasion to be in Tennessee on two occasions within the past several weeks, and it is my observation that Senator BAKER's State, like Nebraska, is "Nixon country."

Mr. President, I ask unanimous consent, that Senator BAKER's fine statement of yesterday be printed in the RECORD.

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

STATEMENT BY SENATOR HOWARD H. BAKER, JR., REPUBLICAN OF TENNESSEE, FROM WASHINGTON, D.C., MAY 16, 1968

I am grateful for the endorsement of all nine Congressional Districts in Tennessee of my favorite son candidacy for the Presidential nomination at the Republican National Convention in August. However, I wish to decline that honor. I will support Richard M. Nixon.

I do so, not because I have known Dick Nixon for many years, which I have; nor because I have great affection for him, although I do; nor because he campaigned for me in my race for the Senate in 1966. Rather, I support him because I am firmly convinced that he is the candidate most keenly tuned to these times, that he will be the best campaigner in 1968, and the best President in 1969.

I have listened carefully to Mr. Nixon's speeches and carefully read his published statements of the last several months. I find in those statements imagination, vitality, compassion and firmness.

I know personally of his strong support for a society of laws which offer justice and equal opportunity to every man in housing, jobs and voting. I applaud his equally strong condemnation of those who would forget that order, as well as justice, is essential to a lawful society. And I thoroughly agree with his rejection of the trends of centralism which pervade Washington today and his insistence that there be a return of power from the bureaucracies in Washington to the people at home.

I believe he will be able to capture the mood of the Nation and point a New Direction for America.

As a result of my decision, the favorite son candidacy, which was never designed as a vehicle for personal gratification or obstructionism, no longer serves a necessary or even useful purpose. I hope to lead a unanimous Tennessee delegation to the Republican National Convention in support of Richard Nixon.

AN AMERICAN CITIZEN LOOKS TO THE FUTURE

Mr. McGOVERN. Mr. President, I am firmly convinced that the spiraling imbalance in our Nation's population is among the most pressing issues of our time.

We are faced with a monumental task in rebuilding and improving blighted urban areas and in meeting the problems of poverty, hunger, and despair that are the daily lot of many Americans.

These demands upon our national resources can, however, be traced in large measure to the Topsy-like concentration in urban areas that has been characterizing shifts in the location of the American people for many years. Already more than 70 percent of our population is stacked on only 1 percent of our land area; by 1980 it will be 80 percent of an enlarged population; and by the end of this century another 100 million Americans are expected to join in the congestion.

I do not accept these projections—or the trillion dollar estimated costs of Federal help to deal with the fruits of concentration—as inevitable. On the contrary, I believe that an intelligent country will ultimately recognize that we must make better use of the open space that is available.

Mr. Harold Spitznagel, a distinguished architect of Sioux Falls, S. Dak., has written a thoughtful letter to me in which he discusses some of the steps that should be taken. He suggests that "tax incentives, cooperation for an enlightened industry, plus governmental encouragement" should be combined to overcome the "abandonment of the rural areas, with all their natural advantages, and the lure of the overcrowded, mandefiled city."

Opportunities to move in this direction are encompassed in proposed legislation before Congress and in programs that are already in effect. S. 2134 and S. 2300, for example, would employ Federal procurement policies and tax incentives to encourage business to bring economic expansion to rural areas.

Because he has supplied a concise description of the issues involved, Mr. Spitznagel's letter deserves to be read carefully by each Member of Congress. With that thought in mind, I ask unanimous consent that the letter be printed in the RECORD.

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

THE AMERICAN INSTITUTE OF ARCHITECTS,
Sioux Falls, S. Dak., May 2, 1968.

Senator GEORGE MCGOVERN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCGOVERN: The following is, I readily admit, too long, but unfortunately, it is a subject that defies discussion in but a few words. My thoughts are not necessarily those of The American Institute of Architects but rather those of one who from a lifetime of experience fully realizes the difference between a program and the time required for its accomplishment.

Certainly in time, the U.S. Government will allocate an unprecedented and enormous sum of money for a program which it desperately hopes and no doubt believes will solve the problem of the city. I doubt if you would disagree with me when I say that money alone, even if aided by the most skilled planners, may well not be enough to solve a problem which has been hundreds of years in the making, and which has its roots, as you know, in ignorance, a lack of opportunities for an interest in education, poverty, sloth and indolence. Whether the white man is solely and entirely responsible for the existing conditions is a matter which I cannot with authority discuss, but it exists irrespective of the responsibility therefor.

I hope that in my following statements you will not conclude that I am by nature a pessimist, and I would hope that you would give me credit for being realistic, at least insofar as the area of design and construction is concerned. I have deep-seated fears that we will spend billions and that the results will be disappointing, if not catastrophic. A number of years ago I remarked to several of my friends that the buildings at that time being constructed by the Public Building Authority were nothing more than updated slums, and that in constructing these human filing cases, they had contributed little if anything to the improving of man's environment, much less offering a solution to the already festering urban crisis.

My present fear is that we will not only see more of the same, but unfortunately, hundreds or thousands of new housing com-

plexes which, because of their size, may well be considerably worse than those that preceded them.

Simply stacking families in an ever higher pile offers no solution to the problem, which in my opinion, has been and still is largely one of density. A 40-story housing unit will only tend to worsen the situation, and the prohibitive cost of urban property substantially restricts the prospect of the highly desired "open spaces."

The disrespect, vandalism, and lack of pride with which even the best of the new units have been treated by their inhabitants makes me shudder when I think of what the future may well hold.

There is no doubt in my mind that many of the proposed programs could be accomplished in what would be considered a relatively short period of time, i.e., some five to ten years; but the speed may well contribute little and probably greatly lessen the changes of an acceptable long-range solution to the housing problem.

We have recently seen how long it takes to accomplish even a relatively small development such as Reston, which, as you know, is now turning out to be somewhat less than completely successful in spite of the monumental and not unsuccessful effort to provide for pleasant living. All of the talk now concentrated on new towns is not realistic timewise, because I am sure that to plan and construct a New Town which would come close to satisfactorily accommodating its new population would require the better part of ten years. European experience documents this statement fact. If it is done in less time, I would question whether the results would be satisfactory because speed and appropriate environment seldom if ever go hand in hand, but are the result of long and skillful studies in Europe primarily by architects rather than giant corporations and war-born entrepreneurs seeking new outlets. I have no quarrel with New Town programs, but they do not offer any kind of immediate solution to a critical problem.

I am convinced that one, and not illogical, solution to the Urban Problem is dispersal, and only within the last year or so has anyone paid much more than lip service to this approach to a solution to the dilemma (I realize that both Senators Mundt and McGovern are working on this; but they are indeed in the minority; and unfortunately, I do not know if it has reached the level of the House of Representatives.) Recently, however, the United States News and World Report cited such a concept as being worthy of consideration. It would seem to me that when the whole problem is reduced to one in which there are too many people in one place and too few in another that if something were done to attract the many to the location of the few, the city problem would be at least partially and relatively quickly relieved.

I realize that most of the city dwellers and unfortunately, the executives in the large corporations view the small metropolis with a jaundiced eye where they feel that the climate is abominable, the temperatures either at sub-zero or blast furnace levels, and the opportunities for education and pleasant living limited or restricted. Anyone that has lived in this area, as I have, realizes that there are few facts that will support such an evaluation. Certainly, in cities such as Cedar Rapids, Rochester, Sioux City, Sioux Falls, and countless other communities, it would require but a minimum effort to provide for a considerable increase in population. This is primarily due to the fact that the BASIC public services exist and need only to be expanded. These, of course, include street systems, water and sewage systems, police and fire protection, educational, religious, and varying degrees of cultural and recreational institutions, as well as all of the other various facilities required by a city. It is true that if one were to start from scratch and had unlimited time and money, he would produce a better community; but my question is what is going to happen during the five or ten years which will be an absolute minimum requirement for the construction of the New Town from scratch.

I would not, by any means, suggest that the dregs of the cities population be dumped in the lap of the smaller community but rather that we make a major effort to create employment opportunities for many of the native born who have fled the smaller city for that reason, few of whom would not now welcome an opportunity to return, providing that they had appropriate income, not by any means more and in some cases less. If only a small proportion of these people are reclaimed, the overcrowding of the urban area will be proportionately reduced. I would not be so naive as to believe that we could syphon off only the cream of the urban crop, but we would have to also provide an appropriate proportion of job opportunities for those with minimal education and marginal skills.

The rural areas provide the ideal environment for satisfactory living which the urban scene cannot offer unless the problem of overcrowding is solved. Again you cannot hope to quickly clean up a condition which has had centuries of time to develop. I am hopeful, as no doubt are you, that tax incentives, cooperation from an enlightened industry, plus Governmental encouragement will aid in solving our problem which is the abandonment of the rural areas with all their natural advantages, and the lure of the overcrowded man-defiled city.

I realize that the Congressional Delegation is fully aware of most of what I have said; we are, however, as you also know, desperately in need of appropriate and immediate action lest both the city and the rural areas deteriorate further.

Respectfully,

HAROLD SPITZNAGEL, FAIA.

SECURITY IN ASIA AFTER VIETNAM—ADDRESS BY DR. MORTON H. HALPERIN

Mr. SPARKMAN. Mr. President, Dr. Morton H. Halperin, Deputy Assistant Secretary of Defense—International Security Affairs—for Policy Planning and Arms Control, delivered an address at Pomona College on May 7. Dr. Halperin's remarks on "Security in Asia After Vietnam" seemed to me to be most perceptive and objective. I commend his speech to the attention of Senators and ask unanimous consent that it be printed in the RECORD.

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

SECURITY IN ASIA AFTER VIETNAM

(Address by Dr. Morton H. Halperin, Deputy Assistant Secretary of Defense—International Security Affairs—Policy Planning and Arms Control, at Pomona College, Claremont, Calif., May 7, 1968)

It is a pleasure for me to be here today to participate in this series of discussions about U.S. interests in Asia, with particular reference to Vietnam. For various reasons, I thought that it would be appropriate for me to look to the period beyond the Vietnam War and to discuss with you U.S. security interests in Asia after the end of the Vietnam conflict.

I wish for this purpose to ignore the many problems and difficulties that remain in the way of bringing an end to the Vietnam war and to simply assume that the fighting has come to an end and an honorable peace established. Having asked you to make this rather bold assumption, you must also realize the extent to which I am crystal ball gazing.

In this new post-war period, what should U.S. objectives be? Are there events in Asia which could threaten the security of the U.S.? Are there other concerns which we as a people share and wish to have our Government express? These are difficult, complex questions. The world is no longer divided, as it was in the early post-war period, into relatively homogenous blocks competing at all levels for the support and allegiance of the non-aligned. In such a world our interest in containing the spread of international communism was relatively simple to define and this goal elicited wide public support. The world is no longer so simple and our interests are less clear.

What are we to make of a situation in which an Asian communist country seizes a U.S. vessel in international waters with the Soviet Union uninvolved and professing to be unable to do anything about it—while a short time later, the Soviets have one of their ships seized and held by their Chinese "allies"?

At the United Nations General Assembly, Special Session, currently underway, the delegates are debating an agreed Soviet-American draft of a Non-proliferation Treaty. If this extraordinary event is greeted by at least some countries as a welcome sign of the end of the cold war, others view it as a threat to their interests based on the collusion of the super powers.

None of this means that the Soviet Union does not in certain situations post a threat to American interests, but it does suggest that threats to the peace and stability of the world will in the future come from a variety of different sources and that all such threats need concern us directly.

Whatever the shape of the international situation, American foreign policy must have as its fundamental goal the prevention of actions which could threaten the existence of the U.S., or its way of life. On this principle I believe we could all agree. Where the disagreements and the tough decisions come in determining what events could threaten our security and what effective actions are to deal with these threats—effective both in the sense of coping with the external situation and in the sense of avoiding reactions at home which would themselves threaten domestic tranquility and progress.

In seeking to define where and how we must act, we are confronted by the painful fact that most other nations are too weak to enable those who are threatened to rely on them to protect their vital interests. The days when the British Navy was the bedrock of Western Hemisphere security are gone forever, and many nations with and without our consent have assigned to us the role once performed by Her Majesty's Fleet.

For this reason, we must be concerned not only with threats to particular pieces of territory which if dominated by hostile forces could threaten our security, but also with threats to the credibility of U.S. commitments and to the principles of peaceful change to which we are dedicated.

As difficult as it is to define the vital security interest of the U.S., the problem is further complicated by the existence of other objectives which are widely shared by the American people and which we expect our Government to pursue. The presence in the world of sick and hungry children, and of peoples striving to improve their standard of living and to increase the measure of human dignity afforded to the individual arouses our sympathies for reasons almost entirely unrelated to American security. There is nothing shameful or dangerous about pursuing such objectives, provided we do so with a large measure of humility, with a recognition that others may wish to define the institutions necessary for a good life in ways radically different from our own, and provided that we avoid syphoning energies or resources, or disrupting the consensus necessary to deal with our urgent domestic problems.

Let me now try to relate these broad and rather slippery concepts to the specific questions of American security policy in Asia, recalling that I have postulated an honorable peace in Vietnam.

The historical concern of the U.S. in Asia can, I think, be most clearly understood in terms of the two sets of objectives I have just outlined. First and most important, we have been and continue to be concerned with maintaining a balance of power in Asia so that no single nation can gain sufficient control of the area to directly threaten our homeland. The relevance of this concern to the current period, both the capability and the objectives of potential enemies, is a subject to which I wish to turn in a moment, but it is important to recall that not very many years ago the U.S. was forced to fight a long and bloody war because we failed to be concerned with the Asian balance of power. To those of us who did not experience these events, the concerns expressed by those who did may seem stereotyped and incomprehensible; but we must recognize that the cost of rejecting the true lessons of that experience could be very great.

Behind the shield of the military power of others the U.S. for many years pursued humanitarian and economic objectives in Asia. We continue to have such objectives.

In the years following the end of World War II, the U.S., in seeking to avoid a repetition of the unchecked expansion of the power of a single Asian nation, entered into a series of treaty commitments with many countries of Asia. These treaties are relatively limited in scope, they commit us within the limits of our Constitutional processes to come to the aid of these governments when they are threatened by external aggression, or, in some cases, internal subversion supported by a foreign power. But there are great limits on what we are committed to do. For one thing, our obligation is only to aid the country being threatened. It is not to be construed as an obligation to defend it while its people stand on the sidelines cheering us on, but otherwise proceed with their business as usual. Nor are we committed to keep a particular government, or even a particular set of political institutions intact.

We could debate for a very long time whether such commitments were wisely entered into. Such debate, while important, should not obscure the fact that these commitments were entered into solemnly with wide support from the Congress and the American public. We cannot lightly discard such commitments, or refuse to honor them; although we can, and must, be clear on just what we are committed to and take a very careful look at proposals for new or expanded commitments.

Most of our commitments in Asia arose from a concern about the threat from the Chinese mainland. I think that it is important that we be very clear in defining in what ways China threatens the security of Asian nations and in what ways she does not.

Any assessment of the Chinese threat must begin with consideration of China's capabilities, admitting at once that an analysis of capabilities tells us what a nation might do and not what it intends to do. We estimate that the Chinese are devoting approximately 10% of their Gross National Product to defense—a very large fraction for an underdeveloped rural society.

Some of this effort goes into the Chinese nuclear program. The Chinese have conducted a series of nuclear tests, and may soon deploy a limited number of missiles capable of reaching all of the major capitals of Asia. They are also working on ICBM's, and we expect that they could have a significant capability against the United States by the mid-70's.

Despite the emphasis in their rhetoric on wars of national liberation and the public attention to their nuclear program, most of the Chinese defense budget goes for the maintenance of the largest ground army in the world. The disposition and capability of Chinese General Purpose Forces indicates that the primary objective of these forces is to maintain a capability to defend the China mainland against attack. The Chinese have built up substantial air defense forces, but only a limited capability for air operations beyond their borders. The Chinese Communists still have only a very limited airlift capability for use in the Taiwan straits or elsewhere. The PLA could fight effectively against any attempt to invade China, but has only a very limited capability beyond its borders, although, in Southeast Asia, its capability far exceeds that of its neighbors.

Turning then to the much more difficult question of intentions, we begin with the fact that all of the leaders of China have a long background in revolutionary warfare, and they all view violence as an inevitable part of domestic and international politics. The leaders in Peking expect their adversaries to use force when it is in their interest, and they have long feared an American attack. The Chinese leaders share a belief in the notion that revolution must be primarily an indigenous movement, but they also believe that limited help from the outside can be of great value. We need, also, to keep in mind that the major preoccupation of the Chinese leaders—both Mao and the opposition—is with internal events within China and with the future shape of the Chinese revolution.

Thus, the main tasks given to the Chinese military have been (1) to maintain internal security, (2) to be in a position to defend China against external attack, and (3) to aid revolution abroad.

The Chinese have stated on a number of occasions that they will never use nuclear weapons first. I believe it is very likely that this pledge conforms with Chinese intentions. The Chinese fully understand the destructive power of nuclear weapons, and recognize that their use of nuclear weapons would bring an overwhelming response from the United States. The Chinese see their nuclear power as providing a deterrent against American actions aimed at preventing them from interfering in the affairs of their neighbors. They hope to be able to persuade the United States and China's neighbors that the U.S. will withdraw from Asia, rather than run the risk of nuclear war.

As I already suggested, China's conventional capability appears to be designed primarily for defense and internal security. However, as the Chinese indicated in Korea and on the Indian border, they are prepared to send forces across borders, either in extreme situations, or when they can with a limited action and at low cost gain a significant political advantage.

It is in the field of support for insurgency that Chinese capability poses a real and active threat to security in Asia. The Chinese devote only a very small fraction of their resources to developing a capability to assist insurgency abroad. They do, however, run training schools and produce small arms and equipment of use to insurgents. They are currently supplying substantial amounts of equipment to the Viet Cong guerrillas in South Vietnam and are aiding communist guerrilla forces in Thailand and Burma, in addition to training of potential insurgents from many countries throughout the world.

Threats to peace and security in Asia come not only from the Chinese Communists. Even if Peking were to become entirely preoccupied with its internal problems, Asia would still be an arena marked by violence and military conflict. For one thing, the two other Asian communist states, North Korea and North Vietnam, are on their own, and certainly without direction from China, supporting military adventures across international boundaries. The North Vietnamese military forces are currently operating not only in South Vietnam but also in Laos, and the North Vietnamese are aiding Thai insurgents. North Korea has just launched a disturbing campaign to seek to overthrow the Government of South Korea by infiltration of large numbers of guerrillas.

Violence also emanates, of course, from many noncommunist sources. Internal violence has marked political development in many Asian countries, and we can expect such violence to continue. Moreover, there are many local disputes between Asian nations.

Asia then will be a scene of political ferment, including possibly violence of many types, over the next decade. The question for American policy makers and for American citizens will be how to determine which acts of violence should concern us, and when we are concerned to determine how we can best contribute to a peaceful resolution of the conflict.

Let me begin by suggesting some of the things that we should not be concerned about, or rather events for which our concern should not be translated into government action of any kind.

As I have said, violence is frequently a part of the process of political and economic change in developing countries in Asia, as well as elsewhere. In some cases the violence is initiated by groups who would more effectively implement programs to develop their societies. In other cases, the violence is instigated by groups, whether on the right or left or in the center, who are corrupt or ineffective. In my view the United States does not have the power, the wealth, or the interest to intervene whenever violence flares up within a country. We have no commitment to any government to keep it in power against domestic enemies not supported by external force. We can and must discipline ourselves to remain aloof from intervention in such situations of internal violence.

The same holds true for local conflicts across borders involving states to which we have no security commitments. As much as we may deplore such activity, I believe that we should not step in ourselves unilaterally to resolve such disputes. We have obligations under the United Nations' Charter, which we take seriously, and we should always stand ready to work through the United Nations to mediate such conflicts and bring them to an end.

Such internal conflicts and local conflicts cover much of the violence which is likely to occur in Asia and elsewhere in the developing world over the next decade, but there are residual categories left in which the U.S. is vitally concerned, and in which U.S. action of some kind may well be needed.

The clearest need for a U.S. role in Asian security affairs is in relation to China's nuclear capability. As I have suggested, it seems very unlikely that Peking would use her nuclear weapons, but such action is unlikely, at least in part, because the Chinese have no doubt that the U.S. would respond. Moreover, at least some Asian nations are more concerned than we are about the possibilities of Chinese nuclear threats.

The General Assembly in the United Nations is now meeting, as I noted at the outset, to discuss one of the most important treaties which we have ever negotiated. If this treaty succeeds, mankind will be spared the great danger which would come from the spread of nuclear weapons to a large number of countries. But the treaty will only succeed if the U.S., and the Soviet Union, are prepared to take the steps necessary to convince other countries that they need not develop their own nuclear capability. This problem is particularly acute in Asia where there are several potential nuclear powers.

We and the Soviet Union will have to demonstrate that we are seriously negotiating in an effort to end the nuclear arms race between the two countries. The U.S. some time ago proposed that the two countries engage in serious bilateral talks on limiting strategic defensive and offensive systems. The Soviets agreed in principle to such talks and the Soviet delegate in his opening re-

marks at the resumed session reiterated his government's interest in negotiations to limit strategic forces. We continue to hope and expect that the Soviet Government will soon agree to a date for talks to begin.

As long as mainland China remains aloof from international arms control negotiations and as long as countries fear the possibility of Chinese or Soviet nuclear threats, the U.S. also needs to make clear its willingness to oppose nuclear threats if the nonproliferation treaty is going to be viable. We have attempted to demonstrate our resolve in two ways. The U.S. has treaty commitments with a number of Asian countries, including Japan, the Republic of China on Taiwan, Korea, Australia, New Zealand and the Philippines. As we have made clear both publicly and privately, these treaties are in no way limited to particular weapons. The U.S. has a firm commitment to protect these countries against nuclear threats and our top officials have made it clear that we intend to honor those commitments. Were we to abandon these commitments, the pressures in several countries now allied with us to develop their own nuclear capability would be very great.

For countries with which we do not have treaty relations, but which refrain from making nuclear weapons, the U.S. has in the past offered unilateral assurances of a general nature. In connection with the non-proliferation treaty, we and the Soviets have agreed to sponsor a Security Council resolution which recognizes the need for the nuclear-weapon state permanent members of the Security Council to act immediately, in accordance with their obligation under the United Nations Charter, in the case of aggression accompanied by the use of nuclear weapons. The U.S. intends to issue a unilateral declaration warning that any state which uses, or threatens to use, nuclear weapons will have its actions countered effectively. The Soviets intend to issue a similar declaration. These steps stem from our desire to prevent the spread of nuclear weapons—not from an impulse to take on greater responsibilities for their own sake.

In the case of overt conventional attack against countries to whom we are committed by treaty, U.S. interests also require that we act. We cannot lightly ignore the commitments we have made. Thus, we do better to make our intentions clear in advance in the hopes that we can thereby deter overt aggression. But such deterrence requires that we maintain appropriate military forces and develop plans to use them.

Our treaty commitments and our concern for non-proliferation require us to maintain a credible deterrent against nuclear threats, and overt conventional aggression against countries to which we are allies. In some cases, I believe, we will wish to intervene to assist in resistance to externally supported insurgency.

But a willingness on the part of the U.S. to intervene does not mean that we will do so automatically, or without regard to what is happening in the area.

The U.S. attitude toward intervention might well be expressed in terms of three principles: (1) self-help, (2) regional responsibility, and (3) residual U.S. responsibility. Let me try to explain briefly what each of these means.

The principle of self-help is simply the notion that the country being threatened must take primary responsibility for its own security. In the case of conventional threats, we expect the country under attack to man the first line of defense. Depending on their own capability and that of potential enemies, we would expect them to be responsible for at least the early stages of any conflict and in some cases for the entire burden of providing ground forces. We would expect them, also, to maintain the necessary bases and facilities so that U.S. forces can return quickly when necessary, but need not remain permanently in large numbers in overseas bases.

In the case of insurgency, we expect the local government to play an even more dominant role. In Vietnam the U.S. assumed a major share of the burden of fighting the war only because South Vietnam was confronted not only with insurgency, but also with what amounted to an overt conventional attack by regular North Vietnamese units. In the face of this sudden invasion, we were forced to assume a major role in the combat, but we have now begun the process of turning over more responsibility to the South Vietnamese military forces and we expect them to assume an ever-growing share of the burden. In the case of other countries in which there are lower levels of external support, we would expect the local government to carry the full load of combat military operations. We would expect them also to take primary responsibility for developing the necessary plans and programs to deal with the insurgency.

Finally, and most important, we expect the local government to play the primary role in those programs of political and economic development which will enable the government to build sufficient support and cohesion to effectively prevent the emergence of an insurgent group which can be effectively supported from the outside.

We take this attitude in part because we cannot rightly ask our own people to sacrifice if the people under direct attack are not doing their share but also because our efforts cannot succeed unless the local forces are assuming a primary burden. Insurgency cannot be checked by an American effort.

The principle of regional self-help means that we expect neighbors to work together to deal with the economic and political causes of instability. There have been very encouraging steps in this direction over the past several years. I refer not only to the contributions of several countries to the effort in Vietnam, but also to the growing number of associations for political and economic operations in Asia. To the degree that these associations are effective, the countries concerned will be in a better position to prevent the emergence of insurgency, and to develop both economically and politically.

Where events reach the stage of overt insurgency, we would hope that the governments of the area will cooperate in providing technical assistance and advice, and, where the insurgencies are located along a common border, will work together to deal with the threat.

Where outside military forces are needed, we would expect that they will be provided, at least in part, by the neighbors of the country under attack.

In considering the prospects for regional and economic and political cooperation, our attention falls, in part, on the potential role of Japan, which is by far the greatest industrial power in Asia. The Japanese fully recognize their responsibility, and we expect them to play an increasingly active role in assisting the countries of the area, both economically and politically.

We look forward to increasingly more intimate ties with Japan in our common effort to promote political and economic development in Asia.

Historically, Japan has been keenly aware of the direct bearing of the security of adjacent areas such as Korea and Taiwan to its own security. Sensitive to the desire of Asian countries to avoid domination by any power, Japan has in the recent past played a quiet but vital role in economic development in both the private and public sectors to the point where it is today principal trade partners and principal source of investment for most East Asian countries. In the coming years, this trend is likely to continue, as well as Japan's cautious leadership in such Asian organizations as the Asian Development Bank, ASPAC, and the Southeast Asian Ministerial Conference, an annual meeting of economic ministers which Japan organized.

The third principle I suggested is that of residual U.S. responsibility. The first aspect of this principle is that we cannot and will not do the things which the nations of the region can and must do for themselves. This means also that we intend to keep our presence in the area at the minimum essential level. The President and the Secretary of Defense have made it clear that we do not desire to maintain any permanent bases in South Vietnam. In other countries in Asia, I believe that we would keep only those forces necessary to make our commitments credible and to perform necessary support functions.

We will provide, as I have said, nuclear guarantees which will make it unnecessary for the countries of the area to develop their own nuclear capability, and effectively to check any Chinese temptation to use their nuclear power. We will continue to maintain conventional ground and especially air forces to reinforce the efforts of our treaty partners in deterring, and when necessary resisting, aggression. We will, within the limits of the assistance voted by Congress, want to provide military assistance to help support both conventional and counterinsurgency forces of countries confronted by external threats. Finally, our economic assistance will constitute our most important contribution to political stability and security in Asia. Such military and economic aid is absolutely essential if we are to rely on local forces to play the primary role in defense. Many of these countries simply cannot afford to maintain the necessary military forces while proceeding with economic development. Taiwan and Korea are both cases in point. These countries have sustained impressive rates of economic growth while maintaining the military forces necessary to deter any attacks; they have been able to do so only because of our assistance—both economic and military. In the case of Taiwan the success of its efforts had enabled us to terminate grant economic assistance and to shift much of our military assistance to credit sales. In the case of Korea the increasing North Korean efforts at subversion will require us to continue substantial aid programs for some time to come. But such aid is well worthwhile provided it is used effectively, as it has been, since it enables the Koreans to assure—as they wish to do—primary responsibility for their own security, and it is far cheaper and more effective than our trying to do it for them.

Finally I should say a word about the prospects for improving our relations with the communist states of Asia and in particular with China. The basic thrust of our policy was stated very clearly by President Johnson in his State of the Union address in January 1968 when he said:

"We shall continue to hope for a reconciliation between the people of mainland China and the world community—including cooperation in all the tasks of arms control, security, and progress on which the fate of the Chinese people, like the rest of us, depends.

"We would be the first to welcome a China which had decided to respect her neighbors' rights. We would be the first to applaud were she to concentrate her great energies and intelligence on improving the welfare of her own people. And we have no intention of trying to deny her legitimate needs for security and friendly relations with neighboring countries."

But change in our relations with Peking will come only very slowly and only, I believe, when China's relations with her Asian neighbors improve. Our more satisfactory relations with the Soviet Union developed after, and in large part depend on, an understanding that neither side will use force or the threat of force in Europe. Another Soviet effort to erode our rights in Berlin, for example, would rapidly chill our relations with

Moscow. The situation in Asia is similar. We can and do seek a better understanding with the Chinese mainland. However fundamental changes in our relations with Peking, Hanoi and Pyongyang will come only when these countries cease to employ threats of force against their neighbors and end their support for insurgency. We have no desire to encircle or threaten China and we look forward to the day when China's relations with her neighbors will make a U.S. military presence in the area unnecessary.

We should not become the world's policemen, and we have no intention of acting like one. Neither are we irresponsible citizens of the world who will stand by when other nations are threatened by external aggression, or when other citizens of this planet are living in hunger and misery. The necessary U.S. role in Asia is well within our economic and political capability. To do less is to invite disaster. To do more would be to neglect our domestic problems, and to seek to do what we cannot do and should not attempt.

NATIONAL UNITY OF PEOPLE OF SOUTH VIETNAM

Mr. McGEE. Mr. President, the impressions of well-informed Americans who have been to Vietnam are important, I think, to all of us in assessing the situation in that war-torn country. So it was with deep interest that I read in last Sunday's Denver Post an account of an interview with Richard M. Schmidt, Jr., general counsel of the U.S. Information Agency. He reported, after a 5-day tour of Vietnam, that he was encouraged by the sense of national unity being evidenced by the people of the South. I am encouraged that a man of the caliber I know Dick Schmidt to be has made such a report. I ask unanimous consent that the article, written by Denver Post reporter Donna Logan, be printed in the RECORD.

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

USIA AIDE'S FINDING: SOUTH VIETS GAINING SENSE OF UNITY

(By Donna Logan)

Richard M. Schmidt, Jr., general counsel for the U.S. Information Agency (USIA) who left Saigon last Sunday after a five-day tour of South Vietnam, reports that the "sense of national unity among the South Vietnamese is encouraging."

There is "considerable optimism," said Schmidt in an interview, that the South Vietnamese are building confidence in themselves.

The former Denver attorney met with officials of the Joint U.S. Public Affairs Office (JUSPAO) who are directing civilian efforts in areas of information and rural development in South Vietnam.

He observed rural development teams both north and south of Saigon, and said he was particularly impressed with an "urban renewal" program started by the South Vietnamese at My Tho, south of the city.

GREAT PROGRESS

There, said Schmidt, from Route 4 south to the Mekong Delta he saw "hardly any military presence" and "great progress in civilian aspects of the economy" since the Viet Cong had been driven out.

Civilians have begun new water systems and sewer lines and housing, Schmidt said, in areas freed of Viet Cong. The agricultural progress has been "outstanding" and the Vietnamese are establishing productive truck farms to supply the cities with food from the delta farmland.

Schmidt reported meeting with village elders, "drinking tea with Buddhist nuns" and seeing evidence of a "bustling" economy in the My Tho region.

Farther north at Bien Hoa, Schmidt said, there is an increasingly bustling economy as consumer goods are "more and more in demand."

TV SETS APPEAR

Television sets, for example, are becoming more numerous, he said, and have been placed by the Vietnamese government in strategic locations at marketplaces where people gather for information.

In the past 10 days, Viet Cong attacks have been aimed at communications centers, particularly radio and television.

Schmidt said an attack May 3 in Saigon against the government television station was repulsed by South Vietnam reaction forces which "did a fantastic job of pushing them (Viet Cong) back."

"Since the Tet offensive," Schmidt said, "the war has been brought closer home to the residents of Saigon in the physical sense."

Surprisingly—to the Viet Cong—the citizens have turned to the South Vietnamese government instead of away and into the arms of the enemy, Schmidt noted.

At a meeting May 4, Ambassador Ellsworth Bunker pointed out the South Vietnamese have a new sense of unity toward the government instead of the village hamlet, Schmidt said.

DEFECTIONS INCREASE

Schmidt added that defections of Viet Cong troops have been increasing.

In a battle May 1 during his visit, Schmidt said, allied forces stopped shooting and 95 enemy troops came over.

Schmidt added that Viet Cong soldiers are much younger and less well-trained than they have been.

"There are numerous reasons for optimism," said Schmidt, "though we all know we've got a long way to go. But the biggest reason is in the increasing confidence of the Vietnamese themselves."

A NEW ALINEMENT FOR AMERICAN UNITY—ADDRESS BY RICHARD M. NIXON

Mr. CURTIS. Mr. President, a highly significant speech was made last night by a man who a few years ago sat regularly in the Presiding Officer's chair in this Chamber.

The speech was a nationwide address on the CBS radio network, and the man who made it has become the man of the hour in American politics—the only man on the scene who can lead America out of the abyss of decadence, dispirit, and disarray into which our Nation has slipped.

The man of the hour is Richard M. Nixon, and the speech he made, entitled "A New Alinement for American Unity," is a clear, concise blueprint for pulling America and Americans back together again.

I ask unanimous consent that Mr. Nixon's outstanding message be printed in the RECORD.

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

A NEW ALINEMENT FOR AMERICAN UNITY

(An address by Richard M. Nixon on the CBS radio network, May 16, 1968)

Great movements and changes in the political scene are seldom recognized while they are happening.

They are perceived long afterward. Historians, looking back in American history, can spot the great shifts:

There was the time, 140 years ago, just after the Era of Good Feeling, when Andrew Jackson re-introduced the two-party system in America.

There was the time, 100 years ago, after the collapse of the Whig Party, of a new coalition that became the Republican Party.

And there was the time, 35 years ago, when Franklin Roosevelt assembled a Democratic coalition of organized labor, minority groups and the "solid" South.

That last assemblage of power blocs dominated the middle third of the Twentieth Century in America. But as we enter the last third of this century, it is time we recognize a profound change that has taken place in American politics.

PARALLEL IDEAS

Without most of us realizing it, a new alignment has been formed.

Most Americans have not been aware that this new alignment has been gathering together. Yet it has happened, and it is an exciting, healthy development.

More than a century ago, Alexis de Tocqueville put his finger on the mysterious formation of a new opinion:

"Time, events, or the unaided individual action of the mind will sometimes undermine or destroy an opinion, without any outward sign of the change. It has not been openly assailed, no conspiracy has been formed to make war on it, but its followers one by one noiselessly secede; day by day a few of them abandon it, until at last it is only professed by a minority . . .

"They are themselves unaware for a long period that a great revolution has actually been effected . . .

"The majority have ceased to believe what they believed before, but they still affect to believe, and this empty phantom of public opinion is strong enough to chill innovators and to keep them silent and at a respectful distance."

This new alignment is already a new majority; it will affect the future of all Americans for generations to come whether they are part of it or not.

The new majority is not a grouping of power blocs, but an alliance of ideas.

Men and women of all backgrounds, of all ages, of all parties, are coming to the same conclusions. Many of these men and women belong to the same blocs that formed the old coalitions. But now, thinking independently, they have all reached a new conclusion about the direction of our nation. Their very diversity of background provides a basis for a new unity for America.

THE REPUBLICAN VOICE

Listen to the conclusion as expressed by one group, the most visible one, voiced by many Republicans for many years:

"This nation has become great not by what government has done for people but by what people have done for themselves. The more centralized and domineering a government gets, the less personal freedom there is for the individual.

"The role of government is to do for people what they cannot do for themselves: to open up new opportunities, to mobilize private energies to meet public needs, to protect and defend every citizen, to create a climate that enables every person to fulfill himself to the utmost—in his own way, and by his own choice."

That's the Republican voice, the voice of both liberals and conservatives within the party, and its good sense is becoming more appealing to millions of Democrats and Independents. That traditionally Republican thinking is the well-spring of the new alignment.

VOICE OF THE NEW LIBERAL

But there is another voice saying much the same thing in a different form. It is the voice of the New Liberal.

That voice of the New Liberal calls for a workable form of "participatory democracy." It demands a political order close to the

people who are governed, in which the people play a vital part. That voice demands more personal freedom and less government domination.

Thoughtful critics like Daniel Moynihan and Richard Goodwin—both liberals—are giving the word another dimension. A century ago, to be a "liberal" meant to be against the domination of governmental authority, to put personal liberty ahead of the dictates of the State. Only recently has the term "liberal" come to mean the dependence on federal action to meet people's needs.

The future meaning of liberal is likely to return to the reliance on personal freedom. But it will have a difference: it will see that a key role of government is to provide incentives for the free enterprise system to accept more social responsibility.

In that context, liberals and conservatives will find themselves coming closer together, rather than splitting apart.

Just as there is a difference between the New Deal Liberal and the New Liberal, there is a big difference between the New Liberal and the New Left.

The New Liberal recognizes that progress and order go hand in hand. He points to the channels of protest open to those who dissent, especially through the electoral process. In this way, the American system can be a force for change without changing the American system itself.

The extremists of the New Left strongly—even violently—disagree. They say that the respect for dissent, the protection of their civil rights to protest peaceably, are only safety valves for the Establishment.

The very processes that permit gradual change are resented by these extremists. That is because they would find it much easier to break a rigid structure than to break our flexible one.

They feel—quite wrongly—that they have to tear down in order to build, shaking society to its foundations, leading us to anarchy. The New Left has a passion, while the New Liberal has a program.

And yet I have a feeling that many of the young people who call themselves New Leftists now are in fact far more closely attuned to the voice of the New Liberal. When it comes to a choice between getting something off your chest or getting something done, sooner or later most people choose to get something done.

VOICE OF THE NEW SOUTH

There is a third voice—the voice of the new South. Not the old solid South of the Thirties, of automatic voting habits and a declining economy.

The new South is no longer prisoner of the past; no longer bound by old habits or old grievances or the old racist appeals. The new South is building a new pride, focusing on the future, pressing forward with industrial development through resurgent private enterprise, forging a new place for itself in the life of the nation.

Politically, the new South is in ferment. It is breaking the shackles of one-party rule. Its new voices are interpreting the old doctrines of states' rights in new ways—those of making state and local governments responsive to state and local needs.

VOICE OF THE BLACK MILITANT

There is a fourth voice—the voice of the black militant. There is a deep and widening division between today's black leadership and the doctrinaire welfarist.

When you listen to these black voices, you hear little about "handouts" or "welfare." Instead, you hear the words "dignity," ownership," "pride." They do not want to be recipients, they want to be participants.

The message of giveaway, of handout, of permanent welfare is no longer of interest to people who want dignity and self-respect.

The nation, in its present economic crisis, cannot afford an increase in these giant welfare programs today.

What we can and should do immediately, is to respond to their demands for a share of American opportunity, for a legitimate role in private enterprise.

THE SILENT CENTER

There is a fifth element to the new alignment—a non-voice, if you will.

That is the silent center, the millions of people in the middle of the American political spectrum who do not demonstrate, who do not picket or protest loudly. Yet, these people are no less committed to seeking out this new direction. They are willing to listen to new ideas, and they are willing to think them through.

We must remember that all the center is not silent, and all who are silent are not center. But a great many "quiet Americans" have become committed to answers to social problems that preserve personal freedom. They have rejected the answers of the Thirties to the problems of today.

As this silent center has become a part of the new alignment, it has transformed it from a minority into a majority. That is why we are witnessing a significant breakthrough toward what America needs: peacefull, orderly progress.

DISHARMONY IN THE NEW ALINEMENT

My point is this: these voices—the Republicans, the New Liberals, the new South, the black militants—are talking the same language.

Let's not oversimplify. The voices are not joined in any harmonious chorus—far from it. The ideas of the new alignment differ in emphasis. But they do not conflict the way the old alliance of power blocs used to conflict.

The differences within the new alignment are differences of emphasis, not of fundamentals; differences in the *speed* of change, not so much in the *direction* of change.

Now, the new alinement's greatest need is to communicate with all its elements, rather than march along in parallel lines that never converge.

STRANGE BEDFELLOWS

You can be sure that the members of the old power blocs will try at first to dismiss this new majority as just an assortment of strange bedfellows.

But despite the differences in appearance, despite the differences in ways and means, despite the lack of communication, despite all the pains of realignment, the *fundamental agreement is there*. Even men who find each other disagreeable at first, can find themselves in agreement.

THE STRADDLERS

I do not claim to be the only one who notices the formation of this new alignment. On the campaign trail today you can see the politicians of the old order adjusting their appeals. It may be awkward, but they speak about "more Federal billions now for the cities" in one breath and then, in the next breath, talk of "an end to the old welfare system and a return to private enterprise."

These politicians are trying to have it both ways. On the one hand, they are reluctant to abandon the old power alliances that have served them so well in the past. On the other hand, they don't want to miss the new boat as it leaves the dock.

People today, and the political figures who appeal to them, will have to make the hard choice: whether to cling to the old power-bloc alliances of the middle third of this century, or to join the new alignment of ideas that will shape the final third of this country.

PROMISE OF UNITY

And therein lies the great excitement of this new alignment. Right now, we see our differences all too clearly; in the future, those of us in the alignment will see our similarity of methods and goals much more clearly.

The mark of a good insight is when everyone says "Of course—that's what I've been thinking all along, only I never put it that way." That is what is at the heart of the new alignment: the crystallization of what is on the minds of the American people today.

Tomorrow, as we focus the new movement more clearly, America will gain a new unity.

We will not seek the false unity of consensus, of the glossing over of fundamental differences, of the enforced sameness of government regimentation.

We will forge a unity of goals, recognized by men who also recognize and value their own diversity. That is the great advantage of an alignment of ideas over the coalition of power blocs.

As we coalesce the elements of this new alignment, some surprising things will begin to happen. As frustration ends, violence will wane; as runaway government is curbed, personal freedom will grow; as demeaning welfare systems are replaced, individual initiative will take the lead; as peace returns to the American city, America will be better able to build peace in the world.

JOINING THE NEW ALINEMENT

The new alignment speaks in many accents, and approaches its point from many directions. But the common message is there:

People come first, and government is their servant. The best government is closest to the people, and most involved with people's lives. Government is formed to protect the individual's life, property, and rights, and to help the helpless—not to dominate a person's life or rob him of his self-respect.

The concept is great not because it is new, but because it is right and it is relevant.

Victor Hugo pointed out that there is nothing so powerful as an idea whose time has come. The time has come for this idea. No one leader has drawn together this new alignment; it has been drawn together by the magnet of an idea that is right for our time, that speaks to us now, that has special meaning today.

How do you become part of the new alignment?

You don't have to be a member of any special party, or any union; you are not required to live in any region or any city; you don't have to be rich or poor, young or old. Because we're not dealing with blocs—we're dealing with an idea.

If you believe that people do come first; if you believe that dignity must replace the dole; if you believe that order and progress go hand in hand; if you are idealistic about personal freedom;—then you don't have to worry about where to go to join the new alignment.

You are already a part of it.

RISING TO THE CRISIS

The great re-alignments of our history did not take place in normal, quiet times. They took place when America was in trouble, or when the existing majority could not come to grips with the needs of the nation. And so, without realizing it, a new majority is formed and lasts as long as it meets the need for change. This is what we mean by "the collective wisdom of the people."

This is the unspoken voice of America, in its majesty and its mystery, demanding articulation by men who sense its new meaning.

That is why new faces with more of the old answers miss the point. That is why new leadership is needed now—leadership with a proven record of fighting for the action the new majority now demands.

No man can predict the ultimate shape of the alignment that is happening in America today. But I know this: It is alive, it is moving forward, it is rooted in reality, and it calls out for you to come aboard. In the years to come, I believe that historians will record this:

That in the watershed year 1968, America, in a time of crisis, responded as it has responded before—with new ideas, with great traditions, with a new alignment, and with the fresh hope that comes from a new unity.

AMERICA'S PROTECTIVE INFLUENCE IN ASIA

Mr. McGEE. Mr. President, if American influence in the world has declined, as some contend, that fact escapes the governments of other nations. As Crosby S. Noyes reported recently in a column from Tokyo, and published in the Washington Evening Star, the consuming interest in Japan is not with what is going on at home, but what is going on here in the United States. What policy Japan will follow will be largely determined by the future course of the United States. That is likewise true around the world. For that reason, Noyes writes, the Japanese idea of an acceptable solution to the war in Vietnam would be close, indeed, to the American ideal.

In another column, Noyes points out the simple fact of life which must confront us. It is that the free nations of Asia have come to look upon American military power as their protective curtain. If it is withdrawn, they will accommodate themselves to the power certain to fill the void—the Communists, led by the Chinese.

Mr. President, these columns by Crosby Noyes are, I think, on target. They should be read and considered by those who would consider either withdrawal of American power from Asia, or from Vietnam alone at this point, as well as those who would seek an end to the war there by accommodating the Hanoi government's desire for a hand in the affairs of South Vietnam's future. I ask unanimous consent that they be printed in the RECORD. Also, I ask unanimous consent that a column dealing with the question of withdrawing American troops from Vietnam, written by David Lawrence, and published in the Evening Star, be printed in the RECORD.

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

[From the Washington Star, May 14, 1968]

JAPAN RECOGNIZES ASIA'S STAKES IN VIETNAM

(By Crosby S. Noyes)

TOKYO.—No one, including the Japanese, is very interested in talking about Japan these days. The only question that seems to fascinate everybody now is what in the world is going on in the United States.

The traveler fresh from Washington is seized on eagerly and pumped for information for all he's worth. The election, the riots, the prevailing attitudes toward the war, the state of the administration—these are matters of literally universal concern. The inquiring reporter is lucky if he's able to get in a question now and then.

This concern is understandable enough in countries that have made common cause with us in Vietnam. It is more surprising in a country like Japan which is very far from being a client of the United States and whose support of our action in Vietnam has been, to say the least, reserved.

The interest is not academic. It is a measure of the extent to which the policies of almost every important country in the world are geared one way or another to the policies of the government in Washington. It is also a rather pointed commentary on those students of the international scene who keep expounding on how far American "influence" has declined in recent years.

The minute there is serious uncertainty about what the government in Washington is up to, there is equally serious uncertainty about the most fundamental policies of many other countries. And in democracies, the governments involved are likely to find themselves in real trouble.

Japan is no exception. President Johnson's speech of March 31 set off a political commotion here that is still causing tremors throughout the government.

There was a general tendency to look on Johnson's withdrawal from the presidential election as a kind of resignation. In a parliamentary democracy, the resignation of a government automatically implies an admission of defeat, raising the prospect of a drastic reversal of policy. In this case, of course, the crucial policy placed in question was the effort in Vietnam and the American position in Asia.

In the same way as our active allies in Vietnam, Japan's Prime Minister Eisaku Sato had the uncomfortable feeling that the rug was being yanked from under him. The assumptions on which his pro-American policies were based no longer seemed sure. The opposition could be expected to make the most of the situation. And Sato urgently required reassurance.

Nor was Johnson's withdrawal the only unsettling factor. The murder of the Rev. Martin Luther King Jr., the burning and looting in Washington, the picture of troops guarding the gates of the White House watched nightly on millions of Japanese television screens, added powerfully to the impression of an impending crackup in which Japan inevitably would be deeply involved.

Altogether, it has been a trying period. But now that things have calmed down somewhat, the net results, in the view of some people here, are fairly encouraging.

What has emerged is a new awareness of how closely the destiny of Japan is tied to that of the United States. And when it comes to Vietnam, it suddenly appears that the differences are very small, indeed.

It is still a touchy business. For the time being, at least, there will be no public statement from the Japanese government on what kind of settlement in Vietnam it would support. But it can be said on good authority that Japan's concept of an acceptable solution is one which Washington could easily buy.

Defeat and surrender in South Vietnam would be looked on as a disaster. Reunification is a long-range goal as in Germany and Korea. In the meantime, the objective should be the establishment in Saigon of a government enjoying strong public support.

A coalition involving direct Communist participation is not considered practical. The post-war government would have to be essentially non-Communist in character, although it is hoped that the more nationalistic elements in the Viet Cong might be separated from the Hanoi-dominated organization and play a role in the political life of the country.

The Japanese leaders are under no illusions about the difficulties involved in reaching such a solution through negotiations. They also believe that strong international guarantees would be needed to make any settlement stick. But they recognize now perhaps more clearly than before the stake which all the free nations of Asia have in Vietnam and the necessity of seeing the conflict through to a successful conclusion.

[From the Washington Star, May 16, 1968]

JAPAN A GOOD TEST OF DOMINO THEORY VALIDITY

(By Crosby S. Noyes)

TOKYO.—There has been a good deal of glib talk lately about the shape of a new American policy in the Far East once the war in Vietnam is over. Almost invariably it looks forward to a gradual withdrawal of American power in Asia, with Asians themselves taking over an increasing responsibility for their own defense.

Japan is a good place to test the validity of this theory. Because Japan is the only country in this part of the world with the potential muscle to make the theory work. But when it comes to the proposition of Japan taking on primary responsibility for the security of Asia, there is only one realistic message to pass along: Forget it.

Sure, the Japanese are interested. Their own security depends very directly on the stability of Asia as a whole. They are also well aware of the pressures to which small countries on the borders of Communist China are subjected.

They are even willing to help—up to a point. Japan is a charter member of the Asian Development Bank. It plans to provide major economic assistance to countries like Indonesia and participates in a number of regional development schemes.

But this, along with very active and profitable commercial activity everywhere in Asia, is as far as it goes. The stock argument is that the stability of the area depends ultimately on its economic well-being. And it is in this field exclusively that Japan plans to make its contribution.

Japanese leaders readily concede the need for military strength as well in Korea and many countries of Southeast Asia. Any contribution to the common defense by Japan, however, is firmly ruled out. This is one country where rejection of all forms of militarism has grown into something like a national religion. Sending Japanese soldiers anywhere in Asia in the foreseeable future is simply unthinkable.

Even in their own self-defense, there are definite limits to what the Japanese are willing to do. Any proposal to increase the strength of the country's modest home defense forces meets strenuous political opposition. In a recent incident, a minister of agriculture who was indiscreet enough to suggest that Japan should have warships to protect its fishing fleet in home waters was hounded into resigning.

Japan, to be sure, doesn't feel that it is directly threatened at this point. The American 7th Fleet is more than adequate protection against any invading force. The Chinese nuclear bomb is not yet considered much of a problem.

Of much more immediate concern is the situation in Korea, where the Communists have recently shown signs of wanting to provoke a renewal of the war. South Korea in Communist hands would represent an intolerable strategic threat to Japan. Yet in the direct emergency, no one here would dream of sending military support to South Korea. And no one in South Korea would dream of asking for it.

So those who talk about the withdrawal of American power in Asia—or as Sen. Eugene McCarthy would say, the "liquidation" of our commitments there—should have a very clear idea about what they are implying. The power vacuum created by such a withdrawal would be immense. And there would be quite literally no one other than the Communists to fill it.

The Japanese feel perfectly free to criticize many aspects of our policy in Vietnam and elsewhere. They may argue about the return of Okinawa and demonstrate against the visitations of American nuclear-powered submarines.

Yet at the same time, the Japanese, like all other non-Communists in Asia, have come to look on American military power in this part of the world as an established, permanent and indispensible fact of life. Far more than in Europe—indeed, far more than in any other part of the globe—reliance on American support is the foundation of all national security in the free nations of the Far East.

In this situation, it is not hard to predict what an American retreat in Asia would involve.

For the smaller countries, many of them already threatened by militant communism, there would be no choice except prompt ca-

pitulation. The innocent notion that nationalistic fervor is a sure bulwark against subversion and armed force would be small comfort to those involved.

The hardier nations, or those less immediately threatened, might indeed try to establish some system of collective security. But the collective weakness of these nations compared to the force that could be brought against them, the distances involved and the regional rivalries that still exist discourage any optimistic predictions. In all probability, the dominoes in time would fall.

And even for Japan, with all its potential power, the result would surely be a gradual retreat to a position of total neutrality. There would be no need for the United States to liquidate its commitments here. Once persuaded that they can no longer rely on America's performance, the Japanese themselves will cut the ties and make what accommodation they can with the new and very dangerous world in which they find themselves.

[From the Washington Star, May 15, 1968]

IS EARLY TROOP PULLOUT FEASIBLE?

(By David Lawrence)

Will the Vietnam War end before the presidential election is held in the United States? Will many of the troops then come home this year? If no peace agreement is made, will there at least be an armistice and a cessation of the fighting while the negotiations are prolonged beyond November?

Curiously enough, neither side has the answer to any of these questions at this time. The problem is complicated by the belief prevailing in Hanoi that the Democratic administration here is so anxious for peace that it will make almost any concession in order to get a pledge that the fighting will cease immediately while details are left to subsequent parleys.

The peace negotiations which will begin as soon as the preliminary problems of organization and participation are settled at the Paris conference will not be successful unless an over-all plan of settlement can be formulated. Undoubtedly some neutral governments in the world will play a part behind the scenes in suggesting various ways of achieving peace.

The North Vietnamese see an advantage in withholding any approval of an armistice until they have won some important concessions. What the Hanoi government wants is a formula that will permit it to take over South Vietnam. This will not be forthrightly asserted, and probably promises will be made that North Vietnam will respect the independence of South Vietnam.

The real difficulty is that Communist elements are inside South Vietnam. The government in Saigon is fearful that it will lose out if the American troops go home. North Vietnam's promises and pledges might be disregarded, and it is heard in South Vietnam that America would not promptly send its troops back to Vietnam.

This is why the United States is not likely to withdraw its troops until some international apparatus has been agreed upon to assure the fulfillment of the terms of the agreement. Many people who have been reading about the negotiations in Paris are assuming that it may be feasible to end the war before the American elections. But a halt of the fighting could be brought about only if both sides are willing, and the United States would not risk a big reduction of its forces until some practical plan for enforcing the peace agreement is developed.

It would appear, therefore, that no substantial number of American troops is likely to be pulled out of Vietnam for another year or more. The parents and relatives of the young men in the armed forces may, however, keep on hoping that the major fighting will be stopped between now and November.

The big question is when, if an armistice is agreed upon, American forces can begin to be withdrawn in large numbers. Certainly it would be prudent for the United States government to wait and see whether the armistice agreement is fulfilled. In the case of the Korean War, there were frequent violations of the armistice by the North Koreans and many American troops were killed after the cessation of the fighting had been ordered by agreement of both sides.

A Vietnam armistice could be signed after mutual concessions are made. But the document would be worthless until sufficient time has elapsed in which the good faith of the North Vietnamese can be tested. The prospects of an early "peace"—in the sense in which the term is being used in the United States—is not likely until next year, since an armistice will have to come first. The period in which the terms of peace are worked out could be lengthy.

It is improbable that a peace treaty between North and South Vietnam can be arranged unless several nations agree to pledge their military forces to support the agreement. This is properly one of the functions of the United Nations. The majority of the member countries, however, are closer to the Communist side, and the Soviet Union is not likely to permit any U.N. peacekeeping force to be established. But an international force can be set up by a group of nations irrespective of any relationship to the United Nations.

The problem of making peace in Vietnam is not necessarily going to be solved by the delegates to the Paris conference. Much will depend upon whether the Moscow government will really block all efforts and keep the Vietnam situation in the same unsettled state as the Korean truce has been for years.

AN ATTORNEY GENERAL FOR CONGRESS

Mr. PELL. Mr. President, a few days ago I read an interesting article written by Ernest Cuneo for the North American Newspaper Alliance, expressing the view that Congress needs its own Attorney General if its power and position is to be restored.

The idea is challenging and the objective is one with which I am sure we are all in accord.

Because I believe the article will prove interesting to Senators, I ask unanimous consent that it be printed in the RECORD.

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

CONGRESS NEEDS OWN ATTORNEY GENERAL IF ITS POWER IS EVER TO BE RESTORED

(By Ernest Cuneo)

WASHINGTON, May 7.—For a considerable time, there has been growing concern over the relegation of the Congress to a secondary role in the Nation's affairs. This has come about in two principal ways. The Senate, once all powerful in international matters, was all but completely emasculated in foreign affairs by the famous Curtiss-Wright decision of the Supreme Court in 1936. The decision held that the president was the sole spokesman for the Nation in foreign matters, that he need give the Senate only such information as he saw fit, and that his actions could not be questioned even in the courts. Added to his powers as commander-in-chief, in volatile and dangerous times, it is no wonder that Professor Corbin remarked that the Nation was back to the first institution of the Anglo-Saxon race, the elected kingship.

On the domestic side, Congress faced the dilemma of all powerful bodies, the paradox that the only way to exercise power is to delegate it. Congress created the vast governmental agencies ranging from securities and exchange to the power and the communications commission. These and other agencies regulate more of American daily life than it is pleasant to think about. The power of these agencies is such that it has been remarked that national elections may become irrelevant because American life is today largely governed by agency. Far from being responsive to the people, there is considerable doubt as to whether they are responsible either to the Executive Department or to the Congress. They have been described as revolving between them. Mohammed's coffin revolves twixt heaven and earth.

CONGRESS FAILED ITS DUTY

There never was the slightest doubt that the Congress was designed to be the supreme branch of the government, nor that it must be restored to its original position if we are to continue in a government responsive to the people. It is a fair statement, therefore, that the Congress failed its duty, not only to itself, but primarily to the people by allowing its power to be eroded.

The manner of the erosion of congressional power suggests the manner in which it can be restored. Assuming that the three great branches of government are equal, that is legislative, executive and judicial, it follows that the latter, the Supreme Court, usually has final say, in case of dispute. This is not provided for in the constitution. The Supreme Court itself simply took that power unto itself in the early case of Marbury vs. Madison.

CONGRESS UNCONSULTED

It is somewhat astonishing, therefore, that since the inception of the republic, the Congress provided for an Attorney General, who is in fact, house counsel for the executive branch, and provided for no attorney general for the Congress of the United States. Since the Constitution designedly built in frictions for the purpose of dividing power, it follows that on greatest issues, the Congress is represented before the Supreme Court by an Attorney General who represents only the executive. Thus, the Supreme Court and the executive branch often labor mightily to ascertain the intent of Congress, with Congress across the street and totally unconsulted. Of the finality of Supreme Court decision, Mr. Chief Justice Hughes said simply and forthrightly, "the Constitution means what the Supreme Court says it means." This is the present state of the law, but it was not designed so. Mr. Justice Holmes declared, that if the Supreme Court did not have the right to declare acts of Congress unconstitutional, the Union could continue; on the other hand if it did not have the right to declare acts and decisions of the various States unconstitutional, the Union would dissolve. The original Constitution gave no powers over Congress to the Supreme Court.

The Supreme Court, as do all other courts, accepts without question the rulings of the State Department on status of foreign matters. It would seem appropriate, therefore, that the Supreme Court accept the will of Congress as stated by Congress, and not decide itself what the Congress intended.

This, of course, would involve fundamental procedural changes in cases where the intent of a congressional statute is before the Court. There is, of course, the implied condition that if the Congress is not satisfied with the interpretation of the Court, it can change it by another law. But this is a slow and cumbersome business, and of no value in the case actually before the Court.

HEALTHY COMPROMISE

An extremely healthy compromise would be if the Congress looked to the protection of its constitutional powers by the creation of its own law office. Thus, it could create the offices of the attorney general of the Congress, with solicitors-general of the

House and of the Senate. By law, it could be easily provided that when the attorney general of the Congress deems that a fundamental constitutional right of the Congress is in issue, or when the intent of the Congress is a decisive issue, then the Congress itself shall have right to appear before the Court to memorialize the Court on what the Congress deems its intent or its constitutional right to be. Failing in this, that body most responsive to the people will continue to be shouldered, and alarmingly, into space more confined by the Courts, the agencies, the executive branch, for the reason that it did not assert its constitutional rights.

The creation of an attorney general of the Congress with solicitors-general of the House and of the Senate would instantly restore the Congress to the pre-eminence designed for it in the original Constitution.

SMALL BUSINESS ADMINISTRATION HELPS BUSINESS TO HELP ITSELF

Mr. SMATHERS. Mr. President, in these trying times when everyone seems to be making big troubles out of little ones, I should like to tell two stories about small business with much happier endings.

Each involves a helping hand from Government. One brought a disaster-stricken company to a richer life. The other made a more substantial success out of a little, plodding concern.

The first company is Melweb Signs, Inc., of Daytona Beach, Fla., which manufactures and installs neon signs and works on other outdoor advertising projects.

In 1953 it had 40 employees, did about $650,000 business a year, and had a net worth of about $215,000. The hurricanes came. When they had gone, the company had suffered more than $75,000 damage, of which little more than half was covered by insurance.

The Small Business Administration stepped into the picture with a $34,000 disaster loan, payable over a period of 10 years, at 3 percent, the rate set by Congress for such loans.

Instead of having to struggle and devote much of its energy to make up its loss, Melweb was able to embark upon an aggressive expansion effort.

The company used its investment tax credit and ploughed back into the company a substantial part of its earnings.

By careful analysis Melweb was able to determine that its future operations would be more successful in manufacturing neon signs rather than other related operations, and they have made the change.

It is a pleasure to tell how successful Melweb Co. has become. Their sales have passed $1.4 million. Their profits more than tripled, and their net worth has risen by more than $265,000. Perhaps even more significant to the economy, the number of employees of Melweb Signs, Inc., has grown from 40 to 100.

Our other case, which tells of a smaller success, is no less gratifying.

It is the case of the Strickland-Chrobak Corp. another Florida firm, this one in Jacksonville. It sells and rents scaffolding and construction equipment.

The business was started in 1956 as a branch of a Georgia company and was later bought by the Messrs. Strickland and Chrobak in June 1962. Early in 1963, when the Small Business Administration made a $20,000 loan to the company, they were doing a little over $100,000 a year business and had a net worth of $34,000—$20,000 of which was invested by the new owners.

In the first 10 months of the new operation, the firm earned a small profit, but its efforts were now directed toward specialty lines. The SBA loan enabled them to increase their rental inventory and gave them working capital so they could take on business which they had previously been unable to handle because of their short supply of stock and working capital.

The loan did the trick. Sales have now risen to a level of about half a million dollars a year, net worth has nearly tripled to $119,000, and that all important item, the number of employees, has risen from five to 11.

These two companies are prime examples of what President Johnson has stressed in his continuous efforts to help business to help itself. It is quite possible that each of these companies might have attained the same measure of success without SBA loans, but it certainly would have taken much longer.

This joining of efforts by the private sector has produced many obvious benefits. More capital worth has been created; new jobs have been created; and, of course, the national economy has benefited.

These are two more examples of what Robert C. Moot, Administrator of the Small Business Administration, pointed out when he said recently:

> We are carrying on the SBA promise that no small businessman will ever be allowed to falter for lack of any assistance we can give him. Congress gave us a mandate to help small business, and I hope the day never comes when we shall do less.

RED BUFFALO

Mr. DOMINICK. Mr. President, this morning the Secretary of Agriculture announced his decision not to permit the routing of Interstate 70 west from Denver, Colo., through the Gore Range-Eagle Nest Primitive Area—the Red Buffalo Route.

As one of those who have been deeply concerned over the location and cost of Interstate 70 across our great State, I am delighted with Secretary Freeman's decision against the Red Buffalo Route. This decision, if implemented by construction of the Vail Pass alternate, should mean earlier completion of the route to the western slope, perhaps by as much as 2 or 3 years, a saving in overall tax funds of more than $50 million, and a preservation of our wilderness resources, one of the great drawing cards for the people of Colorado.

Secretary Freeman's decision was arrived at only after long and detailed study of the problems involved, and I commend him for the care and depth of the research which he and his staff and many private groups gave to this troublesome problem.

Reconstruction of the Vail Pass Route by our fine highway department to conform to interstate specifications will improve the present highway enormously and should minimize most of the complaints which the opponents of the route have expressed. The grade will be less than that of Red Buffalo, the comparative danger of slides will be reduced, and the finished road will be available sooner, all at a saving to hard-pressed taxpayers.

The decision of the Secretary also conforms with the provisions of the Highway Act providing that highways shall not be constructed over recreation lands when a practical alternative routing is available.

Once again, I commend the Secretary and the private groups on both sides of this difficult problem who provided the detailed factual data on which the decision was based.

I ask unanimous consent that Secretary Freeman's letter to me dated May 17, 1968, his public statement, and his letter to Secretary of Transportation Boyd be printed in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
Washington, D.C., May 17, 1968.

Hon. PETER H. DOMINICK,
U.S. Senate.

DEAR SENATOR DOMINICK: When Congress passed the Wilderness Act on September 3, 1964, it was aware that one of the various routes under consideration for Interstate Highway 70, west from Denver, Colorado, would pass through the Gore Range-Eagle Nest Primitive Area on the Arapaho and White River National Forests. In recognition of this possible need, the Wilderness Act delegates to the Secretary of Agriculture the responsibility for determining if it is in the public interest to delete from the southern tip of the Primitive Area such area as may be necessary to accommodate the highway. In March of 1967, the Colorado Department of Highways requested through the Bureau of Public Roads and the Forest Service permission to locate Interstate Highway 70 through the Primitive Area.

Our Forest Service completed a comprehensive analysis of the resource impacts which would result from construction of the proposed highway in this location. In addition, we asked that two more independent studies be made. Hundreds of private citizens and groups wrote to give us their views.

After carefully reviewing all of the facts available to me, I have concluded that it is not in the public interest to modify the Primitive Area boundary to accommodate the Red Buffalo route for Interstate Highway 70. Attached are copies of my letter of decision to the Honorable Alan S. Boyd, Secretary of the Department of Transportation, and my public statement on the matter.

Sincerely yours,

ORVILLE L. FREEMAN.

DECISION ON THE REQUEST BY THE COLORADO DEPARTMENT OF HIGHWAYS TO ROUTE INTERSTATE HIGHWAY 70 THROUGH GORE RANGE-EAGLE NEST PRIMITIVE AREA, ARAPAHO AND WHITE RIVER NATIONAL FORESTS

(Statement by Secretary of Agriculture Orville L. Freeman)

The controversy over routing Interstate 70 through the Gore Range-Eagle Nest Primitive Area in Colorado represents, in microcosm, the larger question of how the public interest may best be served in the use of National Forest lands. It is a controversy that will rage with increasing intensity in the future as an expanding American population and a rising standard of living push relentlessly against a very fixed resource, our available land.

Although the decision to be made in this case was simple—whether or not to allow an Interstate highway to pass through a Primitive Area—the facts and arguments on both sides of the question that led up to that decision were anything but simple.

My decision is to preserve the Gore Range-Eagle Nest area by denying permission to build Interstate 70 over the Red Buffalo route.

Our studies show that the road through the Primitive Area—which has come to be known as the "Red Buffalo Pass Route"—would have a serious and permanent impact on wilderness values. It would destroy or seriously erode the wilderness resource on about 5,300 acres of land suitable for addition to the National Wilderness Preservation System. It would destroy another 4,800 acres also suitable for Wilderness preservation by cutting it off and isolating it from the main body of the present Primitive Area.

There are economic arguments—albeit with conflicting figures—for doing just this, for sacrificing the wilderness values in over 10,000 acres in the interest of speedier auto travel.

The Red Buffalo route would save about 10.9 miles. The State Highway Department estimates this shortened distance would save the motoring public some $4 million a year for the next 20 years. On the other hand, the wilderness route would cost some $76.3 million compared to $26.6 million by the longer Vail Pass route, the most often mentioned alternative.

Impact on forest resources—other than wilderness—would be about the same over the two routes according to our studies. The Vail Pass route would disturb about 6½ more miles of National Forest land and affect 2½ miles more stream than the Red Buffalo route. Impact on wildlife, livestock forage, fisheries, timber, and water quality would be roughly the same. But, as I said earlier, the impact on wilderness values would be very great indeed.

This is the conclusion reached by two separate studies of this Department—those of our Department's analysts and our Forest Service and also by the Interior Department's Bureau of Outdoor Recreation.

I have carefully examined these studies, others by the State Highway Department, and still others by concerned citizens and organizations.

I have also most carefully reviewed the charge given me by the Congress in the Wilderness Act of 1964, which delegated to me responsibility to make the specific decision as to whether this Primitive Area should be penetrated.

In addition, I have examined the history of this question. The Gorge Range-Eagle Nest Primitive Area was established in 1933. In 1941, 8 years later, its area was reduced to accommodate the present route of Highway 6 over Vail Pass; this decision having been made at the time because there was no feasible alternative for this important transcontinental route.

The evidence before me indicates that alternatives do exist, although my decision does not in any way determine the alternative; it merely precludes the Red Buffalo route through the Primitive Area.

This Department established the Nation's first Wilderness Area some 44 years ago. Before the Wilderness Act passed in 1964, we had designated 88 separate areas encompassing over 14½ million acres to be managed for wilderness purposes. We are proud that Congress endorsed this concept when it accepted 54 of these administratively designated areas with about 9 million acres as the nucleus of the National Wilderness Preservation System. It has been my personal privilege to put 11 areas containing over 2 million acres in the Wilderness System by Secretary's order. This is nearly one-fourth of the present Wilderness System. In the first 3 years after the Wilderness Act passed, this Department completed its review of 12 Primitive Areas and recommended additions to the Wilderness System which will add about 1,200,000 acres. One of these, the San Rafael, became the first addition to the original Wilderness System when President Johnson signed the act on March 21, 1968.

Through 4 decades, this Department has maintained that the National Forest Wilderness System should not be invaded—even for important purposes—if there is a feasible alternative. We have rejected the pleas of miners who would shatter the wilderness calm with the roar of helicopters because such use would make their work easier and more efficient. We have used primitive equipment and travel methods in administering Wilderness when modern motorized equipment would have been more convenient. I have urged the Kennecott Copper Corporation to forego development of large copper deposits in favor of the priceless, yet intangible, national treasures of the Glacier Peak Wilderness in Washington. I have consistently resisted efforts to cut the heart out of the San Gorgonio Wilderness in California for a winter sports development. We held then, and we hold now, that economics *alone* is not a sufficient basis for determining whether wilderness shall survive or die.

This philosophy has guided me in this decision. All of the National Forest resources must be utilized in the combination that best meets the needs of the American people. We have all the land now that we will ever have. As administrators of these lands, we must resolve conflicts in the interest of the greatest number of people in the long run, which is what I have attempted to do today.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., May 17, 1968.

HON. ALAN S. BOYD,
Secretary of Transportation.

DEAR MR. SECRETARY: On March 13, 1967, Mr. A. R. Abelard, Division Engineer, Bureau of Public Roads in Denver, Colorado, wrote to Regional Forester David S. Nordwall requesting that boundaries of the Gore Range-Eagle Nest Primitive Area in the Arapaho and White River National Forests be changed to accommodate the routing of Interstate Highway 70 via the proposed Red Buffalo Pass tunnel.

In accordance with the responsibility delegated to me by the Wilderness Act, this Department has completed its analysis of that portion of the Primitive Area which would be affected if the request were granted to determine its suitability or nonsuitability for designation as Wilderness. Our Forest Service has also made an analysis of the resource impacts which would result from construction of the highway over both the Red Buffalo route and the most discussed alternative route over Vail Pass. To be sure that no facts were overlooked, I also asked for two other independent studies—one by our Department's analysts and the other by the Bureau of Outdoor Recreation in the Department of the Interior. The numerous reports, letters, and other expressions from interested organizations and individuals have also been carefully considered.

These studies reveal that the majority of the affected portion of the Primitive Area is suitable for addition to the National Wilderness Preservation System. The impact on such resource values as wildlife, fisheries, water quality, timber, and grazing does not differ significantly between the two alternative routes. However, the proposed Red Buffalo route would destroy or seriously erode the wilderness resource on approximately 5,300 acres of the land presently suitable for addition to the Wilderness System. The remainder of the suitable area would be isolated from the main body of the Primitive Area, and its wilderness values would be seriously compromised.

The Department of Agriculture initiated the wilderness concept 44 years ago. Under this concept, it is in the public interest to designate for this and future generations some specific areas where roads will not be built. Congress endorsed this philosophy when it passed the Wilderness Act in 1964.

The Gore Range–Eagle Nest Primitive Area was established in 1933. In 1941, it was reduced to accommodate the present Route 6 over Vail Pass because there was no feasible alternative to that proposal. However, the evidence before me does not support a conclusion that a feasible alternative to the Red Buffalo route does not exist or that it would be in the public interest to delete an additional area from this designated Primitive Area for that route. I am, therefore, directing that the Regional Forester inform the Bureau of Public Roads that the boundary of the Primitive Area will not be modified to accommodate the highway route currently proposed by the Colorado Department of Highways.

Sincerely yours,

ORVILLE FREEMAN.

TELEVISION TIME FOR CANDIDATES

Mr. HARTKE. Mr. President, Clayton Fritchey, writer for the Washington Evening Star, today joins the growing number of newspaper writers, presidents of the major broadcasting networks, and Members of Congress, who are seeking the suspension of section 315(a) of the 1934 Federal Communications Act, for the duration of the 1968 campaign for the major candidates seeking the office of President and Vice President.

We need only to look back upon the experiences of the 1960 campaign, when a bill which I sponsored was enacted into law, thus making possible the great Kennedy-Nixon debates.

I have introduced a repealer measure during the first session, and have recently introduced a bill which would temporarily suspend section 315(a) for the duration of the 1968 campaign, if the Congress is not willing to repeal it outright.

I ask unanimous consent that this very cogent article by Mr. Fritchey be made part of the RECORD.

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

TV TIME FOR CANDIDATES A SPENDING REMEDY

(By Clayton Fritchey)

The Presidential election campaign still has six months to go, but even at this early date the spending is breaking records. The cost of one large state primary these days almost compares with the cost of a national election not so many years ago.

The public is rightly concerned. "Is Indiana For Sale?" asks one prominent publication. "Can A Nomination Be Bought?" asks another. It isn't just the Kennedy spending that is troubling, for all the candidates are pouring large sums into their drives. Nelson Rockefeller and Hubert Humphrey are not formally in the primaries, but they too will have to spend lavishly to meet the competition.

Nobody likes this, especially the candidates, but, as they point out, the cost of campaigning has soared, chiefly because of the rush to television, and the rising cost of that expensive medium. Candidates who cannot afford substantial television exposure are hopelessly handicapped.

The best answer to this problem is liberal free time (during premium hours) for television debates between the candidates, both in the primaries and the general election. This would cost the television industry millions of dollars; it would require difficult adjustments of programming; and no doubt would expose the industry to complaints from viewers who are indifferent to politics.

Yet, in the face of this, the industry appears to be not only willing but eager to undertake this public responsibility. Frank Stanton, president of CBS, has been openly

campaigning for Congressional authority to sponsor in 1968 the kind of debates (Kennedy vs. Nixon) that were the high point of the 1960 campaign.

Some weeks ago there was doubt that the incumbent President would be willing to participate in debate, but Johnson's retirement has overcome that obstacle. Since then, all the candidates have indicated interest in the proposal, for the debates would certainly ease the drain on their campaign funds.

Hence, all that stands in the way is Congressional reluctance to modify Section 315 of the Federal Communications Act to permit television to give the major candidates free time, without also being required (as of now) to give equal time to every frivolous or crank candidate that runs for the Presidency. The famous Kennedy-Nixon debates were made possible in 1960 when Congress temporarily suspended Section 315 for the duration of that campaign. Otherwise the networks could have been forced to give equal time to 20 other obscure candidates, which, of course, was manifestly impractical.

Considering the success and popularity of the 1960 experiment, and the fair way it was conducted by the television industry, it is hard to understand why Congress is holding back this year, especially when television spokesmen have been offering to broaden this public service by extending it even to the Presidential primaries.

Supporters of Section 315 argue that it protects third parties. Actually, it tends to penalize significant third parties by lumping them together indiscriminately with the insignificant. The Wallace campaign, for instance, is a serious one, and, as Stanton says, broadcasters ought to be free to treat it as such; but if they have to give equal time to all third parties, significant or trivial, they'll probably give it to none.

The television debates of 1960 drew and held audiences 20 percent larger than the entertainment programs they pre-empted. They heightened interest in the election to an unprecedented degree, and on Nov. 8, 1960 a greater percentage of voters went to the polls than ever before in U.S. history—64.5 percent, as against 60.4 in 1956. There is everything to gain and nothing to lose by amending Section 315 for a trial period of several years. After all, it can always be reinstated if television abuses the change or fails to make the most of it.

TIME FOR COMMITTEE TO REPORT HUMAN RIGHTS CONVENTIONS

Mr. PROXMIRE. Mr. President, since its founding in 1945, the United Nations has struggled and striven to maintain the peace and protect the human rights of all individuals. The fight has been long and hard and not entirely successful.

But at least in its quest for peace, the U.N. has had the complete support of the United States. Such cannot be said about human rights. Here the United States, particularly the U.S. Senate, has been content to sit on the sidelines and watch the show.

Since 1948, the United Nations has produced 20 treaties designed to insure human rights. The United States has ratified only one of these treaties. This is a pitiful record. Surely we can do better.

Even now, the Committee on Foreign Relations is sitting on two conventions, Forced Labor and the Political Rights of Women, on which hearings have already been held. The time for action is now. I call on the Committee on Foreign Relations to report these treaties so that the entire Senate may have a chance to vote and go on record.

A TRIBUTE TO JOSEPH HUDSON, JR., DEERFIELD BEACH, FLA., WHO DIED IN THE SERVICE OF HIS COUNTRY

Mr. SMATHERS. Mr. President, I should like to give recognition today to a young man from my State who died in the service of his country.

On March 5, 1968, the Sun Sentinel, of Pompano Beach, Fla., reported that Pfc. Joseph Hudson, Jr., of Deerfield Beach, Fla., was listed as killed in Vietnam. On June 28, 1966, Joseph enrolled in the Job Corps at the Wolf Creek Job Corps Civilian Conservation Center, in Oregon. He had been out of school 24 months after completing the 11th grade. He had tried to enter the Armed Forces, but was classified 4-F. The West Palm Beach, Fla., State Employment Service Office advises that Joseph "comes from an area of extreme poverty." Joseph graduated from the Wolf Creek Center on December 12, 1966. The employment service stated that he "was well on his way to making something of himself." He had reportedly been in the Army for about a year.

Unfortunately some people have the misconception that the Job Corps is a haven for draft dodgers. What Job Corps actually does is to equip many youngsters who wished to enlist but were previously rejected by the Armed Forces for service. As of March 1968, 10,123 Job Corpsmen had entered the Armed Forces. These are young men who come from the same type of background as those who are engaging in unlawful acts in areas of unrest in our cities. As opposed to their contemporaries, however, these young men have and are defending a system which has helped them on the road to achieving their full potential.

I commend the initiative and service of Pfc. Joseph Hudson and express my deepest sympathy to his family and friends.

OBJECTIVES AND RESOLUTIONS OF THE NAVY LEAGUE OF THE UNITED STATES

Mr. FONG. Mr. President, Hawaii, a maritime State, was host to the 66th annual convention of the Navy League of the United States last month—April 21–27.

About 1,600 persons—1,200 from the mainland United States—assembled in Honolulu for the national convention, the first held by the league in the 50th State.

An independent, nonprofit, civilian educational organization, the Navy League serves as the civilian arm of the Navy. Its 304 councils are organized in 49 States, including Hawaii, and in nine other locations.

At its Honolulu convention, the league unanimously adopted a Declaration of Objectives and Resolutions, 1968. It is a statement which deserves attention and consideration. I quote from a portion of the statement:

Two significant events transpired during this past year which accentuate the necessity for a full scale re-determination of policy, program, and strategy to fulfill the objectives of our national interest.

1. The emergence of the Soviet Union, a nation heretofore dominated by a continental defense concept, as a fullfledged maritime power with expanding global ambitions.

2. The change of civilian leadership in the Department of Defense.

These two recent developments place sharp focus on the importance of the Navy League, as the "Civilian Arm of the Navy," expressing its purposes in terms of the national needs for decisive maritime power. It has been the conviction of the Navy League that restrictive policy, strategy, and programs in recent years have precluded the Naval Services from assuming a dominant role in defense required in the light of emerging threats and the volatile world situation.

Therefore, the League considers that a review and revision of these broad categories, which now inhibit the development of modern and decisive maritime power, is an immediate need.

The Navy League identified seven basic areas to which it invited the attention of the American people and the Government: First, national maritime policy; second, national maritime strategy; third, ship construction; fourth, oceanic education; fifth, current world crises—limited wars; sixth, personnel; and, seventh, oceanic research.

The convention adopted resolutions setting forth its policy on each of these basic areas.

I am especially pleased that the Navy League is continuing its efforts toward broader education among the American people in ocean-related activities, with emphasis on educational opportunities in our Nation's schools. Such opportunities are encouraged and made more available as a result of recent congressional legislation.

As a cosponsor of the Marine Resources and Engineering Development Act and the National Sea Grant College and Program Act, I was pleased to note the Navy League Convention in Honolulu adopted a resolution on oceanic education.

The resolution expresses the position of the Navy League, "as a matter of policy, to continue to foster the broad spectrum of oceanic education and research in universities, colleges, and institutes of education throughout the country to attain a preeminent intellectual foundation for gaining the fullest oceanic advancement in furtherance of the long-term security and prosperity of the Republic."

In connection with the convention, the two leading Honolulu dailies printed editorials which I commend to Members of Congress. One is entitled "Hawaii and the Oceans" and was published in the Honolulu Star-Bulletin of May 2; the other is entitled "U.S. Power at Sea" and was published in the Honolulu Advertiser of April 23. I ask unanimous consent that the editorials be printed in the RECORD.

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

[From the Honolulu Star-Bulletin, May 2, 1968]

HAWAII AND THE OCEANS

"The number of intellectuals in the United States oriented to the sea is very small.

"The number of these participating in U.S. policy-making is almost infinitesimal."

The author of this observation was an active participant in last week's successful Honolulu meeting of the Navy League of the United States.

The concern he expressed was central to the deliberations and recommendations of the League in its meetings here.

Some 1,600 persons gathered here, 1,200 from the Mainland, with their ranks well-dotted by retired admirals and captains and important business leaders.

President Charles F. Duchein expressed in his welcoming speech the central interest of the League in developing a wider resource of trained ocean-oriented people and of winning an ear for them when U.S. policy is made.

He spoke cuttingly of the fact the former Defense Secretary Robert McNamara frequently kept the Navy and other military chiefs from giving direct advice and counsel to the President. He gave praise to Clark Clifford, the new secretary, for appearing to change direction on this.

But Duchein expressed greater concern with the long run and the need for a nationwide educational program to encourage broader understanding of the oceans and the maritime concept.

In this Hawaii can heartily concur.

The League voted its approval of the Sea Grant College program as laying the foundation for providing a reservoir of ocean-oriented leaders for the future.

This program could have a long-term impact as significant as that of the Land Grant Colleges established a century ago.

The League also indorsed the Marine Engineering and Resources Development Act of 1966 under which a master plan for our future oceanic development is now being structured.

Some leaders suggested that "maritime parks" should be encouraged near Sea Grant campuses with industry and the academic world cooperating as now is done with industrial parks.

Others suggested that ocean-oriented industrial leaders would find ways to make the U.S. more competitive in ship construction, and pointed out that one firm (Avondale Shipyard in New Orleans) even now is almost competitive with foreign builders.

With proper emphasis, it is believed the U.S. could develop 100-knot ships and quick turn-around techniques that would open new markets to U.S. vessels. Less than eight per cent of U.S. trade now moves in U.S. bottoms.

Concern was expressed that the U.S. presently is lagging in all phases of ship-building and oceanic research, even fishing, while Russia is moving ahead.

The long-term answer was seen in building more ocean-oriented leaders for the U.S.

This is an area in which Hawaii itself should be able to make a great contribution.

It is an area to which ambitious young Islanders can well address themselves. Most academic disciplines can be related to the ocean.

Hawaii fully backs the League in its desire to see ocean-oriented leaders and intellectuals win a greater role in government.

It expects through the University of Hawaii to help train and supply them.

[From the Honolulu Advertiser, Apr. 23, 1968]

U.S. POWER AT SEA

The Navy League of the United States, the independent civilian support group, is holding its first national convention in Hawaii at a significant time.

It comes in a period of change when sea power, both military and civilian, is going to be increasingly important in the Pacific.

There is ample evidence of this on the military level.

Vietnam's outcome remains uncertain. But the hoped-for settlement and eventual withdrawal there seems bound to increase our future reliance on Pacific bases and naval forces.

Moreover, this does not come at a static time in the ratio of naval power and Communist interest in naval matters. One of the major military facts to emerge last year was the well-documented growth of Soviet sea power.

Not only has Russia dramatically increased the size of its fleet, it has increased its scope, even to the extent of building aircraft carriers and creating a marine corps.

The Russian naval buildup has been most evident in the Mediterranean and Middle East, where British withdrawal is leaving a vacuum.

But it seems only likely Russian naval activity will move around and down to Southeast Asia and out into the Pacific, the biggest geographical unit in the world and one where the Soviets do not have a base.

Thus, at a time when U.S. naval activity will become of new importance in security, it may also be meeting with increasing Russian activity in our Pacific lake.

But the prospects do not end there. Nor does the interest of the Navy League at this gathering.

One aim of the meeting, in fact, is to call for the launching of a new national maritime program. Part of the theme in this comes from a statement by Vice President Humphrey:

"The United States must have a maritime policy, if it is to remain a maritime power."

That we have no effective national civilian maritime development policy is almost as sad as the present state of our merchant marine.

The U.S. has declined to 12th place in the world on merchant ship construction and sixth place in active, privately owned merchant fleet. Russia has the world's fastest-growing merchant fleet. It will pass ours in tonnage in early 1970.

Writing in the current issue of Navy magazine, military specialist John G. Norris says:

"American-flag ships are carrying less than 8 per cent of U.S. foreign trade, compared to 50 per cent in 1950. While the world's shipping fleet has increased more than 60 per cent in the past 15 years, the privately owned U.S. merchant fleet has dropped by about 25 per cent."

Since maritime power is what President Eisenhower called the "four arm of defense," such facts have military implications that are naturally of special concern to the Navy League. But they also have economic implications that are important in terms of our balance of payments.

As dismal as our maritime picture is the difficulty in getting a realistic development plan going. As Norris points out:

"The public image of the maritime industry is of squabbling groups within both capital and labor, constantly demanding subsidies because of inefficient management and obsolete practices which make them unable to compete with other maritime powers."

If that seems like a harsh judgment for the public to hold, nobody should underestimate the problem or the need for something better.

Both the Administration and Congress are coming forth with programs, and the importance of doing so was pointed up by Acting Maritime Administrator James Gulick earlier this year. He said that unless a program were adopted the U.S. merchant marine would "go down the drain."

What's most needed is a program that will make the point to the nation, not to island Hawaii or the coastal states where interest in the sea and its potential is great, but all across the country where there are other preoccupations.

To do this is not easy. As we said in an editorial last October: More subsidies in the tired manner of the past do not seem the answer, if we are to truly move. Money must be used to stimulate new thinking rather than to solve old problems.

Such are the divisions over Vietnam and its military significance that not everyone is going to agree with all the statements made at this meeting where the military influence is strong.

But on the continuing importance of naval power in a vast and changing Pacific and on the need for a vigorous American merchant marine there is understanding and appreciation of the broad aspects of Navy League goals.

TRIBUTE TO THE LATE JOSEPH W. MARTIN, FORMER SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mr. THURMOND. Mr. President, I wish to add my comments to those which have been expressed in honor of the late Congressman Joseph W. Martin, former Republican Speaker of the House of Representatives during the 80th and 83d Congresses. When Joe Martin died, our Nation lost one of its great statesmen and great personalities. He was elected to the House of Representatives in 1924, serving in the 69th and each succeeding Congress including the 89th; he was elected minority leader in the 76th through 85th Congresses except the 80th and 83d in which he served as Speaker.

Joe Martin was one of the stalwarts of the middle 20th century. He protected our two-party system and helped to preserve the Republican Party which I have grown to respect and adopted as my own. He was his party's leader in the House of Representatives for 20 years, and it was because of his dynamic leadership that he acquired the well-deserved title of "Mr. Republican."

Mr. President, the whole Nation was saddened by the death of Joe Martin, and this sadness was deepest among those who knew him as a legislator. He was a great American, and his efforts helped to preserve the freedoms and opportunities of our great Nation for generations to come.

SENATOR JENNINGS RANDOLPH ADDRESSES SECOND SYMPOSIUM ON COAL MINE DRAINAGE RESEARCH, SPONSORED BY THE AMERICAN MINING CONGRESS, IN PITTSBURGH, PA., MAY 15, 1968

Mr. BYRD of West Virginia. Mr. President, yesterday in my Senate remarks entitled, "Acid Drainage Problems Studied," I called attention to the perplexing water pollution problems caused by acid mine drainage, which were being discussed at the second symposium on coal mine drainage at the Mellon Institute in Pittsburgh. This meeting was sponsored by the Coal Industry Advisory Committee to the Ohio River Valley Water Sanitation Commission.

At the symposium luncheon on May 15, attended by approximately 350 persons, my distinguished colleague from West Virginia [Mr. RANDOLPH] presented an eloquent discussion of industry and Government cooperation in water quality

control and particularly in regard to mine drainage pollution.

As chairman of the Senate Public Works Committee, Senator RANDOLPH has been a knowledgeable and realistic advocate of comprehensive programs dedicated to the improvement of water quality and the cleaning of our streams and rivers. He has been a diligent worker for vital research efforts and pilot and demonstration projects which hopefully will culminate in effective national pollution abatement processes. It is important to emphasize that our able colleague [Mr. RANDOLPH] has been in the forefront of the movement to develop a viable partnership between Government and industry in this complex area. In the final analysis, such a partnership will be the answer to making our waters clean.

I should like to note that Senator RANDOLPH has had a close and continuing interest in the specific field of mine drainage problems. He has had many years of experience, beginning with his work in the House of Representatives as a member of the Committee on Mines and Mining and chairman of its Subcommittee on Coal. I know that this early work has been a valuable asset in his present endeavors.

Mr. President, the senior Senator from West Virginia [Mr. RANDOLPH] gave a challenging address at the symposium luncheon. He was introduced by C. Howard Hardesty, senior vice president of Continental Oil Co., a native of West Virginia who has given constructive leadership to the coal industry and to our State in general. Mr. Hardesty has worked closely with Senator RANDOLPH and with me in efforts to provide realistic solutions to pollution problems.

Mr. President, I ask unanimous consent that the address of the Senator from West Virginia [Mr. RANDOLPH] he printed in the RECORD.

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

RESEARCH AND RESPONSIBILITY

(Remarks by Senator JENNINGS RANDOLPH, Democrat of West Virginia, before the Second Symposium on Coal Mine Drainage Research, American Mining Congress, Pittsburgh, Pa., May 15, 1969)

I am gratified to participate in this Second Symposium on Acid Mine Drainage Research. I am even more pleased with this evidence of the commitment of the mining industry to meet one of the critical problems of environmental pollution. For it is incumbent on all of us—in government at all levels and in industry—to strengthen our efforts to combat mine drainage pollution in order to compensate for the years of neglect in this area.

In referring to the "years of neglect," I do not charge industry alone for this condition. In 1926, the Secretary of War sent to the Congress the report of the Chief of Engineers on his investigation of pollution affecting the navigable waters of the United States. The Chief of Engineers discussed the seriousness of pollution from mine drainage wastes, but concurred in the judgment of the Bureau of Mines that investigation of neutralization methods should precede a decision as to "whether it is more economical, everything considered, to treat these wastes at their source, or to bear with the damage done by them later, if untreated."

The Chief concluded that until more information and data were available he would not "be prepared to recommend any Federal legislation for the prevention of pollution by acid mine drainage."

But the conditions and attitudes have changed in the four decades since the Chief's report, and surely no responsible person in government or industry would today deny the need for preventive and remedial legislation at both the state and Federal levels.

Nor would any responsible person today predicate preventive or remedial action solely on measurable terms of a benefit/cost ratio. But let us for a moment consider the problem solely in economic terms:

It is estimated that over 3,000,000 tons of acid are discharged annually from active and abandoned underground and strip mines into the streams and impoundments of the Appalachian region. (The great bulk of this pollution, as you know, occurs in the States of West Virginia and Pennsylvania.)

The commercial value of the 3,000,000 tons of acid—if recovered and used in the processing of steel, rayon, etc.—would be approximately $90,000,000. In addition, some 150,000 tons of aluminum, worth $12,000,000 is washed away—enough to make 6,000 Boeing 707 airplanes. And 500,000 tons of iron, worth about $50,000,000 are washed down the Nation's rivers every year.

It is difficult to measure the cost of this blight in terms of the earlier replacements required for corroded waterworks, bridge piers, boat and barge hulls, culverts and other structures, and the higher water treatment costs for industries and municipalities. However, to offer one example, the City of Clarksburg, West Virginia, population 27,500, spends approximately $20 per million gallons for treatment to neutralize the acid in the municipal water supply, or $100 per day, or approximately $36,000 per year. It is further estimated that the abandoned mines upstream from Clarksburg, which are responsible for the acid condition, under new grouting techniques now being developed and tested in the region, could be sealed off with a consequent reduction of about 90 percent of the acid drainage, at a cost in the neighborhood of $1,250,000. Such an investment would thus pay for itself in terms of water treatment costs alone, in less than 40 years. This, of course, does not include the added recreational benefits downstream, nor improved recreational opportunities if small impoundments were constructed in conjunction with the sealing of abandoned mines.

In order to advance our efforts in the field of acid mine drainage, I introduced last year S. 1870, cosponsored by my friend, Senator Joseph S. Clark of Pennsylvania, a bill to authorize additional funds for the demonstration of the engineering and economic feasibility of various abatement techniques for mine water pollution. The purpose of my bill is to provide funds to demonstrate certain techniques within drainage basins so that we can determine more accurately the cost-benefit ratios for certain abatement methods.

The Subcommittee on Air and Water Pollution of the Committee on Public Works, on which I am privileged to serve as Chairman, conducted hearings on this matter last year and our Committee incorporated major provisions of my bill in S. 2760, which was passed by the Senate on December 12, 1967.

As enacted by the Senate, the bill authorizes $15 million for such demonstration purposes, on a Federal-State matching basis with the State contributing not less than 25% of the project costs. The program would be administered by the Federal Water Pollution Control Administration of the U.S. Department of the Interior, and in selecting watersheds or drainage areas for demonstration purposes, the Secretary will give preference to areas which have the greatest public value for use for recreation, fish and wildlife, water supply, and other public uses. I am pleased to report that the House Committee on Public Works has completed hearings on S. 2760, and it is my hope that it will be reported in a very few weeks.

In passing, I would mention that such a program as this, though recommending additional authorization of public funds, is not, in my opinion, in conflict with the President's expressed intention to maintain a lean budget. For we have already indicated some of the magnitude of costs, both public and private, that result from acid mine pollution. And the very modest investment in research and demonstration recommended by my bill would yield long term benefits vastly in excess of the $15 million that would be authorized.

Natural resources are the reservoir from which society draws its material sustenance. Although there is a growing awareness of the need for aesthetic resources such as space for recreation and natural beauty, the basic resources are soil, air, water, and minerals, including fuel. Minerals and all sources of energy gain in relative importance with advancing technology and expanding industrialization.

Throughout history, those nations with access to minerals, and the technology for using them, have gained ascendency. Before World War II, the leading powers also were leading coal producers. In order of declining rank, the five leading coal producers were the United States, the United Kingdom, Germany, the USSR, and Japan. That the military victory went to the side with the greater capacity to convert iron and coal into tools of industry, and weapons, is more than coincidence. It is a fundamental fact of existence. It is axiomatic that the United States must have a continually increasing supply of minerals if we are to meet the needs of our burgeoning population for a comfortable standard of living and for national security.

At the same time, other natural resources must be preserved and protected. Among mankind's many activities, mining is not the major cause of environmental damage. Industrial wastes and municipal sewage pollute our streams. So, also, does sediment from agricultural activities, highway and urban construction, and burned over forest land. Automobiles pollute the air, and beer cans defile the countryside. Although water pollution is reaching intolerable levels, the loss of soil by erosion is at least as serious, and is inextricably involved with many water pollution problems, especially those resulting from surface mining and construction activities.

The new dimension that has been added is the increase in man's ability to control the other elements of nature. He can destroy the soil, render air and water unusable through pollution, kill every form of life. He also has the means to conserve and protect. Whether he has the wisdom and self-restraint to take effective action in the remainder of this century may well determine the course of man's remaining years on earth.

As Fairfield Osborn stated in his book, *Our Plundered Planet*, some 20 years ago, it has not been the change in climate since Biblical times so much as the misuse of land that accounts for the disappearance of many of the ancient civilizations and the present impoverishment of those areas where mankind formerly thrived. As Mr. Osborn stated:

"Palestine has today the same general weather conditions that it had in Biblical times. A small stand of cedars of Lebanon, untouched for many centuries because it was considered a sacred grove and was protected by a wall that kept out goats, supports the opinion that weather was not responsible for the loss of all the immense forests of cedar which existed within historic times."

In parts of Syria, Iraq, China, India, Turkey, and along the Mediterranean border of Africa, poverty now exists on the sites of formerly rich agricultural land. In some places, great cities lie buried because of the misuse of the land. Overgrazing and destruction of

forest by resulting erosion were primarily responsible.

Our land today is not threatened by the same causes as destroyed the lands of ancient civilizations, but by the much more severe depredations of a technological civilization. One need only look at our rivers, heavy with the silt from highway construction and suburban housing construction, the pollution of Lake Erie, and the countless other rivers, streams and lakes burdened with the outfall of municipal and industrial sewage and the product of improper mining practices.

Obviously, the mining industry is not responsible for, nor can it correct, all of the damage that has been or will be done to our natural environment.

Nor do I mean to imply that all of the effects from strip mining are detrimental. Spoil banks often retain more water than the original undisturbed surface, a factor which tends to provide more uniform runoff in streams. Excavations to depths below the water table can be used to create lakes with high recreational value. And other ponds created at mine sites may be useful in flood control, in the preservation of desirable ground water levels and in forest fire control. And many hunters know that the vegetation which eventually occurs voluntarily on strip-mined areas, providing a dense, low-growing cover, offers an improved habitat for deer, rabbits and other small game and wildfowl. These are but a few of the positive benefits that might emerge from mining activities which are planned with a view toward the use of the land after the minerals are withdrawn.

In the growing competition for resources which results from our expanding population and economy, members of the mining community have an urgent interest in the solution of environmental problems. Mining people should understand the impact of their activities on water and soil quality, on fish and wildlife habitat, on agriculture, and on other segments of society. Conversely, they should understand how urban development or the public interest in wilderness areas might affect the mining industry.

This symposium is representative of the kind of thinking which needs to be extended throughout the mining industry, in order that we may all work more effectively to achieve the most ideal distribution of land use patterns to best serve the Nation's future needs.

NEW POSTAGE STAMP HONORS NATION'S POLICEMEN

Mr. BYRD of West Virginia. Mr. President, I was privileged to attend today the first day of issue ceremonies at the White House for the new 6-cent postage stamp honoring our Nation's law enforcement officers.

This moment has been a long time in coming but the honor finally accorded our country's policemen is in no way diminished by the wait.

There is no question in my mind as to the worthiness of our police officers of this honor.

These men are society's frontline defense in the war on crime. They are on duty 24 hours a day, 365 days a year, always ready to respond to calls for assistance.

Too often these men are looked down upon by those whom they have sworn to protect.

Too often they are forgotten men, remembered and appreciated only when there is an emergency.

Too often have the high courts of our land reversed the convictions of confessed criminals; writing restrictions which, figuratively speaking, place handcuffs on the police in the legitimate pursuit of their duty rather than on the criminals who operate in their profession of crime.

This stamp will remind the hundreds of thousands of policemen throughout our country that all responsible citizens are profoundly grateful to them for the work they do protecting lives and property.

I personally am proud to have been able to play some small part in the issuance of this stamp. For the better part of 3 years I have been urging the Post Office Department to issue such a stamp. Last September I was informed by the Post Office Department that such a stamp would be issued.

At that time the then Postmaster General, Lawrence F. O'Brien wrote me as follows, in part:

> I have ordered a stamp on the theme of respect for law and order . . . Your endorsement contributed significantly to my decision to issue this stamp.

Today this promise has become a reality and, we in Congress, appreciate the hard work and dedication of our country's police officers who have been deservingly recognized by the issuance of this stamp.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

Mr. HAYDEN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the unfinished business.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The BILL CLERK. A 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.

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

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

AMENDMENTS

Mr. HAYDEN. Mr. President, on behalf of myself, the senior Senator from Montana [Mr. MANSFIELD], the junior Senator from Montana [Mr. METCALF], the junior Senator from South Dakota [Mr. MCGOVERN], and the junior Senator from Arizona [Mr. FANNIN], I ask unanimous consent to offer the following amendments, which I ask the clerk to read.

The ACTING PRESIDENT pro tempore. The amendments will be stated.

The assistant legislative clerk read the amendments, as follows:

On page 19, line 14, insert before the period a comma and the following: "except that this limitation shall not apply in the case of an Indian tribe".

On page 20, line 13, insert before the period a comma and the following: "except that this limitation shall not apply in the case of an Indian tribe".

On page 23, line 7, insert after the paragraph designation "(2)" the words "except in the case of Indian tribes".

On page 41, line 22, insert immediately before the period a comma and the following: "or an Indian tribe which performs law-enforcement functions as determined by the Secretary of the Interior".

The ACTING PRESIDENT pro tempore. Is there objection to the offering of the amendments notwithstanding the unanimous-consent agreement?

Mr. MCCLELLAN. Mr. President, I ask unanimous consent that the amendments may be immediately considered.

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

Mr. HAYDEN. Mr. President, the senior Senator from Montana [Mr. MANSFIELD], the junior Senator from Montana [Mr. METCALF], the junior Senator from South Dakota [Mr. MCGOVERN], and the junior Senator from Arizona [Mr. FANNIN] have joined with me in offering these amendments to S. 917, which would make Indian tribes eligible for grants under this bill.

Indian tribes exercise important law-and-order responsibilities. The present costs for reservation law and order are more than $6 million. The tribes provide more than half of this amount, the Indian Bureau the rest.

Last year, in its report No. 223, on the Interior Department and Related Agencies, the Senate Committee on Appropriations noted the seriousness of the law-and-order problem on the various reservations. Last September, the Assistant Commissioner for Community Services of the Bureau of Indian Affairs, in a memorandum to area directors, stated:

> Crime on Indian reservations is an acute problem. It is one that needs to be clearly recognized along with its disastrous effects upon the reservation community and its members. It is one that seriously retards the growth and stability of the community and the multi-range of social and economic services aimed at assisting Indian people. It is one that deserves the immediate attention of all.

Although tribal governments have important responsibilities for maintaining law and order in large sections of the country, S. 917 would prohibit them from participating in programs available to general local governments. I am sure that this was a legislative oversight. Some of you will recall that the Area Redevelopment Act was similarly amended, to permit Indian tribes to benefit from that legislation which proved to be extremely helpful to many of our Indian citizens.

The amendment would exempt Indian tribes from the population requirements in sections 201 and 301. Tribal governments have law-and-order responsibilities and problems comparable to and sometimes greater than local governments. However, population on most reservations is less than 25,000 persons and in many cases only a few thousand. In section 303 the amendment would exempt Indian tribes from the require-

ment that the applicant increase its funds used for law enforcement. The record shows that a number of tribes are already contributing a substantial percentage of their funds for law enforcement. And, finally, in the definitions section of the bill, section 601, the amendment would include "an Indian tribe which performs law-enforcement functions as determined by the Secretary of the Interior" in the definition of "unit of general local government."

I ask for the adoption of the amendments.

The ACTING PRESIDENT pro tempore. Without objection, the amendments will be considered en bloc.

Mr. McCLELLAN. Mr. President, I have examined the amendments and conferred with interested parties in this legislation and the leaders, and there is no objection to the amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments were agreed to.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess, under the previous order.

The ACTING PRESIDENT pro tempore. Pursuant to the previous order, the Senate will now stand in recess until 2:30 p.m., or subject to the call of the Chair.

(At 12:37 p.m. the Senate took a recess.)

The Senate reconvened at 1:57 p.m., when called to order by the Presiding Officer (Mr. BYRD of Virginia in the chair).

VISIT TO THE SENATE BY THE PRESIDENT OF THE UNITED STATES

(At 1:57 p.m. the President of the United States entered the Chamber accompanied by Senators MANSFIELD, DIRKSEN, and HAYDEN.)

Mr. MANSFIELD. Mr. President, I was discussing with the distinguished minority leader the question of which seat the President of the United States should occupy if he had his choice, either that of the Presiding Officer or that of the majority leader of this body, where he served so effectively and efficiently in those positions for so many years.

We decided that for the time being at least he should not be half a Member of the establishment, but a full-fledged Member of the Senate.

I would like at this time, with the concurrence and approval of my colleagues, to break tradition, in a certain sense, and call upon the President of the United States for a few remarks as the majority leader of the Senate. [Applause, Senators rising.]

ADDRESS BY THE PRESIDENT

The PRESIDENT. Mr. President and Members of the Senate, I appreciate very much your asking me to come here today. I always enjoyed my association with the Senate. I served here as a Senator, a whip, a minority leader, a majority leader, and later as Vice President.

I always profit from what I learn from the Members of this great body, and I appreciate all that you have done to ease my burden to help us better govern this Nation.

I hope that through the years to come, I shall have the privilege of seeing all of you from time to time and that together we can continue to build and develop this Nation and continue to make it the best country in all the world. [Applause, Senators rising.]

RECESS

Mr. MANSFIELD. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

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

Thereupon (at 2 p.m.) the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 2:08 p.m., when called to order by the Presiding Officer (Mr. BYRD of Virginia in the chair).

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.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Mississippi.

Mr. STENNIS. Mr. President, I ask unanimous consent that I may yield briefly to the Senator from Maryland [Mr. TYDINGS] and to the Senator from Michigan [Mr. HART] without losing my right to the floor.

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

MODIFICATION OF AMENDMENT NO. 788

Mr. TYDINGS. Mr. President, I ask unanimous consent that my amendment No. 788 be modified to strike out lines 3 through 8.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maryland? The Chair hears no objection, and it is so ordered.

Mr. HART. Mr. President, I send to the desk an amendment in the nature of a substitute for title II, and ask that it be made the pending business.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read the amendment, as follows:

On page 43, beginning with line 9, strike out through the matter preceding line 3 on page 48 and insert in lieu thereof the following:

"TITLE II—INVESTIGATION ON LAW ENFORCEMENT IMPACT OF COURT DECISIONS REGARDING CRIMINAL LAW PROCEDURE

"The Congress finds that extensive factual investigation of the actual impact on law enforcement of the decisions of the United States Supreme Court regarding criminal law procedure is a necessary prerequisite to legislative action pertaining to such decisions. The Congress therefore directs that the appropriate Committee or Committees of the Congress undertake such investigation of court decisions before the Congress considers legislative action regarding them."

Mr. TYDINGS. Mr. President, I send to the desk an amendment in the nature of a substitute for the amendment which the senior Senator from Michigan [Mr. HART] has offered, and I ask unanimous consent that my amendment be made the pending business.

The PRESIDING OFFICER. The amendment in the nature of a substitute to the amendment offered by the Senator from Michigan [Mr. HART] will be stated.

The assistant legislative clerk read as follows:

On page 43, beginning with line 9, strike out all through the matter preceding line 3 on page 48 and in lieu of the language proposed to be inserted by the senior Senator from Michigan [Mr. HART], insert:

"TITLE II—INVESTIGATION ON LAW ENFORCEMENT IMPACT OF COURT DECISIONS REGARDING CRIMINAL LAW PROCEDURE

"The Congress finds that extensive factual investigation of the actual impact on law enforcement of the decisions of the United States Supreme Court in *Miranda* v. *Arizona, United States* v. *Wade* and other decisions regarding criminal law procedure is a necessary prerequisite to legislative action pertaining to such decisions. The Congress further finds that, in view of the fact that the *Miranda* and *Wade* decisions are recent, there has been insufficient time adequately to evaluate their impact on law enforcement. The Congress therefore directs that the appropriate Committee or Committees of the Congress undertake extensive factual investigation of such decisions before the Congress considers legislative action regarding them."

Mr. STENNIS. Mr. President, I wish to say in the beginning, with emphasis, that this is a very highly important bill that we have under consideration. It represents the product of splendid hearings that have been conducted by the proper committee and subcommittee under the leadership of the Senator from Arkansas [Mr. McCLELLAN], and it attempts to deal with a crucial and critical situation in which this country finds itself, a condition which I think is without parallel in our history.

What I say about certain features of the bill is not trying in any way to discredit the great service that has been rendered; but what I say is for the purpose of emphasizing what I think is a part of the problem and what I think we must do toward some basic reform in our thinking, rather than merely appropriating some money for more studies or more training of various kinds, even though some of that training is necessary, and we do have some of it now.

Mr. President, I wish to refer, in passing, quite briefly, to a section of the bill to which I shall not address myself today but which I think is the most important part of the measure. I refer to title II. Title II is that part of the bill which would restore the rules of evidence that have been in effect from the beginning of our Nation until just a few years ago when they were changed by the Supreme Court of the United States. What I shall say is not an attack on the Court, as such. I think it is very clear they have made

a fundamental error of judgment, and the best proof of that is what is stated in the able dissenting opinions of the judges who would not let themselves be associated with that decision but who were not content with anything less than an active and vigorous dissent. I propose, at a later time in the debate, to discuss these rules of evidence the Court did change and why I think they should be restored to the normal rules that had been in effect.

But the main point is that the rule, as established by the Court, is impractical, unworkable, and does not deal with the realities of crime, and does not deal in a realistic way with the problems that all law enforcement officials are up against all the time.

With respect to the present rule, time has proved that it ties the hands of investigators and police officers to the extent that they cannot meet the demand for protection that society has to have to survive.

However, today I intend to talk primarily about the part of the bill that proposes a lot of Federal money for subsidizing police forces throughout the Nation, as well as for training. I do not particularly object to the training; if the FBI were called on to conduct schools throughout the Nation and to cover the entire Nation with a program of intensive courses, and, on a lower scale, continue that training, I would highly favor that process. But if we fool ourselves into believing that we can cope with this problem by merely passing a bill and appropriating a lot of money, we are behaving more or less like children and blinding ourselves to the real problem.

I am not an expert on anything. I refer only to the experience I have had. The most active and vigorous years of my life were spent as a prosecuting attorney during the depression when there was a lot of crime. I was what we call a district attorney. I had no assistant.

I had no investigator. Only two of the counties where I was serving had a county attorney. I received no help of any kind, but I had to get out and go to the scene of a crime, work up the evidence as best I could, and go from court to court. I am not claiming any special credit for that. It is nothing more than I should have done. But, I did everything. I wrote indictments. I interrogated witnesses. I prepared the cases. I presented them to the court, and so on.

Therefore, as a result of that experience I know firsthand about the problems of an officer and something about the nature of those who violate the law, either by habit, by impulse, or by chance.

Later, I had the responsibility of 10 years' service in the trial courts where I had to preside over trials in a court of unlimited jurisdiction. I ruled on the evidence, and on the witnesses; and, on those who were convicted, I had to try to figure out the punishment. Thus, I am no stranger to this problem at the level it really exists.

Mr. President, we can theorize a whole lot and we can write many books on evidence, we can write books on the preponderance of evidence and reasonable doubt. They all have their place, of course; but, if we are going to enforce the law, we have got to have realistic, practical rules.

We talk about deterring crime. The greatest of all deterrents to crime is the certainty of punishment, not so much its amount but its certainty.

Just let the word get out in the village, township, city, county, or State, or anywhere else, that we are going to prosecute with vigilance and with vigor everyone who violates the law, and make sure, insofar as human endeavor can, that those against whom there is evidence—which evidence will be sought and found—will be brought to trial and those convicted will be punished—not pardoned, not paroled—but will be punished, and that will deter crime. We can theorize and read books from now on but we will not find any remedy that will be effective unless it includes that idea, to some degree at least, of the certainty of punishment.

In that connection, we have all the laws on the books we need to meet this crime situation. What we need is the will to enforce those laws, to prosecute those who violate them, and bring them to justice.

Here in our Capital City, its merchants are being found lying around in their stores, dead on the floor. I understand that last night there were four robberies of bus drivers, one of whom died this morning. That sort of thing has been going on here for months and years now, and the certainty of punishment is being laughed at. That is partly due to the rules of evidence which I have talked about.

Washington, D.C., has a well-trained police force. It is the home of the FBI. I am not downgrading their work. They have been doing the best they can. I think we may need additional police. They are operating in an atmosphere here of "let them alone. Someone else is to blame for these wrongdoings. They are not the culprits. That is not the reason for their violence and their crimes. Society is at fault. It is the schools. It is their family life." Frequently, it is "police brutality." Yes, something is wrong, but not the individual who commits a crime; therefore, no punishment should apply to him.

Mr. President, until we make an about-face on the fundamental concept of fighting crime, we will not get very far.

Mr. ERVIN. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am happy to yield to the Senator from North Carolina.

Mr. ERVIN. The distinguished Senator from Mississippi was a very distinguished trial lawyer, a very distinguished prosecuting attorney, and a very distinguished trial judge in his State. I should like to ask him if his experience in practicing law and law enforcement does not lead him to the conclusion that perhaps the most convincing evidence of guilt is a voluntary confession of the accused that he committed the crime with which he is charged?

Mr. STENNIS. The Senator is correct. Within the safeguards that the common law of England established centuries ago, which we have perfected to meet present needs.

Mr. ERVIN. That safeguard lies in the rule which declares that a voluntary confession shall be admitted in evidence and that an involuntary confession shall be excluded from evidence; is that not right?

Mr. STENNIS. The Senator is correct. That is a summary of the rule, and well stated.

Mr. ERVIN. I should like to ask the Senator from Mississippi if he does not agree with the Senator from North Carolina that the most convincing evidence of the guilt of a person charged with a crime, next to a voluntary confession, is the positive testimony of an eyewitness to the crime that he saw the crime committed and that he saw the accused commit the crime, assuming the witness to be a credible person, of course.

Mr. STENNIS. Yes. That is the basic source of testimony that does convince.

Mr. ERVIN. I should like to ask the Senator from Mississippi if he does not agree with the Senator from North Carolina that from the time the words of the sixth amendment became a part of the Constitution, on June 15, 1790, down to the 12th day of June 1967 when the Wade, Gilbert, and Stovall cases were handed down, that it was accepted practice in all jurisdictions of the United States that the positive testimony of an eyewitness that he saw the accused commit the crime with which the accused stood charged was admissible evidence, and that the question whether the witness was worthy of belief was a matter for the jury and not for the court.

Mr. STENNIS. The Senator is correct. That is what the jury is for. The Senator has correctly stated the rule. In many ways, that is the best possible testimony we could have.

Mr. ERVIN. I should like to read a passage from the Stovall case as a premise for putting a question to the Senator from Mississippi. It sets forth the reasons given by the court for not making the rule announced on that day retroactive, although the court allegedly based the rule on the right of counsel clause of the sixth amendment which had been in the Constitution since June 15, 1790.

I now read the passage:

> 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 were not foreshadowed in our cases; no court announced such a requirement until *Wade* was decided by the Court of Appeals for the Fifth Circuit, 358 F. 2d 557. 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. Wall, Eyewitness Identification in Criminal Cases 38. 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."

That is what the Court said in deciding it would not make that rule retroactive.

I should like to ask the Senator if it is not inconceivable that, if the sixth amendment really put any such limitations upon the positive statement of an

eyewitness that he saw the accused commit the crime charged, someone among the great judges who sat upon the Court during the previous 167 years, or somebody charged with law enforcement, or some other knowledgeable citizen in this country, would not have come to that conclusion prior to the 12th day of June 1967.

Mr. STENNIS. The Senator is so correct. With all deference to the Court—and I make no attack on the Court—the Senator's question proves that this is largely a theory or an academic approach, far from the realities and experience in human nature, and every conceivable, resourceful rule that has been thought about by the many predecessors on that Court and other courts in our country.

Mr. ERVIN. I wish to thank the Senator for yielding to me for questions and to say that it seems to me the decisions in the Wade, Gilbert, and Stovall cases are wholly unrealistic and unworkable in the kind of world in which human beings live; and that it was a new invention which, according to the confession made by the Court in the Stovall case, no one had ever suspected throughout the preceding 167 years could be found in the Constitution.

Mr. STENNIS. It was unthinkable and unheard of then, and these nearly two centuries of experience have not brought about any change in the realities of life or problems in law enforcement.

Mr. President, I proceed now to a discussion of the title of this bill which has to do with the grants of money. I want to express some of my philosophy, based upon experience and at least some knowledge of human nature.

I have little faith that mere Federal grants are going to do much to halt the rapid increase in crime. We already have all the agencies we need to maintain law and order—the police and the courts. We already have a plan for controlling crime—arrest, prosecution, and punishment of the criminal. What we need is action—not a show of activity by merely setting up research projects all over the country. What we need is a firm resolve by those in authority to put down crime and lawlessness—not a constant stream of official reports explaining and excusing it. The way to strengthen law enforcement is by strongly enforcing the law.

These grants do not meet the hard decisions that are going to have to be made sooner or later. When all the money is spent, when all the studies are in and all the police forces have been retrained, reorganized, and reequipped, the question of what to do about the law violator will still remain. Are we going to hold the law violator individually responsible for his wrongs against others and punish him according to the gravity of his crime? Or are we going to continue to excuse him by trying to shove the blame off on society? Until we have made a decision on this basic question, there is very little effective action that can be taken against crime.

This ought to be the first question rather than the last. Until it is settled that the law violator, when caught, is going to be dealt with as a law violator, it is useless to be building up the police forces. The most effective police force possible can only track down, apprehend, and bring into court the violator. If he cannot be convicted in court, it is a waste of time and money to hunt him down.

I am excluding, of course, those who are not proven to be guilty. A person must be proven guilty in open court beyond a reasonable doubt, to the satisfaction of 12 reasonable persons, under the rules, and under the guidance of law.

As long as we continue to operate on the theory that it is the police or society or the law instead of the criminal that needs correction, crime is going to continue to increase. It is time to return to the old-fashioned but sound philosophy that each person is responsible for his own conduct and if it does not measure up to the minimum standards set by society for its protection then he is going to be held accountable to the law. It is time to revive the principles of self-discipline and individual responsibility and make them again the mainspring of our system of government and laws.

We have experimented long enough with the idea that society and not the criminal is the cause of crime. It has brought nothing but higher and higher crime rates and the threat of general anarchy. It is time to turn things around. Society has retreated far enough in its fight against the criminal. The line must be drawn and a determined stand made. The ground lost by appeasement must be regained through aggressive enforcement of the law.

Grants for law enforcement are no substitute for law enforcement itself. If there is to be a grant program, however, it is best that it be kept as far as possible in the hands of those actually responsible for law enforcement. The basic responsibility for law enforcement in this country rests primarily on State and local authorities, and it ought to remain there. It would be extremely dangerous and unwise to transfer any significant part of this responsibility to the national level. There are some crimes national in scope or directly affecting the Federal Government which are properly the responsibility of Federal authorities, but the every day task of keeping the peace and protecting life and property are more safely left to State and local officials who are familiar with the problems and are immediately responsible to the people they serve.

I state here a fact that all of us know well and that staff members in the Senate and staff members in our offices know—that numerous Federal programs have been piled up so high and there are so many of them that it is impossible for a Senator to have anything like complete knowledge of all the laws or questions he has to pass on. It is almost impossible for an Appropriations Committee any more to get down to the real, major part of huge appropriation bills, which provide billions of dollars for various programs.

By the same reason, it is impossible for an Attorney General—it makes no difference who he is—or any other Cabinet official to have personal knowledge of the many duties he has imposed on him by law.

This bill proposes this very large sum of money to be put in the hands of the Department of Justice to be distributed around the country, part of it to subsidize police salaries, part of it to train police. I will refer to training later. We have imposed on the Department of Justice and the Attorney General all kinds of duties. They have certain responsibilities in selecting U.S. attorneys. They have duties and responsibilities in selecting members of the judiciary. They have all kinds of responsibilities now in connection with enforcement of guidelines in hospital cases and school cases. They have all kinds of responsibilities in apprehending criminals. The present Attorney General has jurisdiction over certain crimes, and in some degree he was in charge of investigating the unfortunate incident we had recently.

Now we are piling all of those things on top of these officials who already are unable to get down into the real problem. It all has to be delegated to others. They are never elected and never confirmed by the Senate; and this is another illustration of our tendency, when a problem comes along, to try to solve it by authorizing and appropriating a lot of money and turning the matter over to some branch of the Federal Government.

If we create a condition here whereby the police departments of various cities, or the mayors, or the police departments of small cities or counties, are going to come here like so many other people are having to do, to beg for money and trade for money, trade, and traffic and promise, and be put on trial and error, we are going to confound and confuse the whole problem. If we are going to have real law enforcement, there has got to be a desire for it back home, back where the problem is. The major influence contributing to the success of such a program is public opinion back home.

To put every local police officer under the remote control of the U.S. Attorney General would further weaken law enforcement, not strengthen it. There are over 40,000 local jurisdictions plus 3,000 counties and the 50 States. Any effort to bring the law-enforcement agencies of all these units of government under one head and administer their operations at long distance would tie local law enforcement in knots. They would become so snarled in Federal regulations and guidelines, so burdened down with Federal forms and reports that law enforcement would come to a standstill while crime runs rampant.

I emphasize that, Mr. President. I say that with all deference to the officeholders. It would not be their fault. We now have a proven Federal Bureau of Investigation that handles investigations of crime, but there is nothing they can do about prosecuting the criminals; that all has to be agreed to by the Attorney General. That is another part of his burden.

We have the FBI, which has done a wonderful job in training officers beyond its own—State officers and city officers—and I would vigorously support any reasonable plan for the FBI handling these training programs on a large scale, to start with, throughout the Nation, and then on a continuing basis, so as to keep

them up to date. But I am not going to be fooled into believing that we can merely appropriate some money here, and then everything is going to be rosy.

I think there will be more confusion. I believe it will downgrade and degrade the whole concept of actual law enforcement, rather than help it. It would be just another instance where we would be flooded with applications here, of people, police wanting to have their salaries raised—and many of them ought to be raised—but there will be applications coming here to get on the police force somewhere, because now they are connected with the Federal Government, since a lot of the money would be coming from certain Federal sources.

So I think we have the cart before the horse. I am going to support the amendment, with reference to these funds, that would make whatever grants are made by a block grant, which would be a payment, not to the individual subdivisions in a State, but to the State itself. If we are going to have the appropriations, let the State then be responsible, under certain provisions that we put into the law itself that would protect the expenditure of the money, but leave the responsibility, the power, and the oversight back where it belongs, at the State or at the city level.

Federal control would gradually become more strict and less compatible with local conditions. The discretion and authority of local police chiefs and superintendents will be steadily diminished. They will no longer be able to act promptly on their own best judgment but will have to have all their decisions reviewed by some unknown official in Washington. The procedures and red-tape for getting anything done will stretch out endlessly and local officials will become merely minor subordinates at the bottom of a Federal bureaucracy. This will undoubtedly drive many experienced men out of law enforcement and discourage bright and energetic young men from entering law enforcement work.

At the same time, Federal law enforcement will also suffer. Attention would be diverted from the protection of vital national interest, and resources that should go into the enforcement of Federal laws would be used instead to supervise law enforcement officers at the local level. Instead of hiring more Federal agents to investigate criminals we will be hiring more bureaucrats to investigate local police departments to see if they are in compliance with all the Federal regulations that will be issued.

The best qualified men will be taken out of active law enforcement at the local level and drawn to Washington to fill a desk job reviewing applications for Federal grants.

It is also highly dangerous and contrary to the most fundamental principles of free government to put it within the power of one man to impose on the entire country his personal philosophy of law enforcement. The creation of a national police force has always been rightly feared and firmly resisted in this country as a grave threat to liberty. One man with centralized control over all law enforcement agencies of the Nation and the authority to say which laws will be enforced—or will not be enforced—and how and by whom they will be enforced, is the very essence of the totalitarian state. We are treading dangerously close to this pitfall and must be extremely careful not to stumble into it in the panic to pass a crime bill. It is a step which once taken is almost impossible to retrace.

There is no real safeguard against the concentration of power over the police if the spending authority for all law enforcement is lodged in one central agency under the general direction of one man. One follows the other as night follows day. Control over Federal funds carriers with it effective control over the State and local matching funds so that it is not just the Federal expenditures that are managed from Washington but all spending for law enforcement. In order to avoid losing Federal funds State and local governments will be under severe pressure to adopt programs favored by the Federal administrator rather than those which are more sound or more urgently needed when considered solely from the standpoint of local conditions. This pressure is always difficult to resist and it is practically unbearable when exerted directly on small individual communities. They have neither the resources nor the organization to stand up separately against the overbearing authority of the Federal Government and they will be whipped into line one by one. They will become more and more dependent on the Federal Government and gradually lose the habit and ability of acting on their own initiative to solve the problems of local law enforcement.

To avoid centralized control is not only sound political philosophy but sound law enforcement as well. The wisest administrator is not infallible and if he were he would still be incapable of devising a single rule, one way of doing things, that would be appropriate to all situations. Local control over law enforcement insures that the errors of one man or one agency or one State will not extend nationwide. Mistakes which may be borne a while with minimum damage in a limited area might become disastrous if imposed on the county at large through centralized control. Blunders that might be corrected if confined to one locality might become permanent, for want of a better example to follow, if they are made as national policy.

Centralized control of law enforcement would also needlessly force the whole country into an ill-fitting straitjacket. Different areas have different problems and different priorities. To put them all under a single administration would inevitably, if unintentionally, compel them all to adopt similar policies and similar procedures regardless of whether they were appropriate to local conditions. It is highly unlikely that communities 3,000 miles apart are going to have identical interests, and it is equally unlikely that programs thought up by some body in Washington will fit the needs of either. The result will be that everywhere, local law enforcement will be a makeshift compromise that does not adequately serve any community but merely satisfies the masterplanner's passion for national uniformity.

Furthermore, it is foolish to put millions of dollars into studies and research projects while closing down the best laboratories available for discovering new ways to combat crime. There is no better way of experimenting with new methods of law enforcement than through the thousands of independent police forces throughout the Nation. Every police department in the country is engaged in constant research, bringing to bear the power of different minds on the problem of crime, trying different solutions, correcting their errors and improving their methods, as they try to solve the 3 million crimes committed each year. To impose a bureaucratically determined uniformity on the Nation's local police forces would eliminate this useful diversity and destroy one of the best means we have of discovering and testing new methods of law enforcement.

For all these reasons I am cosponsoring and strongly supporting Senator DIRKSEN's block grant amendment to title I of the crime bill. It preserves the basic features of the committee bill, but it makes one major and highly desirable change. Under the amendment Federal funds for law enforcement assistance would be provided to the States in the form of a block grant instead of being parceled out by the Federal Government among individual communities. The funds would then be administered by the State and it is provided that at least 75 percent of the Federal grant to the State must be made available to units of local government.

The system of administration provided by the amendment will reduce the danger of a central Federal agency gaining complete control over local law enforcement. It will avoid the stifling uniformity of national regulation. It will conserve the energies of the Federal Government for the enforcement of Federal law, and eliminate the need for creating a huge new bureaucracy to administer the program. It will preserve the independence and freedom of action of local government in matters of law enforcement. It will insure that every community will receive a fair hearing on its application for funds and not be drowned out and pushed aside in the national competition for funds at the Federal level.

ORDER IN THE CHAMBER

Mr. President, may I suspend until order is restored in the well of the Senate Chamber?

The PRESIDING OFFICER (Mr. HART in the chair). The Senator is quite correct. The Senate must be in order. The Senator will suspend until order is restored.

Mr. STENNIS. Mr. President, I have never understood why it is that when any Senator is speaking, our staff members here have to have all these conferences down in front, talking in such loud tones that the speaker can hear them and everybody else can hear them.

They are very valuable men, and I respect them highly, personally. Some of them have been here as long as I have. But I think it is an affront to any Senators—I am not speaking about myself, but to any Senator—however important their business is, for them to sit there and talk into his face while he is trying to think, as well as speak.

I know they do not look at it that way, or had not thought about it that way, but that is the practical effect of it.

The PRESIDING OFFICER. The Chair shares the feeling of the Senator from Mississippi, and appreciates his last comments. But these things do occur without thought.

Mr. STENNIS. Yes. I thank the Chair.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Mississippi may proceed.

Mr. STENNIS. I thank the Chair.

Most importantly, the amendment preserves the vital link between the people and law enforcement. When the responsibility for keeping the law and the authority for spending the money necessary to do it are united in the local government, the people affected have direct control over the safety of the community. If law enforcement breaks down they have the means readily at hand to restore it. If the local government is indifferent to the situation the people can elect more responsive representatives. If, however, they have to look to local government for enforcement of the law while appealing to an appointed official in Washington to provide the money, the people will have lost effective control over the peace and welfare of their community. Instead of acting to protect themselves they will have to get in line behind everyone else going to Washington and asking for assistance. If it does not come, they will have no recourse; and if it does, it may well be too late.

The people are the best judge of their own needs and the means of meeting them should be left in their hands. The block-grant amendment comes closest to recognizing this principle and I strongly urge its adoption.

Mr. President, I wish to make it clear that some additional training for police officers is needed. Times change. The police need to be brought up to date, and there are times when they need additional equipment. Electronic and other modern devices are now coming into the picture for the detection of crime. Every city and every State may not be able to provide complete training of itself, so I would favor, to that extent, some kind of Federal program to start such training. But that is the extent to which I would be interested in real participation by providing sums of money. I would not want the people to be fooled into believing that the mere appropriation of funds and the setting up of some kind of program will change the situation.

I would judge that in the city of Washington generally speaking plenty of training and plenty of money are available. Congress has appropriated money to enable the city government to enforce the law. Somewhere along the line an unwillingness to enforce the law and impose penalties has intervened. As I said in the beginning, I think it is unfortunate that, without any intended wrong, some of the decisions of the Supreme Court went outside the field of reality and put shackles and other limitations on the very finest, best-trained officers of the law. That has made it impossible for them to cope with many criminal cases.

This is not a theory with me. I have spoken with many officers. I have spoken with men who walk the beats. I sometimes come in contact with them in the evening while I walk in the area of the city where I live. I have had the privilege of knowing a number of them during the many years I have had a home in Washington.

I have also spoken with men in the FBI. They are intelligent men and understand these matters. They do not talk out of turn or out of school.

It confirms what I believe, based on my experience with these problems. That is why I am so insistent here that we consider this position.

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

Mr. STENNIS. I yield to the Senator from Arkansas, and I thank him again for his fine work in the hearings.

Mr. McCLELLAN. I express my appreciation to the distinguished Senator from Mississippi for the very able address he has given this afternoon.

Mr. STENNIS. I thank the Senator.

Mr. McCLELLAN. Mr. President, particularly am I impressed with the remarks of the Senator in the last few moments with respect to the fact that spending money will not eradicate crime. And that is the only solution in the so-called crime bill which the Senate has already acted on, but which the House did not act on, that is contained in the bill that was sent to us and recommended by the administration.

I agree with the Senator. I do not believe that spending money is any substitute for the correction of the grievous errors that the court has committed that favor the criminal as against society and law enforcement.

That is the real crux of the battle in the Senate today—not the spending of money. There is not a single Senator who would not be willing to spend $1 billion, $2 billion, or any amount of money if it would correct the conditions that exist. However, the spending of money alone simply will not do it.

We can give better training, and it is needed.

How would we profit law-enforcement authority by training and equipping officers and then not having them sustained and supported by the highest court in the land?

Unless the Court will meet its responsibility and sustain these officers, instead of doing just the opposite and making their decisions reflect upon the law-enforcement agencies of this country, unless we can get some correction in that area, the spending of money will not get the job done.

Mr. STENNIS. Mr. President, I thank the Senator. As always, he is so sound in his thinking and so practical in his application.

Mr. President, I shall not detain the Senate but a few moments longer.

I have been surprised at the vehemence of the assaults that have been made upon the provision of the pending bill that seeks to restore the rules of evidence under which this Nation has grown, the rules of evidence which have served our country so well until a change was made here a few years ago by the Court.

Article III of the U.S. Constitution is a provision that gives Congress not only the power, but also the duty to pass on this very matter when it says in article III, section 2:

> 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.

That provision gives Congress the duty to pass on these matters, on all exceptions. And the title of the pending bill that refers to that subject is merely an effort to try to restore what have been the rules of evidence for all these many decades. They evolved from the common law of England centuries ago.

The basic principles involved have been affirmed and reaffirmed over and over again, as the Senator has pointed out, by the preceding courts in all of the prior years in which our Government has been in existence.

That is the rule in the State courts generally.

It took a long time to discover a thing that they say is so wrong. They made a virtually 180° angle turn. This constitutes a handcuffing of our law-enforcement officers.

Mr. President, I thank the indulgence of the Senate, and I yield the floor.

Mr. McCLELLAN. Mr. President, I again compliment the distinguished Senator from Mississippi who served for many years, received much experience as a trial lawyer for many years, and served as a distinguished judge in his State.

The distinguished Senator from Mississippi is extremely capable of analyzing the conditions which exist today as a result of the impact of the Court decisions. He is able to counsel with respect to the best way and the best methods of trying to combat the crime evil that has engulfed our country.

RESCISSION OF ORDER FOR RECOGNITION OF SENATOR THURMOND TODAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the previous order that the distinguished Senator from South Carolina [Mr. THURMOND] be recognized today be vacated.

The PRESIDING OFFICER. Without objection, 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. McCLELLAN. Mr. President, I invite attention to the chart displayed at the rear of the Chamber. It compares the rise in crime to the rise in population in this country from the years 1944 to 1967.

It shows that from 1944 until today that the population of the Nation in-

creased 48 percent while the rate of crime increased 368 percent.

Looking at the chart, we see that the crime rate has greatly increased since the time the Supreme Court began to change the law of the land. Crime has spiraled upward. Opponents of title II of S. 917 say, "Well, do you want to go back to the days of the third degree?"

Of course, no one wants to do that. But, I say, Mr. President, that we have got to reverse the trend from what it is today. It cannot continue, or else America cannot survive. Everyone's life is in danger. No one is secure.

Is the Senate going to do anything about it? Or, are we going to pass a small money bill which will take 5 years before it can start being effective?

Look at the chart, Mr. President.

What will happen in the next 5 years while we are waiting for that money to begin to take effect?

Are we going to do nothing about it in the meantime?

I say we cannot take that risk. I, for one, do not intend to take it.

Before today I have tried to speak about the crime conditions existing in the country and have tried my best to call the attention of my colleagues to something that I think the country already knows—that the present rate of crime increase cannot be permitted to continue.

There is something radically and vitally wrong, so wrong that it will destroy law and order in this country if something is not done to reverse the present trend.

Probably the worst place in the country today is the Nation's Capital. What is happening here is a national disgrace.

I have here a copy of today's noon issue of the Washington Evening Star. I also have a copy of today's noon issue of the Washington Daily News.

I ask the Presiding Officer to look at the headlines. I know that the RECORD cannot adequately reflect them. But, Mr. President, the headline in the Washington Daily News is "Bus Driver Slain Here." That headline is in letters 1½ inches tall. It must have some significance.

The headline of the story in the Washington Evening Star is "Bus Driver Slain in Holdup, Sparking Rush-Hour Walkout."

That refers to a walkout of the bus drivers; and who can blame them, Mr. President?

I ask unanimous consent to have the article printed at this point in the RECORD.

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

BUS DRIVER SLAIN IN HOLDUP, SPARKING RUSH-HOUR WALKOUT—FIVE OTHERS ROBBED IN DISTRICT OF COLUMBIA DURING NIGHT—UNION THREATENS NEW TIEUP UNLESS PROTECTION IS GIVEN

A two-hour wildcat strike erupted among D.C. Transit bus drivers this morning after the fatal shooting of a driver in one of six bus robberies last night and early today.

The union local president said the buses might not run after dark tonight if protection is not provided.

The six holdups occurred between 10:17 p.m. yesterday and 3 a.m. today.

John Earl Talley, 46, died about seven hours after he was shot twice in the head about 1:20 a.m. at 20th and P Streets NW. Three suspects were captured shortly after the shooting and a fourth is being sought.

Talley, it was learned, had a gun but it was not known if it was the weapon used in the slaying.

George Apperson, president of Capital Local 689 of the Amalgamated Transit Union, said later:

"The boys have had a belly full. I don't know if people are going to have transportation tonight or maybe tomorrow.

"The preliminary job is to get the men back on the streets during daylight today but tonight—if you can't put someone on the bus to protect the operator, then I think I may have to keep the operator off. . . ."

TWO HUNDRED THIRTY-TWO ROBBERIES IN 1968

Last night's six robberies brought the total for the 4½ months of 1968—to 232—compared to 326 in all of 1967.

Of about 150 buses due on the road at 6 a.m. today, about one third were not running. Many of the missing operators called in sick, according to union and company officials.

But by about 8 a.m., the union said service on the five divisions of D.C. Transit was running at "about 95 percent" of normal amount.

Heaviest hit apparently was the Bladensburg-Benning Road division, the one to which the dead driver belonged.

District police, anticipating a massive traffic jam when first word of the wildcat came through, held over the midnight to 8 a.m. shift to cope with rush-hour traffic.

Apperson said officials of the Washington Metropolitan Area Transit Authority were working to set up a meeting with Mayor Walter E. Washington and union officials today.

Asked what he would tell the mayor, Apperson said:

"I'm going to tell him what will happen tonight if we don't get men on the buses to protect the drivers. Maybe they could use police or military police. Unless it's done I'm fearful there will be no transportation in the Nation's Capital tonight."

In Oakland, Calif., he said, police were put on the buses for a short period after a wildcat strike that erupted there after a bus driver was shot.

Apperson said maybe some kind of curfew would be the proper step to protect the drivers. He said he would go to Capitol Hill today to press Congress to do something.

"SACRED TO DEATH"

One union official said this morning he would not drive on the night shift: "I won't take any night shifts. It's dangerous out there and I'm scared to death."

Apperson said he has talked in the past with Sen. Robert Byrd, D-W. Va., about the bus drivers' plight and he said he will try to see Byrd today and Rep. Joel Broyhill, R-Va.

Talley, of 2015 Somerset St., West Hyattsville, died at 8:20 a.m. at George Washington University Hospital.

OUT OF CONTROL

Police said that at 1:20 a.m. shots were heard at 20th and P Streets NW. Two U.S. Park policemen rushed to the scene and saw a D.C. Transit bus running out of control down P Street NW, with several Negro youths fleeing the opposite way.

One of the patrolmen, Pvt. Quinto Geissitto, chased one of the fleeing youths and captured him on Hopkins Place NW, after the youth hid under a car. Another youth was arrested nearby, and later this morning a third was apprehended in the neighborhood of 4th Street NW. All were juveniles, police said.

The other robberies were described by police this way:

10:17 p.m.: Joseph Bush, a D.C. Transit driver, told police he was approached by two men at 8th Street and Potomac Avenue SE. One held a gun in one hand, and with the other, clasped a handkerchief to his mouth. The gunman demanded money, got $31 in bills and $98 in tokens and change; then the pair fled on foot. Police describe both holdup men as Negroes in their early 20s.

HANDS OVER $50

11:15 p.m.: Augustus Bosley, 28, told police his bus was boarded by two Negro men at 10th Street and Virginia Avenue SE; one held a knife to Bosley's throat, the other snatched $2 in cash and $50 in change and tokens before fleeing.

11:15 p.m.: James Walker, 27, a Transit driver, said he was approached by a Negro man at Minnesota Avenue and Gault Place NE. The man, who held a gun, demanded money. Walker was forced to hand over $50 in cash and tokens.

12:30 a.m.: Dewey Graves, 31, told police he was stopped at the intersection of 25th Street and Benning Road NE when two Negro men, one with a gun approached. They demanded money, and escaped on foot with $17 in cash and tokens.

3 a.m.: Robert E. Thomas, 26, was stopped at 8th and K Streets NE when two Negro men approached. One held a gun in his hand. The gunmen escaped with $16.50.

Apperson said the morning walkout was not called by the union local but added it was "sanctioned to this extent—we're going to protect these men."

The local has about 2,850 active members, of whom about 2,000 are D.C. Transit operators.

URGED SPECIAL FORCE

D.C. Transit and union officials have increased their public discussion of the need for protection of bus drivers in recent months. However, as far back as May, 1965, D.C. Transit President O. Roy Chalk urged creation of a special 250-man police unit to cope with increasing violence on company vehicles.

In February of this year, District police increased their efforts against transit holdup men by putting some plainclothesmen on buses in areas heavily hit by bandits.

Last March, D.C. Transit asked the police department to assign uniformed men to ride buses, but police officials said they did not have the manpower.

"We just don't have enough personnel to do that," said Police Chief John B. Layton after a meeting with Morris Fox, vice president of the company.

Apperson, at about the same time, told a Star report that if a driver was killed, he would call off his men.

"One of these days someone's going to get killed. So far we've been lucky, but somebody's going to pull a trigger sooner or later," he said at that time.

After the holdup-shooting of Talley, WMAL-TV reported that as many as 25 D.C. Transit drivers showed up at the scene and there was talk at that time of a walkout. Two of them told a WMAL newsman that they had been robbed themselves within the last 24 hours.

Mr. McCLELLAN. Mr. President, I invite attention to the following portion of the article. I believe it is of great significance:

John Earl Talley, 46, died about seven hours after he was shot twice in the head about 1:20 a.m. at 20th and P Streets, N.W. Three suspects were captured shortly after the shooting and a fourth is being sought.

Mr. President, I lived within three blocks of that neighborhood but I moved early last year because of the crime conditions.

The article continues:

Talley, it was learned, had a gun but it was not known if it was the weapon used in the slaying.

George Apperson, president of Capital Local 689 of the Amalgamated Transit Union, said later:

"The boys have had a belly full. I don't know if people are going to have transportation tonight or maybe tomorrow.

This is a subheadline in the article: "232 Robberies in 1968."

Compared with 326 in all of 1967.

If my calculation is correct, the year is less than half over—only eleven twenty-fourths of the year has passed—but there is already a 71-percent increase over the number of robberies committed in the Nation's Capital last year. That is frightening, and it must be stopped. We will not stop it, as has been said by the distinguished Senator from Mississippi, simply by passing the so-called gun title in this bill and spending the small amount of money that has been recommended by the President for various purposes. The money will be spread so thin that very little effect will come from it.

I say without any hesitation and without any reservation that if those two titles are all that will be enacted, it will be only a little slap at the terrible conditions that confront us, and it will not be enough to retard, hinder, or abate the crime menace that is endangering our country.

Mr. President, I invite attention to another item, in yesterday's edition of the Washington Evening Star. It is entitled "An Open Letter to the President of the United States and the Mayor of Washington." It is not the first advertisement of this type. Several of these ads have been inserted in the local press by various groups begging for protection.

What is wrong, Mr. President? Why cannot these citizens be protected? It is said that we have better jurisprudence today; that it is more equitable; that it is right and just. Look at the rate at which crime is increasing, and then let someone tell me that it is better, that we are making the streets safer. Every day, the risk one takes in walking the streets is increased—every day—as irrefutable statistics demonstrate. What are we going to do? The American people are asking today, "Is Congress helpless, or does it lack courage?"

We are going to answer that question in this debate, Mr. President. We are going to answer whether we have courage to do more than spend a little money or whether we are going to get to the root of this problem and try to demonstrate by legislation that it is the sense of the U.S. Senate that crime must be stopped and that criminals must not escape just punishment on dubious technicalities and be turned loose on society to repeat and continue their pursuit of nefarious crime.

Mr. President, I ask unanimous consent that this open letter to the President of the United States and to the Mayor of Washington be printed at this point in the RECORD.

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

AN OPEN LETTER TO THE PRESIDENT OF THE UNITED STATES AND THE MAYOR OF WASHINGTON

It can happen here. The District of Columbia has become a disaster area and a battleground. The field of combat is clearly defined. It is in the minds of the lawbreakers—and those who are tempted to break the law. Our most powerful weapon must be knowledge that the law will be enforced—fairly and firmly.

The ultimate restraint for the lawless is not jail. It is the possibility of jail. When that possibility is diminished by lax law enforcement, crime becomes a way of life. When lawlessness is blinked at, we're eyeball to eyeball with anarchy; "window shoppers" are encouraged—to break the window. Give a potential criminal an inch and he'll take everything he can get, along with human life.

There are those who think that to deplore the increase in the spiral of crime brands one a reactionary. We are not reactionaries but if we did not react to the growing lawlessness in our city with alarm and protest, we would be irresponsible citizens.

We respectfully urge you, Mr. President and Mr. Mayor, while you seek from Congress the needed legislation for the disadvantaged, to seek also laws which will protect all citizens from irresponsible elements in the community—and to seek the means, if in your opinion you do not have them, to enforce those laws. We ask you to enforce and reinforce the law's presence—to alter the present climate which keeps salesmen of national manufacturers from visiting our stores in the Washington area because of danger on the streets, and prevents the law-abiding from going about their lawful pursuits. Escalate the war against robbers, arsonists and murderers—to achieve safety in our city and peace at home.

GREATER WASHINGTON DIVISION OF MARYLAND-DELAWARE-DISTRICT OF COLUMBIA JEWELERS' ASSOCIATION,
Affiliate of Retail Jewelers of America.

Mr. McCLELLAN. Mr. President, I have said to my colleagues on the floor of the Senate that I am receiving mail from every State in the Union, urging that Congress do something. The people want more done than a little gesture of spending a little money. We have already found that the spending of money, as such, is not a cure for all our ills, and it will not cure this disease, either. It will take more than that. It will take law enforcement, and that is something we do not have today.

According to the statistics, many crimes are not reported. How much, no one knows. Estimates are that from two to three times as many serious crimes are committed in this country as are reported. But of the serious crimes reported, seven of eight of law violators who commit those crimes are not punished for their unlawful deeds. That is not law enforcement. I believe that if we had the true figures, taking into account the number of crimes that are not reported, the figure would not be seven of eight. The figures probably would reveal that only one out of 15 criminals is punished for the crime he commits. We cannot have law and order in this country with that kind of law enforcement.

As we debate S. 917, crime continues rampant across our Nation, every day, not only in Washington, D.C. In the District of Columbia there were six robberies, and one killing last night. Robberies are up 71 percent over the figures for all of last year, Mr. President.

Every day, in important cities across our country, there are newspaper reports of violent crimes. It should be remembered that only one of eight of those committing the crimes is punished. That is conceded.

As an example, there occurred in Washington a few days ago a dastardly crime which was reported in local newspapers. A 14-year-old girl was raped in the basement of a United Planning Organization youth center by three youths.

On May 16, I received a letter from a resident from Washington who is concerned about crime in our streets, and I quote from his letter:

On Wednesday, May 8, 1968, my granddaughter was attacked by 6 or 7 teen-agers on her way home to the Northeast part of Washington, D.C.

To me, these young punks act like a lot of wild animals. There is too much of this going on in our nation's capital, and I think Congress should stop talking and do something to put an end to it.

Mr. President, I believe I can say, without any fear of contradiction, that millions of Americans today entertain that sentiment in their hearts: Why does Congress not do something about it?

Mr. President, I propose to try to do something about it, and this is the time to do it. We are approaching the hour of decision. Let no one say he did not have a chance. He will have the chance in S. 917 to try to do something about it, to try to stem the tide, to try to put around the innocent some shield of protection from the ravages of murderers, rapists, robbers, and muggers.

Mr. President, I received a letter dated May 13, 1968, from Miss Ruth Stout, who is a history teacher in Ohio and who, for several years in the past, has accompanied a school-sponsored tour of eighth-grade students to Washington, D.C.

Because of the current unrest in Washington—and that unrest amounts to lack of safety, and that is exactly what it is; it is lack of safety—and because of the current unrest in Washington and the Poor People's March, this history teacher is concerned about the safety of her students if she were to bring them to Washington.

Mr. President, I ask unanimous consent to have the letter from Miss Stout printed at this point in the RECORD.

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

CIRCLEVILLE, OHIO,
May 13, 1968.

Senator JOHN McCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SIR: For several years I have taken eighth grade students to Washington, D.C. These are no longer school sponsored tours but private tours in which the students are accepted on the basis of scholarship and conduct. These very fine groups of young people have enjoyed the tours and have profited patriotically and educationally by them. This year I am preparing two tours to be conducted in June. Each tour will have thirty-three students.

Knowing that the much publicized "Poor Peoples' March" is now being undertaken, the parents and I are much concerned about the safety of the children on the tours. We are experiencing anger, frustrations, fear and anxiety over the tactics employed and to be employed by the so called "Civil Righters". We are disgusted with our Congress in permitting the lawlessness, rioting, burning and disrespect in *Our* Nation's Capital. We are alarmed that Congress can be coerced by threats. While we believe in and uphold the

rights of all Americans to march, petition and assemble, we also believe that "rights" are not absolute but relative. We feel that our right to visit our Capital City in safety and with protection is being denied, and that the marchers, among whom are bound to be some lawless elements, are jeopardizing the public safety, public health, public welfare and public morals. We are growing weary of the attempt to brainwash us with the idea that "riots are a deserved punishment for the white man's sin of racism". This idea is not aiding the negro but is hastening the corruption and debasement of our society.

We ask, "What will Congress do? Where are we headed? Is the sickness of 'permissiveness' spreading so rapidly among our Congressmen that even the courageous will be stricken?"

We believe that Congress *has* the authority and should exercise that authority to control riots, crimes and civil disobedience. What we ask is that Congress do something to control rioting, burning, looting, assaults and civil disobedience in our capital. We ask that interference with traffic and the camping and trespassing on the Mall, on the grounds of the public buildings, and on the grounds surrounding the monuments, be prohibited in the interest of public safety, health and morals.

If Congress fails to do this, how can we honestly teach our young people respect for law and order? How can we say to them that the rights of the majority are being safeguarded?

Mr. Congressman, I want to know what protection will our groups have? What assurance can I give the parents that their children will be protected from insult and violence while in Washington?

Sincerely,

Miss RUTH STOUT,
History Teacher, Valley Forge Award 1966, Sertoma Award 1967.

Mr. McCLELLAN. Mr. President, the letter speaks for itself.

Go into the corridors of the Capitol today. In the past, at this time of year, near graduation, these corridors have been flooded with visitors. The visitors are not here today and for one reason only: because they do not feel safe in their Nation's Capitol.

Law enforcement has broken down and all some would do about it, is spend a little more money. This is not adequate; this will not provide the relief; we have to do more.

A medical doctor from Maryland writes:

I feel that Washington, D.C., which is the Capital of the greatest nation in the world, should have more effective laws regulating protest demonstrations and marches. I feel that all citizens, be they individuals or groups, should be allowed to express their opposition. However, I feel that these groups should be represented in the nation's capital by not more than 100 people. There should be no more than one demonstration or protest march per day. Demonstrations or protest marches by any one group should not last longer than one week. Public facilities should not be provided or allowed to be used by these groups. If necessary, bond should be posted to cover damage to private property during a demonstration.

Mr. President, I would say this person possibly goes to the extreme, but it shows what is happening to God-fearing, law-abiding, decent American citizens. They are becoming disillusioned; they are frightened, and they are terrified. Is the Senate going to sit here and do nothing about it, and pass a soft, money-spending bill? That may be all the Senate does, but if we do not do more, we will reap the whirlwind, Mr. President.

We are being rewarded now for our failure to enforce the law. What a tragic reward it is: More crime, more deaths, more rape, more mugging; and less obedience and less respect for law and authority every day because we are not enforcing the law.

Mr. President, the doctor stated further in his letter to me as follows:

I feel if we are to preserve the dignity of the capital and have an orderly and safe city, there must be more stringent regulations to demonstrations.

If some laws of this type are not enacted soon, Washington, D.C., will follow the course of Rome where the hordes descended upon it and demanded dole which eventually destroyed the empire.

You say it cannot happen here, Mr. President? Ten years ago no one would have believed what the chart in this Chamber reflects with respect to increased crime. Anyone who might have made such an assertion would have been looked upon as a prevaricator.

Today it is true. We are in the midst of it and some are afraid they might lose a vote if we got down to the guts of the matter and tried to eliminate this cancer in our society.

Another concerned citizen, Mr. Edward W. Green, from Landover, Md., stated in his letter that it is about time someone has voiced their opinion on the rulings of the Supreme Court:

These decisions have handcuffed the police courts of this country to protect the criminals. The law abiding citizen must have a gun to protect his home and family. It has become impossible to depend upon the courts and the police to stop crime.

The reason why the police cannot stop crime is the court decisions.

Mr. President, it is a sad commentary indeed when law-abiding citizens feel compelled to write Members of this body asserting that we can no longer depend on "the courts and the police to stop crime."

Mr. President, I have a number of quotations from letters to place in the RECORD. In view of the time situation and the fact that I want to speak on another aspect of this question during the afternoon and because the distinguished Senator from South Carolina [Mr. THURMOND] wishes to address this body at this time, I am going to conclude in a moment and yield the floor for the present, so the Senator from South Carolina can make his address. Following his address, I shall have some more remarks to make on the importance of the legislation before us, and particularly with respect to the confessions provision in title II.

A lady from New Lisbon, N.J., writes:

I do hope you will continue to try to get good laws passed so that the decent people can safely walk the streets again. Today, the criminal is catered to, and it is a disgrace that the laws all favor the rapist and murderer.

From Fairfax, Calif., a man writes:

I may not be one of your constituents, but I definitely support the stand you are taking in defense of our American way of life.

A man from Webb City, Mo., states:

I believe all people interested in our country welcome and support your investigations. We can no longer tolerate and excuse offenses against our constitutional government regardless how minor. If force is needed to expose and expel our enemies within, it should be used now. The day of our choice is now, not later."

A California man states:

I want to thank you for your concern for the honest people that your bill S. 917 will help to protect. Up to now the Courts have been helping the crooks. They can thank the Courts for their services and the honest people can look to you and your bill S. 917. We need it in its fullest.

From Norwalk, Conn., a man writes:

You, Senator Mundt, and others in the Senate and House are so right, realistic. These marches should not be permitted as they will be violent, riotous.

From a county official of a small western Kansas county, I received a letter stating:

You are thanked, commended and congratulated upon your interview as published in the U.S. News & World Report on May 6th.

You have put into words my thoughts and beliefs as I have garnered them from the responsible and irresponsible reportings of the news media, and you do deserve the Nation's wholehearted "Thank You".

A lawyer from Wewoka, Okla., writes:

It is refreshing to me to know that some of the leaders of our nation in high office have the nerve to analyze the problems and face them with a sane and sensible remedy. It seems to me that we can't continue to tolerate riots, looting, stealing and disrespect for law and order much longer.

From a couple in California:

We have just read of your Bill called the Crime Control Bill (S. 917). We are writing this letter advising you and our California Senators and Representative that we are very much in favor of this measure and would wish that you and our California representative vote in favor of this bill as soon as it reaches the floors of the respective Houses.

A Des Moines, Iowa, man writes:

This is a critical situation for our country. Our Senators and Representatives must set aside politics and go to work with our President and Attorney General for stricter law enforcement for these militant groups. Certainly all colored people do not approve of riots. People can't tolerate violence; they're beginning to live in anxiety and fear, and we don't want another Viet Nam gradualism. Only the communists can sit back now and enjoy our rioting conditions.

A doctor from Jackson, Miss., states:

Please do all you can to stop the breakdown of our government and the destruction of the Christian people of America.

A Massachusetts woman writes:

In these times, it is extremely difficult to express one's views at the risk of being called a Bigot. A great many politicians mostly those up for elections, do not speak out loud enough for law or order, if they do, they make sure to sugar coat the following sentences. It is gratifying to find persons who know the issue and know the only answer. Speak out. We can attain nothing in this

country until we have Law and Order first and without intimidation.

Another Massachusettsan states:

Your comments on riots in U.S. News & World Report (5/6/68) are the first from any Federal official that make sense to me. I believe we need desperately a National leadership that speaks in support of principle and not out of fear of losing votes.

A couple from Newport News, Va., write:

We salute you for your Crime Control Bill (S. 917) and "the guts" to stand up and be counted.

From Walhalla, S.C., a man writes:

What this country needs, and needs desperately is law enforcement, without regard to race or color, and no more coddling of criminals, or potential criminals. The fact that our country is in a really desperate situation seems to be completely ignored by our present administration.

A Stockton, Calif., housewife comments:

I feel that most people think as I do—they have had their fill of lawlessness—not only in connection with rape and murder, but in all forms of crime. Most people I have talked to do believe that punishment is a deterrent, but that we are not inflicting this punishment to its full extent in our Courts so we are not accomplishing the desired effect. As our local District Attorney said to me: "If you tell a small child not to put his hand in the cookie jar or you'll give him a good spanking, he's not so liable to put his hand in there. But tell him that if he puts his hand in the cookie jar now you'll probably spank him in two years, and that child is going to get a cookie."

A Brookhaven, Pa., couple write:

Please accept our sincere (Thank You) for your constant effort in trying to abolish crime, riot and disorder in this wonderful land of ours.

From New York, a man comments:

Please make every effort for a strong crime bill or people will form vigilantes in every city as the last resort.

A housewife from Sun City, Calif,, writes:

Why are there not more men like you who will speak out at the injustices being fostered upon us by our Supreme Court.

Another Californian states:

It is a sad state of affairs when there is more concern for the "rights" of criminals than the rights of the law-abiding citizen. I strongly urge your support of the crime control bill.

A St. Louis, Mo., man comments:

Keep up the good work in having the Anti-crime bill passed. The American citizens won't feel safe until it is.

A retired Air Force man from Georgia states:

Many friends, associates and myself wish you well in your Crime Control Bill, S. 917. What a great pity that members of the Supreme Court are and have been selected due to political patronage, membership of various groups, etc. rather than judicial experience or ability. Everyone is aware that the anarchy now in existence can be in part traced to the most questionable rulings we see from the Supreme Court.

From California, a woman comments on the Supreme Court:

It is heartening to know that at long last something is going to be done about the Supreme Court. At present we are living under an oligarchy of the Court.

A Cape Charles, Va., man writes:

I feel that it is high time that more people in office take a firm stand on enforcing our laws to quell disorders. If men of your caliber and men in positions of leadership fail to do this, our country will surely be destroyed by a minority group.

From Eugene, Oreg., a woman writes:

I read about your pushing for Senate passage of the Crime Control Bill that would supersede controversial Supreme Court decisions, and I am writing to wish you success! It's about time our Senators and Representatives woke up and tried to do something.

God bless you in your work, and I hope you succeed and hope you'll get your bill and a few more, stronger one's passed. I'm so afraid we're too late.

A housewife in San Diego, Calif., writes:

Concerned citizens of each party, except the Communist Party, U.S.A., are aghast and utterly confused by so many decisions made by this administration, as well as by the Supreme Court, that are unfavorable for the preservation of this Republic.

An attorney in Detroit, Mich., comments:

I have read with considerable interest your comments on the decisions of the U.S. Supreme Court in the cases referred to therein as published in the last issue of the U.S. News and World Report. It is a masterpiece. I hope you will continue to pour it on and keep pouring it on until the Congress enacts some legislation that will knock those decisions into a cocked hat. They are positively "deplorable and demoralizing" as you point out in the excerpts.

In all the years of my life I have never had the feeling of insecurity for my country as I have now. Law and order has been the prevailing concept of our national life, but now there is a complete reversal of that concept and, in my opinion it all stems from those rank decisions you mention and many others like them, giving complete protection to the underworld with little or no protection to law-abiding citizens. Those decisions are so rank they fairly stink. It is little wonder that law enforcing agencies hesitate to make arrests and bring cases before the courts when they are so fenced in by rules of the highest court. Rules that are utterly ridiculous.

You are doing a real service to the people in bringing to them the necessity for changing the law, giving to the public protection not now afforded them. The Supreme Court could also do a real service to the people by half of them resigning their high posts.

From Oak Ridge, Tenn., a woman writes:

Although I am not a constituent of yours, I do want to take the opportunity to commend your efforts regarding passage of the Crime Control Bill. This piece of legislation is badly needed and long overdue. I have written both Senators from Tennessee urging them to give this Bill their full support.

From Washington, W. Va., a man comments:

I agree with you one hundred percent that the handcuffs placed on the police by the Supreme Court should be removed so that the criminals can be brought to justice and the people protected.

A woman from Glendale, Calif., writes:

We want to thank you from the bottom of our hearts for your patriotism and unswerving loyalty to the United States. Your splendid article in U.S. News and World Report entitled "How Riots are Stirred Up" should be a warning to all of the people who are lenient and sympathetic with the marchers in whose wake violence inevitably follows. You have done a great service to our country by your stand on the various issues, and by your very informative articles. May God bless you for your great service to our country.

Mr. President, out of deference to my distinguished colleague, the Senator from South Carolina [Mr. THURMOND], I yield the floor at this time. When he has concluded, I shall resume with some further remarks on this issue.

Mr. THURMOND. Mr. President, I wish to thank the distinguished Senator from Arkansas.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. LONG of Louisiana. Mr. President, I congratulate the Senator for the magnificent fight he has been making for law and order to resist this tremendous increase in crime that has been going on in this country. I applaud the Senator. I understand he is planning to offer some amendments and propose affirmative steps.

Mr. McCLELLAN. We have them in the bill now. The Committee on the Judiciary reported some very effective legislation. There is a motion pending to strike it from the bill, which would eliminate the real crux of this measure with respect to doing something about crime.

Mr. LONG of Louisiana. Mr. President, I recall that in years gone by the distinguished Senator from Arkansas and others have tried to do something about this tremendous increase in the crime rate here in the District and elsewhere in the country. Some people, because of their liberal philosophy, I guess, said "No, we must not do anything about the Supreme Court decisions which favor crime over law enforcement and which favor the criminal over society."

The Senator has labored diligently in that respect and I wish him luck.

Mr. McCLELLAN. I thank the Senator. I am proud I have his support in this effort. I urge all of my colleagues to join hands together.

Mr. President, it is said, "Oh, that would be a harsh remedy you propose to try to correct the Supreme Court decisions." It may be harsh but the harshness does not compare to the tragedy happening in this country. Something must be done.

Mr. LONG of Louisiana. Mr. President, will the Senator yield further?

Mr. McCLELLAN. I yield.

Mr. LONG of Louisiana. Mr. President, as the Senator knows so well, here in the District of Columbia we are experiencing the fact that people of all races suffer from the breakdown of law and order. The Negro citizens of our community suffer from mugging, raping, and murdering just as the white citizens suffer. This is a matter in which every good citizen should stand together in support of government and in support of necessary laws and constitutional amendment to bring us back to law and order.

Mr. McCLELLAN. The Senator is so correct. We all suffer from lack of law

enforcement, and that includes people of every race, creed, color, and station in life. No one profits from it except the criminal; no one except the criminal is profiting from crime today; and regrettably and tragically, too many criminals today are profiting from crime. It has become a way of life for them. They are getting by with it because of the lack of law enforcement. I say it cannot go on. We are moving, moving rapidly toward anarchy in America. Some say it cannot happen here. I say: Look at the increasing crime rate. Take a pencil and a pad of paper and project the crime rate ahead a few years. Project the rate of increase in crime by a few years ahead and we will find that law and order can simply not exist.

Mr. LONG of Louisiana. I know that the Senator is well aware of the fact that a poor people's group is camped near the Lincoln Memorial, one of their principal complaints being that they think they should have some good jobs.

The last time I looked at that situation, there were 50,000 good jobs available as policemen throughout this country. I think we need 500 additional police just in Washington, D.C., alone and at least an equal number in Baltimore only 40 miles away. There are 1,000 good jobs right there—at least what was once considered a good job, that of being a policeman; but because of recent Supreme Court decisions and the failure of Congress to act to restore traditional law enforcement and the high morale which once existed in our police forces, on the Federal part to correspond to that which should be done by State and local governments, it makes it very difficult to recruit the 50,000 good men and women needed to serve as police officers.

Mr. McCLELLAN. Mr. President, there are plenty of opportunities for people to qualify for positions as policemen as well as firemen—but especially policemen. What is the reason for it? Poor pay may be one reason, but I say to the Senator that there is a greater reason—to wit, the policeman gets no support from sources who should give him respect and protection.

Today, why should a policeman go out and risk his life to catch a known murderer or criminal who is armed with a gun, when the Supreme Court will find some small technicality, without regard for guilt or innocence, to find a way to turn that murderer or criminal loose and then, in the decisions the Supreme Court render, attack the officer who risked his life and reflect upon his integrity, by inferring that we cannot trust a policeman to do right, that we cannot trust our courts to do right. That is their attitude. It is wrong. There should be a change.

Call this an attack on the Court?

I do not attack the Court. I deplore what some of its decisions are doing to this country. As long as I am able to do so, I am going to protest, and I am going to do what I can, as a legislator in the Senate of the United States, to get legislation enacted to correct it. If it is not corrected through that process, or through a reversal of their conclusions and views, then the spiral in the crime rate will continue onward and upward, and if it keeps going onward and upward, then the security of the American people will sink lower and lower.

There has got to be a change. We do not need a change in the Constitution of the United States. That is what is wrong now. Had the Supreme Court interpreted the Constitution as it had been the law of the land since the founding of the Republic, we would not have all these problems today. All it had to do was to adhere to precedent, the precedents of distinguished judges, some of the greatest in this Nation, as well as some of the greatest jurists, the most honored and most respected this country has ever known, who rendered decisions on the identical issues and declared that the Constitution did not require all of the ceremonial warnings that the Supreme Court today now says must be given as in the Miranda case.

Who is attacking whom?

The Court had to attack its predecessors. If saying they are wrong is an attack, I say that the Supreme Court today—five members of it—are wrong. If that is an attack upon the Court, then to arrive at what the Court did—those five members—they have to attack all their predecessors who came before them who had ruled on the same issues.

What is sauce for the goose is sauce for the gander. I am not attacking them any more than they attack.

Mr. LONG of Louisiana. As the Senator from Arkansas so well knows, sometimes something gets to be law because the courts hold that the law is "thus and so," even though it has never been regarded as being that before.

Mr. McCLELLAN. To the contrary, in this instance, it had been held specifically on all fours that it was not that way by the predecessors of the present day Supreme Court, who undertook to change the Constitution.

Mr. LONG of Louisiana. The point being there that when that Court rules the Constitution to mean something different from what it had been understood to be in the past, and different from the previous decisions of earlier years, the Court has, in effect, made its own law.

Mr. McCLELLAN. The Court has amended the Constitution because previous Courts said the Constitution did not require it. The Court now says that the Constitution does require it. Had the present Supreme Court adhered to precedents and observed the law of the land, and had they followed the law of the land, we would not have the hiatus we have today in law enforcement.

Mr. LONG of Louisiana. The Senator has so well stated it. Largely as a result of the Supreme Court decisions, we have seen the crime rate go up over a period of the past 20 years by 380 percent. That is a fantastic increase in crime. I am referring to the chart in the rear of the Chamber. I am not sure whether that is the Senator's table or someone else's, but I accept it on its face as to what has been happening in this country.

Mr. McCLELLAN. Let me say to the Senator from Louisiana that I had that chart verified before I had it placed in the Chamber.

Mr. LONG of Louisiana. When a Supreme Court decision has the effect of changing or amending the Constitution of the United States——

Mr. McCLELLAN. That is tantamount to doing exactly that, and the Supreme Court does not have the power to do that.

Mr. LONG of Louisiana. Assuming that the Supreme Court honestly, in error, or for good cause, or even correctly, ruled the Constitution to mean something different than it had been construed to mean in the past, if we in the Congress do not think that is a change for the better, then it is our duty and we are paid to work on a matter of that significance. It is our duty to correct the situation in such fashion as to offset whatever mischief or evil might occur as a result of what we regard as an unwise decision of the Court.

Mr. McCLELLAN. It becomes our duty. We are the elected representatives of the people.

I know what the Senator must be experiencing in his mail, the protests he is getting, and the pleas from his constituents to do something about it. I am getting them. I know every Member of the Senate must be. What are we going to do? Nothing? Just spend a little more money? That is not the answer. It is not going to get the job done.

Mr. LONG of Louisiana. The Senator has quoted—quite correctly, I think—the Mallory decision. He has tried to do something about it for a number of years. He has also quoted the Miranda decision. He is trying to do something about that, and to point out what it has led to.

It seems to me if we are serious about this, we should come up with some answers. Part of the answer is that if we think those court decisions have tended to lead to what has happened, then we should so change the law—not by changing the Miranda decisions, because Miranda was liberated and turned free, even though he was obviously guilty, and so was Mallory——

Mr. McCLELLAN. Miranda has been convicted on another charge and has been given a sentence, and he has been reconvicted on this charge, although it is questionable whether it will be sustained, because he made a confession to a common-law wife. How much dignity will be given to a common-law marriage by the court, we do not know, but if it is given as much as a legal marriage, then that confession cannot be received in evidence and is not admissible, because it is privileged.

Mr. LONG of Louisiana. The situation we have is that the law is clearly unsatisfactory when we have a 380-percent increase in crime over a period of 20 years. I have served in the Senate most of those 20 years. People have a right to say, "What is the matter with you people up there? Why don't you do something about this?" I think they would correctly expect us to try to correct those things about the law, whether they got that way by court decisions or by our passing bad laws in the past, that would make the law help bring about adequate law enforcement.

One thing I have done since we have had all the looting and shooting and arson and practically armed insurrection against the Government, is that when I am on the street and see a policeman, I

practically walk out of my way to go up to that policeman on the street and take his hand and say, "I want to thank you for what you are trying to do to protect the people of the community, my family, my property, and my person, but if there is something we can do that will help you to do your job, you can count on me to try to vote for it."

I appreciate what the Senator from Arkansas has done, as a member of the Judiciary Committee, in many years of diligent effort in this field to try to reverse this trend. I hope that his efforts, together with those of some of our other colleagues, will meet with some success. I quite agree with the Senator that merely spending some money will not do it. It will help the morale of the police and firemen to have their pay increased, but it will take more than that. There is no question about it.

Mr. McCLELLAN. I thank the Senator. I am grateful, indeed, for the support he is giving us in this matter. He has always been on the side of law and order. He has made every contribution he could, as a representative of his wonderful State in the Senate of the United States, on the side of law and order. I am grateful I have his support in this battle.

U.S. CIVIL RIGHTS COMMISSION CHARGES UNFOUNDED AND RECOMMENDATIONS UNWARRANTED

Mr. THURMOND. Mr. President, Saturday's report of the U.S. Commission on Civil Rights is an unfortunate combination of unfounded charges and unwise and unwarranted recommendations. The report contain blanket charges that Negroes have been barred from political participation in the Southern States by actions of both governmental authorities and political parties. The Commission thus calls for new laws to be passed by Congress and new rules to be passed by the national party organizations.

As a Senator from South Carolina and as an active participant in the Republican Party of South Carolina, I should like to comment on these charges as they apply to my State and to parties in South Carolina. Political party organizations are governed by State law in South Carolina. The party organizations are based on the precincts which hold public meetings that are required to be publicized in the local press, both as to time, date, and place. At these meetings, precinct officers and delegates to the county conventions are chosen. The county conventions may nominate local candidates or authorize a primary; they also elect county party officials and delegates to the State conventions. State conventions may nominate statewide candidates or may authorize a party primary for this purpose.

The State convention also chooses State party officials and elects delegates to the national conventions. Between conventions, the county parties are run by an executive committee composed of one committeeman from each precinct, and the State parties are run by an executive committee composed of one committeeman from each county.

All of the procedures outlined above are provided for by State law. At every phase of the political process, from the precinct to the State convention, decisions as to policy, nominees and party officials are made by a majority of the participants. All voters are free to participate at the precinct level, and elected delegates at the subsequent conventions. The party machinery is composed of persons freely elected in open meetings according to State law.

There are 1,638 precincts in South Carolina. The Commission alleged discriminatory practices in only three of these during the 1966 reorganization. The 1968 reorganization has already occurred, and I am familiar with no charges of this nature. Further, the Commission cites disputed elections involving Negroes in Democratic primaries. These were resolved according to State party rules: Two were decided in favor of white persons, one in favor of a Negro. No mention is made of election disputes involving white persons only.

Negroes participate in large numbers in the general election. We are currently undergoing complete voter reregistration, and surely such charges would be debated in the State now if they were true. With regard to party participation, Negroes are active in both parties. There are Negro candidates in both parties and Negro delegates to the State conventions of both parties. It is clear that the vast majority of politically active Negroes are in only one of the parties, but this is the result of the exercise of choice by those Negroes and not the result of any pattern of discrimination.

The truth is that Negroes participated in party affairs as they chose to—and were not in any way prevented from working in either party.

It may be true that Negroes were not elected to party positions to which they sought election. This, however, is not discrimination, but the choice inherent in free elections. Surely freely elected delegates to party conventions are not to be told that they must elect certain candidates to office. Many Negroes have sought public office in South Carolina. Their failure to be elected is not a result of discrimination but a result of the voter's decision to vote for other candidates. In a free society, members of any group—either racial or religious—are not entitled to a share of either public or party offices; they are entitled only to seek these offices.

Mr. President, I resent the Commission's charges. With regard to my own State—of which I have personal, first-hand knowledge, I know them to be false. With regard to other Southern States, I suspect them to be false also. Apparently, what the Commission is suggesting is that the national committees of the parties require a certain racial balance in the selection of party officials, or the delegates to the national conventions will be penalized. Such a suggestion is totally unwarranted. It violates the very principle of a free election. As a substitute, perhaps a law should be passed requiring that the Negro vote be fairly apportioned between the parties on election day. This would certainly make as much sense as the Commission's other suggestions.

Another suggestion made by the Commission is that Federal registrars be present in all jurisdictions until such time as the percentage of registered voters who are Negro is the same as the percentage of the population which is Negro. Mr. President, this is nothing more or less than asking the Federal Government to take over the functions which properly belong to the political parties or other political groups. The Senate is not naive about politics. A knowledge of the political system and how it works is an unwritten requirement for membership in this body. The simple truth is that the greatest single obstacle to voter registration is apathy. Political parties, voter education groups, and labor unions spend many long and hard hours getting people registered who they feel are predisposed to vote their way at the polls. The process is time consuming. It is expensive. It takes many dedicated volunteers—or paid staff personnel. The plain truth is that many people do not register and vote unless prodded by someone else.

Many of these apathetic citizens need to be told where to register, when to register, how to register. They often need to be reminded by mail and by telephone. Finally, they need to be given a ride to the registration office. Anyone familiar with politics knows this to be true. All those familiar with politics also know the terrific advantage any party, group, or political persuasion would have if the Federal Government undertook this task for them. It is axiomatic that the political group which is successful in getting its voters registered has a great advantage. To utilize the time, the money, the energy, and the personnel of the Federal Government on behalf of one group of voters—instead of the normal private resources—is to give a terrific boost to one group over the other citizens.

Mr. President, we are also familiar with group voting preferences in this Nation. Many detailed and scholarly studies have shown that many individuals cast their votes as members of a larger group, rather than on individual considerations. Politicians from Maine to California are aware that racial, religious, economic, and other group identifications often play a large part in how a person votes. We know from experience that certain groups tend to vote alike on election day. This is known as bloc voting. We also know that studies of past elections have shown that general political preferences of these various groups. Thus, by making the facilities of the Federal Government available to certain groups for registration purposes, but not to other groups, the Government is injecting itself in the political process in a partisan and unfair manner.

Voter groups do not register with equal enthusiasm. Educational level, economic status, union affiliation, religious preference, involvement in political and/or civic affairs—all of these in addition to race—play a great part in the predictability of whether or not a person will register. Whether or not he has been the subject of an organized registration drive also plays an extremely important role. For the Government to inject itself into this process by conducting registration drives aimed at specific voter groups is to allow the Government to use the taxpayers' money to give valuable as-

sistance to one group to the exclusion of others. It should be remembered that the Commission is not asking the Federal Government to register all voters—only Negro voters, and in certain States. It should also be noted that Negroes in these States, for the most part, have a history of preference for a particular party and a particular point of view.

Let me give a specific example of how this works. As I mentioned earlier, South Carolina is currently undergoing complete reregistration of all voters, as State law requires this every 10 years. It is obvious that those who are most successful in getting their friends and supporters reregistered have a large advantage. The registration board in Clarendon County, S.C., has been open from 9 a.m. to 5 p.m. daily, except Thursdays and Saturdays, when they are open from 9 a.m. to 1 p.m. Federal registrars were active in this county 2 years ago. The total registration—including those who had died or moved away during the previously 10 years—was approximately 10,000. For the new registration period, 8,000 voters had been reregistered by April of 1968, indicating that voters were reregistering in large numbers. Nevertheless, the U.S. Civil Service Commission, over the signature of Wilson M. Matthews, director of the voting rights program, mailed a letter to all voters who had been registered by a Federal registrar that they must do so again. The letter reads as follows:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 8, 1968.

——— ———: This is to tell you that the law of South Carolina requires all registered voters in the State to register again in order to be able to vote in future elections.

Our records show that you were registered by a Federal Examiner and given a Federal "Certificate of Eligibility to Vote." *If you have not already registered again, you must do so now.*

In order to register again do *one* of the following:

1. Go to your Local Registration Board. The Board for Clarendon County is in Manning at the County Courthouse. The Board for Dorchester County is in Saint George at the County Courthouse. Both registration offices are open from 9:00 a.m. to 5:00 p.m., Monday through Friday of each week. Take your Federal Certificate with you to the Board. Do so by May 11.

2. Go to the office of the Federal Examiner where you registered. Take your Federal Certificate with you. The Federal office for Clarendon County is in Manning in the Federal Building. The Federal office for Dorchester County is in Saint George in the Post Office. These Federal offices will be open starting Wednesday, April 10, 1968, from 8:00 a.m., to 5:00 p.m. every day except Sunday. If you register again at the Federal Examiner's office, you must do so by May 11, 1968, in order to vote in the primary.

3. Mail two copies of the State Application for Registration to your Local Registration Board. Applications may be obtained at your Local Board, the Post Office, a bank, or other public place in your county. If you register by mail, your Application must be notarized and you must mail it in together with your Federal "Certificate of Eligibility to Vote."

Remember, you must register again by May 11, 1968, at your local board or at the Federal Examiner's office if you want to vote in the June 11 primary election. If you register after May 11, you can vote in the general election of November 5, 1968, and future elections.

Sincerely yours,
WILSON M. MATTHEWS,
Director, Voting Rights Program.

Mr. President, I forwarded this letter to the office of Mr. Matthews, requesting an explanation as to what authority existed for such a letter to all Negro voters registered by Federal examiners. I received an answer from Anthony L. Mondello, General Counsel to the Civil Service Commission. In his reply Mr. Mondello cited several Federal regulations as the basis for this action.

Mr. President, I ask unanimous consent that the letter of Mr. Mondello, dated May 10, 1968, and copies of the United States Code of Federal Regulations 801.401 through 801.404 be placed in the CONGRESSIONAL RECORD at this point in my remarks.

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

U.S. CIVIL SERVICE COMMISSION,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., May 10, 1968.

Hon. STROM THURMOND,
U.S. Senate.

DEAR SENATOR THURMOND: This will respond to your letter of April 24, 1968, regarding the letter of April 8 sent by the Civil Service Commission to certain voters in South Carolina.

I regret that you interpret the letter as being "coercive". It was certainly not intended to be so interpreted by the addressees or anyone else. The letter was sent for the purpose of informing those citizens of South Carolina who had been listed under the Voting Rights Act of 1965 of the State law requirement to register if they wished to vote. The letter informs these citizens of the places where they can register and advises them that failure to do so will result in the loss of their current eligibility to vote.

The Commission is authorized, and indeed directed, to supervise the activities of its employees, manage its internal affairs, and execute, administer and enforce the statutes with which it is concerned. Under the Voting Rights Act, the Commission has power to regulate procedures concerning removals from eligibility lists. The regulations (45 CFR 801.401–801.404) require a discrete procedure to be used with respect to each voter to be removed from eligibility; an administrative burden which is not borne with respect to voters who remain eligible. I believe the action of the Commission in dispatching the letters of April 8, 1968 to be consistent with the overriding objective of the Voting Rights Act to fulfill the right of qualified citizens to vote, and with the authority of the Commission to manage its affairs.

If I can be of further assistance, please let me know.

Sincerely yours,
ANTHONY L. MONDELLO,
General Counsel.

SUBPART D—REMOVALS FROM ELIGIBILITY LIST

§ 801.401 Scope.

The subpart prescribes the bases and procedures for removals from eligibility lists under the Act.

§ 801.402 Bases for removals.

An examiner shall remove the name of a person from an eligibility list:

(a) Pursuant to the instruction of a hearing officer under § 801.316;

(b) Pursuant to the order of a court having jurisdiction under the Act;

(c) When the examiner determines that the listed person has lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States and in accordance with the instructions concerning loss of eligibility to vote prescribed by the Commission after consultation with the Attorney General which shall be set out in Appendix D to this part and incorporated in and made a part of this section.

APPENDIX D

This appendix sets out the bases for loss of eligibility to vote and removal from an eligibility list.

ALABAMA

A person loses his eligibility to vote in elections in the State of Alabama if:

(1) He is no longer a legal resident of the State of Alabama or the county for which he is listed (a person may not vote in a county or precinct in which he is not a resident, but when a person removes from one precinct or ward to another precinct or ward within the same county, town, or city within three months before an election, he may vote in the precinct or ward from which he so removed);

(2) He dies;

(3) He is convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on wife, bigamy, living in adultery, sodomy, miscegenation, incest, rape, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude, or vagrancy or being a tramp, or selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector, and has not been subsequently pardoned with restoration of his right to vote specifically expressed in the pardon;

(4) He is declared legally insane by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States or the State of Alabama.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

GEORGIA

A person loses his eligibility to vote in elections in the State of Georgia if:

(1) He is no longer a legal resident of the State of Georgia or the county for which he is listed;

(2) He dies;

(3) He is convicted of treason against the State, embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of Georgia with imprisonment in the penitentiary, and has not been subsequently pardoned;

(4) He is declared legally insane or idiotic by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States or the State of Georgia.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not

result in loss of eligibility in any other election.

LOUISIANA

A person loses his eligibility to vote in elections in the State of Louisiana if:

(1) He is no longer a legal resident of the State of Louisiana or the parish for which he is listed, however the removal from one parish to another does not deprive a person of the right to remain listed in the parish from which he has removed for the purpose of voting for district officers to be elected in a district which includes the parish to which he has removed, or for State officers, whether the parish is in the same district or not, until he has acquired the right to register or be listed and vote for such officers in the parish to which he has removed (the removal of a person from one precinct to another in the same parish does not deprive him of his right to remain listed in the parish from which he has removed until three months after the removal);

(2) He dies;

(3) (a) He is convicted of any crime punishable by imprisonment in the penitentiary and has not been subsequently pardoned with the express restoration of the franchise, or (b) he is convicted of a felony and has not subsequently received a pardon and full restoration of franchise.

(4) He is declared legally incompetent or insane by a court and has not been subsequently restored to legal competency or sanity by a court;

(5) He is dishonorably discharged from the Louisiana National Guard or the military service of the United States and has not been reinstated;

(6) He deserts from the military service of the United States or the militia of the State of Louisiana, when called forth by the Governor or, in time of invasion, insurrection, or rebellion, by the President of the United States and has not returned to the command from which he deserted, made good the time lost in desertion, and served out the term of his original enlistment;

(7) He becomes an inmate of any charitable institution, except the Soldiers Home and the United States Marine Hospital at Carville; or

(8) He loses his citizenship in the United States or the State of Louisiana.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

MISSISSIPPI

A person loses his eligibility to vote in elections in the State of Mississippi if;

(1) He is no longer a legal resident of the States of Mississippi or the election district for which he is listed;

(2) He dies;

(3) He is convicted of arson, bigamy, bribery, burglary, embezzlement, forgery, obtaining money for goods under false pretenses, perjury, or theft and has not had his right to vote restored by the legislature;

(4) He is declared legally insane by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States.

A person loses his eligibility to vote in municipal elections only, if he (1) is no longer a legal resident of his city or town, or (2) if he has, within two years before the next municipal election, been convicted within the municipality of violating the liquor laws of the State or the municipality, or (3) is at the time of the municipal election in default for taxes due the municipality for the two preceding years. Loss of eligibility to vote in a municipal election because of change of such residence or such conviction or such default in taxes does not result in loss of eligibility in any other election.

SOUTH CAROLINA

A person loses his eligibility to vote in elections in the State of South Carolina if:

(1) He is no longer a legal resident of the State of South Carolina or the county for which he is listed;

(2) He dies;

(3) He is convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, challenging or accepting a challenge to duel with a deadly weapon, or crimes against the election laws and his right to vote has not been restored by pardon;

(4) He is declared legally insane, idiotic or incompetent by a court and has not subsequently been declared legally sane or competent by a court;

(5) He becomes a pauper supported at public expense; or

(6) He loses his citizenship in the United States or the State of South Carolina.

A person loses his eligibility to vote in municipal elections only if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of residence does not result in a loss of eligibility in any other election.

[30 F.R. 9913, Aug. 10, 1965, as amended at 30 F.R. 11104, Aug. 27, 1965; 30 F.R. 14046, Nov. 6, 1965]

§ 801.403 Procedure for removals determined by examiners.

An examiner may remove the name of a listed person as authorized by § 801.402 (c) only after:

(a) Giving the person a notice of the proposed removal of his name stating the reason why the removal is proposed and offering the person an opportunity to answer the notice of proposed removal in person or in writing or both within ten days after his receipt of that notice;

(b) Considering all available evidence concerning the person's loss of eligibility to vote, including any timely answer submitted by the person.

§ 801.404. Notification of removals.

When an examiner removes the name of a person from an eligibility list he shall notify the person, the appropriate election officials, the Attorney General, and the attorney general of the State of that removal and the reason therefor.

Mr. THURMOND. It should be clear from a careful examination of the regulations cited by Mr. Mondello that no such authority is conferred on the Civil Service Commission. The regulations provide a detailed procedure for notifying voters who are no longer eligible to vote under State law and enumerate the provisions applicable in South Carolina. Complete re-registration required of all voters is not cited, even though this was part of South Carolina law at the time the regulations were devised, and had been for years. Chapter VIII of title 45 is clearly not referring to a mass mailout of letters to one portion of the voters when all voters are similarly affected.

Mr. President, it is apparent that the Civil Service Commission is willing to use its power and facilities to conduct registration drives for Negroes. This may be in accord with the goals of the Civil Rights Commission, but it is unauthorized by law and is improper. The Civil Rights Act of 1965, bad as it was, was aimed at eliminating alleged discrimination, not at taking over the functions of non-government political organizations.

Mr. President, I object to the type letter mailed out by Mr. Matthews being sent for serveral reasons:

First, it has the obvious effect of encouraging certain voters to re-register—but not all voters.

Second, it is on Government stationery and has a coercive ring to it.

Mr. President, how fortunate all of us would be if the Government would send a letter to a voting group of our choice telling them they must register to vote. This is an unfair, partisan intrusion into the free political process. The Civil Rights Commission apparently wishes to extend this type of activity even further.

Throughout the Commission's report, issues facing State government are discussed only in terms of how they affect this particular racial group. For example, many of us are familiar with the conflict in many States as to whether legislators should be chosen by single member districts or be elected as a slate on a countywide basis. There are numerous arguments pro and con. Generally, those favoring single member districts are in a political minority and are unable to elect even one representative of the slate, although they may represent 49 percent of the votes. The political majority prefers that the county be represented by the countywide elected slate, usually contending that intracounty legislative districts are lacking in political history and an identity of interests, thus constitute artificial constituencies. This debate has taken place in many States. Conservatives and liberals, Republicans and Democrats, appear on different sides of the issue in different States and in different counties within the States, probably according to whose ox is being gored—though reasons of principle cannot be altogether discounted.

However, because this issue has an effect on Negro political power, the Civil Rights Commission takes a position in favor of single member districts. The fact that both parties and numerous groups are affected by the measure is irrelevant. Everything must be subjected to whether or not this one group achieves political power—regardless of the fact that other groups are affected. If population patterns indicated this group would be favored by the countywide approach, I have no doubt that the Commission would endorse that method.

Another example is the Commission's discussion of the full-slate requirement. In South Carolina if 10 positions are being filled for the State house of representatives, the voter must vote for 10 candidates—no more or no less. The purpose of this is to prevent "bullet ballots." There are numerous arguments for and against this system, and they do not involve race. The South Carolina Republican Party actually brought a suit, unsuccessfully, to invalidate this requirement, preferring a system which provided greater opportunity for two-party legislative delegations. The Civil Rights Commission's report discusses this issue only in its racial implications. Because it

does not serve to accomplish political power for a particular racial minority, the Commission is constrained to comment on its use.

Mr. President, in conclusion, I am disturbed and concerned about this report. The Commission is subjecting every consideration of fairplay, of impartiality, of constitutionality, of the interest of everyone in society, to the achievement of political power for one racial group—not the opportunity to achieve power, but the actual achievement of power for this group. This is unprecedented. It deserves the careful study and serious attention of all Members of Congress.

Mr. President, I ask unanimous consent that the article, entitled "Rights Unit Warns Parties on Bias," published in the Washington Post of May 12, be printed at this point in the RECORD.

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

RIGHTS UNIT WARNS PARTIES ON BIAS—MAY ASK LEGISLATION

(By Jean M. White)

The Civil Rights Commission called on the Democratic and Republican parties yesterday to eliminate racial discrimination at every level of party activity.

If the parties fail to do so, it said, "new legislation providing greater political control over the electoral process may be necessary."

Among other things, the Commission said, the parties should refuse to seat Southern delegations at the national conventions this summer unless the state political organizations allow Negroes full participation in party affairs.

The commission made the recommendations in a 256-page report entitled "Political Participation." It is the first detailed study of the effects of the 1965 Voting Rights Act on Negro voting and political participation in the South.

"While we found that there has been an increase in the number of registered Negroes and a corresponding increase in the number of black candidates seeking public and party office," it said, "there are new forms of discrimination and new election contrivances to prevent Negroes from participating fully and freely in the political and electoral processes."

Much of the report dealt with internal party politics as distinct from public elections.

Participation in party politics, the Commission notes, is at the heart of the American electoral process. But, it added, neither of the national political parties has issued firm and binding directives to insure full and equal participation by Negroes in party activities.

The Democratic and Republican parties, the Commission concludes, "must assume responsibility for eliminating present practices of discrimination at the state and local levels." The rules, it adds, should clearly spell out that a state organization that fails to abide by the directive of the national party would risk losing its convention seats to a challenging delegation.

The Commission study found that Negroes accounted for less than 1 per cent of the officers of the Democratic and Republican state party committees in the Deep South.

Negroes, it found, are still excluded from local party activities and made to feel unwelcome—precinct meetings may be abruptly adjourned when they enter and information is kept from them.

In most Southern States, the report notes, primary elections are conducted by the political parties rather than government officials.

SOME STEPS TAKEN

Both political parties have taken some steps to eliminate discrimination and encourage Negro participation in state and local party affairs, the commission observed.

For example, the Democratic National Committee has included a non-discrimination resolution and guidelines in its call to the 1968 convention. But these are not binding, and the credentials committee is not obligated to enforce the guidelines, the commission points out.

As for the GOP, the study notes that the Republican National Committee has not adopted any guidelines but has provided some help to candidates and party officials seeking to get more Negroes involved in party affairs.

William L. Taylor, staff director of the commission, said the commission probably will have observers at the national conventions this summer and staff members will be available to assist party officials and supply information.

"If we do not get action from the parties, then Congress should take a good look to insure full participation by Negroes in party activities," he added.

FIGURES CITED

The commission report finds that since passage of the 1965 Voting Rights Act, 1,280,000 new Negro voters have been registered in 11 Southern states to bring the total to 2.8 million—about 57 per cent of the voting-age Negro population in the last census. Registration for whites is about 75 per cent.

At the same time, more Negro candidates ran for state, local and party offices in the South. Almost 250 were elected to public office.

But new and old forms of discriminations still deny many Negroes the right to vote and discourage them from running for public or party office, the report emphasized.

The commission study details practices such as these:

Dilution of the Negro vote by racial gerrymandering, switching to at-large elections, and full-slate voting laws.

Measures to prevent Negroes from obtaining office. These include abolishing the office, extending the term of incumbent white officials, making formerly elective offices appointive, raising filing fees, and withholding information from Negro candidates.

Discrimination against Negro registrants and voters. The study mentioned withholding information, failing to provide adequate voting facilities in Negro areas, and refusing to provide or permit help to illiterate Negro voters.

Intimidation. Commission field workers found Negro voters, candidates, poll watchers and campaign workers were subjected to harassment and intimidation in some areas of Louisiana, South Carolina, Mississippi, Alabama, Georgia and Virginia during the 1966 and 1967 elections.

One of the greatest deterrents to Negro participation in voting and political activities, the commission found, is economic dependence. Negro tenants and sharecroppers dependent upon white landlords, bosses, bankers and merchants often are afraid to vote or run for office.

Earlier this month, the Commission held hearings in Montgomery, Ala., and Taylor said one discouraging finding was the "evidence that Federal programs . . . have failed almost completely to break the cycle of economic dependence" of Negroes in the South.

He added that the commission now is studying this problem of economic insecurity facing Negroes in the South and hopes to have some recommendations later.

COMMISSION RECOMMENDATIONS

Among the commission recommendations is one to broaden the Civil Rights Act of 1968 to provide protection from economic as well as physical intimidation and authorize victims to bring civil actions for damages and injunctive relief. The report noted that the 1968 law does not cover campaign workers.

Here is a summary of some of the other recommendations:

The Justice Department should assign Federal voting examiners to all political subdivisions where Negro registration is disproportionately low.

The Justice Department also should move to block enforcement of new state legislation or party rules that violate the provisions of the Voting Rights Act of 1965, and should use existing legal sanctions in cases of discrimination in treatment of election officials, candidates, campaign workers and poll watchers and the exclusion of party members from precinct meetings.

The Federal Goverment should institute a program of affirmative assistance to encourage Negroes to register and vote and provide Negro candidates with information and legal advice on meeting requirements for political office.

The Federal Government should undertake an extensive program to reduce the economic dependence of Negroes and to permit them to participate more freely in voting and political activity.

After the 1968 elections, Congress should evaluate whether discriminatory practices still exist in states and political subdivisions in which voter registration tests and devices were suspended for five years under the 1965 act.

ROBBERIES ON D.C. TRANSIT BUSES

Mr. THURMOND. Mr. President, last night John Earl Talley, a bus driver, was shot and killed in a robbery attempt on a D.C. Transit bus. There were five other armed robberies on buses in the District of Columbia last night. One immediate result is that a large number of bus drivers failed to report for duty this morning, and there is considerable question whether the buses will be running after dark tonight.

The city's bus drivers are scared for their lives, and understandably so: Last night's six robberies bring the total for the 4½ months of 1968 to 232—compared with 326 in all of 1967. Bus drivers requested police protection on the buses in March, but police officials indicated that sufficient manpower was not available.

Mr. President, the city of Washington is the Nation's Capital. It should be a model for the rest of the Nation. It should set an example for cities all over America in law enforcement as well as in other fields. If Washington is setting the example, it is no wonder that cities throughout the United States are regressing into jungles of violence and disorder.

The President of the United States has a duty and a responsibility to see that the inhabitants of Washington are protected. This duty is not being fulfilled. Last night's tragic slaying of John Earl Talley and the five other armed robberies on the city's buses are evidence enough of the failure of Washington's authorities to protect the citizens. A city that cannot provide sufficient protection to allow normal operation of its mass transit system is in serious trouble. This is coming on top of the continued occurrence of arson and sporadic looting which are well on the way to becoming permanent hazards for residents of the city.

Mr. President, one of the reasons for the rapid descent of this city into chaos is the restrictions placed upon law enforcement officers in the District. The criminals know these restrictions exist.

According to law, a police officer is free to use all necessary force to aid in the arrest of a felon. I repeat, all necessary force. If police officers are not to use all the means at their disposal unless their lives are threatened or unless they catch an arsonist with gasoline in hand, many criminals know that if they can outrun the officers, they will get away. Law enforcement personnel should be instructed that if they have reliable information that a felony has been committed, and reliable information that the suspected felon is the guilty party, and that he cannot be stopped by means short of using force, they are authorized to use whatever force is necessary. They have not been so instructed, and the wave of crime and violence continues unabated in this city.

The much-heralded step of increasing police patrols will accomplish nothing if police officers continue to operate under unnecessary restrictions. Crime continues because the criminal is convinced that the promise of success is significantly greater than any risk he entails.

Another contributing factor is certainly the series of Supreme Court decisions which have made convictions of those arrested more difficult, specifically, the Mallory, Miranda, and Escobedo rulings. Justice White, in his strong dissent in the Miranda decision states:

> In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the street and to the environment which produced him, to repeat his crime whenever it pleases him.

He further noted:

> The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it.

We should keep these thoughts in mind when voting on title II of the omnibus crime control and safe streets bill next week.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SPONG in the chair). The clerk will call the roll.

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

The PRESIDING OFFICER. Without objection, 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. McCLELLAN. Mr. President, I commend the Senator from Connecticut [Mr. RIBICOFF] for his valuable contribution to this bill through his able advocacy of better education and training for law enforcement officers. More than a year ago, he introduced a bill to provide loans to college students enrolled in law enforcement programs and tuition grants to policemen to encourage them to seek and obtain a college degree by part-time study. Throughout the hearings and consideration of this bill, Senator RIBICOFF strongly supported these police education programs and convinced the committee of their merit.

As a result of his efforts, section 406 of title I authorizes $10 million for a two-part program of educational assistance: forgivable loans up to $1,800 a year to undergraduate and graduate students enrolled in law enforcement studies and tuition grants of up to $300 a semester, or $200 a quarter, to law enforcement officers enrolled in courses relating to their police work.

This proposal is an important step toward raising the educational standards of police officers as recommended by the President's Commission on Law Enforcement. A 1961 survey of 300 police departments showed that less than 1 percent required any college training; and a 1964 study of 6,200 officers across the Nation revealed that only 30 percent had taken one or more college courses, and just 7 percent had a college degree.

An effective, modern policeman should have sound judgment, tact, stability, and a knowledge of political science, psychology, and sociology. These traits can best be developed through advanced education. With the implementation of the proposed legislation, the Nation can look forward to a significant improvement in the quality of our police forces.

But beyond his work on this proposal, the Nation owes a debt of gratitude to Senator RIBICOFF for speaking out on behalf of greater public understanding of the difficult and demanding roles of police officers in our society.

In these tense and troubled times, he has been a voice of calm and reason. He has taken a moderate course, recognizing that progress can only be made in an atmosphere of order and respect for the law and those who uphold it.

In a recent speech, Senator RIBICOFF eloquently developed this theme. I ask unanimous consent that the text of the speech be printed at this point in the RECORD.

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

TEXT OF SPEECH GIVEN BY SENATOR ABRAHAM RIBICOFF OF CONNECTICUT BEFORE THE CONVENTION OF THE CONNECTICUT COUNCIL OF POLICE UNIONS, NO. 15, AFL–CIO, PARK PLAZA HOTEL, NEW HAVEN, CONN., APRIL 17, 1968

We meet today at a time of rising national concern about crime in our cities and our communities.

The events of April, the burning and the looting and the destruction in 125 cities, have shown us how deep and widespread is the threat to law and order in this country.

They have also shown us how great is our debt to the police officers in our nation.

For you are the men who risk your lives for the rest of us. Upon your shoulders rests the enormous burden of maintaining the public peace, of controlling disorders without killing people. No group of men in this country has shown greater skill, patience, dedication and courage than our police officers.

And yet, you often find that instead of being praised you are criticized.

You are told what your job is and how to do it. You are told you must have the wisdom of Solomon, the courage of a combat officer, the gentleness of a Florence Nightingale. We ask you to be Dr. Kildare and Batman rolled into one.

On the one hand we expect you to possess the sympathetic, characteristics of physician, nurse, teacher and social worker as he deals with school traffic, acute illness and injury, juvenile delinquency, suicidal threats and missing persons.

On the other hand we expect you to command respect, demonstrate courage, control hostile impulses, and meet great physical hazards. We ask you to control crowds, prevent riots, apprehend criminals and chase after speeding vehicles. There is no other profession which constantly requires such seemingly opposite characteristics.

The patrolman has one of the most difficult and demanding jobs in the world. An officer is compelled to make instant decisions affecting his own life and the lives and property of others. These decisions often must be made without clearcut guidance from a legislature, the courts or his superiors. A mistake can cost him his life—or the life of an innocent person. There is seldom a reward for the right choice, and the wrong one can be disastrous for the entire community.

Unfortunately, too many have little or no understanding of the policeman's role. The public attitude toward the police was distressingly demonstrated in a 1961 survey which rated the status of 90 occupations. The police rated 54th.

We cannot have effective law enforcement when the police are held in such low esteem.

The cry of "police brutality" has sounded so loud that we have forgotten the facts. The overwhelming number of policemen are hard-working, dedicated, helpful and needed by the entire community. We should do everything possible to encourage respect for law and the men sworn to uphold it. As a whole, the police have taken a "bum rap" for the failures elsewhere in our society. We have forgotten that the policeman fills one of the most agonizing roles in the community. He represents the *status quo*. He is the most visible symbol of authority—faced with the task of enforcing a law he didn't make.

It is time to pay attention to our laws. But it is equally time to pay attention to our police.

We must learn to understand the problems of the police—and do everything to encourage able men to join and stay in our police departments. We must begin programs to make their work more effective. For the Kraft survey in the ghettos showed that people there—like everywhere—want more protection, not less. Those who live in our slums suffer most from urban crime.

Improving our police forces is not a complicated matter—but it does require effort, money and imagination.

First, and most important, we must make sure that we attract and keep the best men for the job. Simply stated, this means a decent wage for our policemen, and I think it is fair to say that our police need and deserve substantial pay increases.

Second, we need to make sure that the police officers we attract are properly trained—and not only in the skills of detection, protection and defense—but in the problems of humanity, to which few others are closer each working day.

In many cases, this too will require money—to hire civilian instructors and teachers.

Third, we must take the necessary steps to make our police more effective. Mobile radios, improved communications, scooters and computers can help. But more basic steps are long overdue. In most police departments, up to one-third of a detective's time is spent typing reports—in triplicate—and doing paper work.

Why not make dictaphones and typists available—at much smaller salaries—and al-

low the detective to spend his time doing what he is trained to do—find, arrest and capture criminals?

Go into any courtroom and you will find police officers waiting to testify. For the most part, they are at the mercy of the defendant's lawyer, who moves for a continuance—and requires the officer's testimony to await another day and more long hours spent away from his assignment. We must develop better court procedures that respect the time of the police. If better procedures cannot be found—if the police officer must continue to spend a considerable amount of time in the courthouse—why not install training and teaching devices there. Then the officer could get—and receive credit for—additional training while he waits.

And, fourth, we need to hire more police from minority groups, and we must improve relationships between the police and the community. Why not establish cadet corps for the police, recruited from young people—who serve as cadets while the Department helps them get the schooling they need to qualify fully as police officers?

Why restrict police-community relations activities to the community level? Why not establish units at the precinct level as well?

We should explore the possibility of setting up some type of civil force to deal with problems like domestic quarrels, garbage in the halls, and other matters not strictly related to criminal law. We have seen wonderful results when women were put to work as "meter maids"—when non-police officers were stationed at school crossings. Why not expand the concept—and get the policeman back where he belongs, back full time in the fight against crime.

These suggestions are by no means conclusive. I offer them as indications of what small steps might be taken to produce significant results.

In the 90th Congress, I have introduced legislation to enable every police officer to earn a college degree in police science. Under my bill, officers who have been employed for a minimum of 2 years would be eligible for tuition grants of $200 a semester to attend a local community college as a part of their regular duty. To assure that the police forces gain the benefits of the increased education of their officers, the bill requires officers to remain with their units for a period of 18 months.

The bill has been incorporated in the Safe Streets and Crime Control bill which was recently approved by the Senate Judiciary Committee. I am confident that the Senate will pass the bill and that funds for police education will soon be assisting thousands of police officers in Connecticut and around the country to improve their knowledge and skills.

The violence that America has undergone for the past five years is much more than a police problem. And the people who know this best are the police themselves. In city after city, police officers have told me that they can keep a lid on a hot situation, but they cannot end the slums that breed the conditions that lead to riots. That, they say, is a job for the rest of us. As one young police sergeant put it:

"If you really want to help us, clean up the ghetto." But by the same token, the police of this nation know better than anyone else that cleaning up the ghetto, ending the squalid poverty in our cities, cannot be done overnight. They know that those who promise an overnight cure, be they black or white, are misleading and deluding the men and women in our cities. Those who promise instant success will build only frustration that may lead to more anger and destruction.

We must bring an end to the suffering and squalor in our cities, to the unhappy lives that millions of law-abiding Negroes have contended with. But we must also do this within the framework of law and order. Every American must discipline himself. Every American must try to redress his grievances through legitimate chnnels. Those who preach anarchy and tyranny are not interested in building America. They are interested in destroying America.

The violence of this month—and the disorders of last summer—are destructive of more than property. Violence is destructive of the spirit. It hardens the attitudes of men.

Nowhere has it produced lasting and positive results.

Violence does not eliminate the conditions it seeks to destroy. Often it causes them to endure.

Violence does not make life in the slum any less mean or more tolerable, or bring forth responsible leadership.

Violence does not create understanding.

Instead, violence breeds fear. Lawlessness creates a lack of confidence. Disorder pushes into the background those who would build. The glare of flames and the flashing lights of police cruisers illuminate only the wreckers and the wreckage.

The times and events cry out for sanity and for constructive action.

More than 15 months ago, following extensive hearings on urban problems, I introduced a package of legislation that was based on six main themes. They were:

First, guaranteed job opportunities for all;

Second, providing a decent home in a decent environment that includes personal security and public safety;

Third, offering the maximum encouragement to private investment in rebuilding our cities and the lives of our people;

Fourth, involving the individual in his own destiny and emphasizing neighborhood development;

Fifth, reorganizing our agencies of government so that the new ideas of today will not wither on the bureaucratic vines of yesterday; and

Sixth, developing an educational system that will equip all children with the skills and resources necessary for a modern and growing society.

They are as valid today as they were in January of 1967. Perhaps more so.

The strength of a nation lies in its sense of moral force. The test of civilized men is how well they restrain in themselves that which can destroy others. America is a strong and a civilized nation. It is composed of black men and white men who believe in this country and who want this country to endure and to prosper.

America was founded on the belief that a man could change his destiny through peaceful means. For some, especially Negroes, this was impossible for many generations. But now it is possible. A foundation exists. We must build upon it so that one day, when police and public officials gather together, we will no longer speak about violence and destruction.

ADMISSIBILITY OF CONFESSIONS

Mr. McCLELLAN. Mr. President, I wish to discuss further the confession provisions of title II of the pending measure.

Mr. President, no matter how much money we appropriate for local police departments we will not have effective law enforcement so long as the courts allow self-confessed criminals to go unpunished. The confusion and disarray injected into law enforcement by such decisions as Mallory—*Mallory* v. *U.S.*, 354 U.S. 449, decided June 27, 1957—Escobedo—*Escobedo* v. *Illinois*, 378 U.S. 478, 1964—and Miranda—*Miranda* v. *Arizona*, 384 U.S. 436, decided June 13, 1966—are deplorable and demoralizing. They have weakened intolerably the force and effect of our criminal laws, and Congress better do something about it.

These decisions have set free many dangerous criminals and are daily preventing the conviction of others who are guilty. How can the freeing of known, admitted, and confessed murderers, robbers, and rapists by the courts, not on the basis of innocence, but rather on the pretext of some alleged, minor, or dubious technicality, be justified?

The breakdown of law and order emanating from such slavish dedication to technicalities is diminishing the safety of our citizens in their homes and on the streets of our cities. It is, to some degree, responsible for the increase in vicious assaults that are being made by thugs and hoodlums upon police and law-enforcement officials upon whom we must rely for protection.

Gangsters, racketeers, and habitual criminals are increasingly defying the law and flaunting duly constituted authority and getting away with it. As a consequence, public confidence in the ability of the courts to administer justice is being destroyed. Until the courts, and particularly the U.S. Supreme Court, become cognizant of this damaging trend and begin to administer justice with greater emphasis on truth and a deeper concern for the protection of the public, the crime rate will continue its upward spiral and the quality of justice will further deteriorate.

Criminal laws and punishment of the guilty are imperative to the preservation of social order and the civic liberties of our people. In the pursuit of those objectives, the scales of justice should be balanced proportionately and firmly so as to protect both the rights of society and those of the individual.

MALLORY CASE

Rule 5(a) of the Federal Rules of Criminal Procedure states that an officer making an arrest shall take the arrested person "without unnecessary delay" before a committing magistrate. The determination of what constitutes "unnecessary delay" was properly left to the court to be determined by the circumstances in any given case. In the Mallory case (*Mallory* v. *U.S.* 354, 449, June 27, 1957) some 7 hours after being taken into custody he voluntarily confessed to the crime of rape. The police could not locate a committing magistrate that night and, therefore, he was not arraigned until the next day. For this reason, the Supreme Court reversed his conviction and released him saying that the delay between arrest and arraignment was too long.

As I remember, and I think I am correct, some time thereafter this man was released on that rape charge, was arrested again, tried and convicted, and is now serving a sentence in prison for the crime of rape. What about the second rape victim, Mr. President? Who is responsible for that? We hear a lot of people crying that some policeman did not warn the accused of his rights and, therefore, he should be released again on society. Mr. President, do we think of the future victims? Do we fail to remember them?

This is just one instance. I think in each of those cases I have referred to the defendant has been convicted since of another crime, but all of them have

been turned loose and all of them have since been convicted of other crimes.

Had they been in prison no doubt these other crimes would not have occurred, especially those committed since their convictions.

In the Mallory case the court said that 7 hours constituted "unnecessary delay." Eight short years later, the U.S. Court of Appeals for the District of Columbia—following the Supreme Court's edict—held, unbelievably, that a 5-minute interview before arraignment violated rule 5(a) and reversed the manslaughter conviction of one Tom E. Alston, Jr. (*Alston* v. *U.S.* D.C. Circuit No. 18750, May 6, 1965).

One would have to search long and hard to find a decision more calculated to thwart the administration of justice, and lessen respect for the law. The phrase "without unnecessary delay," under the distorted construction now applied by this court, means that the police cannot detain and talk to, or interrogate for even 5 minutes one who is suspect of having committed a crime of violence.

Title II would return to the rule of reason in such cases by providing that—section 3501, (c):

> In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law enforcement officer or law enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a commissioner or other office empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury.

ESCOBEDO AND MIRANDA CASES

Custodial interrogation has always been recognized as "undoubtedly an essential tool in effective law enforcement" said the Supreme Court in 1963 (*Haynes* v. *Washington*, 373 U.S. 503, 515).

This was held just 5 years ago. Yet 1 year later this same Supreme Court held:

> When . . . an investigation no longer is a general inquiry into an unsolved crime, but has begun to focus on a particular suspect who has been taken into custody, and the police carry out interrogation that lends itself to incriminating statements, without warning of his constitutional rights and without acceding to his requests for assistance of counsel, the accused has been denied the right to counsel guaranteed by Amendment 6 and the due process clause of Amendment 14. Consequently any statements elicited from him during such interrogation is inadmissible at his trial.

Justice White accurately characterized this far-reaching 5-to-4 decision in his dissenting opinion. He stated that the Court seems to think it is uncivilized for law enforcement to use an accused's own admission at his trial and effects this by attaching the right to counsel to its rule. This right attaches once the accused becomes suspect and thus bears admissions. This rule will prove unworkable unless police cars are equipped with public defenders and undercover agents and police informants have defense counsel at their side. He said:

> Under this new approach one might just as well argue that a potential defendant is constitutionally entitled to a lawyer before, not after, he commits a crime, since it is then that crucial incriminating evidence is put within reach of a Government by the would-be accused.

The defendant here knew full well that he did not have to answer. This new rule will cripple law enforcement.

If I attack the Court in trying to rectify these decisions, I am joined by four members of that Court who dissented.

Unhappily and tragically, Justice White's dire predictions are with us today, as the prohibitions imposed by this rule are definitely thwarting legitimate and necessary efforts of law enforcement officers to detect and investigate crime and to apprehend and prosecute those who are guilty. Thus, by this decision, the rights of society and the safety of the public are further imperiled while the wages of crime are enhanced and the protection of the criminal is reinforced and made more secure.

Following the reversal of Escobedo's conviction, this self-confessed murderer continued his criminal career and was subsequently convicted on four counts of possessing and selling heroin and sentened to 22 years in prison.

But it was in the case of *Miranda* v. *Arizona*, 384 U.S. 436, decided June 13, 1966, that the Supreme Court went "too far on too little," said Justice Tom Clark. In that case, the Court in another 5-to-4 decision amended the Constitution to formulate a new code of rules for the further protection of criminals at the expense of public safety. The decision provides that no confession—even if wholly voluntary in the traditional sense—can be admitted in evidence in a State or Federal criminal proceeding unless the prosecution can sustain the burden of proving that a fourfold warning of his rights was given to the suspect in custody before he was questioned; namely, that he has a right to remain silent; that anything he says may be used against him; that he has the right to have an attorney present during all questioning; and that, if indigent, he has the right to a lawyer without charge. Under this decision, the prosecution also has the burden of proving that the suspect voluntarily waived these rights by some affirmative statement and that such waiver continued in force throughout the entire questioning period. Any conviction depending in whole or in part upon voluntary confessions obtained by methods which do not measure up to these rigid standards must be reversed on appeal.

This decision was an abrupt departure from the precedent extending back to the earliest days of the Republic. Up to the time of this 5-to-4 decision the "totality of circumstance" had been the test in both State and Federal courts in determining the admissibility of incriminating statements and evidence derived by leads therefrom.

Prior to the 5-to-4 Miranda opinion, the Court had consistently held, as so clearly demonstrated by Mr. Justice White in his dissent, that:

> It is *not* essential to the admissibility of a confession that it should appear that the person was warned that what he said would be used against him, but on the contrary, if the confession was voluntary, it is sufficient though it appears that he was not so warned.

Mr. President, that is quoted from a prior decision of the Supreme Court. It was not the Constitution that changed. It was five members of the Court who undertook to change the Constitution, and what the Court had said for years was the Constitution.

This is nothing less than an usurpation by the Court of the power to amend the Constitution. That power is not reposed in the Court by the Constitution.

It is that usurpation of power and its exercise here that we are truly trying to correct.

Justice Clark aptly characterized the decision by saying that—

> Even in Escobedo the Court never hinted that an affirmative "waiver" was on the prosecution; that the presence of counsel—absent a waiver—during interrogation was required; that a waiver can be withdrawn at the will of the accused; that counsel must be furnished during an accusatory stage to those unable to pay; nor that admissions and exculpatory statements are "confessions."

Mr. President, listen to what Justice Clark said:

> To require all those things at one gulp should cause the Court to choke over more cases than (the two) expressly . . . overruled by Miranda.

Yes, Mr. President, I think that Justice Clark was right.

I ask today: Who benefited from it?

Not society. Not law abiding citizens. Not the innocent. The confessed, guilty defendant—who have since committed another crime and been sent to prison—is the only one who benefited from it.

Who benefits from it today?

The lawless element in the country. Not the good citzen. Not decent people. Not those who are afraid to walk the streets at night, but the criminal, the beast—if you please—who walks the streets, seeking to prey upon the innocent upon whom he can vent his depraved appetites.

Justice Harlan said:

> I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell.

Mr. President, Look at the chart. The line represents the accelerated increase in crime today. It is almost vertical. It is moving rapidly in that direction. If it gets there, there is no telling what will happen.

He said further:

> The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion . . . rather, the thrust of the new rules is to negate all pressures, to discourage any confession at all. The aim in short, is toward "voluntariness" in a utopian sense, or to view it from a different angle, voluntariness with a vengeance.
>
> We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the Court is taking a

real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

Mr. President, that is not my language. Anyone who wants to charge that I am being a little harsh should read the opinions of the dissenting justices. They did not spare any language to show they knew what was happening by these decisions.

Justice White said:

Although in the Court's view in-custody interrogation is inherently coercive, it says that the spontaneous product of the coercion of arrest and detention is still to be deemed voluntary. An accused, arrested on probable cause, may blurt out a confession which will be admissible despite the fact that he is alone and in custody, without any showing that he had a notion of his right to remain silent or of the consequences of his admission. Yet, under the Court's rule, if the police ask him a single question such as "Do you have anything to say?"—

Mr. President, they cannot even ask that. They cannot even ask a single question like, "Do you have anything to say?" or "Did you kill your wife?"

To repeat the quotation:

Yet, under the court's rule, if the police ask him a single question such as "Do you have anything to say?" or "Did you kill your wife?" his response, if there is one, has somehow been compelled, even if the accused has been clearly warned of his right to remain silent. Common sense informs us to the contrary. While one may say that response was "involuntary" in the sense the question provoked or was the occasion for the response and thus the defendant was induced to speak out when he might have remained silent if not arrested and not questioned, it is patently unsound to say the response is compelled.

I see nothing wrong or immoral, and certainly nothing unconstitutional, with the police asking a suspect whom they have reasonable cause to arrest whether or not he killed his wife or with confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent.

Until today, "the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence."

The rule (of Miranda) will measurably weaken the ability of the criminal law to perform (its) tasks.

There is, in my view, every reason to believe that a good many criminal defendants, who otherwise would have been convicted on what (the) Court has previously thought to be the most satisfactory kind of evidence, will now, under this new version of the Fifth Amendment, either not be tried at all or acquitted if the State's evidence, minus the confession, is put to the test of litigation.

In my opening remarks which I made on May 1, Law Day, the day this bill was taken up and made the pending business of the Senate, I cited case after case, newspaper accounts, of known defendants being turned loose on the basis of the Miranda decision. I cited one case in which a 14-year-old boy killed his mother by shooting her 12 times, and confessed to his father, and then went, with his father, to the police and confessed again. Because he had not been given a warning and offered a lawyer, and because everything the Miranda case said had to be complied with was not complied with, the judge had to turn him loose.

Mr. President, is that justice? Is that American justice today? If it is, the criminal has all the advantage. Under the Court's logic in the Miranda case, the day may come when a parent cannot ask his child about any harm the child has committed upon his mother without the parent giving him a warning that anything the child says may be used against him. Should fathers and mothers be required, before they ask a child about an act that may be criminal, to say, "Son, or Daughter, I am going to ask you something. I want you to know you can remain silent. You do not have to answer me. If you answer me, it may be used against you. Yes, Son, or Daughter, if you cannot afford a lawyer, I will provide you a lawyer. You must have him here by your side before I can ask you a question"?

Mr. President, is that justice?

Mr. President, one of the things that is contributing to crime in America is the lack of discipline in the home.

Justice White went on to say:

I have no desire whatsoever to share the responsibility for any such impact on the present criminal process.

In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him.

I cited a number of cases which are cited in the RECORD in my speech on May 1, the day this bill came up, and I invite those interested to read them. But those are only a few examples of what is happening in America today.

Justice White goes on to say:

Nor can (the Miranda) decision do other than have a corrosive effect on the criminal law as an effective device to prevent crime.

Look at the chart of crime today. The line is spiraling up and up, largely as a result of these decisions that do not enforce the law, decisions that favor criminals and turn them loose.

The opinion goes on to say:

A major component in its effectiveness in this regard is its swift and sure enforcement. The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it. This is still good common sense. If it were not, we should posthaste liquidate the whole law enforcement establishment as a useless, misguided effort to control human conduct.

I am quoting the view of the minority, 4 members of the court, including the father of the present Attorney General of the United States. Those are the views they held. They did not want to try to change the Constitution. They rebelled against it.

The opinion goes on to say:

Much of the trouble with the Court's new rule is that it will operate indiscriminately in all criminal cases, regardless of the severity of the crime or the circumstances involved. It applies to every defendant—

Yes, a lawyer of the bar, a judge on the bench, the most intelligent man, a professor, a doctor of laws in this country, if he should be apprehended for some crime, must be told by the police officer, "I must warn you that anything you may say will be used against you. You must be silent. If you cannot afford a lawyer, we will get you one free of charge." How asinine can a rule of law or procedure be that requires such a warning to an accused having a doctorate of law degree or the court must set him free?

The same would apply to a hardened criminal, one who had been in the penitentiary most of his life and is a repeated offender. He would have to be advised of the Miranda warnings.

Mr. President, it does not make sense. It is not justice, and we should not tolerate it. I hope this body will have the intellect, courage, and wisdom to protest, by its vote, this trend toward absolving criminals from their responsibility under the law, and to strengthen the law enforcement officer who risks his life to try to enforce the law.

It applies to every defendant, whether the professional criminal or one committing a crime of momentary passion who is not part and parcel of organized crime. It will slow down the investigation and the apprehension of confederates in those cases where time is of the essence, such as kidnapping.

The fears expressed by the minority were well founded as evidenced by the testimony received by the Subcommittee on Criminal Laws and Procedures, which is contained in the copy of the hearings on Senators' desks.

May I most respectfully and urgently suggest to my colleagues that the spiraling rate of crime that now plagues our Nation and endangers our internal security will continue unabated—even worsen—so long as this rigid and arbitrary prohibition against the admission into evidence of voluntary confessions by criminals is imposed on the processes of justice. As chosen representatives of our people we have a duty to do something about it. I earnestly ask each of my colleagues to join me in this most important legislative effort.

To allow reasonable questioning of suspects would protect the innocent, and would not, I am convinced, infringe in any way on the real constitutional rights of the criminal.

More than those of any other nation, our criminal trials are replete with protection for the accused. This was true before Miranda. Since Miranda, the trial has become a quest not for truth or innocence, but rather a witch-hunt for technicalities that protect the law violator and unbalance the scales of justice in favor of the self-confessed, known guilty criminals.

Yes, Mr. President, we hear a lot about witch hunting. There is a lot of it done today, in places where it should not be done—trying to find technicalities to free prisoners, to release convicted, guilty criminals back on society.

Are there those who say it is not being done? I say to them, "Look at the record. Look at these cases overruling precedents of a hundred years, to arrive at the decisions that would release these hardened criminals back on the society from which they came, to continue the pursuit of their criminal activities."

That is what they have done, Mr. President. Today some of them are back in the penitentiary, because they have

been convicted of another crime. That crime could have been avoided had we adhered to the Constitution as it had been interpreted and enforced since the founding of this Government.

It simply does not make sense that uncoerced confessions and incriminating statements cannot be used in the prosecution of a criminal. From time immemorial voluntary confessions and incriminating statements have been considered the very best of evidence. After all, a criminal trial should be a serious effort to ascertain the truth. It is a flagrant travesty on justice to reject and exclude from consideration the strongest and most reliable evidence of guilt. No lawyer or judge for one moment would contend that coerced confessions should be admitted against an accused. They have always been excluded, and should be, for the simple reason that coerced confessions or statements are not trustworthy. But, if uncoerced, they are obviously the most trustworthy and convincing evidence of guilt that it is possible to produce.

Mr. President, the Constitution says that no man shall be compelled to be a witness against himself. The Constitution does not say that an officer investigating a crime has no right to ask the suspect a question about it. That is not compulsion. That is not the meaning of the word "compelled."

By "compelled" in this sense, as used in the Constitution, is meant coerced into making a statement. To ask a man if he killed his wife, or to ask him the question, "Where were you when the crime was committed"—if he answers those questions, is that compulsion? If it is compulsion, Mr. President, Webster's Dictionary fails to give that definition of it.

How, then, is civilized society to determine the issue of whether or not such evidence was coerced? Commonsense dictates that the determination, in each individual case, should be made in the same manner that other disputed issues of fact are determined under our system of jurisprudence—by judge and jury. When the confession or incriminating statement is offered in evidence and the issue of voluntariness is raised, the trial judge should exclude the jury and hear the evidence. If the trial judge concludes it was involuntarily given, he should exclude it. If he concludes it was the voluntary act of the defendant, he should admit it and then permit the jury to hear all the evidence as to the circumstances of the giving of the confession or statement, with instructions that it be given such weight as the jury may feel it is entitled to receive. In short, the totality of circumstances is the true and should be the only test for the court in determining voluntariness and the admissibility of a confession.

Certainly such a procedure would adequately safeguard the rights of the defendants. Judge and jury decide the ultimate issue of guilt or innocence in criminal cases. There is no reason why the issue of voluntariness should not be determined in the manner I have just outlined—a procedure that has always been the law of the land until these recent 5-to-4 decisions of the Court attempted to amend the Constitution. I believe that our trial judge and juries are to be trusted. They see and hear the witnesses and, therefore, are better able to determine the truth than an appellate court which sees only a cold printed record.

EXPLANATION OF TITLE II (SEC. 3501)

Title II would require the trial judge to take into consideration, in determining the issue of voluntariness, all the circumstances surrounding the giving of the confession or incriminating statement of the accused. Such circumstances would include the length of time between arrest and arraignment; whether the defendant knew the nature of the offense with which he was charged or suspected; whether he was advised or knew that he was not required to make any statement and that such statement could be used against him; whether the defendant had been advised prior to questioning of his right to the assistance of counsel; and whether he was without the assistance of counsel when questioned and when giving his statement or confession. The trial judge would have to take into consideration these factors, together with any others which have relevance in determining voluntariness. This procedure would provide a workable yardstick for the court, the jury, the accused, law enforcement officers, and would protect the public interest. It would be eminently fair to the accused as well as to society. It is reasonable. No arbitrary time limit would be set for holding and questioning an accused before arraignment. Nor would this procedure deny the prosecution the use of prime evidence of guilt; that is, voluntary confessions and incriminating statements, on the arbitrary and unreasonable ground that the arresting officer did not warn the accused of his constitutional rights and that the accused did not have a lawyer present. We all know that a confession might be involuntary and coerced no matter how much warning the arresting officer might have given or how short the time between arrest and arraignment. And we all know that a confession might be unquestionably and completely voluntary even though the accused had not been so warned and had not been arraigned without delay. The test of admissibility should, therefore, rest upon the circumstances in each individual case and should be applied by those best able to make the determination—our trial judges and juries who hear and see the witnesses as they testify.

REBUTTAL TO ARGUMENTS MADE AGAINST THE VOLUNTARY CONFESSIONS SECTION OF TITLE II (SEC. 3501)

First. Contention: That title II is "a resort to police state tactics."

Answer: The voluntariness test is not a "police state tactic," we lived under it up until the Miranda decision in 1966. It was constitutional up to that time, when by a vote of 5 to 4 a "new rule was fashioned" by the Supreme Court. Many more Supreme Court Judges have held it to be constitutional, than have ruled against it.

Second. Contention: That title II would do great damage to the perpetuation of a system of government by law."

Answer: On the contrary, the damage to law enforcement and respect for law and order has been done by these unrealistic 5-to-4 decisions of the Supreme Court, which have been tantamount to amending the Constitution by misinterpreting it. The Constitution has not changed. A misinterpretation of it by five judges has sought to change it.

Third. Contention: That proposals in title II are "heavily suspect first in their effectiveness and second in their constitutionality."

Answer: The testimony in the RECORD shows conclusively they would be effective and are desperately needed. As to constitutionality, no one can say what the Court would do when these issues get there. Title II would not be declared unconstitutional by three of the present Justices; the procedure provided was not declared unconstitutional until 1966; the RECORD contains much support for constitutionality.

Fourth. Contention: The President would not sign the bill with title II included.

Answer: The same doubts were expressed about the District of Columbia crime bill which revised the Mallory rule. The President signed that bill.

Fifth. Contention: The only part of S. 917 that would make streets safer is title I.

Answer: All the money in the Treasury won't make streets safe if self-confessed criminals, who have voluntarily admitted their guilt, are to be turned loose.

Sixth. Contention: That the bill seeks to change the fifth and sixth amendments to the Constitution.

Answer: No such thing. Nothing in title II denies a defendant a right to appeal, all the way to the Supreme Court if he so desires. The Court can still pass upon any claim of denial of rights in the orderly process of appeal.

Whether or not a confession is voluntary is a question of fact. Traditionally, if there is any substantial evidence to support a lower court finding on the facts, appellate courts will not interfere. The bill does no violence to this principle.

Section 3501 of title II does not deny the circuit courts of appeal and the Supreme Court the power of review. It does not even provide that the trial judge's finding as to voluntariness shall be conclusive.

The bill does not seek to change the fifth and sixth amendments. They remain the same, only five of the Justices have usurped the power to amend the Constitution.

Seventh. Contention: That Miranda was correctly decided, and that the bill provides unlimited time for third-degree methods.

Answer: The bill does no such thing. It does not authorize unlimited interrogation by police. The length of time between arrest and arraignment specifically is one thing the judge must look to in determining voluntariness. Police officers know the courts will be looking at their conduct.

Eighth. Contention: It is argued that the presumption of innocence is one of our safeguards.

Answer: No one disputes that; nor does the bill in any way affect this presumption.

Ninth. Contention: That an arrested person must be carried forthwith before a magistrate.

Answer: Rule 5(a) states—"without unnecessary delay." Nothing in the bill authorizes lengthy delay in arraignment; delay is a factor the judge must take into consideration in determining the factual issue of voluntariness.

Tenth. Contention: That this proposed legislation is a futile attempt to amend the Constitution.

Answer: Not true. It is a conscientious effort on the part of Congress to undo incalculable harm five members of the Court have done to society by their attempt to amend the Constitution by erroneously interpreting it. Of course, it is possible the Supreme Court might declare the provisions of title II, or some of them, unconstitutional. But this is by no means certain. If the Court should do so, the Congress might then have to resort to more drastic and cumbersome procedures of amending the Constitution in an effort to respond to the demands of the people for protection from the injustice of guilty criminals being released on society.

Eleventh. Contention: That there are emotionally unstable defendants who will confess to save a loved one, and that we cannot have "the kind of rule of thumb" set out in the bill.

Answer: The concept of "totality of circumstances" was not thought to be a rule of thumb up until the Miranda decision. Trial judges, who see and hear the defendant and other witnesses, are better able to judge and weigh the evidence, and to take into consideration the mental state of the defendant. The bill does not provide for a rule of thumb. It provides the most accurate, reasonable, and reliable approach to the problem of the admissibility of voluntary statements and confessions.

Twelfth. Contention: That title II "smacks of a Court-packing scheme."

Answer: This is a wholly inaccurate analogy and as a matter of fact, when I was a Member of the House of Representatives, I opposed the Court-packing scheme. We seek not to pack the Court. We seek only equal justice for society as against the criminal and for a return to the law of the land—the Constitution as interpreted by some of our most learned Justices of the Supreme Court since the founding of the Republic.

Thirteenth. Contention: The adoption of title II would do nothing in the fight on crime.

Answer: The record completely refutes this statement. For example, testifying on the confessions provision of the bill—title II—the Honorable J. Edward Lumbard, chief judge of the U.S. Court of Appeals for the Second Circuit, New York City, said:

> During the past ten years the most troublesome questions before the trial and appellate courts both State and Federal, have involved the administration of criminal justice under our Federal Constitution. The judges share the alarm of the public, the Congress and the President over the worsening crime situation and the shrinking power of law enforcement to cope with it as effectively as it should. Any proposals for expanding and clarifying the powers of law enforcement agencies must be considered in light of the fact that it has become more and more difficult for these agencies to secure sufficient evidence of crime to justify arrest, prosecution and conviction. First, decisions of the Supreme Court now require law enforcement agents to warn suspects . . . . in such a way that those who otherwise would voluntarily speak are now virtually encouraged not to do so. Thus in many cases the most ready, the most authentic and the most natural means of getting information by the voluntary statement of the person best able to tell, is no longer available.
>
> We think this matter is so important that the Congress and the State legislatures ought to do the best they can to lay down the rules under which statements may be taken, and to provide how the rights of the individuals should be protected.
>
> For the reasons set forth in the separate statements of seven members of the President's Commission, I think the public interest in effective law enforcement would require a return to the rule that the admission of the statement or confession of an accused should depend only on whether it was voluntary.

Judge Alexander Holtzoff, U.S. district judge for the District of Columbia, stated:

> There is no doubt whatever that in the District of Columbia at least, many criminals whose guilt was either admitted or was not seriously in dispute have been turned loose because of the manner in which the rule of the *Mallory* case has been interpreted and applied in this jurisdiction. In my humble judgment this was one of the contributing causes to the difficulty in enforcing the criminal law and in the increasing rate of crime. Washington has become a crime-ridden city.
>
> We get fewer pleas of guilty than we ever did before, because experienced and sophisticated criminals feel that, well, they will take a chance. The chances are very great that eventually, if they are found guilty, the conviction may be reversed.
>
> Not only have we had a diminution in the percentage of pleas of guilty, but trials take longer, because instead of concentrating on the real issue of the case—namely, did the defendant commit the crime, that is what we should be trying—we have to try a great many tangential issues, such as did the policeman take his prisoner promptly enough to a magistrate. Should he have questioned him? Should he have searched him? And more time is devoted to these tangential issues than to the real issue that has to be tried.
>
> The question of guilt or innocence become relegated to the background, because in many of these instances guilt isn't seriously in dispute.

The Honorable Edwin M. Clark, president judge, 40th Judicial District, Indiana, Pa., in a letter to Senator McCLELLAN dated April 13, 1967, stated:

> It is my opinion that a voluntary confession and the information gathered by the police as a result of a voluntary confession should be admitted in evidence in the trial of a case. In the trial of cases today of course, I am bound by late decisions of the United States Supreme Court and we try all cases in the light of those decisions. I think, however, I have the right to say that I believe that these decisions are based upon some rather fuzzy, mental, sob-sister gymnastics. I am very much interested in the rights of the individual but I am also interested in the rights of society generally.

Fourteenth. Contention: The proposals are shocking, arbitrary, attempts to legislatively repeal the Constitution, and lacking in congressional restraint.

Answer: The present majority on the Supreme Court has shown no restraint whatsoever, even though chided and warned by four of their brethren. This proposed legislation, on the other hand is really restrained. It would only restore "the law of the land" under the Constitution.

Fifteenth. Contention: That if changes are to be made in the Constitution they should be made through amendment.

Answer: I wholeheartedly agree. We are here protesting and trying to rectify 5-to-4 court decisions, which have had the effect of amending the Constitution—a power the Supreme Court does not have under the Constitution.

Sixteenth. Contention: That the voluntariness test is "vague."

Answer: There is nothing vague about it. It is time tested and the only commonsense way of dealing with the problem. Voluntariness is a question of fact in each case that arises and must be left to the court and jury, just as all other such issues are, under the guidelines being set forth in the bill. It is not a straitjacket.

Seventeenth. Contention: That State prosecutors now always see to it that the evidence as to voluntariness is conflicting; that coercion is denied on the record by the arresting officers; and that, therefore, that is the reason the majority on the Supreme Court insists on warnings.

Answer: This is an unwarranted indictment of the integrity of State law-enforcement officers. Commonsense tells us that an officer who would coerce a confession and lie about it would lie also and say he gave the warning, and that the defendant waived counsel. The only sensible solution to the problem then is the "totality of circumstance" approach, an issue that should be determined by the trial judge and jury.

Eighteenth. Contention: That absence of counsel means the defendant will have no witnesses other than himself to testify to abuse by interrogating officers.

Answer: Under this bill the court must take into consideration whether or not he had counsel. Trial judges would surely take this into account in the case of an uneducated or misinformed defendant, but it would have little or no weight with a law school graduate, or other well-informed defendants. Nor should it have undue weight with a hardened criminal—a repeater in crime.

Nineteenth. Contention: Since there are 50 States there will be 50 different versions of what is voluntary.

Answer: This is absurd. Every case must stand on its own facts. It is a factual question, not a law question, in each case as to whether or not a confession was coerced.

Twentieth. Contention: That the proposed action by Congress "can only generate cynicism among the people, invite lawlessness, and make a mockery of the rule of law in America."

Answer: That is a good description of current conditions and that is exactly what we are trying to overcome by the enactment of S. 917.

Twenty-first. Contention: That there is a "longstanding principle" that the accused has a right to be advised of his rights.

Answer: Prior to Miranda the Supreme Court had consistently held that

there was no such constitutionally required right to warnings.

Twenty-second. Contention: That the bill would be a disservice to the police.

Answer: Policemen, prosecutors, and judges disagree with this. The record of testimony is overwhelming against this contention.

Twenty-third. Contention: That some surveys show that Miranda has had no adverse effect on law enforcement.

Answer: Surveys on the effect of Miranda, whatever their basis may be, are completely in disregard of and at variance with the testimony in the record. For example, the Younger survey was laid to rest by Mr. Quinn Tamm, executive director, International Association of Chiefs of Police—see page 340 of the hearing record. The Sobel survey was likewise proved fallacious by Judge Miles McDonald, justice, New York Supreme Court—see page 687 of the hearing record.

Twenty-fourth. Contention. That it is a myth that prosecutors need confessions and admissions to make their cases.

Answer: This conclusion is not shared by the numerous witnesses who testified; certainly not by the Association of District Attorneys, which endorses title II and such other prosecutors—Mr. Charles E. Moylan, Jr., State's attorney for Baltimore City, or by Mr. Aaron E. Koota, district attorney, Brooklyn, N.Y., or by Mr. Arlen Spector, district attorney, Philadelphia, Pa., or by Mr. Frank S. Hogan, district attorney, New York City.

Twenty-fifth. Contention: That "should the Supreme Court declare this portion of the bill unconstitutional, vast numbers of arrests and convictions made in reliance on the bill would be invalidated."

Answer: This argument is fallacious because; first, no one can predict what the Court would hold as to retroactivity; second, the question could get to the Court speedily; third, the bill applies only in Federal courts; fourth, other Federal convictions would be few in number and would have to be passed upon in separate proceedings. The facts in each case would have to be passed upon; fifth, nothing in the bill requires Federal or State officers to cease giving the warnings; and, sixth fears expressed in this regard are purely speculative.

Mr. President, some two or three extremely liberal editorial writers have characterized title II of S. 917 as an unwarranted attack on the Supreme Court. Mr. President, if it is an unwarranted attack, so were the statements I have read here of four members of the Court itself. If it is an unwarranted attack, then there are millions of Americans today who, in their hearts, are attacking the Court, because they believe its decisions are wrong.

Can we not disagree, and can we not criticize, without being charged that we are attacking the Court? If this is an attack, then the Court attacked its predecessors, Mr. President, in order to arrive at the rulings that it made.

I do not believe my colleagues or the law-abiding citizens of America will be deceived or misled by these "red-herring" tactics to becloud and detract from the real issue.

The true issue, and there is no escaping it, is the spiraling rate of crime and the erroneous decisions of the Supreme Court, versus the safety of our people and the security of our country.

That is the real issue in this battle, Mr. President, that is being fought here in the Senate today. That is the issue.

Since this bill has been in issue, I have not seen one single editorial by these bleeding hearts expressing concern for the victim—not one expressing concern for the safety of our citizens—and not one expressing concern for the total breakdown of law and order which is evident in all sections of the country, and especially here in the Nation's Capital.

Who cares for the victim? Who wants to protect our citizens? Who is concerned over our internal security?

I earnestly solicit and urge all Members of the Senate to join with me in this fight, and vote for a strong, comprehensive anticrime bill to make our streets safe, and to insure equal justice for all—for society as well as for self-confessed, confirmed criminals.

Let us bring the scales back in balance.

ALL SEGMENTS OF LEGAL COMMUNITY CONDEMN TITLE II OF CRIME BILL

Mr. TYDINGS. Mr. President, I believe it is important that the Senate recognize, in its consideration of title II of S. 917, that spokesmen for all segments of the legal community in this country have spoken firmly against these radical proposals. One recurrent theme in this criticism should be emphasized. Far from assisting police in effective law enforcement, approval of title II would deprive the police of clear guidelines for their conduct and create a chaos of uncertainty for police and prosecutors.

Before any member of this body considers voting for title II, he should consider that the Judicial Conference of the United States—which is composed of the most distinguished Federal judges, at the district court and appellate levels, in this country—is on record as opposed to all of the provisions of this title, except for the provision to overrule the 1967 Wade case, regarding lineups, which the Conference has not yet had time to meet on.

Before any Member of this body considers voting for title II, he should consider that the criminal law section of the American Bar Association has adopted a formal position opposing title II of this bill.

Before any Member of this body considers voting for title II, he should consider that the American Law Institute, composed of the most eminent lawyers in this country—a group which, incidentally, was critical of the rules set out in the Miranda case before that case was in fact decided—has just this week issued a report recommending against any legislative action to change the Miranda rules at this time. The report states:

> Prior to any serious consideration of a system that would be inconsistent with *Miranda*, it is of the utmost importance to evaluate what the results are of seeking the fairest and most effective procedures within the scope of that decision. It is only as experience accumulates and is carefully evaluated that the appropriateness of more sweeping changes can fairly be judged.

Before any Member of this body considers voting for title II, he should consider, and study carefully, the unanimous views of 212 legal scholars, from 43 law schools, including the deans of 24 law schools, who have written urging that title II be rejected by the Senate. These law schools are the following:

University of Arizona College of Law, Tuscon, Ariz.

Boston College Law School, Brighton, Mass.

University of California School of Law at Davis, Calif.

University of California School of Law at Los Angeles, Calif.

California Western University School of Law, San Diego, Calif.

Chase College School of Law, Cincinnati, Ohio.

University of Chicago School of Law, Chicago, Ill.

University of Cincinnati College of Law, Cincinnati, Ohio.

University of Connecticut School of Law, West Hartford, Conn.

University of Detroit School of Law, Detroit, Mich.

Duke University School of Law, Durham, N.C.

Emory University School of Law, Atlanta, Ga.

Georgetown University Law Center, Washington, D.C.

George Washington University National Law Center, Washington, D.C.

Gonzaga University School of Law, Spokane, Washington.

Harvard University Law School, Cambridge, Mass.

Indiana University School of Law, Bloomington, Ind.

University of Kansas School of Law, Lawrence, Kans.

University of Louisville School of Law, Louisville, Ky.

Loyola University School of Law, Los Angeles, Calif.

University of Maine School of Law, Portland, Maine.

University of Maryland School of Law, Baltimore, Md.

University of Michigan School of Law, Ann Arbor, Mich.

University of Missouri School of Law, Columbia, Mo.

University of Missouri School of Law, Kansas City, Mo.

University of New Mexico School of Law, Albuquerque, N. Mex.

University of North Dakota School of Law, Grand Forks, N. Dak.

University of North Carolina School of Law, Chapel Hill, N.C.

Northeastern University School of Law, Boston, Mass.

Notre Dame Law School, Notre Dame, Indiana

University of Oklahoma College of Law, Norman, Okla.

University of Oregon School of Law, Eugene, Oreg.

University of Pennsylvania School of Law, Philadelphia, Pa.

Rutgers, The State University, School of Law, Camden, N.J.

University of South Dakota School of Law, Vermillion, S. Dak.

Southern University Law School, Baton Rouge, La.

Stanford University School of Law, Stanford, Calif.

University of Tennessee School of Law, Knoxville, Tenn.

University of Tulsa College of Law, Tulsa, Okla.

University of Utah College of Law, Salt Lake City, Utah

University of Virginia School of Law, Charlottesville, Va

West Virginia University College of Law, Morgantown, W. Va.

Yale University School of Law, New Haven, Conn.

Mr. President, the letters from these law schools reveal both the radical character of title II and its undesirability.

Mr. President, before any Member of this body considers voting for title II, he should consider the unanimous views of the groups I have mentioned—the Judicial conference of the United States, the criminal law section of the American Bar Association, the American Law Institute, and hundreds of legal scholars across this country. Having considered these views, I believe that every Member of this body should be persuaded to vote against every provision of title II.

I ask unanimous consent that the full text of these letters appear in the RECORD, so that these letters can be studied in detail.

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

THE UNIVERSITY OF ARIZONA,
Tucson, Ariz., May 6, 1698.

Senator JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR TYDINGS: I have read with interest, and I may say astonishment, Title II of the Omnibus Crime Control and Safe Streets bill. Passing the question of the power of the Congress to overrule the Supreme Court's decisions in *Miranda* and *Wade*, I should like to direct my comments to the proposed reduction of the Court's appellate jurisdiction in certain aspects of criminal cases and abolishing federal habeas corpus jurisdiction over all state criminal convictions.

As a student of the criminal process, as one who has served as a prosecutor as well as defense counsel, I can only say that I regard these proposals as the most dangerous to have grown out of our current concern for the criminal process. I respectifully suggest that these sections of the statute bespeak a misdirection of the Senators' concern over the state of criminal procedure. The fact is that the states have long ignored the necessity to revise and modernize their procedures in order to accomplish their objectives of social control with efficiency, fairness but a due regard for individual rights. As a result, the Supreme Court and lower federal courts have been compelled to exercise their long standing power to enforce the Constitution. The result has been considerable friction and restiveness under the pressure of federal court decisions but the solution is the improvement of statute procedure not the dismantling of the federal courts' power to protect individuals from injustice and unconstitutional treatment.

For example, few states in this nation have any post-conviction procedures worthy of the name. To resolve that problem by making it impossible for one who has been aggrieved to vindicate his right in federal court seems unwise in the extreme.

The practicing profession and the law schools are only now beginning to awaken to their responsibility to modernize our criminal process. If this responsibility is discharged in reasonable fashion, there will be little necessity for the federal courts to exercise their ancient authority but that authority ought always to be available.

I appreciate the opportunity to express my views on this most important legislation.

Sincerely,

CHARLES E. ARES,
Dean.

THE UNIVERSITY OF ARIZONA,
Tucson, Ariz., May 6, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Dean Ares has forwarded to me a copy of your letter of April 19th requesting comment upon S. 917, the Omnibus Crime Control and Safe Streets bill. Without attempting to write a lengthy legal memorandum which I am sure you have in sufficient supply, I want to say that in my considered opinion the bill is, in certain respects, plainly unconstitutional.

Of particular concern to me is the attempt to regulate the appellate jurisdiction of the Supreme Court. While language in *Ex Parte McCardle*, 7 Wall. 506, certainly suggests a residual power in Congress to deprive the federal courts of specific areas of jurisdiction, it is my view that Congress, having once established the courts, must refrain from disestablishing areas of judicial concern when to do so would seriously hinder the protection of basic civil and constitutional rights. (See: *Glidden* v. *Zdanok*, 370 U.S. 530 at 604–605, dissenting opinion of Douglas J.)

The other provisions of the bill which attempt to legislatively define constitutional standards, are to my mind equally offensive. In our system of government the judiciary is the body that is empowered to "expound the constitution," to paraphrase Chief Justice Marshall.

Sincerely,

WINTON D. WOODS Jr.,
Professor of Law.

BOSTON COLLEGE LAW SCHOOL,
Brighton, Mass., April 25, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Dean Drinan has referred to me your letter of April 19 concerning the Judiciary Committee's amended Title II of S. 917.

I suggest that a balanced appraisal of the Supreme Court's decision in *Mallory* v. *United States*, 354 U.S. 449, must take into account the factual background of that case. The record shows that shortly after the crime was committed the police set out a dragnet and indiscriminately arrested a great many citizens on nothing more than suspicion or speculation. All these people were held in custody far beyond the time at which the legal mandate required that any accused be presented before a U.S. Commissioner. It was only after Mallory gave the confession the police wanted, that Mallory himself was brought before a magistrate and the others released. To me, these circumstances constitute the strongest sort of justification of the Court's action in adhering to the doctrine that it had announced fifteen years earlier in *McNabb* v. *U.S.*, 318 U.S. 332. A generation or two ago, there was a legal philosophy accepted by some eminent jurists with reference to the somewhat similar matter of the use of evidence obtained by unreasonable search and seizure. This philosophy was summed up in the well known phrase which objected to the proposition that "the criminal is to go free because the constable has blundered." Experience over the years has shown that all too frequently constables have done much more than simply "blunder." In the light of such experience there is now a pretty general consensus, first among State Courts, then capped into constitutional dimension by the Supreme Court (*Mapp* v. *Ohio*, 367 U.S. 643) that the only effective way of enforcing the rights of the people under the Fourth Amendment is to exclude from evidence at a trial material seized in violation of that Amendment. I suggest that similar considerations logically lead to the conclusion that the only effective method of enforcing existing legal limitations upon police rights of arrest and detention is to adopt a similar evidentiary rule of exclusion.

With reference to the provisions of the Committee amendment, which look to evasion of *Miranda* v. *Arizona*, 384 U.S. 436, and *U.S.* v. *Wade*, 388 U.S. 218, I would suggest that enactment of such provisions would be a gross abuse of the powers of Congress under Article III of the Constitution. I refuse to believe for one minute that when the Founding Fathers authorized the Congress to regulate and establish exceptions to the appellate jurisdiction of the Supreme Court it was ever conceived that this power would be used to prevent judicial action striking down violations of the Constitution itself. In my opinion, one of the most shameful episodes in United States history was the one, some one-hundred years ago, when the Congress rushed through a law snatching away from the Supreme Court its appellate jurisdiction in a case which seemed certain to bring about invalidation of the manifestly unconstitutional Reconstruction legislation. I would fervently hope that American history will never witness a repetition of this incident. I do recall, however, that at the height of a wave of hostility some ten years ago attempts were made to use the Congressional power to regulate the appellant jurisdiction of the court in order to make a dead letter of various constitutional doctrines announced by the Court which one senator or another found unacceptable. You may recall that it was probably only through the brilliant parliamentary leadership of the then Majority Leader of the Senate in combining all of the bills into a single package that the incipient revolt against the Supreme Court was defeated by a single vote.

With reference to the proposed abolition of Federal habeas corpus to review State convictions, I feel that this too would have a dangerous tendency to undermine the securities of individuals guaranteed by the Constitution. Our experience for many years in the administration of Federal habeas corpus in these cases has revealed abundantly that all too often State criminal procedures contain "springes" (*Davis* v. *Wechsler*, 263 U.S. 22, 24–25) which the Constitution forbids the States to bar enforcement of Federal rights. As you know, however, the pressure of business upon the Supreme Court is so great that it would be impossible to set aright denials of Federal rights from such sources by direct review through the writ certiorari. The only alternative remedy which the ingenuity of diligent and talented men has been able to devise is the present practice of collateral review in the Federal Courts. I strongly feel that until a better procedure, which would furnish protection of basic individual rights, can be devised we should retain what we have.

I earnestly hope that your efforts in opposition to this unfortunate Committee amendment will meet the success that it deserves.

Sincerely yours,

JOHN D. O'REILLY, Jr.,
Professor of Law.

UNIVERSITY OF CALIFORNIA, DAVIS,
Davis, Calif., April 25, 1968.

Hon. JOSEPH D. TYDINGS,
Senators' Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I agree with you that it would be a great mistake for Congress to pass title II of the Omnibus Crime Control and Safe Streets bill.

The proposed § 3501 would propose to legalize some procedures which the Supreme Court has found to be in violation of the Constitution. Such a head-on collision between legislative and judicial authority is not a satisfactory way to solve this problem. In these days when we are all so concerned with maintenance of law and order in our cities, it is hardly an appropriate precedent for the Congress itself to act in defiance of the law laid down by the courts. I am inclined to think that there are things Congress might do in relationship to this problem which would not involve what is in effect, defiance of court rulings.

§ 3502 would also be a most unfortunate precedent. Whatever the basic constitutional limitations are, they should have reasonable uniformity of application within the United States. To allow each state to develop its jurisprudence regarding confessions without any form of unifying review would run counter to the traditional constitutional scheme. Whatever one's views on the Supreme Court cases dealing with confessions, I should think that one would regard it as a mistake to open this way of dealing with the problem. I hope we are not ready to start tearing down the Union by permitting the creation of local legal empires sheltered from the uniform application of Federal law. Similar comments to the above apply to § 3503. I cannot believe that Congress does not want any constitutional control upon the testimony of alleged eye witnesses, notoriously a most unreliable form of evidence in criminal proceedings. Here again, there is room for creative legislation setting legislative standards for the admission of such testimony. The Court itself has indicated that with such adequate standards, it would not feel the need to apply its requirement of having a lawyer at a line-up.

§ 2256 deals with a very difficult problem which has been struggled with by the Judicial Conference and Congress over the years. Again, it would seem that the meat-axe approach of cutting out all collateral review in the Federal courts is much too arbitrary a solution to the problem.

Sincerely yours,

EDWARD L. BARRETT, Jr.,
Dean, School of Law.

UNIVERSITY OF CALIFORNIA,
LOS ANGELES,
SCHOOL OF LAW,
Los Angeles, Calif., April 26, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: We are writing to you regarding Title II of the Safe Streets bill, S. 917, as recently reported out by the Senate Judiciary Committee. As we understand it, Title II would overrule the decisions in *Miranda* v. *Arizona* and *Westover* v. *United States* and make voluntariness the sole test of admissibility of a confession in the Federal courts. It would withdraw the jurisdiction of any Federal court to review state court determinations on the voluntariness issue. It would make eyewitness testimony always admissible in the Federal district courts, thus overuling the decision in *United States* v. *Wade,* and withdraw the jurisdiction of Federal appellate courts to review state or Federal trial court determinations admitting such testimony. It also would overrule the decision in *Mallory* v. *United States* holding that unnecessary delay in bringing an arrested person before a magistrate is a ground for excluding a confession obtained during the period of delay. Finally, it would effect a withdrawal of the power of the Federal courts to review state court convictions through *habeas corpus.*

As teachers of constitutional and criminal law, we are dismayed by this attempt to overturn, in wholesale fashion, recent decisions of the Supreme Court in the field of criminal procedure. In our judgment, Title II is bad as a matter of policy. It is worse as a matter of constitution law.

In overruling *Miranda* and *Wade,* it represents an attempt to withdraw constitutional protections by statutes—a power that Congress clearly does not have under the Constitution.

In attempting to withdraw the jurisdiction of the Supreme Court to review state court decisions as to confessions and eyewitness testimony, it raises serious constitutional questions involving the limits of Congressional power under the Constitution. Although Congress has the power under Article III to determine the appellate jurisdiction of the Supreme Court, there is grave doubt that that Article empowers it selectively to withdraw the jurisdiction of the Court to review *particular* issues that arise in the context of a criminal case. If Congress could so use its power over the appellate jurisdiction of the Supreme Court there would be nothing to prevent the Congress from promulgating similar legislation every time the Supreme Court reached a decision with which it disagreed.

In abolishing Federal habeas corpus jurisdiction in state criminal cases, Title II also raises serious constitutional questions since Article I of the Constitution bars suspension of the "privilege of the Writ of Habeas Corpus" except in cases of rebellion or invasion.

Viewed as a whole, Title II makes substantial inroads on the traditional power of the Federal courts to determine constitutional issues in state criminal cases. As a matter of policy, we consider this undesirable. Historically the Federal courts have performed an important and useful function in reviewing state criminal convictions for constitutional error. Over the years, it has been amply demonstrated that state courts have not always effectively protected the constitutional rights of accused persons. Abolishing Federal court review would relegate important issues of constitutional dimension to the authority of 50 state court systems. It would thus make for inconsistency and undercut the basic protection of individual rights that our system of judicial review has traditionally provided.

In summary, we conclude that Title II of S. 917 represents bad law and poor policy. We vigorously oppose it and call upon you and your colleagues in the Senate to reject it.

Sincerely yours,

Norman Abrams, William Cohen, Kenneth Graham, Harold W. Horowitz, Kenneth Karst, Herbert Morris, Melville B. Nimmer, Monroe Price, Arthur Rosett, Lawrence Sager, Murray L. Schwartz, Professors of Law.

UNIVERSITY OF CALIFORNIA,
LOS ANGELES,
SCHOOL OF LAW,
Los Angeles, Calif., April 26, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I have joined a letter to you, dated today, signed by some of my colleagues, concerning Title II of the Safe Streets bill, S. 917. The purpose of this letter is to elaborate on some of the points made in that letter, concerning the unconstitutionality and undesirability of Title II.

As a teacher of federal jurisdiction, as well as constitutional law, I am particularly concerned with the restriction of Supreme Court Jurisdiction, contained in proposed 18 U.S.C. § 3502, and the severe curtailment of habeas corpus jurisdiction in the proposed amendment to 28 U.S.C. § 2256.

The proposed reduction of Supreme Court and lower federal court jurisdiction in 18 U.S.C. § 3502 would, since the days immediately following the Civil War, be the first time that the jurisdiction of the Supreme Court has been curtailed because of disagreement with the merits of the Court's decisions. More important, it would mark the first time in our history that a jurisdictional statute has been used to control the merits of the future decisions of all federal courts. Because the serious policy implications of the use of Congress' control over the Court's jurisdiction to control the Court's decision of constitutional issues are so obvious, I will confine my discussion to the constitutional issues. *Ex Parte McCardle,* 74 U.S. 506 (1869), sustained the power of Congress to repeal the Court's recently granted power to review decisions of the circuit courts on habeas corpus. While the repeal frustrated the Court's review in the *McCardle* case itself, the *McCardle* case does not establish Congress' power to remove entirely narrow classes of cases arising under the Constitution from the Court's reviewing power. After *McCardle,* the Court continued to have jurisdiction to review denial of the writ of habeas corpus by petition for original writs of habeas corpus and certiorari. *Ex-parte Yerger,* 75 U.S. 85, (1869). Moreover, nothing in the *McCardle* case justifies the power of Congress to deny jurisdiction to federal courts to determine discrete issues in cases where the courts continue to have jurisdiction over other federal issues in the case. Finally, and most significant, federal courts would continue to have jurisdiction to review and reverse state court decisions which hold that a confession should be *excluded* on federal grounds. The determination whether the federal court can review federal law issues concerning confessions in state cases depends entirely upon the decision on the merits in the state courts, and not upon the nature of the case or the issues involved. Even conceding the power of Congress to deny federal jurisdiction entirely over certain kinds of constitutional issues (a concession I have refuted above), it is settled that Congress can not use its power over jurisdiction to control the *outcome* of judicial decisions in cases where the courts are given jurisdiction. *United States* v. *Klein,* 80 U.S. 128 (1872). In short, 18 U.S.C. § 3502 would not be a constitutional exercise of Congress' power to control the jurisdiction of federal courts, but an unconstitutional attempt to control the merits of constitutional adjudication.

The proposed amendment to 28 U.S.C. § 2256 would be an unconstitutional suspension of the writ of habeas corpus. Moreover, its impact upon the process of federal review of state court conviction will be more serious than that of any other provision of Title II. Its effects would go far beyond cases of exclusion of confessions and the products of illegal search and seizures. The Supreme Court is not physically able to review on certiorari the merits of federal constitutional issues in the decisions in criminal cases in the fifty states. If denial of certiorari is equivalent to the denial of all federal court review, either the Supreme Court must undertake such review to the point that it will be unable to function in other classes of cases, or denial of the most basic federal constitutional rights of fair procedure will be without remedy in the federal courts. In the case of indigent prisoners, more and more the extent of their right to fair procedure will depend on the adequacy of representation by court-appointed counsel if all further review is denied simply because counsel failed to raise issues which "could have been determined" at the trial. With the amended habeas corpus bill, those states which provide the lowest level of representation at the criminal trial will gain the largest immunity from further federal court review of the constitutionality of their procedures. It would be tragic if the amended habeas corpus bill should cripple the orderly development of minimum constitutional standards of fair procedure in criminal cases. That national tragedy might be dwarfed by the increased numbers of in-

digents imprisoned after trials which fail to meet the basic minimum of due process.

Sincerely,

WILLIAM COHEN,
Professor of Law.

UNIVERSITY OF CALIFORNIA,
LOS ANGELES SCHOOL OF LAW,
Los Angeles, Calif., April 26, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I recently joined with some of my colleagues in a letter dated April 26, 1968 addressed to you commenting on Title II of S. 917 as reported out by the Senate Judiciary Committee. I would like to take the opportunity to add some more particularized thoughts to the comments expressed in that letter.

The attempt to overrule the decision in *Miranda* v. *Arizona*, in addition to being of very dubious constitutionality, is unfortunate. It is probably based upon the misconception that *Miranda* somehow has hamstrung law enforcement efforts. Although there were outcries to this effect at the time of the decision, experience since has produced no substantial evidence that the *Miranda* doctrine has interferred significantly with effective law enforcement.

The warning and waiver rules formulated in *Miranda* are designed simply to protect against the potentiality for compulsion involved where a suspect is "thrust into an unfamiliar atmosphere and run through menacing police procedures," and to insure that statements obtained are "truly the product of free choice." If we have not abandoned our traditional concern about compelled or involuntary statements there can be no objection to taking reasonable steps to protect against the risk of such compulsion.

Similar grounds exist for rejecting the attempt to overrule the recent decision in *United States* v. *Wade*. There is no evidence that *Wade* has hampered law enforcement. Consistently with that decision, eyewitness testimony can still be used simply by providing an opportunity for counsel to be present at any lineups. Surely the potential for "improper suggestion" inherent in pretrial lineups justifies providing this minimal degree of protection to a suspect in a criminal case.

The attempt to overrule *Mallory* v. *United States* is also of doubtful merit. That case implemented Rule 5(a) of the Federal Rules of Criminal Procedure which prohibits unnecessary delay in bringing an arrested person before a magistrate. This bill would eliminate the one available sanction—the exclusion of statements made during the period of unnecessary delay—to encourage prompt presentation of the arrestee before a judicial officer. Unless we are prepared to abandon such promptness as a value in our criminal justice system, it behooves us to provide an effective sanction to insure that such delay does not occur.

In this connection, it is worth noting that state courts have also begun to express serious concern about such delay. In a recent case. *People* v. *Powell*, 59 Cal. Rptr. 817 (1967), the Supreme Court of California said:

"The principal purposes of the requirement of prompt arraignment are to prevent secret police interrogation, to place the issue of probable cause for the arrest before a judicial officer, to provide the defendant with full advice as to his rights and an opportunity to have counsel appointed, and to enable him to apply for bail or for habeas corpus when necessary . . . .

"In the case at bar the delay was used to 'extract' from these defendants not one but fourteen self-incriminating statements . . .

". . . [W]e need not decide at this time whether the circumstances just described amounted to such prejudice as to render reversible the denial of defendants' constitutional and statutory rights to prompt arraignment. But we cannot condone such conduct by the police, and any repetition thereof will be closely scrutinized."

In conclusion, let me also add another word about the several attempts in this bill to withdraw the jurisdiction of the Supreme Court to review claims of error of constitutional dimension in the criminal process. Such attempts, if effective, would upset the existing delicate balance between our three coordinate branches of government. Historically, the Supreme Court has functioned both symbolically and in fact to protect individual liberty in our society. Legislation such as this would go far to undermine that role of the Court and, in my judgment, be a substantial step toward a type of society we abhor.

Sincerely,

NORMAN ABRAMS,
Professor of Law.

UNIVERSITY OF CALIFORNIA,
LOS ANGELES, SCHOOL OF LAW,
Los Angeles, Calif., April 25, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I have already joined with a number of my colleagues in a letter to you, commenting on Title II in S. 917, I want to add some personal reflections.

I believe that the legislation is unconstitutional and that, apart from this, bad policy. It seems to me that legislators legitimately concerned with respect for law must exercise extraordinary care in avoiding the enactment of unconstitutional laws. It erodes the value of law for all when those specially responsible for its enactment are themselves prepared to go beyond the limits of law. This ties in with the *Miranda* decision. There is no evidence that law enforcement has been hampered by that decision but there is good reason to believe that the risk of police violation of constitutional rights has been diminished.

There is much talk these days of an increase in crime, of indifference to and disrespect for law. The decisions of the Supreme Court in the area of protecting the rights of individuals are, for me, among the most persuasive reasons for believing that our laws deserve respect. Nothing, at this time particularly, should be done to attack that institution in our society which is most closely linked in the minds of many with preservation of individual rights.

Yours sincerely,

HERBERT MORRIS,
Professor of Law and
Professor of Philosophy.

CALIFORNIA WESTERN UNIVERSITY,
San Diego, Calif., April 24, 1968.

Re. S. 917, omnibus crime control and safe streets bill.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: Your letter of April 19 addressed to the Dean of this Law School has been referred to me for reply.

Time does not permit a detailed analysis of the constitutionality of Title II of the Crime Control bill. Nevertheless, it is apparent that the provisions thereof do raise serious constitutional questions.

Section 3501(b) sets forth certain factors to be considered by the trial judge in determining voluntariness of a confession. Even though the judge finds that one or more of these factors are missing he may nevertheless find the confession voluntary, and thus admissible. However, *Miranda* establishes that the Fifth Amendment privilege against self-incrimination requires that certain warnings be given the accused before his confession can be admitted against him.

If Congress can give a trial judge the power to admit a confession obtained in violation of the Fifth Amendment, then it is Congress, not the Supreme Court that is defining the Fifth Amendment. If Congress has the power to set the limits for the exercise of the Fifth Amendment, it would appear that it would also have the power to set the limits for the exercise of all other constitutional rights, restricting or enlarging them at will.

Since the decision in Marbury v. Madison, this power has resided with the Supreme Court, and it is inconceivable that the Supreme Court will (or should) change that at this late date in our history.

Insofar as Section 3502 is concerned, the extent to which the Congress can enlarge or restrict the exercise of appellate power of the Supreme Court has not been definitely determined. Nevertheless here again, history tells us that the Supreme Court is the final arbiter of constitutional questions, not Congress. If Congress can prevent the Court from reviewing the constitutionality of the admissibility of a confession, why can't Congress then restrict the review of other constitutional issues? For example, why could not Congress also then enact legislation preventing the Supreme Court from reviewing a State Supreme Court decision that the First Amendment had not been violated? Or any other Amendment?

When one asks the question that way, it is apparent that while the exact limits of the appellate jurisdiction of the Supreme Court have not been defined, our constitutional system requires that the Supreme Court be the final arbiter of constitutional issues, and that Congress not have the power to restrict the appellate review of constitutional adjudications made by State Supreme Courts.

From a purely public policy point of view, I think that just proposing this kind of legislation is very unwise. Because of the challenging times we live in today, we have great need to preserve our constitutional system, and for our people to understand and have confidence in it. This kind of legislation is designed to destroy the system, and destroy public confidence in it.

This does not mean that the Court is above criticism, but criticism ought to be constructive and intelligent and not destructive and emotional.

If ever there was a need for greater knowledge of the merit of our system, that need is here today. What we need is greater education of the people in the tremendous advantages of living under this system rather than an emotional attack upon the Court because we dislike its decisions. It would be far better for members of Congress to undertake to educate their constituents in the value of the system, rather than to tear it down.

Sincerely,

JAMES E. LEAHY,
Associate Professor.

CHASE COLLEGE,
SCHOOL OF LAW,
Cincinnati, Ohio, April 25, 1968.

Hon. JOSPEH D. TYDINGS,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I am in receipt of your recent letter of April 19, 1968, and a copy of Title II of S. 917. In reviewing the proposed Title II, I was aghast at the proposals contained therein. In my opinion, Title II is patently contrary to the United States Constitution. It is an attempt to legislatively remove the safeguards of the Bill of Rights and the Fourteenth Amendment. The reviewability of judicial action is the bulwark against infringement of individual rights in this great country of ours.

My greatest concern, however, is that these provisions were approved by a Committee of the Senate, containing many of its most distinguished and learned members. The future of this country is indeed dark, when our government leaders spearhead the assault upon the basic fundamental rights of the individual. True safeguards exist only

if the worst element of society receives guarantees accorded to others.

I would urge that you, and your colleagues, make every effort to eliminate Title II.

Very truly yours,

C. NICHOLAS REVELOS,
Acting Dean.

THE UNIVERSITY OF CHICAGO CENTER FOR STUDIES IN CRIMINAL JUSTICE, THE LAW SCHOOL,
Chicago, Ill., April 22, 1968.

Hon. JOSEPH TYDINGS,
U.S. Senate, Washington, D.C.

DEAR SENATOR TYDINGS: I write to you about Title II of S. 917 as approved by the Senate Judiciary Committee. I do most earnestly hope that this legislation will not receive Congressional approval.

I am closely concerned with many of the problems of the prevention and treatment of crime in this country; but I am not a specialist in constitutional issues and therefore I shall not comment on the constitutionality of Title II or on the likely judicial consequences of its legislative acceptance. It is clear to me, however, that these provisions would make no contribution whatsoever to reducing crime or the fear of crime in this country. They would not improve our prevention or treatment methods. They would not, I believe, increase police crime clearance rates. They are the product of misplaced frustration, not relevant to the serious problems of crime and its effective control.

No responsible student of criminal law can look at the overcrowded dockets and routine processing of criminal cases in many State jurisdictions in this country without recognizing the need for some extra-State protection both of the rights of the accused and of the integrity of the system which confronts them.

The better police forces and virtually all policemen now face community anxieties about crime in the streets which often sound to them like cries for action—any action—prompt and forceful. They need the protections of clear rules. Title II would deny them this. Its passage at this time would undercut the more thoughtful voices within the police not only for lawful law enforcement but for effective law enforcement. This Act at this time would be seen by many police as a mandate for unlawfulness; there is little the country needs less, and many other policemen realize this.

These views are, of course, my own; I cannot speak for the Center for Studies in Criminal Justice but I know my views are widely shared by my colleagues.

Yours sincerely,

NORVAL MORRIS.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, Ill., April 22, 1968.

Senator JOSEPH TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I am writing to express my concern over Title II of Senate Bill 917, as recently approved by the Senate Judiciary Committee. This Title takes a substantial step backward in the quest for civilized criminal procedure, and it is in several respects of quite doubtful constitutionality.

1. Section 2256, which would virtually abolish federal habeas corpus for persons convicted in state courts, would shift to the already burdened Supreme Court the entire task of overseeing the constitutionality of state criminal proceedings. Recent decisions demonstrate that the state courts are not always able or willing to protect the constitutional rights of the accused. The availability of habeas corpus in the federal district courts gives some assurance that meritorious claims will not get lost in the enormous volume of petitions to the Supreme Court, and the district courts are in a better position than is the Supreme Court to review the constitutionality of convictions because of their ability to conduct factual hearings. To make the state-court decision conclusive as to matters that were or even could have been determined is to subordinate the constitutional rights of citizens to considerations of procedural expediency. To require a man to serve an unconstitutional sentence because his lawyer bungled is not a choice worthy of a free society.

Moreover, section 2256 runs afoul of the provision in Article I, Section 9 of the Constitution forbidding suspension of habeas corpus. It is no defense that the proposal leaves habeas corpus intact as to persons in custody other than pursuant to a state-court judgment; as held in Eisentrager v. Forrestal, 174 F. 2d 961 (D.C. Cir. 1949), the Constitution forbids suspension of the privilege as to any class of persons. Nor is it material that the proposal purports not to eliminate habeas jurisdiction but only to make the state judgment conclusive; the Supreme Court has made clear that review of issues available in the state courts is necessary to the protection of federal rights on habeas corpus, see Fay v. Noia, 372 U.S. 391 (1963), and to forbid investigation of such issues would effectively suspend the privilege.

2. Section 3502 is an even more drastic proposal designed to eliminate altogether federal review of the validity of confessions utilized in state criminal proceedings. To abandon the long-established principle of Supreme Court review of the denial of federal rights in state courts would be to risk leaving those denials uncorrected and also to invite disuniformity among the States in the interpretation and application of the Constitution. The fact that illegal convictions today continue to reach the Supreme Court before being set aside attests to the present need to preserve the Supreme Court's power.

The section too presents serious constitutional difficulties. Although Congress has power under Article III to make "exceptions" to the Supreme Court's appellate jurisdiction, it has never been held that this power can be used to frustrate substantive constitutional rights. Ex parte McCardle, 7 Wall. 506 (1864), which upheld a limitation of the Supreme Court's jurisdiction by appeal, emphasized that other avenues to the Court remained open. Cf. Battaglia v. General Motors Corp., 169 F. 2d 254 (2d Cir. 1948) and Eisentrager v. Forrestal, 174 F.2d 961 (D.C. Cir. 1949), both holding the analogous power of Congress to limit district-court jurisdiction subject to constitutional limitations. Judicial review of the constitutionality of the acts of government, a critical part of our system of checks and balances, would be a delusion if it could be defeated by the simple expedient of phrasing a statute in jurisdictional terms.

Section 3502 is subject to an additional constitutional infirmity, for it attempts to deprive the Supreme Court of power not over whole cases but over a single issue. Even if Congress were free to deprive the Court of jurisdiction altogether, it could scarcely order the Court to decide cases in disregard of the Constitution. Ever since Marbury v. Madison, 1 Cranch 137 (1803), it has been settled that the Supreme Court, when a judgment is properly brought before it, must obey the Constitution. The Court cannot therefore be directed to affirm convictions unconstitutionally obtained.

3. The provisions in proposed sections 3501 and 3502 permitting the admission of eyewitness testimony and of voluntary confessions are designed to overturn recent Supreme Court decisions recognizing the right of a suspect to prompt arraignment, to be informed of his rights, to the effective aid of counsel, and to effective cross-examination and confrontation of witnesses. Insofar as these decisions were based upon interpretation of the Constitution, the proposals are beyond the power of Congress; the federal courts cannot be told to violate the Constitution. The Miranda and Wade decisions explicitly invoked the Constitution; it seems most probable that the McNabb-Mallory rule requiring prompt arraignment, while based in those decisions upon the Court's supervisory power over lower federal courts, would be held to be required by the Constitution if the supervisory power were curtailed. As a matter of policy the Title II proposals are most unfortunate. They encourage delay in arraignment, which is an important safeguard against arbitrary incarceration. They encourage law-enforcement officers to take advantage of the ignorance of suspects. They increase the danger of convicting innocent persons on what Mr. Justice Frankfurter once called the untrustworthy testimony of strangers who caught a fleeting glimpse of the criminal. They suggest that the United States is not prepared to treat those accused of crime in a fair and civilized manner.

I urge that Title II be omitted from Senate Bill 917.

Yours very sincerely,

DAVID P. CURRIE,
Professor of Law.

COLLEGE OF LAW,
UNIVERSITY OF CINCINNATI,
Cincinnati, Ohio, April 23, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: Yesterday I received a copy of your letter addressed to the Dean of our law school respecting Title II of S. 917. Before April 29th, I shall not have time to write a brief or to comment at any length. Under the circumstances, I shall simply state my conclusion. The enactment of Title II of S. 917 would be a giant step backward in a civilized society.

Sincerely yours,

WILBUR R. LESTER,
Rufus King Professor
of Constitutional Law.

THE UNIVERSITY OF CONNECTICUT
SCHOOL OF LAW,
West Hartford, Conn., May 3, 1968.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: We would like to express our views concerning certain provisions of the proposed Omnibus Crime Control and Safe Streets bill.

We are of the opinion that the provisions of the bill which in effect repeal the *Miranda* and *Wade* cases are unconstitutional, and that Congressional attempts to undo Supreme Court decisions of Constitutional Law do not reflect credit on the legislative process.

The provisions of the bill which withdraw the jurisdiction of federal courts over state court convictions, although argually constitutional, are unwise and unwarranted. We feel that legislative action which is designed to limit the availability of federal judicial protection of individual constitutional rights is an extremely dangerous precedent.

Very truly yours,

JOSEPH A. LAPLANTE,
Professor of Law.
ARNOLD H. LOEWY,
Assistant Professor of Law.

UNIVERSITY OF DETROIT
SCHOOL OF LAW,
Detroit, Mich., May 8, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Our Dean, Father Paul Harbrecht, referred your letter of April 19, 1968 to various faculty members with academic responsibility over the subject matter of S917, the so-called Omnibus Crime Control

and Safe Streets Bill. As I teach the basic six-hour course in Constitutional Law as well as the Seminar in Crime and Society (Criminology), I would like to take this opportunity to indicate that I fully agree with your stand regarding Title II, as I have in the past with respect to the Dirksen Amendment on reapportionment (e.g. your remarks of March 22, 1967 on the Senate floor).

Although the McNabb-Mallory Rule should be retained as a standard for states to work toward in their administration of criminal justice, and thus proposed section 3501 should be struck down, I would like to center my remarks on proposed sections 3502, 3503 and 2256 due to the portentous ramifications they embody with respect to the federal balance-of-power. Such dangers are *pro tanto* enhanced with the diminishing powers of the states due to their failure to respond to the needs of the population. Given this increasing political fact of American life, the federal balance of power so wisely provided by our founding fathers constitutes a virtual "last stand" against a situation conducive to absolutism.

First let us look to experience. Over the one hundred seventy nine years of the republic there have been only three opinions of the Supreme Court that have had to be reversed by amendment, viz, Amendments 11, 13–15, and 16. If after given a chance to operate, the decisions obviously attacked are improper ones, then all informed citizens committed to our utilitarian system would have to reply, "so be it." However, the truth is that the above proposed sections represent the pressure of a small minority of politically powerful individuals who mistakenly feel that they, and their past performance, are attacked when the Supreme Court attempts to equalize the substance of criminal justice meted out to all citizens in spite of their financial and/or intellectual resources.

Those instances, for example, where attempts have been made to determine if the decisions regarding confessions have had a negative impact on successful prosecutions, the answer has almost always been no. (I say "almost always" because I am not aware of any such reports, but admit they may exist.) The Eleventh Amendment resulted from an error of draftsmanship; the 13–15 from a basic social problem still with us, and then only after a bloody war; and the 16th from the political ramifications of the industrial revolution. Let us not now set the dangerous precedent of allowing special-interest groups (however well-meaning they may feel their cause to be) the ability to overturn untested rules directed at the protection of the individual, the very *raison de etre* of our nation. As Justice Brandeis once wrote, "The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning but without understanding."

I have had the privilege of discussing the cases in issue with both Mr. Justice Brennan and former Justice Tom Clark. The latter informed me shortly after the Miranda decision that he has realized the wisdom behind the majority opinion of the Court, and supports it. May I suggest you request that he, or both he and Mr. Justice Brennan (if tradition permits) be called to testify regarding the proposed legislation. May I suggest District Attorney Yeager of Los Angeles County, California, also be called.

More dangerous than the substance of these proposals, and the portentous consequences of further dividing this nation between the rich and the poor, is the methods the proponents choose to realize their objectives. Rather than attempt the Amendment route, honestly proclaiming their objective, and requesting the people for a mandate through the state legislatures, the supporters of the Title II are willing to risk a serious impairment of the federal balance-of-power, with all the consequences alluded to above. If I may be allowed to utilize a cliché, they are willing to run the grave risk of throwing the baby out with what deem to be bath water.

Moreover, the legislation raises serious problems of constitutional dimensions. It is true that *Ex Parte* McCardle is on the books. It is a product of its times, of Reconstruction with its concomitant national anger over the unnecessary carnage of brother against brother. But it was followed later the same year by *Ex Parte Yerger*, and most significantly, by *United States* v. *Klein* shortly thereafter. With the disappearance during recent years of the deference granted to property rights (Klein) when contrasted with those of the individual (McCardle), the Supreme Court, in my opinion, will deem the above proposals regarding its jurisdiction unconstitutional as a violation of the balance-of-power. Certainly the language of *Baker* v. *Carr*, as well as Mr. Justice Douglas' remarks in *Glidden Co.* v. *Zdanok* in response to Mr. Justice Harlan, tends to support my conclusion.

Should this prove to be the case, where will Congress find itself? It will in effect "be out on a limb." It will have forced upon itself the choice between backing down in the face of a challenge to its power under Article III, Section 2, Paragraph 2, Sentence 2 of the Constitution, or calling into issue the fundamental power of judicial review upon which rests our most sacred and traditionally proclaimed national characteristic—that we are a nation "of laws and not of men."

One is compelled to ask, "For what purpose does Congress present itself with this possible dilemma?" "Is it due to a basic national need or requirement?" (I find none!) "Is it acting to protect a fundamental American principle with respect to the rights of the individual?" (Quite the contrary will result.) Thus, perhaps presumptuously, I must suggest that Congress forbear, lest it and the nation end up the eventual victims of the ominous legislative effort.

Respectfully,

ALLEN SULTAN,
Assistant Professor.

DUKE UNIVERSITY,
Durham, N.C., April 26, 1968.

Hon. JOSEPH D. TYDINGS,
US. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: We write for the purpose of urging the defeat of Title II of the so-called Omnibus Crime Control and Safe Streets bill. Title II contains a number of unfortunate amendments. One would deny lower federal courts jurisdiction to entertain collateral attacks on state court criminal judgments even where the constitutional rights of state defendants have been abridged thereby overruling *Townsend* v. *Sain* and *Fay* v. *Noia*. Another would deprive both the lower federal courts and the Supreme Court of the power to review the voluntariness of a confession admitted in a state criminal trial where the highest courts of a State has found the confession voluntary, regardless of whether the State court flagrantly defied the Supreme Court's prior determinations of the appropriate standards required to be applied by the Fourteenth, Sixth and Fifth Amendments. Another provision would permit the introduction of a confession into evidence in a federal trial if the court determined that the confession was voluntary, even if the confession resulted from a custodial interrogation in which the defendant had not been informed of his privilege against self-incrimination and his right to assistance of counsel as required by the Fifth Amendment as interpreted by the Supreme Court in *Miranda* v. *Arizona*. The bill would also overturn the *McNabb-Mallory* doctrine which for twenty years has excluded the admission of confessions obtained during a period of unnecessary delay between arrest and presentment before a magistrate in federal trials. Another amendment apparently designed to overrule the Supreme Court's decision in the *Wade* and *Gilbert* cases, would not only permit the introduction of "eye witness" testimony under circumstances where a defendant has been denied the assistance of counsel at a lineup, in violation of the Sixth Amendment, but would go so far as to permit its admission in circumstances where the admission of such testimony would constitute a denial of due process of law, as in the case of testimony resulting from an unfairly staged lineup.

At this late date in our constitutional history it seems clear that the Supreme Court is the final arbiter of the meaning of the Constitution. This is the meaning of *Marbury* v. *Madison*. The Court has interpreted the Fifth Amendment in *Miranda* and the Sixth Amendment in *Wade*. It is not the function of the Congress, and beyond its power, to overrule these decisions. It is equally clear that it has no right to require a federal court to permit a conviction to rest on evidence obtained in violation of the Constitution. Furthermore the impartial studies now available (Yale, Georgetown, Pittsburgh) provide no basis for a belief that these decisions have had any substantial effect upon police effectiveness.

It is doubtful if the Congress has the authority to deny the Supreme Court the right to review a state court ruling admitting a confession obtained in violation of the Fifth or Fourteenth Amendments, after a state Supreme Court has opined that the confession is voluntary. The power to limit the appellate jurisdiction of the Supreme Court is asserted to find support in *Ex parte McCardle*, decided a century ago. It is doubtful if *McCardle* would be decided the same way today. Indeed its holding was limited two years later in *United States* v. *Klein*. In any case, even if it continues to have vitality, it may be distinguished. The bill in question poses grave problems of the equal protection of the laws which did not face the Court in *McCardle*. A single class of defendants in state prosecutions, those whose confessions have been found voluntary by the highest state courts, are alone deprived of the right to review by the Supreme Court of lower court rulings affecting their rights under the Constitution. It is extremely questionable if there is anything about this class of defendants which is sufficiently distinctive to merit subjecting its members to this type of overt discrimination.

In any case, the attempt to divest the Court of appellate jurisdiction in an area where Congress disagrees with its decisions poses a great threat to the balance of powers. The attempted exercise of such power by the Congress would set an unfortunate precedent which might ultimately imperil the judicial independence which has been the bulwark of freedom since the inception of the Republic.

The immediate result of divesting the court of jurisdiction to review rulings of "voluntariness" is clear. Two cases during the present term provide examples of the level of civilization in criminal procedure which would result from limiting the Supreme Court's jurisdiction as the bill proposes.

In *Beecher* v. *Alabama* a badly wounded negro confessed to the rape and murder of a white woman at gunpoint after Tennessee police had told him that they would kill him if he didn't tell the truth and fired a rifle next to his ear in order to emphasize the point. Five days later in a morphine stupor and intense pain the defendant signed written confessions prepared by Alabama investigators who had engaged in a 90 minute conversation with him after the defendant had been instructed to "cooperate" with them by the medical attendant in charge. The Alabama Supreme Court concluded that the

confessions taken from him by the investigators were voluntary.

In *Brooks* v. *Florida* the defendant accused of rioting in a prison was confined with two other prisoners for 14 days in a cell 7 to 13 feet long and 6½ feet wide. The cell had no external window, no bed or other furnishings or facilities except a hole in the floor which served as a commode. Brooks was fed 12 ounces of "peas and carrots in a soup form" and eight ounces of water daily. The defendant's testimony that he was stripped naked before being thrown into the cell was not controverted. During his two weeks his only contact with the outside room was interviews with the prison's investigating office. On the 15th day of confinement under these conditions, the defendant was brought before the investigating officer and confessed. The Florida court upheld this conviction.

It is difficult to believe that the Senate could want state rulings of this kind to be upheld. But this would be the result of the bill reported to the floor of the Senate by the Judiciary Committee.

The denial of jurisdiction to lower federal courts in cases in which state criminal judgments are attacked on constitutional grounds is defended upon the basis of the Congressional power to limit the jurisdiction of the lower federal courts. The practical effect would be to suspend for state prisoners the federal writ of habeas corpus, the "Great Writ" which has protected the liberty of English-speaking persons for almost three hundred years. In addition, substantial problems of equal protection are implicit in a situation where the meaning of the Constitution depends on local option unless Supreme Court review can be obtained. Even if such a drastic step is constitutional, it seems clearly to be unwise. The large number of cases brought to the federal courts by state prisoners has resulted from two factors, the refusal or failure of some state courts to follow Supreme Court decisions, and the failure of most states to enact modern post-convictions remedies. The Supreme Court is not able to review all cases where there are substantial allegations of deprivation of Constitutional rights. To permit the continued confinement of state prisoners, whose convictions rest on evidence obtained in violation of the Constitution, or whose sentences violate Constitutional mandates, would make the Bill of Rights meaningless to substantial numbers of citizens accused of crime, and reduce the Supremacy clause to a meaningless rubric in the field of criminal procedure. It would also remove one of the principal incentives to the reform of state criminal procedure.

Over-turning the *McNabb-Mallory* rule is likewise unwise. During twenty years it has proved to be an effective device for discouraging arrests without probable cause, and implementing the privilege against self-incrimination, the right to counsel, and the right to bail. Furthermore, there is no evidence that it has, in the past or at the present, constituted any impediment to federal law enforcement outside of the District of Columbia.

Last year the Congress passed legislation over-turning the Mallory Rule in the District of Columbia, but requiring the safeguards constitutionally required by the *Miranda* decision which are absent from the present bill. The present effort to overturn *Mallory* can only be described as a symbolic gesture designed to set back the evolution of a criminal procedure which will protect the rights of the citizenry with no attendant benefits to law enforcement. The manner in which the bill seeks to achieve these objects again raises doubts concerning its constitutionality. The bill does not permit delays in order to interrogate. It requires the Court to admit evidence obtained during a period of unlawful delay. It may be doubted whether such an approach is consistent with the imperative of judicial independence and the integrity of the processes of justice which are implicit in Article III of the Constitution.

These comments are not intended to constitute a detailed presentation of all of the legal principles involved. We regret that we were not invited to present our views before the Judiciary Committee under circumstances where a scholarly study could have been prepared. This document has been prepared in the few days available to us after receipt of your letter in an effort to express sincere hope that the Senate will delete Title II from the bill when it reaches the floor.

Your very truly,

A. KENNETH PYE,
Professor of Law [Criminal Procedure], Duke University.

WILLIAM W. VAN ALSTYNE,
Professor of Law [Constitutional Law] Duke University.

DANIEL H. POLLITT,
Professor of Law [Constitutional Law and Criminal Procedure], University of North Carolina.

FRANK R. STRONG,
Professor of Law [Constitutional Law] University of North Carolina.

EMORY UNIVERSITY,
SCHOOL OF LAW,
Atlanta, Ga., April 24, 1968.

Senator JOSEPH D. TYDINGS,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I appreciate very much your sending me a copy of Title II of S. 917 and calling attention to the effect of its provisions on recent decisions of the Supreme Court which have delineated for our society the outlines of "fair treatment" for persons suspected of crime.

It seems to me that once our society is presented, by an authoritative branch of government, with a higher standard of "fair treatment" than what has customarily been followed, another branch of government can hardly settle for less. The point is that new ideas have already come upon the current scene in this area of criminal procedures and Title II, even if passed, cannot obliterate these ideas; such legislation can only mark those who support it as being willing to settle for "unfair treatment"—and this in the face of our time-honored notion that a man is presumed innocent until proved guilty.

It is really strange legislation that deliberately sets our federal trial court judges against our federal appellate judges and our state courts against our federal courts when the situation today cries out for more unity.

Surely there must be a better way.

Sincerely yours,

BEN F. JOHNSON,
Dean.

GEORGETOWN
UNIVERSITY LAW CENTER,
Washington, D.C., May 3, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: We write for the purpose of urging the defeat of Title II of the so-called Omnibus Crime Control and Safe Streets bill. Our position with respect to this legislation is well stated by Professor A. Kenneth Pye of the Duke University School of Law in his letter of April 26, addressed to you.

We stress that those portions of Title II, (Section 3501 and 3503) which would abrogate the Supreme Court's interpretations of the Fifth and Sixth Amendments in the *Miranda, Wade,* and *Gilbert* decisions are plainly unconstitutional. As Professor Pye points out, the supremacy of the Supreme Court as final arbiter of the meaning of the Constitution cannot be doubted. By attempting to abolish these decisions, the Congress flouts the balance of powers which is the heart of our constitutional government.

Proponents of Title II may point to the language of *Miranda* and *Wade* suggesting that Congress and the States are at liberty to develop workable safeguards for implementing the Fifth and Sixth Amendment rights of an accused during custodial interrogation and pretrial lineups. The fallacy in this argument is that Sections 3501 and 3503 completely fail to provide even minimal safeguards. The conclusion is inescapable that these provisions contemplate derogation and abrogation, rather than implementation, of the decisions. In *Miranda,* Mr. Chief Justice Warren observed: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

The other provisions of Title II overturning the *McNabb-Mallory* Doctrine and divesting lower federal courts of jurisdiction to entertain collateral attacks on State court criminal judgments are both constitutionally suspect and unwise. It is regrettable that the pendency of this bill before the Judiciary Committee received so little publicity, and that interested persons have not had time to develop the kinds of analysis so sorely needed for reasonable congressional consideration of legislation of such vast and unprecedented implications. We believe, for example, that available emperical data will not demonstrate that the *Mallory* rule has significantly impeded legitimate law enforcement activity in the federal system. We also believe that the availability of federal habeas corpus to state prisoners is an indispensable bulwark against procedural arbitrariness and injustice in the States.

In short, we believe that enactment of Title II would seriously jeopardize the rights of all accused, state and federal, guilty and innocent, and would represent a retreat to principles of law enforcement and criminal procedure long since discredited and considered repugnant to the concept of equal justice in a civilized society.

Very truly yours,

ADDISON M. BOWMAN,
Associate Professor of Law (Criminal Justice).

SAMUEL DASH,
Professor of Law (Criminal Justice).

JOHN G. MURPHY, Jr.,
Associate Professor of Law (Co-Director, Legal Internship Program).

JOHN R. SCHMERTZ,
Associate Professor of Law (Procedure and Evidence).

JOSEPH M. SNEE, S.J.,
Professor of Law (Constitutional Law).

BETHESDA, MD.,
May 2, 1968.

Senator JOSEPH TYDINGS,
Senate Office Building,
Washington, D.C.:

Undersigned faculty members of the National Law Center, George Washington University, believe removal title II from pending crime control bill is of utmost importance. Legislative efforts to prevent Supreme Court from performing its role of constitutional adjudicator seriously jeopardizes basic separation of powers principle. Elimination of Federal habeas corpus review removes vital safeguard against abuse of rights of individuals, who have often secured more effective representation and vindication of their rights in Federal than in State courts.

Fully support your efforts to eliminate these provisions from S. 917.

Richard C. Allen, Jerome A. Barron, James M. Brown, Monroe H. Freedman, J. Reid Hambrick, Roger S. Kuhn, Arthur Selwyn Miller, Donald P. Rotschild, Ralph C. Nash.

GONZAGA UNIVERSITY,
Spokane, Wash., April 30, 1968.

Senator JOSEPH TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: Thank you for your letter of April 18, 1968 concerning Senate Bill S. 917. I agree with your conclusions

concerning title II of this bill. In my opinion, much of the bill is of doubtful constitutionality in addition to being extremely unwise. It is, indeed, as you say, an extensive legislative assault on the Supreme Court.

I support you in your efforts to strike Title II from the bill.

Sincerely,

LEO J. O'BRIEN,
Dean.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 30, 1968.

Senator JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: We are writing to urge the Senate to reject Title II of the Omnibus Crime Control and Safe Streets Act of 1968 (S. 917). This Title seems designed to overrule several recent Supreme Court decisions, including *Miranda* v. *Arizona* and *United States* v. *Wade*. The effect of these decisions upon law enforcement is as yet unknown. But, regardless of their merits, we believe that enactment of Title II is not an appropriate way to deal with any problems they may raise.

The language of Title II makes far reaching, and possibly dangerous, changes in the working of our Constitutional system. By limiting the power of the federal courts to review rulings as to the admissibility of confessions and eye-witness testimony in criminal cases, the bill will lead to nonuniform interpretations of the Constitution. And, to see the Constitution applied differently in different places is likely to create disrespect for the law. Moreover, partial elimination of the habeas corpus jurisdiction of all federal courts will either prevent defendants from having questions of federal law determined in a federal forum, or vastly increase the workload and impair the efficiency of the Supreme Court. Finally, for this legislation to attempt by statute either to overturn particular Constitutional rulings, or to restrict the court's jurisdiction over issues in a case which would be governed by those rulings, raises very serious constitutional problems. The attempt suggests a dangerous tinkering with the delicate check-and-balance system.

If revision of *Miranda* and *Wade* is felt desirable, we believe Congress should accept the Court's suggestion, made in those cases, to enact alternative legislative solutions to the underlying problems involved—the problems of police interrogation, self-incrimination, the need for counsel, the line-up, and eye-witness testimony. We see no reason to believe that these problems—which gave rise to the *Miranda* and *Wade* cases—can be solved merely by removing the courts' jurisdiction to deal with them. Finely tailored, sharply focused solutions, not a broad undiscriminating approach, are called for.

We, therefore oppose enactment of Title II.

Yours sincerely,

Richard R. Baxter, Professor of Law; Harold J. Bergman, Professor of Law; Stephen G. Breyer, Assistant Professor of Law; Clark Byse, Professor of Law; David F. Cavers; Fessenden Professor of Law; James H. Chadbourn, Professor of Law; Abram J. Chayes, Professor of Law; Jerome A. Cohen, Professor of Law.

Vern Countryman, Professor of Law; John P. Dawson, Charles Stebbins Fairchild Professor of Law; Alan M. Dershowitz, Professor of Law; Richard H. Field, Professor of Law; Roger D. Fisher, Professor of Law; Paul A. Freund, Carl M. Loeb, University Professor; Charles Fried, Professor of Law; Livingston Hall, Roscoe Pound Professor of Law; Milton Katz, Henry L. Stimson, Professor of Law; Andrew L. Kaufman, Professor of Law; Louis Loss, William Nelson Cromwell, Professor of Law.

John H. Mansfield, Professor of Law; Frank I. Michelman, Professor of Law; Charles R. Nesson, Assistant Professor of Law; Frank E. A. Sander, Professor of Law; David L. Shapiro, Professor of Law; Morgan Shipman, Assistant Professor of Law; Samuel Edmund Thorne, Professor of Legal History; Donald T. Trautman, Professor of Law; Arthur T. von Mehren, Professor of Law; James Vorenberg, Professor of Law; Lloyd L. Weinreb, Assistant Professor of Law; Adam Yarmalinsky, Professor of Law; Albert M. Sachs, Professor of Law; Henry M. Hart, Jr., Dane Professor of Law; Paul M. Bator, Professor of Law; Derek C. Bok, Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 30, 1968.

Senator JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I am writing to urge the defeat of Title II of the pending crime control bill, which came to my attention in Saturday's press. In my view, three simple points are enough to demonstrate that this is highly unsound legislation.

First, it is an exceedingly dangerous precedent for the legislative branch to overturn constitutional decisions of the Supreme Court by curtailing the Court's jurisdiction, as this bill would do in adding proposed Section 3502 to Title 18 of the United States Code. We live in times in which it is increasingly difficult yet increasingly important to maintain the rule of law. I suggest that it would encourage disrespect for law for the Congress to use political power to shut off access to normal judicial process as a method of preventing the enforcement of the Constitution.

Second, Congress has laid no foundation for such drastic action. It is not only possible but even probable that Congress could make enormously important contributions to the improvement of the law pertaining to confessions. The *Miranda* case should not be the last word. But as matters stand, an insufficient time has elapsed to perceive the effects of the *Miranda* line of cases, and the Congress has not even conducted a thorough and systematic study of the problems of confessions in criminal cases. All Title II accomplishes is to revive the old rule of voluntariness which, standing alone, has proved demonstrably inadequate to prevent the use of "the third degree" in procuring confessions from suspected criminals. To develop a new rule requires careful factual study of the consequences of the *Miranda* principle and the examination of alternatives. No such groundwork has been laid for the enactment of Title II.

Third, proposed Section 3502 of Title 18 of the United States Code is particularly objectionable. The power of the Supreme Court to reverse State convictions under the Fourteenth Amendment may have been employed in highly debatable cases, but it has also been necessary to prevent shocking travesties on justice. For example, in *Ashcraft* v. *Tennessee,* 322 U.S. 143, two defendants were convicted and sentenced to 99 years in the penitentiary almost entirely on the basis of confessions procured by holding them without sleep or rest, under a glaring light, for 36 hours of constant questioning, by teams of lawyers and investigators. In *Brown* v. *Mississippi,* 297 U.S. 278, the confession was obtained by twice hanging the defendant by the neck from a tree limb and then tying him to a tree and beating him until he confessed. The violence and torture in *Chambers* v. *Florida,* 309 U.S. 227 were scarcely less brutal. Ordinarily the State judges are quick to correct such travesties upon civilized justice. Unfortunately, there are exceptional cases in which the only corrective is the Supreme Court of the United States. Proposed Section 3502 lumps all these cases together indiscriminately in curtailing the Court's jurisdiction. The Court's effectiveness in correcting barbarities like *Brown, Chambers,* and *Ashcraft* ultimately depends upon its power to determine for itself whether fundamental rights were denied. I find it impossible to believe that if the Senators were aware of the probable impact of Title II upon cases like *Brown, Chambers,* and *Ashcraft,* the Senate would vote to cut off Supreme Court review whenever a State court found that the confession was not the product of coercion.

Sincerely,

ARCHIBALD COX.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 29, 1968.

Senator JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I write to urge the rejection of Title II of S. 917. Title II has been drafted to overturn a number of Supreme Court decisions, whose development in the law I have been watching since shortly after I began teaching Criminal Law in 1932.

There are objections to Title II of S. 917 which go far beyond the unconstitutionality of some of its sections. They would undo the progress of the past twenty years in rationalizing and improving police practices. They would permit the Federal Government to hold persons for questioning before its own officials in federal cases for long periods of time. They would abandon state prisoners to the vagaries of state court decisions.

We are at long last making progress in the proper and respectable enforcement of the criminal law. I strongly urge you to advocate in the Senate, that the Senate not interfere to undo all the work of the past twenty years of the Federal Courts.

Very truly yours,

LIVINGSTON HALL,
Roscoe Pound Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 29, 1968.

Senator JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I am writing to urge the Senate to reject Title II of the Omnibus Crime Control and Safe Streets Act of 1968 (S. 917). I share the dissatisfaction of many persons with the decisions of the Supreme Court in Miranda, Wade, and Mallory—at least as Mallory is applied in the courts of the District of Columbia. I also deplore the indiscriminate and destructive use of habeas corpus.

But Title II is a thoroughly indefensible approach to the solution of the problems raised by these cases. The bill seeks to exclude the federal courts from the decision of major constitutional issues. This reverses nearly 200 years of constitutional history. Since the decision in Cohens v. Virginia and Martin v. Hunters Lessee the jurisdiction of the Supreme Court to determine constitutional issues has been the cornerstone of our federal judicial system. To return the power over these decisions to the courts of our 50 states is an invitation to confusion, conflict, and futility. Furthermore, I doubt that this legislation will hold up in the Supreme Court. The Supreme Court on appeal or certiorari and the district courts in habeas corpus have jurisdiction over *cases* insofar as they involve constitutional issues. Once they have jurisdiction they cannot be forbidden to consider any issue relevant to the disposition of the case.

The proper way to deal with the issues raised by Miranda, Wade, Mallory, and habeas corpus is by legislation directly addressed to matters of criminal procedure. These questions are of the utmost difficulty.

I would welcome legislation of that character but the now proposed legislation is a failure to give these issues the serious consideration to which they are entitled.

Yours sincerely,

LOUIS L. JAFFE,
Byrne Professor of Administrative Law.

CAMBRIDGE, MASS., *April 30, 1968.*

Senator TYDINGS,
Senate Office Building,
Washington, D.C.:

Urgently hope Senate will reject title two omnibus crime bill unwise and inappropriate to deal with difficult problems of criminal procedure by manipulating courts jurisdiction and endangering delicate balances underlying our separation of powers.

PAUL BATOR,
Professor of Law,
Harvard Law School.

INDIANA UNIVERSITY,
SCHOOL OF LAW,
Bloomington, Ind., May 2, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: I have delayed a response to your letter of April 19th about Title II of S. 917 until I had had an opportunity to consult with some of my colleagues. As you might have expected, out of these discussions emerges the clear view that Title II contains provisions that are certainly unwise and in some aspects unconstitutional.

We believe the policies reflected in the *Miranda, Mallory,* and *Wade* decisions are sound. To the extent that the safeguards imposed by these decisions render more difficult the procuring of convictions, we feel this is a legitimate price to pay for the preservation of fundamental decencies in the administration of criminal justice. If the Congress wishes to eliminate safeguards which the Supreme Court has determined to be constitutional rights, we believe that formal amending processes should be invoked. Aside from this procedure, it might be appropriate for the Congress to conduct extensive fact-finding hearings to determine the actual impact on police operations and criminal prosecutions of the decisions in *Miranda, Mallory* and *Wade*. The findings of such an investigation might assist the Supreme Court, if at a later time it is disposed to reconsider its holdings in the relevant cases. To attempt constitutional revision by statute, as seems to be the effort of Title II of S. 917, invites an unfortunate confrontation of the legislative and judicial powers that cannot fail to undermine respect for the Supreme Court and possibly for the Congress as well.

We are aware of the difficult constitutional questions involved in the assertion of legislative power to restrict the review jurisdiction of the Federal courts and to abolish Federal habeas corpus jurisdiction over state criminal convictions. It is difficult to believe, however, that Congressional control over the jurisdiction of the Federal courts may be exercised so extensively as to prevent effective assertion and implementation of rights guaranteed by the Constitution of the United States. That such a risk is implicit in the elimination of Federal review of state determinations of voluntariness is well illustrated by such recent decisions as *Beecher* v. *Alabama*, 88 S. Ct. 189, and *Brooks* v. *Florida*, 88 S. Ct. 541.

We would strongly support your efforts within the Judiciary Committee and the Senate itself to assure the elimination of Title II of S. 917.

Your sincerely,

WILLIAM B. HARVEY, *Dean.*

THE UNIVERSITY OF KANSAS,
SCHOOL OF LAW,
April 29, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR: I have your request for comments on Senate Bill No. 917, the so-called Omnibus Crime Control and Safe Streets Bill. I have reviewed that bill, and our expert on criminal law, Professor Paul E. Wilson, has also reviewed it. Paul is co-editor of the American Criminal Law Quarterly, the periodical published by the Criminal Law Section of the American Bar Association. Paul is also on the Council of the Criminal Law Section of the American Bar Association. Both of us are of the same view.

We strongly oppose enactment of Title II of that bill. Not only do we disagree vigorously with the policy expressed in the bill, but we consider the bill an affront to the Federal Judiciary. Insofar as it purports to repeal the *Miranda* and *Wade* decisions, it seems clear that the proposal is unconstitutional. We find it incredible that the Title could have been favorably reported by the Senate Judiciary Committee. As we see it, the proposal is one effectively to amend the constitution by legislation. The proposed limitations upon the Federal Judiciary and state post-conviction matters are to us intolerable. The history of the administration of criminal justice in this country makes it clear to us that the federal constitutional guarantees can be made effective in state prosecutions only when the federal courts have broad powers to grant post-conviction relief. As we see it, the principal objective of this proposal is to make possible the emasculation of constitutional guarantees in criminal prosecutions.

In short, we urge that the bill be defeated decisively.

Sincerely,

JAMES K. LOGAN,
Dean.

LOUISVILLE, KY.,
May 8, 1968.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.:

The undersigned law professors respectfully urge you to vote against title II of Senate bill 917 which title is designed to curtail many important constitutional guaranties affirmed by the Supreme Court. We regard this title as reactionary and one which may bring the courts and Congress into conflict over constitutional guaranties. Legislation in this field is apt to provoke more trouble than it settles. History has shown that the limits of constitution rights are more properly a field for judicial development than for legislative action, CC Hon. Joseph D. Tydings.

DEE A. AKERS,
WM. E. BIGGS,
NATHAN S. LORD,
JAMES R. MERRITT,
RALPH S. PETRILLI,
WM. E. READ,
ABSOLOM C. RUSSELL,
W. SCOTT THOMSON,
University of Louisville School of Law,
Louisville, Kentucky.

LOYOLA UNIVERSITY,
SCHOOL OF LAW,
Los Angeles, Calif., April 25, 1968.

Hon. JOSEPH D. TYDINGS:
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I have read with interest your letter of April 19, 1968, addressed to the Dean of this faculty.

Upon a reading of the enclosed proposed legislation, it occurred to me that the enactment of any such legislation could be one of the most serious legislative acts in recent history. I can imagine no good which could possibly arise out of any such legislation. I will not use your time unnecessarily by expanding upon the obvious constitutional, ethical, and psychological problems which can be created by such legislation. In my opinion, therefore, you are entitled to the most complete support for the position you have taken, and it is my sincerest hope that this portion of the Crime Bill will be deleted before its final enactment.

If I can be of any further service in this matter I would be delighted to do anything which you request.

Sincerely yours,

GEORGE C. GARBESI,
Professor of Law.

NEWPORT BEACH, CALIF.,
April 26, 1968.

Hon. JOSEPH D. TYINGS,
Senate Judiciary Committee,
Washington, D.C.:

Passage of Senate bill 917 would be fatal to judicial system. Please note my strong protest.

J. REX DIBBLE,
Professor of Law and Former Dean,
Loyola Law School.

UNIVERSITY OF MAINE,
SCHOOL OF LAW,
Portland, Maine, April 23, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: I concur with you that the proposed Title II of the Omnibus Crime Control and Safe Streets bill contains provisions that would be most unwise. I am circulating your letter, with a copy of the bill, among the faculty of this law school with the suggestion that they write to you if they are so inclined.

Thank you for drawing the material to my attention.

Sincerely yours,

EDWARD S. GODFREY,
Dean.

LAW OFFICES, CHASE, ROTCHFORD,
DRUKKER & BOGUST,
Los Angeles, Calif., April 29, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

SIR: I am a full time practicing lawyer in Los Angeles and a part time professor at Loyola Law School at Los Angeles. Dean Tevis of the law school has called my attention to your letter of April 19 pertaining to the so-called Omnibus Crime Control and Safe Streets bill. I also have read the copy of the proposed bill enclosed with your letter.

In my view, this bill would do immense damage to the present state of the law in those areas it would affect. The proposal to remove the appellate jurisdiction of the Supreme Court of the United States is clearly unwarranted as is the attempt to abolish federal habeas corpus over all state criminal convictions.

I can only strongly urge you to do everything within your power to fight this far-reaching and ill-considered legislation.

Very truly yours,

JAMES J. MCCARTHY.

UNIVERSITY OF MAINE,
SCHOOL OF LAW,
Portland, Maine, May 2, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: I have just had an opportunity to read Title II of S. 917, the Crime Control and Safe Streets bill.

The attack on mandatory fair procedures as a prerequisite to admissibility of confessions is extremely disturbing. The procedural rules which proposed sections 3501 and 3502 are apparently designed to reverse are perhaps the only way of assuring fair treatment for criminal defendants. In particular, it would seem that the right to counsel (or a knowing and fully voluntary waiver of that right) is not only an essential protection for the poor and uneducated, but is probably constitutionally required:

Since wealthy and educated persons know of their right to remain silent until consulting with counsel, a lack of warning to the poor and uneducated constitutes a denial of equal protection; and

It seems realistically true that the constitutional right to counsel extends back to the interrogation stage of criminal proceedings.

However, I am most distressed by proposed section 2256, which would seek to abolish federal habeas corpus jurisdiction in state criminal cases.

The privilege of the writ of habeas corpus is enshrined in the Constitution, and stems from the Magna Carta. The Writ is generally regarded as the greatest protection of individual rights existing in Anglo-American law.

If the Congress were to purport to say that citizens of the United States cannot have a *United States* court determine the question of whether they were imprisoned in violation of the *United States Constitution*, it is not certain that individual rights would suffer greatly; no doubt the Supreme Court would grant certiorari more freely, at the expense of other types of cases. But by an attack upon habeas corpus, the Congress would bring itself into disrepute.

I hope that the Committee rejects these backward-looking proposals.

Very truly yours,

DAVID J. HALPERIN,
Associate Professor of Law.

UNIVERSITY OF MARYLAND
SCHOOL OF LAW,
Baltimore, Md., April 23, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Title II of the proposed Crime Bill (S. 917) now before the United States Senate contains provisions on confessions and eyewitness testimony in criminal cases and on federal habeas corpus which are very unwise and of doubtful constitutionality.

Title II first provides that in a federal criminal prosecution a confession shall be admissible in evidence if it is voluntarily given. The states, on the other hand, are not required to adopt any particular test on the admissibility of confessions in criminal cases. However, Title II does attempt to withdraw from the jurisdiction of the federal courts the review of a ruling by a state court system that a confession is admissible into evidence as voluntarily made. This latter provision is an open invitation to the states to return to the old voluntariness test on the admissibility of confessions and an attempt to shield states which adopt such a course from federal court review of criminal convictions where such confessions are admitted into evidence. All these provisions are in direct conflict with the Supreme Court's landmark decision in *Miranda v. Arizona*, which discarded the old voluntariness test on the admissibility of confessions and held that additional safeguards must be developed to protect, in the setting of custodial interrogation, a suspect's constitutional privilege against self-incrimination. Any confessions obtained by the police in the absence of these safeguards were held inadmissible. The *Miranda* opinion required in the way of safeguards basically that the police warn the suspect that he has a right to remain silent and a right to the presence of an attorney, either retained or appointed. The *Miranda* opinion was nevertheless very clear in stating that federal and state governments were free to supplant these safeguards with other safeguards which they found more appropriate or workable so long as the latter safeguards were fully effective in protecting a suspect's privilege against self-incrimination. Title II does not do this. Rather, its provision on the admissibility of confessions are in direct conflict with the Supreme Court's *Miranda* decision, which found that the voluntariness test did not adequately protect the rights of the suspect. Title II therefore does not deal constructively with the problem of reconciling the suspect's privilege against self-incrimination with effective law enforcement; but rather provokes an unseemly and needless confrontation between Congress and the Supreme Court. In doing this the Title unwisely departs from the *Miranda* opinion's well-founded concern with protecting the dignity and integrity of a person suspected but not yet convicted of the commission of a crime.

The provisions of Title II on eye-witness testimony are open to similar objections. The testimony of an eye-witness to a crime that the defendant was the perpetrator has often proved to be unreliable. One of the chief causes of this unreliability is that the eye-witness often first identifies the defendant as the perpetrator in a line-up or other pre-trial confrontation where various suggestive influences may lead the eye-witness to pick out the defendant. To protect innocent defendants from faulty identification processes, the Supreme Court held in the recent case of *United States* v. *Wade* that the suspect had a constitutional right to counsel during such crucial pre-trial confrontations. A courtroom identification of the defendant is inadmissible if it is the product of a prior identification of the defendant at a pre-trial confrontation where the defendant neither had nor waived counsel. Once again the way remains open for Congress or the states to develop alternative means of protecting an accused from an erroneous identification. Title II does not adopt this constructive approach but enters into direct collision with the Supreme Court's *Wade* decision when it provides, in effect, that eye-witness testimony shall in all instances be admissible in state and federal criminal trials.

Title II also seeks to abolish the rule, established by the Supreme Court in *Mallory* v. *United States*, that any confession obtained by federal officers during an illegal detention is inadmissible in the federal courts. The *Mallory* rule does not derive from the Constitution but from the Supreme Court's exercise of its supervisory power over the administration of federal justice. Nevertheless, few individual rights are more precious than the right to be brought before a judicial officer within a reasonable time after an arrest for purposes of obtaining bail, a preliminary hearing, or information on one's rights. Congress should not encourage federal law enforcement officers to delay bringing an arrested person before a judge by telling the officers that no matter how long they delay the confession may still be admissible. The recently enacted District of Columbia Crime Bill permits the District police to detain a suspect for three hours prior to bringing him before a judge. Three hours should be ample time for the police, and any further delay should be considered in the majority of cases as unreasonable. Federal law enforcement officers should not be able to profit from such an unreasonable delay by obtaining a confession.

Perhaps the most regrettable provision in Title II is the attempt to withdraw from the federal courts the habeas corpus jurisdiction over state prisoners. This withdrawal of jurisdiction may amount to an unconstitutional suspension of the great writ of habeas corpus. In any case, this provision deprives state prisoners of a readily available federal forum in which to raise federal constitutional claims and leaves the determination of a state defendant's federal constitutional rights entirely to the state courts, subject only to discretionary review by the Supreme Court on the defendant's direct appeal from his conviction. Such a withdrawal of federal jurisdiction upsets the delicate balance of federal state relationships. As the Supreme Court indicated in its discussion of the federal habeas corpus jurisdiction in *Henry* v. *Mississippi*, the federal courts grant the state judiciary full opportunity to air and determine initially federal constitutional claims and only intervene on habeas corpus when federal constitutional rights have been denied. It appears most unwise to remove this federal check on the states' administration of criminal justice.

For the above reasons we as individuals urge you to do all in your power to secure the defeat of Title II on the Senate floor.

Very truly yours,

EDWARD A. TOMLINSON,
(Drafter of the letter),
BERNARD AUERBACH,
LEWIS D. ASPER,
EVERETT GOLDBERG,
LAURENCE M. KATZ,
SANFORD JAY ROSEN,
JAMES W. MCELHANEY,
GARRETT POWER,
Members of the Faculty.

UNIVERSITY OF MARYLAND,
SCHOOL OF LAW,
Baltimore, Md., April 23, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Thank you for your letter of April 19th alerting us to the dangers lurking in Title II of S. 917. Several members of the faculty are drafting a comprehensive letter dealing in specific terms with the objections that can and should be made to Title II. Their letter will reach you soon.

Meanwhile, let me just make two points:

1. Much of Title II seems to me to be destructive; it creates unnecessary and unseemly tension between the Congress (which may pass it) and the Supreme Court (which will be called upon to pass on its constitutionality).

2. Congress can take constructive action to clarify what law enforcement officials can do within the guidelines of current Supreme Court decisions, without diminishing the important rights that have been granted the accused. Such a legislative approach, I think, would have widespread support in the academic community as well as elsewhere.

Sincerely yours,

WILLIAM P. CUNNINGHAM,
Dean.

BALTIMORE, MD.,
April 24, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Thank you for bringing to my attention the crime bill currently before the Senate, Title II of which would amend chapter 223 of title 18 and chapter 153 of title 28 of the United States Code. In my judgment it is a very bad approach to a difficult problem.

I share the apparent discontent of the bill's proponents with the exclusionary rules developed by the Supreme Court, in an attempt to insure fairness in criminal proceedings. Such rules sometimes free the guilty to achieve their ends. I would like to see Congress and the States try to work out alternatives which would permit conviction of the guilty, such as, for example, administrative and training procedures within law enforcement agencies which would make police misconduct a rarity. Such approaches to the

problem, not open to the courts to initiate, are open to legislative bodies. But I see nothing of such a constructive nature in this bill.

Unless alternatives can be developed, we must stay with the exclusionary rules if we are to seek fairness. The cases before the Supreme Court will continue to be difficult, and its decisions will sometimes seem to be wrong, but the Court must continue to review State practices and supervise federal practices, because history shows that without such action many law enforcement agencies and State courts will not adequately police themselves. The bill may be bad constitutionally as well as bad as a matter of policy, it is doubtful that the constitution permits this kind of limitation of the Supreme Court's jurisdiction in such an important area of civil liberties.

My colleagues, Professor John W. Ester and Assistant Professors Robert G. Fischer and Lawrence L. Kiefer, have authorized me to say that they agree with the views expressed in this letter.

Sincerely yours,

JOHN M. BRUMBAUGH,
Professor of Law, University of Maryland School of Law.

UNIVERSITY OF MARYLAND,
SCHOOL OF LAW,
Baltimore, Md., April 24, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Title II of the proposed Crime Bill presently before the Senate reflects a genuine feeling of concern that the Supreme Court is, in effect, penalizing the public by requiring the release of confessed criminals in its attempt to prevent law enforcement officials from violating the civil rights of indigent defendants in criminal proceedings.

In my opinion, however, the proposed bill bends too far the other way in eliminating Supreme Court review in the area of confessions. While somewhat similar restrictions have been imposed upon the appellate jurisdiction of the Supreme Court and have been held constitutional (*Ex parte* McCardle, 7 Wall. (74 U.S.) 506; see U.S. v. Klein, 13 Wall. (80 U.S.) 128, 1872), experience has shown that without Supreme Court review, state courts and agencies cannot be relied upon to assure fair police and trial practices. The proposed limitations upon the use of the writ of habeas corpus would be a body blow to civil liberties as would be the removal of the unifying force of Supreme Court review upon the disparate constitutional interpretations of fifty states.

Congress and the states should, however, consider alternative approaches directed to the heart of the problem, namely, the conduct of law enforcement officials. Such officials might be made amendable to civil suits and perhaps governmental sanctions for unacceptable, clearly defined misconduct, such as coercing a defendant to confess or a delay of more than a few hours in bringing him before a magistrate. Radical revision of present training and administrative procedures of law enforcement officials could also accomplish much in this area. Until satisfactory alternatives are developed, it would be most unfortunate to remove the Supreme Court's jurisdiction over an area as vital as civil liberties.

Sincerely yours,

AARON M. SCHREIBER,
Associate Professor of Law.

UNIVERSITY OF MICHIGAN
LAW SCHOOL,
Ann Arbor, Mich., April 25, 1968.

Re the unconstitutionality of title II of S. 917.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: After wrestling for decades with the unruly, unsatisfactory "voluntariness" test for the admissibility of confessions—an elusive measureless standard of psychological coercion developed by accretion on almost an ad hoc, case-by-case basis, a test so uncertain and unpredictable that it guided police conduct very little, if at all—the Supreme Court of the United States finally displaced it with a set of relatively firm, specific guidelines: "Custodial questioning" must be preceded by warning the suspect that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda* v. *United States*, 384 U.S. 436, 444 (1966).

We do not claim there is nothing to be said for a *constitutional amendment* modifying the Supreme Court's reading of the Fifth Amendment to prohibit police interrogators from compelling a defendant to be a "witness against himself" and the Court's interpretation of the Sixth Amendment to afford a person in the police station, as well as in the courtroom, "the assistance of counsel for his defence." We maintain only that there is nothing to be said for a bill which *pretends there are no constitutional principles at stake* but simultaneously flies in the face of this nation's constitutional traditions by seeking to insulate the bill from judicial review.

We realize that some members of Congress are unhappy about recent Supreme Court constitutional rulings in the police interrogation-confession area, but we submit this scarcely justifies an expression of unhappiness in the form of a statute which in one breath fails to recognize the existence of authoritative constitutional decisions squarely on point, but in the next breath manifests sufficient awareness of the bill's constitutional infirmity to seek to prevent the federal courts from performing their essential and traditional function of determining a statute's consistency with the federal constitution. To solemnly pass Title II into law, in order to register unhappiness or wishful thinking, seems to be nothing less than a perversion of the legislative process.

In the thirty years since *Brown* v. *Mississippi*, 297 U.S. 278 (1936), the first fourteenth amendment due process confession case, the U.S. Supreme Court took an average of only one state confession case per year—and *two-thirds of these* were "death penalty" cases. See Prettyman, Jr., *Death and the Supreme Court* 297–98 (1961). But Section (e) of Title II purports to remove even this modest check on state courts by purporting to take away the U.S. Supreme Court's power to "disturb in any way" a state court's finding that an admission or confession was "voluntarily made".

It is well to remember that but for the intervention of the U.S. Supreme Court, the defendant in *Brown* v. *Mississippi* would have been convicted on the basis of a confession obtained after thirty-six hours of continuous interrogation by police "relays"; the defendant in *Malinski* v. *New York*, 324 U.S. 401 (1945) would have been convicted on the basis of a confession obtained from him only after he had been stripped of all his clothing for three hours; and the defendant in *Davis* v. *North Carolina*, 384 U.S. 737 (1966) would have been convicted on the basis of a confession taken from him only after he had been questioned an hour or two each day *for sixteen days*—during which time no one other than his police captors saw or spoke to him. All of these confessions—*according to the state courts*—were "voluntarily made."

In a few short days we shall celebrate "Law Day." On that day leaders of the Congress and the bench and bar will undoubtedly point with pride to our "accusatorial, adversary system," of which the right to counsel and the privilege against self-incrimination are dominant features. A vote for Title II is a vote to honor our ideals *only* on "Law Day" and other ceremonial occasions, but to forget them the rest of the year.

Sincerely yours,

Layman E. Allen, Olin L. Browder, Paul D. Carrington, Robert A. Choate, Alfred F. Conard, Luke K. Cooperrider, Whitmore Gray, Robert James Harris, Carl S. Hawkins, Jerold H. Israel, John H. Jackson, Michael S. Josephson, Douglas A. Kahn, Yale Kamisar, Paul G. Kauper, Thomas E. Kauper, Arthur R. Miller, William J. Pierce, Terrance Sandalow, Joseph L. Sax, Stanley Siegel, Russell A. Smith, Theodore J. St. Antoine, Richard V. Wellman, L. Hart Wright, Kenneth L. Yourd, Members of the Faculty.

UNIVERSITY OF MICHIGAN LAW SCHOOL,
Ann Arbor, Mich., April 25, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: This letter relates to Title II of the Omnibus Crime Control and Safe Streets bill (S. 917), recently reported by the Senate Judiciary Committee. Because I believe the provisions of Title II are founded on erroneous assumptions and constitute a serious threat to the American tradition of constitutional government, I feel obliged to state the basis for my views.

Having spent the larger part of my professional life in the study of criminal law and the administration of criminal justice in the United States, I am, of course, aware of the agitated concern engendered in some quarters by the decisions of the U.S. Supreme Court in cases like *Miranda* and *Mallory*. I shall not pause to argue the merits of these decisions; nor am I disposed to challenge the sincerity of those who have disagreed with the Court. I am convinced, however, that the Court's critics have unreasonably exaggerated the importance of these decisions in their efforts to explain the problems confronting American law enforcement today. The evidence overwhelmingly supports the view that the crime rate and the comparative ineffectiveness of law enforcement in this country have very little to do with judicially fashioned rules of evidence of the sort announced by the Supreme Court in *Miranda, Mallory, Wade,* and kindred decisions. In my judgment, the effort to make the Supreme Court the scape-goat for the failure of American law enforcement is wrong for the same reasons that the sale of patent-medicine cures for cancer are wrong: it is based on an erroneous diagnosis of the illness and is dangerous because it diverts attention from the real problems and creates false hopes in an ineffectual remedy.

But even more serious is the method Title II proposes. Stripping the Court of jurisdiction in certain types of cases because members of Congress happen to disagree with the Court's view of the constitutional commands is a step down a road that leads to fundamental alteration in the distribution of powers in the American system. Once a first step is taken along this path, it will be difficult to avoid other steps in the future. I regard Title II as fully as ominous an assault on the Supreme Court as the court-packing proposal of the 1930's. In some respects it may be a more insidious threat, for it is less forthright and candid, and its dangers less apparent to the public at large.

I strongly urge that Title II be deleted from the bill.

Sincerely yours,

FRANCIS A. ALLEN,
Dean.

UNIVERSITY OF MISSOURI,
SCHOOL OF LAW,
Columbia, Mo., April 24, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Your letter to Dean Joe E. Covington dated April 19, 1968,

and concerning S. 917 has been referred to me for reply. Your letter requested a reply not later than April 29.

All of the undersigned members of this faculty are specially concerned with either Constitutional Law, Criminal Law or Evidence.

Due to the shortness in time, it is not possible for us to delineate the reasons for our views. It will have to suffice that, for reasons of unconstitutionality or undesirability, we are opposed to all of the provisions included in Title II of S. 917. Please add our names to the list of opponents of this proposed legislation.

Respectfully,

WILLIAM P. MURPHY,
Professor of Law.
EDWARD H. HUNVALD, Jr.,
Professor of Law.
T. E. LAUER,
Associate Professor of Law.
GRANT S. NELSON,
Assistant Professor of Law.
ELWOOD L. THOMAS,
Assistant Professor of Law.

UNIVERSITY OF MISSOURI,
AT KANSAS CITY,
Kansas City, Mo., April 30, 1968.

Hon. JOSEPH D. TYDINGS,
Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR TYDINGS: Dean Kelly has referred your letter of April 19 to me, as professor of constitutional law, for response.

I concur entirely with you that Title II should be stricken from the Crime Control Bill. In an effort to overcome the *Wade, Miranda,* and *Mallory* decisions, the proponents of the Title would jeopardize the whole constitutional system. The Supreme Court is the heart of the Constitution and judicial review is the essence of the Constitution. Any attack on the jurisdiction of the Court is necessarily an attack on the Constitution itself. The American people have accepted the thesis expounded by John Marshall in *Marbury* v. *Madison* that it is the peculiar function of the Supreme Court to interpret and apply the Constitution and they look to that tribunal as the ultimate guardian of their rights under the Constitution. To deprive the Court of jurisdiction to pass upon a claimed right is in effect to deny that claim. If the jurisdiction of the Court can be trimmed in one area to fit someone's distaste for certain decisions of the Court, it can be adjusted for another's dislikes, with the end that the Court ceases to be the supreme court of the United States. Without judicial review the American Constitution would be essentially the same as the Stalin Constitution, a handsomely worded document lacking in reality. The best place to put a stop to an inroad on the jurisdiction of the Supreme Court is whenever an inroad is proposed.

Title II's limitations on the jurisdiction of the Federal Courts are, I presume, being rationalized as falling within the authority conferred upon Congress by Article III, sec. 2, to make "exceptions" and "regulations." It is my firm conviction that this is not a conferral of a carte blanche upon Congress to enact any kind of legislation it sees fit affecting the jurisdiction of the Federal Courts but is rather a grant of a limited power to enact needful rules and regulations in keeping with the spirit of the Constitution. It is certainly not within the spirit of the Constitution to deprive an individual of his privilege against self-incrimination, his right to counsel, his right to be brought promptly before a magistrate, or any other right made secure by a decision of the Supreme Court, yet that is what Title II aims to do. The proposed amendment to 28 U.S.C., sec. 2256, is evidently designed to reduce to a negligible minimum Federal supervision over State Courts' disposition of Federal rights since the Supreme Court obviously can perform only a minute portion of the task of review of State action. If Title II is enacted, the Due Process Clause of the Fourteenth Amendment will be for all intents and purposes repealed pro tanto and the discredited States' rights doctrine of interposition will have won accreditation.

Unless constitutional development from *Marbury* v. *Madison* to the present is somehow obliterated, Congress cannot say that *Mallory, Miranda* and *Wade* are not the law of the land. It is 165 years too late to replace judicial supremacy by congressional supremacy in the matter of interpreting the Constitution.

Sincerely,

JOHN SCURLOCK,
Professor of Law.

ALBUQUERQUE, N. MEX., *April 29, 1968.*

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.:

For Senate to adopt S. 917, proporting to overrule Miranda and Wade decisions and to abolish the Mallory rule would be unwise and as to Miranda and Wade probably unconstitutional. Statistical studies show these rules are not handicapping police in proper law enforcement.

Prof. GEORGE N. STEVENS,
Prof. HENRY WEIHOFEN,
University of New Mexico,
School of Law.

UNIVERSITY OF NORTH DAKOTA,
SCHOOL OF LAW,
Grand Forks, N. Dak., April 23, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: Thank you for your recent letter with its enclosure of S. 917. Since I teach our criminal procedure course, the Dean has forwarded the materials to me.

Not only do I regard the statute as being itself unlawful, to the extent that it attempts to correct a constitutional decision through ordinary legislation, but I further believe that it would reverse a very wholesome trend in recent Supreme Court decisions: toward removing justice from the list of marketable commodities, and encouraging economic and ethnic minorities to respect the law by demonstrating to them that the law respects them. It is decisions such as Miranda which provide the most effective corrective to "crime in the streets"; not bills such as S. 917, however deceptively labelled.

Thank you for your efforts to defeat this statute.

Very truly yours,

MARTIN B. MARGULIES,
Asisstant Professor of Law.

NORTHEASTERN UNIVERSITY
SCHOOL OF LAW,
Boston, Mass., April 22, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Enclosed is a statestatement concerning Title II of S. 917. You are free to use it in whatever way you wish.

I am in complete agreement with your view on this bill, and its progress to date reflects an unrealistic attitude on the part of the members of Congress.

Sincerely,

THOMAS J. O'TOOLE,
Dean.

STATEMENT OF DEAN THOMAS J. O'TOOLE, NORTHEASTERN UNIVERSITY SCHOOL OF LAW, CONCERNING TITLE II OF S. 917 (THE "OMNIBUS CRIME CONTROL BILL")

So far as it applies to state criminal trials, Title II appears to be constitutional in the light of existing precedents.

Its constitutionality depends, however, on a technicality. Under Article III of the United States Constitution, the appellate jurisdiction of all the federal courts and the original jurisdiction of the lower federal courts are subject to Congressional definitions. If Congress were to enact Title II, it would be saying to some persons convicted in state criminal trials: even if you have been unconstitutionally convicted, we are depriving you of any federal opportunity to have your rights vindicated. By withdrawing the rights to writ of habeas corpus, Congress would be sharply narrowing this most ancient and hallowed device by which Americans and their British forbears have protected their personal liberty against arbitrary government action.

Insofar as it applies to criminal trials in the federal courts, this proposed title II is blatantly unconstitutional. The Mallory rule has never been placed on constitutional grounds, but Miranda and its ramifications are nothing more than an explicit development of the constitutional rights to fair trial and to representation by counsel. In nonlegal terms, these judicial rulings represent not simply a desire to avoid convicting the innocent, but also an attempt to secure recognition of the human dignity of all persons, even those who stand accused.

At this point in national history, when constructive and imaginative approaches to our urban problems are desperately needed, the enactment of Title II would be an angry and vindictive attempt to return criminal justice to a more barbaric stage. Worse than that, it would be a declaration by Congress of disaffection with our Bill of Rights and the independence of our federal judiciary.

NOTRE DAME LAW SCHOOL,
Notre Dame, Ind., May 7, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR: I regret exceedingly that it has not been possible to reply sooner to your letter of April 19 concerning S. 917. One of our brilliant young professors, at my request, has written a brief memorandum on Title II of the Bill. I share his views and pass them on to you, since it seems to me that he has said what I would say better than I could say it myself.

"The *effort* to legislatively overrule *Miranda* is unfortunate and illegal. Unfortunately because *Miranda*, when all is said and done, does no more than extend to the poor and stupid what the wealthy and sophisticated have had all along. Illegal because it attempts to amend the Constitution by statute, which is a legislative version of what Senator McClellan accuses the Court of.

"Restriction of the *habeas corpus* jurisdiction is unwise, in view of the proud history of that remedy in Anglo-American jurisprudence and in view of its use in our own history to protect the most disadvantaged and unpopular of criminal defendants. It is also a paltry attempt to punish the Supreme Court by hopelessly clogging its certiorari and original dockets."

With warm regards and all best wishes, I am.

Sincerely,

JOSEPH O'MERA.
Dean.

THE UNIVERSITY OF OKLAHOMA,
Norman, Okla., May 1, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: In response to your letter I inquired of my colleagues with respect to their views regarding the wisdom of the proposed legislation.

Two members of the faculty took the position that the faculty as a whole should express no opinion until each member had

the opportunity to study the problem carefully.

The overwhelming majority of the faculty expressed the view that we as the faculty should express agreement with the views which you stated. Two members of the faculty who expressed agreement with your views did, however, disagree on the habeas corpus point involved in § 902(a) and observed that they could not see why the Court cannot adequately review questions after presentation to the state courts.

In summary, it is fair to say that twelve members of the faculty and I substantially agree with the views which you expressed in your letter.

Yours truly,

EUGENE KUNTZ, *Dean.*

UNIVERSITY OF OREGON,
SCHOOL OF LAW,
Eugene, Oreg., April 27, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: Please add my name to those who support your efforts to have Title II of S. 917 stricken from the Crime Control bill.

Sincerely,

CHAPIN D. CLARK,
Acting Dean.

UNIVERSITY OF PENNSYLVANIA,
THE LAW SCHOOL,
Philadelphia, Pa., April 24, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: We write to express our strong concern over the provisions of Title II of S. 917 (the "Safe Streets" bill), currently before the Senate.

Every one of the provisions of this Title presents a serious constitutional question. To the extent this means only that they may prove to be ineffective or invalid, that would not necessarily be sufficient reason to oppose passage. The bulk of these provisions, however sweep much too broadly, creating serious additional problems going to the core of our governmental system.

The provisions which would restrict the jurisdiction of the Supreme Court and of the inferior federal courts (especially with regard to habeas corpus) are particularly troublesome. By their terms, these provisions would cut federal jurisdiction back so far as virtually to eliminate federal review in nearly all state criminal cases—regardless of the number or kinds of federal issues which may have been involved. There is substantial question whether these provisions would actually be effective as written or whether they might be partially or entirely unconstitutional. To the extent they might operate, however, they would alter the nature of our system far beyond what is necessary or appropriate in the circumstances.

The provisions seeking to redistribute authority within the federal judicial structure are less troubling only in degree. They also present constitutional questions and also would, if effective, work serious dislocation in the over-all functioning of the system.

Of greatest importance, the provisions of Title II would pose the issues of constitutionality in a manner likely to produce a confrontation between the legislative and judicial branches of our Government from which the Nation can only suffer. No matter how the immediate questions might be resolved in the specific cases, the long-range effects of such a confrontation could be even more serious.

One does not have to agree with the pace or even to content of the decisions of the Supreme Court in the area of criminal procedure to conclude that the corrective measure proposed in Title II is too blunt an instrument which would cause unnecessary damage to our system as a whole.

Sincerely yours,

JEFFERSON B. FORDHAM,
Dean.
ANTHONY G. AMSTERDAM,
Professor of Law.
STEPHEN R. GOLDSTEIN,
Assistant Professor of Law.
A. LEO LEVIN,
PAUL J. MISHKIN,
CURTIS R. REITZ,
LOUIS B. SCHWARTZ,
BERNARD WOLFMAN,
Professors of Law.

RUTGERS UNIVERSITY,
SCHOOL OF LAW,
Camden, N.J., April 29, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: I am writing in reply to your letter of April 19th. Like you, I am distressed by those provisions of Title II of S. 917, the Omnibus Crime Control and Safe Streets Bill, which purport to overturn the *Miranda, Wade* and *Mallory* decisions, remove federal appellate jurisdiction to review state court decisions admitting confessions, remove federal appellate jurisdiction to review both state and federal cases admitting eyewitness identification testimony, and abolish federal habeas corpus jurisdiction over state criminal convictions.

While I think that all these features of the bill are unwise and that many of them present the most serious constitutional problems, and consequently hope that all of them will be stricken from the bill, I am particularly distressed over those provisions which limit the jurisdiction of the federal courts. Most questionable, in my opinion, are those provisions of Section 3501 which would remove appellate jurisdiction from the Supreme Court and the United States Court of Appeals to review state decisions admitting confessions and both federal and state decisions admitting eyewitness identification testimony. The point is not whether Congress has power to limit the appellate jurisdiction of the Supreme Court. This is uncertain. See Hart, *The Power of Congress to Limit the Jurisdiction of the Federal Courts: An Exercise in Dialectic,* 66 Harv. L. Rev. 1362, 1365 (1953); Ratner, *Congressional Power over the Appellate Jurisdiction of the Supreme Court,* 109 U. Pa. L. Rev. 157 (1960). The point is that this is changing the referee in order to obtain a referee who may be more favorable to the views of those doing the changing. Even if constitutionally permissible, this is inconsistent with the framework of the amending process of article V of the Constitution. It bears the marks of an attempt to circumvent the amending process. I am opposed to efforts to change the game by changing its rules or its referee no matter from whom they originate.

In addition, the provision depriving the Supreme Court of jurisdiction to review state court decisions admitting confessions and the provision depriving the Supreme Court of jurisdiction to review both state court and federal court cases admitting eyewitness identification testimony will, if a federal trial court or a state court, respectively, should declare unconstitutional the substantive provisions of the act dealing with the confession or eyewitness identifications problems, lead to a lack of uniformity in the decisions of the various courts—state and federal—as to whether the provision in question is constitutional. This is regrettable. There should be but a single ultimate arbitor of constitutional questions. The Constitution should mean the same thing in all the states and in all federal judicial districts.

Moreover, the effect of these jurisdictional provisions insofar as they apply to review of state court determinations would be to provide the person convicted in a state court of even one opportunity to have a federal claim adjudicated in a federal court. A person convicted in a state court is entitled to a determination of a federal claim by a federal court just as he is entitled to a determination of his state claims in a state court. While cases involving review of convictions by state courts usually involve state claims, they may also involve federal claims. State law is supreme with respect to the generality of criminal law within a state, but federal law is supreme with respect to the federal claims presented by a state criminal case. Under the Constitution, conflict between the state law and a valid claim under the federal Constitution must be resolved by the state law giving way to the federal claim. A federal court does not review questions of state law when it reviews a claim of person convicted in a state court except to determine whether the state law is constitutional. That federal courts do review questions of state law to this extent is entirely proper. The Government whose law in supreme in a particular area, here the federal government, should have authority to adjudicate that supremacy. Otherwise, courts of the other government, here the state government, who may possibly be less receptive or sympathetic to the claim of supremacy, here the federal claim, would, in violation of the spirit of the Supremacy clause, be able to frustrate these claims.

This is not to say that state courts are in fact unreceptive or unsympathetic to federal claims but only that there is a greater likelihood that being institutions of another sovereign, they may be less receptive or sympathetic to these claims than federal courts.

In short, these provisions could undermine the federal supremacy for which the Constitution provides when state law conflicts with it. Just because a case involves the criminal law of a state—which, if of course, authoritative when it does not conflict with the Constitution—does not mean that it does not contain a federal claim also. Under our system of government, the federal claim, in cases of conflict, control, and federal courts may be more certain guarantors of the vindication of federal rights than state courts.

I have a similar objection to section 902(a) of the Act. This provision abolishes the remedy of a state prisoner to seek relief from a state criminal conviction by writ of habeas corpus issued by a Federal court. In so doing, it would effectively preclude any *Federal* determination of federal claims in state criminal proceedings in all but a few of these cases, because the great number of these cases, are reviewable by the Supreme Court on direct review of the judgment of conviction or of a judgment of a state court rejecting an attempt to collaterally attack the judgment of conviction only by discretionary writ of certiorari, and the pressure of work on the Court will make it impossible for certiorari to be granted in more than a tiny fraction of these cases.

Very truly yours,

MICHAEL P. ROSENTHAL,
Associate Professor of Law.

THE UNIVERSITY OF SOUTH DAKOTA,
Vermillion, S. Dak., April 24, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Your letter of April 19th calling attention to the inclusion of Title II in the Omnibus Crime Control and Safe Streets bill, and to the one-vote approval by the Senate Judiciary Committee of the provisions of Title II, caused a great deal of consternation here in this Law School. I personally am appalled by the action of the Committee. This is true despite the fact that I have a great deal of sympathy for some of the goals which Title II is rather obviously attempting to attain. It is incomprehensible to me that the Judiciary Com-

mittee of the United States Senate should lend its support to an attempt to change drastically our system of adjudication of constitutional rights in order to overturn specific products of that system. It is even more incomprehensible that the Committee should attempt to take such action with no publicity and little or no attempt to explain to either the legal community or to the public in general the purposes or the implications of its action.

Since receiving your letter, I have made personal telephone calls to a number of the outstanding legal leaders in the state of South Dakota. Not a single one of them was aware of the existence of Title II, and although quite a few of them were something less than antagonistic toward its purposes, without exception they were firmly opposed to the methods being used to fulfill those purposes.

The action of the Committee in this instance is completely illogical and ill considered. If the appellate system is under direct attack, the entire system should be studied and revised where necessary in a uniform logical manner. If, on the other hand, the attack is directed toward individual case results of this system rather than toward the system itself, the enactment of Title II, which jeopardizes our existing constitutional protection, borders on representative irresponsibility. Action of this sort should not be taken without full public discussion involving participation by the Bar, legal educators, and the legal community, as well as by all other segments of the interested public.

Please let me know if I can be of further assistance in your attempts to delete Title II from the Omnibus Crime Control and Safe Streets bill. I am forwarding copies of this letter to Senators McGovern and Mundt, and to the President of the South Dakota State Bar, together with my recommendation that they do everything within their power to prevent the enactment of Title II.

Sincerely yours,

JOHN D. SCARLETT, *Dean.*

SOUTHERN UNIVERSITY,
Baton Rouge, La., April 25, 1968.

Re S. 917 (omnibus crime control and safe streets bill).

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SIR: In view of the immediacy of your need for a reply to your letter of April 19, 1968, the views expressed herein are not supported by research. There are, however, some fundamental constitutional principles that are involved in the proposed bill above referred to. Specifically, the Fourteenth Amendment protections of a "Due Process" would be seriously eroded should such a bill become law.

Further, to enact such a bill into law would set a dangerous precedent on the constitutionally fixed balance of power between the Executive, Judicial and Legislative branches of government. The historic function of the Supreme Court in maintaining order in meeding out justice under a single constitutional principle would be seriously imperiled and would be to permit as many different applications of law as there are State Supreme Courts. This to me would cause utter chaos in our system of administration of justice.

I trust that my views will aid in this type of bill which seems to be emotionally inspired rather than legally reasoned with justice as its aim.

Respectfully,

A. A. LENOIR.

STANFORD SCHOOL OF LAW,
Stanford, Calif., April 23, 3968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I have just seen a copy of Title 2 of Senate 917 as approved by the Senate Judiciary Committee and wish to write you to protest against its possible enactment. First, though not most important, the constitutionality of at least two of its provisions is most dubious. I think that a reading of the Supreme Court decisions indicates that at least our present Supreme Court would be prepared to hold the overruling of the Miranda or the Wade decisions unconstitutional; and although the legislative overruling of the Mallory decisions is not so clearly unconstitutional, it would be without effect as a practical matter providing Miranda remained standing.

Secondly, the efforts to contact the jurisdiction of the United States Supreme Court and the general habeas corpus of jurisdiction though perhaps constitutional are all the more dangerous. The fact is that once it becomes popular to restrict the jurisdiction of the Supreme Court and the lower federal courts in the area of constitutional rights we are well on our way to removing the constitutional rights of the individual from judicial protection.

Finally and most important, entirely apart from any unconstitutionality, I would like to protest even more against the lack of wisdom of Title 2. The protections which Title 2 is meant to repeal are for the most part protections given to the poor and the dispossessed against a government which more and more they are feeling they have no share in. To abolish these protections, rather than decreasing crime, could only have the effect of increasing the alienation of large numbers of our minority group members, of playing into the hands of the extremists who tell them that the "establishment" is rigged against them and of increasing violence.

I hope that this bill can be defeated not only before it has any chance of becoming law but before widespread publicity can be given it. The very fact that Congress is considering such a bill at this time is a blot upon the legislative process.

Yours very truly,

JOHN KAPLAN,
Professor of Law.

THE UNIVERSITY OF TENNESSEE,
COLLEGE OF LAW,
Knoxville, Tenn., April 23, 1968.

Hon. JOSEPH T. TYDINGS,
U.S. Senate,
Judiciary Committee,
Washington, D.C.

DEAR SENATOR: We are pleased to write in support of your efforts to remove Title II from S. 917, the so-called Omnibus Crime Control and Safe Streets bill, purporting to repeal by statute the constitutionally grounded *Miranda* and *Wade* decisions, to overrule the *Mallory* decision, to remove the Supreme Court appellate jurisdiction to review state decisions admitting confession or eyewitness testimony in criminal cases, and to abolish federal habeas corpus in all state criminal convictions.

First and foremost, this proposal violates the basis of our constitutional system, which has rested, since Chief Justice Marshall, upon the view that the judiciary has the final determination as to what a constitutional provision means. The Court occupies a most advantageous position in this function, being removed from the political pressures and the emotions of a moment, the bias of a particular social or political segment of our country, and being the principal body which by custom is supposed to be impartial and judicial, and to weigh the welfare of the nation over the concerns of particular groups.

Second, experience demonstrates that the protection we can count on to preserve the new experiment of the founding of our nation, and the new ideal of government which was created, has most consistently been the United States Supreme Court.

Third, the decisions of the states have shown repeatedly that even the most fundamental and basic elements of due process are often disregarded.

Fourth, the decisions of the Court, debatable though a few have been, have, in the overwhelming majority, been consistent with the concepts of freedom for those who constitute a minority, whether the classification is based upon accusation of crime, color, race, religion, or political philosophies.

It is most disturbing to visualize a time when liberties will depend upon a particular state's interpretation of what the welfare of the nation requires, which will depend all too frequently upon the emotional and unwise preoccupations with some local bias or self interest. These are the dangers which the constitution sought to avoid. Without the jurisdiction of the Supreme Court, freedom will depend upon what state decides the question. There will be no uniformity. If the day ever comes when the Supreme Court has been effectively muzzled we will live in a different world. We will live in a nation that will have become more like the totalitarian governments of the Fascist and Communist world, which we purport to abhor, which we ought, we believe, to resist.

We hope that your efforts and those of others of like mind will succeed in arresting this tendency toward an era when freedom as we know it, will become a weakened, once adhered to, ideal.

We recognize the need to control crime more effectively and to make streets more safe. We think that this can be done in ways other than removing from our system its basic characteristic. Better trained and more efficient personnel in the law enforcement area, more effective regulation by and of the criminal law administration machinery, the removal of some of the most significant causes of the current crime picture all should be pursued much more thoroughly before the solutions are sought by the provisions of Title II.

We realize that liberty has its costs, but we believe that the destruction of liberty has a greater cost. We do not believe that we can afford the cost to our system of weakening the underpinning to freedom and liberty which the United States Supreme Court has provided.

Yours respectfully and sincerely,

Harold C. Warner, Dean; Josep G. Cook, Assistant Professor of Criminal Law; Don F. Paine, Assistant Professor of Evidcnce; Elvin E. Overton, Professor of Constitutional Law; Jack D. Jones, Associate Professor of Law; Durward S. Jones, Assistant Professor of Law; Forrest W. Lacey, Professor of Law; Jerry J. Phillips, Assistant Professor of Law; Dix W. Noel, Professor of Law.

THE UNIVERSITY OF TULSA,
COLLEGE OF LAW,
April 23, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR TYDINGS: Thank you for your letter and the copy of S. 917 "Omnibus Crime Control and Safe Streets Bill." Of course the Senate and House have the power to withdraw federal habeas corpus jurisdiction over all state criminal convictions, although I feel that this would be a most disastrous exercise of that power.

Miranda and *Wade* simply cannot constitutionally be overruled by legislative fiat. I sincerely hope that you are successful in having these provisions stricken from the bill.

Thank you again for furnishing me with these materials. If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,

BRUCE PETERSON, *Dean.*

THE UNIVERSITY OF UTAH,
COLLEGE OF LAW,
Salt Lake City, Utah, May 1, 1968.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I very much appreciate your letter of April 19, 1968, calling the attention of our faculty to the provisions of Title II of Senate Bill 917. Our faculty has responded to your letter by urging the elimination of Title II from the bill. A statement signed by every member of the law faculty is enclosed.

Sincerely yours,
SAMUEL D. THURMAN, *Dean.*

THE UNIVERSITY OF UTAH,
COLLEGE OF LAW,
Salt Lake City, Utah, April 30, 1968.

As members of the Legal Profession devoting our professional efforts to the communication of the American legal tradition to our students, we are shocked and dismayed that the Senate Judiciary Committee should have favorably reported Title II of Senate Bill 917.

This blunderbuss bill attempts to deal with the crime problem by repressive measures inconsistent with the American system of law and the constitutional concern for individual liberty. We believe that the bill would seriously curtail the developing legal doctrines designed to protect and preserve individual liberty and personal human dignity. In our increasingly complex society, it is vital that neither the legal doctrines designed to protect and augment the personal rights and personal dignity of the individual nor the traditional processes of judicial review to secure those rights should be undercut by short-sighted federal legislation. As conservatives, we challenge the appropriateness of a legislative proposal designed to curtail judicial review of actions by governmental officials. As liberals, we question the wisdom of a proposal which would have the effect of giving abritrary discretion to the police and to state courts as a means of dealing with so complex a problem as that of the increase in crime. As citizens, we are dismayed at the destructive impact upon our federal polity, and its system of checks and balances, of this proposal by insulate state court decisions in criminal matters from effective federal judicial review, thereby encouraging non-uniformity in and discriminatory application of constitutional rights of the individual.

This repressive proposal, designed as a measure for crime control, would in our opinion, ultimately have the effect of rendering law enforcement less effective. History shows that a free society must depend for effective crime prevention on the cooperation and support of its people. Such support and cooperation ultimately rests upon the moral persuasiveness of the law and the justice with which the law is administered. In the words of Justice Brandeis, "If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." This proposal to curtail judicial review of law enforcement measures can only be seen as an invitation to law enforcement agencies to bend and break the statutory law as well as the fundamental law of the land, the Constitution itself.

In these troubled times, when we have seen riots in our cities and commotions in our streets, Congress must not suggest that the police are above the law by measures designed to weaken judicial review of law enforcement practices. To do so would vindicate the claims of extremists who use false cries of police brutality as a justification for and an incitement to unlawful action. Since effective law enforcement and crime prevention ultimately depend on the support of all segments of the population, Congress should do nothing to weaken that support. Title II of this bill would do so.

The proposal to reverse the recent Supreme Court rulings on confessions is subject to more specific criticism. Congress should be aware that numerous studies in many parts of the nation conducted after the Miranda decision show that the Miranda rule has not operated to inhibit effective law enforcement. On the contrary, the detailed and specific rules of Miranda make for more effective law enforcement and fewer instances in which guilty men escape justice than the vague and uncertain standards of the "totality-of-the-circumstances" test of voluntariness which the bill proposes to substitute for the Miranda rule.

The great virtue of Miranda is its clarity. Law enforcement officers know in advance what they may do and what they may not do to questioning a suspect. If, they fail to obtain a confession because the suspect asserts his constitutional right to remain silent, the officers may pursue other investigative avenues while the clues are fresh. Conversely, the uncertainty of the voluntariness standard means that the officers lack a clear guide to what is permissible. In the absence of guidance it is understandable that officers will often guess wrong and go too far. When they do so, the only remedy available would be a later judicial ruling that the confession is inadmissible. Such rulings will usually come when it is to late to pursue other investigative paths with the result that guilty men will often escape conviction. Thus, it can be said that the clarity and certainty of the Miranda rule will lead to greater assurance that the guilty will be convicted, and to fewer miscarriages of justice, than would a return to the uncertainties of the voluntariness test revived in S. 917.

The proposal to eliminate the jurisdiction of the United States Supreme Court to review state rulings in criminal cases, admitting confessions into evidence, flies in the face of more than 30 years of constitutional history. Since Brown v. Mississippi, 297 U.S. 278, in which Chief Justice Charles Evans Hughes declared a state-approved conviction obtained by torture to be "revolting to the sense of justice" and a "clear denial" of due process of law, the Court has repeatedly been called upon to consider the constitutional admissibility of incriminating statements attributed to defendants in cases affirmed by the highest state courts. While today, these cases include few instances of physical torture and sadistic violence, we do not believe that our precious liberties as Americans would be served by a bill which would preclude the Supreme Court from providing a remedy in these situations. Yet section 3502 would have such effect.

The Supreme Court's role in state and federal confession cases has brought uniformity of approach and consistency of doctrine into this difficult aspect of criminal law enforcement; elimination of jurisdiction to review such questions would undoubtedly promote inconsistency, confusion, uncertainty, and caprice as the courts of the several states, lacking in a national perspective and without the check and balance of Supreme Court review, go their several independent ways. The ideal of "equal justice under law" would thus be impaired, for lack of uniformity and consistency in the administration of justice is widely regarded as characteristics of a "government of men," not of a "government of law."

Perhaps nowhere in Title II is its essential clumsiness and total disregard of constitutional principles more clearly demonstrated than in section 3503. This section would prohibit the exclusion of testimony that a witness saw an accused commit or participate in a crime. The provision is apparently aimed at the Supreme Court's recent rulings in United States v. Wade, Gilbert v. California, and Stovall v. Denno. These decisions attempted to fashion controls to deal with risks inherent in lineup identifications. The cases were a response to a continuing problem, the danger that identification testimony, however honest, may often be mistaken. Numerous legal commentators and judges, including Justice Frankfurter, Dean Wigmore, Judge Jerome Frank, Professor Borchard, and Doctor Glanville Williams, among others, have pointed out that such erroneous identifications are a major cause of convictions of innocent persons. We assume that nobody, including the proponents of section 3503, would seriously contend that crime control can or should be achieved by the conviction of innocent persons. Yet their proposal is an attempt to nullify the Supreme Court's efforts to assure that only the guilty are convicted by requirements making identification testimony more trustworthy.

Section 3503 is also a graphic demonstration, by its clumsiness and over-breadth, of the lack of insight and perspective with which Title II was prepared. While section 3503 was, it seems, chiefly aimed at the lineup cases, it succeeds in hitting many other targets involving entirely different problems and constitutional principles. The section would in large measure repeal the rules of Weeks v. United States and Mapp v. Ohio insofar as they exclude testimony obtained from an illegal search and seizure. The section would legalize "police state" practices by permitting the illegal searcher to testify to what he found in all cases where the possession of the items found was a crime. In addition, the section would in large measure eliminate the fruit-of-the-poisonous-tree rule as applied in both state and federal courts. Its unqualified language would require admission of eyewitness testimony without regard for other circumstances which, under present law, may limit admissibility in the interest of competency, probativeness, fairness, and public policy; and it would eliminate the principal practical sanction against violation of the constitutional right of personal privacy. We believe that section 3503 is not the kind of legislation that law-abiding and law-respecting persons expect or deserve from the Senate. Moreover, this section, in and of itself, demonstrates the lack of careful consideration which generally characterizes Title II as drafted.

The proposal to eliminate the habeas corpus jurisdiction of the federal courts to review state court decisions claimed to violate federal constitutional rights will lead to an excerbation of tensions between state and federal courts. If enacted, this provision will mean that an increased proportion of state court decisions will undoubtedly be brought to and considered by the United States Supreme Court. Thus, instead of the litigation taking place in the states before federal district court judges who are members of the state bar and familiar with state legal practices and traditions, such litigation will take place in Washington. The disadvantage to the states, the litigants, and the federal courts under this proposal seems obvious; the inability of the Supreme Court, with its already heavy workload, to give adequate protection to constitutional rights is deplorable.

Finally, we urge that you consider the proposals embodied in S. 917 from an historical perspective. The finest traditions of the Senate suggest that posterity will not look kindly on this ill-considered attempt to curtail and restrict the legal remedies of individuals seeking redress for violations of their constitutional liberties. While no doubt these legal remedies are sought by guilty and innocent alike, history teaches that the rights of all, guilty and innocent alike, are inseparable. The American tradition of presumed innocence until there has been a final determination of guilt, made in accordance with law, emphasizes the truth that the rights of the innocent are diminished by measures designed to restrict thorough judicial consideration of the claims of those who are believed to be, but in fact may not be, guilty.

We urge you to look beyond the problems of the immediate present and to weigh the part that the federal courts have played in developing the legal rules and restraints on governmental power. Individual rights of the citizen, developed over centuries of historical conflict, are far too precious to be sacrificed to temporary political expediency. We urge the Senate to stand firmly for a continuation of equal justice according to law. We urge you to vote for the elimination of Title II from Senate Bill 917.

Sincerely,

Robert W. Swenson, Lionel H. Frankel, Robert L. Schmid, John F. Flynn, Wallace R. Bennett, Arvoban Alsty, A. C. Emery, Ronald W. Boyce, Jerry R. Andersen, Samuel D. Thurman, I. Daniel Stewart, Richard L. Young, Richard I. Howe, William J. Lockhart, Edwin Brown Firmerge, E. Wayne Thode, Denny I. Ingram, Jr., Members of the Faculty.

UNIVERSITY OF VIRGINIA,
SCHOOL OF LAW,
Charlottesville, Va., April 29, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR TYDINGS: Your letter of April 19 reached me just as I was on the point of leaving for meetings in Washington. This explains my inability to reply in time to meet your deadline. I immediately referred your letter to Professor Low who replied on April 23. I hope you found his letter helpful.

I write now merely to echo the sentiments he expressed. While I can, in no sense, speak with authority on the problems raised by *Miranda* and *Wade*, I cannot escape the feeling that, even if constitutional, as to which I have reservations, the proposed legislation would be at once premature and unwise.

It would be premature because we have not yet acquired enough experience adequately to judge the impact of the decisions. It would oe unwise because at this juncture in our national life the last thing we need is to generate an added sense of instability by stimulating a dispute between the Congress and the Supreme Court.

I am glad to know that one of your standing and reputation is taking up the cudgels against Title II of S. 917.

Please do not fail to call on me if you think I can be helpful.

Sincerely,

HARDY C. DILLARD,
Dean.

UNIVERSITY OF VIRGINIA,
SCHOOL OF LAW,
Charlottesville, Va., April 23, 1968.

Senator JOSEPH D. TYDINGS,
U.S. Senate, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR TYDINGS: Your letter of the 19th only came to my attention today. The timing is somewhat unfortunate in view of the fact that you need replies before April 29 and the press of other matters on such short notice does not give me the opportunity to make the type of response which your letter deserves.

I would like in any event to give you what quantitative help I can by registering my firm opposition to Title II of S. 917. It is, in my opinion, riddled with Constitutional infirmities and is likely if it becomes law to be directly provocative of a confrontation between the Court and Congress such as we have never seen. Although those sections which purport to deprive the federal courts of jurisdiction to review state court judgments undoubtedly derive some support from decisions such as *Ex Parte McCardle*, I do not believe that the present Court would, or should, read Article III to give Congress the power to exempt from the federal system review of such fundamental matters. To do so would give the Congress the power to repeal the Bill of Rights through the back door and to make the Supremacy Clause meaningless verbiage.

Let me also add that I am one who has grave doubts about the wisdom and necessity of cases like *Miranda* and *Wade*, although more to their detail than to the principles for which they stand. But I do not believe that precipitate repeal—even if it could be effective against Constitutional attack—is a wise course, if only for the reason that those who accomplish it will think that they've done something to solve "the crime problem" or "crime in the streets". What they will actually have accomplished, on the other hand, will have been a Constitutional crisis which has little bearing at all on a real solution to our problems.

I hope that you find this letter helpful, and that you are successful in your efforts to defeat this measure. I am only sorry that I could not devote more time to helping you make a case.

Sincerely,

PETER W. LOW,
Assistant Dean,
Associate Professor of Law.

WEST VIRGINIA UNIVERSITY,
THE COLLEGE OF LAW,
Morgantown, W. Va., April 24, 1968.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: Dean Paul Selby, Jr., of our College has shown me your letter of April 19 calling to his attention Title II of S. 917 as it was reported by the Senate Judiciary Committee. I am shocked by the contents of Title II as it was reported by the Senate Committee and join you in a sincere concern over the grave consequences that could result from enactment of the Bill in this form. The Title as drafted would wipe out three decades of gradual improvement in the administration of criminal law as encouraged by Supreme Court decisions.

As the Bill is drafted even the original confessions case—*Brown* v. *Mississippi*—where the State Court blatently approved the admission of a confession extracted by an admitted brutal beating would lie beyond the power of Federal Courts to control. While some have fairly complained that the Supreme Court rulings in regard to confessions are overly stringent, this Bill responds out of proportion to that complaint. It throws out the baby with the bath. It strikes me that this is a major assault upon the dignity of the Federal Judicial System as a whole and I think it does not represent responsible legislation at all. I am shocked that Congress could consider going so far.

Additionally, grave Constitutional doubts are raised as to whether Congress can completely remove the availability of all Federal Courts to protect recognized Federal Constitutional rights. I urge you to work actively for the defeat of Title II. I am sending copies of this letter to Senators Randolph and Byrd urging them to take a similar position. This is a matter of utmost gravity in my estimation and represents a serious threat to the proper administration of criminal justice in the United States today.

Very truly yours,

WILLARD D. LORENSEN,
Professor of Law.

YALE UNIVERSITY,
LAW SCHOOL,
New Haven, Conn., April 26, 1968.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Many thanks for your letter of April 19, alerting me to the impending Senate debate on S. 917.

I am fully in agreement with your view that Title II of S. 917 should be stricken from the bill. Title II is, in my judgment, dangerous, retrograde legislation, which would, if enacted into law, strip American citizens of vital and hard-won procedural rights.

As I see it, Title II would, if adopted, have at least four calamitous sets of consequences:

(1) The new Section 3501 of Title 18 would strip federal criminal defendants—including those in the District of Columbia, where Congress has special responsibility to the citizens who cannot elect their own lawmakers—of the shields against official abuse written into law by the Supreme Court in *Mallory v. United States*, 354 U.S. 449; *Miranda v. Arizona*, 384 U.S. 436, and kindred decisions. Bearing in mind that *Miranda* was itself a declaration of the requirements of due process, there would seem grave doubt that a legislative overruling of *Miranda* is, at least as to federal defendants, constitutional. Nor is the constitutionality of the proposed section saved by the fact that the Court, in *Miranda*, invited legislative approaches to the problem of interrogation procedures the Court was there considering. Plainly enough, what the Court was soliciting was alternative safeguards of defendants' due process rights, not simple obliteration of the safeguards there formulated.

(2) The new Section 3502 of Title 18 would apparently deprive federal courts, including the Supreme Court, of authority to review the voluntariness of confessions admitted in evidence in state criminal trials. At one stroke this proposal would destroy one of America's firmest bulwarks against barbarous forms of law-enforcement.

Adoption of this section would mean repudiation of Chief Justice Hughes' historic decision in *Brown v. Mississippi*, 297 U.S. 798, reversing death sentences imposed on Negro defendants convicted on the basis of confessions elicited by systematic beating (a deputy sheriff who acknowledged whipping one of the defendants said he hadn't been unduly severe: "Not too much for a negro; not as much as I would have done were it left to me." 297 U.S. at 284).

The proposed legislation would undercut *Payne* v. *Arkansas*, 356 U.S. 560, in which Justice Whittaker summarized the relevant evidence as follows (356 U.S. at 567):

"The undisputed evidence in this case shows that petitioner, a mentally dull 19-year-old youth, (1) was arrested without a warrant, (2) was denied a hearing before a magistrate at which he would have been advised of his right to remain silent and of his right to counsel, as required by Arkansas statutes, (3) was not advised of his right to remain silent or of his right to counsel, (4) was held incommunicado for three days, without counsel, advisor or friend, and though members of his family tried to see him they were turned away, and he was refused permission to make even one telephone call, (5) was denied food for long periods, and, finally, (6) was told by the chief of police "that there would be 30 or 40 people there in a few minutes that wanted to get him," which statement created such fear in petitioner as immediately produced the "confession." It seems obvious from the *totality* of this course of conduct, and particularly the culminating threat of mob violence, that the confession was coerced and did not constitute an "expression of free choice," and that its use before the jury, over petitioner's objection, deprived him of "that fundamental fairness essential to the very concept of justice," and, hence, denied him due process of law, guaranteed by the Fourteenth Amendment."

And the proposed legislation would likewise put beyond Supreme Court review a case like *Leyra* v. *Denno*, 347 U.S. 556, 561, where Justice Black observed:

"First, an already physically and emotionally exhausted suspect's ability to resist interrogation was broken to almost trance-like submission by use of the arts of a highly skilled psychiatrist. Then the confession petitioned began making to the psychiatrist was filled in and perfected by additional

statements given in rapid succession to a police officer, a trusted friend, and two state prosecutors. We hold that use of confessions extracted in such a manner from a lone defendant unprotected by counsel is not consistent with due process of law as required by our Constitution."

In considering the impact of legislation which would remove the voluntariness of confessions in state criminal trials from federal scrutiny, you may feel, as I do, that the following facts about confession cases adjudicated in the Supreme Court in the quarter-century following *Brown* v. *Mississippi*, are relevant:

"In twenty-five years, from February 1936 (when *Brown* v. *Mississippi*, the path-breaking coerced-confession case, was decided), to June 1961, the Supreme Court set aside state court convictions on coerced-confession grounds on twenty-two occasions. Of the twenty-seven defendants involved in these cases, nineteen were Negroes and six were whites; the race of the other two is not disclosed by the record. Sixteen of the nineteen identifiable Negroes were tried in Southern courts. Only one of the six identifiable whites, and neither of the two racially unidentified defendants, was tried in a Southern court." (Pollak, The Constitution and the Supreme Court, vol. II, p. 198.)

(3) The full impact of proposed Section 3503 is hard to determine. But it apparently would, at a minimum, purport to insulate federal and state criminal convictions based on eye-witness testimony from federal judicial review even where, for example, such testimony was perjured. Of course, the introduction into evidence of perjured testimony, known by the prosecution to be false, was denominated a denial of due process of law as long ago as *Mooney* v. *Holohan*, 294 U.S. 103. To write into federal law the proposition that federal criminal convictions based on perjured testimony should be immune from appellate or collateral attack would seem a plain violation of the Fifth Amendment. To create a cognate immunity for state criminal convictions of this nature would seem to generate constitutional questions of comparable gravity.

(4) If the proposed new Section 2256 of Title 28 means what it appears intended to mean, it would virtually erase the cherished writ of federal habeas corpus as it applies to state prisons. Taken together with the preceding sections of title II, it would complete the work of making a large spectrum of vital federal claims, vainly asserted in state criminal courts, almost invulnerable to vindication by the federal judiciary. It seems not inappropriate to recall that federal habeas corpus for state prisoners chiefly derives from the Habeas Corpus Act of 1867, adopted to give some measure of reality to the new liberties contained in the Fourteenth Amendment, which had a few months earlier been submitted to the states for ratification. It would indeed be a grim irony if Congress were to celebrate the centennial of the Fourteenth Amendment by jettisoning the Great Writ.

Very sincerely,

LOUIS H. POLLAK.

P.S. In the body of this letter I have supposed that the proposals under discussion were intended to accomplish—and were so drafted as to be successful in accomplishing—very radical changes in the existing structure of federal judicial review of criminal convictions. But it is, of course, arguable that some of the proposals do not go as far as I have feared they may.

For example, the proposed new Sections 3502 and 3503 of Title 18 in terms deny to the Supreme Court and other Article III courts authority to "review [or to] reverse, vacate, modify, or disturb in any way, a ruling of any [state] trial court . . . admitting in evidence" a confession or so-called eye witness testimony. Normally, of course, the Supreme Court or other federal court does not, in passing upon a challenged state court conviction, "review, reverse, modify, or disturb" any particular evidentiary ruling except in the sense of determining whether authorizing the trier of fact to base a judgment of conviction on, *inter alia*, certain challenged evidence, worked a denial of due process. In short, the federal court acts on the totality of the state adjudication, of which a controversy with respect to the constitutionality of certain evidence may be a, or even the, key element. If the federal judicial scrutiny is by the Supreme Court on direct review, a disposition adverse to the state is a reversal of the *judgment of conviction*, not the evidentiary ruling. If the federal judicial scrutiny is by a district court on habeas corpus, a disposition adverse to the state is, ordinarily, not even an order vacating the judgment of conviction, but rather an order releasing the petitioner (notwithstanding the judgment of conviction; but, ordinarily, subject to the state's entitlement to reprosecute in a trial conforming with the mandate of due process).

Similarly, the proposed Section 2256 of Title 28 would deny to the Supreme Court or any other Article III court authority "to reverse, vacate, or modify any . . . judgment of a State court" following a verdict or plea of guilty, except on appeal or certiorari from the highest court of the state which has appellate jurisdiction to review the trial court. By placing the proposed section in the habeas corpus part of Title 28, the drafters presumably intended the proposed new section as a limitation on habeas corpus; and this is the sense in which, in the body of this letter, I have construed the proposal. However, as I have noted just above, a federal habeas court deciding adversely to the state does not ordinarily "reverse, vacate, or modify" the judgment pursuant to which the petitioner is detained; rather, the federal habeas corpus court ordinarily issues a (contingent) release order notwithstanding the (constitutionally defective) state court judgment of conviction. So, the question arises whether the provision as drafted actually accomplishes what I suppose to be the draconian curtailment of federal habeas corpus jurisdiction intended by the drafters. If the language does not accomplish this purpose, however, it is hard to assign operative effect to the quoted language, or to the preceding language purporting to assign "conclusive" effect to the state court judgment as to "all questions of law or fact which were determined, or which could have been determined" in the state trial court. (If the proposal works the drastic cutback on habeas corpus which I suppose was intended, very serious constitutional questions are presented—questions which are the more serious in proportion as the companion provisions of Title II curtail federal judicial scrutiny, by direct review on appeal or certiorari, of substantial claims of denial of due process of law.)

YALE LAW SCHOOL,
New Haven, Conn., May 1, 1968.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: Approval by the Senate Judiciary Committee of Title II of S. 917 (The Safe Streets and Crime Control Act) prompts this letter. Enactment and implementation of Title II would undermine many major advances that have only recently begun to be made in the administration of criminal justice.

The major components of Title II are of doubtful constitutionality. The Title in its entirety constitutes a threat to the integrity and soundness of our criminal process, and places in jeopardy many hard won procedural rights. Guided by the wisdom of the generalization once proffered by Jerome Hall that the substantive criminal law should be designed for criminals and that its procedure be designed for honest people we urge that Title II be stricken from the bill.

Sections 3501(a) and 3501(b) which make a narrowly and arbitrarily conceived "voluntariness" the sole criterion for the admissibility of a confession in evidence in a Federal court are in conflict with the decision of the Supreme Court in *Miranda*, 384 U.S. 436. There the Court established the following specific essentials of voluntariness as constitutional requirements for the admissibility in evidence of confessions:

A suspect must be warned that he has a right to remain silent and that anything he says may be used against him.

A suspect must be warned that he has a right to consult with a lawyer and to have the lawyer with him during interrogation.

A suspect must be warned that if he cannot afford a lawyer, a lawyer will be appointed for him.

These *Miranda* requisites are designed to safeguard the right against self-incrimination under the Fifth Amendment. As Chief Justice Warren emphasized in *Miranda*, the FBI practice then being followed was substantially consistent with the decision. To abandon the *Miranda* guides can only serve to encourage those abuses of authority frequently carried out in the name of law enforcement. And equally disheartening, enactment is likely to set up on another course of litigation at a time when the police after some 30 years of litigation following *Brown* v. *Mississippi*, 297 U.S. 798, have been provided with reasonably clear guide lines to which they can respond. (See Interrogations In New Haven: The Impact of *Miranda*, 76 Yale L. J. 1519 (1967).)

Section 3501(c) provides, contrary to the Court's decision in *Mallory*, 354 U.S. 449, that a confession shall not be inadmissible in evidence in a Federal court solely because of delay between the arrest and arraignment of the defendant. Section 3501(c) is bound to increase prolonged and indefinite incarceration and interrogation of suspects, without opportunity to consult with friends, family or counsel. Not only does this section undercut the purpose of the Court's exercise of its supervisory power in *Mallory* but it is likely to trigger police practices of doubtful constitutionality.

And there are serious doubts about the constitutionality of Sections 3500 and 3503. Section 3503 so far as it relates to eyewitness testimony undercuts the Court's decision in *Wade*, 388 U.S. 218, which gives body and meaning to the right to counsel at crucial early stages of the criminal process. Both Sections 3502 and 3503 prohibit Federal review of decisions by State courts, even though the State court has squarely passed upon a Federal claim. The Supreme Court has had ultimate authority under the Constitution to resolve conflicting interpretations of Federal law and to pass on the constitutionality of legislation enacted by Congress. To deny this authority to the Supreme Court is to nullify the Supremacy Clause and destroy the role of the Supreme Court in our constitutional system. Sections 3502 and 3503 are thus far more serious attacks on the Supreme Court than the Court-packing plan of the 1930's. To abolish Supreme Court review would create chaos in the interpretation of important issues of Federal law, since the 50 State Courts and 94 Federal district courts would become the final arbiters of the meaning of the Constitution and laws of the United States in very important areas of the administration of criminal justice.

Finally, Section 2256 abolishes the habeas corpus jurisdiction of Federal courts over State criminal convictions. The sole Federal review of a Federal claim by a State prisoner would be limited to appeal or certiorari. The Constitution prohibits the suspension of the writ of habeas corpus except in cases of rebellion or invasion. Since the remedies of appeal and certiorari are almost entirely discretionary in the Supreme Court, they cannot adequately protect Federal constitutional rights. Many State prisoners would

thus be denied even one full and fair hearing in a Federal court on their constitutional claim. Sole reliance on State court judges to protect Federal constitutional rights can not protect these rights.

For these reasons, and without expressing our views on other provision of S. 917, we urge that every effort be made to defeat Title II of S. 917.

Your laudable efforts on behalf of improving the administration of justice encourages us to convey these views to you.

Respectfully yours,

JOSEPH GOLDSTEIN,
Justus S. Hotchkis Professor of Law.
ABRAHAM S. GOLDSTEIN,
William Nelson Cromwell Professor of Law.
STEVEN B. DUKE,
Professor of Law.
JOHN GRIFFITHS,
Assistant Professor of Law.

YALE LAW SCHOOL,
New Haven, Conn., May 2, 1968.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I have just had word from my colleague, Alexander M. Bickel, Chancellor Kent Professor of Law and Legal History, that he wishes to be associated with the letter that I sent to you yesterday, May 1, concerning Title II.

Sincerely yours,

JOSEPH GOLDSTEIN,
Justus S. Hotchkis Professor of Law.

THE HIGH CASUALTY RATE IN VIETNAM SINCE ANNOUNCEMENT OF PEACE TALKS

Mr. BYRD of Virginia. Mr. President, the military command reported today that the United States suffered the highest American death toll, 562, for any week in the Vietnam war.

Total casualties, dead and wounded, were 2,787.

These casualties occurred at a time when U.S. emissaries were in Paris to meet with representatives of the North Vietnamese.

The high casualty rate the United States has suffered during 1968 is not only tragic and distressing, it is alarming.

During the 2-year period 1966 and 1967, U.S. casualties in Vietnam averaged 1,000 per week.

For the first 19 weeks of 1968, U.S. casualties averaged 2,500 per week. Last week's total was nearly 2,800.

It is important that our Nation explore all possibilities leading toward peace in Vietnam.

But it is also important that the American fighting man in Vietnam—500,000 of them—not become the American forgotten man.

While we are seeking peace in Paris, we must not be lulled into policies which lead to increased American casualties.

Thoughtful Americans yearn for peace in Vietnam. But until peace comes our Government is obligated to pursue such military policies in Vietnam as will minimize American casualties.

I am concerned at the high casualty rate that has existed since the President on March 30 announced his intention to meet with the North Vietnamese in peace talks.

A meeting between representatives of the two Governments is a hopeful sign—provided it does not force us into adopting military policies which can only lead to increased American casualties.

THE NEED FOR DECENTRALIZATION OF THE SCHOOLS

Mr. BYRD of Virginia. Mr. President, it is interesting that the liberal New York Times is stanchly advocating a "genuine decentralization" of New York City's school system.

The Times, in a lead editorial Saturday, May 11, says:

> Genuine decentralization of the city's school system is in imminent danger of sabotage by a combination of political cowardice in Albany and political maneuvering in New York.

Continuing, the Times says this:

> The basic issue is plain and simple. It is that the slow-moving and remote bureaucracy of New York City's school system has proved incapable of responding to the specific needs of children in a huge educational complex in which the requirements of the middle-class and of the severely deprived have come to be separated by a gaping gulf.

The Senator from Virginia does not pretend to know the needs of the school system of the city of New York.

But the Senator from Virginia has long been an advocate of bringing the public school systems as close to the people as possible. I feel strongly that the closer we can keep the schools to the people, the more effective school system we will have.

That is the reason I want the Federal Government to keep its hands off the operation of the schools in the various localities. It is one reason I oppose the so-called guidelines handed down by the Department of Health, Education, and Welfare. I do not want control of the schools to be shifted to Washington, D.C. I want decentralization of the schools.

I want the localities to handle their own school problems. The New York Times goes further and wants a decentralization within the city itself.

It is good to read that the New York Times, a newspaper that long has had a keen interest in public education, is now firmly advocating the decentralization of the public schools of that city.

To me this dramatizes that the larger a city becomes and the larger the Nation becomes the more difficult and the more complex its problems become. Thus it is more important to decentralize; it is more important to permit the States and the localities to work out their own local problems.

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.

AMENDMENT NO. 802

Mr. LONG of Louisiana. Mr. President, I submit an amendment, intended to be proposed by me, to the bill (S. 917).

I ask unanimous consent that the amendment be printed at this point in the RECORD.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD reads as follows:

On page 107, between lines 4 and 5, insert the following new title:

"TITLE VII—UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

"SEC. 1201. The Congress hereby finds and declares that the receipt, possession, or transportation in commerce, of a firearm by felons, veterans who are other than honorably discharged, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

"(1) a burden on commerce or threat affecting the free flow of commerce,

"(2) a threat to the safety of the President of the United States and Vice President of the United States,

"(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

"(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by Article IV of the Constitution.

"SEC. 1202. (a) Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the armed forces under other than honorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(b) Any individual who being employed by any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the armed forces under other than honorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States,

and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(c) As used in this title—

"(1) 'commerce' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

"(2) 'felony' means any offense punishable by imprisonment for a term exceeding one year;

"(3) 'firearm' means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle or shotgun;

"(4) 'destructive device' means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

"(5) 'handgun' means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

"(6) 'shotgun' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

"(7) 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

"SEC. 1203. This title shall not apply to—

"(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

"(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm."

On page 107, line 5, strike out "TITLE V" and insert in lieu thereof "TITLE VIII".

On page 107, line 6 strike out "1001" and insert in lieu thereof "1301".

Mr. LONG of Louisiana. Mr. President, it seems to me that the amendment I have prepared would go far toward solving the almost continual debate that has taken place over the gun question for years, ever since the assassination of President Kennedy. It seeks to bring together the people on both sides of this issue and also seeks to meet the constitutional problems involved.

A lot of people have objected to the Dodd gun bill on the theory it would make it difficult for honorable people—who have a right to have weapons for the defense of their homes to acquire weapons—and would make it somewhat cumbersome and burdensome for people to cross State boundaries seeking an opportunity to hunt or engage in other sports activities, as they have historically done in this country.

It would be burdensome on the hardware stores that sell firearms. A lot of people have felt that one way or the other it would impede the privileges and the rights that people have had historically.

It would be a bother to them, and it would not really prevent what it seeks to prevent in that it would not have, for example, prevented Oswald from acquiring the weapon with which he killed John Kennedy. And it would not have kept the assassin of Martin Luther King from acquiring the weapon he used for that dastardly act.

Generally speaking, it would have burdened good, honorable people without achieving enough good to make it worthwhile.

On the other hand, Mr. President, the best argument for the position of the Senator from Connecticut [Mr. DODD] and those who share his view seems to have been that there are a lot of lunatics, mental incompetents, and members of the criminal element who have guns and have been using guns to rob, plunder, and commit all sorts of crimes.

This, of course, is contrary to what we want. While we may be willing for a citizen to have a gun for the defense of his home—and I certainly have no objection to it—we do not want the murderers, the burglars, the rapists, the looters, or the arsonists armed to the teeth and walking the streets. We do not want the habitual criminals who have committed all sorts of crimes armed and presenting a hazard to law-abiding citizens.

That being the case, it makes good sense that we should see to it that citizens, as far as Federal law is concerned, can have weapons for self-defense.

I have prepared an amendment which I will offer at an appropriate time, simply setting forth the fact that anybody who has been convicted of a felony or discharged from the Armed Forces for conditions other than honorable, has been adjudged by a court of the United States or State to be mentally incompetent, or, if he is a citizen of the United States, who has renounced his citizenship, or, if he is an alien, who is illegally and unlawfully in the United States he is not permitted to possess a firearm, and he would be punished by a sentence not to exceed 2 years in the penitentiary or a $10,000 fine, or both.

It might be well to analyze, for a moment, the logic involved. When a man has been convicted of a felony, unless—as this bill sets forth—he has been expressly pardoned by the President and the pardon states that the person is to be permitted to possess firearms in the future, that man would have no right to possess firearms. He would be punished criminally if he is found in possession of them.

Let us take the case of men who have served in the Armed Forces. If it is found that a serviceman must be discharged for a reason other than honorable, because he has been convicted and has been given a dishonorable discharge or a bad conduct discharge, or if he has agreed to resign from service on conditions less than honorable, he would forfeit his right to possess firearms.

Once again, this is a matter of saying that if he cannot be trusted to carry arms for Uncle Sam, he cannot be trusted to carry arms on the streets. This kind of person is part of the criminal element in many instances, the kind of person who does not know how to behave properly, and is a hazard to others when he possesses firearms.

A person who has been adjudged mentally incompetent should not carry firearms. That is too dangerous. Idiots and morons who carry high-powered rifles are a threat to citizens.

Also, if a person has renounced his citizenship and is not a citizen of this country, that would be a situation in which he has voluntarily given up certain rights that belong to an American citizen, which would include the right to bear arms. If he is an alien who is illegally in the United States, he should not be carrying firearms. He is one who should not be trusted to carry firearms.

Mr. President, if the report of the Warren Commission is correct and Oswald acted alone in the assassination of John F. Kennedy, a bill such as this could have prevented the assassination of President Kennedy by Lee Oswald. Oswald, as I understand, did not have an honorable discharge from the military service. I believe he had renounced his citizenship. For reasons involved in this bill, he would not have been permitted to possess firearms. And if he had managed to come into the possession of firearms illegally, most likely he would not have been such a good shot, because he would not have been able to practice the use of firearms, because people would have been aware that he had no right to possess or transport them.

It is my understanding that the committee seriously considered proceeding in this direction, but was deterred from doing so by what I believe was not the best of advice from the Department of Justice. The Department of Justice sent a letter to the Committee on the Judiciary—it can be found in the printed record of the hearings—indicating that they had a constitutional doubt that the Federal Government could outlaw the mere possession of weapons. I contend that the Federal Government can do so. I have discussed this matter with legislative counsel, and I believe they agree with me.

For example, there was much debate and discussion about the constitutionality of the Civil Rights Act of 1964, but many of the items and transactions reached by the broad swath of the Civil Rights Act of 1964 were reached by virtue of the power of Congress to regulate matters affecting commerce, not just to regulate interstate commerce itself. While I have had some doubts as to how far Congress should go in regulating matters affecting commerce, the Supreme Court decisions with regard to the Civil Rights Act of 1964, as well as other decisions, have clearly established the right of Congress, in the view of the Court, to regulate matters affecting commerce. So if you want to do something about this matter, the present state of the law, as interpreted by the Supreme Court, would clearly permit you to reach either the possession or the transportation of weapons, in that this could affect commerce.

I refer to the bill. It will be noted that it says:

Congress hereby finds and declares that the receipt, possession and transportation of a firearm by felons, veterans who are other than honorably discharged, mentally incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes a

burden on commerce or threat affecting the free flow of commerce.

So Congress simply finds that the possession of these weapons by the wrong kind of people is either a burden on commerce or a threat that affects the free flow of commerce.

You cannot do business in an area, and you certainly cannot do as much of it and do it as well as you would like, if in order to do business you have to go through a street where there are burglars, murderers, and arsonists armed to the teeth against innocent citizens. So the threat certainly affects the free flow of commerce.

Also, we clearly have a right to protect the life of the President of the United States. What happened with regard to the assassination of President Kennedy is a very good example. So we set forth that the possession of weapons by people of the type I have described—a description broad enough to include Mr. Oswald—would be a threat to the safety of the President of the United States and a threat to the safety of the Vice President of the United States. We employ many Secret Service agents to protect the lives of the President and the Vice President from people of that sort. We have passed a law making it a Federal crime for one to assassinate the President. If we have a right to pass that law, we certainly have a right to take measures to protect the lives of the President and the Vice President.

Then we say that the possession and transportation of firearms by these people is an impediment or a threat to the exercise of free speech and to the exercise of religion guaranteed by the first amendment to the Constitution of the United States. That clause, of course, could clearly pertain to this Government's right to protect citizens, such as Martin Luther King, who are expressing either religious or political views and whose life might be endangered because someone did not agree with what they were saying. But they have a right to say it. This would clearly justify the Federal Government in protecting the right of free speech guaranteed under the first amendment of the Constitution and in protecting freedom of religion.

We go on to say that the possession of firearms by people thus described would be a threat to the continued and effective operation of the Government of the United States and of the government of each State as guaranteed by article IV of the Constitution. The type of riots that occurred after the assassination of Martin Luther King bordered on anarchy, and such lawlessness certainly is a threat to the continued and effective operation of government. The Government does have a right to protect itself and to maintain its own existence.

So, Mr. President, it seems to me that the constitutional problem is not at all insurmountable. Any one of the constitutional connections I have mentioned would be adequate to support a statute such as I propose to offer; and all four of the constitutional connections—each in its own right—could support such a statute and could assure its constitutionality, in my judgment. Certainly, the combination of the four reaches that extent.

Mr. President, I shall read from a memorandum prepared by one of our fine lawyers in the legislative counsel discussing this problem:

It may be argued that the proposal to prohibit the receipt or possession, or transportation affecting commerce of any firearm by certain undesirable persons can be supported as a constitutional exercise of (1) the broad reach of the power of Congress to regulate matters affecting commerce, as in title II of the Civil Rights Act of 1964—

In my judgment, we could stop there. That is all the authority we need to do what I propose.

The memorandum continues:

(2) the power of Congress to protect the life of the President of the United States and the Vice President of the United States, as in the recently enacted criminal provision related to presidential assassination, kidnapping, and assault of section 1751 of title 18 of the United States Code, (3) the authority of Congress to protect the fundamental rights of national citizens guaranteed by the Constitution and laws of the United States, here, the right of free speech and the free exercise of religion, and (4) the power of Congress to insure the continued operation of the Government of the United States freely elected by the people of the United States, and pursuant to Article IV of the Constitution, to guarantee to each State a republican form of government.

Mr. President, there is an additional provision which I recommend would take care of the underworld element which has been so successful. Having been found guilty of felonious conduct and denied the right to possess weapons themselves, they proceed to hire bodyguards, triggermen, and goon squads to go out and do their dirty work for them, all in the same general course of conduct. The murder-incorporated types, or the major underworld characters have been known to have so-called triggermen working for them.

If the boss is the kind of person whom I have described and he hires a triggerman to do his shooting for him, then while he is in the performance of his duties he would not be permitted to possess firearms.

Many people are concerned about the Mafia and concerned that some member of the Mafia may have a number of gun-carrying lieutenants working for them who would otherwise be permitted to possess firearms to endanger the lives of good citizens who are interested to do that which is right, as the Lord gives them the right to see it.

If a person is in the employ of a person who is not permitted to possess a firearm, then the employee would not be permitted in the performance of his employment to possess a firearm; and one who is either convicted of a felony, or for other reasons not permitted to carry weapons, would be covered.

It seems to me that this simply strikes at the possession of firearms by the wrong kind of people. It avoids the problem of imposing on an honest hardware store owner the burden of keeping a lot of records and trying to keep up with the ultimate disposition of weapons sold. It places the burden and the punishment on the kind of people who have no business possessing firearms in the event they come into possession of them.

Mr. President, I ask that the amendment be printed and available at the desk in due course and when we have occasion to discuss it and explain it I shall offer it to the Senate.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

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

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

THE SUSPECTED KILLER OF MARTIN LUTHER KING

Mr. LONG of Louisiana. Mr. President, in connection with my earlier statement, I think it might be well to have printed in the RECORD an article that was published in Life magazine discussing the background and record of the man who is suspected of having killed Dr. King. The article starts on page 20 of Life magazine, and includes interviews associated with the article.

The article makes clear that this man who is suspected of this murder was a convicted felon, having committed a number of serious offenses and having been convicted.

Assuming that what is thought with respect to the assassin is correct, as I have indicated, the proposal which I have sent to the desk perhaps would have saved the life of Martin Luther King and the life of President Kennedy, as well.

Mr. President, I ask unanimous consent to have printed in the RECORD the article entitled "The Story of the Accused Killer of Dr. King," published in Life magazine on May 3, 1968.

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

THE STORY OF THE ACCUSED KILLER OF DR. KING

(NOTE.—This account is written by Associate Editor William A. McWhirter, from reports by Life Correspondents Gerald Moore, Richard Woodbury, John Pekkanen, Frank Leeming, Jr. and Ron DePaolo.)

His name was Galt. Eric Galt. Eric Galt. If you did not hear the name the first time, that was all right because Eric Starvo Galt was more than likely to repeat it, again and again, as if he were still trying to memorize the thing himself. It seemed new, out of place, like his manner, nervous and friendly and quickly withdrawn, like his $150 alligator shoes which did not go with the mismatch of blue pants, brown coats and Redi-Ty bow ties, like his puffy stomach which he rubbed worriedly as if it didn't quite belong to him. "I knew he was lying about his name," says a bar acquaintance, a songwriter who traveled with him from Los Angeles to New Orleans. "I just knew he wasn't an Eric. He was too country to be an Eric."

That is also what the Federal Bureau of Investigation concluded when it identified Eric Starvo Galt, the accused killer of Martin Luther King, as no more than a lean, bat-

tered wild-hair, a punk who was a local nuisance in half a dozen Mississippi River towns, a convict who had escaped a year ago in a bread truck from the bakery of the Missouri State Penitentiary in Jefferson City, just plain James Earl Ray.

Jimmy Ray was a child whose nose ran all winter, who missed anywhere from 25% to 30% of a school year, flinched when a teacher dared so much as to reach out an arm and sat painfully aware that to the other students in the Ewing, Mo. elementary school he was just another member of the family "out there on the side of that hill without enough to eat."

He had grown up mean in the thinnest of times and the toughest of places. Born March 10, 1928 in Alton, Ill., he was the eldest of nine children of George and Lucille Maher Ray, a Catholic family that was to drift from river town to town throughout the Depression. When he was one year old, the family moved upriver to Quincy, Ill.; when he was 6, they moved across the river to Ewing, Mo., and when he was 16 and out of the eighth grade, they moved again to Quincy. The sight of the large, shiftless family coming where work was scarce was hardly a welcome one for communities with already too little to share. The family even began to think of itself with the same carelessness as the towns themselves had: they were identified as the Rayns, the Raynes or the Raines, either because of the way Ray was drawled out or from confusions with past families. The children cared little in any case and often went to school under different names.

Jimmy was the eldest, but he already seemed to be wearing hand-me-downs; in rural poverty, no age is ever old enough; there is always someone before you. Virgil Oscar Graves, who was principal of the Ewing school, recalls Ray: "He was a rebel. He rebelled against authority and his approach to most of his teachers was very bad. He always seemed to have trouble getting his assignments in on time. But he was a sensitive boy. I remember he came up to my desk one day wearing patched overalls and asked whether I thought the other kids would pay attention to his appearance."

The school record was considerably more brusque. James Earl Ray was only in the second grade by the time he was being judged a menace to the Ewing community. The record declared:

"Attitude toward regulations—violates all of them.

"Honesty—needs watching.

"Appearance—repulsive.

"Courtesy—seldom if ever polite."

The Ewing school system also took note that his teeth were defective. By the time he was 14, Ray was still in the seventh grade and had slipped so far behind so many classes that everyone's sorriest predictions were confirmed. Ray only tried in endless scraps to make up for what the students, as much as five years younger were doing to him in the classroom. He was an unmanageable bully. Once, in a fight over a piece of meat in the cafeteria, he ran a knife through his brother Jack's ear. In the sixth grade, he was caught stealing the class's hot-lunch money.

"The family had it pretty poor," remembers a local resident. "I've seen the time when they had a sack of potatoes to eat—that's all, just a sack of potatoes."

As they grew up, the Ray children were either to drift off or to be routinely placed in foster homes, seldom again seeing another member of the family. Even today, Gerald Ray, a brother, insists their father's name was George, while Jimmy Ray's birth certificate shows it was James. An uncle, William E. Maher, of Alton, says of the Rays: "We tried to stay away from them. They always seemed to want something."

Besides Jimmy, there were Marjorie Ray (who died as a child after setting herself on fire with a box of matches), John, Melba, Carol Jean, Gerald, Franklin "Buzzy" Delano (who was killed in 1964 when he and a girl friend ran their car off a bridge into the river at Quincy; the funeral provided one of the few Ray family reunions), Susan Jane and Max. The father died in 1951, most probably of chronic alcoholism; the mother in 1961. Of the other surviving Rays of Quincy, Melba Ray was in a succession of foster homes and today spends most of her time in the lobby of the decaying Virginia Hotel on Oak Street. Occasionally, she goes to her $30-a-month room upstairs to fondle a giant wooden cross which she has painted red, white and blue and lettered "rugged cross." She once walked it down Maine Street in Quincy. "I made it," she says, "to keep my sanity. After what happened to Kennedy and the war and all . . . I had to turn to Jesus."

Susan Jane, who will be 21 this week, never bothered to see Melba, although she lived only a few miles away from the Virginia Hotel until 1965. She was a hospital cafeteria worker, secretary and go-go dancer until marrying an ex-bandleader who now manages a hamburger drive-in in North Chicago. Susan failed even to recognize Jimmy's picture in the newspapers.

John, the next eldest after Jimmy Ray, has also served prison time, for burglary. So far, he hasn't been heard from. Carol is now a St. Louis housewife who called a relative to say she was horrified and too ashamed to think of even leaving her home. Max, 17 years old, is living with foster parents. He has only his brother's example.

Susan Jane, John and Carol have now been joined with the rest of the scattered Ray clan in a kind of common notoriety. Behind their locked screen doors, they give their laments of pride and offense against Jimmy Ray. But it is not clear which the family members hate most: that Ray may have been responsible for such a hateful act or that their neighbors may now learn the truth of their past lives in Ewing and Quincy. Or that, perhaps, after years of obscurity and estrangement, this event may force the Rays together again.

Then there is Gerald (Jerry) Ray, who says simply, "Jimmy is my brother." Over the years, Jerry has been in trouble as often as Jimmy. But Jerry, who lives in Wheeling, Ill., today has grown accustomed to their separations and of the family is probably closest to his brother. "After we were grown," he says, "about the only times I could see him was when he was visiting me in jail or when I would visit him. One or the other of us was in jail most of the time. Jimmy wrote me a lot."

Jerry is, with his brother, a fellow professional ("A grocery store," he says, "is worth maybe $200, but a supermarket is worth about $1,500"), so he can be cooly analytical about the King case. As he told the FBI when discussing his brother's motives: "Well, look at it this way, Jimmy escaped. He had served seven years of a 20-year sentence. Because he escaped, he would be facing flat time if they caught him plus more time on him for escaping. He would have to steal while he was out to support himself so he knew he would get rapped extra for that. A deal with a lot of money would have looked pretty good to a man in that circumstance. He sure didn't have any love for colored people, but I know he wouldn't have put himself in a spot like this unless there was something in it for him."

In their last winter in Ewing, the Ray children had spent most of their time in bed for lack of heat in the home, which had only a dirt floor. They began tearing out the inside of the house to use for kindling until, in early spring, the remainder of the building simply collapsed around them. The Rays left Ewing soon afterward and James Earl Ray, who was then 16, little more than a town nuisance and an uneducated school bully, drifted off to join the Army.

Ray's service record is erratic but blunt enough about the failure of the following two years. If there was anything more miserable for Ray than competing with boys five years younger, it came in dealing with men his own age. There were enough battles to make his Army career look like a Golden Gloves circuit instead of a tour of duty spent mostly in Germany, as an infantryman and military policeman. Finally he was handed a general discharge in December 1948 that cited Ray's "ineptness and lack of adaptability to military service."

He lost a factory job in Chicago, had a car repossessed in St. Louis and used up a bank account in Alton before heading for Los Angeles in the fall of 1949. It was there that he began to commit an almost clownish series of crimes, angry and desperate. As a hapless and headstrong victim of a depression that seemed to be lifting everywhere but where he was, James Earl Ray would have been as effective if he had settled for kicking tires. As it was, he chose to hold up grocery stores.

Ray first tried to steal a typewriter from a cafeteria office in L.A., but was discovered by an assistant manager. He got away but only after dropping his Army discharge papers and a bank savings book. Even so, he stayed around the neighborhood until a parking lot attendant recognized him and called the cops. With no record, only 21 and an Army veteran, Ray was given a 90-day term.

"Every time he came back here, he got into trouble," says his uncle, Bill Maher, in Alton. And the Alton police chief, William Peterson, remembers the passing through of James Earl Ray with a special loathing: "He was a dirty neck, the kind of criminal who gets into all kinds of trouble, hates and has no respect for the law." But if Ray blundered, got caught and returned only to lose another day, he did so with persistence.

On May 6, 1952 he tried robbing a cab driver in Chicago of $11 but was again discovered, chased by policemen down a one-way alley; when he refused to surrender, one of the patrolmen fired a shot, hitting him in both arms. Ray fell through a basement window, cutting his face open. He was found guilty and sentenced to two years in the state prison. On March 12, 1954 he was released.

Attempting to break into a dry cleaner's in East Alton, Ill. on Aug. 28, 1954, he lost his loafers as he kicked out the front windows. The police began arriving and Ray turned, in stocking feet, to run across the broken glass, through thickets and over the railroad tracks. The police stopped to dismantle the distributor on the engine of his parked car. Ray circled back and tried to start the motor, but he took off again as the police converged. He tried again and then a third time to return to the car, both times failing to start it; finally, with his feet slashed and bleeding, he ran some five miles to a relative's house.

In March 1955, Ray was arrested with a partner for passing forged money orders and sentenced to Leavenworth Penitentiary, where he was released two years and nine months later, in early 1958.

It was not until Aug. 7, 1959 that Ray had his first success—an $800 grocery store holdup in St. Louis. He and his partner both escaped. Encouraged, two weeks later they chose a market in Ray's old neighborhood in Alton. It was hardly a smooth operation. The wife of the market owner remembers: "At first, I thought he was fooling around and so I started telling him about God and then he pulled the gun. That was all there was. He chased people all around the store. He just ran around like a wild man." But the pair got $2,200. Their escape, however, was so rushed that Ray forgot to shut his car door and fell out as he swerved the car sharply around a corner. The car crashed and Ray fled, leaving his partner behind.

In October, Ray returned to St. Louis with a new accomplice to hold up a second market there. But this time, they got only $190 from a cashier and then were followed by a

customer who gave police a running account as they switched cars. Their new car was later seen parked in front of Ray's rooming house. As the police entered the building, they spotted Ray and ordered him to halt. He turned and ran to his room; one of the cops followed and hit him over the head with his revolver. Another boarder happened by and, taking advantage of the distraction, Ray stood up and began to run. A patrolman fired a single shot and Ray surrendered. It took a jury only 20 minutes to sentence him to 20 years in the Missouri State Penitentiary. That was the last time James Earl Ray stood trial.

Ray, however, was not quite spent. After the verdict, Earl A. Riley, a deputy sheriff, remembers that he "had taken the handcuffs off one of his wrists when Ray suddenly grabbed my arm and swung me around against the cell bars. While I was on the floor, he tried to kick me in the head, then he broke loose and ran to an elevator," where he was caught.

For the next seven years in prison, Ray distinguished himself only by a series of solitary escape attempts which earned him the nickname "The Mole." For this quiet, angry figure the ventures were perhaps a source of amusement, perhaps a way to do precisely what the skinny schoolboy in Ewing, Mo. had always wanted to have happen—to rebel, be recaptured and revolt again. "Hey, kids, it's the Mole!" Once he tried to scale a wall and was knocked unconscious when his makeshift ladder collapsed; another time, in 1966, he hid for two days in a ventilator shaft, then crawled to a rooftop only to have a guard spot his hands coming up over the top. He was trying to escape with $4.15, razor blades, a broken mirror and a bag of assorted pills. Then, exactly a year ago, he finally did it.

In the curiously lit world that includes a sleek, bleached strip of North Hollywood, Eric Starvo Galt might have seemed 34 or even 28 years old, depending on the shade, the time of day or how close he was sitting to the bar lamp at the Rabbit's Foot Club. Galt, who was 40, looked like a man learning to swing; last November, he went on a marijuana-buying junket to Mexico. "Sharon," one of his ballroom dance instructors, had suggested to the girls at the National Dance Studios in Long Beach that her pupil had developed a crush; he trembled, she said, when he stood too close. But Galt fled in his white Mustang after only an hour on Go-Go Night, and for $245, paid in advance, enrolled in bartending school instead.

James Earl Ray had never had his picture among the "big dealers" in the warden's album in the Missouri State Penitentiary. In Prison, like any kid from Alton or Quincy or Ewing or Shelbina, Mo., he had never mixed with the big boys from Kansas City and St. Louis. "He's innocuous," said the warden. "He's penny ante."

That is, James Earl Ray, slight and round-shouldered, who flinched, smiled a crooked, private grin and sometimes even seemed to walk on a slant, was once penny ante. But, says the FBI, on April 4 in Memphis, at the moment Martin Luther King died, all the bills for the Mustang, the shoes, the dancing lessons and a $150 30.06 Remington—and maybe the bitter childhood—came due.

Mr. LONG of Louisiana. 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 recinded.

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

CRIME IN WASHINGTON—MURDER OF BUS DRIVER THREATENS TRANSIT SERVICE

Mr. BYRD of West Virginia. Mr. President, I invite the attention of the Senate to an article published in today's Washington Evening Star entitled "Bus Driver Slain in Holdup, Sparking Rush Hour Walkout."

The article reads in part as follows:

A two-hour wildcat strike erupted among D.C. Transit bus drivers this morning after the fatal shooting of a driver in one of seven bus robberies last night and early today.

The union local president said the buses might not run after dark tonight if protection is not provided.

The seven holdups occurred between 10:17 p.m. yesterday and 3 a.m. today.

John Earl Talley, 46, died about seven hours after he was shot twice in the head about 1:20 a.m. at 20th and P Streets NW. Three suspects were captured shortly after the shooting and a fourth was arrested later this morning. All are juveniles.

George Apperson, president of Capital Local 689 of the Amalgamated Transit Union, said later:

The boys have had a bellyfull. I don't know if people are going to have transportation tonight or maybe tomorrow.

The preliminary job is to get the men back on the streets during daylight today but tonight—if you can't put someone on the bus to protect the operator, then I think I may have to keep the operators off.

Mr. President, the staff of the Senate Appropriations Subcommittee on the District of Columbia, of which I am chairman, was advised during the day that a decision had been reached this morning to supply 40 uniformed policemen per day—this would amount to 320 man-hours per day—to be placed on buses, in an effort to curtail crime, and, hopefully, to keep the busdrivers from going on strike.

I am told this will be on a voluntary basis and will be in addition to the 20-percent augmentation of police announced late last week.

I understand the uniformed policeman will man certain buses and bus stops beginning tonight. I am also advised that it now appears that D.C. Transit will have sufficient operators to operate most schedules in most areas this afternoon and tonight.

Although Mr. Talley was murdered in the Northwest section of Washington, it is expected that bus operators in the Northeast, quadrant of the city, the area most affected by the driver shortage this morning, will be hesitant to return to work. This could cause a substantial slowdown in bus operation in this area of the city for some days to come.

Mr. President, I also call attention to the Washington Post of Tuesday, May 14, 1968, in which the Mayor of the Nation's Capital was reported to have said that Members of Congress, businessmen, and the public in general ought to stop downgrading the city. I quote from an article by Miss Elsie Carper, Washington Post staff writer:

"I am out on the streets day and night," the Mayor said. "The city doesn't look like a city gripped in fear. Don't misunderstand me. We have tensions; we have problems, we have potentials' for trouble.

"But," he said, "it is time to come out from under the bed, stop listening to false rumors and build a city."

Mr. President, it may be distressing to the Mayor to hear that some Members of Congress have advised student groups not to come to the city, but I am more distressed by the long and futile effort that far too many officials of government here have made to sweep crime under the rug in the District of Columbia; and I am distressed and grieved at the senseless slaying of a busdriver in this city today while he was doing his work.

How long do we have to wait for officials, who have been telling us that Washington is a safe place, to realize that instead, the Capital City of the most powerful nation in the world has become a veritable jungle, where decent, law-abiding citizens have to cower behind locked doors at night, with blinds drawn, for fear they may be assaulted, maimed, robbed, raped, and murdered?

I have almost no words, Mr. President, for the anger that wells up in me this afternoon as I contemplate what has been allowed to happen in the city that ought to be a model of law and order for the whole world to see. A model, indeed. Instead of a model, it is a mockery of law and order, a travesty on the concept of a civilized, urban nation.

I have no words to express the outrage which I feel, which is tempered only by my sorrow for the family and friends of this man who went to his job last night, perhaps in the thought that all might be well with him after the night's work hours had been spent—or that all might not be well. He must have known fear in his heart as he thought of countless other busdrivers who have been attacked and robbed in this city in the last few weeks and months.

In the last 3 weeks, if memory serves me, four merchants have been killed by armed hoodlums in their places of business in the city of Washington as the merchants went about their peaceful pursuits.

One of these, a 62-year-old hardware merchant, Bert C. Walker, was found shot to death in his store at 3213 Georgia Avenue, NW., on the afternoon of May 14.

The first of the four slayings to which I have referred occurred on April 29. Benjamin Brown, 59 years old, was fatally shot in his store at 1100 Ninth Street, NW.

Next was Emory Wade, 42, killed in an A. & P. Store at 821 Southern Avenue, Oxon Hill, Md.

The third victim was Charles Sweitzer, a sundries items salesman in the Brinsfield Rexall Drug Store at 2929 South Capitol Street on May 7.

So, four men were slain in their stores, Mr. President, since April 29—less than a month ago.

And now, today, the driver of a bus was slain as he went about what should have been the peaceful pursuit of his work.

Who can blame this driver's friends and associate for wanting to leave their buses today, or tonight, or tomorrow, or next week, in fear of their lives, even though thousands of people would be left stranded and unable to get to their jobs or to their homes?

Mr. President, if it takes a bus strike to awaken the officials of the District government—and, yes, of the Federal Government, as well—at least something will have been accomplished.

It is astonishing and tragic to think that the recent rioting in the District of Columbia taught our city government and our Federal Government so little. It is disheartening to realize, in retrospect, that the looting, the arson, and the murdering that went on in this city in April, and which are continuing in May, are being viewed by some officials as something of a civic triumph because the lives of adult rioters and arsonists—purveyors of violence, if you please—were spared. It is frightening that the city is reaping the ugly fruits of the seeds of restraint that were so freely sown during the time of the riots and prior thereto.

No criminal is afraid of an unloaded gun. No criminal is afraid of a policeman, of a National Guardsman, or of Federal troops who will not shoot. On the contrary, the criminal is emboldened to strike only the harder at a society that is soft on hoodlums, soft on criminals, soft on rioters.

I find no fault with the police and the soldiers who were supposed to be protecting the Nation's Capital. They were acting under policies that were not initiated or developed by them. But they might as well have been armed with BB guns or cap busters, for all the good that they could do to impress upon the lawless element of this city that crime does not pay and that violence, if persisted in, will be done only at the risk of life and limb of the individual lawbreaker. It is shameful that this was the official policy of the city, although no one in a position of responsibility seems willing to admit it. This pusillanimous performance will go down in the annals of the city as one of the most weak-kneed responses to violence that society has ever seen. Now we reap the whirlwind, and we will continue to reap the whirlwind.

There has been a great deal of patting themselves on the back by many, while bus drivers and merchants continue to pay with their lives for such a weak-kneed policy on the part of government officials and on the part of the courts in dealing with the criminals.

Mr. President, who knows who will be next? It may not be a busdriver. It may not be a merchant. It may not be a merchant's family. It may be a friend of yours. It may be an acquaintance of yours or mine.

I did not know these men. I knew none of the four merchants. I did not know the busdriver who died last night.

The next time it may be a relative of some official of the Government. Who knows? But what difference does this make? It is too early to pat oneself on the back for the way the riots were handled.

This city and this country, Mr. President, have been misled by far too much silly sociology about how to meet the criminal threat that is dragging the Nation down to ruin. All of the foolish optimism, all of the slobbering over the criminal, has brought us to the terrible crisis we now face in this city.

I do not know who is advising the students to stay home. I have not advised any to stay home. But I would not advise any to come to Washington while the so-called Poor People's Campaign is in progress, or while crime continues apace as it does now.

One needs only to look daily at the Visitor's Galleries in this Chamber to see that the students are not here. A year ago or 2 years ago, it was difficult for Senators to move through the Halls, difficult to get to the elevators, because of the great masses of people coming from all over the Nation—students and tourists visiting their Capitol, visiting the Congress, filling the Galleries. At times they stood in line out here in the corridors waiting to get into the Galleries.

But look at the Galleries today, as we meet in the month of May. Often they are half filled, often only a third filled. People are not standing in line to get into the Galleries now. I doubt that citizens require advice from Members of Congress not to come to Washington. The daily press carries to the eyes and ears of the Nation the distasteful facts of the situation in this city, and people can make up their own minds.

Mayor Washington was quoted in the news article to which I referred at the outset of these remarks as saying that those who have been criticizing the continuing toleration of criminal activities here, and the breakdown of law enforcement in the District of Columbia, ought to: "come out from under the bed, stop listening to false rumors, and build a city."

Mr. President, some of us in this Chamber have been trying to build a city here. We have been doing our best to make this a better city in which to live. We have done our best to improve the educational facilities in the city, to improve the recreational facilities, to provide swimming pools, community centers, and better libraries. We have been trying to build a city, Mr. President. I think it is time for the Mayor and his Director of Public Safety to come out from under whatever it is they have been hiding under, and face the facts.

The Mayor said that he had been walking the streets, and that "the city does not look like a city gripped in fear."

Well, I do not know where he was walking, but if he was doing it without a bodyguard in some areas of this city, he was taking his own life in his hands.

Mr. President, I sympathize with the Mayor in many respects. I think he has been trying to do a good job. I think he has been working conscientiously; and he has many advisers. He has many people telling him how to do his job. He cannot please everyone. I have been impressed with his conscientious efforts. I think he is a hard worker, and I think that he needs the support of Members of Congress and citizens in his effort.

I do support him in his efforts. I want to support him in his efforts. I want to do whatever I can in cooperation with him and anyone else while I am chairman of the subcommittee to fund programs that can be justified and that will improve the lot of the citizens in the community. However, there is no use in kidding one's self that people are under the bed without good reason.

There is no point in kidding ourselves that they are not gripped with fear. One fools only himself if he attempts to believe that this city is not a city gripped in fear. The sooner we face up to the fact, the quicker appropriate action may be taken.

It is time for this Nation's Capital to quit temporizing with criminals. It is time or past time for any more remarks such as the one that Safety Director Patrick Murphy made when he was reported in the press to have said that he would resign his position rather than shoot looters or arsonists.

Of late, within the last day or so, as I recall, the press has indicated that Mr. Murphy has now qualified this earlier statement. And I was glad to see that there was a qualification of this earlier statement which he was reported to have made.

I am glad to see Mr. Murphy come around to a more reasonable point of view. But the damage from the earlier statement was already done.

How do I know? I know because I have talked with policemen. I have talked with merchants. I have talked with people of this city. I know damage was done. I know that police morale was affected adversely, and I know that the morale of the citizens was likewise affected.

So, I have been pleased to hear that he has qualified his earlier statement to some degree. But, if he still feels that, after the terrible events connected with the bus holdup last night and after the terrible events connected with the slaying of four merchants within the past 3 weeks in this city, criminals should be temporized with—there is no question that restraint should be used where force is not required, depending upon the circumstances at a particular time, but there has been too much restraint in dealing with lawbreakers—if he feels that the police should not have the strongest backing from their immediate superiors and their superiors all the way to the top—strong, firm, unequivocal backing—in their efforts to enforce the law, then he ought to resign.

We need actions, not words from him and from Mayor Washington and from the White House, to prove to this city that the reign of terror in Washington—it is not mere rumor—will be brought to a halt by whatever means are necessary.

I heard the President at the White House several months ago, in speaking with reference to crime in the city, address himself to those persons who are responsible for enforcing the law in the city and say something to the effect that if they did not get busy and reverse this trend—and I am not quoting him exactly, but essentially I am quoting him correctly—the fur was going to fly.

I have not yet seen any fur fly, Mr. President. And I have not seen the crime trend reversed in the city of Washington.

I have heard a lot to the effect that we ought to pass this crime bill—and we should—but there are ample laws on the books now in the District of Columbia to deal with criminals, if those laws were but enforced firmly.

Just vigorously enforce the laws already on the books, and we will put the criminals on the run.

Talk all we want about spending more money for research, for better law enforcement. I am for it. I want to spend more money for it. I will vote for it. But we can spend all the money in the Federal Treasury, and we can make all the speeches for the radio, the TV, and the other press media about passing legislation. But as long as we do not mean business in enforcing the laws that are already on the books and as long as we let the Federal courts go unscathed, the criminal is still going to hold the upper hand.

Message after message comes to Congress. Speech after speech is made before the TV cameras about crimes and criminals. But not one word is ever said in those messages about how the Federal courts of the country are greatly responsible for the spiraling crime rates.

I have said time and time again, and I shall repeat it today, that if we really want to strike at the roots of crime in this country, we should start with the Supreme Court of the United States. In making appointments to the Court—and it is a responsibility that this Senate shares in its constitutional powers of confirmation—one should try to place people on that Court who will not temporize with the criminal. Yes, accord the criminal his constitutional rights. Accord him his constitutional rights, but let us not forget about the rights of innocent victims.

So, let us point the finger where we should.

I say to the President of the United States, whoever he is or may be: "Look at your Supreme Court. Look at your appointees. If you want really to do something about crime, start there."

I also say that we in the Senate have a responsibility to face up to the facts and to act promptly on the provisions that are before us, which will help to rectify some of the decisions that have been handed down by the United States Supreme Court and which have, figuratively speaking, placed handcuffs on the police departments of the country.

So we all share a responsibility in this matter—not just Congress. Congress needs to pass legislation; it needs to appropriate money. But Congress is not alone. Let the executive branch face up to its responsibilities and enforce the laws that are already on the statute books and appoint men to the Federal courts who will look at the problem as the average man on the street has to look at it and as it confronts him as he goes about his business daily, in fear.

We have had enough mealy-mouthed reassurances that do not and cannot and will not reassure.

As to crimes against busdrivers, to which I have alluded, there was a total of 331 vicious crimes against busdrivers in 1967 in this city, such as robberies, attempted robberies, and assaults; and this was an increase of 315 percent over 1966.

Through May 9 of this year there have been 294 aggravated crimes of this nature, which, when projected, will more than double last year's tragic toll.

Mr. President, I regret that it takes senseless killings of bus drivers and merchants to awaken the governing officials to the fact that the city is in fear and to the need for taking action to dispel that fear.

Mr. President, I ask unanimous consent to insert in the RECORD an article which appeared in the Washington Post of May 14, 1968, titled "Mayor's Plea to Hill: Halt Attacks, Rebuild," and to which I have previously referred.

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

DECRIES SPREAD OF RUMORS: MAYOR'S PLEA TO HILL: HALT ATTACKS, REBUILD

(By Elsie Carper)

Mayor Walter E. Washington made an appeal yesterday to members of Congress, businessmen and the public in general to stop downgrading Washington.

He spoke out at a hearing before the House District Committee's special investigating subcommittee on legislation that would require organizations seeking parade permits to post a bond.

The legislation, aimed at the Poor People's Campaign, is similar to a provision in a bill approved by the House Public Works Committee last week requiring permit applicants to post bond for use of Federal or District property when there is a likelihood of damage or disorder.

Mayor Washington said it distressed him to hear that members of Congress were advising student groups to cancel their spring trips to the city because of the danger of violence.

He praised members of the Daughters of the American Revolution, who held their national convention here a few days after the April riots, and added that others should show the same courage.

Instead, he said, some people are "yelling from the rooftops and hiding under the bed while some of us carry the load . . . They are going to pull this city apart if they are not careful."

After the hearing, Washington told reporters that people in the suburban areas are making observations about the city without knowing the situation and that businessmen are spreading rumors.

"I am out on the streets day and night," the Mayor said. "The city doesn't look like a city gripped in fear. Don't misunderstand me. We have tensions; we have problems, we have potentials for trouble.

"But," he said, "it is time to come out from under the bed, stop listening to false rumors and build a city."

District Committee Chairman John L. McMillan (D-S.C.) told Washington that during the first day of the riots his phone was busy with merchants wanting to know "if I couldn't give them any relief." They told him, he said, that there were policemen standing outside their stores but they had "orders not to touch the looters."

Both Washington and Police Chief John B. Layton emphatically denied that any such orders had been given. Layton said police made almost 8,000 arrests during the disorder and 1,100 of them were for looting.

Washington opposed the bonding bill, saying that the requirement would raise constitutional questions under the First Amendment by limiting the right to petition only to groups able to post bond. He said the city had issued 85 permits in the last year and that all of the parades and demonstrations had been peaceful.

McMillan responded by saying that "we all believe everyone has a right to come and petition, but we do not think groups should be permitted to remain here and disrupt the orderly procedures of government."

Rep. Albert W. Watson (R-S.C) complained that the Interior Department turned down the request of a Baptist organization to hold a parade and rally on the Monument grounds in October because of tensions in the city.

He said there was "no way to reconcile" the position of the Department in granting a permit to the Poor People's Campaign for a camp near the Lincoln Memorial and denial of a permit to the Baptists.

Subcommittee Chairman Basil L. Whitener (D-N.C.) said that a request made by North Carolina Boy Scouts to hold a camporee on the Monument grounds in July had not received a reply from the Interior Department.

He contrasted the "God and country" motto of the Boy Scouts with a statement by leaders of the Poor People's campaign that they will "turn the city upside down."

The subcommittee also had under consideration a bill that would require the city to remove at public expense buildings destroyed or damaged during riots. Rep. Samuel N. Friedel (D-Md.), who introduced the bill, said that it was only fair that the city government, which has the responsibility for maintaining law and order and suppressing riots, should bear the cost of removing the debris.

Washington supported this bill. The city estimates of cost of demolishing and removing the unsafe structures at $300,000. About one-third of that amount is available from District funds and the balance would be covered by a demolition grant from the Department of Housing and Urban Development.

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. 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.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order of Thursday, May 16, 1968, that the Senate stand in adjournment until 12 noon on Monday next.

The motion was agreed to; and (at 6 o'clock and 4 minutes p.m.) the Senate adjourned until Monday, May 20, 1968, at 12 noon.

NOMINATION

Executive nomination received by the Senate May 17, 1968:

DIPLOMATIC AND FOREIGN SERVICE

David F. King, of Utah, now Ambassador Extraordinary and Plenipotentiary of the United States of America to the Malagasy Republic, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 17, 1968:

IN THE AIR FORCE

Col. William T. Woodyard, FR4827, Regular Air Force, for appointment as dean of the faculty, U.S. Air Force Academy, under the provisions of section 9335, title 10, of the

United States Code, with rank of brigadier general.

IN THE ARMY

The U.S. Army Reserve officers named herein for promotion as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593(a) and 3384:

To be major general

Brig. Gen. Louis Kaufman, O390854.

To be brigadier generals

Col. Frank Albanese, O324827, Artillery.

Col. Donn Raymond Driver, O383580, Medical Corps.

Col. Frederick William Duncan, Jr., O1167818, Artillery.

Col. Cyrille Pierce LaPorte, O1116742, Corps of Engineers.

Col. Leo Albert Santini, O1576603, Civil Affairs.

Col. Leonard Spencer Woody, O405973, Corps of Engineers.

The Army National Guard of the United States officers named herein for promotion as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593(a) and 3385:

To be major general

Brig. Gen. Raymond Ashby Wilkinson, O373466.

To be brigadier generals

Col. Robert Joseph LeBlanc, O446454, Infantry.

Col. John Randolph Phipps, O417523, Infantry.

Col. John Joseph Remetta, O1105757, Infantry.

Col. Salvador Torros, O365162, Infantry.

Col. Dan Walker, O393696, Artillery.

Col. Robert Thomas Williams, O1167284, Infantry.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be brigadier generals

Col. Oliver Wendell Bassford, O346058, Adjutant General's Corps.

Col. James Sprague Brooks, O2067274, Adjutant General's Corps.

Col. Robert Howard Canterbury, O545783, Adjutant General's Corps.

Col. Edward Joseph Hooten, O734235, Adjutant General's Corps.

Col. Thomas David Neal, Jr., O363394, Adjutant General's Corps.

Col. Carson Royce Neifert, O1165317, Adjutant General's Corps.

Col. Clarence Edwin Reid, O329493, Adjutant General's Corps.

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. George Vernon Underwood, Jr., O20679, U.S. Army.

The U.S. Army Reserve officer named herein to be Chief of Army Reserve under the provisions of title 10, United States Code, section 3019:

Maj. Gen. William James Sutton, O263659.

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be general

Lt. Gen. Andrew Jackson Goodpaster, O21739, Army of the United States (brigadier general, U.S. Army).

IN THE NAVY

Adm. Ulysses S. G. Sharp, Jr., U.S. Navy, for appointment to the grade of admiral on the retired list, pursuant to title 10, United States Code, section 5233.

Rear. Adm. John V. Smith, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

IN THE MARINE CORPS

Lt. Gen. James M. Masters, Sr., U.S. Marine Corps, for appointment to the grade of lieutenant general on the retired list in accordance with the provisions of title 10, United States Code, section 5233 effective from the date of his retirement.

Lt. Gen. Victor H. Krulak, U.S. Marine Corps, for appointment to the grade of lieutenant general on the retired list, in accordance with the provisions of title 10, United States Code, section 5233, effective from the date of his retirement.

Maj. Gen. William J. Van Ryzin, U.S. Marine Corps, having been designated, in accordance with the provisions of title 10, United States Code, section 5232, for commands and other duties determined by the President to be within the contemplation of said section, for appointment to the grade of lieutenant general while so serving.

IN THE AIR FORCE

The nominations beginning Leonard J. Kirschner, to be captain, and ending Edward G. Wolf, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 8, 1968; and

The nominations beginning Richard F. Rosser, to be permanent professor, U.S. Air Force Academy, and ending Peter A. Swan, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 22, 1968.

IN THE ARMY

The nominations beginning George H. Dygert, to be captain, and ending Loren L. Zeller, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 10, 1968.

IN THE NAVY

The nominations beginning David C. Aabye, to be lieutenant, and ending Robert B. Wilcox, to be a permanent lieutenant (jg) and a temporary lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 25, 1968; and

The nominations beginning David E. Adams, Jr., to be ensign, and ending Francis L. Sink, to be ensign which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on May 6, 1968.

EXTENSIONS OF REMARKS

A LETTER TO THE FOLKS FROM A BOY AT COLLEGE

HON. HARRY F. BYRD, JR.

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, May 17, 1968

Mr. BYRD of Virginia. Mr. President, Charles McDowell is a perceptive and witty writer for the Richmond Times-Dispatch. His column of May 16, 1968, published in the Times-Dispatch, strikes the funny bone while getting at the heart of some of the recent disorders we are witnessing on our campuses. I ask unanimous consent that the column be printed in the Extensions of Remarks.

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

A LETTER TO THE FOLKS FROM A BOY AT COLLEGE

WASHINGTON.—The following letter might well be received any day now by the parents of a young man off at college:

DEAR MOTHER AND DAD: I'm sorry not to have written for so long, but I have been very busy here on the campus. You will be glad to know, however, that I had a long talk with the dean recently about my grades that seemed to worry you when I was home for spring vacation.

I had my opportunity to talk with the dean while we were holding him hostage for 48 hours in the administration building.

We had a good confrontation but I don't think the dean understood that I failed English History 202 as a conscientious protest against colonialism. He is just too old—37, I think—to comprehend that many of us feel a deep commitment to making college meaningful.

I broke his water cooler to give him something to think about.

Sooner or later the college administration is going to have to realize that we of the new generation mean business when we demand a new era of true academic freedom.

I am aware, Mother and Dad, that you are not exactly in sympathy with what has been going on here. I know you wonder if it is worth all the money you are spending to send me here. But some day you may realize that it was worth it.

We students have advanced the cause of free inquiry farther in the past couple of weeks than in the previous history of this place. We now hold the dorms, the library, the student union, the second floor of the administration building and about half of the academic buildings, and we have the whole science faculty shut up in a lab with a bushel of frog cadavers.

It may shock you, but I have a hunch that a loyal alumnus like you, Dad might even come around some day to making a substantial contribution toward building back the gymnasium. Actually, we had nothing against athletics as such, but any emphasis on fun and games in a serious intellectual community strikes us as contradictory and unacceptable.

Specifically, we wanted to make a forceful intellectual demonstration against scholarships for athletes when not one grant is available to full-time protest singers or to some of the most talented academic insurrectionists in this country.

Incidentally, the car that you gave me for my birthday was not damaged when the west wall of the gymnasium fell into the parking lot. I had left the car at the country club and rode to the riot with a friend on a motorcycle.

We find that it is beautifully provoking to the police, faculty, administration and other enemies of free inquiry if we arrive at riots with our beards blowing in the wind. What I am missing about English History I am learning about life as it really is.

Please don't worry about my failing the one course—and the others, too, if this Fascist