Group, three (3) copies of "Act of the Establishment of the Supreme Committee of the National Movement of Estonia-Latvia-Lithuania", issues 1–4 of the underground periodical *"Dievas ir Tevyne"* (God and Country), some other underground publications, and two portable typewriters.

Viktoras Petkus is still in prison, but has not been tried.

Last known address, Vilnius, Lithuania SSR, Gavelio G–VE 16, Apt. 4, Viktoras Petkus.●

## FOOD SOURCES IN DANGER

### HON. ELIZABETH HOLTZMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, June 16, 1978*

● Ms. HOLTZMAN. Mr. Speaker, in a recent article in the New York Times, Clyde Farnsworth discussed a new study of the Earth's dwindling food and energy resources. Published by Worldwatch Institute, a resource monitoring organization, the paper stresses that in much of the world, shortages caused by increasing human demands had already contributed to inflation, unemployment, and reduced growth. It also cautions that increasing shortages will require far-reaching social and economic changes in our society.

I commend this article to your attention. The text follows:

[From the New York Times, May 15, 1978]

REPORT SEES DANGER TO SOURCES OF FOOD

POPULATION GROWTH SAID TO IMPERIL SUCH "RENEWABLE" RESOURCES AS CROPLANDS AND FISHERIES

(By Clyde H. Farnsworth)

WASHINGTON.—Fisheries, forests, grasslands, and croplands, the system that supports life on the planet, have come under mounting and unsustainable pressures and have become a source of increasing economic stress, a new study has found.

A paper published by Worldwatch Institute, a resource monitoring body here, says that in large areas of the world human demands on these resources are already contributing to inflation, unemployment and reduced growth.

"As human needs outstrip the carrying capacity of biological systems and as oil reserves shrink, the emphasis in economic thinking must shift from growth to sustainability," said the paper's author, Lester Brown, an agricultural economist and specialist in resource management.

DANGERS OF OVERPOPULATION

His paper, "The Global Economic Prospect: New Sources of Economic Stress" develops a theme taken up earlier in this decade by the Club of Rome, an international group of industrialists, scientists, economists and sociologists that has sponsored studies warning of the dangers of overpopulation.

One Club of Rome work, "The Limits of Growth," jarred thinking a half-dozen years ago with the message that the planet's capacity to support human life and unrestricted industrial growth was rapidly being reached.

Mr. Brown adds to the passimism by concluding that the so-called renewable resources—fisheries, forests, grasslands and croplands—are in danger of not being renewed and argues that declining yields from them are adding to economic stress. He cites the following evidence to support his contention:

Between 1950 and 1970 fish supplied an increasing part of the human diet as the technological capacity to exploit oceanic fisheries expanded. But in 1970 the trend was abruptly and unexpectedly interrupted, and the productivity of scores of oceanic fisheries is still falling as the catch exceeds the regenerative capacity. World population growth has led to an 11 percent decline in the per capita catch and to rising seafood prices everywhere.

Forests provide not only lumber, but to humanity this is the main source of energy. With the average villager requiring a ton or more of firewood each year, expanding village populations are raising firewood demands so fast that the regenerative capacities of many forests are being surpassed.

Population growth and rising affluence are increasing demands on the world's grasslands at a time when overgrazing is already commonplace. As these pressures build, many countries find it difficult to expand livestock herds.

Cities and deserts are encroaching on cropland. In some countries, such as the United States, the cropland being lost exceeds the new land being brought into cultivation. Each year, according to one specialist, more than 2 million acres of arable cropland are lost to highways, urbanization and other special uses.

RISING COSTS OF COMMODITIES

The 18th-century English economist, David Ricardo, first suggested that the investment of ever-increasing amounts of capital or labor in any activity would eventually result in diminishing returns. Mr. Brown says the same principle applies to fertilizer utilization and crop yields in recent years.

During the 1950's, each additional million tons of fertilizer used annually was associated with a 10-million ton increase in the grain harvest. During the early 1960's the increase per extra million tons of fertilizer declined to 8.2 million tons of grain. During the late 1960's, it fell further to 7.2 million tons, and by the early 1970s, each additional million tons of fertilizer yielded only an extra 5.8 million tons of grain.

Efforts to expand the world fish catch represent another case of diminishing returns, according to Mr. Brown. He cites figures from the Organization for Economic Cooperation and Development showing that the total gross tonnage of the world's fishing fleets grew by more than 50 percent in the six years ending in mid-1975. In the same period the world catch did not increase at all, so the catch per dollar invested fell sharply.

Closely related to diminishing returns are the rising real costs of many commodities, a factor that adds to inflationary pressures. The world price of soybeans, a principal source of high quality protein, doubled between 1972 and 1973. During the five years since then, prices have remained at high levels.

The world price of newsprint, which was remarkably stable from 1950 to 1973, doubled within a four-year span. In 1978 prices moved above $300 a ton for the first time in history.

Although rising oil prices have commanded attention in the industrial world, rising firewood prices have fueled inflation in many third-world countries.

INSPIRATION CALLED THE ANSWER

Conventional economic assumptions cannot provide the real answers to today's economic problems, Mr. Brown contends. He approvingly quotes Prime Minister Pierre Elliott Trudeau of Canada to the effect that the solution to the problem of inflation will not be provided by an economist but will instead come from "a political, philosophical or moral leader inspiring people to do without the excess consumption so prominent in the developed countries."

There will have to be simpler life styles among the affluent, says Mr. Brown, and new population policies that stress stability rather than growth.

The study concludes: "The changes involved in accommodating ourselves to the earth's natural spacities and resources suggest that a far reaching economic transformation is in the offing. The origins of the change are ecological, but the change itself will be social and economic." ●

# SENATE—*Monday, June 19, 1978*

*(Legislative day of Wednesday, May 17, 1978)*

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. KANEASTER HODGES, JR., a Senator from the State of Arkansas.

PRAYER

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

Hear the words of the Apostle Paul in Colossians 3: 12–14.

"You are the people of God; He loved you and chose you for His own. Therefore, you must put on compassion, humility, gentleness and patience. Be helpful to one another, and forgive one another, whenever any of you has a complaint against someone else. You must forgive each other in the same way that the Lord has forgiven you. And to all these add love, which binds all things together in perfect unity".—Today's English version.

May the truths of this exhortation be expressed in our lives today and always.

In the Redeemer's name we pray. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., June 19, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. HODGES thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader, the Senator from West, Virginia, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

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

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are two nominations on the Executive Calendar under the Department of Justice which have been cleared. I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the two nominations, and that the Senate then return to legislative session.

Mr. STEVENS. Mr. President, reserving the right to object, I am informed that those items have been cleared on our side. We do not object.

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

The ACTING PRESIDENT pro tempore. The first nomination will be stated.

DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nomination of Peter F. Vaira, Jr., of Illinois, to be U.S. attorney for the Eastern District of Pennsylvania.

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

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The second nomination will be stated.

The second assistant legislative clerk read the nomination of Russell T. Baker, Jr., of Maryland, to be U.S. attorney for the district of Maryland.

Mr. SARBANES. Mr. President, I am pleased to support the Judiciary Committee's recommendation that the Senate confirm Russell T. Baker, Jr., of Columbia, Md., for the position of U.S. attorney for the District of Maryland. Mr. Baker's outstanding legal qualifications reflect the high standards established for service in the Department of Justice. His academic and professional careers have encompassed an extraordinary range of legal experience and achievements, and he is eminently qualified for this very important position.

Since February 1, Mr. Baker has been serving as interim U.S. attorney for Maryland. Prior to then, he was serving as Deputy Assistant Attorney General for the Criminal Division of the U.S. Department of Justice. He previously served from 1971 to 1974 as an assistant U.S. attorney for Maryland and as law clerk to Chief Justice Warren E. Burger.

I have great confidence in Mr. Baker's abilities and his proven record as an outstanding legal professional. He is dedicated to the fair and impartial administration of the law and to the highest principles of American jurisprudence. He is a person of great integrity who has always faced difficult decisions squarely, shown good judgment, and has as a consequence been given increasingly responsible and challenging tasks at every stage of his legal career.

Mr. Baker merits the approval of this distinguished body, and I urge his confirmation as U.S. attorney for the District of Maryland.

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

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominees.

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

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Without objection, the Senate returns to legislative session.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. STEVENS. Mr. President, I ask unanimous consent that Mike Bergt, of my office, be granted the privilege of the floor during my special order.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. 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.

Mr. STEVENS. Mr. President, I yield back the remainder of the minority leader's time.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Alaska (Mr. STEVENS) is recognized for not to exceed 15 minutes.

Mr. STEVENS. Mr. President, may I rescind the prior yielding back of the time of the minority leader and ask that it be available to me in case I need it?

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

ALASKAN LANDS

Mr. STEVENS. Mr. President, this is another in a series of statements I wish to make to the Senate concerning the so-called d–2 issue, the Alaska lands issue.

This morning I would like to talk primarily about the relationship of this issue to the oceans.

Alaska has the longest coastline of any State. As a matter of fact, it has half the coastline of all the United States, and 70 percent of the Outer Continental Shelf is off Alaska. Alaska is a State whose future is totally entwined with that of the oceans, and Alaskans have always been dedicated to the protection of the oceans.

I think the signal bill in the history of Alaska's statehood has been the 200-mile-limit bill, a bill that I first introduced in the Senate and which is now law. This legislation extended the jurisdiction of the United States out to 200 nautical miles for the purpose of fisheries conservation. We have a regional council in Alaska. Ours is the only State in the Union which has one regional council dealing with one State. We are very proud of the action of this regional council in dealing with the preservation of the marine resources off our shores.

When we look at this d–2 legislation, it is apparent that it is basically a land bill. As a matter of fact, it was intended to be a land bill. It is a bill that is designed to review up to 80 million acres of land that could be selected by the State or the Natives of Alaska under the Statehood Act or the Alaskan Native Land Claims Settlement Act.

There are some people who have asked what d–2 means. I think Alaskans will always remember the remark of the distinguished junior Senator from California when, upon arriving in Anchorage, someone asked him what he thought about the d–2 issue. Senator HAYAKAWA said, "What is that? It sounds like a new bug spray."

We have heard a great deal recently about the complexities of the d–2 issue, and it is nice to have someone add a touch of humor to this very difficult area of concern.

Basically, the bill that comes from the House to the Senate would withdraw 70 million acres of onshore land for wilderness purposes. That is five times as much as has been established in the whole of the United States—all of 50 States—in 14 years.

But the major problem in terms of ocean policy is that this bill that came from the House, H.R. 39, includes a provision which would extend some of the reserves out 6 miles from shore. To my knowledge, this is a unique situation. It never has been proposed anywhere else. As a Nation, we still recognize the 3-mile limit for national jurisdiction. We never have extended the jurisdiction of the United States 6 miles in a total base area, as H.R. 39 proposes to do. We have extended conservation jurisdiction for the purpose of the marine resources in the

water column, but no action ever has been taken by the U.S. Government to interfere with ocean traffic or the use of the oceans beyond 3 miles.

The problem that now arises is that this 6-mile limit will have a marked effect upon the administration of the 200-mile conservation zone by the regional council established under the 200-Mile Limit Act.

There also are provisions in the House bill that affect Coast Guard management. There are provisions in the House bill that will affect the development of the Outer Continental Shelf because of the lack of onshore availability of sites from which to work. There will be ocean-related problems in terms of wilderness and refuge management because of their impact upon aquaculture and anadromous fish management, as the lands would be proposed for exclusive single-use management onshore.

These provisions of H.R. 39 set precedents which I hope Senators from other States will take into account. For example, I understand now that there are some extreme environmental groups that are thinking about extending seaward boundaries off Hawaii 6 miles. To take the position that the oceans out to 6 miles should be managed for the benefit of land use, particularly for a single-use concept involving millions of acres of land, is very shortsighted.

We want to manage the shores along the oceans for the purpose of perfecting the oceans. H.R. 39 turns this concept around and says we should manage the oceans in order to prevent any impact onshore. That is a very shortsighted point of view, as I said, and here are some reasons why.

Basically, those of us who worked on the Coastal Zone Management Act, the 200-mile Limit Act, the Outer Continental Shelf Act, the Marine Mammal Protection Act, and the Ocean Pollution Act—all these acts of Congress included increasing the protection of the oceans—are appalled by the action of the other body in placing the wilderness and wildlife preservation onshore ahead of the acts that have been passed by Congress to protect the use of the oceans and, as a matter of fact, to mandate the use of the coastal zone so that it would be available to enhance the production of marine resources and to reduce the impact of pollution offshore.

The unprecedented 6-nautical-mile zone seaward of high tide off refuges has a tremendous impact upon Alaska. As I pointed out, we have half the coastline of the United States, and this 6-mile zone means literally millions and millions of acres will be added to the designation of wilderness and wildlife refuges. What it really means is that the uses that we currently make of our oceans will be limited by their impact offshore.

I think the House left unanswered a great many questions. For example, what happens to the fishermen who, under Alaska law, have the right to place set nets on the shore and to fish from fixed sites for anadromous fish? What happens to our whole concept of conservation of anadromous fish, whereby we maintain that the stream of origin must be identified and that there must be sufficient escapement of salmon, for example, upstream, in order to assure reproduction of that run of salmon before any fish are taken for commercial purposes?

The activities we carry on within 6 miles of shore, in the interests of conservation and increased reproduction of our anadramous fish resources, would be in conflict with the provisions of the d–2 legislation as it passed the House as H.R. 39. Not the least of the difficulties is that the House bill splits the management of this region offshore between the Regional Fisheries Council and the State of Alaska. At the present time, the Regional Council and the State of Alaska are in accord with the regulations as to the management of this area.

H.R. 39 makes four entities responsible for the management of the 6-mile zone—the Regional Council for the 3 miles beyond, the State of Alaska for the first 3 miles. Aquaculture projects on shore are under the jurisdiction of the Department of Agriculture, and the Interior Department has jurisdiction over their lands. So that what we would have would be four entities involved in the management of the oceans offshore, in terms of trying to manage those oceans, not for the benefit of the oceans and the marine resources, but for the arbitrary designation of wilderness or wildlife refuge.

The impact of H.R. 39 on aquaculture is tremendous. The bill would prohibit the use of aquaculture and aquaculture products in national park areas or wilderness areas in Alaska. That is some 40 million acres. Aquaculture in the remaining 35 million acres of wilderness would be allowed only at the discretion of the Secretary of the Interior or the Secretary of Agriculture, depending upon who was the manager of the land.

This may not seem substantial to non-Alaskans, but we are in the process of trying to rebuild and restore the anadromous fish runs in our State. We still have the last anadromous fish runs in the United States, if not in the world; but we could restore a great deal more of the potential, particularly of the salmon, if we could use our incubators and build hatcheries where appropriate.

There are substantial restrictions in H.R. 39 as to where hatcheries and these other aquaculture projects can be built.

I point out, also, that H.R. 39 threatens the management of fur seals, sea lions, whales, and porpoises that currently takes place under the Marine Mammal Protection Act and under treaties endorsed by our Government within this 6-mile zone.

The Interior Department would take over the management of these species within the 6-mile zone, notwithstanding the fact that the National Marine Fisheries Service currently has jurisdiction over them, under the existing acts of Congress and treaties to which we are a party.

Of particular interest is the impact of H.R. 39 with respect to the jurisdiction over the Pribilof Islands. The Pribilof Islands are managed in order to assure that the taking of the Alaska fur seal, under the North Pacific Fur Seal Treaty, is carried out in accordance with the terms of that treaty. Many people apparently question this treaty today, and they are misguided, extreme environmentalists. That treaty was entered into by Canada, Russia, and the United States in order to prevent pelagic sealing; that is, the taking of seals on the high seas. That is the way they used to be taken; and, just as in the case of salmon, there was no way to tell what herd they were from, no way to tell what their age was or their sex. They were taken as they were swimming. The number of fur seals were going down and down.

We entered into the North Pacific Fur Seal Treaty as a result of this decline. We managed the Pribilofs and scientifically harvested the fur seals which are distributed to Canada and to Russia and now the fur seals are being restored to their original vitality in terms of their reproduction capability.

Under H.R. 39 the Pribilofs would revert to a refuge system. It would mean that the Interior Department would have jurisdiction and not the Commerce Department. This would, in effect, in my opinion be a breach of the fur seal treaty and we could expect Russia and Canada to resume pelagic sealing.

It is extremely short-sighted from the point of view of conservation and environmental concern to see the House of Representatives take the position that the Pribilof Islands should become a refuge and placed under the management of another department, a department which has no cognizance really of the entity, such as the National Marine Fishery Service, that has jurisdiction of the U.S. obligation under the North Pacific Fur Seal Treaty.

Let me comment upon the ocean impact as far as H.R. 39 is concerned on the Coast Guard's activity. The Coast Guard's ability to maintain our aids to navigation are extremely important to our State. We still use our river systems for freighting and the Coast Guard's activity in placing navigation aids not only in the coastal area but in the inland rivers is very important to us. Annually the Coast Guard has problems in moving expeditiously to replace the aids to navigation that have been taken out by the ice as it comes down these river systems.

Under H.R. 39 the Coast Guard could not locate any of their aids to navigation in these areas created by H.R. 39 without the approval of the Secretary of the Interior. Just the paperwork involved in that in getting approval of the Secretary of the Interior could well delay the replacement of these aids to navigation as they are needed in the springtime when the freighters start coming back up the rivers.

I think of extreme importance is the fact that the Coast Guard's ability to modernize or improve the vessel traffic control system for the Valdez terminus of the Trans-Alaska pipeline system could be limited or curtailed by H.R. 39.

There are special investigation problems in the Wrangell Narrows, and I point out that the lands offshore of that terminus on both sides would be turned into a wilderness area by the House bill.

We do not understand why the House of Representatives sees fit to change the designation of areas that are so important to the health and safety of those who are transporting Alaska oil to the south 48.

We see no reason why the Coast Guard's ability to maintain their aids to navigation in Alaska waters should be hindered or curtailed in any manner, in order to review the lands we promised to review in connection with section 17d–2 of the Alaska Native Lands Claims Settlement Act.

Mr. President, many villages in western Alaska are dependent on these river barges for supplies. If the Coast Guard is unable to maintain the navigational aids for these inland waters, if they are hindered in any way, it will delay the ability of the private barge system that is still in action on our rivers, the river boats, from taking supplies to these small Native villages in western Alaska.

I wish to mention also NOAA's marine sanctuaries program. That is a program of which we are extremely proud up in Alaska because it is moving forward with the planning to develop sanctuaries as are required to protect the marine resources.

Now along comes H.R. 39, and it says that the lands offshore under the oceans are to be managed for the benefit of the onshore activity that is deemed to be of the highest and best use by the House of Representatives, and in most instances that is wilderness. It has nothing to do with the sanctuary program that envisions taking whatever action is necessary to protect the marine resources that require sanctuaries.

Thirty-five million acres of the withdrawals proposed by H.R. 39 are in coastal areas. They impact, as I said, the coastal zone management program which is under NOAA, the marine sanctuaries program which is under NOAA, and I see no reason for the inconsistency between the action proposed by H.R. 39 and the previous acts of Congress which are now law and are now working with regard to our coastal zone area.

Of particular importance is the need for onshore areas to monitor the development of the offshore areas.

We passed the Coastal Zone Management Act and in so doing made available special funding to take care of the impacts on shore of offshore oil and gas development. This bill, H.R. 39, as I understand, turns that around. It says that the offshore areas cannot be used because the onshore areas will be designated as wilderness or as wildlife refuges. The net result of that will be that the offshore development that will come anyway beyond 6 miles in terms of oil and gas development will have nowhere to go onshore in order to have the access for pipelines, terminuses, docks, or warehouses, the activities that must be available in the shortest distance possible in order to provide the supplies for the oil and gas development offshore.

What these people want to do is prevent the access to the shore at all, and that means that in some of the most treacherous waters that the U.S. marine and oil and gas activities take place on they have to go miles and miles farther up the coastline in order to establish these service areas. The net result of that is to increase the distance these service vessels have to travel. It increases the risk of Outer Continental Shelf development, which automatically increases the risk to the marine resources upon which my State is so dependent.

Another important item is NOAA's jurisdiction over the atmosphere. NOAA is mandated to monitor the Nation's weather in order to predict what will happen in the rest of the country. the NOAA people and the pilots that I associate with call the Gulf of Alaska and the area around the Aleutian chain a weather factory because it is from there that most of the enormous storms that come down across Canada and across our country originate.

However, in this bill, H.R. 39, the weather monitoring in withdrawn areas and in the 6 miles off those withdrawn areas is subject not to the NOAA activity and the Secretary of Commerce that has jurisdiction over them, but it is subject to the discretion of the Secretary of the Interior. NOAA's ability to monitor weather could be substantially hindered in Alaska if it must go to the Department of Interior for permission to install weathering devices every time they want to modernize the weather-gathering activity of the United States off Alaska.

Mr. President, the least I can say for H.R. 39 in terms of the oceans off the shores of my State is that it is an unprecedented catastrophe. It would mean the reversal of policies established by Congress not only in the first 10 years of our statehood but certainly the reversal of almost every act of Congress that deals with the oceans off the shores of Alaska that has been passed by this Congress since I have been a Member of the Senate, and that is for the last 9½ years.

I can think of no reason for the Senate of the United States to even consider the proposition that the 6-mile zone of withdrawals on shore should be reserved, not for the purpose of protection of the oceans, but for the protection of the withdrawals on shore.

I might say I have discussed this matter with the distinguished Senator from Washington, our neighbors, Senator JACKSON, of the Energy Committee, and I am pleased to state that as I understand his comments, he generally agrees with me that that 6-mile zone has no business in this bill that is primarily aimed at dealing with the problems of land management and management of the public lands in Alaska.

Mr. President, I yield the floor.

## COMMITTEE MEETING

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the Public Lands and Resources Subcommittee of the Energy and Natural Resources Committee be authorized to meet during the session of the Senate today to hold a hearing on S. 707 and S. 3046, the Coal Slurry Pipeline Act of 1978.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Mr. President, reserving the right to object—I have no objection, Mr. President.

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

## LABOR LAW REFORM ACT OF 1978

The ACTING PRESIDING pro temport. Under the previous order, the Senate will now resume consideration of the unfinished business, H.R. 8410, which the clerk will state by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 8410) to amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such act.

The Senate resumed the consideration of the bill.

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

Mr. WILLIAMS. Mr. President, will the Senator withhold that for a moment?

Mr. STEVENS. I withhold.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

Mr. WILLIAMS. Mr. President, when an employer discharges an employee in the course of a union organization drive, not only does that employee suffer, but all employees suffer. This is because the delay involved in securing the reinstatement of the illegally discharged employee will often be accompanied by a delay in the negotiation of a contract with the union.

We all know what these discharges for union activity are all about. They are most often, really, means of intimidating the workers with the election coming up. But notwithstanding the fact that there have been discharges, for union activity, and the election does precede and the union is elected and the agent for bargaining is thereby established, and the contract bargaining under the law should begin, that unfair labor practice, of course, will be the center of attention, and it will delay the negotiation of the contract with the union.

These discharges during organizational drives are particularly destructive of worker rights, and are worthy of the special attention which the remedies in this bill give to them.

The case of Columbus Caldwell, and his fellow workers at Schill Steel Products in Houston, Tex., demonstrates this sad fact of industrial life.

WHY AMERICA'S WORKERS NEED LABOR LAW REFORM CHAPTER 16

On May 21, 1962, the United Steelworkers Union filed a petition for an election to represent the workers of the Houston, Tex., warehouses of the Schill Steel Products Co. On June 13, 1962, the company fired Columbus Caldwell and

Wilbur Brown because of their activities in support of the union.

The Board's regional director ordered an election to be held. The union won the election, and was certified as the collective bargaining agent on August 21, 1962. However, the company still refused to bargain with the union.

Unfair labor practice charges based on Caldwell's and Brown's discharge and the company's refusal to bargain were filed and proceeded through trial stage. On August 20, 1963, the National Labor Relations Board issued a decision, finding that Caldwell's and Brown's discharges were unlawful and that the company had refused to bargain with the union. The Board ordered Caldwell and Brown reinstated with back pay, and ordered the company to bargain in good faith with the union.

The company appealed to the U.S. Court of Appeals for the Fifth Circuit, which, on January 11, 1965, enforced the Board's orders.

After the circuit court issued its decision, 2½ years after the illegal discharges, and the illegal refusal to bargain, the company offered Caldwell and Brown their old jobs back. The company also sent a letter to the union, indicating that it was prepared to bargain in good faith. Brown declined to return to work, but Caldwell took his old job back. The two shared $5,876.78 in back pay. The union and the company representatives then sat down to negotiate a contract.

Almost a year after the court of appeals' decision and order, the union and the company thought that they had finally agreed to the terms of a contract. The union signed the contract on behalf of the workers, and presented it to the company officials. They refused to sign it.

This led to another unfair labor practice charge, and on November 16, 1966, the Board issued another decision finding the company had refused to bargain.

By this time, more than 4 years had passed since the union had won the election. The Board had ordered the company to bargain in good faith twice, the court had ordered it to bargain once, and still, the workers were no closer to a contract than they were at the beginning of the proceedings.

On January 19, 1968, the Board petitioned the circuit court for an order finding the company in civil contempt of the previous court order to bargain in good faith.

The court assigned the matter to a special master who held a hearing in October of 1970. Finally, on April 19, 1973, almost 11 years after the union had won the election, the court held the company to be in contempt of its bargaining order, which had been issued 8 years earlier.

The contempt adjudication was finally closed in 1974, and thereafter, the company commenced bargaining in good faith.

Mr. President, it took 12 years after the union won the election before the company bargained in good faith. This unconscionable conduct would have been most unlikely under the provisions of H.R. 8410.

Under H.R. 8410, Columbus Caldwell and Wilbur Brown probably would have been reinstated by court order shortly after their illegal discharges, and, the make-whole remedy would certainly have discouraged the employer from dragging his feet for 12 years before bargaining with the union.

Mr. President, it is cases like Columbus Caldwell's that the labor law reform bill that is before us is all about.

Mr. President, this is the 16th of these personalized cases that highlight the importance of this legislation before us. This is the 16th case I have described here. They all start out with a recital of unfair activity long ago, and some who do not read any further might wonder what this is all about. This is 1978, why are we talking about these cases back in the 1960's? But every one of them—and they are typical of the abuses that underlie the need for this legislation before us—has dragged out through the years until they are almost contemporary, and many of them I have cited are still before the courts.

It is a strange, strange world that we live in in this area of labor-management relations, a strange world, indeed. We have an underlying law that we all have applauded in this debate, the Wagner Act, the National Labor Relations Act, a 40-year-old law. But notwithstanding total agreement here that our basic National Labor Relations Act is sound and is one of the prime reasons why our Nation enjoys the stability it does in this area, unlike so many other industrial countries; notwithstanding all of that, we are in this filibuster on a bill that does not change that basic law that we all agree is sound.

What the bill before us does is to address that small percentage of employers or unions that do not voluntarily share this general acceptance of the law and that want to do whatever is possible to make it ineffective. What the bill does is direct effective remedies to that percentage of people, and that is all we are doing. Notwithstanding that, we are in the second month of debate on a remedy bill to make effective a law we all agree is sound.

That is why I say we are in a never-never land. You could expect this in the land of Kafka, but here in our reasoned, ordered, logical, thoughtful, intelligent society to go through this charade of a filibuster on a bill that has two basic elements: When the law says there will be an election, we say through this bill there will, in fact, be an election; when the law says a union duly elected will be bargained with, we say the law should mean what it says, and if there is not bargaining, there will be an effective remedy. That is all we are doing here. Yet we are in the second month of this strange debate created by, a hard core of people who oppose the National Labor Relations Act, who are basically opposed to the recognition and effectiveness of labor unions.

Out of that core came this contagion, a virus of emotion, that took over some who, in their daily lives live in opposition to those they have joined. Companies that have a union, that recognize it, work with it, bargain with it; even those companies, that this bill would not affect, have been caught with a virus, the virus of emotion, based on lack of understanding of the bill which is, in turn, the result of so many misrepresentations of this bill and what it does.

Of course, it is getting redundant to the point where I would think that proposition 13 ought to apply to us. When they pay the bills for the redundancy of this debate—every page of the CONGRESSIONAL RECORD costs about $325—and we do not hear much new around here; and so this is all taxpayers' money down the drain—I would think the taxpayers would be well advised to suggest to us, "Look, you are in a democratic society. We make our decisions by voting in a democratic society. Why don't you people in the Senate stop wasting money with talk?"

It is not only the CONGRESSIONAL RECORD expense, the entire operation of the Senate is tied up as a result of a filibuster. This is shameful in a democratic society where decisions should be made by people coming to a vote.

I strongly think it is obviously time that we got to a vote, whatever the result will be on the votes that come. We have a lot of votes ready for us. Up there at the desk, I understand there are amendments—amendments offered in good faith—that will take a great deal of time. I would think, in this day of the citizens' demand for frugality in Government, that we ought to be able, right now in the second month of this filibuster after the issues have been so clearly drawn, to take heed and get to voting. That is what the bottom line of a democracy is: The vote.

I shall yield for now, and hope I may have some encouragement from the Senator from Utah, who is, as I mentioned earlier, promising to be a good filibusterer—filibusterer? Filibusterer.

I hope that in the second month, we can look to him, now, for leadership, democratic (with a small d) leadership, to enable us to come to decisions in this body, and get back to all of the other work that is ours to do in our part of the Congress.

For now, I yield the floor.

Mr. HATCH. Mr. President, I have enjoyed listening to our distinguished colleague, the chairman of the very prestigious Human Resources Committee and my dear friend, the Senator from New Jersey (Mr. WILLIAMS).

All I can say is that, having been raised a Democrat and having been a Democrat with a big D most of my life, and having been raised in the union movement, and with a great deal of respect for the union movement, maybe I am in a position to talk about democracy a little bit, and why the filibuster is a very important procedural rule.

As Senators know, this is the only deliberative body in the world, at least to my knowledge, where the minority can

stand up and put the majority to a test and say, on a piece of legislation as controversial as this one has been and will prove to be in the future, regardless of what happens here tomorrow, that they are going to have to get 60 votes to back them up.

The fact of the matter is, this is controversial legislation. It is legislation that really does no good for anybody concerned except those who are big labor union leaders here in Washington, who really have too much power already.

Also, when you think about a filibuster, the filibuster is the only way that the minority can stand up to a tyrannical majority. It is the only way that the minority, when, as in this case, representing the vast majority of all the people, who do not want to lodge any more power in the hands of the big Washington labor union leaders, can stand up to a tyrannical majority and say, "Look, we have had enough; we are not going to put up with it any more."

The fact of the matter is that if this was a secret ballot on the floor of the U.S. Senate, up or down, I believe that the minority in this case would very rapidly become the majority. If Senators could really vote their consciences and it was not a matter of special interest group pressure, I do not think there is any question that this awful bill would be shot down.

I respect the Senator from New Jersey and the very strong way he has led the proponents of this legislation, the pending bill and the Byrd substitute therefor. He has been a gentleman; he has been a man who has stood up for his particular point of view forcefully and with articulateness and with honesty in many ways. I believe that he is one of the great Senators here, not only because he is so well liked, but because he does work hard, and he has been here almost all the time on the floor of the Senate. I respect that, and I respect him, and he knows it. He knows that as we work together on the Human Resources Committee, I try to cooperate with him and the other members of the committee as much as I can.

But in this case, the minority's opposition to this bill happens to represent the vast majority of the people of this country, who have said:

> Enough is enough, we have had it, we are not going to lodge any more power in the hands of this special interest group in Washington, D.C., which has had a great deal to do with building the bureaucracy which is threatening all of us, hurting all of us, and engulfing all of us to the point where Proposition 13 did come through from a State standpoint, and now they are talking about Proposition 13s all over this country, including in the Federal Government.

I think that is good. To be honest, somebody has to put the skids under Government intervention into our lives. I congratulate the people of California for having done so, and I hope my colleagues in the Senate, as we vote against cloture, will support our efforts against this particular bill, because they deserve support.

I wish to say that I think it is important to note that in all of the history of the Senate, there have only been, to my knowledge, four votes, or I should say four issues, which have gone through five or more cloture votes.

Of those four, this is one of them. So, really, only three other issues.

The Wyman-Durkin debate went to six cloture votes. That was a political issue and also a procedural issue. It was not really a substantive issue. There was a rule XXII change which went to five votes. That was also a procedural issue, not a substantive issue.

The only other vote that went to five cloture votes in the history of the Senate, to my knowledge and that of the Congressional Research Service, was on the Consumer Protection Agency, as I recall, which also went to five votes.

So this particular bill has matched the highest number of cloture votes on a substantive issue in the history of the U.S. Senate.

I wonder when we will reach a point when we say, "Enough is enough" and the majority of people in this country can be recognized, again, through the only means available to them, and that is through the role of extended debate which says, "Look America, look at what is going on on the floor of the Senate, analyze it, let us know what you think."

I can say, overwhelmingly, they have let us know, and that is that they do not want this bill—and they should not, because this bill is not going to be helpful to America and certainly not to the taxpayers of America.

Mr. WALLOP. Will the Senator yield?

Mr. HATCH. I am delighted to yield without losing my right to the floor or having it considered a second speech under the rule.

Mr. WALLOP. I suggest that what the Senator is saying is exactly right. It is a plea, unfortunately, that few others have made. It does not seem to find its way into the press and the reporting of this issue. A plea to be heard, that all the polls, all relevant polls, show that this is not an issue which the country at large wants passed in this form. The plea, the whole point of having a debate of this length, is plainly just to try to get this plea to the public. Yet a good deal of the reporting on it, until perhaps the weekend, has been as though there was some kind of an obstruction going on.

I have to compliment the Senator from Utah for standing up to some rather unpleasant criticism on the part of those who do not understand what he is about.

It is a funny thing to be in a minority and representing the majority opinion of this great country and to have to take this long to prove the point. I suggest to the Senator that he will probably succeed in that, and I would be happy in it.

Mr. HATCH. I hope the distinguished Senator from Wyoming is correct that we will succeed.

But whether we do or do not, I think it is very important to note there have been a lot of Senators on the floor of the Senate, and elsewhere, working to defeat this bill, because I think it is a pretty close issue in the Senate when we consider the ideological mix in the Senate. I think this has been a nonideological bent. I think it has been a nonpartisan bent, a nongeographic or geopolitical bent. I think it has been on the facts, on the substantive issue involved.

I compliment the distinguished Senator from Wyoming, who played a principal role in leading the opposition to this bill, and rightly so, as he has played a principal role on many other bills on the floor of the Senate. I think he continually stands up for those things he believes in, in good conscience.

We will be setting a new precedent as we vote tomorrow on the sixth cloture vote on this particular bill. I have not complained about it. I think the majority leader ought to have as many cloture votes as he wants. As long as we can hang in there, I want to hang in there, because I think we are fighting for higher principles than just to have a victory on a bill or not to have a bill. I think we are fighting for the survival of our country on some of this legislation.

I talked, for instance, to Dr. Rinfret over the weekend and I asked about his conclusions.

He told me that, if anything, his conclusions, that with every 10 percent increase in unionization there would be a 5-percent increase in the consumer price index, which would translate to a 3-percent added increase in inflation. In other words, it would lead us to double-digit inflation, just this one bill. Consider the thousands of upward forces in our society. Imagine one bill leading to that. He said that, if anything, that is a conservative estimate, that he can show it might have more dramatic consequences than that.

I think that is something to be very frightened over. It is something for us to consider. But even if that is untrue—and everybody admits it will be inflationary—the question is how much range from the Robert Nathan nonanalytical study, but more or less just pro-labor study, that said there would be at least a half percent increase in inflation up to the Rinfret, who is moderate, 3 percent up beyond that.

Others say it would be more than that, which would be an immediate consequence of the enactment of this legislation, if we are unfortunate enough to lose tomorrow, or whenever the final cloture vote is held, with regard to our opposition of this bill.

But let nobody be deceived. I think it is important to note when we vote tomorrow on the sixth cloture vote that we will be establishing a new precedent here, and that is, this issue will literally have undergone more cloture motions and more cloture votes than any other issue in the history of the Senate on a substantive basis.

That is pretty important and that is pretty interesting.

What is more is that a lot of people have come up to me over the weekend,

some of whom have thought maybe this bill was all right, who have said:

You know, we didn't realize the power of this special interest group in Washington to cause on the floor of the United States Senate six cloture votes on something that, apparently, is unacceptable.

So what it comes down to is the scramble to try to change a few votes. I submit that anybody who would change his vote for this bill will have a very difficult time from that time forward into the future. I think the only way to change is against the bill and vote against cloture. I think that would be the only safe thing to do, because the people all over this country are sick of it. They have had all they can stand. They know that this is a bad bill.

I do not think Panama reaches the significance of this issue. I never did think it did because this is the most important domestic issue in this country for over 30 years.

I think that is important for all of us to consider. That is why we have gone this long. That is why I am prepared to go as long as they want to. Of course, we have no choice in the matter.

But I think there is a time when the distinguished majority leader, for whom I have deep respect and certainly admiration, has to say:

Well, you know, we've given it all we can, and we have to get about our other business here on the floor of the Senate.

On the other hand, if cloture is invoked, which I hope it will not be, I suspect there will be a number of other weeks here on the floor of the Senate which we will have to spend because we are fighting for a high cause. We are fighting for our country's economic stability. We are fighting for fairness. We are fighting for justice and the free enterprise small business sector of this country.

I think that is pretty darn important. Therefore, we have to go all the way, because I do not know of any other issue that really is as important as this one, except perhaps the SALT II treaties and agreements. I just do not know of anything that would rank with this one as a matter of importance.

I happen to believe the proponents feel pretty much the same way, that this is an important issue from their perspective. I certainly accept that, and that in their minds that is true. In my mind, it is untrue. But that is what makes for battles like these and is, of course, what makes the U.S. Senate a great place to monitor and follow.

Mr. WILLIAMS. If the Senator is finished, I would ask the Senator if he would yield, or when he is about through.

Mr. HATCH. I am happy to, without losing my right to the floor or having it considered as a second speech.

Mr. WILLIAMS. There are a few things which I think he would appreciate my raising at this time, rather than later.

Mr. HATCH. I am happy to have the distinguished Senator from New Jersey do so.

Mr. WILLIAMS. The Senator from Utah moments ago made this observation, that if the Members of the U.S. Senate could vote in secret ballot they would have come to a decision on this matter along the lines that the Senator from Utah would have them.

He said that if it were a secret ballot and the Members could vote their conscience and not the wishes of special interests, we would have a result and we would have it his way.

Mr. HATCH. I did not say all Senators would vote that way.

Mr. WILLIAMS. All I can say is I would suggest to the Senator from Utah that he have read back the words he said and ask himself whether he would revise that statement.

If there is one thing that I would think those of us who have the honor to serve here should feel is part of the grain of being a Senator—it is that it is our calling to express our conscience and vote our conscience. The public vote, the open vote, is one of the greatest things we can have. We have taken that democratic procedure of the open vote, right into our committees.

Before the Senator from Utah arrived, we used to meet in executive sessions and write up the bills, and there was no rule to require the publishing of those votes.

That has all been changed. We felt that it was in the greatest interest of this country that this institution operate itself in a way that the people will know us and will know what we do. We have decided not to have the difficulties and the lack of faith that comes with secrecy.

The Senator from Utah is on a different tack here. What he is suggesting is secrecy promotes conscience.

Mr. HATCH. I do not think that is quite correct.

Mr. WILLIAMS. I would say an open society is what promotes good conscience.

Mr. HATCH. I am glad to have the comments of the distinguished Senator and I agree wholeheartedly with them. I would not have the Senate run in any other way. He may very well be right that if it was a secret ballot, the substantive outcome would not change. I think it would.

I agree with the distinguished Senator from New Jersey that this is the way to run the Senate, openly and without secret. I certainly agree with that. I also think he would have to agree with me that there are many special interest groups working in Washington, not the least of which is the big labor movement which has tremendous power here in Washington. That is what I am getting down to. I think that power is translated into a sixth cloture vote. I think it has become a test of power here. That is the point I am trying to make.

So I agree with the distinguished Senator from New Jersey on the points he has made, and certainly commend him for his point of view and his perspective here today.

Mr. WILLIAMS. If the Senator will yield——

Mr. HATCH. I am delighted to without losing my right to the floor and without having it considered a second speech under the rule.

Mr. WILLIAMS. And I would not object to that.

I mentioned there were two points that I wanted to refer to now in connection with the Senator's speech. I would like to add one other, and I will make this very brief.

The repetition of this charge and argument that somehow those of us who are working towards remedies in the labor law reform bill are responding to a special interest, and it is slurred in a way to suggest that this is an unwholesome situation. We have people like the two workers I mentioned today, people who are struggling to get an opportunity to have a vote for an election. I do not know how many millions more like those two are out there. But I submit, those are the special interests which should concern us. There are a lot of them. They have an interest in having the opportunity to have the labor law that we have now work.

The special interest that the Senator from Utah talks about is big labor. Certainly, the AFL–CIO are in a position where they are elected to represent the working people of this country.

Mr. HATCH. Twenty percent of the working people of this country. Eighty percent are not represented by them.

(Mr. ZORINSKY assumed the chair.)

Mr. WILLIAMS. They are interested also, all working people who want an opportunity in life to improve their life situations. The unions are not elected now to represent so many of these, but they work for them nonetheless.

Let me tell you, Mr. President, how they work for people who have no chance, no hope, no thought of representing. They feel a responsibility for working people, whoever they are, even if they cannot become organized under the AFL–CIO.

I know farm workers. I have worked for 20 years to bring a measure of equal opportunity to farm workers. They cannot organize under the National Labor Relations Act. Yet one of my strongest allies over these 20 years was the unions who could not represent them under the National Labor Relations Act.

On the other side of this special interest; it is really, I would say, an immature charge. Certainly, people with interest in legislation reach us with their opinions, the Right-To-Work Committee, the National Chamber of Commerce, the National Association of Manufacturers, the Business Round Table. All of these people are gathered in groups and they have a particular interest. Call it a special interest. I do not call that insidious. They have reached those who are opposed to this bill and with their message. It is against the bill.

I will say some of the activities generated by the Right To Work Committee, that special interest, have been done in a way that I wish we could get described to all the people who have received the communications. I ask unanimous consent to include in the RECORD at this point, if the Senator will agree,

a communication that reached a citizen of New Jersey, a questionnaire. It is a right-to-work questionnaire. It went to Garry Hilliard, 64 East Park Street, East Orange.

From the first question, and I will not read it all:

Should common situs picketing be legalized?

Are you in favor of compelling State, county, and municipal employees to pay union dues?

Should big labor officials be allowed to continue pouring millions of dollars of compulsory union dues into political campaigns?

Do you believe Congress should force hundreds of thousands of unwilling workers into unions through a so-called labor law "reform" bill that would pressure employees into signing compulsory union contracts?

Have you sent your postcards to your Senators?

To help defeat that bill, the labor law reform, they are asked to send contributions to the National Right To Work Committee, $1,000, $500, $100, $50, $25, name the amount.

And they are to send it to one of our own Members.

This questionnaire was put out under the request of the Senator from Nebraska (Mr. CURTIS).

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

QUESTIONNAIRE ON UNION MONOPOLY POWER

Please return to: Senator Carl T. Curtis, National Right To Work Committee, 8316 Arlington Boulevard, Fairfax, Virginia.

Special questionnaire for: Mr. Gary E. Hilliard, 64 E. Park St., East Orange, New Jersey.

Please answer the questions below and return this form at once in the enclosed envelope. Your name will not be used without your written permission.

1. Should common situs picketing be legalized, giving construction union officials the power to shut down an entire building site because of a dispute with a single subcontractor?

2. Are you in favor of compelling state, county, and municipal employees to pay union dues to keep their government jobs?

3. Should Big Labor officials be allowed to continue pouring millions of dollars of compulsory union dues into the political campaigns of their handpicked candidates?

4. Do you believe Congress should force hundreds of thousands of unwilling workers into unions through a so-called labor law "reform" bill that would pressure employers into signing compulsory unionism contracts?

5. Have you sent your postcards to your Senators?

To help defeat S. 1883, compile and publicize this survey, and inrcease its coverage all over America, I enclose my contribution to the National Right to Work Committee of: $1,000 —, $500 —, $100 —, $50 —, $25 —, other amount $ ————.

Senator Curtis: You may ——— may n- ——— use my name when contacting my Congressman and Senators with the results of this survey.

Signed ————————————.

Mr. WILLIAMS. Gary Hilliard, of 64 East Park Street, East Orange, was one of how many who received that? If he received that on East Park Street in East Orange, I will make the guess that this went to thousands if not tens of thousands, maybe hundreds of thousands.

He happened to know that this was a misrepresentation. Question No. 4, Mr. President, is the only question which remotely deals with this bill, and it grossly misrepresents the effect of this bill. And it came right after three questions that have nothing, nothing at all to do with this bill—situs picketing, a distant memory, public employees, not covered.

I do not believe the Senator from Utah was here.

Mr. HATCH. I was here.

Mr. WILLIAMS. The Senator was here to vote on situs picketing?

Mr. HATCH. Not to vote on it but I was here the last time it came up.

Mr. WILLIAMS. That is why I say a distant memory to those of us here. The Senator did not have that. It is a distant memory.

The organization of State, county, and municipal employees have nothing to do with this bill. There was one other, compulsory union dues into political campaigns, which is against the law.

This is a typical association of issues with this bill; in this matter for the purpose of raising money for the right to work committee.

With respect to special interests—and this is the first I have mentioned it, but I am getting just a little weary of having that slur come our way—certainly, people with interests will reach us with their opinions and their ideas. Call them special, call them particular, call them what you will. People have ideas, and they reach us here. We agree with them; we do not agree with them; we modify it.

I do not object to that. I object to what a "special interest" might do, as I feel that the Nation is not served with this kind of questionnaire going out to hundreds of thousands of people, raising money in a way that is misrepresenting what is going on in the U.S. Senate.

I appreciate the willingness of the Senator from Utah to have this out right now, in this way. He did not have to do this. He did not have to yield to me in this way, and it is a gracious thing to do.

Mr. HATCH. I am delighted to listen to the Senator from New Jersey.

Mr. WILLIAMS. There would have been time for me later to do this, but I feel that we would not have had the previous question.

There is one other thing. The Senator says that if Senators go the other way on this measure, there will be trouble ahead. It sounded to me as though that was a suggestion of political trouble ahead. I suppose that is fair debate, but it had the flavor of almost a threatening suggestion of a political clout.

I think it is for the people out there to decide, those who finally go to the polls, as to what will be the effect any votes are going to have.

I would not suggest to any Member that "if you go this way, you are going to have trouble." I do not feel that that flavor of threat should be part of this debate. That is a matter for the individual. Perhaps his political future should be reflected by what he does here. But I am not going to say, "Senator HATCH, watch out. If you keep going that way, down that road, you're going to have trouble."

Mr. HATCH. Others have said that, principally the AFL–CIO.

Mr. WILLIAMS. My appreciation to the Senator for permiting me at this time to have this discussion.

Mr. HATCH. I am delighted to yield to the distinguished Senator from New Jersey at any time. I enjoy my colloquies with him. I think he makes a very interesting point. He has been the principal spokesman for the AFL–CIO in the U.S. Senate during the last approximately 20 years, so he does have a great interest in exposing his point of view on this subject.

With respect to misrepresentations, I saw the special report from the AFL–CIO: Mom and pop are not involved. Of U.S. business, 78 percent are exempted from this bill.

They did not tell us that 72 percent of them were sole proprietors, where the only employee is the proprietor, and that the other 6 percent are businesses of probably less than three employees. In other words, they are so small that nobody would try to organize them, anyway.

Last week, I received a report which was humorous in nature, because they said this, as I recall:

The following describes all that the Senators from Utah, Senator GARN and Senator HATCH, have done for the employees of America:

Then there was 3 inches of blank space.

The distinguished Senator from New Jersey knows that I have worked on the Human Resources Committee. I have done a great deal for the employees of this country. I have voted for the CETA bills, for youth unemployment bills, for pregnancy disability benefits, and for a number of other issues that have done a great deal for employees. Nevertheless, that is the way it is characterized to every employee of the 20-percent controlled by the AFL–CIO.

So when we talk about special interests, we can spend all day just talking about the misrepresentations by the labor movement in this particular issue.

If we really want to talk about misrepresentations, let us go to the bill, because that is where they all are. The bill is filled with misrepresentations and problems.

I understand why the distinguished Senator from New Jersey feels as strongly as he does. He has been a principal spokesman in this matter for a number of years, and in his eyes, justly so. I respect him for his leadership on our committee.

Mr. President, I understand that the distinguished Senator from Wyoming (Mr. WALLOP) wishes to make a statement. I ask unanimous consent that my remarks not be considered a second speech under the rules.

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

Mr. HATCH. I yield the floor to the Senator.

The PRESIDING OFFICER. The Senator fom Wyoming is recognized.

Mr. WALLOP. I thank the Senator from Utah.

Mr. President, I thank the Senator from New Jersey as well, because I think he puts in some perspective what we are trying to do here.

I do not honestly feel that there has been any attempt on the floor to threaten people—on eiher side. Naturally, in an issue that goes as far as this one does, there are pressures from without this Chamber that exceed any that are inadvertently achieved within the confines of this Chamber.

I have spent some time analyzing the effects of the amendment of the distinguished majority leader on the small businesses and the employees of my State. I suspect that, while the intent to modify this bill is genuine, the effect of the modifications—as it will relate in my State, and probably to others—is really no modification at all.

Over the course of the past 2 months, the small businesses of this country have combined their efforts and worked together to help defeat passage of this so-called Labor Reform Act. Since the emphasis of the past few weeks has been on the topic of small businesses and the impact this legislation will have on the employers and employees of these businesses, let me point out some figures with respect to the employment force in the State of Wyoming which will prove how devastatingly powerful this legislation would be in my State, if enacted.

I preface this by saying that Wyoming is a right-to-work State. We have a large and viable union membership, and we have a large and viable work force that is nonunion. To characterize one side or the other as being antiemployee is an unjust characterization of those who believe in their union and their membership in the union and take pride in it. It is truly an unjust characterization of those who choose not to belong to unions and who, with the sweat of their brow and the callouses on their hands, are still contributing members to the economy of that State.

In my State, as of February 1977, there were 11,933 total business firms. Of this total number of 11,933, 228 employ more than 100 workers. Let us break it down even further. Of the 11,933 total firms, 11,611 employ less than 50 workers.

The total work force in Wyoming numbers 115,979. Out of these 115,979 employees, small businesses have on their payrolls almost three-fourths of the work force in the State of Wyoming. These figures include all businesses, from the smallest retail store to the largest mining company.

Small businesses, those under 100 employees, are the backbone of Wyoming, and have been. It is only recently that major corporations with energy interests brought in large numbers of employees and large work forces to that State. Until that time, perhaps the Union Pacific was the major employer in the State of Wyoming. The small businesses, with less than 100 employees, in the State of Wyoming, have the largest percentage of workers within the State; and one has to draw the conclusion that they have every right to voice their concern in opposition to this legislation, and they have done so. They represent most of the people who work and are employed in the State of Wyoming. They fear, as I do, that if H.R. 8410 is enacted, their business will suddenly be an easy target for professional unionizers who wish to begin organizing in an area which up until this time has not been very fertile territory.

On Friday, May 26, Senator ROBERT C. BYRD proposed an amendment which would codify existing jurisdictional limits set by the National Labor Relations Board. It has been the point of our argument the past few days that this amendment would do nothing to protect those small businesses already covered under the Board's jurisdictional tests from the pro-union provisions of H.R. 8410. This amendment cannot be used as a compromise, because in essence it does nothing to change what already exists. Small businesses are the ones who will bear the burden should 8410 become law.

Should it become law and should any significant number of those businesses fail, what, one may ask, is the advantage to the employees of a company that no longer exists? One can scarcely call that labor reform.

The correspondence I have received, both for and against the labor reform bill, has numbered about 7,000 pieces. That is trivia compared to the mail load of those from larger States. Nevertheless, from a State with the population of Wyoming, it is a significant comment by the population on a piece of legislation before the U.S. Senate.

A breakdown of the totals show that the mail has run far more than 2 to 1 against the passage of H.R. 8410.

A number of letters from small businessmen spell out their concerns about this legislation. At this time, I should like to read some of the more meaningful letters which were sent to me by informed and interested small businessmen and workers from the State of Wyoming.

It should, I hope, make us aware how these employers and employees are feeling and why they fear the results should H.R. 8410 become law and why they fear the results even with the well-intentioned but basically ineffective compromise amendment that is on the floor before the Senate at the moment.

I have a letter from a Mr. L. Steltenpohl from Casper, Wyo., who writes:

DEAR SENATOR WALLOP: Well, it looks like the unions are trying to change the rules again so that they can have it all their way. I am referring to S. 1883—

Which through the power of metamorphosis has come to be H.R. 8410 again, and we have been through that, the Labor Reform Act of 1977. Suffice it to say the gentleman refers to the legislation essentially that is in front of us.

I want to say that this bill is not reform; it is union power grabbing.

As a retailer, I have from time to time had experience with unions trying to organize my workers. They have not had much luck so far, but under this new bill they could walk away with the election. As my Senator, I am relying on you to make sure that this does not happen. I want you to oppose this legislation.

As things stand now, the unions have every right to try to organize my workers, and they do try. Fortunately, even though the present law is not completely fair to me, I do have a chance of beating the unions, and so far I have. That will not be true if this new idea becomes law.

Probably the most troublesome provision in this proposal is the part on equal access to my employees during working hours for the union. As you know, Senator, a retail store is a public place. The public is encouraged to visit my store. I would like to know how I would prevent union organizers from turning my store into an organizing campaign ground. In addition, why does the union need even more access to my employees than they already have. Union representatives can visit my employees at home, in any public place, even my store when they are not working. At the same time, my access to my employees is pretty much confined to meeting them during the time they are working for me. This provision is clearly designed to ease even more the problem unions have in meeting with my employees. I think it is unfair.

The manner in which a retailer must conduct himself in attempting to give his side of the story to employees about union organization is now very difficult. The average retailer is not versed in the legal complexities involved. The strict time limits S. 1883 would impose, would make it impossible for the retailer to mount a campaign which would tell the employees the other side of the story and thereby give them the opportunity to make a fair choice. This proposal speaks of a delay that normally does not exist, and on the other hand clearly tilts the balance in favor of the professional union organizer. In doing so, it deprives the employer of the right of rebuttal and more importantly, denies the employee the right to make a choice based on two viewpoints.

Section 8 of the Labor Reform Act of 1977, which amends the Labor Management Relations Act invites a condition that puts the NLRB on the union's side of the bargaining table. This proposal puts the retailer at the mercy of a union. In retailing, generally the retailer is not a trained labor expert, and the cost of hiring outside help is prohibitive. For such an employer, when confronted with professional union negotiators, the advantage clearly lies with the union. With relative ease, a skilled union negotiator could solve a major first-contract issue by provoking the inexperienced employer into making mistakes that would subject him with an order from the NLRB setting employment costs. This is certainly a departure from freedom of enterprise.

As my Senator, I want you to oppose this union power grab. Vote against S. 1883.

Sincerely,

L. STELTENPOHL.

I have another one from a man who runs a Best Western Motel in Powell, Wyoming, the Kings Inn. Mr. E. J. Cregger writes:

DEAR SENATOR: I am writing in regard to S. 1883 the "National Labor Reform Act," which you will be voting on shortly. I believe it is critical that you vote NO on this legislation to avoid the damaging effect it would have on my business in upsetting the present balance between business and unions to

give either an unfair advantage in organization efforts. Some of the very objectionable features of the proposed measure include:

1. The requirement that employers give union organizers the opportunity to communicate with employees on plant premises during working hours;

2. NLRB ordered wage and benefit increases when and if the Board and the Board alone determines that an employer has not properly negotiated with a unit; and

3. Elections that would be held on a quick schedule, making it impossible to properly educate the employees on the advantages and disadvantages of union membership.

My business, employing less than 15 persons, would be particularly damaged by any law of this type. I would be unable to counteract a well-financed union drive.

I urge you to vote NO on this or any similar revision of the current labor acts which would further encourage unionization of our business activities.

Sincerely,

E. J. CREGGER,
*Kings Motel Inc.*

The interesting thing, Mr. President, about these particular letters is that many of these people have already undergone an attempt at unionization despite the fact that they are said not to be under the coverage of the practice of the NLRB as it exists today.

Another interesting thing is that their concern is consistent in their inability to summon up the economic resources to challenge at one time both the U.S. Government and any given union through the National Labor Relations Board.

I have another letter from the Wyoming Health Care Association signed by Mr. Dan J. Lex, who is executive director of it. And it reads as follows:

DEAR SENATOR WALLOP: I am writing in behalf of the nursing homes of Wyoming to express our concerns regarding the upcoming NLRA "Reform" bill (S. 1883).

As small businesses, we are very concerned with the impact such legislation may have if passed. Areas of this bill that concern us most are:

1. "Quickie" elections within 15 days of a union's demand that an election be held will hamstring employers and give the unions an overwhelming advantage in unionizing employees—whether or not employees really want it.

2. Requiring employers to subsidize the costs of a union's election campaign is unconscionable. Why should business be expected to subsidize organizing efforts?

3. Giving the NLRB such massive powers to intimidate business will cause companies to capitulate rather than risk penalties that can be imposed for standing up to the unions.

4. "Packing" the Board is a scheme reminiscent of efforts to "pack" the Supreme Court.

5. Requiring the Board to seek Court injunctions for a wide variety of "interference" allegations—rather than the current limited list of allegations with discretionary powers in all others—will burden the Courts with a flood of injunction requests, further delaying resolution of cases.

6. Authorizing the Board to enforce its own orders by taking specific action against a party "willfully" violating the Act will make the Board its own prosecutor, judge and jury.

7. Imposing a very strict standard of review on any Court that may have to rule on a Board certification decision takes away an employer's right of appeal to the Courts.

As we understand, Senators Tower and Hatch will lead a filibuster against the bill. We would ask that you support them and vote against cloture as often as is necessary.

Thank you.

Sincerely,

DAN J. LEX,
*Executive Director.*

I point out that the sixth concern that the gentleman, Mr. Lex of the Wyoming Health Care Association, brings out authorizing the Board to enforce its own orders by taking specific actions, thereby making the Board its own prosecutor, judge, and jury, has become one of the most discredited and, in fact, difficult things to deal with in the so-called Occupational Safety and Health Act. The fact that it goes outside of the traditional system of justice in this country which has got to give us all pause to sit back and consider whether or not it is really in the best interests of anyone—employers and employees of America—that we bypass our judicial system, especially as it relates to those in the world of small business who cannot afford permanently engaged lawyers, who cannot afford to appeal to court after court after court up through a system once they have been belted by a decision of the National Labor Relations Board or, indeed, an OSHA inspector.

Mr. President, I have a mailgram from the Wyoming Retail Merchants Association, from a Mr. Guy Gjorklund, president, and Mr. Gary N. Zook, the executive vice president.

DEAR SENATOR WALLOP: WRMA urges you to oppose the passage of S1883, the so-called NLRA Reform Bill. We feel this is a huge union power grab, an effort to shore up declining union membership at the expense of business, and the target is unmistakably small business.

Several provisions of S1883 are unsatisfactory and violate the very foundations of our democratic form of government and our free enterprise economic system.

"Quickie" elections within 15 days of a union's demand that an election be held will hamstring employers and give the unions an overwhelming advantage in unionizing employees—whether employees really want it.

Requiring employers to subsidize the cost of a union's election campaign is unconscionable, why should business be expected to subsidize organizing efforts?

Giving the NLRB such massive powers to intimidate business will cause companies to capitulate rather than risk penalties that can be imposed for standing up to the unions.

"Packing" the board is a scheme reminiscent of efforts to "pack" the Supreme Court.

Requiring the board to seek court injunctions for a wide variety of "interference" allegations—rather than the current limited list of allegations with discretionary powers in all others—will burden the courts with a flood of injunction requests, further delaying resolution of cases.

Authorizing the board to enforce its own orders by taking specific action against a party "willfully" violating the act will make the board its own prosecutor, judge and jury.

Imposing a very strict standard of review on any court that may have to rule on a board certification decision takes away an employer's right of appeal to the court.

If Congress really wants to reform the current system, it should:

Guarantee secret ballot election absolutely.

Guarantee employees the right to vote on whether to strike or continue a strike.

Insure union members have a say in how their dues are spent and non-union employees in a "union" or "agency" shop are protected from having to support the political activities of the unions.

Make union violence an enjoinable activity and provide injured employees the right to seek damages from the wrongdoers.

Thank you for considering our position, we sincerely hope you will agree and aggressively oppose S1883.

GUY GJORKLUND,
*President.*
GARY N. ZOOK,
*Executive Vice President, Wyoming Retail Merchants.*

All of these letters have a consistency to them that expresses a genuine fear of, try as one will, to go through the amendment that is before us, one cannot find any area in which it will ease their very genuine fears. I would again say that I can scarcely find it in my heart to quarrel with people who worry about their jobs or their business when they write in opposition to this.

It is possible now to organize, and I would suggest that the country knows that it is possible to organize. I would also suggest that the country knows full well that when people do organize generally they have been sold, and their organization, the union into which they have been organized, works hard at representing them.

Remove the requirement to compete for their affections, and you put on the working men and women of this country a system of tyranny that is not, I suggest, in their interest. Unions should have to compete for their affection. A union should represent them well. A union should have to continue to represent them well in order to continue to attract their membership.

To take it away, to take away that competitive edge that is necessary to attract their loyalty, I think it would be a grave error and a grave disservice to the working men and women and their employers in this country.

Mr. President, I have two other letters which I ask unanimous consent at this time to include in the RECORD.

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

CHEYENNE, WYO.,
*January 16, 1978.*

Hon. Sen. MALCOLM WALLOP,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR WALLOP: I am writing in reference to the new Labor Reform Bills presently being considered by Congress. The bill in the House of Representatives is H.R. 8419 and in the Senate is S. 1883.

The first I heard of this new bill was from an article titled, "New Labor Laws Would Force Workers to Join Unions", published in the Clarior-Ledger Jackson Daily News, Jackson, Mississippi on December 25, 1977, copy attached. I feel this is a great injustice to be handed the American workers. I believe the bill will place a yoke around every

worker's neck. Stop and consider the effect it can have on unemployment, economy of the country, and the companies that do not want Union shops? My feelings are companies will close, the economy will decline, and unemployment will rise. Making a worker join a Union, if he is against it, means he cannot work at his profession. If he does join a Union, then his take home pay is decreased, his buying power has decreased, and he is at the whims of the Union.

May I call your attention to Article XIII, Section 1 of the Constitution of the United States, which says:

"Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Forcing a person to join a Union against his will is placing him in involuntary servitude, because he must do as told by the Union. Why do I say this? Because if the Union decides to go on strike, then he must follow that ruling. He cannot work for if he does, he will be harassed. Here is a good example of what I mean. The Soft Coal Union is on strike, and the newspapers and news reports are how non-union coal companies are being harassed by the Unions. They, the Unions, are doing everything they can to close them down. Is this right?

The President has made speeches about the "Rights of Humans." I see where the passage of this type of law is not for the workers human rights to work, but taking it away from him. Taking away the "Human Rights" of the American people is starting the downfall of the American Way of Life. How can we speak of "Human Rights" to the world when it is being denied here?

I agree, we do need new Labor Reform Laws. We need it to protect the non-union workers as well as the union workers. Look at the violence and destruction of property that has been caused by the present soft coal strike. Where are the laws that prevent violence and destruction during a Union Strike? When violence and destruction are caused during a strike, every person in America is hurt. Companies are closed and worker's pay is lost because these companies do not want to have thousands of dollars worth of damages done to the plants or mines. Where is their protection?

I see where passage and signing into law either bill H.R. 8410 or S. 1883 is the first step to becoming a Union controlled country. Our Legislature, Executive and Judicial branches of the country will become, not by the people for the people, but by the Unions for the Unions. Again, our Rights as Humans have been lost. Look what the Union forces have done to the economy of Great Britain. Is this the same thing the American people want? I say "NO!"

I strongly feel that the Bills for Labor Reform now in Congress are not in the best interest of the American Labor Force. Our Constitution gives the American people the right to life, liberty and the pursuit of happiness. Our life is threatened by strike violence. Our liberty is taken away because we will be forced to join Unions to work and do their bidding.

As a worker who will fall in the category of being forced to join a union to work, I feel either Bill H.R. 8410 or S. 1883, if passed, is unconstitutional.

Sincerely,

ALLAN D. WALCKER.

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NEW LABOR LAWS WOULD FORCE WORKERS TO JOIN UNIONS

(By Reed Larson)

Organized Labor, increasingly rejected by America's working people, is looking to Congress to give it a bill with which it can force hundreds of thousands of additional workers into unwanted unions.

This latest grab for government-given power comes at a time when there is conclusive evidence that the American wage-earner is less willing than at any time in the last 40 years to join a union.

In 1976, only 24.5 percent of all non-agricultural employees in the nation were union members—the lowest percentage since 1937, according to the U.S. Department of Labor.

Union members now comprise only 20.1 percent of our total labor force—a 20 percent drop since 1955, organized labor's highwater mark. Most of these workers joined a union because they had to—to hold their jobs.

Private-sector unions sustained a new net loss of 866,000 dues-paying members between 1974 and 1976—the first decline in union membership in 14 years.

In 1976, union organizers won only 48 percent of 8.638 NLRB-supervised secret-ballot union representation elections—down from 61 percent in 1965. And unions call for elections only when they think conditions are most favorable for a union victory.

The number of elections to withdraw from union representation increased from 200 in 1967 to 600 in 1976.

Confronted by these alarming statistics, union organizers are now waging a multimillion dollar campaign to influence Congress to pass what they erroneously call a labor law "reform" measure.

Identical "reform" bills have been largely prepared by and introduced at the bidding of the AFL–CIO. Union lobbyists and Secretary of Labor Marshall persuaded President Carter to endorse the "reform"—H.R. 8410 in the House of Representatives and S. 1883 in the Senate. H.R. 8410 passed the House on October 6, 1977. Hearings have been completed on S. 1883 but final Committee action and floor vote is not expected in the Senate until early 1978.

Unquestionably, the fundamental rights of working men and women will be severely jeopardized if either bill becomes law in its present form. Despite denials by the bill supporters, the effect plainly will be to coerce more and more employees into union membership in non-Right to Work states—and into irrevocable (and automatically renewable) dues check-off arrangements in Right to Work states.

This coercion will be accomplished by establishing devastating new financial penalties which the National Labor Relations Board—at the demand of Big Labor—can impose on any business resisting union demands.

An employer who balks at compelling employees to support an unwanted union, for example, would risk an NLRB ruling that he has not "bargained in good faith." The new government reprisals that would follow such a ruling could cripple large businesses and destroy smaller ones.

As a result the typical employer would be strongly influenced to sign a union agreement without delay, no matter what union negotiators demanded. And almost invariably, union spokesmen insist that all employees be required to pay union dues or fees as a condition of continued employment.

If S. 1883 (H.R. 8410 in the House) is passed into law, employees will become helpless pawns caught in a bitter struggle between Big Labor, desperate for new members, and large and small businesses, afraid of government reprisals for resisting union demands.

Clearly, S. 1883 is designed to blackmail employers into becoming the instruments of union oppression. This was accurately summed up recently by noted New York Times columnist A. H. Raskin, when he noted that union organizers have come to rely on "union-shop contracts and other kinds of 'pushbutton unionism' in which the employer delivers over workers." This is, the proposed law is heavily loaded with provisions which make it profitable for an employer to compromise his employees' freedom of choice while, at the same time, making it extremely costly for him to defend employee freedom.

Ironically, this latest grab for power by union bosses comes at a time when Organized Labor enjoys virtual exemption from most federal laws protecting human rights. As the 1974 winner of the Nobel prize in economic science, F. A. Hayek, wrote:

"They (unions) have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which governments signally fail in their prime function—the prevention of coercion and violence."

The inevitable results of our one-sided national labor policy are what anyone would expect: union irresponsibility, corruption, and violence. Here a few typical examples of what has happened to workers who freely decided for themselves they did not want a union:

Sammy Kirkland was viciously beaten in Florida for trying to operate a backhoe without a union card. In the Denver area, the chief organizer of the Northern Colorado Building and Trades Council had more than 40 apartment and townhouse developments put to the torch as part of his scheme to drive non-union construction workers off the project and out of work.

In Missouri the NLRB had to order the president of the Laborers Union Local to stop shooting at his own members! And in Louisiana, Joe Hooper, father of two small children, was shot to death by an AFL–CIO union mob. Hooper was even a union member . . . but he had joined the "wrong" union!

To prevent further "stacking the deck" against the individual employee, the National Right to Work Committee has proposed three short amendments to S. 1883. The amendments would prohibit application of the bill's penalty provisions in any situation in which compulsory unionism is an issue in union contract negotiations.

Backers of the labor law "reform" proposals say their purpose is simply to reinforce the right of employees to join unions and accept collective bargaining. If advocates of H.R. 8410 and S. 1883 were sincere, they would not object to the Committee's anti-compulsion amendments. Yet, congressmen acting in Big Labor's behalf made certain the amendments were not even considered in the House debate on H.R. 8410. And there are no signs to indicate that the pro-union Senate Human Resources Committee has given the amendments consideration.

The real intent of H.R. 8410 and S. 1883 has now become clear.

Rep. Frank Thompson (D-N.J.) admitted publicly in July that his proposal is aimed at "doing away with open shop havens." In his view, an "open shop haven" is created by a state Right to Work law.

Once employed by the United Auto Workers as a union organizer, Rep. Thompson is principally known for introducing "sweetheart" legislation sought by the union hierarchy—including the 1975 and 1977 "common situs" picketing bills and the 1965 measure designed to repeal Section 14(b) of the Taft-Hartley Act.

AFL–CIO president George Meany confirmed organized labor's real goal on September 7, 1977, when he appeared before the House subcommittee chaired by Thompson. Meany clearly signaled that passage of H.R. 8410 would bring an all-out Big Labor attack on Right to Work when he said:

"This is the year to revamp the first aspect of the (National Labor Relations) Act . . .

Then let's get on to the second portion of the NLRA—the collective bargaining process, the strike, the picket line, the boycott, union security and Section 14(b)..."

Further and conclusive corroboration was provided when Vic Kamber, the director of the AFL–CIO's "Task Force on Labor Law 'Reform'", trumpeted an October 31 poll, commissioned by the AFL–CIO, purporting to disprove widespread support for Right to Work laws.

However, the findings by the so-called "Public Interest Opinion Research" firm of Alexandria, Va., are contradicted by such reputable and widely-known research firms as George Gallup, The Roper Organization and Opinion Research Corporation of Princeton, N.J.

According to a Gallup poll last spring, 63 percent of the American public oppose compelling people who work for a unionized employer to join a union once they have been hired, while only 31 percent support the idea.

The National Right to Work Committee has no objection to—indeed it welcomes—real, meaningful labor law reform. But the bill which the House passed and which is scheduled to go before the Senate in early 1978 is not it—at least in its present form.

One thing this country does not need is another weapon which organized labor can use to force American men and women into joining a union or paying dues to keep their job. That's compulsion—that's un-American—and that's wrong.

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RIVERTON, WYO.,
*January 2, 1978.*

Senator MALCOLM WALLOP,
*Casper, Wyo.*

DEAR SENATOR WALLOP: I am a retail store operator in your state. My reason for writing is to let you know that I am completely opposed to S. 1883, the so-called Labor Reform Act of 1977. I want you to vote against this measure when it is considered by the Senate.

As I see it, this law is not reform; it is a power grab by big labor. They want the Congress to give them a free ticket to organize workers. I don't agree to the idea of giving labor unions a crutch. There is a lot of dissatisfaction with labor unions. They say they are for the worker; but it doesn't turn out that way.

I have included some of my reasons for being opposed to S. 1883.

(1) What does this bill mean in terms of equal access? If for example, an employer incidentally talked to one or two employees during working hours about the union, would the organizer have the same right? If so, a retailer's selling floor would become the organizational campaign ground. That kind of activity could seriously disrupt the ongoing conduct of business.

(2) The new proposal would also give all the advantage to the union in an organizing campaign. The union could work months getting signature cards from my employees; once they had 51% of them signed up they could ask for an election. As a store manager, I have all kinds of things to do. I do not spend all of my time trying to prevent union activity. More likely than not, the first word I would have about the union election is when I am notified that it will take place in 15 days. Now how am I supposed to be able to answer all the union's charges and tell my side of the story? Fifteen days is just not long enough; particularly when the union has had months to work on my employees. This is not labor reform, this is union power grabbing.

(3) A third part of S. 1883 that really bothers me is that if a union wins the right to represent my employees, the government could step in and tell me how much I have to pay the employes if I don't dance to the union's jig while bargaining. That's nothing more than putting the government on the union's side. That's unfair.

There are plenty of other problems with this bill, Senator. As my representative I ask you to vote against this measure. It is a wrong move and it is a move against the rights of both employees and their employers and for a big special interest group. Vote No, on S. 1883.

Sincerely,

LARRY NABER.

Mr. WALLOP. These letters are from people who are not employers but employees.

I would suggest that both sides have a genuine interest in their opposition to this bill; that it is not something that is opposed by the giants of industry in this country; it is not something that is opposed by antiworker human beings, cruel, unreasonable capitalists, but people who are genuinely the backbone of the economy of this country, and who genuinely work to seek to represent the best interests of the working men and women of this country.

Mr. President, I see the distinguished Senator from Oklahoma (Mr. BARTLETT) has arrived on the floor. I yield to him at this time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. I thank the Senator from Wyoming.

Mr. President, last week I directed my remarks on the subject of the Labor Law Reform Act to the substitute bill introduced by our distinguished majority leader, Senator BYRD. I was not able to read my statement in its entirety because of the fourth cloture vote that was schedule to take place then. Today I would like to begin my remarks at the point where I was cut off.

As I stated in my previous address on the subject of the Byrd substitute, I believe that it does cover some of the concerns with H.R. 8410, as expressed by those of us here who feel that passage of this legislation is not in the best interests of the small businessman or the employee. But I hastened to add then, just as I do today, that the fundamental thrust of the amended provisions remains the same, and thus the substitute fails to reflect genuine compromise.

3. MAKE-WHOLE REMEDY—SECTION 9

Under the current law, there is no provision for a "make-whole" remedy. But under section 9 of H.R. 8410, which amends section 10(c) of the National Labor Relations Act, the Board may award, in cases where there has been an unlawful refusal to bargain before entering into the first contract, compensation to unit employees for the delay by the unfair labor practice.

The amount is to be measured by the difference between, first, the wages and other benefits actually received by such employees during the period of delay, and second, the wages and fringe benefits the employees were receiving at the time of the unfair labor practice multiplied by the percentage change in wages and other benefits stated in the Bureau of Labor Statistics average wage and benefit settlements, quarterly report of major collective bargaining settlements, for the quarter in which the delay began.

The Byrd substitute deletes this standard and inserts in its place the Bureau of Labor Statistics' "employment cost index" for occupations covered by collective-bargaining agreements. According to Senator BYRD, this standard "should assure that the experience of small employers will be fairly reflected in the Board's remedy." Senator BYRD indicated in his statement in support of the substitute that an employer will not incur make-whole liability prior to the time that it is put on notice by the NLRB's general counsel that an illegal refusal to bargain is taking place. This "safeguard," however, is nowhere reflected in the language of the substitute as printed in the June 8, 1978, CONGRESSIONAL RECORD.

Mr. President, the substitute thus exchanges one complex governmental standard for another—it does nothing to alleviate the difficulties associated with the use of any governmental standard. For example, by computing a particular employer's make-whole liability, a union can use this figure to its tactical advantage both in efforts to organize employees, and in the negotiation of an initial contract. During organizing drives, union organizers could guarantee minimum wage rate hikes in the initial contract simply by indicating that in the event the employer refuses to bargain in good faith the Government will provide employees with a specified increase in hourly wages as a remedy for the unlawful conduct.

In addition, an employer's make-whole liability will inevitably serve as an artificial floor below which a total economic package may not realistically fall. No union will be willing to accept an economic package less than what can reasonably be anticipated through make-whole relief. Finally, the substitute measure does nothing to preclude application of the make-whole remedy to employers who are doing nothing more than satisfying the statutorily required prerequisites for court review of Board determinations in representation proceedings.

Assuming that Congress approves this remedy, although it is my hope that they do not, qualifying language should be added so that this provision would not apply in situations where an employer legitimately challenges a refusal to bargain finding and/or where there is a genuine issue of fact or law concerning determinations arising from an election; for example, unit issues, objections to the conduct of an election.

Due to the many problems with respect to computing the amount of compensation to be awarded an employee based on the Bureau of Labor Statistics settlement index, or the "employment cost index," I believe that a new and objective formula should be formulated. For example, the following language might be adopted in the appropriate places of section 3(a) of H.R. 8410:

In a case in which the Board determines that an employer's unlawful refusal to bargain prior to the entry into the first collec-

tive bargaining agreement with a representative selected or designated by a majority of employees in the bargaining unit was for the sole purpose of delay and no genuine issue of law or fact was present to warrant a refusal to bargain, the Board may award to the employees in that unit compensation on a lump-sum basis for the delay in bargaining caused by the unfair labor practice. In determining the amount of compensation to be received as a result of the delay in bargaining caused by the unfair labor practice, the Board shall consider (1) wage increases received by employees in the same geographical area performing similar work for the period of time in question; (ii) wage increases received by bargaining unit employees prior to refusal to bargain; (iii) wage increases received by employees in other facilities of employer in the same geographical area performing similar work over period of time in question; and (iv) such other factors as the Board determines relevant. Upon consideration of these factors, the Board shall ascertain what the percentage change in wages would have been for the period of time in question and shall multiply that change by the difference between the wages received by such employees during the period of delay, and the wages such employees were receiving at the time of the unfair labor practice.

Mr. President, the "make-whole" remedy under H.R. 8410 represents a fundamental shift in Board policy concerning collective bargaining. Succinctly stated, that policy which dates back to the days of the Wagner Act of 1935 has been for the parties to reach their own agreement without Government interference with respect to the terms of the settlement. It is also yet another example of a punitive remedy being assessed against the employer. The make-whole remedy will result in the Government writing contracts for the employer and, therefore, the entire process of free collective bargaining, which is the cornerstone of labor-management relations in this country will be overturned.

Because the Board will, in effect, become a third party in all negotiations, this governmental intrusion into rights is unprecedented.

A key factor which the committee failed to consider is that the United States, in comparison to developed countries with free trade union movement, ranks among the lowest in terms of percentage of available workdays lost to labor disputes. It is clear, therefore, that prior to overhauling the process of free collective bargaining, which has worked exceptionally well over a period of 40 years, that the need and the proposed benefits of the change be clearly demonstrated.

This factor must be coupled with the findings in a recent study on the economic impact of the make-whole remedy conducted by Rinfret Associates, that—

[T]he "make-whole" provisions . . . appear to use an extreme settlement solution and appear to be inequitable, unfair and to violate the spirit of fair play which is the essence of American legislation. These Amendments, as proposed, could result in an unfair economic advantage for large trade unions and for large business.

Thus, not only is this provision an inflationary one, but it might accelerate the exportation of jobs in those industries that are already besieged by foreign competition.

Moreover, it is difficult to understand why the average wage and benefit settlements index or the employment cost index is an appropriate standard to penalize employers whose wage rates may be less than the index. An analysis of the companies comprising the Bureau of Labor Statistics index, which includes representatives from the telephone, steel, automobile, aluminum, and rubber industries, reveals three common characteristics: they are oligopolies; they are capital intensive, as opposed to labor intensive; and, they are industries in which unions have historically had a stronghold indicating a total disparity in leverage. Thus, by definition, these settlements will be significantly greater than the normal first contracts with a small employer.

A case in point is the recently negotiated coal contract which has been costed out over a 3-year period to a 41 percent increase in salary. Since the contract is front loaded, which entails a greater salary increase during the first 2 years than in the final year, the first-year salary increase may be as high as 15 or 16 percent.

A further problem in this area concerns the committee's insistence that benefits be considered as well as wages. According to a highly complicated formula set out in the Senate report (page 17, n. 5), one must attempt to place a cost figure on benefit plans—

[I]n situations where the only compensation to the bargaining unit employees is in the form of wages.

The simple answer to this proposition is that costing out benefits is a terribly complex process which entails placing dollar figures on such intangibles as holidays, vacations, pensions, health and welfare plans, and the like. It is perfectly obvious that unless another more feasible approach is taken, decisions on this subject will be arbitrary at best.

Mr. President, the make-whole remedy is particularly inappropriate because a refusal-to-bargain charge by the National Labor Relations Board which arises out of delays occurring before the signing of a first contract is often a minor, technical violation of the act. Moreover, any unilateral change by an employer with respect to mandatory subjects of bargaining, may violate section 8(a)(5) of the act.

Thus, if a company decides to require its employees to wear respirators based on preliminary findings by the Occupational Safety and Health Commission that a certain product has potential toxic effects, this unilateral action may result in a section 8(a)(5) violation irrespective of management's good intentions.

Similarly, an employer may violate the act if he refuses during negotiations to allow a union representative to examine his books and records with particular reference to the unit costs and profit margins. See, e.g., *NLRB* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (1956).

The case law on this subject shows that employers acting in complete good faith are oftentimes found in violation of section 8(a)(5). The imposition of such a drastic remedy in this context is totally unfair and is disproportionate to the violation that it is designed to cure.

The make-whole remedy will also eliminate the employer's only effective method under existing law of appealing adverse decisions in cases where bargaining units are determined. Under current practice, an employer must refuse to bargain with a union if he wishes to seek appellate court review of what he considers an erroneous bargaining unit determination or an objection to the election. If the court rules against the employer, the Board may then issue a bargaining order as a remedy. Thus, the well-settled practice of challenging bargaining unit determinations would be effectively eliminated because the employer will be deterred from seeking court review because he risks a more severe sanction.

The make-whole remedy directly contradicts precedent thwarting efforts of the Labor Board to interfere in the bargaining process. There are several Supreme Court rulings prohibiting the Board from compelling settlement of disputes over the terms of a contract.

The Court has repeatedly held that the right to bargain does not entail the right to insist on a position free from economic disadvantage. It is not surprising, therefore, that this remedy was rejected by the former Secretaries of Labor and Board Chairman Fanning in their testimony before the House Subcommittee on Education and Labor on H.R. 8410.

4. CONTRACT DEBARMENT—SECTION 9

Under the current National Labor Relations Act there is no provision for debarment. But under section 9 of H.R. 8410, which amends section 10(c) of the act, companies or labor organizations found to be in willful violation of a Board or court order may be debarred.

This debarment procedure is initiated by the Board which makes a recommendation to the Secretary of Labor. The Secretary then has the discretionary authority to reduce or rescind a debarment order whenever the Board determines that the unfair labor practices upon which the order is predicated have been remedied.

The Byrd substitute measure incorporates an essentially meaningless change into the contract debarment provision. It would turn the Secretary of Labor's discretionary authority into a mandatory authority so that debarment orders would be lifted automatically upon a Board determination that the unfair labor practices have been remedied.

The substitute measure fails to address any of the inherent deficiencies in the contract debarment procedure. For example, it does nothing to alleviate the unfairness to employees who lose their jobs as a result of debarments. Nor does it provide any remedy against flagrant violators of the NLRA who do not contract with the Federal Government.

In addition, the failure to provide for appellate review of either Board's determination that a willful violation has occurred or the Secretary of Labor's determination that debarment will not ad-

versely affect the national interest perpetuates the due process infirmities in the current provision. Finally, the substitute maintains the incentive for parties to litigate rather than settle cases which have been filed so as to minimize the possibility of loss of future Government contracts.

Mr. President, assuming that Congress really believes that debarment is a necessary sanction, and I want to make it clear that I do not, enforcement should be left in the Federal district courts as characteristic of Board procedure with respect to contempt matters. Because the Board has been successful in enforcing contempt charges before the Federal district courts, there is no reason to assume that it will not be equally successful in bringing debarment charges in that forum.

The Federal district courts insure that there is no institutional bias or other personal or political considerations taken into account.

There can be no question that debarment is fundamentally punitive. Chief among the problems resulting from this new remedy is the fact that debarment would be profoundly counterproductive to the goal of H.R. 8410 to protect workers' rights because of the simple fact that debarment would, in many cases, mean the loss of jobs for those employees who would be working on the contract. It obviously makes little sense to punish the worker for the employer's acts, even in cases where unfair labor practices by recalcitrant employers are willful and repeated.

The experience of the Office of Federal Contract Compliance Programs (OFCCP) illustrates why debarment should not be implemented, or at the very least, why debarment should not be implemented at this time. The difficulties within the OFCCP became so severe that a special task force was assembled to develop constructive suggestions leading to a more workable program.

That task force has just recently issued a report in September, 1977, on its findings entitled "Preliminary Report on the Revitalization of the Federal Contract Compliance Program." The report is less than complimentary. In referring to the lack of standards or guidelines within the OFCCP, the report acknowledges that:

> Until such time as OFCCP codifies and demonstrates its ability to require rigid adherence by contract officers to *reasonably definitive and objective standards for compliance decisions the fear of contractors will remain somewhat justified.* (Emphasis added.)

(Mr. DECONCINI assumed the chair.)

Mr. BARTLETT. The debarment provision is also without any qualifying language as to its application. As presently constructed, an entire corporation may be barred from receiving Government contracts even though only one of its affiliates or divisions is found guilty of a willful violation. Such a result is an overkill and is directly contrary to Board precedent which has developed several tests in analyzing whether two or more companies can be considered a "single employer." These tests include an analysis as to whether there is interdependence of operations, common ownership and control, and common direction of labor relations policies. These tests could serve as a useful guide rather than following the current "shotgun" approach.

Mr. President, it also appears that the sponsors of debarment contemplate that the Board will cease having contempt power. Under the current law, the Board may seek a contempt order in the Federal district court compelling the respondent to comply with a former Board ruling.

Under this section, however, the Board is imbued with the authority to seek debarment after determining that the respondent has willfully violated a final order. The difficulty with this scheme is the lengthy 6-month period of time it usually takes for an administrative law judge to reach a decision together with the additional 6-month period of time it usually takes the Board to reach a decision on appeal.

The end result may, perhaps, be stated more graphically by the suggestion that, by providing relief according to the administrative law judge route as a substitute for contempt power, you might increase delays on the order of a 1,000 percent. Moreover, Federal district courts are much speedier than administrative law judge proceedings and are empowered to give much greater relief in terms of possible sentences, fines, and the like, than an administrative law judge.

Supporters of debarment also fail to consider the Board's success in bringing contempt charges against violators of the Act. Throughout its history, the Board's record of bringing contempt charges against repeated or willful violators of a Board order is impeccable. By the same token, there are a number of extraordinary remedies available to the Board in dealing with the very small percentage of persistent offenders.

In sum, debarment represents a complete and unwarranted change in the philosophy of the act. Since there is a very real possibility that it will result in idling workers, it profoundly contradicts the avowed goal of H.R. 8410 to protect workers' rights. Not surprisingly, labor spokesmen have expressed much concern on this problem (oversight hearings on the National Labor Relations Board, 94th Cong., 2d Sess. 460 (1976)). Statement of Louis P. Poulton, associate general counsel of IAM and the American Conference of the United States recommended that this sanction be deleted (oversight hearings on the National Labor Relations Board, 94th Cong., 1st Sess. 523 n. 23 (1975)).

5. NLRB REGIONAL OMBUDSMAN

The Byrd substitute incorporates an earlier amendment to H.R. 8410 which would direct the Board to establish ombudsmen in each of its regional offices. These individuals, in the words of Senator BYRD:

> Would respond to inquiries about the operation of the law, Board procedures, complaint processing, and so on. Adoption of this proposal will provide meaningful assistance to the smaller businesses covered by the Act for whom the cost of outside counsel is burdensome.

Under current law, the Board conducts representation elections and prosecutes and adjudicates alleged unfair labor practices. The Byrd proposal would effectively place the Board in the position of dispensing substantive legal advice as well.

The Board's regional offices currently provide the public with a wide range of information regarding Board jurisdiction and Board procedures. For example, Board personnel routinely respond to inquiries regarding probable Board jurisdiction, whether certain conduct constitutes an unfair labor practice, procedures for filing charges, and many other questions pertaining to the administration of the act.

Regional personnel do not provide substantive legal counsel because to do so would put the regional offices in an administratively impossible dilemma. For example, notices to respondents that unfair labor practice charges have been filed could well be met with a response that the conduct engaged in was a direct result of advice supplied by the ombudsman. In addition, the proposal would give rise to legitimate complaints that taxpayer dollars were being utilized to subsidize the legal services of small businesses.

6. FREEZING NLRB JURISDICTION

Finally, the substitute incorporates a provision which would preclude the Board in the future from asserting jurisdiction over enterprises that do not satisfy the discretionary jurisdictional standards in effect on May 1, 1978. When this provision was originally introduced, the distinguished majority leader indicated that he believed it answered the charge that upon passage of the labor reform legislation "the NLRB will proceed to extend its jurisdiction to cover hundreds of thousands of small employers."

Relaxation of the Board's jurisdictional standards, however, is not a major concern of the small business community. Indeed, many small businesses would welcome the protection afforded by the NLRB in its current, well-balanced form. Rather than being opposed to the NLRB per se, small business is opposed to the decidedly prounion amendments to the NLRB which are contained in H.R. 8410.

In addition, the provision effectively guarantees the very result it purports to avoid. Because the Board's discretionary jurisdictional standards are expressed in terms of specific dollar volumes of business, inflation steadily erodes the jurisdictional thresholds thus expanding jurisdiction over small businesses. With the Board's monetary jurisdictional standards frozen at 1978 levels, the inevitable effect over time will be to systematically bring increasingly large numbers of small businesses under the Board's jurisdictional umbrella.

But under section 14(c)(1) of the Landrum-Griffin Act, the Board is already precluded from making its jurisdictional standards more stringent than those prevailing on August 1, 1959. The standards prevailing at that time (and

still effective today) were announced in Siemans Mailing Service, 122 NLRB 81. These standards were expressed in terms of specific dollar volumes depending upon the type of business in question. However, inflation has steadily eroded their jurisdictional thresholds, thus expanding jurisdiction over small businesses.

The Byrd amendment would continue this expansion by codifying standards written 20 years ago without taking into account the effect of inflation since that time. For example, the Board will assert jurisdiction over a nonretail enterprise if the gross annual outflow or inflow of goods sold or purchased are only $50,000. Because of inflation, far more small businesses would have been exempted under the $50,000 standard in 1958 than would be true today.

As is readily apparent, organized labor would benefit greatly from adoption of the Byrd amendment. By removing the Board's discretion in determining the scope of its jurisdiction, the amendment insures a gradual expansion in the coverage of the NLRB.

The Byrd amendment would still leave under the jurisdiction of the Board 847,497 business establishments, a rather substantial number even if one were to subtract all of the Fortune 500 companies. These businesses employ over 44 million workers, 75 percent of the covered work force. Statistics provided by the National Labor Relations Board further indicate that the companies which do not come under the Board's jurisdiction employ, on the average, less than five employees. Thus, while "Mom and Pop" stores may not be involved here, just about every business is.

Ignored by the proponents of H.R. 8410 is the practical effect of strengthening the power of unions against small employers. Union arguments in support of current labor law amendments include claims that employers engage in dilatory tactics before the courts and the NLRB. The only examples cited are very large corporations that have retained expert, and quite expensive, legal counsel. One might question whether a business employing only five workers has the financial resources to use the delaying tactics described by the unions if its propaganda is true.

Also, one might question whether a union is actually going to provide individual service to bargaining units of only five employees. If employees in these small units want union representation, it is available to them under present law. However, it would seem that such persons should not be forced into union membership solely because their employer would be forced into capitulating to union demands under the provisions of H.R. 8410.

As the NLRB stated in *South Hoover Hospital,*

> A small employer's first violation of the Act may be attributable to its gross ignorance of the labor laws rather than to its calculated design to subvert them.

That comment notwithstanding, H.R. 8410 would effectively establish harsh new penalties to be applied against any business, large or small, found to have violated the act either intentionally or inadvertently.

One other important fact not apparent from a cursory review of the Board's own jurisdictional standards is that the NLRB normally goes to great lengths to exercise jurisdiction over an employer even if its own criteria are not met. For example, the dollar volume of a motel in Sands Motor Hotel fell below the jurisdictional threshold. Nevertheless, the Board came up with the necessary dollar amount by lumping the motel's dollar volume in with the volume of a restaurant doing business near the motel, even though the restaurant was a wholly separate corporation.

A similar result occurred in James Johnston Property Management. There, the Board was confronted with an employer who provided management services to several small apartment buildings, but whose gross revenues fell below the $500,000 minimum. It overcame that problem by combining the dollar rental volume of all the buildings that the agent managed for the individual owners. As member Penello pointed out in his dissent, such a device was inappropriate as Johnston, together with all the other building owners, did not constitute a single employer. Each apartment was managed on a joint basis by Johnston and the owner of that particular building. There was no relationship of any sort between each of the building owners.

The Labor Act is grounded on the commerce clause, and one might think that the Board would allocate its limited resources carefully by considering only those cases having a substantial effect on commerce. However, when Grand Resorts, Inc., came before the Board, it chose to extend jurisdiction to a group of jai alai players on strike against a gambling corporation. Interestingly enough, while the Board was processing the case, the Immigration and Naturalization Service ruled that as long as the players, who had entered the country on occupational visas, were not working, they were subject to deportation. All 34 of the players, citizens of either Spain or Mexico, were sent home.

Finally, this provision would preclude the Board from reevaluating prior discretionary refusals to assert jurisdiction in light of current economic conditions. In the past few years, the Board has reversed precedent and asserted jurisdiction over private nonprofit colleges and universities, charitable nonprofit institutions, and law firms on the basis that changed conditions made assertion of jurisdiction appropriate. Such reexaminations would not be possible under the Byrd substitute.

Mr. President, many of us, indeed I think just about every one of us who oppose H.R. 8410, oppose it primarily because of the dangers it poses to small businessmen all across this great land of ours. Since our distinguished majority leader introduced his substitute measure there has been an attempt by the Senators engaging in this extended debate to illustrate and to explain their reasons for objecting to the substitute.

But we have not succeeded in convincing the proponents of this reform measure that our continued concerns are genuine. So at this time I think it would be instructive to let small business speak for itself.

Mr. President, I ask unanimous consent to have printed in the RECORD material issued by the NFIB, a rebuttal to George Meany and other advocates of labor law reform legislation, and a statement by the Small Business Legislative Council of the National Small Business Association.

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

Within the past few weeks, small business has been pictured in big labor, union-sponsored national advertising as a smokescreen for big business and as a victim of a shell game in the current debate over labor law "reform". The National Federation of Independent Business (NFIB), the nation's largest small business organization, with more than one-half million members, wishes to refute this myth.

Small business has every reason to be wary of big labor's designs. Small business is labor intensive. It depends more upon its workers and less upon expensive equipment for success and growth. So when big labor leads the fight for an unnecessarily steep increase in the minimum wage, small business gets hurt.

When big labor refuses to support an expansion in the youth apprenticeship wage program, small business feels it as much as the young and unemployed. NFIB supported an apprenticeship wage proposal that could have provided thousands of young people with jobs. Big labor and its political allies shot it down.

And when big labor tells the President to take a walk with his voluntary wage restraint program, small business will certainly end up paying the price of higher inflation.

Small business was told not to fear OSHA, not to wory about ERISA. Now small business is being told not to fear the "labor law reform" bill, S2467. It is only a procedural matter; it is not aimed at promoting organized labor—so we are told. But let's look at the facts.

This proposed labor law legislation has been pushed by the bureaucrats and power brokers of organized labor. This is not surprising. It seems that the union leaders have noticed a phenomenon very disturbing to them: more workers want less union involvement than ever before. Today only one out of five workers belong to unions, compared to more than one out of four 20 years ago. And last year unions won fewer than half of the certification contests supervised by the NLRB.

TWISTED LOGIC

Small business recognizes the motivation of union bosses. It is as obvious as it is audacious: unions have not been successful under our present system of labor laws, so they want to change the rules to improve their organizational record. This logic completely overlooks the obvious question. If unions are so good for their members, why don't more members join unions?

Wherever the fault lies, it is not with the federal labor law. In the 40 years since passage of the original National Labor Relations Act, workers in this nation have enjoyed tremendous gains in wages, fringe benefits and job security. And the resulting economic and political impact of unions is awesome and obvious. The present federal labor law generally has worked as it was intended and is not in need of wholesale reform.

But the bill's proponents disagree and claim several current examples of organizing efforts frustrated because the federal law is not tough enough. Whatever the facts may be in those cases, it is certain that large national companies will continue to have legions of lawyers and labor consultants available to advise them on how to stay in the bounds of the law and still give the unions a good fight. Small businesses, however, will be severely affected by this bill.

SMALL BUSINESS ALREADY AN EASY TARGET

Big labor may well complain that it cannot win against big business. The NLRB 1976 annual report lists labor as winning only 22 percent of the 111 organizing elections of units with 500 or more workers. But big labor has been going after small business with a vengeance and has been very successful at it. For the same period the NLRB supervised 3,865 elections in units with fewer than 20 employees and unions won 57 percent, nearly three out of every five organizing drives for small units. Small businesses with small groups of employees are clearly easy targets for the big labor leaders.

These statistics document a situation distressing but familiar to many small businesses. Not only do they usually lack regular counsel on labor affairs and laws, but they often lack the time and resources to effectively fight any organizing drive. Small business owners do not sit in board rooms giving orders. They are often their own foreman, inspectors, accountants, and janitors. They cannot take the time to print placards or organize employee rallies to discuss their views on unions. They are sharply restricted by law and NLRB decisions as to the type and content of contracts with their employees on the union issue. And they are often unaware of any movement toward unionization of their firms until they are presented with the certification petition by the NLRB. By then the union has done all its advance work and the business owner faces a stacked deck. Such circumstances sometimes lead employers to feel pressured and react precipitously, especially if they are unfamiliar with the nuances of the federal labor law, as most small business owners are.

This bill, in the name of streamlining "procedures", will further handcuff the small business owner who is faced with an organizing campaign from a sophisticated, expertly advised national union. The elections would be even quicker and the penalties would be even harsher.

This viewpoint of labor law reform—based on the realities of the small business owner's environment, is substantiated in a recent analysis by the Small Business Administration (SBA):

. . . The Labor Reform Bill will give unions an unfair advantage over small businesses who have neither the time or expertise (including resources to acquire the expertise) to walk the very thin compliance line proposed by the bills. Since the penalties for noncompliance are so severe, most small businesses confronted with a union organization drive will likely give up in advance rather than risk any action which might be construed later to have been illegal. This will result in unnecessarily increased costs which small businesses are least able to pass on to consumers. Projected further, this means many more small businesses going out of business.

Congress is responsible for legislating in the public interest. Trade unions now are large, powerful bureaucracies. What is good for big unions and their leaders is not necessarily good for the nation. Federal labor laws must strike a balance for workers, among unions and businesses, large and small. Each has different needs and problems. The Senate should realize that S. 2467 will badly tip that balance against small business.

THE LABOR REFORM ACT AND SMALL BUSINESS; THE DANGERS OF AN "EXEMPTION" TO THE NATIONAL LABOR RELATIONS ACT

On Friday, May 26, 1978, Senate Majority Leader Robert C. Byrd (D-W. Va.) proposed an amendment to the Labor "Reform" Act which would codify existing jurisdictional limits set by the National Labor Relations Board. It was argued that this amendment would satisfy the objections of those who opposed the "Reform" bill because of its impact on small business, on the grounds that under this amendment such businesses would now be "exempt" from the National Labor Relations Act as amended by the bill assuming it is passed. This is a phony premise! In fact, implicit in this amendment is the admission that the Labor "Reform" Act is anti-small business. Nevertheless, this amendment does nothing to protect those small businesses already covered under the Board's jurisdictional tests from the blatantly pro-union provisions of the "Reform" bill. Moreover, the amendment goes even further and strips away the protection afforded by the basic labor law to those small businesses and their employees who may not now be covered but who may become involved in labor disputes over which the Board would have exerted jurisdiction but, under the Byrd amendment, would be prohibited from doing so.

Thus, the Byrd amendment helps no one and hurts those small businesses who would be disenfranchised from the National Labor Relations Act.

SCOPE OF THE NLRB'S JURISDICTION

As further evidence that the Byrd amendment is simply a ploy to mislead those who recognize the adverse consequences this bill will have on small business, consider the following. According to the NLRB's own statistics about 847,497 businesses are presently covered under the Board's discretionary jurisdictional limits. These businesses employ some 44 million employees, or about 75 per cent of the country's covered workers. Approximately 647,000 of these businesses are non-union. These are the targets for union organizing and the proposed amendment does nothing to protect these small businesses from the pro-union inflationary provisions of the so-called Labor "Reform" Act. These companies lack the financial resources and the sophistication to counter professionally-managed union organizing drives and, in effect, will be forced to capitulate to union demands under the provisions of S. 2467. The Byrd amendment offers no help to these small businesses whose opposition to the bill remains adamant.

The Byrd amendment completely misses the mark in attempting to meet the objections of small business to S. 2467. No group has objected to the provisions of basic labor law, the National Labor Relations Act. In fact, small business has consistently maintained that the present law is balanced, and has served the purpose of promoting industrial stability. Yet the amendment would permanently exclude "smaller" businesses from coverage under the Act, while at the same time subject small businesses to the harsh provisions of the "Reform" bill, which would permanently tip the balance in favor of unions. The "protection" afforded by the amendment is illusory and would have the perverse effect of limiting the protection of the Act while at the same time giving union organizers everything they ever wanted to force unions on small businesses already covered.

Mr. BARTLETT. Mr. President, the above discussion demonstrates that there are substantial problems posed by many of the major provisions of H.R. 8410. An intelligent discussion of the bill requires that these problems be raised so that the Members of the Senate understand that many of the provisions designed to expedite Board case-handling procedures will not serve their intended goals. There can be little question that H.R. 8410 does not constitute even a partial effort at true "labor law reform." By focusing solely on the alleged abuses of management, the bill does not address several areas which are in serious need of correction.

At the same time, there are provisions in the bill which, while objectionable in part, have less of an impact on responsible employers. Such provisions include section 11—mandatory injunctions, section 4—rulemaking, and section 13—stranger picketing. Although these provisions are less objectionable than the others mentioned above, they still reinforce the argument that this attempt at reform will merely lengthen the process and fail to provide true reform to individual workers.

7. PRELIMINARY INJUNCTIONS

Under the current National Labor Relations Act, the Board has discretionary authority to seek injunctive relief to reinstate a discriminatorily discharged employee.

Section 11 of H.R. 8410, which amends section 10(1) of the act, requires the Board to petition for a temporary injunction to reinstate a discriminatorily discharged employee. Only cases occurring in a representational campaign before the first contract is signed or during a campaign to deauthorize or decertify a union would trigger this mandatory action.

Mr. President, the necessity of amending section 10(1) of the act with respect to cases arising under sections 8(a)(3) and 8(b)(2) of the act is highly doubtful because other sanctions are more than an adequate deterrent to recalcitrant employers.

Injunctive relief is time consuming and duplicative because it requires the aggrieved party to appear before an administrative law judge and a Federal district court judge. Furthermore, in light of the prediction by the General Counsel of the Board of a "dramatic increase in the number of 10(1) petitions," it is perfectly apparent that it is not feasible to implement this provision.

A final factor weighing strongly against this provision is that nearly all discharge cases depend on credibility resolutions which, in turn, necessitate a full hearing so that the demeanor of the witness can be properly evaluated. Because Board attorneys under this provision will be entitled to proceed directly in the Federal district court on the basis of a "reasonable cause" determination that the charge is true, Federal district judges will be forced to render decisions without the beenfit of the in-court testimony of the appropriate witnesses. In sum, this provision is unnecessary and will further clog the Board and the courts at a substantial expense.

8. RULEMAKING POWER

The Board currently has rulemaking authority but has chosen not to use this

authority due to the complexities involved in this area.

Section 4 of H.R. 8410, which amends section 6 of the National Labor Relations Act, authorizes the Board to promulgate rules concerning equal access, resolution of disputes concerning eligibility of voters, and holding of elections in cases in which an appeal to the Board has not been decided prior to the date of the election. The Board is also charged with promulgating rules to determine whether certain units are appropriate for the purposes of collective bargaining.

Establishing bargaining units through rulemaking is an untried concept in the private sector. The Labor Board has traditionally evidenced a hostility toward the use of rulemaking. See, for example, F. McCulloch, "Procedures Employed by the NLRB for Determining Policy," 1964 proceedings, ABA Section of Administrative Law; Bernstein, "The NLRB's Adjudication Rule Making Dilemma Under the Administrative Procedure Act," 79 Yale L.J. 571 (1970). Indeed, former Chairman McCulloch considered rulemaking to be a "cumbersome process * * * that necessarily impedes the law's ability to respond quickly and accurately to changing industrial practices."

While the drafters of H.R. 8410 believe that rulemaking should be used in representational cases, the Labor Board has previously rejected such an approach. In 1971, the American Association of University Professors filed a petition requesting that the Board issue rules "to guide the determination of issues in representation cases involving faculty members in colleges and universities." Denying the petition for rulemaking, the Board stated:

> The Board considers that the Petition properly points out that the Board's unit determinations in this area should take into account certain practices and organizational structures which do not parallel the traditional practices and organizational structures in private industry. The Board's information to date, however, suggests that there is also a great variety in this regard within the academic community, and also that the practices and structures in universities and colleges are undergoing a period of change and experimentation. The Board believes that to adopt inflexible rules for units of teaching employees at this time might well introduce too great an element of rigidity and prevent the Board from adapting its approach to a highly pluralistic and fluid set of conditions. Accordingly, the Board shall deny the petition.

The reasons advanced for rejecting rulemaking in the academic community in 1971 are equally relevant today. Moreover, a review of rulemaking in the public sector illustrates limited utility for its use in private sector representational cases.

Rulemaking in Massachusetts and Florida resulted from the fact that the parties and agencies involved agreed that the establishment of bargaining units at the outset of a new legislative scheme would best be achieved in one proceeding rather than case-by-case adjudication. The procedures employed in those States can best be analogized to a consolidated representational case. Indeed, in Florida, for example, the pending representation cases involving State employees were essentially folded into the rulemaking proceeding.

From a logistical point of view, it is a very difficult and time-consuming task to establish bargaining units through rulemaking. While general criteria can and have already been developed, the application of that criteria will vary depending on the facts of a particular case. For example, the Board has long exercised its rulemaking authority concerning voting eligibility of employees on layoff or leave of absence with a reasonable expectation of return to work. Despite the rules, however, litigation has not been avoided, and it is likely that codification of bargaining units will have the same result.

The value of rulemaking is in establishing a framework which can be applied on a uniform basis. Bargaining unit determinations, however, have never been susceptible to such a standard. According to an extensive study conducted on behalf of the industrial research unit of the Wharton School of Finance and Commerce, it was concluded that:

> [T]he vacillating trends and inconsistent results in many of the unit cases provide substantial evidence of the severity of this problem. An analysis of these same cases will reveal that much of the confusion in the area of unit determinations is attributable to the Board itself.

Another example of the highly tenuous basis for proponents of this section is revealed in a statement contained in the Senate Report (page 20) that "[E]xamples of such plainly appropriate units approved as a matter of course by the Board are single plant units. * * *" However, a careful review of the case law on this subject reveals extensive litigation concerning the single plant vis-a-vis the multiplant unit, particularly where there is a high degree of functional integration of the employer's operations. As an indication of the disparity of thinking by Board members as to the proper unit configuration with respect to the single plant versus multiplant unit, member Leedom, in a dissenting opinion in *S. D. Warren Co.*, 144 N.L.R.B. 204 (1963), Aff'd. on other grounds, 353 F. 2d 494 (1st Cir. 1965), asserted that his colleagues' decision represented "an arbitrary grouping with no rational foundation."

The problem with H.R. 8410 is that it assumes that the Labor Board is capable of establishing hard and fast unit structures by rulemaking. We must, as the Labor Board did in rejecting the AAUP rulemaking petition, seriously question such a capability. The adoption of bargaining unit rulemaking could well have a negative impact on existing collective-bargaining arrangements, in cases where long-standing collective-bargaining units would not coincide with newly created Board unit rules. The negative impact on labor relations stability of such a scenario would be very significant.

E. ILLEGAL WORK STOPPAGES

Under the current law, injunctive relief may be obtained under certain circumstances against wildcat strikes, but not against stranger picketing.

Section 13 of H.R. 8410 provides that an employer may seek injunctive relief against stranger picketing where the picket line is not maintained by a labor organization in connection with a labor dispute. As a result, injunctions would not be available if the picket line is maintained by a labor organization in connection with a labor dispute.

An employer can also secure injunctive relief if the refusal to work is not authorized, initiated, or ratified by a labor organization. If the union does authorize, initiate, or ratify the illegal activity, no restraining order can issue under this section.

An analysis of this provision must necessarily begin with a review of the Supreme Court's decision in *Boys Markets, Inc.* v. *Retail Clerks' Union, Local 770*, 398 U.S. 234 (1970), and *Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397 (1976). These decisions both involve the availability and utilization of injunctive relief under section 301 of the Labor Management Relations Act. In Boys Markets, the Court held that an injunction may issue when a strike takes place over a grievance which the parties are bound under the terms of the collective bargaining agreement. In Buffalo Forge, in a divided 5-to-4 decision, the Court, in considering the propriety of injunctive relief in sympathy strike situations, held that injunctive relief was not appropriate.

Boys Markets and Buffalo Forge are cases illustrating the divisive nature of Federal court intervention in labor disputes and a balancing of the policies contained in the Norris-LaGuardia Act and section 301 of the Taft-Hartley Act. See F. Frankfurter, and N. Greene, *The Labor Injunction* (1930); *Milk Wagon Drivers' Union, Local 753* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 100–03 (1940). From a policy standpoint I believe that Boys Markets, wherein the Court held that arbitration is the primary vehicle of promoting industrial peace, was decided correctly and should not be overruled. Conversely, Buffalo Forge, wherein a majority of the Justices provided a literal interpretation of the Norris-LaGuardia Act, should probably be overruled. Interestingly, the House considered a fairly expansive amendment on this issue but decided to adopt a much more limited version.

As noted by Justice Stevens in his dissent in Buffalo Forge, it is self-evident that the question of whether employees can honor a picket line is a subject for arbitral determination. However, requiring an employer to go first to arbitration and allow the work stoppage to continue frustrates not only the arbitral process but makes virtually meaningless the union's agreement not to strike. Granting injunctive relief, therefore, promotes the very policies which led the Supreme Court in Boys Markets to accommodate section 301 of the Taft-Hartley Act with section 4 of the Norris-LaGuardia Act.

As observed by Justice Stevens, the concerns which prompted passage of the Norris-LaGuardia Act were not applicable to a situation where a court was

dealing with the enforceability of an agreement:

Like the decision in Boys Markets, this opinion reflects, on the one hand, my confidence that experience during the decades since the Norris-LaGuardia Act was passed has dissipated any legitimate concern about the impartiality of federal judges in disputes between labor and management, and on the other, my continued recognition of the fact that judges have less familiarity and expertise than arbitrators and administrators who regularly work in this specialized area. The decision in Boys Markets requires an accommodation between the Norris-LaGuardia Act and the Labor Management Relations Act. I would hold only that the terms of that accommodation do not entirely deprive the federal courts of all power to grant any relief to an employer, threatened with irreparable injury from a sympathy strike clearly in violation of a collective bargaining agreement, regardless of the equities of his claim for injuctive relief pending arbitration.

Because another critical aspect of national labor policy is the concept of free collective bargaining, it is difficult to argue that the utilization of injunctive relief to enforce a bargain freely struck runs contrary to these policies. Injunctions designed to enforce what has been agreed to are far different than the types of injunctions which gave rise to the Norris-LaGuardia Act. As recognized by the Supreme Court in Boys Markets, there has been a shift from the "protection of the nascent labor movement: to evolving a policy designed to encourage free collective bargaining and peaceful settlement of disputes."

It is perfectly apparent that the issuance of injunctive relief to enforce an agreement to arbitrate and not to strike hardly brings about an abuse that the Norris-LaGuardia Act was intended to prevent. The policies enumerated in section 2 of the Norris-LaGuardia Act cover a vastly different situation than exists today.

It should, of course, be noted that in nearly all collective bargaining agreements the only promise a union makes in the entire contract is not to strike. The remainder of the obligations are placed squarely upon management's shoulders. This provision, however, undercuts the enforceability of the union's only obligation.

Against this background, it is clear that section 13 is not an adequate remedy for employers faced with strikes in violation of a no-strike clause in a collective bargaining agreement. Indeed, the Senate report emphasizes that the rule of Buffalo Forge be preserved and that the present balance between employers and unions be maintained. The recent debilitating effects of the coal mine strikes, however, are a prime illustration that an equitable balance does not exist.

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

Mr. BARTLETT. I yield the floor to the Senator from Wyoming (Mr. HANSEN).

Mr. HANSEN. Mr. President, I thank my distinguished colleague from Oklahoma.

Mr. President, I ask unanimous consent that I may continue without this being counted as a second speech.

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

LABOR UNION POWER AND COMPETITIVE MARKET ECONOMY

Mr. HANSEN. In 1944, Henry C. Simons stated in his book, "Some Reflections on Syndicalism":

Somehow, sometime, the conflict between the special interests of labor monopolies and the common interest must be reconciled. Beyond some point their exactions become insufferable and unsupportable; and their power must be broken to protect the general welfare.

Never has this sentiment been more manifest than today, on the eve of one of the most potentially dangerous pro-labor bills ever offered to Congress. To allow such a bill to pass will do nothing but strengthen the monopoly of a special interest; the largest special interest in America today, organized labor. As Mr. Simons points out, to go too far will serve no one but this special interest and will cause great suffering to all people in our country.

What is the function which a labor union ideally should accomplish in a free economy? It is difficult to accept the broad argument advanced by some economists that a labor union is by its very nature antithetical to a competitive system, that it is a fundamentally anti-competitive foreign body in the market mechanism which must ultimately either destroy this mechanism or itself be destroyed. Unions do have legitimate economic functions. Market wages are not necessarily "competitive wages." The marked immobility of a large fraction of the work force and the ignorance of many workers concerning better alternative employments provide employers with opportunities for wage exploitation which is in the interest of a healthy economy to prevent.

Insofar as unions cause subcompetitive wages to be raised to competitive levels, they help to increase output, improve the allocation of labor resources, and increase employment. Similarly, unorganized labor may confront monopsonistic or oligopolistic employers able to depress wages below the value of labor's marginal product. Again unions will be serving a valuable economic function if they succeed in redressing the imbalance and lifting wages to the competitive level. Pure monopsony, however, is probably very rare; and under present conditions the monopoly power of unions typically overreaches employer monopsony. Modern unions, that is to say, are far more likely to be making monopoly gains of their own at the expense either of employers or the public than they are simply to be holding wages at the competitive level.

Quite apart, however, from any purely economic function it may have, the labor union provides, or should provide a locus of fraternal allegiance and of self-identification in a business society whose members are bound together primarily by the cash nexus. It is the Meta-economic values which the labor union can conceivably offer to its members which make it a useful and perhaps even indispensable institution in a capitalist economy of the American type. In a society which emphasizes democratic values and personal responsibility, there is clearly a certain advantage, phychological and moral, in giving working men and women the opportunity of having an effective voice in the bargain reached with employers concerning wages, hours, and working conditions. In the absence of the union, the ingredients that enter into what an employee would consider a fair bargain are also likely to be absent. The suspicion would remain that terms of employment, whether or not just by economic standards, had been "imposed" by the employer. Moreover, many non-wage aspects of employment, grievance procedures, seniority provisions, vacation assignments, and so forth, which have important implications for worker morale are doubtlessly dealt with less arbitrarily in unionized than in nonunionized firms. In these and many other ways, a union may help to provide a valuable offset to the anonymity, the diminishment of self-worth, and the psychic insecurity which seem inevitably to arise in an attempt to preserve a stable structure in the highly unstable and intensely fluid processes of a mass-production and mass-consumption society. In the great moral tragedy of the industrial system, Frank Tannanbaum has written a philosophy of labor. He states:

It destroyed the symbolic and meaningful world that had endowed the life of the individual with an ethical character. The individual worker now had no recognizable place that he could call his own, no society to which he "naturally" belonged, and no values by which he was expected to live. The ordinary meanings that make life acceptable had evaporated. His economic insecurity was but part of a larger perplexity * * * it is against this background that the role of the trade union must be examined. In terms of the individual, the union returns to the worker his "society." It gives him a fellowship, a part in a drama that he can understand, and life takes on meaning once again because he shares a value system common to others * * *

Certainly, the pursuance by unions of fraternal and social goals of this type must serve to promote the health of an industrial society. At the same time, there is room for doubt concerning the extent to which unions themselves have understood and accepted these objectives. The primary goals have been and are economic and unions have typically aimed at "more and more" in Samuel Gomper's famous phrase. The economic goal has become the all-pervasive one and the cash nexus, far from being overcome, dominates union theory and union policy. As unions have grown big in the pursuit of "more," the individual member has dwindled in importance. Perversely, unions often elect to support programs and objectives which deny the feeling of self-worth and extinguish individuality. The anonymity of the work place is reinforced by the anonymity of the union card. The structure of wage rates, for instance, should idealy be a highly differentiated one to correspond to the very different talents, personalities, and preferences of the individuals who compose the labor force. Society gains from such an arrangement both in

the improved allocation of its principal economic resource and psychically in the recognition of individuals' differences. But it is precisely the elimination of such wage differentials which many unions, especially those of the "industrial" type, will seek on the grounds that they are "undemocratic" or "inequitable," or that the complexities of wage administration thus introduced make it more difficult for the union to get everybody's wages lifted, or simply that the results of union activity under such a system will be less dramatically evident to the membership. The end effect of wage uniformization anyhow is—apart from the economic distortions it produces—to aggravate the general process by which the individual is smothered in the mass.

It is highly questionable whether there is in fact any profound attachment to the values mentioned on the part of those who lead labor organizations today. As Professor Tannenbaum himself concedes:

> . . . the individual worker is being immersed in an expanding association, over which he can have only decreasing control . . . the powerful national union is replacing the individual, and we are faced with the prospect that there will soon be little personal bargaining left, and, by implication, small freedom of occupational choice.

In a sense, the almost total submersion of the fraternal, noneconomic, and service goals of labor unions in the drive for "more" is but the result and the reflection of the growth in labor union power. Organizational power has its own special logic: it exists for itself and if not restrained increases in virtue of a kind of built-in multiplier mechanism. Before an organization bent on power, all that is small, local, unique, and individual must wither. From a position of relative weakness at the close of the 19th century, labor unions have risen in the second half of the 20th century to positions of strategic power unrivalled in American society. Significantly, unions entered upon the most precipitate phase of their growth in the 1930's upon receiving under the Norris-Laguardia and Wagner Acts almost total immunity from the antitrust laws. Union membership in 1913 was 3 million; today, it is over seven times this amount. Union dues run billions of dollars annually, unions' assets are estimated to be earning billions, and union trust funds run to many billions more. But these numbers convey no adequate picture of the power of unions over the economy. In a sense, membership rolls and cash assets are irrelevant to the issue of union power, for this power is strategic rather than quantitative, though even quantitatively union strength in the United States is impressive.

A vast offset to the nonunionized sectors of the economy is the concentration of membership in key industries: steel, coal, automobiles, construction, public utilities, communications, and transportation. Some unions in the mass-production industries, such as the United Automobile Workers (UAW) and the United Steelworkers (USW), number well over 1 million members each. And the power of such unions to disrupt the orderly processes of the economy and to damage the general welfare in the pursuit of their objectives is as awesome as these numbers suggest. The economic power of even the largest business organizations, subject as they are to a variety of legal and economic restraints, is as nothing compared to the power of the great international unions.

Unionism's power derives from the fact that the economy of the United States is a highly differentiated, complex, and interdependent system in which the cessation of only one activity or the breaking of only one link in the chain of production and distribution—if the interrupted function be a crucial one—can put a substantial part of the economy out of commission, if not paralyze it completely. Significantly, unions have succeeded in establishing control over just such crucial points in the economy. Moreover, the union rule that picket lines are not to be crossed, regardless of the merits of a particular strike, places strategic power in the hands of even the smallest union.

It is needful to point out at the same time that the strike itself, justified or unjustified, by no means represents the major harm that unions can inflict on society. It is the settlement which follows the strike which may impose the hardest burden on society at large. Strikes end, their descriptions, which can be immense such as the recent coal strike, are temporary even if severe, but the settlements which follow them may cause permanent distortions in factories and produce markets yielding chronic unemployment, diminished rates of private investment and thus of growth, lessened international competitiveness and balance-of-payments problems. The occurrence of any one of these developments, and a fortiori where several are taking place simultaneously, diminishes the social dividend and contracts the economic alternatives open to producers and consumers. In sum, the community suffers a reduction both in its material welfare and in freedom.

Some observers have noticed with optimism the relative decline in industrial violence in the United States over the past 25 years. But this "peace" should not deceive. For it may merely represent the increasing unwillingness of many employers, especially those of small size and limited assets, to even enter a contest with the labor union behemoths of today, knowing in advance that they can only lose. The diminishment of such employer resistance means merely that it is now the public which must pay ransom to the unions in the form of higher prices, less output, and reduced employment opportunities.

Will unionism's power naturally diminish with the slower growth of unionization as many allege? In recent years, it is true, the proportion of organized labor to the total labor force has shown some tendency to diminish, even though membership has continued to increase in absolute terms. The reason for this development is to be found in the declining percentage of production ("blue-collar") workers in the labor force and in the corresponding increasing percentage of white-collar workers, clerical workers, and the service occupations in general—all of which groups have traditionally resisted union organization. nevertheless, it would be a serious mistake to infer from this development that the power of unionism over the American economy will recede in the near future. On the contrary, the very slowdown in the rate of unionization suggests that unions have already saturated those sectors of the economy which are organizable, or which it pays to organize. Moreover, the fact that unions' energies and funds no longer have to be devoted to the same extent as formerly to recruitment and organization means that these resources can be directed to the more effective consolidation of existing union power.

Union energies not spent in organizational work may, in the future, be expected to spend themselves all the more in achieving the ultimate objectives for which organization was undertaken in the first place.

Examples of this transference of effort are the numerous mergers and alliances of formerly independent unions which have been proposed or accomplished in recent years. Working coalitions of unions with related interests have emerged in many different fields. Consolidations are planned or have been carried through for the aircraft-missile industry, the airline industry, and the oil and chemcial industries, and many more, all of them aimed at giving the unions even greater "bargaining" power than they now possess in dealing with employers.

Most ambitious, and in terms of the resulting power potential, most ominous of the consolidation efforts has been that sponsored by the International Brotherhood of Teamsters. The enormous power for destruction of such a labor colossus, should it ever materialize, is appalling, but not much more so than the existing quantitative and strategic power the Teamsters already possess. With its millions of members, the Teamsters is by far the largest single union in the United States. In the words of the late Robert Kennedy, when he was counsel for the Senate select (McClellan) committee, it is "a union so powerful, that it is certainly the mightiest single organization in the United States next to the Federal Government itself * * *."

In 243 days of hearings, shocking disclosures before the McClellan committee called the Nation's attention to the unsavory Teamster record of extortion, graft, racketeering, violence, and intimidation. The misrule and the misdeeds of the corrupt satrapy of the giant union were analyzed and exposed in the testimony of over a thousand witnesses. The public outcry was great and there were numerous demands that something be done to eliminate hooliganism from the labor movement. To be sure, the Teamsters were expelled from the AFL–CIO and a number of legislative changes were made with the intent of restraining unions' "unfair practices." But neither

revelations nor public outcry slowed the Teamsters; indeed, in a disturbing reversal of logic, the union subsequently experienced one of its most rapid periods of growth. The reason is that none of the actions which were contemplated or enforced against the Teamsters were calculated to deal with the real cause of Teamster bad practices: the vast, unrestrained, irresponsible, and corrupting power of the union itself, the fundamental difficulty was singled out by Senator CURTIS of Nebraska during the course of these McClellan hearings:

> Congress cannot expect a cleanup in labor-management relations until we do something that we haven't done to date at all, and that is to deal with [the] power and immunities and compulsion in the field of unionism that invite the wrong kind of people to go into union leadership.

It is surprising that the aforementioned hearings took place in the early sixties and in 1978, the Teamsters is still no better off.

Labor union power, that is to say, has not only an ethical dimension; it is not only the commission by union functionaries of crimes of all sorts which is disturbing. Far more important is labor's unchallenged economic power, a power which it can and does exercise within the law as presently constituted.

"Collective bargaining," as the term is customarily used in economic textbooks, is purportedly a mechanism for correcting the imbalance of power between the "defenseless" single employee in dealings with the "all-powerful" employer. The transmutation which the term has undergone in the quarter century which has elapsed since passage of the Wagner Act (1935) finds pungent illustration in Jimmy Hoffa's description of how "collective bargaining" is conducted by the Teamsters:

> First we close down this guy's outfit where the trouble is. However, if he doesn't settle we close him down [i.e., prevent him from doing business] in the surrounding States. Then if he still won't settle, we close him down across the whole ——— country.

(Mr. LONG assumed the chair.)

Mr. HANSEN. Mr. President, it will be objected that the Teamsters are not typical of the American union movement as a whole and that it is unfair to draw conclusions respecting labor unions in general from the Teamsters' record. It is admitted that the "bad practices" and the cruder forms of Teamster behavior are in many ways peculiar to that organization (though other unions, the New York waterfront unions for example, have even more noisome histories). But the Teamsters can unquestionably be regarded as representative of a new and critical turn in American industrial relations: the accumulation in the hands of great labor unions of economic power so enormous that it threatens the very foundations of democratic order, one of the prerequisites of which is that the State shall hold the monopoly of coercive power. The teamsters are but the advance column of a general movement in which powerful unions are emerging as States-within-the-State, occasionally supported even by paramilitary formations using the devices of mass picketing and the threat of violence to exact tribute from the people.

Unions achieved their early gains helped by the general belief that they are institutions indispensable to a democratic society, but they have now reached the point where, in Henry Simon's image, they roam the country like great bandit armies, collecting ransom from the sovereign and waging economic warfare on the people.

The malfeasance of labor union bosses of the modern stripe, bad practices such as featherbedding, jurisdictional strikes, interunion raiding, stranger picketing, secondary boycotts, and the crimes of unions generally are in the this light merely incidental to their economic domination of society—inevitable blemishes on the vast escutcheon of almost total power. It is a fact David McCord Wright states in his book, "Regulating Unions," that—

> Even if there were no racketeering, no violence, no goon squads, no sit-down strikes—even if every pension fund were honestly and intelligently administered—even if every union leader were a personally honest and highminded man—there still could be need for restraints upon union activities [because] honest men can force the economy into inflation or unemployment—by mistakenly asking too high a level of money wages. Honest men can high-mindedly prefer security in work routine to technical change and thus hold back the standard of living of the poor . . . honest men can in the name of equality, destroy incentive, opportunity, and saving.

Historically, a pronounced cultural lag has characterized most discussion of the labor issue in the United States: A fund of sympathy has been reserved for an underdog who has in the interim become topdog. Fortunately, the aggressive, unrestrained, and monolithic phenomenon which labor has become is coming under closer scrutiny by many people. As the awareness of this transformation spreads, however, there is a danger of over-compensating for it. The group anarchy and injustice which labor union monopoly—in collusion with other private agglomerations of power—has imposed on much of the economy may find its remedy in an authoritarian system of one kind or another. Menacing steps in this direction have already been taken.

As an alternative to Government takeover of the economy, it is asserted that both labor unions and management groups must become more "socially responsible." But does anyone seriously imagine that the swaggering power of unionism today will be contained by appeals to its altruism and magnanimity? The law gives unionism practically carte banche in the pursuit of "self-interest," and in any event there is no reason to suppose that unions should or could abandon the pursuit of self-interest in favor of some higher goal. Unions themselves have, on occasion, vigorously asserted that any public interference with the pursuit of self-interest objectives by unions would be contrary to the principles of a free enterprise economy. If the fundamental axioms of the market system is valid, there is as little reason for labor unions to give up self-interest as there is for the enterprise monopolist to abandon the maximization of profits to the end that he may more effectively assume his "social responsibility." It is not the union or the businessman which is evil; evil is the context of power within which self-interest is pursued. Both business organizations and unions necessarily meet their social responsibilities when they stick to their knitting within a context of vigorous competition. The pious hope, so frequently expressed, that all the power forces in our economy will one day learn to accept their responsibilities is to be commended. It is nonetheless futile. "Guidelines" may be laid down and adjurations made to unions and entrepreneurs to observe them, but this kind of "economics by admonition" is nothing but an amiable substitute for price control which tends to lead to the same irrationalities and restrictions of freedom as does price control of the more formal type.

The evil of excessive power in economic life can be corrected not by treating its symptoms but only by dissolving the power structure itself, that is to say, by the restoration of competition. It is merely silly, as Simons observes:

> To complain because groups exercise power selfishly. The mistake lies simply in permitting them to have it. Monopoly power must be abused. It has no use save abuse.

The phenomenon of overweening labor union power is ultimately a constitutional and political problem: Its solution must be found within the context of the basic political philosophy which the Nation accepts.

At the same time, this power has an economic dimension and it is at the bottom of the economic damage which it inflicts on the country. Moreover, labor unions have grown to their great estate ostensibly as economic and not as political entities; they have established themselves with economic arguments and they continue to demand special privileges and immunities accorded to no other groups in society on the basis of alleged economic benefits provided to society. The labor interest has traditionally been identified by the unions with the public interest. The diagnosis of labor union power, therefore, properly begins with an inquiry into its consequences for general economic welfare. The question, moreover, which must be asked today is whether unions, as presently constituted, fit into the American economy at all. How much abuse from labor monopoly can the market mechanism absorb before it breaks down completely?

The modern industrial economy owes its immense productivity primarily to the division of labor and to the extremes—as an automation, for example—to which it has proved possible to push the division of labor. The greater the division of labor, however, the more interdependent is the economic system, the more sensitive to every slight disturbance, and the more prone therefore to crisis and upset. Such a system can function effectively only if the central task of coordinating its millions upon millions of moving parts is successfully and continuously

accomplished. There are only two ways of effective organizing such an economy: By means of the market—vulgarly called capitalism—or by means of a centrally administered plan—planned or socialist economy. In the one case, the fundamental decisions as to what shall be produced and how much of it, and how resources are to be used, are made by the people in the marketplace; in the other case, these decisions are reserved to the central authorities who establish targets for production, consumption, and investment and allocate resources, including labor, in conformity therewith.

The market, functioning much like a giant computer, solves the problem of coordinating the incalculably large number of private economic activities to which the division of labor gives rise spontaneously and anonymously and yet, mysteriously, in such a way as to maximize the return to society from its available economic means. Millions of men, each pursuing his own interest, thousands of firms, each maximizing its own profits without a concern for what goes on elsewhere, discover that their selfish activities advance the interests of the total society, where competition is present, more than if this goal had been deliberately striven for. Scarce resources are conserved, all resources are moved to their most productive employments, urgent demands are given preference, and individual satisfactions are maximized—within the limits of income—in a manner which no system directed from the top has ever been able to duplicate. Essentially, as Professor Hayek has noted, the price system and the market in which prices are formed constitute an immensely complex and at the same time extraordinarily efficient communications system.

The centrally administered economy of the type exemplified in the Soviet Union can accomplish some of the functions described above—the proofs of it are only too obvious—though only with gross inefficiency. Some consumers, firms, and industries are woefully undersupplied, others are extravagantly or wastefully oversupplied. Inefficiencies of this kind are inherent in the planned system; they are the price that must be paid for its inadequate economic communications system. The system would not work at all, however, if private persons were able to go their own way, economically speaking and, in effect, countermand the objectives of the plan. Coercion is literally the order of the day in a planned system and that is why economic planning and personal freedom are irreconcilable. Needless to say, a collectivist system of the Soviet type cannot tolerate unions of the American type. There is no place in such a system for collective bargaining, or strikes, or picketing, not only because such activities would inevitably jeopardize the "plan," but because they would require a sharing of the State's monopoly of coercive power and violence, unthinkable in a totalitarian State as it is problematical in a democratic one. Not only labor services, but the laborer is a commodity in such a system; it is the power of the central authorities to shift labor and other resources to different employments at will that makes possible the striking sectoral accomplishments of the type exemplified in Soviet heavy industry, missiles, and rocketry.

All of this is commonplace enough and would not require emphasis were it not for a widespread confusion concerning the nature of the market mechanism reflected in the use of the term "mixed economy" to describe the American system and the acceptance of such mixture as an ideal. Would an ideally "mixed system" be one directed 50 percent by the Government and 50 percent by the market? Such a system, it is clear, would yield nothing but chaos; Government plans for production, consumption, and distribution would be unworkable for they would be in conflict at every point with private plans expressed in the market place. The market mechanism, in turn, would be continually fouled by Government interventions affecting half of the decisions to be made. It is for this reason that a fully planned economy will be more efficient, in an economic sense, than a half planned one. Eloquent testimony to this truth is provided in the dismal economic performances of democratic socialism in the years following World War II. The discovery that mixtures of freedom and planning will not work has forced Western socialism into the strangest of byways, for the masses, among whom socialism presumably finds its principal support, have discovered the productive and stabilizing power of the market economy and no longer want to give it up. Western Socialists, paradoxically, no longer advocate "socialization" and "planned economy." Lately, their criticisms of the incumbent conservative governments often amount to charges that the latter are not pursuing market economy vigorously enough!

But if a society determines to solve the central economic problem of coordinating the disparate activities of a specialized industrial economy by means of the market rather than by means of a consciously elaborated central plan, it is essential that the systematic character of the market method be understood and respected. For the market economy is necessarily a unitary process, a scheme of order no part of which may be interfered with without affecting the performance of other parts of the system and therefore of the whole. Failure to take sufficient account of this characteristic has led in the past to gross errors in economic policy. People imagine that it is possible to isolate a given segment of the economy, or a particular economic phenomenon—wages, farm prices, investment, inflation, foreign trade—and deal with it on its own terms without regard to the possible reverberations on the rest of the economy. The inevitable result of such ad hoc interventions is to create a new disorder for every old one temporarily patched up.

On the other hand, there is a very wide range of Government interventions of a certain type which are essential to the functioning of the market economy, without which it would immediately collapse. For this reason, it is useful to distinguished between those interventions which conform to the market, (that is, those such as the pure food and drug laws, taxes, tariffs, and so forth, which do not interfere directly with the formation of prices) and "non-conformable" interventions, (that is, those such as the setting of maximum or minimum prices or wages, import quotas, exchange control, and so forth, which vitiate the supply-demand mechanism). It is on the framework of the market economy that the conformable activities of Government are most desirably located. These framework functions of Government, as they pertain to the economy, include the establishment and maintenance of an appropriate and stable monetary and fiscal system and the establishment of rules and regulations designed to maintain competition. Of course, many other things the Government does on the framework impinge on the economic system; no market economy could function for a day without the implementation of the whole body of laws established to protect basic rights and to advance the interests of a just and a free society. Moreover, the State itself is only one of a host of institutions—cultural, moral, religious—which surround and support the market, softening the outcome of the competitive struggle and taking care for the things that lie beyond supply and demand. To call such a system a "mixed economy" is to grossly abuse the term. The framework functions of Government in a free society are not to be confused with nonconformable interventions in the market nor yet with the planned economy.

It is above all competition with which the market economy stands or falls. For it is competition which prevents private persons or groups from acquiring coercive power over others. Monopoly power exercised by business or labor groups vitiates the law of supply and demand as surely and as effectively as do nonconformable government interventions. In effect, the market system suffers from a serious inherent disharmony between producers and consumers, sellers, and buyers. Producers and sellers are naturally desirous—in pursuance of the goal of profit maximization—to dispose of their goods and services on the most advantageous terms. If withholding or restricting supply will improve these terms—as it generally does—and if the power to practice such restriction is persent, monopoly gains will accrue to some segments of the population at the cost of diminished benefits for others. Consumers, on the contrary, are desirous of having supplies of goods and services as cheap and abundant as possible. But because consumers are not organized (nor apparently organizable), the organized producers and sellers are constantly tempted, one might almost say required in the nature of the case, to exploit them. Such exploitation will be normal in a laissez-faire system.

The rationale of a laissez-faire system is that a market economy will accomplish its essential coordinating and planning functions if only left to itself. This idea was joined in the classical economics, most notably by Adam Smith, with the important discovery that free

competition is an uncompromising market policeman constantly at work to prevent the producers from lording it over the consumers.

(Mrs. HUMPHREY assumed the chair.)

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. HANSEN. I am happy to yield.

Mr. LONG. Madam President, I say to the distinguished Senator that I, for one, gained the impression from reading Adam Smith that it was an error to assume that he was merely suggesting that nothing be done about the economic system. It was my impression—perhaps at odds with others who have read some of Adam Smith's writing—that his thought was that you should pass laws which would encourage competition and pass laws that would let competition, on a reasonable basis, exist throughout the whole economy; that, having done that, with laws that favor no one but give everyone a chance to compete, with laws shaped to encourage competition and to encourage everybody to make his best effort, then you should let the situation proceed on its own, without the Government running it or trying to interfere.

It was always my impression—and I ask the Senator if it is his view—that what Adam Smith was speaking for was actually a system in which we would pass laws to encourage competition, to strike at monopoly, and to prevent accommodations in restraint of trade; that having done that, we should amend the laws from time to time in order to keep achieving the same purposes; that the idea was not just to turn the whole thing loose but to pass laws that would encourage competition.

Mr. HANSEN. Mr. President, I appreciate very much the observation of my distinguished and admired colleague from Louisiana. I know of few people in this body for whom I have greater respect than I do for him. It has been my very pleasant and instructive privilege to serve with him on the Finance Committee. I must say that even if I were to be around here for many, many years, I would expect never to achieve his grasp of the forces at work in America.

I am not prepared to argue with the conclusion he might reach in reading from Adam Smith. I think what we are talking about, though, comes down to striking a reasonable balance and then trying to see, as we do from time to time, how these laws are drafted, and then move toward that balance.

I suspect that on that point possibly he and I might differ with respect to a particular law. I do not disagree that the function of this body and of Government generally is to examine society, to examine the warp and woof of the fabric that holds life together and makes possible cooperation and contemplates the various activities we engage in and which must be looked at.

I suppose what I am trying to say, Madam President, is that I detect certain evidences that the pendulum has swung more one way than it has the other; that it has not quite struck equilibrium. I would be the first to admit that it never will be right where everyone in the country says it should be.

I am not certain that I have responded to the observation of my greatly respected and esteemed friend, but that is the best I can do.

Mr. LONG. Mr. President, it was my impression that many people, from reading Adam Smith—and perhaps some who did not read his works at all but just heard someone talk about them and reached their own conclusion—gained the impression that he was just in favor of leaving everything alone, just do not touch anything. That could be a literal translation of the words "laissez faire."

However, Adam Smith, writing in his day, was advocating the destruction of the status quo. He was advocating that we strike down and destroy mercantilism, which basically was a system built on monopolies.

His argument was that you should destroy all those monopolies and get rid of favoritism and let the system compete; that having done that, it would work. He said that laissez faire does not mean just to leave it alone; it means let it work. Having put together a system which we hope to have a competitive capitalism, let the whole thing work, because be contended that it would work.

Some think of those who speak of Adam Smith's teaching as people advocating the status quo. If the Senator is advocating Adam Smith's philosophy today, and I take it the Senator is, he would not be advocating just to leaving everything alone; he would be saying get rid of a bunch of monopolies, strike down the restraints of trade, and let people compete.

Mr. HANSEN. I did not necessarily mean to have interpreted from my remarks, Madam President, that I was embracing any specific interpretation of Adam Smith's writings. I did call attention to what he has said because I think there is a real lesson to be learned when we speak about monopolies. I am certain I know that he and every other Member in this Chamber who is fairminded, and as far as I know everyone is, recognizes that we may have monopoly power surface in many forms. It can be on the part of employers, it can be on the part of industrialists, it can be on the part of giant corporations, and it certainly can be on the part of such organizations as organized labor.

I am not certain that my friend from Louisiana was in the Chamber when I quoted Senator KENNEDY, but the fact was that he, too, recognized the monopolistic power of the Teamsters. If we find that monopoly exists on one side, let us see what effect it is having. Does it simply correct an imbalance and bring things into greater or more nearly equilibrium than what they were before? Or has it indeed made itself subject to the charge of excessive power? If that is the case then let us swing it back the other way.

Will my friend from Louisiana agree generally that it is our duty here to ask those questions?

Mr. LONG. Yes. I do not take issue with the Senator's argument. I think he is making a very fine argument.

I simply wanted to see if we can agree that the philosophy of Adam Smith is not as reactionary as some people think.

I always regarded Adam Smith's philosophy as being inspirational, even today, because what he is advocating was competition, and I think competition is good for everything.

Mr. HANSEN. I certainly do agree with my friend from Louisiana, as I generally do, and I take special note of saying that I agree with him on this specific point.

Madam President, the point is that this system is not perfect. I suspect, if we were to remain in continuous session in the next 5 years and do nothing but try to legislate in the area of labor reform, at the end of that time there would be plenty of people in the country who would say we really had not improved things at all.

But I do say this:

I am persuaded and rather completely convinced that when we talk about freedom, and that seems to be one of the great goals, one of our cherished objectives in America, I believe that it can be expressed in many ways. Certainly freedom of the marketplace is a way it can be expressed. People from countries behind the Iron Curtain who have visited America never cease to marvel at the opportunities that we have as Americans to go into the marketplace and pick, choose, and decide what we want to buy. We do not have to buy shoes that the Soviet hierarchy has decided will be offered to the typical Russian consumer. Sometimes I think maybe we have gone a little overboard. But we can buy American shoes, and they are in decreasing supply now because there has been a great infusion of shoes from Italy, Spain, and other countries around the world. We have an opportunity to be very selective and what, in effect, that does is to challenge the American manufacturer to challenge the rest of the world to try to see who can best produce, what will sell when people are given the opportunity to make the kinds of choices that the American market today provides. I do not want to change that, and I know that my good friend from Louisiana does not want to change that.

I think that we are also probably at a point in Goverment in America today where there are many people seriously questioning the wisdom of Government to determine what is best for the people.

I think that the so-called tax revolt today underscores a widespread and pervasive conviction on the part of the majority of Americans that, after all, each of us who makes his income or who earns his wages should be given a greater opportunity to spend it in the ways that he wants to spend it. Maybe he will be a little more charitable, if government were to relinquish some of the power it has assumed in recent decades to attempt to be all things to all people.

I have listened a number of times to my very admired chairman of the Finance Committee, Senator LONG, when he has talked about what would result

if people had a little greater opportunity to spend their disposable income in ways that satisfied them and how it would relate to greater employment in this country. He has convinced me that indeed in some respects we have gone too far in taking choices away from people, and it is time to swing things back and to let the average person have a little greater say in disposing of his disposable income.

I thank my good friend and admired chairman for the contribution he has brought to this discussion and express also my appreciation to him for his very keen leadership as chairman of the Finance Committee. I wish only to observe, Madam President, that I think this country would be well-advised to read some of the speeches and hear some of the observations that Senator Long has made. If we were to take those to heart, I suspect we would find a marked decrease in unemployment in this country, we would find a sharp rise in investment in American industry, we would find an expansion of job opportunities, and we would put a lot of people to work who now are unable to find positions simply because for too long we have pursued the illusionary goal that Government can do all things for all people, that Government is smarter than the average American, that Government should supplant the individual choices which we have been able to make over these years for it's own choices.

I thank my friend from Louisiana.

Mr. LONG. I thank the Senator.

Mr. HANSEN. As I was saying earlier, the expectation in the early phases of capitalism that a completely unregulated economy would insure the promotion of the general welfare was not fulfilled. Great as was the discovery of the regulating principle of competition by the classical economists, it was coupled in their minds with the fatal error that competition was self-maintaining, that in fact it is best attained and maintained by a policy of laissez-faire. In fact, freedom was used in the "free" economy to form trusts, cartels, monopolies, that is, to destroy market freedom.

On monopolistic or almost monopolistic (oligopolistic) markets, prices are unable, or only very inadequately able, to fulfill their functions of allocating resources and distributing output optimally (that is, with reference to the needs of consumers, at least cost). As economic systems are deformed by ever more numerous concentrations of power, price systems become increasingly unstable and susceptible to crisis. Group anarchy replaces the sovereignty of the consumers. Valuable lessons in these respects may be learned from the decay of the market economy in Europe in the inter-war period (1919–39). Cartels, monopolies, Government interventions of every description, selfish demands by powerful pressure groups, and the confused directives of "democratic socialism" all but paralyzed the economies of the European countries; these truly "mixed systems" created conditions of misery and uncertainty that were eventually exploited by various "men-on-horseback." Thus did the "free" economy as then understood pave the way for economies of the centrally-administered type. In retrospect, it may be said that it was not the market mechanism as such (a neutral device) but the particular institutional, legal, and cultural matrix in which this mechanism was embedded, with its mistaken conception of the roles of the market and of the government, which was responsible for demise of old-style European capitalism.

It was the historic good fortune of the United States that enough persons recognized at a relatively early date the fundamental deficiencies of a laissez-faire system to make possible the enactment of legislation (Sherman Act, 1890) which in effect abolished this system as far as the business community was concerned.

I think I have just spelled out in my prepared remarks the thought that prompted the Senator from Louisiana to raise the questions that he so incisively propounded to me. I think it was this course that he was talking about, that simply to leave everything alone was not good enough, and it would not serve Government well and, of course, that is the point that I have just addressed here in discussing the antitrust laws.

The antitrust laws established the state as the guarantor and enforcer of competition in the product markets; unquestionably, they helped preserve the United States from the fate which overtook European old-style capitalism, though they were far from providing a complete solution to the problem of enterprise monopoly.

The antitrust laws were aimed primarily at enterprise monopoly for at the time unions were widely regarded as underdogs in an economy dominated by powerful trusts. Due in part to this sympathetic emotional aura in which the role of the early unions was viewed, but primarily to confusion on the part of economists and the courts respecting the meaning of "monopoly," the unions were specifically exempted by the Clayton Act (1914), sections (6) and (20), from the significant provisions of the antitrust laws. These exemptions have rendered the position of the law and the courts toward competition ambivalent: On the one hand, competition is actively, and in recent years even vigorously promoted in the product markets; on the other hand, it is for all practical purposes enjoined in the markets for labor, the most important single resource of the economy. By declaring the labor of a human being to be "not a commodity or article of commerce" (Clayton Act, section (6)), the Congress in effect laid down the premises needed to take labor and wages "out of competition."

It is clear that both legally and emotionally, labor unions enjoy a special position in the American system: they have been taken out of the competitive frame. Putting them back in that frame will assuredly prove a most difficult but hopefully not impossible task. For the difficulties are largely conceptual and semantic. If verbal misunderstandings can be cleared up, a great deal will have been accomplished in the direction of fundamental reform. Basically, the problem is one of determining to what extent unions are or ought to be competitive and to what extent they are and ought to be monopolists.

In our present situation, unions exist with this monopoly power, free from antitrust regulations. Moreover, the trend in recent years has been to augment this power rather than to restrict it or use it for more beneficial economic causes. The Labor Reform Act is one more piece of legislation which aims to strengthen the grip of unions over workers and employers in the United States. To allow this to occur is to ask for more disruption and more centralized planning in America's economy. At some point, power groups have got to be stopped. Defeat of this proposed legislation is only the first step to limiting economic effects of large organizations and restoring to common people more control in the destiny of the United States.

Madam President, I know my distinguished and cherished friend from New Jersey would like to propound some questions and, without losing my right to the floor, I would be happy to try to respond.

Mr. WILLIAMS. Mr. President, I wonder if the Senator will yield for just a few minutes while I refer to a record that has been developed here that is responsive to his earlier remarks that included references to the studies and investigations of the McClellan committee when our colleague, the late Senator Robert Kennedy, was the staff director of that committee.

Mr. HANSEN. I would be happy to yield.

Mr. WILLIAMS. I thank the Senator.

I wanted to point out that, perhaps the Senator was not here, but on Thursday our colleague, Senator KENNEDY, of Massachusetts, fully described the Judiciary Committee's action and then the Senate's action on the criminal code revision—S. 1437.

In this speech the Senator from Massachusetts made three basic points:

First, the fact that some unions and union members may commit crimes is no justification for indicting the entire labor movement or for opposing this bill.

Second, in answer to those who maintain that the bill before us now is deficient because it does not address the issue of union criminal activity, the Senator from Massachusetts discussed six provisions of law which are presently on the books, which specifically address the problem of union corruption. Plainly, Federal criminal law is more than adequate to deal with illegal labor conduct. Finally, Senator KENNEDY answered the charge that the labor movement has shown little interest in cleaning up its own house by pointing out that the AFL–CIO vigorously supported the work of the Senate Judiciary Committee in drafting the criminal code revision which we had before us here on the floor for 10 days and which, of course, was ultimately passed.

The provisions of the U.S. Criminal Code which addressed the problems of

labor corruption and violence were substantially strengthened by that bill.

First, section 1722, deals with extortion. Under this provision of the bill there is a significant tightening of present law.

Section 1752 concerns labor bribery, a new offense, for paying or receiving a bribe to influence a union or union official's actions regarding union membership or work placement; also prohibits the payment or receipt of bribes to those who administer or exert influence over any type of employee benefit plans.

A third section, section 1731, makes it a crime to steal or embezzle assets of all trust funds established by employers, employee organizations, or their families, and not simply pension and welfare funds.

The fourth provision Senator Kennedy discussed—and this, I think, is particularly responsive to the concerns of the Senator from Wyoming: In recognition of the need for legislation specifically aimed at organized criminal activity, the bill includes a group of anti-racketeering provisions. These are in sections 1801 thru 1806, most of these provisions carry forward the current law as contained in the Organized Crime Control Act of 1970, which of course does carry out the prior work of the McClellan committee.

However, in Kennedy's words:

Current law lacks provisions aimed at offenses involving misuse of union pension and welfare funds (section 1752) within the definition of "racketeering activity."

In contrast, he says, this provision we all voted on does include such offenses within this definition, thereby—and this is most significant—

permitting more effective prosecution of these crimes.

Here is the point:

The penalty for racketeering is 20 years. Only national security offenses and a very few other offenses have a more serious criminal penalty than these provisions dealing with racketeering activity. These were added and strengthened with the support of the labor organizations.

Our colleague went on to point out that all parties worked together in developing this measure. It was a bipartisan effort, and had not only the strong support of the AFL–CIO, but had its active contribution.

While all this was said on Thursday last, I think it is appropriate to return to it because of the concern expressed by the Senator from Wyoming. We can be encouraged that when such abuses are found, there is adequate law now, and there is going to be even strengthened law to deal with them in the near future.

I thank the Senator from Wyoming very much for yielding.

Mr. HANSEN. I thank my good friend from New Jersey for the comments he has made. I was involved in a conference, as I remember, last Thursday, and I did not get to hear our mutual friend the Senator from Massachusetts when he raised these points.

I know that my good friend from New Jersey would agree with me that there is certainly plenty of work to be done in the area of legislation necessary to clean up some abuses, some rather considerable wrongdoing, in which certain factions of organized labor have been participants. I do not mean to single them out at all, but simply to say that wherever and whenever we find abuses of power and wrongdoing, I know that he will join with me and others in trying to bring about the necessary changes in the law, if indeed they are indicated, to accomplish those purposes.

We are making progress. I have the feeling that in many respects this particular piece of legislation still has shortcomings. I will not try to enumerate them. I know that the Senator from New Jersey has been on the floor long hours and long days, has heard a great many of the arguments that have been made, and has engaged in debate in the very intelligent and informed manner, which characterizes his utterances, in trying to point out what has been done and what the abuses of the past have been, and the changes that are being sought for in this field.

I know also that, as he has said many times, we cannot make everything perfect in one bill. I agree with him, and I know we are not going to get it done this time. I happen to think we can do a better job than seems to be offered us at the present moment. I do thank him for his contribution, and I appreciate very much the contribution he has made.

Mr. WILLIAMS. I thank the Senator from Wyoming for yielding for that purpose.

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

The PRESIDING OFFICER (Mr. SASSER). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, over the weekend I——

The PRESIDING OFFICER. A quorum call is in progress.

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

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

Mr. HATCH. Mr. President, over the past weekend I had occasion to chat with Dr. Pierre Rinfret concerning this matter, and discuss some of these points with him. He recently wrote me a letter—in fact, as recently as today—and I would like to put the letter into the RECORD. It reads:

DEAR SENATOR HATCH:

You have asked me to bring up-to-date our Economic Impact study on Proposed Amendments to the National Labor Relations Act. You have also asked me to take into consideration, for comment by me, of reactions to the Rinfret Associates' Economic Impact study.

Before I respond to your request, I believe that it is important to bring out certain details about this Economic Impact study which appear to have been overlooked.

This study was accepted by your organization under very strict conditions. We only agreed to accept this assignment under the condition that the sponsors would remain totally removed from our effort. The sponsors agreed that they would have no input to the study, would have no right to edit the study and would have no say whatsoever in regard to the conclusions.

This is important because Secretary of Labor Marshall was quoted in the New York Times as having said, "they arrived at the conclusions they were paid to arrive at." This statement is totally without foundation, totally untrue and a total misrepresentation of our effort. Our report "The Economic Impact of H.R. 8410 and S. 2467" is an independent and objective analysis. It represents our own work and neither its analysis or its conclusions have been influenced or dictated by any other organization or organizations.

There is a second point which needs to be brought to the attention of those who have labled our effort as a report sponsored by big business. This is an inaccurate and misrepresentative appelation. Certainly large businesses and large institutions have contributed towards defraying our cost. In actual fact the great majority of contributors are neither large nor well known organizations. It is a fair statement that the costs of the report have been defrayed by a cross-section of American industry and organizations.

This includes, obviously, both large and small business and both large and small organizations.

One of the points which we have made in our report is that in 1976 the cost of wages and salaries for union members was 16 percent higher than for nonunion wages (see paragraph two of Page 5).

Certain distinguished members of the Senate have taken this point to mean that either (1) union members are 16 percent better off than nonunion members or that (2) nonunion members are underpaid by 16 percent. These perceptions totally miss the point.

If the proposed amendments to the National Labor Relations Act were to apply to only one individual or an extremely small percentage of the total labor force, then these comments would have merit. The key question which the Senate now has to examine is whether the society as a whole can afford to increase labor costs by 16 percent at the very moment when the Wholesale Price Index has been rising at double digit rates and the Consumer Price Index has been rising at close to double digit rates.

Wage rates in industry in 1978 to date have been rising around 9–11 percent per year. If we allow for the most optimistic assumption on productivity of 3 percent per year then union labor cost this year will rise 6 to 8 percent which will certainly contribute to inflation.

It is impossible in this society at this time to increase labor costs 16 percent without contributing to inflation. Anything which adds to inflation is contrary to the national interest of the United States as indicated by the Administration itself and by the Congress. It is our judgment that H.R 8410 and S. 2467 will add to the inflationary trends to the United States and this bill represents inflation by legislation.

Another point which needs clarification is the trend of union membership. One of the arguments set forth by supporters of the proposed amendments to the National Labor Relations Act is that the trend of union membership has been down in the past decade (see paragraph three of Page 4) and that, therefore, union membership cannot be a contributor to inflation. It is obvious to even the most casual observor that union membership alone would not contribute to inflation if wage costs and productivity were identical with both union and nonunion members.

The point is that wage costs of union members are higher than wage costs of nonunion members. In 1972, union membership was 25.5 percent of total employment. In 1976, union membership was 24.0 percent of total employment (see paragraph three of Page 4).

In 1972, wage rate increases for all union workers was 5.8 percent. For nonunion workers it was 5.3 percent. In 1976, wage rate in-

creases for all union workers was 8.5 percent. For nonunion workers it was 6.9 percent (see paragraph three of Page 18). The point is that wage rate increases of union workers exceeded those of nonunion workers even though union workers represented a smaller part of the total employment. It is obvious that the unions have been able to increase wage costs at a faster rate than nonunion members even though union members have declined relative to total employment.

In our report, you should note, we continuously stress the interrelationship between union membership and costs and nonunion membership and costs. It is our judgment, and it is only a judgment, that if union membership had been increasing relative to total employment in the period 1972–1976 then union wage costs would have increased faster than they did and would have been a greater factor in inflation.

A great deal of confusion appears to exist regarding the table on Page 10 and the table on Page 11 of our report. It would appear that everyone without exception has either overlooked or ignored the conditions specified in that table. Both of the tables referred to were constructed on the basis of 1976 wage costs and prices.

The debate which appears to have raged around these tables does not seem to take into account that the data was for 1976.

I do not need to tell you that since 1976 consumer prices have risen, the economy has expanded, salary costs have increased and average hourly earnings have risen. In 1976, the Consumer Price Index averaged 170.5 (1967=100). In the first quarter, 1978, the Consumer Price Index averaged 189.9 (1967=100). In other words, the Consumer Price Index in the first quarter of 1978 was already 11.4 percent higher than the data upon which the tables on Pages 10 and 11 were based.

You asked me to update these tables and to address myself to an interpretation of the impact of an increase in unionization on consumer prices.

We have updated both of these tables. The table on Page 10 of our report and the table on Page 11 of our report have been reconstructed on the basis of first quarter 1978 data. At this point you may ask, as others may ask, why we did not put the latest data in our full report. The answer is that we were not able to time the issuance of the report nor did we realize that the conclusions based on 1976 data would be misunderstood, misinterpreted or ignored. The interesting thing is that our update justifies our analysis.

It is a fair statement that for each 10 percent increase in unionization in this society at this time (meaning, among other things, low productivity, high wage increases and high unit cost of production) there will be an increase of about 3 percent in the Consumer Price Index. Let me point out to you that 3 percent in the Consumer Price Index now works out to an increase of about 6 percentage points.

A 10 percent increase in unionization is defined to mean 10 percent more in percent of the percent of total employment who are union members.

With best regards and with the conviction based upon my professional experience H.R. 8410 and S. 2467 are inflation by legislation.

Most sincerely yours,

PIERRE A. RINFRET.

Mr. President, that is a pretty dramatic letter because he is confirming that subsequent data to 1976 proves his point that he made when he used the 1976 data, that it makes it even more dramatic than he has been able to make it in the past that this bill is extremely inflationary and will lead to double-digit inflation, and is inflationary legislation, or, should I say, inflation by legislation, to borrow the terms of Dr. Rinfret.

If we put it all together, that alone should be reason enough for this bill's defeat. But if we add to that the difficulties that the small businessmen of our society will have to undergo as a result of this bill, then there is absolutely no justification whatsoever for foisting this pushbutton unionism bill off on the people of this country.

Small business people all over this country are up in arms, as they should be, because their very livelihoods are being jeopardized, their businesses are being jeopardized, as a result of this desire on the part of this particular special interest group to have its way to the exclusion and detriment of everybody else in society.

I think the Rinfret letter, which is dated June 19, 1978, makes a very good point.

I commend his economic impact analysis, which is the only economic impact analysis really fairly undertaken in this manner, be reviewed by everybody concerned, because if it is and if we really are trying to do something in this administration to stop inflation and the inflationary spiral, then that report lends a great deal of credibility that this bill should be defeated and that my colleagues, all of whom I deeply respect, should consider ending this filibuster by an overwhelming defeat of the cloture motion.

I suspect that that will be a very difficult thing to do except for the fact that I believe that we have enough Senators who are willing to stand up and be counted in this matter and who are willing to fight this type of legislation, inflationary legislation, or inflation by legislation—to borrow Dr. Rinfret's terms—which are presently being faced with here.

Mr. President, I believe that it is important for all of us to stand up and tell it the way it is with regard to this bill. Literally, if I were to list, in order of priority, the provisions of this bill which are the worst down to those which are still bad but less than the worst, I would start with the "make-whole" remedy. There is absolutely no question that the "make-whole" section of the bill, and of the substitute to the bill, is the most detrimental aspect of this bill. That would be No. 1.

No. 2, in my opinion, would be the quickie election, which is changed by the Byrd substitute to be an instantaneous election. That is certainly bad. That is just slightly less reprehensible than the "make-whole" section.

No. 3 would be the equal access provision or the remaining punitive remedies which this bill is calling for, which are totally unjustified under the law and facts. Then we can take every other provision of the bill and show how detrimental the bill really is to the vast majority of people throughout our country.

It is particularly disturbing to the Senator from Utah, and to many of my colleagues who have expressed such strong reservations about this bill, that the "make-whole" remedy is being advanced as a worthwhile remedy. What is wrong with the "make-whole" remedy is that it takes away a right on the part of the business person to literally have judicial determination of some of the important issues bothering him. Up until now, under present labor law, and I would have to presume after this bill is enacted, assuming it is—which is an assumption I do not think anybody should make—the only way to get a determination by the courts is literally to technically refuse to bargain. It is a time-honored procedure accepted by the board and accepted by the courts. In essence, that provision would do away with that and, in addition, provide for an indexing of wages to the extent that we might have problems even worse than we have today with regard to inflation. This backs up the Rinfret report, and the letter which I have just read into the RECORD.

I would be happy, at this time, without losing my right to the floor and without having my remarks considered as a second speech under the rule, to yield for a question to the distinguished Senator from Montana (Mr. MELCHER), who I understand would like to make some comments or ask some questions.

Mr. MELCHER. Will the Senator mind yielding the floor to me?

Mr. HATCH. Mr. President, I ask unanimous consent that my remarks of this day not be considered a second speech under the rule.

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

Mr. HATCH. I yield the floor.

Mr. MELCHER. I thank the Senator from Utah, my friend (Mr. HATCH). I have a few remarks to make and following that I would like to engage in a colloquy with my friend from Utah on some of the points which affect small businessmen in particular.

Some businessmen say to me and to others in Congress, "Don't lay any more law on me. We have enough."

I know what they are talking about. My experience as a practicing veterinarian for 20 years in Forsyth, when we dealt with changing Federal regulations involving products that we sold to our clients for animal health and nutrition, brought me into confrontation with the results of Federal law that Federal agencies carry out through their regulations.

So when the small business community says "Don't lay any more law on us," I know where they are coming from.

They have not asked for this bill. They have made it clear that they are fearful of the bill.

Small business today is where the owners scramble to keep up with the bookwork, get some orders or sell some merchandise, make the deposits at the bank so they can write some checks to pay their bills. Sometimes they think they are on a treadmill, hardly ever caught up, apprehensive about rising costs and, on top of that, afflicted not

only with the sluggish economy but also, like the rest of us, must endure inflation. Their families are as hard pressed as other families.

They have read with alarm—those of them whose employees are not unionized—that this bill is a master plan of national labor leaders to organize and unionize their employees.

They have been told that by the National Chamber of Commerce. They have been told in most instances by their State chamber of commerce. They have been told that, in some instances, by their local chamber of commerce. They have been told that, in many instances, by various trade associations. They have read or heard in the news media a constant reference to this bill as a broadening of the National Labor Relations Board and an effort by unions to expand their membership.

It follows as naturally as night follows day that if that is the case those small businesses, which are nonunion now, have a great stake in what the effect of this bill would be on themselves and their employees.

Many of them have never thought or considered that a union would be interested in organizing their employees nor have they thought or considered that their employees would be interested in a union. There are at least two reasons for that; there has not been any union activity nor any indication by a union of interest in a great number of small businesses in my State that employ anywhere from 4 to 15 people. The employees have not considered a union and, if they did, their first question would be "How much does it cost me?" And, if they thought that far when told that the dues might be $10 or $12 a month, I believe they would ask, "What do I get back for that?"

So all of the talk and news media coverage has led small business to believe that Congress, through this bill, is jamming something down their throats. They remember OSHA where in my State some of the inspections in the first year or two of inspection of very small establishments seemed to be a vendetta of nitpicking their shops and stores. I well recall the specialty of one of the inspectors, a retired military officer hired by OSHA to make inspections. That specialty of his was citations when three-pronged electrical plugs were not used on electrical appliances in the store or shop. Now, I am sure he was on solid ground as far as the regulations were concerned, and doubtless there are many instances where three-pronged plugs are significant. But is a three-pronged plug really significant for an electric coffeepot? If so, God help us when OSHA inspects Senate offices.

It does sound ridiculous but small business learned during those years that the nitpicking of OSHA citations were for real and if they were not subjected to it personally they knew others who were. They are gun shy of the regulations of a Federal agency and they are gun shy for good reasons.

Earlier during this filibuster I engaged in a colloquy with the junior Senator from Utah to bring out some of the points in this bill that are of concern to small business. During that colloquy on May 23, my friend from Utah said:

I do not know how many of these cases the Senator from Montana has tried, but I am familiar with a great number of them, thousands of them.

Of course, I have never tried a case and I do not want to. But my experience in my town of Forsyth and my experience here in Congress has left me with a deep-seated conviction that is close to my heart—that I want to eliminate some of the confusions caused by Federal regulations that affect and afflict hard-working and hard-pressed small businesses.

To that end, the colloquy on May 23 between my friend from Utah and myself dealt principally with three areas of this bill, comparing it to the present law.

Briefly, those areas under existing law are:

First. Who is covered by the National Labor Relations Board? Retail stores, restaurants, hotels, motels, repair shops, movie theaters, and many other small businesses that gross annually over a half million dollars are subject to the NLRB's jurisdiction.

Second. While the NLRB has the power to set an election when the employees would vote on whether or not they wanted a union my friend from Utah stated that in 82 percent of the cases, the Board set that election date between 12 and 42 days after a petition was filed with the Board.

Third. Access to employer's property by the union organizer varied because of different conditions as had been determined by court cases and Board rulings.

It must be clearly understood that a great portion of that colloquy on May 23 dealt with existing law, and the three points I have just mentioned are the existing law. I sought during that colloquy with my friend from Utah, the distinguished junior Senator (Mr. HATCH), to bring out the changes that would occur if the Senate bill were passed.

I have received thousands of letters from small businesspeople in Montana and these are their major questions. The question, then, is, would enactment of the bill remove any of the confusion, remove any of the redtape, and alleviate any of the necessity for small business to hire attorneys to advise them what rights or restraints would be the case where an attempt would be made to unionize their employees? Although my friend from Utah stated that, based on his experience with thousands of cases as a practicing lawyer, he did not find favor with any of these points covered in the bill as compared to present law, I stated on May 23 that there were some points in the bill that struck down some of the existing redtape and eliminate some of the need for a labor lawyer to interpret the case law as it affected an employer's right to deny access to his property for a union organizer.

My purpose today, if the Senator from Utah (Mr. HATCH) is willing, is to review these same points in the Senate substitute bill, introduced on June 8 and cosponsored by 24 of us, both Democrats and Republicans, to determine if the substitute does not respond to the legitimate concerns of small business connected with these issues when an attempt is made by a union to organize their employees.

The test of whether or not this bill clarifies and simplifies the present law will, in the final analysis, rest on whether small business will be able clearly to know and understand their prerogatives without the costly expense of hiring an attorney to advise them. It is clear that the existing law on some of these points not only is confusing but also requires interpretation of case law and Board rulings that can and do change from time to time. The test of this Senate substitute bill as regards small business will be:

First, the substitute prohibits broadening the jurisdiction of the NLRB to businesses such as retail stores, hotels, motels, restaurants, repair shops, and movie theaters that do less than $500,000 gross business a year. Present law would permit the Board to extend its jurisdiction; the Senate substitute prohibits that.

Second. The time of an election for the employees to vote in those cases where a union is attempting to organize would be no less than 35 days after written notice is given to the employer and no more than 50 days. That was one of the points so widely discussed and termed "quickie elections" by chambers of commerce, trade associations and many others as being harmful to the small employer.

Mr. HATCH. Will the Senator yield?

Mr. MELCHER. I shall be glad to yield in just a moment.

Mr. HATCH. Does the Senator want to ask these individually and have me try to respond?

Mr. MELCHER. Yes, I do, but I just want to complete this statement if the Senator will oblige me.

Mr. HATCH. Certainly.

Mr. MELCHER. I thank the Senator. Under existing law, the Board, at its discretion, has been setting the election dates between 12 and 42 days. If the election date set by the Board at a time less than 30 days—25, 20, 15, or 12—creates a danger of quickie elections, it is certainly appropriate for Congress to establish by law that no election can be set that quickly and that the employer as well as the employees have time to consider the proposal before the election is held. Therefore, the Senate substitute would remove that question and, by law of Congress, remove the discretion of the Board and state clearly that no election would be held in less than 35 days after written notice by the union is given to the employer.

Third. Access, the third point, is established in the Senate substitute as a matter of law, taking away the doubts and confusion of case law and Board rulings which can vary from time to time and is a haven and the beckoning Val-

halla for astute attorneys who engage in the practice of this type of law. The Senate substitute permits by law the employers to reject any intrusion on their property by a union organizer. It requires that, even if an employer engages in a systematic campaign among his employees against the union, the access for the union organizer would only be allowed in nonwork places and nonwork times. It is not hard to understand. It is clear, and the rights of the employers regarding their property are upheld by Congress if the Senate substitute becomes law.

On these points, if my friend from Utah (Mr. HATCH) will engage with me in colloquy, we can provide more detailed information for the small employer.

First, on the question that the jurisdiction of the Board by provisions in the Senate substitute could not be extended to other small businesses, I ask unanimous consent that a table from the Department of Labor listing those establishments under the present standards of gross business be printed in the RECORD at this point.

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

ESTIMATED NUMBER OF EMPLOYEES AND ESTABLISHMENTS COVERED UNDER THE PROVISIONS OF THE NATIONAL LABOR RELATIONS ACT, 1975

| Industry | All establishments | All employees [1] | Gross volume of business in excess of: [2] | Covered | |
|---|---|---|---|---|---|
| | | | | Employees | Establishments |
| Total | 3,843,100 | 58,496,150 | ..... | 44,112,560 | 847,497 |
| Mining | 23,400 | 647,040 | $150,000 | 627,540 | 12,082 |
| Construction | 368,780 | 3,756,830 | 150,000 | 3,088,300 | 162,881 |
| Manufacturing | 291,500 | 18,347,590 | 150,000 | 16,030,140 | 89,401 |
| Transportation | 153,970 | 4,384,170 | ..... | 3,953,680 | 24,525 |
| Local transit systems | 2,845 | 94,560 | 250,000 | 63,470 | 276 |
| Taxicabs | 5,205 | 102,240 | 500,000 | 79,660 | 71 |
| Other transportation | 101,525 | 1,937,790 | 150,000 | 1,686,010 | 13,307 |
| Radio and television broadcasting stations | 5,615 | 143,250 | 100,000 | 127,490 | 1,829 |
| Telephone and telegraph systems | 14,095 | 995,270 | 100,000 | 960,900 | 3,184 |
| Newspaper and magazine enterprises | 10,100 | 432,310 | 200,000 | 405,700 | 1,454 |
| Other communication systems and services | 2,325 | 35,980 | 100,000 | 30,130 | 54 |
| Public utilities | 12,260 | 642,730 | 250,000 | 600,320 | 3,861 |
| Wholesale trade | 354,300 | 4,026,120 | 150,000 | 1,857,220 | 274,603 |
| Retail trade | 1,187,500 | 11,504,530 | 500,000 | 5,983,960 | 145,224 |
| Finance, insurance, and real estate | 369,000 | 4,345,710 | 500,000 | 2,975,110 | 33,138 |
| Services | 1,094,650 | 11,484,160 | ..... | 7,596,610 | 105,638 |
| Auto repair | 83,000 | 384,610 | 500,000 | 77,200 | 2,766 |
| Miscellaneous repair | 44,010 | 201,720 | 500,000 | 55,790 | 1,231 |
| Motion picture | 15,050 | 177,080 | 500,000 | 54,500 | 1,215 |
| Amusement and recreation | 42,600 | 421,620 | 500,000 | 179,770 | 2,412 |
| Business and personal service | 287,800 | 2,675,960 | 500,000 | 1,180,040 | 13,123 |
| Hotels, motels, and other lodging places | 46,000 | 709,210 | 500,000 | 469,240 | 3,830 |
| Hospitals | 5,500 | 2,127,550 | 250,000 | 2,124,140 | 5,240 |
| Nursing homes | 12,100 | 651,430 | 100,000 | 633,290 | 8,479 |
| Other health care facilities | 288,500 | 1,012,070 | 250,000 | 419,410 | 8,260 |
| Universities and colleges and symphony orchestra | 2,650 | 556,970 | 1,000,000 | 423,890 | 379 |
| Other educational services | 25,100 | 422,060 | 150,000 | 406,630 | 14,538 |
| Legal services | 79,140 | 263,000 | 250,000 | 129,530 | 9,136 |
| Other services, n.e.c. | 222,800 | 1,880,850 | 150,000 | 1,443,180 | 35,019 |

[1] Excludes agricultural employees; Federal, State, and local government employees; self-employed and managerial employees.

[2] Estimates have been determined by the Boards, jurisdictional standards, where possible, generally based on gross business-receipt-size. Nonretail businesses follow the $50,000 inflow/outflow test, translated into gross volume of business as shown above.

[3] 3

Mr. MELCHER. On the question of jurisdiction of the board, comparing the Senate substitute either to the previous Senate bill or to existing law, it would seem clear to me that the freezing of the standard would make it very clear where small business is whether it is under the jurisdiction or outside the jurisdiction.

I wonder if I could solicit the comment of the distinguished Senator from Utah on that point.

Mr. HATCH. I appreciate the questions of the distinguished Senator from Montana. I think he is raising legitimate questions, and I hope we can answer some of them.

With regard to the jurisdictional limits, there really will be no change, because those limitations were set by rule of the National Labor Relations Board in 1958. Since that time, we have had in excess of a hundred percent increase in inflation; yet, the rule still applies, and many more businesses have come into effect.

So what we are doing here, in essence, is making legislation out of rules which would exist, anyway.

Admittedly, Mr. Fanning has indicated that he wants to expand even the present jurisdictional limitations. So what the Byrd substitute would do would be to treat these limitations, even though they were 1958 limitations intended to protect small business, which literally have become basically out of date—and I will give some statistics for that—by legislating them, rather than having them in accordance with Board rule, which could change at any time.

As a practical matter, 72 percent of all businesses in our society are sole proprietorships. That means they are businesses in which the only employee is the owner of the business. Those businesses cannot be unionized, regardless of jurisdictional limitations.

Those limitations, in essence, really do not do anything for small business that is not basically done. So 72 percent are businesses which are not covered by the rule, the act, or anything else, because the employer owns the business and is the only employee of the business. He is excluded under the act, and therefore his business is excluded, regardless of the amount of money, inflow or outflow, that business has.

With regard to the remaining businesses, which would not be affected by legislating this rule into law, or by this bill, they are few in comparison. Those are busineses which we maintain have less than three employees, as a general rule, and would not ordinarily be organized, anyway, because it would be economically unsound for the union to try to unionize those businesses. They are not going to do it, anyway.

The significant statistic is that as a result of the 1958 guidelines, which are still the law and which would be legislated into law by this particular substitute, approximately 80 percent of all employees in our society, except for the sole proprietorship employees and other small businesses from an employee's standpoint, would be covered by this bill.

So, with regard to that point, that piece of legislation would not do anything except exclude—which is not the case now, except by rule—but legislatively exclude, certain businesses from having any protection under the act which they have under the present law. In other words, it takes away protection. They may or may not care about that. Nevertheless, that still is another bad aspect of legislating the rule into law.

If we were going to do what is right for small business, we would take into consideration the inflationary factors that have existed since 1958, the date of those procedural and jurisdictional rules, and we would expand those rules up to present reality. That still probably should not be legislated; because if you exempt businesses up to that point, some would argue that that, in and of itself, would exclude businesses which may need the protection of the act. I am not sure that I would make that argument, but some have.

One other thing: It would appear that if the proponents of this legislation are sincere—and I have no reason to doubt that they are—but if they really want to benefit small business, they should exclude from this act any business with less than 100 employees. If you really want to exclude all small business, it would be those with 250 or 400 employees, depending upon the gross inflow and outflow of that business. If they did that, it would be another matter. But I do not believe the proponents would do that.

Mr. MELCHER. I thank the Senator. However, I should like to recall what my friend said on May 23.

Mr. HATCH. That will be fine.

Mr. MELCHER. He said:

Let us understand this, that any business is covered by the complete law. In other words, the National Labor Relations Act could be applied to any business even if it only makes $1.

Mr. HATCH. That is true.

Mr. MELCHER. The Senator continued:

All the Board has to do is change its jurisdictional amounts. If the Board says that a movie theater is not covered unless it does $500,000 worth of business a year before this bill is enacted, immediately thereafter it can say, "Well, we are going to cover it if it has $1 worth of business a year."

Mr. HATCH. That is true, but it has to be engaged in interstate commerce.

Mr. MELCHER. The Senator continued:

That is the significant factor.

The Senator stated that on May 23.

In a later part of the colloquy, the Senator from Utah said:

Let me just add this: The present Chairman of the National Labor Relations Board has been on the Board for in excess of 20 years. He is on record as being for expanded jurisdiction. In other words, he wants to expand the Board's jurisdiction by narrowing these guidelines. I believe we are going to find that, regardless of what happens here, the guidelines will be narrowed.

As a result of that confusion on the Senate floor as to what was going to happen with this bill, or without this bill, small business wants to know where they are. If they are covered by NLRB jurisdiction, they can find it out. If they are not covered by NLRB jurisdiction, they are entitled to know. So the substitute is very straightforward and says that is the way it is. You can know.

None of these bills changes what my friend from Utah was referring to about a sole proprietor who ran his business and was the only employee, or perhaps had one other employee, which perhaps could properly be termed "mom and pop" businesses, about which we hear a great deal when we review some of the literature connected with this bill.

That kind of dialog on the Senate floor, in the chambers of commerce, or in the trade association literature seems to indicate that Congress was reaching out to grab them, bring them in, ram something down their throats.

Mr. HATCH. This bill does exactly that.

Mr. MELCHER. I do not believe it does.

Mr. HATCH. It surely does. I have just shown the Senator from Montana how it does.

Mr. MELCHER. The Senator from Utah has just said that there would not be any jurisdiction of the NLRB over these businesses of that size if the Senate bill is enacted.

Mr. HATCH. That is not what I have said. I have said——

Mr. MELCHER. Will the Senator from Utah clarify this by telling me that he believes that the substitute would take those types of businesses under the jurisdiction of the NLRB? It is so patently clear that they do not that I am willing to listen to anything to clarify the Senator's viewpoint.

Mr. HATCH. The fact is that if the substitute is enacted, the present law would not change, because it would be the same as the rule laid down by the Board.

Let us start from the beginning. The National Labor Relations Act applies to all businesses which do business in interstate commerce regardless of jurisdictional amount. By Board decision, through rules, they have excluded businesses as a practical matter from the onus of the act.

What the substitute will do will freeze those rules which were decided back in 1958.

If that were really fairness and a desire to protect small business, we would not only be concerned about excluding sole proprietorships, which are excluded anyway by practicality, because you cannot unionize the one-owner business, who is the sole employee of the business. They would expand those rules, taking into consideration inflation right up to 1978 with the continual expansion thereafter.

Now, they are not going to do that. The fact of the matter is that this statutory regulation of the rules basically will not change the present law and in a very real sense will forbid the Board from ever changing the jurisdictional rules up or down anyway. Some small businessmen would argue, if you will, that they do not have any dispute with any jurisdictional amount. They would just as soon come under the act. That is not their argument. Others would argue that they do not want to come under the act and do not want the Board supervising their activities.

So, what I am saying is the provision effectively guarantees the very result it purports to avoid. Since the Board's discretionary jurisdictional standards are expressed in terms of specific dollar volumes of business, inflation steadily erodes the jurisdictional thresholds, thus expanding jurisdiction over all business, and there is no other way around it, so this is not a fair provision.

Mr. MELCHER. The Senator should have introduced a bill to amend the Landrum-Griffin Act enacted in 1959, with the provision requiring that the Board could not revise the standards upward. That is already fixed in the law. The Senator has not come to the floor with any amendment that would revise that part of the Landrum-Griffin Act of which I am aware.

Mr. HATCH. I think that is where the Senator is wrong. I think there is an amendment at the desk. However, we all know that any amendments which would take place here are not guaranteed in conference. We all know that. So let us just be honest about it. This bill is so bad that there is really no real way of guaranteeing that we can correct this bill, and there certainly was not any way in committee where the vote was 13-to-2 against Senator HAYAKAWA and myself, no way at all.

Mr. MELCHER. The current law would permit that.

Mr. HATCH. Nor any way, I might add, in the House committee where the vote is just as bad. These two committees have basically always come down in recent years on the side of organized labor. Whether that is right or wrong depends upon your perspective, but that is a fact. Everyone knows that is a fact. Everyone knows that it is very unlikely. It has always been very unlikely to have a bill that really takes into consideration the small businessmen of this country when you consider all of the other reprehensible features in this bill. Admittedly, I admit that the majority leader has recognized it in his own way to try to meet an objection, but I do not believe that he has met the objection, and I do not believe that he can meet the objection through the provision that he has here, and I do not think any labor lawyer would think that he can either.

Mr. MELCHER. There is no question why there is confusion rampant among small business people about where they are and what this bill would do.

Mr. HATCH. That is right. But they know this bill hurts them, and it does.

Mr. MELCHER. To end that confusion about that point, the point of whether or not they are under NLRB jurisdiction or whether NLRB might at some later time, using their own authority, which is in the current law, to bring them under their discretion, even though they would not meet the standards at this time, the Senate substitute freezing the current discretionary jurisdiction would make that clear to all. The current law would permit lowering of the standards to broaden the Board's jurisdiction. The Senate substitute will not permit that.

The quote is on page 21, section 15, "and shall not assert jurisdiction." Nothing could be clearer than that.

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

Mr. MELCHER. So the Senate substitute will not permit that. It clears up that very point that the junior Senator from Utah so eloquently dramatized on May 23 when it meets the concerns that the Senator expressed and imposes that very discretionary loophole that my friend pointed out and warned the Senate needed to be eliminated.

Now I am glad to yield to the Senator.

Mr. HATCH. The fact is that would be a very empirical victory for small business because as a practical matter, although Mr. Fanning would like to expand the jurisdiction, he just cannot do it, and he probably would not be able to do it.

But be that as it may, this very substitute may actually be more repressive to small business than the present rule making power of the board, and that is where small business is not deceived. And you can stand there and say you are benefiting small business as a result of legislating rules into legislation, but in fact it does not benefit small business; it is a detriment to small business no matter which way you look at it. If you really meant to do so, let us legislate based upon the 1958 figures as expanded by the inflation which has occurred in our society up to 1978 figures with a right to expand it beyond that, and maybe that would satisfy a number of small business people in this society.

I take issue with the distinguished Senator from Montana who seems to presume that small business people are mixed up on this bill. I do not think any of them are. I think they know what it is. It is a piece of legislation that is going to hurt them, and we should go through every section, if you desire to do so, and show how it will hurt them. But this is just one area where it will hurt them, but it is basically an insignificant area

compared to "make whole," compared to the "quickie elections," where, if you will, under the substitute there is even a worse provision "instantaneous elections" compared to the "punitive remedies" under this bill, the packing of the National Labor Relations Board, the giving the Board an obligation to rulemake, and you can go on and on. There is hardly a redeeming feature in the whole bill that does anything for small business.

Mr. MELCHER. I think that is true, that the confusion that exists among small business whether or not they are covered under the NLRB is not a major point because they can quickly find out.

Mr. HATCH. I do not think it is a major issue here, but it is an issue.

Mr. MELCHER. But I do believe it is an issue pointed out rather dramatically by the junior Senator from Utah on May 23.

Mr. HATCH. Yes.

Mr. MELCHER. That the Board tomorrow, next month, or next year could expand their jurisdiction and all of a sudden the small business operation that thought they were not under the jurisdiction of the Board would find themselves under the jurisdiction of the Board by means of the Board extending their jurisdiction to a lesser level.

Mr. HATCH. That is true from that standpoint.

Mr. MELCHER. Just to conclude the point about jurisdiction, the present law permits the National Labor Relations Board to expand its jurisdiction. The substitute exempts those businesses such as retail stores, repair shops, and restaurants and hotels and motels and movie theaters pursuant to the table I have already inserted in the RECORD, under $500,000 gross business, and exempts by law.

That, in my judgment, is a reassurance to business doing less than $500,000 by volume.

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

Mr. MELCHER. I would be delighted.

Mr. HATCH. There is a whole set of jurisdictional rules originating with $50,000 and in the neighborhood of $500,000 and they would have to be awfully small to have an outflow and an inflow of $50,000 a year, so there are many guidelines in the table the distinguished Senator has put in the RECORD. I would not want the RECORD to indicate that $500,000 is correct.

The more acceptable figure would be $50,000 as far as the vast majority of businesses, at least that is my understanding.

Mr. MELCHER. I am afraid I must add, so as not to confuse any small business, that they can refer to the table which was printed on May 23, at page 14997. I again ask unanimous consent to have it printed today in the RECORD.

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

ESTIMATED NUMEBR OF EMPLOYEES AND ESTABLISHMENTS COVERED UNDER THE PROVISIONS OF THE NATIONAL LABOR RELATIONS ACT, 1975

| Industry | All establishments | All employees [1] | Gross volume of business in excess of: [2] | Covered | |
|---|---|---|---|---|---|
| | | | | Employees | Establishments |
| Total | 3,843,100 | 58,496,150 | ..... | 44,112,560 | 847,497 |
| Mining | 23,400 | 647,040 | $150,000 | 627,540 | 12,082 |
| Construction | 368,780 | 3,756,830 | 150,000 | 3,088,300 | 162,881 |
| Manufacturing | 291,500 | 18,347,590 | 150,000 | 16,030,140 | 89,406 |
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| Radio and television broadcasting stations | 5,615 | 143,290 | 100,000 | 127,490 | 1,829 |
| Telepnone and telegraph systems | 14,095 | 995,270 | 100,000 | 960,900 | 3,184 |
| Newspaper and magazine enterprises | 10,100 | 432,310 | 200,000 | 405,700 | 1,454 |
| Other communication systems and services | 2,325 | 35,980 | 100,000 | 30,130 | 541 |
| Public utilities | 12,260 | 642,730 | 250,000 | 600,320 | 3,863 |
| Wholesale trade | 354,300 | 4,026,120 | 150,000 | 1,857,220 | 274,604 |
| Retail trade | 1,187,500 | 11,504,530 | 500 000 | 5,983,960 | 145,223 |
| Finance, insurance, and real estate | 369,000 | 4,345,710 | 500,000 | 2,975,110 | 33,138 |
| Services | 1,094,650 | 11,484,160 | ..... | 7,596,610 | 105,638 |
| Auto repair | 83,000 | 384,610 | 500,000 | 77,200 | 2,766 |
| Miscellaneous repair | 44,010 | 201,720 | 500,000 | 55,790 | 1,231 |
| Motion picture | 15,050 | 177,080 | 500,000 | 54,500 | 1,215 |
| Amusement and recreation | 42,600 | 421,620 | 500,000 | 179,770 | 2,412 |
| Business and personal service | 287,800 | 2,675,960 | 500,000 | 1,180,040 | 13,173 |
| Hotels, motels, and other lodging places | 46,000 | 709,210 | 500,000 | 469,240 | 3,830 |
| Hospitals | 5,500 | 2,127,550 | 250,000 | 2,124,140 | 5,240 |
| Nursing homes | 12,100 | 651,430 | 100,000 | 633,290 | 8,479 |
| Other health care facilities | 288,900 | 1,012,070 | 250,000 | 419,410 | 8,260 |
| Universities and colleges and symphony orchestra | 2,650 | 556,970 | 1,000,000 | 423,890 | 379 |
| Other educational services | 25,100 | 422,060 | 150,000 | 406,630 | 14,538 |
| Legal services | 79,140 | 263,000 | 250,000 | 129,530 | 9,136 |
| Other services, n.e.c | 222,800 | 1,880,880 | 150,000 | 1,443,180 | 35,019 |

[1] Excludes agricultural employees; Federal, State and local government employees; self-employed and managerial employees.

[2] Estimates have been determined by the Boards, jurisdictional standards, where possible generally based on gross business-receipt-size. Nonretail businesses follow the $50,000 inflow/outflow test, translated into gross volume of business as shown above.

Mr. MELCHER. It is clear that when you look at the type of small business that is in my State, filling stations, motels, hardware stores, grocery stores, restaurants of any descriptions, fast or slow, dressed up or casual, that it is $500,000 gross business, and that is the standard and that is what the Senate bill does exactly, to reassure those people just where they are at.

Now, the timeframe for election has been referred to very often as the so-called quickie election in the bill.

Mr. HATCH. That is correct.

Mr. MELCHER. When we engaged in our colloquy on May 23, we talked about the practice of the Board, their discretion, in seeing the elections in over 80 percent of the cases of between 12 and 42 days from the date the petition was filed for an election.

I think the criticism of the House bill as it passed the House, the criticism of the Senate bill, by some small business people was that it was too short a time, that is, assuming it might be 21 days for an election, was too short a time——

Mr. HATCH. Mr. President, will the Senator yield on that point?

Mr. MELCHER (continuing). Even though that was more than some cases that the Board at their own discretion set. But I think it can be argued that 21 days in some instances is too short a time, and I well recall the discussion I had with a businessman in my State, who lives in Billings, and who operates a very fine business there, retail business, and he pointed out to me that in their department store if an election were set quickly during the time between Thanksgiving and Christmas they might not really have time, management might not really have time, to get their position together, to have some contact, probably with letters, with their employees to say, "Well, now, here is our side of it."

They are very fine business people who have the respect of the community and are not trying in any way, although they are not unionized, to trample on the rights of their employees, but just saying, "Well, if that is what is going to come our way that the 21 days, if it were 21 days, could well be too short."

So I think the Senate substitute heeded that sort of advice and said it could be no quicker, no shorter period of time, than 35 days from the time the union filed a written notice with the employer. So that in no instance would they find themselves plunged into a campaign on whether their employees were going to unionize or not without having 35 days.

I think this answers one of the real problems that small business views in the House-passed bill and the Senate bill as it was presented to the Senate.

But in addition I think it should be clear that small business finds a problem with the Board having discretion to set these elections in a shorter time, a time such as 12 days or 16 days or 18 days or 21 days or 25 days from the time they receive the petition when it is filed. So I think here is clearly an indication of a response in the substitute not only to what was in the previous bill but what is in the existing law.

I am delighted to yield.

Mr. HATCH. No. 1, the Board never sets an election within 21 days. The only way it is shorter than 21 days under present law is by voluntary agreement.

No. 2, the objection is perhaps a minor objection to the number of days in the matter, but the major objection is setting mandatory days at all, in other words, having what is known as a vote-and-impound procedure; in other words, not having the major determinations decided before the election is held as to who has a right to vote, and letting the union in essence set the unit instead of the Board setting the unit.

What small business says, in fact what all businesses say, and rightly so, is that when you set arbitrary mandatory quickie election timelimits, they are not justified under present law, the present statistics or otherwise. It is like we have said that about 82 percent of all cases are actually determined within a 43-day timelimit or timeframe, that is, under present law. Of the remaining they are almost all decided within 75 days, and in only a very few cases, probably 0.04 of 1 percent, are the cases so complex that they involve contempt proceedings or other problems. So there is absolutely no justification to mandatory union provisions here.

With regard to the substitute, not only is H.R. 8410, as amended by S. 2467, bad because it sets mandatory time limits, which are detrimental to the business people, but I think it needs to be pointed out to the distinguished Senator from Montana that the union does not start unionizing when it gives a notification. It has maybe done that for months before without notice to the employer. So it may have had 6 months, a year, 5 years working on getting that unit in a position where they can all of a sudden set an election.

Now, under present law, the employer can say:

Well, let's decide what the truth is; let's decide who has a right to vote; let's decide all of these pre-election decisions without having a mandated time frame until they are decided.

Under this bill, they go ahead with the election whether or not they have all these decisions made under what is known as a "vote and impound" procedure—in other words, leaving all the problems to be decided after the vote, which is unfair, which gives the union an unfair advantage, which allows, because of the specified time limits, the union to spring the election on the employer, which of course is very detrimental to any small businessman who does not have, as a part of his normal staff, a labor lawyer who can guide him every step of the way, which of course most small business do not have.

Mr. MELCHER. That is correct. That is correct, and I would like to remind my friend from Utah that under this bill it is not necessary to have a labor lawyer. If an employer has as many as 15 employees, at some point, be subjected to a unionization effort, in order to understand this point, the point on access and the point on whether or not the NLRB has jurisdiction over them to begin with, he does not have to hire an attorney.

The reason they have to hire attorneys is simply because of all of the present regulations that are confusing on these very points, on access, on the date of the election, and on how you do it.

Mr. HATCH. Regulations just like these.

Mr. MELCHER. Yes. But the advantage, I remind the Senator, is that these regulations under the current law are changed whenever the Board wants to, or changed when some court or some body having jurisdiction at some appellate level decides, "Oh, no, no, you misinterpreted the act."

Mr. HATCH. That will not change under this law.

Mr. MELCHER. And provides direct support to draw up some new regulations, which require hiring an astute attorney, familiar with the actions of the Board, familiar with the case law, and the whole hodge-podge—to hire that attorney to figure out, "What are my rights as an employer in this instance?"

Mr. HATCH. Yes; that is the point.

Mr. MELCHER. While this union is coming around and saying to my employees: "Why don't you unionize,"

I do not think the average small businessman who employs a dozen people has access to enough money out of his business to be continually hiring lawyers, so I think when we get a chance here, on the Senate floor, to strike out some red-tape, to remove some discrimination, which admittedly, just as the Senator has described so often on this floor, has led to wonderment: "Well, where are we, and which regulation is changed?" The Senator from Utah has cited numerous court cases, some of them going back 30 years, and then traced the development up. For instance, on access, they really confuse people in business, and they can only answer it by hiring an attorney who is very familiar with the law, an expert in it.

Mr. President, to continue on this point about making something clear in the law rather than it being discretionary with the Board, the changing regulations, that can be changed at the discretion——

Mr. HATCH. Mr. President, may I interupt the Senator before he moves on to that point, to answer his last question and at least solve that problem with respect to the bill, and then let us move on to the regulations, so that it will flow more freely in the RECORD itself?

Mr. MELCHER. Certainly; if the Senator has more to add——

Mr. HATCH. Oh, I sure do.

Mr. MELCHER (continuing). To what he has been saying about a quicker day "quickie elections," vote and impound, and so on, I will be glad to have him add it.

Mr. HATCH. Let me just add this: I am sure the distinguished Senator from Montana and I disagree widely on this bill. But this point needs to be answered, that the Senator feels this bill makes it easier for a businessman to know where he stands.

It is simplistic to think that because you mandate a time limitation that alleviates the necessity of having a labor lawyer advise the small businessman with regard to this bill, you make his life easier. Actually, this bill makes a small businessman's life a lot more complex. I just want to cite that difference in opinion that we have. But let me go on.

We have called this a "quickie election." So also has the Office of Small Business Advocacy, as reflected in their situational analysis. They have called it a "quickie election," because that is the best thing to call it.

But under the new substitute it is not even a "quickie election," it is an instantaneous election. Under the guidelines of the Byrd substitute, which are designed to favor even more than before the organizational activities of the union, while putting the employer at a decided disadvantage during the election process, what we now have before us could easily be labeled "instantaneous elections" instead of just "quickie elections."

Under the system provided in the Byrd substitute, it is not only possible but even likely that representation elections will be held within days or even hours of the filing of the petition for an election, which would put small businessmen, or any businessmen, for that matter, at a decided disadvantage. The differentiation between notification in writing that employees are seeking union representation and a petition is crystal clear.

But the deletion of the majority support for petition by the substitute also is crystal clear.

Under this system, unions could notify any time and file a petition at their convenience or an advantageous point beyond the 35-day period and the National Labor Relations Board is statutorily required to hold an election regardless of support for the petition, regardless of notice periods and unit eligibility. This is regardless of any thing other than vacation days, on the earliest administratively possible date. That is what the substitute says.

Mr. MELCHER. I will have to interrupt the distinguished Senator here, because it is clear, first of all, that under existing law the Board will take into consideration a show of interest on the part of the employees. It is very clear under the statute that the Board must also continue to take consideration of a show of interest. But to further augment that, to further clarify it again so it is not just a question of regulations, the amendment described at the desk, well known to everyone in the Senate, of the distinguished Senator from New Jersey (Mr. WILLIAMS), says by law the Board must have a show of interest from at least 10 percent, at least 3 or 10 percent of the employees in that particular business.

But existing law, contrary to what my friend has indicated, does permit the Board, under its own authority, to set the election when they want to.

The fact that they have not does not take away the point that during that period of the 12 to 42 days they have set those elections, that if they chose, if there were not any agreement for any particular date, they could set the election at 15 days if they wanted to. The law is clear that it is their discretion.

Now, that is what we are taking away from them and saying, "You can't do

it any more, if you think you can, you've lost that authority."

Mr. HATCH. The least I can say is that the Senator from Montana and I respectfully disagree, or at least I do with him.

I think the bill is completely contrary to what is is saying. But I think we could——

Mr. MELCHER. Would the Senator mind responding then on that point?

What part of the law that is on the books today that prohibits the Board from setting the election, or a date, say, 21 days——

Mr. HATCH. Is the Senator saying this bill prohibits it from setting the election?

The fact of the matter is that the National Labor Relations Board is probably the most efficient arm of Government today. We do not find a lot of fault with the Board, as far as holding elections, and neither does the small business community, or anybody else.

That is not the problem. The problem is the injustice that occurs from mandatory guidelines and deadlines.

Mr. MELCHER. Could I ask my friend not to confuse the RECORD by stating that the bill does not set a timeframe based on 35 days, no less than 35 days from the time the union organizer has served written notice on the employer?

Mr. HATCH. What is supposed to happen in 35 days?

Mr. MELCHER. That the election can be set no sooner than and no less than 35 days after the written notice has been served on the employer.

Mr. HATCH. What is the understanding of the distinguished Senator from Montana as to when the election may be held after the 35-day period. Is it a fact it may be held within an hour, within a day, or a week?

Mr. MELCHER. I would have to disagree with that.

Mr. HATCH. The Senator would?

Mr. MELCHER, Yes, I would.

Mr. HATCH. Well, the fact is that that is what can be done under this substitute and, from that standpoint, it makes it an instantaneous election and very detrimental.

Mr. MELCHER. I am sure the Senator does not want to confuse anyone.

Mr. HATCH. No, I do not.

Mr. MELCHER. Is he saying that after the written notice was served on the employer, the Board could set the election date in fewer than 35 days?

Mr. HATCH. No. That is not what I said.

Mr. MELCHER. All right. Then the Senator will agree with me on that point?

Mr. HATCH. Yes.

Mr. MELCHER. All right.

Mr. HATCH. Will the Senator agree with me on the point it could be set an hour after the end of——

Mr. MELCHER. An hour after 35 days? I do not believe I could.

Mr. HATCH. The Senator does not think it could.

But it could, under that legislation, under the substitute, it could be set within an hour, a day, a week. It could be set 6 months later at the option of the union. In other words, the union gets to set the time, not the employer.

Mr. MELCHER. Let us stipulate this——

Mr. HATCH. Let us not confuse the people. Why does the Senator not answer the question. I have been answering his.

Mr. MELCHER. I am delighted to answer.

If the case were that at the time the notice was served on the employer and a petition were filed with the Board, let us use a month, or 30 days, file or give to the employer the written notice, given on June 1. The election could not be held any quicker than July 5, assuming that the union, during that time, filed a petition with the Board and had given the Board enough time to do these things. The Board has to get the ballots printed. The Board has to post notices advising the workers when an election is to be held and where. The Board agent has to be selected and designated and sent wherever this election will be held to run the election.

So, given that time frame, I cannot say that the election could not be held on the 35th day.

That is the purpose of it, to prevent it from being held any quicker than 35 days from the time the employer is notified.

Now, I believe I have responded to the Senator from Utah's question.

The election could be held if written notice were given on June 1, a 30-day month, on July 5.

Mr. HATCH. Let us say the notice, the petition, was filed on July 5. Is it not true the election could be held July 6 under this provision?

Mr. MELCHER. Well, now——

Mr. HATCH. Is that true or not? Let us not confuse it.

Mr. MELCHER. No, it is not true, because the ballots must be printed.

Mr. HATCH. What if they have them ready?

Mr. MELCHER. The notices posted advising when the election will be held and where, and the Board agent to be scheduled to run the election.

Mr. HATCH. Has the distinguished Senator from Montana read the language of the substitute?

Mr. MELCHER. Yes. I have read the language of the substitute and I have considered it with other laws that is not being changed, with other regulations not being changed.

Mr. HATCH. I respectfully disagree, is all I can say.

What I say is that it does not help much to haggle over these mandatory over-regulation provisions that this bill or its substitute want to give to us.

All I can say is that we disagree. I think the Senator will find there is not a small businessman alive who will not disagree with him. Most of them know this is not fair. They know this gives an untoward advantage to unions. They know it is going to create unionization all over America and will be sweeping in its creation of it.

They know that in the past they have not had to be threatened with that, but they will be in the future. They are going to have to undergo the expense of labor lawyers, the unionization attempt, and everything else. Naturally, they are a little upset about it. That is what is wrong with this bill. The substitute to it does not help the bill, and it is even worse in some instances.

Mr. MELCHER. Not in this case, I must remind the Senator.

Mr. HATCH. Especially in this case. It is instantaneous rather than a quickie. Either way it is bad.

Mr. MELCHER. I must remind the Senator from Utah in the use of his critique, by his own admission, it is instantaneous after 35 days, June 1 to July 5, from the time the employer receives the written notice about the union election.

Mr. HATCH. But the instantaneous surprise is when the union can spring the election. Quickie is bad enough but this is worse than quickie. It means that a small businessman is at a disadvantage and you are turning and tilting the election affair toward the unions. I do not see how anyone can disagree with it, but apparently the Senator does. I can accept that disagreement, but I respectfully disagree.

Mr. MELCHER. My friend, the Senator from Utah, on May 23, this year, said, on page S. 8068 of the RECORD:

> Seventy-five percent of all representation elections are conducted within 60 days of the petition filing date, and within that figure is a 10-day period which cannot be reduced because under the Board's excelsior rule the union must have in its possession for 10 days a list of the names and addresses of eligible voters.

Mr. HATCH. That is under present law. But that is not under this bill. This bill would change that. That is the problem with it. It has not even taken into consideration the present law.

Mr. MELCHER. How would it change it?

Mr. HATCH. Because it says they can hold an election, by filing a petition, any time after the 35th day. That means it can be instantaneous. It shows how conflicting this is.

If you want to confuse people, enact this bill. If you want to cause small business trouble all over the country, enact this bill. If you want your constituents all over you, enact this bill. To be frank with you, they know it is reprehensible. I believe the vast majority of all people who look at it know that.

I frankly cannot see how anybody can disagree that this is disadvantageous to small business. but apparently the Senator from Montana does. I have deep respect for him and deep regard for him. He has that right. Who am I to argue with that right except to say that I respectfully disagree with the Senator from Montana and I feel the vast majority of the people in this country do likewise, and I would suspect that a lot of business interests would disagree.

Mr. MELCHER. I would echo the mutual respect for my friend from Utah.

Mr. HATCH. I appreciate that.

Mr. MELCHER. I would remind him that on this particular point, his term "instantaneous election," which would be at the first possible moment after the 35-day period——

Mr. HATCH. No, it does not have to be. I am saying it can be. It can be sprung on them at times which are inopportune to the businessman. That is what is wrong with it.

Mr. MELCHER. But the bill would only permit, on line 1, page 8, the election on the earliest administratively feasible date, but not less than 35 days.

Mr. HATCH. That is right. In other words, one thing is sure: The holding of elections would likely be only a matter of a few days at the very most, and that is an instantaneous, quickie election in anybody's viewpoint.

Mr. MELCHER. I have to review what the small business people are exposed to under existing law. The existing law allows the Board, having received the petition, to set the date at their own discretion. Over 80 percent of the cases, which has been provided by statements from several, including the Senator from Utah, have been within 12 to 42 days after the Board received the petition.

There is a legitimate complaint by business that sometimes that might be too soon. It might be confusing. They might find that they could not reach an agreement on what date it should be and would have to accept a date set at the discretion of the Board. The substitute would not interfere with that encouragement, the get-together between the union and the employer to set a mutually satisfactory date. After all, that is commonsense. But in respect to how soon it can be set, we do two things: We take the discretion away from the Board. We tell the Board they no longer have the authority to set the date sooner than 35 days from the time written notice was given to the employer by the union.

Mr. HATCH. Perhaps it would help——

Mr. MELCHER. Then, second, we encourage, through the language in a provision in the bill, if they want a quicker date, a mutually more satisfactory date, they still have that option. But to take away this possibility of "quickie election" from the time the employer is notified there will be an effort by the union to get an election, we say no less than 35 days.

As to the question of when do you need an attorney and when do you not need an attorney, I think this is a fairly significant point that can be clearly understood and it is well stated in the bill. It should not lead to doubt. I think that is some assurance to the small business people. Also, the Senate substitute provides for an ombudsman to help employers who ask, "What is this all about? What are my rights?" It provides one who is familiar with the law, who is familiar with the procedures, and who knows them inside and out. That ombudsman would be available to the employer wherever there was a regional office of the NLRB.

Mr. HATCH. There is one available now. The problem is that he cannot give legal opinions. All he can do is help them with regulatory action and cursory matters. That is a good thing, but it still does not negate the desirability or the desire on the part of a businessman to have his own attorney to tell him what is right and what is wrong. He will have to do it. It is just that simple.

Mr. MELCHER. I would hope not. I would hope this would lessen the need of so many attorney fees for small business people in this area.

Mr. HATCH. It will not.

Mr. MELCHER. It is a small area but it is an important one. It has grown in dimension in the minds of small business people as they read the distorting information which is available to them through various sources which seem to conflict. The Senator from Utah has agreed with me that the Board at present has the discretion to set the date. The Senator from Utah has agreed——

Mr. HATCH. That is after it has examined the record and made the necessary determinations after it has determined who should and should not vote, and done all the things that make it a fair election.

Under this provision, the Board will not be permitted to do that. It is just going to have to hold an election.

Mr. MELCHER. I will get to that point. The Senator from Utah has very kindly agreed to join me in this colloquy and he has agreed that under the discretion of the Board, under current law, they have the authority to set the date and have been doing that in 80 percent of the cases between 12 and 42 days.

As to the question of who would be available to assist the small business person or, for that matter, an employee, under the ombudsman provision of the Senate statute it is clear in this language that that person would know what he was talking about and could advise him.

The general counsel shall designate one or more officers or employees in the Board's national office and in each regional office to act as ombudsmen for the purpose of answering inquiries and disseminating information, particularly with regard to the rights, obligations, and responsibilities of those employers and employees in the small business community.

Mr. HATCH. Can he give legal opinions?

Mr. MELCHER. The ombudsmen shall provide general information and explanation regarding the provisions of this act, regulations of the Board, procedures involved in the processing of cases and the current state of the law with regard to particular areas of concern. Any such ombudsmen shall not be authorized to render advisory opinions or make any factual or legal determinations under this act.

Mr. HATCH. If the Senator will yield at that point, that is precisely my point. It is one thing to say you can have somebody in the NLRB assist you in knowing the facts and so forth. That is one man and there might be 100 elections being held in that particular area. It is another thing to have legal advice as to what your rights may or may not be and he is not entitled to give that advice. So they are going to have to go to an attorney, especially since a lot of the matters that normally are decided before votes are taken or before elections are held will not be decided under this provision.

The problem with this provision is that if a union commencing its organizing serves notice upon the employer, then 35 days later, or at any time during the next 6 months that best suits the union's interest, if a majority support its petition and support it under the Board rule, the Board must give that petition priority, may not hold any hearing, and must schedule the election at the earliest feasible date—that is, when it has a Board agent available to run the election. I add that, to comply with these requirements, the Board sends the petition to the employer with an order that the election shall be held blank days or hours later—in other words, the earliest feasible date.

The election is held even though no one knows who is eligible to vote; the union wins the election, as it must, because it had majority support when it filed the petition. It alone determined the lentgh of the campaign, it alone basically set the election day by the timing of its petition. The law requires an immediate election, thus foreclosing any employer campaign, and that same law eliminates any time for thoughtful consideration by employees before they voted.

That just is not fair and that just plain puts the small businessman at a decided disadvantage. And that is just one of the hundreds of things that are wrong with this bill. It does not——

Mr. MELCHER. It is much more fair than the existing law, I point out.

Mr. HATCH. Oh, no, it is not, where matters have to be determined——

Mr. MELCHER. The existing law permits exactly what the Senator has described to happen anyway. The union would not have to wait 6 months, they could wait a year before filing their petition. They could wait forever. They do not have tc file their petition. No law, no regulation says when they have to file their petition.

What this bill does is say that they cannot possibly have an election any quicker than 35 days after they have given written notice to the employer that they were seeking an election. That is the change in law.

Mr. HATCH. What if they did that every 6 days, just like they do today?

Mr. MELCHER. Will the Senator permit me?

Mr. HATCH. Surely.

Mr. MELCHER. Small business is asking for this. I read those letters I get. I read their concern about quickie elections. I read their real frank and candid discussions on what it would mean to them in a union business if the union attempted to organize them, that they do need some time.

Mr. HATCH. This does not give it to them.

Mr. MELCHER. I have been reading some interesting things here that seem to me to be very pertinent on this point for my friend from Utah. On April 2——

Mr. HATCH. Is this with regard to the present bill as amended by S. 2467? It certainly cannot be with regard to the substitute, I guess.

Mr. MELCHER. No, it is not with regard to the substitute.

Mr. HATCH. All right.

Mr. MELCHER. It is a newspaper item and I hope that the Senator was quoted correctly, because I think he made some valid points:

> Employers don't have enough time to present their viewpoints and employees don't have time to become acquainted with the issues.

The Senator was referring to the fact that 80 percent of all union elections occur within 12- to 44-day timeframes, "Which is not enough time, the Senator pointed out, to resolve difficulties."

Mr. HATCH. That is not what I said.

Mr. MELCHER. Well, perhaps not.

Mr. HATCH. It may or may not be, depending upon whether a lot of these matters are determined. But at least, under present law, the Board allows enough time for the employer to explain his side and the employee to understand the employer and the union side so they can make an intelligent, informed decision. This bill does not. It is just that simple.

Mr. MELCHER. I think the point is that the Senator was echoing what a lot of my small business people in Montana have been writing to me, that anything around 21 days may be too short; that, if anything, we ought to make it longer. So the substitute makes it 35 days.

Mr. HATCH. If the Senator will yield on that precise point.

Mr. MELCHER. The Senator, on April 2, when he was quoted in the Ogden Standard-Examiner, was making an extremely valid point:

> Employers don't have enough time to present their viewpoints and employees don't have time to become acquainted with the issues.

So the substitute says that in no case—it took away the discretion of the Board. It said in no case could it be less than 35 days from the time of filing that written notice with the employer. That is certainly an improvement over any possibility, say, of the Board at its discretion setting an election at 25 days.

Mr. HATCH. If the Senator will yield, it certainly is not an improvement. The reason it is not is that, true—I think one has to understand what they have done here. It is a very intricately written part of the substitute amendment.

What that substitute says is that, once they give notice that they intend to unionize, which can be given every 6 months—in other words, all they have to do is send a letter saying, "We intend to unionize you"—there is nothing that says the election has to be held in 35 days, but there is nothing that says they even have to have an election.

Mr. MELCHER. I remind the Senator that those options are available to unions under existing laws. Nothing has to be done to give them that option.

Mr. HATCH. Exactly; let me make the same point.

Mr. MELCHER. The Senator would agree that those options are available under existing law, would he not?

Mr. HATCH. What options?

Mr. MELCHER. The options he just described. The union organizer can, if he wants to, send a letter to an employer, saying he has an interest.

Mr. HATCH. Yes.

Mr. MELCHER. He can do that now.

Mr. HATCH. There is nothing requiring it now, but he can and does.

Mr. MELCHER. And he can attempt to unionize for 6 months, 12 months, 18 months, whatever he wants to under existing law, without ever filing a petition.

Mr. HATCH. Right, but what he does not have under existing law is the right, any time under that 6-month period, to file a petition and have, at the earliest administratively feasible time frame, which can be 1 hour later under certain circumstances, the right to have an election, which means he can do it at very, very difficult times for the employer. In other words, he has a right, which he does not have now, to stick it to the employer. The small business people understand that. What bothers me is that, apparently, some Senators on the floor of the U.S. Senate do not. But that is where the injustice is.

Mr. MELCHER. The Senator, of course, is a distinguished lawyer who informs us that he is familiar with thousands of these cases, and he knows well that there is nothing in the existing law except what the Senator mentioned on May 23, the Excelsior case, in which the Board, under existing law, can take that petition and set the date.

Mr. HATCH. But they cannot, because they know they would not get away with it, because they have to determine the units. They have to make a number of determinations before the vote can be held. Under this law, that goes by the boards and there is vote and impound on all the decisions. The small businessman knows that. He knows that they can spring this instantaneous election on him at any time within that 6-month period, and that it is just a matter, at the very best, of days; because it has to be held at the earliest administratively feasible time, and that, under present law, is not a problem. It is a big problem under the substitute.

Although the substitute alleges to amend the old bill, with old ideas that do not work, the substitute is worse than the original bill, which is bad enough for small business. Either way, it is unfair.

Mr. MELCHER. The Senator, at least, has agreed with me that, under existing law, the union could come in and start to organize for a month, a year, or 2 years, without filing a petition.

Mr. HATCH. And will not get a quickie election or an instantaneous election if it does.

Mr. MELCHER. The point we have made in the substitute to improve on existing law, in recognition of complaints from small business people, which have been echoed by the Senator from Utah, is that there should not be quickie elections. I would not be offended in any way if the Senator chose to say that not only should it be 35 days from the notice given to the employer—because he has agreed with me that that at least is an improvement in his mind——

Mr. HATCH. If it were not for the second part.

Mr. MELCHER. Written notice must be given. It would not offend me if the Senator chose to offer—and I would be glad to cosponsor with him—an amendment providing that not only must they give written notice, but also, they must file the petition, and then the time runs, 35 days.

Mr. HATCH. Will the Senator yield on that point?

Mr. MELCHER. No, I will not yield at this point. because I am going to get into the very point the Senator from Utah has made concerning this.

The practice of the union organizer, once he has given the written notice that will be required now, and which was not required before, is to file the petition with the Board. Then the Senator from Utah tells me that we have taken away another right, another proper right, in this substitute. He keeps mentioning that. He says the election will result in vote and impound.

I think the term "impound," without any explanation of what the Senator from Utah means, sounds quite ominous. It is repeated often, and it creates the fear that here is something else they are going to foist on us, some new procedure that will be foisted on us; and if they do not get us one way, they will get us another. That is what these small businessmen are thinking.

I come here, of course, with an experience in small business and with some concern for their attempts to run their business without having to be confused by regulations from a Federal agency or a Federal board that are so confusing that they cannot really get on top of it without hiring an attorney.

I want to explain what "impound" means and how the Senator from Utah is using it in reference to this election.

After the 35 days, the bill requires that the election be held and that the vote be taken. If there is a problem on what the unit is—and I dare say that if you asked a hundred small business people in Montana what "unit" meant in this instance, we would be lucky if six or seven would know what "unit" means here. It is very simple. It means the people who are going to vote.

If it is a garage that has car sales in the front and a garage in the back to repair the automobiles, the unit would be determined by whether the union was trying to organize the mechanics in the back part or had some interest in some clerks in the front part.

In this instance, if the employer objected to the union organizer saying, "Im only trying to organize your 17 mechanics and their helpers in the back part. I'm not trying to organize your bookkeeper and your stenographers and your salesmen. I'm only interested in your 17 mechanics and their helpers," possibly the employer would say, "If you really want to do that, I think you ought to take everybody in the whole outfit into the union. I think you ought to have them all." If he argues for that point, the Board would hold the election of everybody, if that is what he wanted, but impound those who were not in the logical unit. That is all that means.

It is not much different from the usual procedure, not much different from what the Board does right now.

I do not want to make it any more complicated for my constituents who are small business people in Montana to understand what is in this bill.

That is all the Senator from Utah is referring to when he says what is a bargaining unit. In some instances—I do not think he said in every case, and I hope he has not, because it would be highly inaccurate, grossly inaccurate—but in some instances there may be a disagreement between the union and the employer as to what is a bargaining unit.

For example, I gave a graphic example and a rational example, but it is not something that does not occur now, too. The Board is not always able to solve these arguments before these elections are held. That is what people have to exist with today—whether they know it or not, that is the way it is.

What we are trying to do is to find whether there is any rational reason to tell small business people that this bill is not as bad as what they are existing under now.

In the case of standards, I think we have established—we at least have made it clear—who is covered under the National Labor Relations Board, depending upon what business they are in and what gross they have.

In the case of the election timeframe, it cannot be argued that it is not advantageous to the employer and sometimes to the employee to make sure that there are at least 35 days between the time of the start of that triggering period by filing a written statement with the employer.

The Senator from Utah says, "Why not have it that the union also has to file with the Board their petition at the same time, and then trigger it from that time?" I have no problem with that, and I do not think anybody else in the Senate has any problem with that, because that is the usual procedure.

When a union organizer gets to a point where he thinks he is getting somewhere, he does want to file.

What we have done in the substitute is this: We said, "We don't like this practice of not playing on the up and up with the employer. You are coming in there to try to organize. You are writing to his employees or you are trying to see some of them that you know, and you are trying to start an idea of unionizing that shop. All right. You have to write to him and give him that written notice, and only then will you be considered for an election."

I think that is fair, and that is a great improvement under existing law. The employer then has at least 35 days before the election can be held.

I think the employees in many instances might feel they have a little better chance, also. I think that it begs a point to say, yes, but the Board might have a reason to have to decide who is the right unit to vote, meaning how many employees of that business are going to vote in this election.

Ordinarily, before that time is out they are going to say, "It looks to us like it is this way," but if you want to argue about it, if the employer wants to argue about it and says, "Oh, no," then they are going to hold the election, segregate the ballots, and impound them if the challenges are sufficient in number to affect the outcome of the election.

It is not any different than the existing law.

I think the point of the additional time does help in the bill. But there have been serious charges raised against the bill concerning access. So in the substitute there is change. The charge was made, and with some validity, also, when access was allowed for a union organizer on the premises of the employer, when he really did not want him there, and they were taking advantage of the employer. Looking at the existing case law and the existing rules that have been followed with this case law I found some favor in putting it into statutory form as to exactly where access would be allowed. But yet that was in the bill as it was reported out by the committee. But the substitute takes away some of the sore spots, where that bill was criticized even for that by saying, "Well, when access is triggered the union organizer would come onto the place, and in effect the employer would be subsidizing his speech, subsidizing the union's chance or the union's effort to sell the employees on their position to join the union."

So the Senate substitute made it very clear. First of all, the employer can refuse access merely by not conducting a campaign on his premises. He then has the right to say:

> No, you are not coming onto my property to sell your side of this issue to my employee. I refuse. It is my property.

Then the question on whether or not the employer would ever have to agree to allow access to the union organizer was left to a triggering mechanism. The triggering mechanism is a systematic campaign by the employer against the union. That is not an easily understood term, either. But what it means is that the employer decides that he is going to contact all his employees at work and tell them he does not want the union and why. That should be his right. It remains his right.

But in my experience with the small business people that I know, they seldom jeopardize the relationship and mutual respect the employer has for the employee and the employee has for the employer, by the employer dogmatically saying, "This is my site." It is more of a give and take. He might write it out. That would not be disturbed. He might have informal discussions where he answers questions in a casual conversation with the employees about what the union organization effort was and why he was opposed.

(Mr. GRAVEL assumed the Chair.)

Mr. MELCHER. But, further, the Senate substitute says that if ever access is triggered by the employer because of his systematic campaign, the union organizer cannot come onto the property during worktime or in work areas. That cannot be permitted.

The Senate substitute says further that in no case would any business with fewer than 10 on the payroll even have to consider access by a union organizer because it would not be permitted under the provision of the Senate substitute. That is clear. It is easily understood.

But let me tell you some of the things under existing law that is not easily understood. Let me refer to a case very briefly that was mentioned by my distinguished friend, the Senator from Utah, on May 19. It appears on S7816 of the RECORD of that date. I shall read:

> . . . the second circuit held that nonemployee organizers should be permitted access to employees on the employer's premises where "no effective alternatives are available to the Union in its organizational efforts." On the other hand, there is another line of cases indicating that where there may be no circumstantial disparity and opportunity, but the employer's conduct in intimidating employees from exercising existing communication opportunities, the Board is required not only to clear up those avenues, but also to provide the union with others.

Have Senators followed me closely? Do they know what this is all about?

One has to really read and re-read it and think it through and then ask someone who is expert in the law concerning it: Just what are my rights? What are my prerogatives? When does that come into effect, those provisions just mentioned there in one of the leading suits so aptly described by the Senator from Utah on May 23.

But even more significant I think is this sentence taken from the leading case in this field, National Labor Relations Board against Babcock and Wilcox. It was put in the RECORD by the distinguished junior Senator from Utah, Senator HATCH, on May 22, and this sentence reads, quoting a part of that case, the judgment of that case:

> But when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.

No wonder small business operators wonder where they are? No wonder they are confused at what might happen to

them in the effort to unionize their employees.

These are confusing court cases. As far as they are concerned, it does not spell out clearly at all what their rights are on access and in many instances it returns the responsibility to the Board to draw up some new regulations to carry out the provisions of their findings.

The judge gives a ruling and says, "This is the way it ought to be" or "this is the way it should be," and then returns it to the Board and says, "Draw up the appropriate rules."

The whole question begs of some correction, and the substitute is an effort in this area to have some correction.

Would the distinguished Senator from Utah, who has been so kind in responding to this colloquy this afternoon, care to give his view of the provision in the substitute as compared with existing law or with the previous bill?

Mr. HATCH. On the equal access provision? I would be delighted. I have enjoyed the colloquy. However, I think my distinguished friend from Montana and I disagree so widely on this issue that I am afraid we cannot get together.

Let me just say this: These new amendments provide that following a union's written notification to the employer that it is organizing his employees, the union's nonemployee organizer shall have the right to come on the employer's premises and address his employees whenever an employer or his agent has exercised his right of free speech and has addressed his own employees "at the work site" or during working time on union issues.

Certain limitations are added, I might add, to the union's right. No more than two organizers can go in any particular area, but they can go two-by-two into various areas, as I understand it. Four are allowed in any parking lot, and they have to give 1 day's prior notice that they intend to exercise their "rights" under equal access, their rights to come on the employer's private property, because he has exercised his right of free speech, a time-honored constitutional privilege that he has.

They may not campaign during working time, but they are limited to times of shift changes, breaks, meal times, et cetera, and they may not campaign during working hours but are limited to parking lots, cafeterias, and other break time areas where employees congregate, which may be a great number in fairly substantial businesses.

Finally, equal access rights do not apply against any employer "who compensates fewer than 10 employees." Again a very slickly written provision which says that if you have 10 supervisors these access provisions apply. So it does not protect small business at all.

I might say these limitations may be a small beginning to the balancing of the campaigning rights of employers and unions, but they still maintain the imbalance of S. 2467 against employers and impinge upon the employer's property rights.

Thus, for example, when unions campaign on paid break times, the employer is still paying his employees and, accordingly, is subsidizing the union's campaign.

Further, the new provisions do not require that the union establish any success in organizing employees before it attains the right to equal access, whereas the Senate committee report required that the union obtain signatures from at least 10 percent of the employees who sought to organize before the equal access rights were triggered.

Further, the amendments may not be as helpful to all employers as their sponsors claim. For example, by specifically granting outside union organizers the right to campaign in cafeterias, the Senate may be overruling recent court decisions holding that no union organizing may be conducted in the cafeterias of hospitals because of the potential adverse impact of such campaigning on patients.

Further, although an exemption from the access requirements for small business has been described as including businesses with less than 10 "employees" this bill does not say that. The bill allows the exemption only if the employer compensates fewer than 10 "individuals" which means that manager, including the company's president, and supervisors, are included in the count.

Finally, the Byrd amendments may be interpreted to vastly expand the right of unions to use on employers' premises paid time for campaigning. Thus the amendment sets no limit on the number of days that outside organizers can campaign on company property. Thus it is possible that the NLRB may rule that once the employer presents a captive-audience speech, the union's organizers may enter his property every day thereafter until the election or at least as often as is necessary for them to personally contact every employee who attended the employer's speech. And, of course, the union's campaigning during break periods, and so forth, is apt to be more personal or more "one-on-one" and thus more effective than an employer's speech to assembled employees.

In short, the balance in favor of union campaigns created by S. 2467 may be further aggravated by the Byrd amendments and a provision, which even Senator BYRD thought went too far, may have been even worse.

The substitute measure thus does not make substantial concessions since employers are still required to open private premises to union organizers whenever they speak to their own employees about union representation. The substitute measure continues to impose a premium on the exercise of the constitutionally and statutorily protected privilege of free speech. Moreover, as the use of equal access privilege is not dependent upon the unavailability of alternative means of communications with employees, the substitute measure remains vulnerable to constitutional attack under the Supreme Court decision in *NLBR* v. *Babcock and Wilcox Company*, 351 U.S. 101, a 1956 case.

Further, the substitute measure perpetuates the illusion that unions are at a comparative disadvantage in communicating their election messages to employees.

This is simply not true, and the substitute measure makes even more pronounced the advantage which unions now enjoy.

Finally, since the employer's president, vice president and other officers are presumably "individuals" compensated by the employer, the proviso limiting the applicability of equal access to employers who compensate fewer than 10 individuals creates more the appearance than the substance of a small business exemption. It certainly does not create a small business exemption.

Mr. MELCHER. Mr. President, would the Senator advise me if he thinks the case law on this is clear?

Mr. HATCH. I think it depends on which case you read. But I think it is clear as far as I am concerned.

Mr. MELCHER. The Senator has no problem with the case law and clearly understands, could easily advise an employer at what point access by an organizer might be permitted?

Mr. HATCH. The Senator has plenty of difficulty with those decisions. However, the decisions—and I might add access is only allowed under the present law under very stringent circumstances, it is not allowed indiscriminately as this law would allow it, and I think justly so, because the poor employer, in exercising his right of free speech, would be put at a decided disadvantage pursuant to either of the bill's provisions, the original substitute or the Byrd substitute, and I might add that what is really at the bottom of this is that those who fully understand labor law know that what this does, if you enact this provision, it just intimidates the employer so he will not say anything because he does not want these people on his premises at his expense. He does not want to subsidize the unionization of his own business.

So, as a consequence, the employer's right of free speech, a constitutionally protected right of free speech, if you will, is violated by this overdesire on the part of those who are proponents of the bill or the substitute or both to try to tilt this in favor of the unions.

I might mention that right now under present law, under justifiable situations which are extreme examples, the Board has ordered equal access. I do not like it, but that is the way it is under present law, so why change the law?

No. 2, the employer is severely circumscribed as to what he can say. He cannot make promises; he cannot promise them any benefits. He cannot say they would be better off. He cannot make anything that would be considered to be a threat or a coercive statement. He is really circumscribed. But the union, the oragnizers, can make all kinds of promises whether or not they know that

they can keep them. They can make promises they know they cannot keep, and get away with it. The poor employer cannot, and within 10 days, under the rule which the distinguished Senator from Montana has recognized in the past, the excelsior rule, within 10 days of the election the employer has to give all the names and addresses of all his employees to the union organizers so that they can call upon the employees in their homes, something that the employer is not permitted to do under law.

So already, under present law, without having this onerous, burdensome, and officious provision, the unions have advantages which the employer does not have in the unionizing campaign. And I might add that this law, if it is enacted, would tilt the scales almost completely in favor of the unions, to the detriment especially, again, of small businessmen.

And they do understand this, and that is why they are fighting it all over America. I submit that even the small businessmen in Montana are fighting this, and will fight it, and have joined in the overall fight throughout this country in trying to protect our small business sector, which we are waging here in the floor of the Senate.

Mr. MELCHER. I assure my friend from Utah that the small business owners and operators in Montana are indeed concerned about access.

Mr. HATCH. That is right.

Mr. MELCHER. And those who have taken the time—and time is always at a premium when you are running a small business—to look into what the existing situation on access is, are quite dumbfounded to find out that a court does order access even when the owner does not want it and resists it.

Mr. HATCH. It is dumbfounding, and I have to admit that a lot of employers have not understood that.

Mr. MELCHER. Under existing law.

Mr. HATCH. And that is true in a lot of cases today. I have to admit that. But they are extreme cases.

The problem is not that the unions cannot communicate with the employees. The problem is that the unions have not been able to persuade them of the desirability of unionizing. That is what is at the bottom of this thing. Since they have been unable or unwilling to persuade the employees, they now come to Congress and ask us to add this so-called pushbutton unionizing bill to deliver the employees over to them.

The small businessmen have decided they cannot allow this to happen, and that is why we are fighting so hard here, or one of the reasons.

Mr. MELCHER. What the small businessmen want to know is, under this bill, can they refuse access? I have to admit that I find, as the Senator from Utah says he has found, that the courts at times say access is allowed, period.

I have briefly read some of the points raised in some of the cases, where the judges made their findings. Just to give an example of the difficulty of understanding what they are saying, they do imply, and they mean just that, that conditions can vary from place to place, and the Board had better set proper rules and regulations so that access can be allowed in those instances.

I did not ask the Senator from Utah whether he agreed with the access provisions of the Stevens agreement. I did not ask him that. I wonder if he would think that that is some sort of mild approach by the courts on access.

Mr. HATCH. Well, to answer that, I do not think that forcing the private owner of property to allow people with whom he violently disagrees on his premises is ever a mild remedy. I might add equal access is allowed under the present law only where the only property on which they are able to talk is owned by the business, or in cases where there has been willful violation.

But I might ask the Senator from Montana, does he believe it is reasonable to require every employer, if he talks to his emloyees within the circumscriptions which bind him, which are very stringent, about unionization, to his own employees, that he should then be forced under the law, by congressional enactment, if you will, to open up his premises and allow those with whom he violently disagrees to come on them at will?

Mr. MELCHER. I would answer the Senator from Utah very succinctly, the answer is no.

Mr. HATCH. I am certainly glad to hear that.

Mr. MELCHER. The question is, are provisions stringent?

Mr. HATCH. The answer is they are.

Mr. MELCHER. I am not asking the Senator a question. That is a rhetorical question.

Mr. HATCH. I see.

Mr. MELCHER. I am going to make a point here.

Mr. HATCH. I see.

Mr. MELCHER. Are these stringent requirements? What is more onerous, the case law set by these judges as we go from one to the other—and we are not even referring to the Stevens agreement, which has nothing to do with the situation, as the Senator seemed to imply, of a captive group surrounded by the business and community, and by the Stevens outfit—it has nothing to do with that.

Mr. HATCH. Will the Senator yield?

Mr. MELCHER. After I have made these points, I will be delighted to yield.

Mr. HATCH. Fine.

Mr. MELCHER. Those people do not live that way. The question set down by the agreement between the Court and the Stevens people, which was not sought at all by the Stevens people, which was really objectional to them, was access.

Mr. HATCH. I agree.

Mr. MELCHER. And pretty strong access. But in view of what was in the Senate bill when we discussed it earlier, last month, I am referring to what the distinguished Senator from Utah said then in response to the Senator from Michigan (Mr. RIEGLE).

He said that access penalizes the employer, because he has to stop work on his premises and on his time allow the union organizer to come and speak to his employees.

He asked, "Why not make the union, if you want to be fair, pay for that, pay for the loss of work?"

On the same day, the distinguished Senator said: "The employer is going to have to open up his premises at his expense to allow the union organizer to come on."

Those were pretty heavy charges against the bill. They needed correction. The substitute does that.

It says that the union organizer, if access is granted, cannot come on and interfere with the work, cannot be in a working area, and it cannot be during worktime.

Now, admittedly, that answers the points that were raised on May 18 by the distinguished Senator from Utah. But the greater point is, is there a right to say "no" to the union organizers?

Mr. President, there is. Contrary to what has often been said, and contrary to what might be interpreted from the remarks made just a few minutes ago by my friend from Utah, the employer need not grant access on the basis of losing his free speech. Free speech does entail talking to employees. Free speech does entail going into a discussion with them to answer their questions that relate the viewpoint of the employer to that of the employee. That is not disturbed. It is not meant to be disturbed, nor would it be disturbed, nor is it even confusing.

As far as the owner going to the home of the employee, of course he can go to the home of the employee if he is invited. What else would the owner want to go to the home of the employee for? Who wants to knock on his employee's door and say, "Let me in"?

What kind of country is that? What kind of relationship is that between employer and employee?

Of course the employer can come to the home of the employee anytime he is invited and the employer does not solicit that invitation.

I find no reason to bring it up in the debate at this stage. It is a confusing item on what is the present situation on access which, admittedly, is confusing to almost everybody else that has read that except, possibly, the Senator from Utah when he reads the case law. But he has granted in our colloquy today that that case law does permit access contrary to the will of the employer in some instances, and we have named a couple of them.

I think the substitute goes a long way in solving this particular problem because it will supplant the changing case law of appellate courts and the rules that are drawn on the basis of those decisions.

I think that is a broad improvement and one that will be welcomed by small business people.

I think it is clear that the employer and small business that does have less than 10 on the payroll will not be subjected to it, under any circumstances—

just taken out, period. That is an improvement because case law, no matter where it is drawn in the rules that follow, even if it is drawn for the conglomerate like Stevens, if we legislate it around, can eventually work its way down to the lower level of business in terms of amount of business done, in terms of employees.

So I think a clarification by law is needed here to supplant what is case law and the rules that have been drawn by the Board from those cases.

The Senator from Utah says that we can look at that exemption of fewer than 10 on the payroll and say, "What if they are all supervisors?"

That is not a relevant point. What union is organizing supervisors? What has that got to do with anything? That is not a concern of any small businessman I have ever heard of. That is not his concern, that he has all of the people he has got on that payroll as supervisors.

But if they were, if that is the way he chose, he need not fear anything. What union is it that is organizing supervisors?

The question of whether or not the employees are on there, some that are on the payroll, some of them are this, or that, or what have you, is clearly an indication that an exemption is wise in this instance.

It is wise because, if we have to bog down the board in all these silly little quibbling deals on who is part of this bargaining unit, it does not make any sense and it would trigger access. So, on this point, the bill has a great advantage.

I think the main concerns in the case of are we covered or are we not, that small business people ask, does the bill affect us, is the National Labor Relations Board going to take us in, we are not under now, or are we? Sometimes they ask that—are we? And, if they are not, will they be taken in?

We have clarified that and said they will not, made it statutory, and take away the discretion of the Board in that regard.

The second point on setting the election date, clearly, this goes to the very grave concern of small business people who have been reading the information about this bill and reading that term "quickie elections" which they are told the unions want, the union organizer wants, because he thinks he can win it with a quickie election.

If they look at that timeframe and read, perhaps, even the RECORD, even get down to reading the RECORD made here in the Senate, and see, as enunciated by the distinguished Senator from Utah, that 80 percent of the elections are held within 12 and 42 days, they wonder, is that the quickie election they are talking about, and not realize that is the current law, that is the current operation of the Board.

They think they must be reading it wrong; that does seem pretty quick. They have a great concern.

They write to everybody in the Senate and letters to the editors. They really have a concern that somehow it is going to be jammed down their throat, that there will be a big effort to unionize them. It has never been done before, but a big effort will spring from this bill and there will be quickie elections held on the basis of this bill and they will not have any time to even think about it, or time with their families on what should they do, talk to a lawyer, or what have you. They are in a quandry.

Their concern is so loud and real and legitimate on that point that the Senate substitute went right to the heart of the matter and said that in no case, even though this bill really does not do anything to cause unions to go out and organize small business, even though there is not any substance to that charge, the response in the bill and the substitute goes right to the point of concern.

Perhaps we are benefited by this concern, those of us who have strong ties with small business, because now we know what the current law and current practice is, and what the discretion is of the Board to hold the elections when they choose.

We have taken that away in the substitute and said:

You cannot do it in less than 35 days, and have to wait until 35 days for that election before it can be held.

And we tell the board—

You don't have any discretion any longer. It is 35 days from the time that union organizer gave written notice to the employer that he wanted an election, or some of the employees wanted an election to be held for the purpose of determining whether or not there would be a union.

As to the third question on access, I well know and well respect the portion of common law that is part of our heritage that says a man's property—I want to say a person's property, it is men and women—a person's property gives with that right of ownership other rights that follow.

Access is found in case law, and the rules the Board had to promulgate as a result of that case law do not in all cases guarantee that.

But in all instances, for every one of the small business people I know that have ever paid any attention to what case law is, or access, they really throw their hands up in the air and say, "What is that all about?"

So the Senate substitute goes directly to the point and establishes not just what access is, but establishes a clear right of the employer not to grant access.

Well, the usual procedure in small business, dealing with a small business employer and dealing with the employees of that business, is truly one of mutual respect for each other.

Small business people have become alarmed because they think for some reason, those that are not unionized, that unionization will be foisted upon them quickly now. Although I think that is not only irrelevant and highly unlikely, but I do not see any possibility of that happening from anything that is in this bill.

Since a concern is raised about access, again it is probably appropriate to take action and to put it clearly in the law in the rights of the employer, and more so than the rights of the employees it is addressed in the substitute provision concerning access.

There are instances where employees want to know what it is that the union organizer is trying to tell them, and there are instances where it is difficult for them to find out. It is not often very difficult with the small employers we have been discussing this afternoon, such as in my State of Montana. The number of employees might be anywhere from 4 to 12 to 18, in some cases 35, in some instances 100. If we get beyond that, it is pretty rare. The bulk of them are in the lower numbers. The employees in those instances are very interested in what the union organizer might be attempting to convey to them and would have no problem at all in finding out.

In the case of the employer who does not want to have the union organizer on the premises, he does not have to. It would be very rare for a small business operator to wage a campaign against the union on his premises. I doubt whether it would happen in very many instances. But if that were the case, and the employer knew by doing that he also invited the other side, the union organizers, to give their side of it, the union side of it, then I think the provisions in the Senate substitute that say, "All right, only in nonwork areas and at nonwork times, eminently answer the objections raised by the Senator from Utah (Mr. HATCH) on May 18.

Because of those points, I believe there is strong evidence that the clarifications and the weeding out of redtape on these three points would make it advantageous for small business people over and above the existing law, the existing rules of the Board, and, in the case of access, the existing case law. I think if we want to be for a reduction in redtape and a restriction on the rulemaking authority of a Federal agency in a critical area, here is one instance where this bill, the Senate substitute, in these three areas meets the challenge and meets it critically. There are these good points that affect small business in clarification and cleaning out of the redtape.

On the question of debarment, it is hardly an issue with small business. That is why I have not discussed it nor have I asked the Senator from Utah, who has been so generous in his time this afternoon in our colloquy, to go into it. I cannot envision a small business operator willfully and knowingly violating the law to bring debarment upon himself. The Senate substitute, in the case of debarment, if it is invoked on someone, has a clear remedy and it is instantaneous when the agreement by the employer to follow the law is stated to the Board. That removes debarment immediately and effectively.

I want to express my thanks to the junior Senator from Utah (Mr. HATCH), my good friend, for his generosity in be-

ing with us this afternoon and partaking in this colloquy. I very much appreciate it and I am very much indebted to him.

I yield the floor.

Mr. THURMOND. Mr. President——

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. MELCHER. Mr. President, I now yield to the Senator from New York.

Mr. MOYNIHAN. I thank my distinguished colleague——

The PRESIDING OFFICER. The Chair has recognized the Senator from South Carolina.

Mr. THURMOND. I will be glad to yield to the Senator from New York for an insertion in the RECORD.

Mr. MOYNIHAN. The Senator from New York was going to yield to the Senator from South Carolina but the Chair has already recognized him.

Mr. THURMOND. I would be glad to yield for a few minutes.

Mr. MOYNIHAN. The Senator is very generous I have a longer statement I would like to make after the Senator concludes.

Mr. THURMOND. I will complete my remarks in 10 minutes, if that is satisfactory.

Mr. MOYNIHAN. The Senator is very kind.

Mr. THURMOND. Mr. President, during my last opportunity to speak against the so-called Labor Reform Act of 1978, I covered abuses by big unions.

The proponents of this proposed legislation do not like to hear that story. They respond that it is a subject for the criminal laws to address. They further respond that opponents of the bill are addressing themselves to issues not within the jurisdiction of the Human Resources Committee. The proponents reason that we are being obstructionists in not talking about the subject matter of the bill.

Mr. President, we are talking about what should be in the bill, but is not to be found there. We have a bill before us, which will increase the power of big unions. Nonunionized employees and many unionized employees are not lobbying for this bill. Employers are not lobbying for this bill. The public is not lobbying for it.

When we speak of big union abuses of employees and property employers, we are speaking of big union power and how they use it. As we consider a bill to give the big unions more power what could be more appropriate than to look and see what they are doing with the power they have now. My point in addressing union abuses can be stated very simply. I am seeking to persuade the Senate that more union power will not be good for the Nation. I am seeking to persuade the Senate that the bill before us is not reform, because reform is a two-way street. A reform bill would address big union abuses of employees and employers as well as perceived employer abuses of the unions.

It is the height of bureaucratic thinking to answer, "But that is not within our jurisdiction." It certainly is an issue which the U.S. Senate can and should consider and one I will continue to address. What could be more important than to learn whether big unions abuse workers by wasting and embezzling their dues? What could be more important than to examine the workers' pension funds maintained by big unions to see if they are managed properly? What could be more important than looking to see if the workers or the bosses run the big unions? If we wish to consider reform of the labor laws, these issues are important. On the other hand, if the proponents are only interested in pumping out another bill for big labor, then I can understand why they are not interested in hearing about big labor abuses.

Mr. President, PROD, a group of Teamster members, have issued a report on abuses within that union. As I mentioned during my last occasion to speak on the bill, it is my understanding that PROD supports this legislation. Their stand certainly lends credibility to their report.

CHAPTER 8—TOP TEAMSTER OFFICIALS: A STUDY OF MULTIPLE OFFICES AND MULTIPLE SALARIES

Mr. President, the international general president's salary is set by the union convention. In light of the tremendous powers the president has to influence convention delegates, it is no surprise that Teamster General President Frank Fitzsimmons draws an annual salary of $125,000, plus allowances and expenses [138]—far and away more than other unions pay their top officials.[139]

In addition to the large cash disbursements Fitzsimmons receives annually, the Teamsters provide him with a host of other benefits whose value is difficult to calculate. For example, Fitzsimmons and other Teamster officials and employees enjoy "haute cuisine" prepared for them by the two French chefs employed at the IBT headquarters in Washington, D.C., known to most members as the union's Marble Palace.[140] The union furnishes Fitzsimmons with a home in a nice residential suburb of Washington, D.C., for which it paid $98,051 in 1971.[141] To aid him in commuting to and from the Teamster headquarters, the union makes available a new Lincoln or Cadillac each year. When traveling out of town, Fitzsimmons has use of the union's fleet of airplanes.[142] In fact, the union even picks up the tab whenever Fitzsimmons wants to take a vacation in this country or abroad, not only for him, but for his wife, secretaries, and any others who can provide "services which he deems necessary while so engaged." The international's "Travel Provision" is very similar to the unlimited expense accounts finagled by William Presser and Babe Triscaro.[143]

The International Teamsters Union does almost as well by its general secretary-treasurer. His salary is set at $100,000 and he, too, enjoys the use of luxurious automobiles and aircraft owned by the union as well as being able to qualify under the same travel provision as the general president for all-expense-paid vacations wherever and whenever he pleases. In his first couple of years in the office, Murray W. "Dusty" Miller managed to supplement these handsome rewards as a result of a series of highly questionable financial transactions, a subject to which we will return at the end of this chapter. First, let us proceed to discuss our principal subject—accumulating large union salaries as a result of multiple office holding by other high Teamster officials.

Fitzsimmons and Miller and not the only two Teamster officials who manage to collect kingly ransoms from union treasuries. During 1974, at least 17 Teamster officials topped the $100,000 mark, and that number would have been greater had not at least 5 other officials slid temporarily below it.[144] In fact, if we were to focus upon a more reasonable salary level say $40,000 for example, we find that a total of at least 147 Teamster officials topped that figure in 1974.[145] There are two basic reasons why Teamster salaries are so high. First, the rank and file have no control above the local level. Second, the IBT constitution, written and modified by local union officials, specifically provides for those officials to hold multiple offices, and receive multiple salaries, in the union's extensive organizational hierarchy above the local level.

A strong case can certainly be made for allowing certain union officials to serve on committees or district councils that may meet from time to time to develop union policies or negotiate contracts. However, most other major unions like the Auto Workers, Steelworkers, and Mine Workers shun the notion that these officials should be paid an entirely separate salary for performing such functions. Obviously, there are limits to what a human being can accomplish in a workday or week and Teamster officials are no exception. In fact, some Teamster officials really make no pretense about working full time on just one job, yet they continue to hold other positions for which they are paid full salaries.[146] Others manage to hold multiple offices which are all designed for the purpose of accomplishing the one job they actually perform.[147] However, the more usual situation is that high union officials will also hold down a local union office plus some position (elected or appointed) on either or both a joint council and conference (or trade division). Finally, in their capacity as the principal official of any one or more of these various organizational entities, some Teamster leaders, like the Pressers, also appoint themselves as salaried trustees or administrators of various Teamster funds, or create deferred compensation or severance plans and make themselves the beneficiaries. The subject of special trust funds is understandably complex and will be dealt with in chapter 10. So, let us focus further on multiple salaries for union, as opposed to "fund," offices.

Eleven of the fifteen international vice-presidents also hold office in both a local and joint council and enjoy the benefits accompanying each office. General executive board meetings and international union matters alone have come to

Footnotes at end of article.

require a substantial percent of their time and attention. How these men can also devote sufficient time to running their locals and joint councils to justify collecting full salaries from those organizations is difficult to imagine. As we shall see when studying the financial profiles of the vice presidents in part IV, some do make half-hearted attempts to apportion their salaries to reflect the time they spend at their many different jobs. However, most do not.

Kansas City Teamster boss Roy Williams is a case in point. His international duties include serving as a vice-president, director of the central conference, head of the freight (trucking) division, general organizers and trustee of the central States pension fund. In addition, Williams also heads local 41, joint council 56, the Missouri-Kansas Conference, the Missouri-Kansas Drivers' Council, and the Central States Drivers' Council. Despite the fact Williams, himself, cannot obviously fill all of these positions, they enabled him to gross $111,155 in 1973.[148] Another case in point is Robert Holmes, the vice president from the State of Michigan, who presumably has some responsibilities to the international for troubleshooting and coordinating Teamster activities in that State to justify the $40,000 plus which he was paid as a general organizer in 1974. At the same time, Holmes headed up the 15,000-member local 337 which paid him nearly $1,000 each week in salary and allowances. Holmes also received several thousand dollars more for heading up Michigan Joint Council 43 and for serving as a union trustee of the central States pension fund.

One of the biggest financial boondoggles in the union is the office of international general organizer. Nowhere are the duties of general organizers laid out. Judging from those who have held this largely honorary appointment from Fitzsimmons in recent years, general organizers in fact do little or nothing to justify their $30,000 salaries which are further increased by whatever allowances and expenses Fitzsimmons may choose to allow.[149] Of the 52 individuals who held that post in 1974, only a dozen or so were in a position to devote substantial time to the position without shirking other important and demanding union responsibilities. For example, 29 general organizers held a local elective office, and 21 of these individuals held at least one additional office in the Teamster organizational hierarchy. Other general organizers held various appointed union jobs which consumed their full time.[150]

In fact, the IBT's expenditures for organizing might raise quite a few eyebrows for several reasons in addition to the fact a substantial part of its annual allowance has gone to pay the salaries, allowances and expenses of high-ranking officials who did absolutely no organizing. In the first place, an alarming number of the men who hold the rank of general organizer are hardly up-and-up trade-unionists inasmuch as they have previously been involved in various criminal activities, including the taking of illegal payoffs from their members' employers.[151] Moreover, a large percent of the huge sums of money the international has spent recently on organizing are largely unaccounted for. From 1971, the year of the last Teamster convention, the amount of money expended from the international treasury increased from $2.9 million to $8.6 million in 1974.[152] Owing to the fact the union did not break down how or where it spent all this money, the rank and file have absolutely no way of knowing whether it was spent on legitimate organizing or whether it was wasted or illegally converted to the private use of certain individuals.[153]

Now let us return to examine the various transactions and multiple salaries which enriched former General Secretary-Treasurer Dusty Miller during the first 2 years he held that office. Prior to his appointment as secretary-treasurer by Fitzsimmons in 1972, Dusty Miller had run the southern conference for two decades. Like the current head of the southern conference Joe Morgan, Miller had occupied both positions of international director and policy committee chairman of the southern conference and had collected two full salaries for what was, and is, essentially one job. His gross salary from those two sources grew steady to the point he broke through the six-figure barrier in 1971 when he received $48,738 directly from the IBT-controlled conference, and $61,887 from the international for serving as Fitzsimmons' emissary and directing conference affairs.[154]

Miller was sworn in as general secretary-treasurer on March 31, 1972. At the time, he still had 17 months to go in his term as chairman of the Southern Conference Policy Committee. While he resigned as the international director of the conference when he became secretary-treasurer of the international, he retained his post on the policy committee and the $54,801 salary that went with it. Moreover, although Miller was not sworn in as the general secretary-treasurer until the beginning of the second quarter of the year 1972, Miller also collected the full $100,000 annual salary that went with his new position in spite of the fact the International also paid Miller's predecessor, Thomas Flynn, his prorated portion of the $100,000 salary or $26,802 for his services during the first 3 months. Thus, during the year 1972, the International Teamsters Union under its new general secretary-treasurer expended a total of $126,802 for a position for which the union's constitution only authorized $100,000.[155] As a result, Miller was able to gross $169,029 in salary, allowances and expenses from the international and the southern conference in 1972.

The year 1973 also proved to be a rewarding year for Dusty Miller. In spite of the fact Joe Morgan took the reins from Miller as chairman of the Southern Conference Policy Committee in August of that year, Miller again received his full, annual salary for the job. Thus, in 1973 Dusty Miller once again grossed more than $160,000.[156]

In 1974, Miller was yet again the beneficiary of southern conference largesse. During that year, the conference gave him a condominium apartment in the Canongate development located in North Miami, Fla., which was built by Calvin Kovens who was convicted in 1964 along with Jimmy Hoffa of defrauding the Central States Pension Fund.[157] The conference had purchased the apartment in 1972 for $48,452 and Miller was the regular tenant until he became the technical owner on April 26, 1974. Interestingly, however, the Southern Conference Policy Committee actually adopted the resolution to make the gift to Miller at the meeting the preceding August when Miller stepped down and Joe Morgan was sworn in as chairman.[158]

While Frank Fitzsimmons undoubtedly knew exactly how well his appointee Dusty Miller was doing financially during these years, neither he nor the union's trustees, whose job it was to monitor the international's books and stop such practices, even bothered to mention, much less question them.[159] Because the conferences are not independent legal entities, and are technically and financially nothing more than extensions of the international union, it may be argued that Dusty Miller, as secretary-treasurer of the international, lined his own pockets during the first couple of years he held office. Not only did the Teamster rank and file never authorize or ratify the excessive payments Miller received, their "delegates" never even elected him to the office of general secretary-treasurer.

FOOTNOTES

[138] In addition to providing for his salary and allowances, the IBT Constitution appears to give the General President an open ended expense account, namely: "All expenses of the General President and General Secretary-Treasurer shall be paid by the International Union." Art. V, Sec. 1(a). This provision would appear to authorize the General President to charge his groceries on a Union credit card. We have no knowledge that he does so and wish only to stress that the presidential expense provision could be so abused.

[139] The Presidents of the next three largest unions received the following amounts during 1974: I. W. Abel (United Steel Workers), $75,621; Leonard Woodcock (United Auto Workers), $62,939; Floyd Smith (Machinists), $46,205. These sums compare to the total cash disbursements the IBT reported giving to Fitzsimmons that year—$133,309. Union records show that a number of other Teamster officials actually managed to earn more than Fitzsimmons in 1974. These included Murray Miller, Donald Peters, Bernard Adelstein, William Joyce, Jackie Presser and Harold Friedman. Such salary levels have been described as "country club unionism" by Ed Sadlowski, United Steelworker District President who has been a frequent critic of I. W. Abel.

[140] In 1974, the principal chef was paid $27,000, and his assistant was paid $12,000. By comparison, the Union's salary expenditures during the same year for its Safety Department were $30,000 for the director and $11,000 for his lone assistant.

[141] Fitzsimmons is obliged to pay income tax on the rental value of the property. In

1975, the IBT claimed that the rental value was $9,375. In fact, real estate experts agree that a conservative estimate of the annual rental value of residential property is 8 percent of its fair market value. Real estate values in the Washington, D.C. area have been appreciating at an annual rate of 15 percent during recent years. Thus, the value of Fitzsimmons' home in 1975 would have been approximately $160,000, and the rental value on which Fitzsimmons should have paid taxes was $12,200, or roughly $3,000 more than Fitzsimmons presumably declared. In fact, the IBT, itself, estimated the value of the house, alone, for insurance purposes to have been worth $128,000. Fitzsimmons may accordingly be liable for understating his income and may owe back taxes.

In addition to the purchase price of the home, the Union's 1971 LM–2 report shows on the very next line an expenditure of $143,919 for "furniture and fixtures". It is unclear whether this form of benefit, namely providing Fitzsimmons with a rent-free possibly furnished house, is lawful under the Union Constitution. Art. V, Sec. 2 (g) permits the Union only to provide accommodations to house officers and employees while on official union business, and require the use thereof." Such provisions generally authorize only out-of-town expenses.

[142] See Chapter 9 for a discussion of the multi-million dollar "Teamster Air Force".

[143] The full text of this Travel Provision which appears in Art. V, Sec. 2 of the IBT Constitution follows:

The General President, for the purpose of promoting the interests and welfare of the International Union and the making of diplomatic contacts with other organizations and institutions, *and for the purpose of conserving his health, may at his discretion travel in this country or,* with the approval of the General Executive Board, *abroad, and may take periodic rests.* The General Executive Board *shall provide for all expenses and allowances* of the General President when performing the services mentioned herein or *when taking periodic rests;* the said expenses and allowances shall include travel in this country and abroad, *the full and complete maintenance of his wife* so that she can accompany the General President, *and all secretarial help and services* which he deems necessary while so engaged. *The expenses and allowances provided for herein are in addition to all other constitutional compensation and allowances.*

All the provisions of this Section shall be applicable to the General Secretary-Treasurer. (Emphasis Added.)

[144] Marked fluctuations of income are by no means rare among Teamster officials. For example, look to the individual financial portraits in Part IV of Roy Williams, Salvatore Provenzano, Rudy Tham, Jesse Carr, Lester Connell and R. C. Cook. While multiple salaries from different Union entities generally account for the high salaries, several Teamster officials have managed to collect more than $100,000 from their Locals alone. For example, in 1974, Chicago Local 710 paid William Joyce (Sec.-Treas.) $134,579 and John Kelahan (Pres.) $112,533; Chicago Local 781 paid Joseph Bernstein (Pres.) $107,731; and, as we have seen, Cleveland Local 507 paid both Jackie Presser and Harold Friedman each more than $125,000 in 1972.

[145] In addition to the 17 officials making more than $100,000, PROD found that 13 made more than $75,000 and less than $100,000, another 45 received incomes between $50,000 and $75,000, and at least 72 earned petween $40,000 and $50,000. Since PROD did not examine the LM–2 reports for every single Teamster organization or the D–2 reports for every Teamster fund, the total number of Teamster officials in each category may well be significantly understated. Moreover, since Canada does not require Teamster officials in that country to file such financial reports, we have no way of knowing what those officials earn. For a list of individuals and their salary levels, see Part IV.

[146] For example. International Vice-President Weldon Mathis lives and works full-time in Washington, D.C., as Fitzsimmons' Executive Assistant. Nonetheless, Mathis received $20,000 from Atlanta Local 728 during 1974 for supposedly running that Local as its President. Mathis is also supposedly a full-time, salaried International General Organizer despite the fact he only leaves his desk to attend meetings with other officials.

Similarly, during 1972 Frank Murtha was the Administrator of the Union's giant Central States Pension Fund located in Chicago, a full-time job if ever there was one. Nonetheless, he too collected a full salary from the International for "organizing". He received $66,000 from the Fund, and $35,000 from the Union.

[147] A classic example of this form of duplicative payments is Joe Morgan who serves as both the International Director of the Southern Conference as Chairman of the Conference's Policy Committee. In 1974, Morgan received $66,563 from the International and $54,939 from the Conference.

Another example is Sam Ancona who was paid salaries by various Teamster organizations all for the same basic job, organizing IBT Vice-President Roy Williams. His 1974 gross salary came to $75,872, $39,677 from the International, $35,195 from Williams' Joint Council 56, and $1,000 from the Missouri-Kansas Conference which Williams also heads. One point to bear in mind is that no Teamster member has ever elected Ancona to these positions.

[148] Williams was appointed Director of the Central States Conference in January of 1976 and the salary which goes with that job will augment his annual earnings still further. Williams 1973 salary total was made up in the following manner. The IBT paid him $40,195, Local 41 paid him $35,900, Joint Council 56 gave him $17,249, and the Central Conference gave him $17,631, reportedly for "expenses". This latter sum of money is peculiar in light of the fact no other officer of the Conference received more than $700 in expenses and the disbursement to Williams was not shown in the Conference's original LM–2, but rather in a subsequent amendment to that report.

Williams gross salary in 1974 dropped to $91,000 because the Conference paid him only $1,479 that year and his Local salary was cut back to $5,200. These two pay cuts were, however, largely offset by a $26,000 raise he received that year from his Joint Council. Interestingly, this raise from the Joint Council came during the same year his Local loaned the Joint Council $45,000 and the Central Conference gave the Joint Council a $54,000 organizing grant. The Local indicated no arrangements for repayment of the loan on its LM–2 form.

Williams has been linked to organized crime in various newspaper accounts. For example, in a series of articles on the Central States Pension Fund which appeared in the Oakland Tribune in 1969, Williams was said to have met with known mobsters and to have helped them in his capacity as a Fund Trustee, to secure loans for which he allegedly received a kickback. According to the newspaper accounts Williams' highly paid protege, Sam Ancona, arranged the meetings and functioned as Williams' link with the mafia. Oakland Tribune, September 26, 1969.

[149] Art V, Sec. 1(d), IBT Const. sets a $30,000 ceiling only for "salary". This limit was apparently disregarded by Fitzsimmons in 1975. See footnote No. 56 in Part 1, above.

[150] Sam Ancona is one such individual. See footnote No. 147, above. Another is Vincent Trerotola, IBT Vice-President Joe Trerotola's son. In 1974, Vince worked for his father in several capacities (administrative assistant to the Eastern Conference, assistant office manager to Joint Council 16, and employee of the Joint Council's pension fund) and grossed $31,364 in addition to the $26,359 he received from the International for "organizing." W. Fleming Campbell, another Gen. eral Organizer ($39,120 in 1974), likewise worked for the Eastern Conference as an administrative assistant ($12,811).

[151] For example, T.R. Cozza (Pittsburgh), William Presser (Cleveland), Rolland McMasters (Detroit), Don Gillette (Miami), and Jack Jorgensen (Minneapolis) have all been convicted of taking illegal payoffs yet all continue to serve as Fitzsimmons' General Organizers. Special Organized Crime Strike Forces of the U.S. Department of Justice have secured indictments against General Organizer Elvin Hughes (Southern Illinois), Rudy Tham (San Francisco), and F. J. Roberto (New Haven). Hughes was accused of arranging kickbacks from the Illinois Conference Welfare Fund. Tham faced charges of extortion and interstate transportation to promote bribery. Roberto and several of his colleagues on Joint Council 64 were accused of embezzlement.

Other General Organizers have also had run-ins with the law. Rocco dePerno figured prominently in the case which led to Tony Provenzano's recent indictment. DePerno allegedly demanded a kick-back on the loan he started to arrange for Tony Pro from the New York State Conference Pension Fund. IBT Vice-President and General Organizer Roy Williams was indicted in February of 1974 for filing false information in the Union's financial reports. Should he be convicted he will be barred from holding any Union office. See 29 U.S.C. 504(a). In spite of this, Fitzsimmons recently appointed Williams as International Director of the Central Conference in addition to General Organizer.

[152] On its 1971 LM–2 form, the Union reported spending $2,912,513 on organizing; in 1972 that sum rose to $3,931,907; in 1973 to $7,434,550; and in 1974 to $8,558,357. In fact, the Union has consistently underreported its "organizing" expenditure in its annual report to the members which it publishes in the *International Teamster* magazine sent to every member. Thus, the Union told its members it spent only $7.5 million in 1974, and $6.4 million in 1973.

[153] For example, it is possible that Roy Williams' 1974 salary increase was skimmed off the International's organizing allowance. Remember, the $26,000 salary increase he received that year from his Joint Council coincided with the 54,000 organizing grant the Joint Council received from the Central Conference which, as we have seen, is an arm of the International.

Due to the possibly suspect nature of the International's huge allocations for "organizing" in recent years, it would seem that members should be entitled to force the IBT to open its books, pursuant to the Landrum-Griffin Act, to justify every expense charged off to organizing 29 U.S.C. 431(c). If any misappropriations should be discovered, members can maintain suits against those officials responsible for wasting or converting their dues-monies to recover the funds. 29 U.S.C. 501. Attorney fees will be awarded against the wrong-doing officials, not the Union, where the plaintiff-members are successful in their suits.

[154] In fact, Miller evidently gained influence rather rapidly under Fitzsimmons. In 1970,

his salary from the Conference was only $32,074. The following year it jumped 50 percent. During the 1960s, Miller held the Conference Policy Committee meetings aboard the Yellow Rose of Texas II, a yacht owned by the Conference. Between 1964 and 1968, the Conference reported expenditures of $27,861 on "Boat and Entertainment Expenses".

[155] In fact, even more was spent if one includes the additional $14,228 the Union paid Miller in allowances and expenses in 1972. The most Miller should have been paid by the International in 1972 was roughly $89,000. For serving as General Secretary-Treasure for 9 months, the Union should have paid him $75,000. For serving as International Director of the Southern Conference for 3 months he might have been expected to earn $14,000 (¼ of the $55,000 Conference Directors are normally paid). The fact that he paid himself considerably more might well constitute a breach of his fiduciary duty. See 29 U.S.C. 501.

[156] He received $57,298 from the Southern Conference and $107,541 from the International.

[157] Canongate was once the popular Teamster resort that LaCosta has now become. Miller's apartment number was 718. According to news accounts, Allen Dorfman stayed close by in apartment 716. Cleveland financier and Bally Corporation treasurer Sam W. Klein stayed next door to Miller in apartment 719. Frank Fitzsimmons and William Presser stayed in apartments 602 and 302 respectively.

[158] Miller probably paid no income tax on the value of this "gift".

[159] The three IBT Trustees were Frank Matula (Los Angeles), Maurice Schurr (Philadelphia), and Louis Peick (Chicago). Fitzsimmons recently elevated Peick to Vice-President. Interestingly, while Matula and Schurr each received less than $1,000 in allowances in 1970, their allowances shot up during 1971 and 1972. Matula received $17,095, just in allowances, in 1971, and $15,182 in 1972. Schurr received $13,015 in 1971, and $12,860 in 1972, again just in allowance, excluding salary and expenses. Incidentally, Matula was convicted of perjury in 1959.

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CHAPTER 9—OTHER TEAMSTER BENEFITS: EXPENSE ACCOUNTS, SEVERANCE PLANS, AUTOMOBILES AND AIRPLANES

Mr. President, depending upon a Teamster official's rank and his proximity to power (most frequently in joint councils and other organizations where he is not directly accountable to the rank and file) the official may well be able to maintain a standard of living which bears no resemblance to the salary he is being paid. Salaries must be attributed directly to the recipient on the Department of Labor LM–2 reports each and every Teamster organization must file annually. On the other hand, many of the other benefits officers receive at union expense are simply not calculable since they are lumped together under various vague designations and are not attributed directly to the officers.[160] Thus, while we will have no way of knowing exactly how well off many Teamster officers really are, let us examine some of the various forms of benefits they receive. Remember, the rank and file must ultimately pick up the tab for each and every allocation of union funds.

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Footnotes at end of article.

ALLOWANCES

The creative use of union allowances can often insure that an officer takes home considerably more cash each month than the rank and file think they are providing him. If an official thinks he deserves a raise or simply wants more money than he is receiving the rank and file would disapprove of a raise, the increase can often be arranged in the form of some allowance or another.

The model bylaws which the international circulates to local unions urge the adoption of a provision whereby the local executive board may vote themselves "additional compensation and allowances" from time to time as needed. In many locals, the executive board's powers are exercised in fact by just one official. At the international level, while we have seen that the Constitution imposes a $30,000 ceiling on general organizers' salaries, the international automatically pays these individuals at least an additional $5,137.50 in allowances each year. To begin with, organizers receive a $7.50 per diem "incidental allowance" and a $200 per month automobile allowance.[161] In addition, when they travel out of town, general organizers are automatically paid another $40 allowance each and every day they are away in spite of the fact their credit cards can be used to cover almost all of their expenses. This form of pay is frequently a pure windfall for organizers.[162]

We make no effort here to present a complete account of the allowances paid to the many hundreds of Teamster joint council and conference officials. Much of this information can be found in part IV in their individual profiles. We do wish to note, however, that IBT Vice President Arnie Weinmeister's Joint Council 28 was scrupulous to indicate on its 1974 LM–2 report that the $7,610 allowance it paid Weinmeister,[163] and the various allowances it paid its other officers were "considered to be additional compensation to the recipients for income tax purposes and are so reported by the joint council." This language on Teamster LM–2 reports appears very rarely and while most allowances paid to Teamster officials are, indeed, taxable income under the Internal Revenue Code, the omission of this acknowledgment by most officials suggests the possibility that they may not be reporting all of their lawful income. In fact, as an "employer," each union entity is obliged to withhold tax on all income they pay Teamster officers and employees. It is possible that those organizations may not have included allowances as well as salaries in the income category in which case they would not have withheld the proper tax. As a consequence, the local or joint council, and so forth, may be directly liable to pay stiff penalties. In such a case, the Teamster rank and file would, once again, have to pick up the financial burden created by their officers.

EXPENSE ACCOUNTS

Many Teamster officials have virtually unlimited use of union credit cards. The sums charged to these union accounts are never attributed to the individual officials and are lumped into various other union expense categories on their LM–2 reports. There simply is no way of calculating the value of this benefit to any given official without asking the union to open its books to a member so he can inspect who signed for what.[164] The only time the union is required to report an expense figure for particular officials is when it has reimbursed those officials for sums they reportedly spent out of their own pockets on union business.[165]

In spite of this very narrow reporting requirement, PROD found that various Teamster organizations have reimbursed certain officials for rather sizable expenses they reportedly incurred.[166] For example, in 1974 Andy Anderson, the international director of the western conference was reported to have been paid $17,318 in expenses alone. Two other western conference officials received even more. John J. Sheridan, chairman of a unspecified trade division of the conference was reported receiving $19,690 in expenses on top of his $33,635 salary. Ralph Cotner, a western conference representative actually received more in expenses than he did in salary ($23,531 against $23,269). And, as we have already seen, Roy Williams received $17,631 in expenses from the central conference during the same year in which no other central conference official received more than $428 in expenses.[167]

TRAVEL ACCOUNTS

Travel accounts are just one form of expense account which a number of Teamster officials have the privilege of enjoying in varying degrees. Nonetheless, they warrant special mention. Fitzsimmons, Miller, and now Schoessling, Presser, Triscaro, and now Busacca, as well as Jesse Carr [168] may all travel whenever they please to posh, warm weather resorts and may bring along wives and/or secretaries or in some cases any number of business associates. The Teamsters membership must pick up the entire tab for their frequent and luxurious vacations. Other Teamster officials enjoy less expansive travel provisions. For example, St. Louis local 618 permits its president, Ed Dorsey, unlimited travel for the purpose of establishing and maintaining contacts that will benefit the local. With a little imagination, such a travel provision could arguably cover trips to join Teamster officials who might be golfing at La Costa.

AUTOMOBILES

The one benefit most frequently enjoyed by high Teamster officials is personal use of union-owned automobiles. And, judging from the make and model of car purchased by most officials, the common attitude is nothing but the best.[169] For example, not only does Frank Fitzsimmons drive a late model Lincoln or Cadillac, so do his two assistants, Walter Shea and Weldon Mathis, who both traded their 1973 Cadillacs for $12,000 Lincolns in 1974. Chicago Joint Council 25, presided over by Louis Peick, outdid the international when it spent $13,957 for a single automobile in 1974.[170]

In addition to providing officials with union-owned automobiles to drive, a number of Teamster organizations have made outright gifts of these cars to their officials. In the early 1970's, nine Teamster officials from the Cleveland area purchased late model cars from the union for the total sum between them of $13. During the ensuing trial for misusing union funds, William Presser's attorneys pointed out that it was a common practice to give automobiles to retiring officials. Retiring local 407 president, John Kalnicki, was one official who purchased his Cadillac for $3, yet he immediately came out of retirement to become an organizer for the central conference. Other retiring Teamster officials who received gifts of automobiles include the union's general secretary-treasurer, Ray Schoessling, who received a vehicle valued at $7,450 when he stepped down from the presidency of Joint Council 25 now headed by Peick.[171] The southern conference gave a $4,915 automobile to Norman Goldstein when he retired from the position of organizer in 1974 to become administrative assistant to the Conference's Policy Committee Chairman Joe Morgan. Various other officials, including IBT Vice-President George Mock, and general organizers W. W. Teague and C. Howard Jones,[172] have received automobile gifts for no apparent reason.[173]

THE TEAMSTER AIR FORCE

Expensive automobiles are not the only form of transportation that Teamsters are providing their officers. In 1969, the union began assembling a fleet of airplanes which has grown to the point where today it includes five luxurious jets and two turboprops worth over $13 million at 1974 values.[174] In the private sector, the Teamster's private air force is exceeded in numbers only by the Nation's largest corporation, General Motors, which owns six jets and six turboprops.

The union acquired its first airplane in 1969 when it leased a jet from Allen Dorfman's Union Insurance Agency for the annual sum of $1.2 million.[175] During the same year, the southern conference, then headed by Dusty Miller, sold its $44,000 yacht and purchased its first plane for $227,850. The following year, the conference began trading up in the executive jet category by trading in this jet for one that cost $663, 850. The difference between the cost of the new plane and the trade-in on its old plane—roughly $450,000—was financed by a grant from the international. In 1972, the southern conference again moved up to another jet which cost the conference $932,850.

During the same year—Fitzsimmons' first year as the elected president—the international purchased a plane costing $3,390,443. Two years later in 1974, Fitzsimmons purchased a second jet for the international at a cost of $1,470,625. In the meantime, he had assisted the Central States Conference to purchase a first plane in 1970 for $552,477 by giving it a grant of $500,000 from the international treasury. The Central States Conference sold this plane in 1972 in order to help finance its purchase of a Hawker Siddeley jet for $717,299. Interestingly, although their old plane had a book value of $497,000, they sold it for only $390,000 to an unidentified buyer. And finally, not to be outdone, the western conference purchased a plane in 1974 for $831,340.[176]

The initial cost of these planes of course represents only a part of the total cost to the rank and file. There are also salaries for pilots and mechanics, as well as insurance premiums, storage costs and landing fees which must be paid, not to mention the cost of fuel and parts. Pilots' and mechanics' salaries alone during 1974 came to nearly a quarter of a million dollars. The Central States Conference is the only Teamster organization which clearly reports the full operating expenses of its aircraft.[177] During 2 recent years, the conference reported spending nearly half a million dollars to keep their one jet aloft. The total annual cost of operating the entire Teamster air force is estimated to be at least $2 million.

The tremendous cost of acquiring and operating these aircraft must inevitably be pondered by the rank and file who wonder whether the planes, particularly such luxurious planes, are really necessary to assist their leaders to represent them. Indeed, they may wonder whether the jets are being used solely for union business or perhaps as a shuttle service for officials traveling between resorts and their several homes.[178] While Fitzsimmons has been generous with the rank and file's moneys to provide himself and his colleagues with a fleet of swift, jet aircraft, he did not, by comparison, spend one cent to insure job health and safety for his 2.3 million members until late 1973 when he hired the union's first safety director at an annual salary of $30,000—a few pennies compared to the huge sums expended on the union's air force.

LOANS

As we saw in the "Cleveland Connection," Teamster officials occasionally manage to obtain sizable loans from different union treasuries. Sometimes it is impossible to determine the terms of the loan, whether, for example, they are more advantageous than the terms available for money in the open market. Indeed, it is sometimes impossible to determine even if the loans were ever repaid.

A close look at the international's LM–2 reports from 1959 to 1974 reveals that nine top union officials have been repaying real estate loans ranging from $5,000 to $40,000 which were made out of the union's general treasury.[179] The Landrum-Griffin Act of 1959 made it illegal for unions to loan, either directly or indirectly, more than $2,000 to any officer or employee. This provision would appear to forbid the union from making loans to its officials out of its various pension and health insurance funds as well as the union treasuries, themselves.

GIFTS AND BONUSES

In addition to the other forms of compensation Teamster officials receive, certain officers have also received handsome gifts from time to time from various segments of the union. We have already seen examples of automobiles being given (sometimes for a nominal price) to officials as retirement presents or in appreciation of their services. Let us now take a look at a few examples of other gifts PROD detected in certain union financial reports. Once again, no systematic effort was made to uncover every gift which may have been lumped into the LM–2 form's "Other Disbursements" category by every Teamster organization during recent years. The following gifts simply caught our attention and were easily verified during our research.

In 1974, Chicago Local 781 gave away $72,000 to just three individuals who all had the same last name—Bernstein. Joseph Bernstein, the local's president, was awarded a $36,000 "other disbursement" on top of the $63,505 salary he already received from the local. His son, Joseph L. Bernstein, the local's secretary-treasurer, and local business agent Robert Bernstein each received $18,000 gifts.[180]

The Teamster conferences have, under Fitzsimmons' overall supervision, been particularly generous over the years. In 1974, the western conference gave its retiring director Einar Mohn $11,872 in addition to the cash bonus of $862 it gave to each of 25 employees that year.[181] That same year, the eastern conference gave its long-time official Richard Bell an $11,000 retirement gift.

The southern conference appears, however, to have been the most generous. We have already seen that it gave Dusty Miller a furnished, luxury condominium apartment in Florida and that it gave automobiles to his son-in-law C. Howard Jones and to W. W. Teague,[182] During his first year as acting general president in control of the conference, Frank Fitzsimmons was the recipient of a $8,119 gift from the southern conference, then under the direction of Dusty Miller.[183] After Miller moved up from conference director to general secretary-treasurer of the International, the conference gave $16,000 to M. Ralph Dixon who retired as secretary-treasurer of its policy committee to be replaced by Miller's son-in-law, Howard Jones. This all occurred at the same time Miller finally relinquished his job as the chairman of the policy committee.[184]

Over the years, various other gifts of cash were awarded to loyal Teamster officials by the southern conference. Veterans International General Organizer W. C. Smith received $1,000 cash bonuses in 1971, 1972, and 1973. In 1974, the conference gave $5,000 gifts to R. C. Cook, and Odell Smith. Cook retired the previous year after a long career as an Atlanta Teamster leader. Smith had been ousted by a reform slate from Little Rock Local 878, the local he had created and dominated for many years. Smith had also served as a union trustee of the Central States Pension Fund.

Footnotes at end of article.

The Texas conference is one more Teamster organization which is in the practice of making gifts to officials although it seems to specialize in giving money to higher officials who might be in a position to do it some favors. For example, from 1962 to 1971 the Texas conference made the annual $720 payments for an insurance policy for Dusty Miller, then director of the southern conference. In addition, it gave Miller $1,500 in 1967, $2,500 in 1969, and $1,500 in 1970 outright. Moreover, when Joe Morgan replaced Miller in 1973, the Texas conference immediately came up with a $3,795 welcome gift for the new southern conference director.

RETIREMENT BENEFITS AND SEVERANCE FUNDS

Although most Teamster officials are eligible to receive comfortable pensions upon retirement, quite a few in addition to William Presser will be able to retire in splendid luxury. Once again, because the Department of Labor requires little information on the subject and does not require unions who fail to provide even this paucity of financial data to comply with the reporting requirements, we frequently cannot determine exactly what any given official will receive and can only put together a rough picture.

To begin with, the IBT constitution (Art. IX, Sec. 10) expressly authorizes the international executive board to adopt any pension or health and welfare plan it deems to be in the best interest of the officers and employees of the international union or subordinate bodies. In fact, the IBT has created two such plans—the Teamster affiliates pension plan, and the retirement and family security plan. Both are funded exclusively out of the IBT general treasury. The affiliates' plan covers every officer and employee in every local, joint council, and conference in the country. The family protection plan covers only international officials and employees. Under this latter plan, IBT personnel are eligible to receive pensions, lump severance benefits, or death benefits (to survivors) after just 5 years of service.[185] The death or severance benefits to which participants are eligible are equal to the reserve calculated on the basis of 75 percent of the accrued pension.[186] (Form D–1, May 1973). The formula used for computing the annual pension benefit is: 3⅓ percent times average annual union salary[187] for all years prior to 1970 times number of years employed plus 2½ percent times average annual union salary during and after 1970 times number of years employed equals annual pension. Thus, if an international official were to retire after 25 years of service in the union, 15 of which was at the IBT level, and if his average annual salary were $50,000, he would be eligible to retire on an annual pension of $48,750.

Since the constitution grants the internal general executive board authority to adopt, mantain, or amend any pension or health and welfare trust agreement or plan which it deems to be in the interest of the officers * * * these 17 individuals are empowered to sit around a table and decide just exactly how much they would like to receive when they retire. There is no requirement that they submit the plan to the union's rank and file for approval much less that they even inform the rank and file of its existence. Moreover, due to the incredible flexibility vested in the executive board to modify their pension plans, or even tailor make them to the needs of specific individuals, it would appear that the board could easily induce the departure of a member it might want to ease out or that members could scratch one another's backs as they plan for their own retirements.[188] The IBT constitution, as it is currently worded, simply makes all this possible.

The second IBT pension plan, the affiliates plan, covers every officer or employee of every affiliated local, joint council, and conference who has completed 3 years of employment. Since the most frequent elections held in the union are held no more frequently than every third year, every official who is ever elected to any Teamster office and who serves his entire term is covered by this plan. This includes most of the international officers inasmuch as most of them simultaneously hold some position in a subordinate, affiliated Teamster organization as well. Accordingly, they are eligible to collect benefits under both plans.

Bear in mind that since the contributions into these plans are made out of the IBT treasury, every local union official automatically has a stake in seeing that the per capita dues their organizations must pay to the IBT are sufficient to make the required payments into their affiliates plan. Remember also that the IBT dues structure is part of the IBT constitution (art. X, sec. 3) which is subject to modification at conventions. Who are the delegates to the conventions? Yes, of course, the local union officials. How large is their stake in the IBT dues structure? In 1975, 33 cents of every dollar the locals contributed to the IBT were plowed back into this special plan for the benefit of their officers. While the Teamster rank and file may in some instances have a little authority to approve the salaries they pay their officers out of the local treasuries, they are virtually powerless to affect these pension, death, and severence benefits their officials will receive. They are entirely frozen out of the decisional process by the rules of the IBT convention which enable their officials to line their own retirement pockets. Nonetheless, it is the rank and file who must pick up the tab.

Just how nice are the benefits which may flow from the affiliates plan to all Teamster officials? According to the plan description (form D–1) filed in June of 1973, all union officials and employees are eligible to retire at age 50 if they have worked for the union for 15 years. If they retire at 57 and have 15 years of service, they will receive an annual pension computed according to the formula: 2½ percent times average annual salary up to $40,000[189] times number of years employed equal pension. Thus, if an official were to retire after 20 years with an average annual salary of $30,000, he would be eligible to receive a pension from the affiliates plan of $15,000 per year. But, that is just the beginning of the benefits to which he is eligible under the plan.

Other benefits for which all Teamster officials are eligible under the affiliates plan include disability insurance, lump-sum severance pay, and lump-sum death benefit (to survivor or beneficiary). To qualify for the disability insurance, an officer need only have had 9 years of service to receive an annual payment computed according to the same formula used for figuring the level of pension payments. To be eligible for the death and severance benefits, the officer need only have had 3 years of service. The death payment is 7½ percent of all earnings after 1961. The severance payment is 5 percent of all earnings during the first 10 years of service plus 7½ percent of all earnings after 10 years. Thus, the death benefit to the survivor of the official who worked 20 years in the above example would total $45,000. In addition, when that official left the union voluntarily, or when he was severed by his members in an election, he would have received $37,500 as his lump-sum severance benefit.

In addition to the two international pension plans, various other organizational units in the Teamsters Union also have received $37,500 as his lump-sum officials who may simultaneously be beneficiaries of one of the International's plans. The essential point to understand is that there is no limit on the number of pension plans a Teamster official might line up to tide him through his retirement years.[190] For example, all of the officers of Chicago Local 710 appear to be covered by the plan that covers the local's over-the-road drivers, the local's own special plan for officers, and the joint council 25 plan, in spite of the fact they are not all officials of the joint council.

Another method used by a number of Teamster officials to soften the financial impact of their individual separation from the union is the severance fund earmarked for their benefit. For example, we have already seen this device used successfully by various Cleveland Teamster officials in chapter 7. While these officers may have been innovators of the severance plan, they by no means have a patent on it.[191] In Baltimore, Leo Dalesio had his local 311 set up a special trust fund in 1966 to provide him with benefits in the event he should be voted out of office.[192] As of 1974, the trust had accumulated $130,489 in assets. St. Louis Local 618 has created a similar severance fund for its president, Ed Dorsey which, as of 1974, was worth $85,313 which the union has labeled as an accumlation of unpaid compensation from 1944 through 1962.[193] The officers of local 295 in Jamaica, N.Y., voted themselves a special lump-sum severance pay award plan several years back which paid Harry Davidoff $52,000 when he retired from that local in 1972 in order to devote his energies to Teamster Local 851 which he had recently chartered. In 1974. Michigan Joint Council 43 set up

Footnotes at end of article.

a special severance account for its officials, and local officers in the State and funded it in that year alone with $176,000.

Other local Teamster officials have made similar arrangements for themselves. Newark Local 863—the bailiwick of reputed mafioso Joseph Pecora—reported a reserve for retirement benefits in 1974 which was worth $377,142. Typically, the union did not report for whom these benefits were intended. St. Louis Local 688 maintains a special trust fund for the benefit of its former secretary-treasurer, Harold Gibbons. In 1974, the principal in this trust fund was listed as $159,966. A 4,000-member New York City Local 816 gave its president, Lester Connell, a 125 percent salary increase in 1974 (from $24,268 to $54,226) which the union's bookkeeper indicated included a severance pay settlement.[104]

New Jersey Teamster leader Tony (Pro) Provenzano was one of the originators of the deferred compensation scheme. In late 1962, 2 percent of local 560's members approved a salary increase from $19,500 to $44,500, and several months later they reportedly approved yet another raise bringing his annual salary (just from his local) to $94,500. After Tony Pro went to prison in 1966 for extortion, he began receiving $25,000 annual from his local which had reportedly built up a $250,000 deferred compensation fund from his unpaid salary during the few years immediately preceding his imprisonment. After his release, Tony Pro was forbidden by law from holding any union office for a period of 5 years.[105] Nonetheless, Local 560 continued to pay him $25,000 annually and while his deferred compensation fund was still worth $98,785 at the end of 1974, Tony Pro went back on the local's payroll the next year when his statutory period of union exile ended.

In addition to making provision for his own direct remuneration, Tony Pro evidently created a "Local 560 Officers and Business Agents Deferred Service Payment Fund." [106] The existence of that fund first became known in 1963 when local 560 filed its LM–2 report for the preceding year. That report showed that the fund was then on deposit at the Hudson City National Bank and was worth $93,818. Througout the 1960's, local 560 poured large sums of money into what it vaguely described under the heading "Bank and Welfare." [107] In 1971, the local transferred this fund to the Garden State National Bank under an account it described as the "officers and employees severance pay plan." [108] The purpose and value of this fund, and those for whose benefit it is intended, remain a mystery.

FOOTNOTES

[160] This information clearly should be broken down further so the rank and file could get a more accurate picture as to what their officers are receiving.

[161] As we shall see later in this Chapter, the Union frequently owns the automobiles its officials use and provides them with gasoline credit cards. Therefore, this $2,400 annual automobile allowance to General Organizers may be a pure windfall.

[162] See Art. V, Sec. 1(e), IBT Constitution which authorizes these various allowances not only for International Organizers, but also for International Vice-Presidents, Trustees and "executive officers". It is not known whether the Union interprets this latter designation to include high-ranking, staff employees.

[163] Weinmeister also received $5,737 in allowances from the International in 1974 bringing his total for allowances that year to $12,947. Other high ranking Teamster officials who happened to break the $10,000 allowance barrier in 1974 included IBT Vice-Presidents George Mock, Robert Holmes, William Presser and Andy Anderson. Another eleven Eastern Conference "representatives" and nearly two dozen General Organizers and International Auditors also topped this mark in 1974. Many other officials may also have run up equally high allowances.

[164] Should the Union balk, members may force the Union to open its books "for just cause" to verify the LM-2 figures. 29 U.S.C. 431(c).

[165] The Department of Labor instructions for completing the LM–2 reports state that unions should *not* include "expenses for hotel room or for transportation of the officer on official business by public carrier for which payment was made by your organization either directly or through its credit arrangements" in the "expense" column next to the officer's salary. The government goes on to make it clear that the sum which must appear in this column is only that amount which the officer paid out of his own pocket for "expenses necessary for conducting union business."

Those expenses which are charged directly to Union credit cards or which are paid directly by the secretary-treasurer are listed instead under a heading, "Office and Administrative Expenses," which include such items as rent, bonding premiums, utility bills, etc. No further breakdown is required. As a result, the category can function as a catch-all, concealing certain questionable expenditures. The sums appearing in the category can vary radically from one year to the next without explanation. The Central Conference, for example, reported spending the following amounts in this category during the years indicated:

| | |
|---|---|
| 1971 | $790,842 |
| 1972 | 1,072,614 |
| 1973 | 379,775 |

Why these enormous variations?

[166] For a detailed summary of "expenses" reported by various Teamster organizations for a large number of Teamster officials, see the profiles in Part IV.

[167] Another example of a wasteful expense account which Roy Williams may tap at his pleasure without the money being attributed directly to him as an "expense" is the Missouri-Kansas Conference bylaw (Sec. 8.01) which authorizes Williams (President), Ed Dorsey (Vice-President) and Karl Rogers (Sec.-Treasurer) to spend Union funds to "provide entertainment for themselves and their friends during non-working hours on out-of-town trips." Remember, the General President is empowered to reject any Teamster organizational bylaws.

[168] Carr is the President of Alaska Local 959 who was recently appointed an International Trustee by Fitzsimmons.

[169] Some locals do exercise restraint when spending their members' dues money on automobiles. For example, Winston-Salem Local 391 and Seattle Local 741 both require their officers and business agents to use their own cars for Union business and simply provide them with a fixed monthly allowance for this transportation expense.

However, typical language appearing in Union bylaws seeks to justify the personal use of union-owned automobiles:

It is recognized that such officers or employees are required to be on call at all times, may be required to garage such automobiles and are responsible for their safeguarding. Accordingly, for the convenience of the union and as partial compensation for such additional responsibilities, such officers shall be permitted private use when the automobiles are not required on Union business.

This language can hardly excuse the officials from reporting the value of the personal benefit they derived and from paying income tax on it.

[170] Peick's Joint Council also reported giving $15,281 in 1974 to Peick's Local 705 as "reimbursements for auto expenses". Other examples of such extravagance are provided by Newark Local 641 and Cleveland Local 436. Local 641 purchased seven $9,000 autos while Local 436 supplied each of its seven officers with brand new Cadillacs.

[171] When Schoessling gave up his job as Joint Council 25 President in 1973, he stepped immediately into another Joint Council position—Trustee—yet continued to draw the exact same salary ($28,500) that he had received as President. The other Joint Council trustees received only $15,500.

[172] Jones received this car in 1969 from the Southern Conference which his father-in-law, Dusty Miller, then ran. When Miller became the International's Secretary-Treasurer, Jones was elevated to Secretary-Treasurer of the Southern Conference Policy Committee. Inasmuch as Jones was also on Fitzsimmons payroll as a General Organizer, he was able to gross $69,491 in 1974 ($43,052 from the International and $26,439 from the Conference).

[173] For a listing of 31 similar automobile transactions, see Appendix "C".

[174] Scripps Howard reporter Dale McFeatters has identified the aircraft to be: 1 Grumman Gulfstream II, 2 French-built Dassault Falcon 10, 1 Learjet 35, and 2 Swaringen Merlin II turboprops. McFeatters' investigation also uncovered a Hawker Siddeley 125 jet technically owned by the Teamsters Central States Pension Fund.

[175] This arrangement apparently generated such bad publicity that the International canceled the lease. After the 1970 LM–2, there is no more mention of the agreement. A 1972 Chicago Sun-Times investigation revealed that the Union Insurance Agency bought singer Frank Sinatra's 12-passenger Grumman Gulfstream jet for $3-million and then turned around and leased it to the Central States Pension Fund. Sinatra's jet reportedly replaced two planes used by the fund which were found to be too small. Chicago Sun-Times, June 18, 1972.

[176] Other Teamster organizations have also tried to get into the aircraft business. Even the tiny Georgia-Florida Conference which operate on only $150,000 annually was involved in an attempt to purchase its own plane. In December 1971 they bought a Beechcraft for $55,000 plus $19,250 in interest. Shortly thereafter however, they sold the plane for a small profit. Alaska Local 959 reported purchasing a plane in 1972 for $115,000. The corporation which owns Local 959's buildings also reported spending $365,488 for airplanes in 1974 and the Local reported paying the salaries of two pilots that same year.

[177] For example, the Southern Conference lumps the operating expenses of their jet into a category entitled, "Airplane, Travel, Entertainment & Dinner."

[178] Several top Teamster officials have had second homes in warmer areas of the country. Frank Fitzsimmons, Dusty Miller, William Presser and the late Thomas E. Flynn all had condomoniums in luxurious Canongate development in North Miami. While in office Dusty Miller reportedly had a home in Palm Springs, California as well as Great Falls, Virginia while Fitzsimmons now has a house in La Costa in addition to his Union-owned residence in Bethesda, Maryland. Milwaukee Teamster official Frank Ranney reportedly maintains a residence on Coral Springs, Florida.

[179] The officials who received the loans, and the amount of the loan are: James Casey, former administrative assistant to Dusty Miller, $17,000; Thomas E. Flynn, the late General Secretary-Treasurer, $29,000; T. L. Hughes, $6,000; D. Kaplan, $23,000; Joseph W. Morgan, $26,000; W. T. Mullenholz, former comptroller of the IBT, $13,000; Frank J. Murtha, $40,000; and F. A. Tobin, $24,000. The International did not clearly report this information until 1962. It is assumed, however, that all the loans were made prior to the effective date of the Landrum-Griffin Act, September 14, 1959. For a more complete listing of IBT loans, see Appendix "D".

[180] Joseph Sr. also received $8,226 in expenses from the Local, $15,500 from Joint Council 25, and $10,417 from the Central Conference. Including the gift from his Local, he grossed $133,648 in 1974. His son grossed $87,478 and Robert Bernstein grossed $76,743.

[181] During the same year that Fitzsimmons was able to suddenly "promote" Andy Anderson to take Mohn's place, the International also gave Mohn a $10,000 "other disbursement."

[182] During the same year in which it gave away these cars, it also gave the same two individuals $1,000 bonuses. 1969 must have been a good year, indeed! Jones received another $1,000 bonus in 1971 even though he was not listed as a Conference employee that year.

[183] Whether this was a "gift" or "income" for which Fitzsimmons was liable for taxes is debatable in light of the fact the Conferences are under the President's sole direction and control. Similarly, one might also question the validity of numerous other "gifts" in one form or another which Teamster officials have received from organizations they control.

[184] The Southern Conference under Miller also made a sizable real estate loan ($110,000) which it reported in 1969. The loan was described by the Conference as a "1st Mtge Sale of Trust Prop. 20 yrs transferred from aff." and was made to two individuals identified only as N. Trent and D. Trent. As of 1974, only $13,446 of the principal of this mysterious loan had been repaid.

After Joe Morgan became Director of the Conference, it reported spending in 1974 $85,873 in contributions to civic and charitable causes. This sum was more than twice the amount the Conference had ever before spent for such causes. Because the expenditure was not itemized, there is no way to determine who, or what organizations were benefitted. Teamster members would, however, be entitled to examine the Conference's books and receipts to verify these expenditures. See 29 U.S.C. 431(c).

[185] Since elections for International officers occur only once every five years, every officer will qualify even if he should only serve one term in office.

[186] The Union's Plan description does not specify how the "reserve" or "accrued pension" value is computed for purposes of determining lump severance or death benefits.

[187] Evidently an official's "salary" is not limited to just his IBT salary but may be the total accumulation of salaries for holding office in multiple organizational entities.

[188] In the International's 1975 LM–2 report, there appears the following mysterious entry under the heading "contingent liabilities";

"On October 24, 1975 the International Brotherhood of Teamsters entered into an agreement with the Retirement and Family Protection Plan for Officers and Employees of the International whereby the International Union agreed to set aside $698,064 in a deposit account for a contingent liability which will be determined by December 31, 1977."

[189] The salary ceiling listed in the Union's 1973 D–1 report was $20,000. Although the Union had not filed an amended D–1 report when this Report was published, PROD learned from a reliable source inside the Union that the ceiling had been raised to $40,000 and that the period of time for 100% vesting had been shortened from 15 to 10 years.

[190] The "model" Teamster bylaws contain an open-ended provision conferring unlimited discretion upon subordinate Union officials to create special trust funds for their own personal benefit. The following is a typical provision:

*Benefits.* The Executive Board may from time to time provide fringe benefits for officers, employees and representatives of this organization, including but not limited to such fringe benefits as vacations with pay and expenses thereof, holidays, sick leave, time off for personal leave, and in connection therewith, any disability or sickness, health and welfare and retirement benefits and activities and facilities relating thereto, and may from time to time provide changes therein as well as additional compensations and allowances. Art. VII, Sec. 4, Local 728 Bylaws. (Local 728 is the Atlanta Local headed by IBT Vice-President Weldon Mathias.)

[191] For example, a business agent or officer in Cleveland Local 407 may be covered by the Local's own Severance Fund, the Joint Council 41 Business Agent's Pension Plan, and the IBT Affiliates Plan. The officers in Pontiac, Michigan Local 614 appear to be covered by their Local's severance fund as well as the Michigan Joint Council 43 fund and the IBT Affiliates Plan. Salvatore Provenzano and his fellow Local 560 officers and agents have the protection of the generously funded Local severance plan in addition to the benefits of the Joint Council 73 and IBT plans.

[192] "This and all other severance funds which have become quite popular among Teamster officials, appear to be intended as a financial backstop to cushion the officials from the effects of union democracy. With such financial security, one may question the extent to which the officials will continue to be motivated to represent the will of their electorate.

[193] This fund was not even created until 1962. Whether this sum of money was actually earned, but deferred, or whether it was simply created and then spread back over a number of years in order to make it appear to have been more modest is a question which should be asked by the Union's members. The answers may well determine whether the law has been violated. See 29 U.S.C. 501. They may also establish whether, when, and how much income tax the beneficiary should have, or did pay.

[194] This phenomenon might also account for the fact that Atlanta Teamster official, R. C. Cook, received a salary increase from $32,203 to $50,541 the year immediately prior to his retirement.

[195] See 29 U.S.C. 504.

[196] Once again, the Local has never divulged either to its members or to the government in a financial report exactly for whose benefit this fund was intended, what amounts have been paid from it, and of course to whom.

[197] For example, in 1962 the Local reported expenditures under this general heading of $79,802; in 1963, $79,907; and 1964, $54,323; and in 1965, $48,851. Because the heading, "Bank and Welfare", is so vague, PROD had no way of knowing whether it referred to just the Hudson Bank Deferred Service Fund or to that fund as well as some other welfare fund. Between 1966 and 1970, Local 560 reported making prior payments only into an unspecified "welfare fund". It was during these years that Tony Pro was incarcerated.

It is reasonable to conclude that the Local 560 rank and file have no knowledge whatsoever of the existince of these funds much less how much principal there is in the fund or funds and who draws, or is eligible to draw that money. The U.S. Department of Labor has failed to require Local 560 to fully report this information. It is possible that two business agents may, for example, have received sizable "severance payments" while in jail in recognition for their former services and loyalty. Salvatore Briguglio went to prison for counterfeiting, a charge that was originally filed against Salvatore Provenzano. Some say that Briguglio took the "fall" for Provenzano, currently an IBT Vice-President whom Fitzsimmons brought in to replace Tony Pro when he went to prison. Another business agent is Steven Andretta, an individual who has figured prominently in the investigation of Hoffa's disappearance.

[198] The amounts the Union reported contributing into this account are: 1971—$11,942, 1972—$77,164, 1973—$51,619, and 1974—$55,043.

Mr. President, I ask unanimous consent that a Washington Star article reporting the conviction for murder of "Tony Pro" Provenzano be printed in the RECORD at this point.

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

PROVENZANO, AIDE GUILTY IN MURDER OF TEAMSTER RIVAL

KINGSTON, N.Y.—Anthony Provenzano, an organized-crime figure who had been linked to the disappearance of James R. Hoffa, and Harold Konigsberg, an extortionist and alleged enforcer for organized crime, have been convicted of murdering Provenzano's union rival.

The rival, Anthony Castellito, disappeared June 6, 1961, and his body has never been found.

The jurors, all of whom looked away from the defendants as they walked in, deliberated and heard testimony re-read for almost nine hours before reaching their verdict yesterday.

Provenzano, who has been free on $25,000 bail since July 1976, was turned over to the Ulster County sheriff. Konigsberg is already serving a prison term for extortion.

Castellito was the secretary-treasurer of the 13,000-member Teamsters Local 560, in Union City, N.J., one of the country's richest locals, in 1961 when Provenzano was president.

The prosecution charged that Provenzano paid Konigsberg $15,000 to kill his union rival, Castellito, also known as "Three Fingers Brown," at Castellito's summer home in Kerhonkson, near here.

Konigsberg was allegedly aided by Salvatore Sinno, a star prosecution witness; Edward Skowron, now dead; and Salvatore Briguglio, who was scheduled to be tried here until he was shot and killed by two men in Manhattan's Little Italy on March 21.

Briguglio was a key suspect, along with Provenzano, in the 1975 disappearance of Hoffa, the former Teamsters president who is presumed dead.

Another prosecution witness, Ralph M. Picardo—now free on bail while appealing earlier convictions for murder and extortion—testified that Provenzano told him in a Newark bar, the Chateau Renaissance, that he had ordered the murder of Anthony Castellito.

Sinno had spent 15 years in hiding under two aliases. He was married and had two children. Sinno fled four months after the murder because he was sure Provenzano planned to have him killed, he testified.

CHAPTER 10—PENSION AND WELFARE FUNDS: FURTHER SOURCES FOR ENRICHMENT

Mr. THURMOND. Mr. President, the AFL–CIO Code of Ethics explicitly forbids salaried officials of its member unions from accepting any additional compensation for managing union funds since "such service should be regarded as one of the functions expected to be performed by them in the normal course of their duties * * *" Teamster officials are restrained by no such code of ethics, and a substantial number of them appear to regard pension and welfare funds as an attractive opportunity for enrichment. In this chapter, we will present a number of cases where Teamster officers are profiting from such funds by drawing additional salaries or paying themselves lavish fees. We make no effort here to address, however, the subject of misuse of funds—a topic which deserves separate treatment.[199]

The model bylaws adopted by most Teamster organizations contain a provision authorizing officials to create trust funds "to provide benefits for members or their beneficiaries." Given this authority, a number of officers have set up pension and/or health and welfare trust funds, and in most instances they have appointed themselves to remunerative positions in the funds. As entirely separate legal entities—apart from the union—the Teamster membership has no direct control over these trust funds, the way they are managed and their funds invested, or the salaries or fees they pay. Indeed, the rank and file frequently are not even aware that their officers are also trustees, administrators, or employees of such funds, much less that they are deriving additional income from the funds. The reason, once again, is because this information is not required by the Department of Labor to be reported by their officers in one place. Instead, this type of information has been reported by the funds, themselves, directly to the Department of Labor on D–2 forms, and it does not show up on the local unions' LM–2 reports which members can examine at their union halls.[200]

Who are some Teamster officials who are drawing additional salaries or fees from pension or health and welfare trust funds? In chapter 7 (Cleveland Connection) for example, we saw that John Rusnak augmented the $26,148 salary he received for serving as a local trustee of Jackie Presser's Local 507 with another $24,000 for serving as "administrator" of the local's health and welfare fund. John Trunzo supplemented his union salaries with an additional $24,700 salary for serving as "administrator" of Presser's Local 507 pension fund. The three top officers in another Cleveland Local (407), Thomas Lee, John Tanski, and Cecil Kinney also sit as trustees of the "Local 407 Insurance Fund." During 1973, they each paid themselves a $5,416 trustees' fee which they increased the following year to $11,250.

A number of New York State Teamster officials also do very well by their local trust funds. Utica Teamster boss Rocco dePerno drew nearly $20,000 in allowances and expenses from the various funds affiliated with his 3,000-member local 182 on top of the $46,216 salary he received directly from the local and the $30,897 he received from Fitzsimmons for serving as a general organizer. Down in New York City, local 805 president Abe Gordon supplemented his $26,000 salary in 1974 from that 3,000-member local with an additional $32,000 which he drew from the local's health and pension funds for serving as the "administrator."

Across town, the Crapanzano family dominates another small Teamster Local 27 and profits handsomely from its two pension funds. The senior Crapanzano, Patsy, serves as the secretary-treasurer of the local; his son Robert is the president; his wife Marie is the recording secretary; and another son Patrick is a business agent. Patsy, Robert, Marie, and Patrick are all trustees of the principal pension fund which Patsy "administers." Robert administers the second fund. All together, the Crapanzano family received $160,000 in 1974 for their various union related activities. Of this sum, nearly $40,000 came from the two pension funds.[201]

Bernard Adelstein is another New York Teamster official who, we have already seen, runs more than one local with Fitzsimmons' express permission; he also runs their various trust funds. His union positions include: secretary-treasurer of local 813 (2,000 members), president of Local 1034 (3,000 members), and trustee of Joint Council 16. In addition, he is both a trustee and the administrator of Local 813's pension fund, insurance trust fund, and the severance and retirement trust fund which also covers Local 1034. Bernard's two sons, Alan and Martin, serve as trustees of the three funds to protect the funds' beneficiaries and assure that their father's conduct meets the highest fiduciary standards. In 1974, the three Adelsteins netted a total of $233,000 for their various union related activities on behalf of their 5,000 members. Of this sum, $46,200 came from the three trust funds.

The giant Central States Pension Fund, which covers a majority of the teamsters who work in the Nation's freight trucking industry, has been a particularly lucrative watering trough for a number of teamster officials over the years. As we saw in chapter 7, William Presser received $28,800 from this fund in 1974 for serving as a union trustee. He has since been forced to "retire" as a trustee due to his conviction for accepting illegal payments from employers in exchange for selling his members short, a crime which the lawmakers decided proved that a labor official was not worthy of the high fiduciary trust expected of a pension fund trustee.

Frank Ranney and Donald Peters are two other Central States Fund trustees who have received substantial sums from the fund for their services. Ranney barely qualifies as a teamster official since the only position to which he is elected by the rank and file is trustee of Milwaukee Local 200, a secure, albeit obscure, position which entails only a few days work each year and which carries with it very little responsibility or authority. Nonetheless, Ranney obviously has the confidence of high ranking international teamsters inasmuch as he has been given positions as a general organizer, and member of the Central States Drivers Council, in addition to his position as a fund trustee. In 1972, Ranney received a $15,300 allowance from the fund. The following year that figure leaped to $65,100. In 1974, Ranney collected a $59,840 allowance, plus another $16,519 in expenses from the fund which, combined with his other union salaries, brought his total "take" that year to over $125,000.

As president of Teamster Local 743, the largest in the country with roughly 32,000 members, Don Peters is a very busy official. Nonetheless, he apparently devotes considerable time as a trustee of the Central State Fund which paid him $15,000 in 1972, $41,480 in 1973, and $33,143 in 1974.[202] In this latter year, Peters also drew his full $80,000 salary from local 743, which together with his compensation from the pension fund and the $31,000 he received from Fitzsimmons for holding the title of general organizer pushed Peters over the $140,000 mark in total union disbursements in 1973.

Not only do many Teamster officials find their services to various Teamster trust funds to be rewarding, so also do a number of other individuals who serve as consultants, lawyers, and administrators.[203] For example, the Pressers' Ohio Drivers' Welfare Fund paid their administrator, Dayton, Ohio attorney Robert Knee, Jr., $878,915 in fees during 1974. This sum amounted to approximately 5½ percent of the total assets in the fund. During 1973, this fund also gave $191,857 in special "fees" to each of two companies owned by Allen Dorfman, Amalgamated Insurance Service Agency and Health Plan Consultants. Although Allen Dorfman was convicted of taking a $55,000 kickback for a loan made by the Central States Pension Fund, his companies have thrived as a result of all the "consulting" business they have provided various Teamster funds. For example, Amalgamated provides various services for Teamster welfare plans including the IBT employees' Health and Welfare Fund,[204] Don Peters' local 743 plan, Jackie Presser's local 507 plan, and William Presser's joint council 41 plan, not to mention the Central States Health and Welfare Fund which, alone, paid Amalgamated $3,278,206 in "service fees" during 1974. In addition, the Central States Health and Welfare Fund paid the following amounts to other Dorfman companies that year: Conference Insurance Consultants, $373,206; Health Plan Consultants, $413,942; and Dental Health, Inc., $47,121.

Cleveland Locals' 407 and 545 welfare funds paid Bernard S. Goldfarb, Inc., a total of $222,202 in 1974 for "office salary, rent, utilities, and maintenance of funds". It so happens that Bernard Goldfarb is a management labor lawyer who represents a substantial number of trucking firms in the Cleveland area. Surprisingly, the trustees of these funds have elected to headquarter their trust funds in his law offices.[205] By itself, this fact might not be so remarkable since the trusts are jointly administered by management, as well as union trus-

Footnotes at end of article.

tees.[205] However, as a practical matter, those who administer health funds are in daily contact with union members with various claims as well as their local union officials who may be assisting them to collect on their claims. It might seem a little odd that these members and the local officials should have to "consult" on such a regular basis with the law firm which represents management and is generally considered to be an adversary.

In addition to serving as a trustee and providing legal and managerial services to these Cleveland local trust funds, Bernard Goldfarb is also one of the management or employer trustees of the central States pension fund.[207] Serving with Goldfarb as employer trustees are Thomas J. Duffey, Herman Lueking, William Kennedy, John Spickerman, Jack Sheetz, Albert Matheson, and John Murphy. Each of these men is actively involved in the day-to-day operations of truck companies which are covered by Teamster collective bargaining agreements.[208] The principal concern of these trucking executives is not the investment policy of the central States pension fund under which their employees might some day qualify for a pension, but rather with their current costs of doing business, a substantial part of which result from Teamster collective-bargaining contracts. Assuming that their union counterparts may also desire something which they have the capacity to provide, trustee meetings afford their members a golden opportunity to arrange various mutually advantageous deals. More on this in a moment.

At first glance it would appear that except for trustee allowances or fees, the union trustees obstensibly have nothing to gain by their positions as trustees. Presumably, the only reason they serve as trustees is because it is an honor to hold such a high fiduciary responsibility and because, as dedicated trade unionists, they welcome the opportunity to serve the teamster rank and file in yet another capacity. In fact, there may be other reasons why teamster officials have been eager to serve as fund trustees.

The central States pension fund, along with numerous other teamster trust funds, is unusual in that the trustees have, themselves, assumed the responsibility for making all investment decisions (for example, select loan applicants, banks, et cetera) rather than assigning this sophisticated and demanding task to professional investment experts.[209] As a result, the trustees are in a position to make huge sums of money available to their friends or business associates even though those individuals may be involved in exceptionally high risk ventures and may put up very little collateral and in spite of the fact other more secure and deserving loan applications must be rejected. The opportunity for arranging kickbacks from such individuals or businesses is always present for the trustee who pushed the loan through or for his family members, whether in the form of cash or stock, present or future. The temptations are inevitable and great in such situations.

Now, let us take a look at the trustees' balance sheet. On the surface, the union trustees stand to gain absolutely nothing of economic value by serving as trustees except in some cases a fee or allowance. Below the surface, however, there may be opportunities to arrange kickbacks or special favors which they may seek. Theoretically, the employer trustees also have this same opportunity. However, since in the real world they are all competitors, they are much less likely to work together closely and to vote as a block than the union trustees who are all colleagues and work together day in and day out. Therefore, the employer trustees are not really in a position to be able to arrange loans for friends. The employer trustees do, however, have their own more immediate economic concerns which stem from their labor contracts. Since the cost of labor is the single greatest cost of doing business in the trucking industry, if these men can persuade the union trustees to "relax" some of their commitments under those contracts, the employer trustees can save their companies millions of dollars. Therefore, the quid pro quo is: "you give me a sweetheart contract or at least guarantee that I will not have to live up to the letter of my contract, and I will approve loans to your buddies and ask no further questions." Each has something the other wants.[210] When this form of collaboration occurs, the teamster rank and file are, of course, double loser's. On the one hand, those who work for the employer trustees' companies do not get what they are entitled to, and every teamsters' pension equity is endangered when their funds are not wisely invested.

To be more specific, let us focus once again upon the central States pension fund as an example. Who are the union's trustees and what are their relationships with the employer trustees whom we have already identified. Due to the lack of current data, we will concentrate upon the trustees during calendar year 1974 before William Presser was ousted by the U.S. Department of Justice. In addition to Presser, the other union trustees were Frank Fitzsimmons, Roy Williams, Joe Morgan and his lieutenant W. W. Teague, Frank Ranney, Don Peters and Robert Holmes. Morgan and Teague are out of the Southern Conference whose jurisdiction embraces Terminal Transport whose chief executive officer, Spickerman, sits with them as an employer trustee. Spickerman's executive in charge of labor relations, Rudy Pulliam, sits on the opposite side of the bargaining table from both Morgan and Teague during the negotiations for the National Master Freight Agreement which are supposed to be conducted "at arm's length". Consider the fact that during the term of the 1973–76 contract, Terminal Transport was allowed by the Southern Conference to layoff large numbers of regular employees and use "casuals" instead, a means of cutting many labor costs to the company.

The only union trustees on the Central States Fund who do not also participate in the negotiation of the National Freight Agreement are Ranney and Peters. However, Ranney does sit on the Central States Drivers Council along with Roy Williams, Fitzsimmons, and William Presser and it is in the Central States area that the opportunities for collusion are the greatest. Because these union officials effectively control the grievance machinery in the Central States, they can easily arrange the necessary "protection" for the companies—not members—either owned or represented by trustees Goldfarb, Murphy, Lueking, Kennedy, and Duffey.

Regardless how much "hanky panky" may actually go on between union and employer trustees of the many teamster trust funds, the fact is that their many, nonadversarial meetings to consider investment decisions and conduct other fund business are conducive at the very least to the development of close cooperative friendships. Whatever else may be said, the principal role of a union official is to understand and represent the interests of the rank and file to whom he owes his total loyalty. The "understandings" or friendships which are nurtured over the years in the cooperative atmosphere of trustees meetings give rise to the most fundamental conflict of interests possible for a professional trade unionist.

Oddly, many high ranking teamster officials make no effort to hide, and even flaunt their camaraderie with management officials. For example, at the much publicized Frank E. Fitzsimmons Invitational Golf Tournament at La Costa in 1975, Fitzsimmons asked Central States Fund trustee John Murphy to join the lead party which also included Dusty Miller and Joe Trerotola. At the time, Murphy also headed Gateway Transportation, a company which has received loans from the central States fund, and was treasurer of the American Trucking Associations. Finally, Murphy happens to be one of the nine individuals representing management who negotiate the Master Freight Agreement covering 450,000 Teamsters.[211]

Of course, if the Teamsters Union were a truly democratic institution, its constituents would quickly oust any official displaying such camaraderie with other employers. The fact that many Teamsters officers have been so brazen, in their display of friendship toward their members' adversaries is further proof of the fact they know they cannot be held accountable to the teamster rank and file. They are insulated by the union constitution and bylaws. Moreover, while the membership might be inclined to mutiny under other circumstances, they are afraid for their persons and their jobs due to the form of "representation" their officials may afford them.

FOOTNOTES

[205] These funds are set up in trusts which are legal entities in and of themselves, totally apart from the Union which is the subject of this Report. Misuse of trust funds, kickbacks, unsecured loans to corrupt businessmen at extraordinarily low interest rates, etc., have been widely attributed to various Teamster officials and joint Teamster-employer funds such as the Central States Pension Fund *See e.g. Wall Street Journal*, July 22–24, 1975. This is an entire and separate subject which we do not attempt to present herein.

[209] Similarly, since Joint Councils and Conferences and other Teamster organizations

file totally separate LM-2 reports with the Department of Labor, and since these reports are not available at the Local Union hall even though the Local official may also be an officer in other organizations, the rank and file who periodically "elect" these officials simply are not customarily aware how much money they are paying them in one fashion or another.

[201] See Chapter 14, *Profiles*, for a more detailed breakdown. Those portraits will also disclose other officials who receive fees from trust funds. See e.g. Frank deBrouse from Washington, D.C. Local 639 who received $10,800 in 1974 for serving as a trustee of his Local's two trust funds.

[202] The $33,144 figure breaks down as follows: $27,980 in allowances, and $5,164 in expenses. Since the Fund was paying a $400 per diem allowance, Peters must have devoted 69 days in 1974 to Fund business or a total of at least 27% of all working days that year.

[203] The former administrator of the Central States Pension Fund, Frank J. Murtha, was paid a $66,000 salary in 1972, the last full year during which he held the post. During that year, Murtha also received $35,145 for serving as a Fitzsimmons' General Organizer. It is interesting to note that Murtha owed the IBT $10,000 on a note it had given him to purchase real estate at the time Fitzsimmons put him on the IBT payroll, a convenient means of facilitating repayment. Moreover, while Daniel Shannon replaced Murtha in 1973 as administrator of the Central States Pension Fund, it nonetheless continued to pay Murtha $35,000 in 1973 and $22,000 in 1974 for services as "retired administrator".

[204] This IBT fund also paid longtime Dorfman business associate, Sol C. Schwartz, $11,216 in direct fees in 1974. Schwartz has reportedly been associated with Abe Chapman, a "consultant" whose real name is Abraham "Triger Abe" Chapalowitz, a one-time hit man for Murder, Inc.

[205] The firm of Goldfarb & Reznick is located at 1825 The Illuminating Bldg., 55 Public Square, Cleveland, Ohio.

[206] In 1974, Goldfarb received trustee's fees of $6,250 from the Local 293 Welfare Fund, and $5,000 from the Local 545 Health and Welfare Fund.

[207] In addition to his other trustee fees, Goldfarb received a $13,420 "allowance" and $4,053 in expenses from this Fund in 1974.

[208] Goldfarb represents the Cleveland Drayman Association and the Northern Ohio Motor Trucking Ass'n. Duffey is associated with the Motor Carriers Labor Advisory Council of Milwaukee. Lueking operates Lueking Transfer out of St. Louis. Kennedy runs Supreme Express and Transfer, also out of St. Louis. Spickerman was until late 1975 the Chief executive officer of Terminal Transport based in Atlanta. Murphy is head of Gateway Transportation out of La Crosse, Wisconsin. Sheetz is with the Southern Operators Ass'n. Matheson is secretary of the Michigan Motor Carriers Ass'n.

[209] In stark contrast is the Teamsters Western Conference Pension Fund which was an "insured plan" administered entirely by the Prudential Life Insurance Company. It is totally independent of the Central States Fund. Following an interview with Einar Mohn, former Director of the Western Conference, the Oakland Tribune quoted him as saying:

"If we had a funded plan (similar to the one in Chicago) I would want it to be an irrevocable condition of the trust that the decisions on investments be made by a bank or some other financial institution, perhaps even a blue ribbon committee of financial experts. . . . I don't think a layman has any business trying to sweat out the market. Our pension fund trustees aren't qualified to make those kinds of investment decisions, and I think they'd agree with me." *Oakland Tribune*, Sept. 28, 1969.

[210] No doubt, the Union and employers will quickly point out that the Taft Hartley Act requires that employee trust funds be jointly administered by employer and Union trustees. However, the Act does not require the trustees to manage the funds and make the underlying investment decisions. Nor does the Act require the Union and employer trustees to be the very same individuals who are responsible for negotiating and administering contracts. These are the circumstances which pave the way for collaboration which is unique to Teamster funds. Most unions appoint outside legal counsel or other "representatives" to serve as their trustees who rarely participate in the actual process of investing the funds.

[211] Investigative reporter Jim Drinkhall has identified some of the more congenial groupings among the 1974 tournament participants. Drinkhall reported that Fitzsimmons and Murphy teed off together with Moe Dalitz, Allen Dorfman, and Las Vegas gambling figure Ross Miller. Other Central States employer trustees (in addition to Murphy) who were present were Jack Sheetz and John Spickerman. The president of Spector Freight, Wilfrind Stanhaus, played as did Bill Wolff, the official with Youngstown Cartage who made the illegal payoffs to Fitzsimmons' Special Organizer, Roland McMaster. Alex Maislin (Maislin Transport, a big company in the East) teamed up with New Jersey Teamster bosses, Salvatore and Tony Provenzano. Rudy Pulliam (Terminal Transport) joined the party which included IBT lawyer David Uelman (Goldberg, Previant & Uelman, the Milwaukee firm which has masterminded the affairs of the IBT under Hoffa and Fitzsimmons). *Overdrive Magazine*, April 1975.

## PART III—THE CLEANUP—WHERE AND HOW TO BEGIN

### CHAPTER 11—A SHOPPING LIST OF WEAKNESSES AND GUIDE TO REFORM

Mr. President, in this part of the report, we will not make a comprehensive effort to propose solutions to each and every problem touched upon in the foregoing parts. We will, however, attempt to recapitulate and identify certain of the more fundamental political and financial weaknesses in the Teamsters Union and offer some very general suggestions which may be considered as possible approaches to reform by those interested in undertaking the task. We stress the fact that we intend our proposals to be considered merely as suggestions—food for thought.

The principal responsibility for reforming the International Brotherhood of Teamsters must lie with the union's rank and file. They possess four basic tools for achieving reform. In the first place, they can become more organized and active at the local level. Corrupt or unresponsive officials who may also hold higher offices can be ousted at the local level. The second tool available to the rank and file is their power to amend their local bylaws. In this same category is their indirect power to amend the IBT Constitution. Currently, this can be achieved only by their local elected officials. The third basic tool available to the rank and file is the internal union disciplinary procedure. Charges may be preferred against officials for their actions which are not in the best interests of the membership. The final basic tool the rank and file have available for remedying political and financial abuse by the Teamster leadership is the right to utilize the Federal judicial system, with the aid of their own lawyers, to gain access to union receipts and other financial data, and to prosecute offending officials who have abused the trust placed in them by the rank and file or who have violated the union's constitution or bylaws.

A major share of the responsibility for the state of affairs in the Teamsters Union today must also, however, be borne by the executive branch of the Federal Government and the U.S. Congress. As a purely practical matter, the teamster rank and file simply do not possess adequate information, on a regular basis, to alert them to the many problems and abuses taking place within their union. Obtaining this information under the current laws as they are administered by the Department of Labor is arduous, if not impossible for the rank and file. Accordingly, before truly meaningful reform can get underway in the Teamsters Union, "outsiders" in the Federal Government will have to undertake a thorough review of the realistic problems which the teamster rank and file will confront and either provide them with direct or indirect assistance. Direct assistance could take the form of more aggressive investigative and law enforcement activities. Indirect assistance could take the form of insuring that the rank and file would have adequate information and legal tools to go about the task of reforming the union themselves.

Let us proceed now to consider a shopping list of some of the more flagrant problems in the Teamsters Union which cry out for solutions. In constructing our list of problems and possible approaches to remedying them, we will group them in the same two categories, namely, political and financial, in which they were presented in the foregoing parts of this report. Our treatment will be necessarily abbreviated. The problems are frequently very complex and interrelated. Constructing solutions to these problems which will not create their own problems or seriously weaken the union is a demanding chore which will require both vision and technical expertise.[212]

#### POLITICAL WEAKNESSES AND SUGGESTED REMEDIES

Since, as we discovered in part I of this report, the International Brotherhood of Teamsters and its leadership may accurately be described as "the tail which wags the dog," let us begin our list, and concentrate upon the political structure of the IBT.

First. The general executive board functions as a rubber stamp to approve the actions of the general president and secretary-treasurer. The vice-presidents owe their primary allegiance to the general president. The vice-presidents are not inclined to exercise independent judgment. The general executive board does not, therefore, function as the principal governing body of the IBT.

An underlying reason for this phenomenon is the fact that the vice-presidents are elected "at large" by every delegate to the International Convention. Because the union is composed of such a large number of members working in diverse

Footnotes at end of article.

industries, convention delegates have no way of judging the qualifications of candidates for vice-president. The vice-presidents are accountable to no specific constituency of members within the union. This problem could easily be corrected if the vice-presidents were in fact elected by the rank and file within specific segments of the union, divided either along geographic, or particular industry or craft lines. The vice-presidents would accordingly be accountable to the membership in their particular constituencies. By the same token, they would not be dependent on the general president for their office, and would accordingly be able to exercise independent judgment. Votes on particular kinds of subjects or issues during executive board meetings should be recorded and published so that the vice-presidents' constituents could appraise their representatives' actions on the governing board of the international union.

Second. The delegates to international conventions do not necessarily represent the interests or will of the union's rank and file.

In the first place, a number of delegates who vote on such sensitive and key matters as amendments to the constitution are representatives from joint councils, conferences, and the international (organizers and auditors). These individuals are inclined to vote their own individual, or union institutional interests, rather than the interests of the union membership. They should not be entitled to attend the convention as delegates.

The bulk of the delegates are local union officials. These individuals were elected by the rank and file up to several years before the convention, not on a platform which addressed the fundamental constitutional issues involving the international union, but rather on a platform addressing either their prior performance, or their promised approach to the process of negotiating and administering collective bargaining covering the local membership. Local union officials should not be entitled automatically to attend international conventions as delegates. Rather, special elections should be held a short time before the convention so that the rank and file may select the delegates they wish to represent them during the international convention. Some might argue that delegates who have not served as union officials will not know enough about the business of running a union to pass judgment on fundamental questions which affect the running of the international union. This argument has no merit for many reasons. The most simple answer is, however, that if a local union official could win one election, he should presumably be able to win another. To the extent that the union's rank and file should send a number of delegates who are not serving in local union office, the convention will become a considerably more independent, supreme governing body. Nonofficer delegates would not confront the prospect of internal union reprisals from a disgruntled IBT leadership. They would arrive at the convention without any of the conflicts of interest which can compromise local officials. They would not have been on the receiving end of a steady stream of benefits, favors, or privileges from the union's principal leadership over the years.

Third. Convention delegates are unable to ascertain the sentiments of the union's rank and file on issues they will be required to vote upon during the convention. Neither candidates, nor matters of convention business, are announced prior to the commencement of convention proceedings.

This should be changed, particularly if there should be special elections for delegates prior to conventions. Individuals seeking to represent the union's rank and file at conventions should be able to develop platforms addressing the basic issues which will arise during the convention proceedings and declare their position on those issues. In the first place, if the vice-presidents have already been elected by their geographic or trade divisions, the only officers who would be elected during the international convention would be the general president and secretary-treasurer, and the three International trustees. New eligibility rules should be established for determining who may run for these offices. For example, any vice-president might be eligible to run without facing the prospect of losing his vice-presidency in the event he should not succeed. Other individuals accumulating a certain number of signatures on a petition might also be eligible to run. As in national and State politics, all candidates would have to declare their candidacies in advance of the convention. So too would all proposed amendments to the constitution have to be announced in advance. Candidates should thereafter be guaranteed a certain amount of space in the International Teamsters magazine to describe their qualifications and declare their positions on issues affecting the international union. Proposed amendments should also be published in the magazine. Thereafter, during elections for the many delegates to the international convention, the sentiments of the union's rank and file with respect to these candidates and proposed amendments could be expressed. In this fashion, the rank and file could effect its will upon, and once again gain some degree of meaningful control over, the international union and its chief executive officers.

Fourth. The rank and file have no way of knowing how their delegates voted on issues and candidates during the IBT conventions.

If the International Brotherhood of Teamsters and its principal officials are to be made accountable to the union membership in any way whatsoever, then the intermediaries, namely the delegates to the IBT conventions, must first be made to be accountable to the union's rank and file. Accountability could be achieved in two ways. One, only those delegates who reflect the will of the majority of the union's members would be sent to the convention were there elections for delegates prior to the convention. Second, where the votes which the delegates cast during the convention are a matter of public record, the rank and file can assure themselves that indeed their delegates did vote as they would have themselves. While it may be too late after a convention to change a delegate's vote, at the very least the union's rank and file can express their displeasure by evicting him from office during the next local election in the event that the delegate was an officeholder.

Fifth. Teamster Locals do not have proportionate representation on joint councils and conferences which accordingly are not representative union organizations.

Each local is entitled to send the same number of representatives to joint council and conference conventions as every other local within the jurisdiction of these supervisory organizational units in the union's hierarchy despite the fact some locals may only represent a few hundred members and others may represent many thousands. Nonetheless, these Teamster organizations have the power to tax the locals on a per capita basis. Such taxation should occur only where there is equal representation. Locals should be entitled to send a number of delegates to joint councils and conferences which is proportionate to the size of the local.

Sixth. Internal union discipline is a one way street. The disciplinary procedures permit officers to squelch dissent among the rank and file. The membership lacks a meaningful procedure for disciplining corrupt officials. The power of the general president to mete out discipline is excessive.

There can be no doubt that disciplinary procedures are an important ingredient in a successful labor organization. Principal officers need to be able to discipline either members of subordinate union officials who jeopardize the union's legal commitments or expose it to lawsuits which might result in substantial damage awards. Both officials and members need to be able to discipline those officers who abuse the fiduciary trust vested in them by the rank and file.

In the Teamsters Union, disciplinary procedures can only be used successfully by officers to punish members, not by members seeking to hold an official in line. Indeed, judging from the list of punishable offenses, the procedures appear almost to have been designed to intimidate the rank and file and any political adversaries of the Teamster leadership. Under no circumstances should disciplinary procedures operate to squelch dissent or political opposition. Teamster disciplinary procedures need to be overhauled so they cannot function as a political weapon. While such procedures may need to be strong and effective, they must also be fair and impartial. Examples of some needed changes follow.

The grounds upon which the general president can throw a local or joint council into trusteeship need to be spelled out in detail. Trusteeships should automatically lift within 6 months during which time new elections should be run. Union charters should not be revoked except following hearings and the issuance of a

Footnotes at end of article.

written statement of reasons pursuant to procedures similar to those used when imposing trusteeships. The negotiation of sweetheart contracts should be grounds for discipline of an officer and/or imposition of trusteeship permitting the union to abrogate the invalid contract. Any substandard contract must be approved in writing by the general president and all contracts must be submitted to the membership covered by those contracts.[213]

Seventh. Eligibility requirements for holding union office are in most instances so strict that only a very small percent of the union membership is entitled to run for office. These requirements frequently preclude the more talented members from opposing unresponsive incumbents.

Teamster bylaws generally require a member to have been a member of the particular organization in which he is running for office for a period of years and to have attended 50 percent of the membership meetings of the organization. Such requirements do not appear to have been designed to insure that only competent members would qualify to run for office. On the contrary, they generally operate to disqualify most potential opponents of incumbent teamster officials. These overly strict requirements should be substantially modified and generally overhauled.

FINANCIAL WEAKNESSES AND SUGGESTED REMEDIES

The financial disclosure requirements of the U.S. Department of Labor are woefully inadequate. Without information, the rank and file have no way of knowing whether or not a problem even exists. Not only do they need to be able to identify problems or areas of financial abuse by their officials, the rank and file need to know exactly what the dimensions of the problem are so that they will be able to tailor an appropriate solution. The lack of adequate reporting requirements is the threshold problem.

Eighth. On the subject of salaries, it appears that many teamsters officials believe that the sky is the limit. Exceedingly large incomes are amassed through a process of holding multiple union jobs and collecting multiple salaries from different organizational entities in the union's hierarchy and also from various union trust funds.

Government Assistance. Mandatory financial disclosure by all individual union officials of their gross receipts from all union sources, together with a breakdown of those receipts, would not by itself eliminate the problem. It would, however, give the union's rank and file sufficient information to address the problem where it exists. Currently, officials do not themselves report their earnings. Rather, the various organizational entities which contribute to their income must report how much they are compensating their employees and officials each year. However, because of the fact teamster officials frequently hold office in many different teamster organizations, the membership has no way of determining how much the individual may be grossing from all union sources without making a systematic survey of many hundreds of union LM–2 and D–2 reports. The Department of Labor should revise their reporting requirements to require that each elected official of any union entity prepare and attach a certified statement of his full earnings from all union (including trust fund) sources during the given calendar year as an addendum to the LM–2 reports filed by every organization in which he is an officer. Such a reporting requirement would, at the very least, permit the rank and file to learn readily how much they are actually paying their officials.

This relief would not directly remedy the problem of excessive, multiple salaries. It would simply enable the rank and file to measure and perhaps remedy the problem on its own.

An internal union solution. One possible remedy to the problem of multiple salaries would be for the rank and file and their delegates to amend the IBT constitution to impose ceilings upon salaries from all union sources, including trust funds. Ceilings would eliminate the incentive to "collect" titles and salaries. In addition to conserving union funds, this remedy would also discourage officers from taking on jobs they have inadequate time to faithfully perform. As a result, the officials might simply concentrate upon performing a superior job in just one or two capacities. A sliding salary scale could be made a part of the constitution. For example, the general president's salary might be set at $100,000; the secretary-treasurer's salary could be limited to $75,000. The ceiling upon a vice president's salary might be set at $60,000, joint council presidents might be limited to $50,000 from all union sources, and so forth.

Ninth. One device frequently used by Teamster officials to jack up their income is the "allowance."

This category of remuneration should simply be abolished from the Teamster vocabulary. Without question, Teamster officials should be paid fair salaries and the union as a whole can easily afford to pay all of its officers adequate salaries. Beyond these salaries, there is absolutely no need for further remuneration under the disguise of an "allowance."

To the extent officials may incur expenses which are both reasonable and necessary to promote legitimate union objectives, then they should be fully reimbursed for such "expenses." Salary and expenses are the only necessary words in the Teamster financial vocabulary. While the union has sought to describe allowances as a form of reimbursement for expenses theoretically incurred by officers who must travel a great deal, much of this money is never spent and it simply ends up in their officials' pockets. The rank and file should be willing to cover all reasonable expenses—not including luxury apartments, first class air fare, and lavish entertainment expenses—for which receipts are presented. That is all that is necessary, and that is all that should be paid. Unlimited travel accounts to cover personal, as well as union trips result in totally unjustifiable waste of union resources.

Tenth. Another form of unjust enrichment some Teamster officials enjoy is the occasional "gift" of a car, luxury apartment, cash, and so forth.

Like the allowance, the term "gift" should be abolished from the Teamster vocabulary. Gifts to union officials out of union treasuries should be prohibited by the IBT constitution and all union bylaws. If fellow officers and members should think enough of a retiring official, then let them pass the hat. At the very most, the treasury should not be taxed for any gift which is more than a token of respect and appreciation—that is, an engraved watch.

Eleventh. The term "organizer" is frequently just an honorary title which permits its holders to collect a sizable salary in addition to whatever remuneration he is already receiving for performing other full-time, elected union jobs.

Organizer jobs are not elective; rather, they are appointive. Teamster organizers should therefore be considered to be full-time employees of the elected union officials who appointed or hired them. Organizers should be professionals who render valuable services to the union. In addition to organizing unrepresented workers, organizers might also function as advisors or counselors either directly to the officials who hired them, or to subordinate union officials and members. There is no need for there to be an overlap between elected officials and organizers. Organizers should not hold any elective positions which might detract from their ability to serve as full-time organizers. To the extent that elected officials are supposed to serve the rank and file who elected them and should owe their only loyalty to their union member-constituents, a serious conflict of interest arises when they accept an appointive organizer job and must "report" to the official who hired them instead.

Twelfth. Severance and deferred compensation funds operate to immunize teamster officials from their members.

It is one thing for the many, various Teamster organizations to provide their employees and elected officials with pension plans and disability insurance in addition to their salaries and expenses. It is an entirely different matter to award them with sizable, and in some cases huge, lump-sum payments when they leave their union positions—even as a result of their being voted out of office. Severance and deferred compensation plans should be banned by the union's constitution and all bylaws. All existing plans should be abolished and their funds should revert to the treasuries of the organizations which theoretically created the plans and which have funded them over the years.

Severance funds operate to erode union democracy. Where the financial impact of being voted out of office is softened to the point it may make very little difference to an official whether he should survive any particular election, his incentive to represent his member-

Footnotes at end of article.

constituents is undermined. Yet, representation is what trade unionism is all about. A union which is structured so that its elected officers can forget what its members need is a union which has ceased to perform the role for which it was created.

At the very most, Teamster organizations might wish to provide defeated officials with a month's salary to tide them over while they locate other employment. Any additional remuneration is excessive and totally unwarranted.

Thirteenth. Union officials who both negotiate and administer collective bargaining contracts on behalf of their members and who also sit as trustees on teamster pension or health and welfare funds may be confronted with tempting opportunities for wheeling and dealing with employers and for arranging kickbacks for themselves.

Since these opportunities arise primarily where the trustees actually make investment decisions, one obvious solution would be to amend the IBT constitution and all organizational bylaws to prohibit any union official from serving as a trustee on any trust fund where these circumstances pertain. The ideal solution would be for the union to select "outside" trustees to represent their member-beneficiaries' interests on the joint union-employer boards of trustees. However, in lieu of bringing in outsiders with impeccable credentials, the union trustees should at the very least be required to relinquish all responsibility for making investment decisions to skill professionals. Their roles should be limited to the normal role of a trustee who only participates in making the very general decisions in his capacity as an overall supervisor of the fund management.

FOOTNOTES

[212] The PROD staff will be available to anyone who wishes to discuss such matters generally, or to obtain technical assistance in drafting desired amendments to the Constitution or any bylaws.

[213] Art. XII, Sec. 1, and Art. XVI, Sec. 4 of the IBT Constitution do purport to require rank and file approval of all contracts by a majority vote. As a matter of fact, however, most sweetheart contracts somehow escape these ratification requirements. Union officials eager to execute such agreements frequently claim that they are simply contract amendments or riders which do not require submission for rank and file approval.

Moreover, while the Constitution appears to require majority approval of contracts, Union officials can claim approval where only one-third vote their approval by claiming that the contract constitutes the employer's "final offer" and by tying the vote to reject the offer with a vote to strike. Strikes require a two-thirds authorization. In the absence of a successful strike vote, Union officials proceed to execute the contract.

The single largest collective bargaining agreement negotiated by the Teamsters Union—the National Freight Agreement—is not in fact a single contract, but rather a collection of some 32 significantly different agreements under a single "umbrella" agreement containing generally inconsequential provisions. Rather than offering each of the 32 separate agreements to just those members covered by them, the IBT provides every member employed in the freight-trucking industry in the entire country with the same ballot asking them whether they approve or disapprove of the National "umbrella" Agreement and their Supplemental Agreements. Under this method of voting, members are not voting upon just their own contract; instead, they are voting upon everyone's contracts even though they have no idea whatsoever what are contained in those contracts. While members covered by certain contracts may vote overwhelmingly to reject their agreements, the Union will execute the contracts and force the members to live under what they consider to be totally unacceptable and offensive contracts if an absolute majority of all voting members vote to approve their contracts.

These procedures which permit the Union Leadership to execute substandard and highly unpopular collective bargaining contracts should be reformed. It is not only in the best interests of the members, but also the Union and the public. Otherwise, there will be, sooner or later, some reaction by the members to their state of involuntary, contractual servitude.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from Newsweek Magazine of June 28, 1976, entitled, "I Say To Them, Go To Hell."

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

"I SAY TO THEM, GO TO HELL"

Even by Teamster standards, last week's convention in Las Vegas was a show-stopper. Beefy guards strutted through the hall, ejecting dissidents and confining reporters to an overhead press box. The local police obediently cleared away protesters outside the hall. President Ford's Secretary of Labor turned up to claim membership in the Teamsters club and proclaim his belief in it, even as his own department was investigating the union's alleged abuses. There was a perfunctory tribute to the memory of vanished chieftain Jimmy Hoffa, but Hoffa's successor, president Frank E. Fitzsimmons, set the defiant tone. "For those who would say it's time to reform this organization, that it is time that the officers quit selling out the membership of their union." Fitz bellowed to the delegates, "I say to them, go to hell."

There were plenty of candidates for the journey. Fitzsimmons himself disclosed at the convention that he and other officials had been subpoenaed last month by a Labor Department task force investigating the financial dealings of the Teamsters' $1.3 billion central-states pension fund. Just last week, a Federal grand jury in San Francisco charged a former union official with embezzling $2.4 million from California trust funds. A Senate subcommittee is girding for a beefed-up probe into Teamster activities later this year. And within the 2.3 million-member union itself, a dissident group continued to assail the leadership for preying on the rank and file.

The union's power amounts to "a national scandal," according to a 177-page report released last month by the Professional Drivers Council (PROD), a group of 2,000 disaffected Teamsters. Among other things, the PROD leaders charged that Teamster officials are vastly overpaid (one regional satrap drew $126,448 in 1974), that there have been repeated thefts and kickbacks from the union's vast pension funds and that rank-and-file members are kept in line by fear of bodily harm and even death. Both the Labor and Justice departments are investigating the alleged pension-fund scandals, and Hoffa's disappearance and presumed murder last year triggered speculation he may have been about to expose further Teamster misdoings in a bid to regain the union's leadership.

Fat and Sassy: But the mounting attacks—and the accumulating evidence of widespread corruption—had no visible effect on the festivities at the convention. The 2,300 delegates overwhelmingly voted to increase dues to help finance a 25 per cent pay raise for their leaders, bringing Fitzsimmons' annual salary up to $156,250, highest in organized labor. Fitz also bulled through authorization for an unlimited number of patronage jobs, with duties and salaries to be set by himself. At night, the delegates cruised the Las Vegas strip as if they owned it—and with an estimated $130 million in pension-fund loans to the city's casino and hotel oprators, they had a fair lien. Mayor William Briare described the Teamsters as "very special people to us."

But it was Labor Secretary W. J. Usery who provided the most unctuous outsider's tribute. "Even though I don't have a Teamsters card, I belong to this club because I believe in it," he told the cheering delegates. Later, he explained that he didn't mean to prejudge his department's investigation. But old-time Labor Department officials were shaken and outraged. "He's pulled the rug right out from under the investigation," said one. And Usery's performance prompted the Senate Labor Committee to announce hearings on the Labor Department's handling of the probe.

Fitzsimmons didn't seem worried. He denounced what he called harassment by the union's enemies, challenged any other union to match the Teamster record and demanded: "What the hell is the matter with the Teamsters?" That brought a standing ovation and unanimous approval for a resolution denouncing "witch hunts" against the union. For the moment, at least, Fitzsimmons was sitting firmly in the driver's seat that Jimmy Hoffa had held so long—and if that dubious parallel bothered him, he wasn't letting it show.

Mr. THURMOND. Mr. President, in closing, I say that it is certainly true that you will not find union abuses of employees addressed in this bill. Equally true is that the high sounding use of the word "reform" as used in this bill is a completely false description of the bill. The Big Labor Relief Act of 1978 or The Union Organizing Act of 1978, are titles which aptly describe this bill. It is a one-sided bill to benefit the big unions. It is no more or no less.

Mr. President, I yield the floor.

Mr. MOYNIHAN. Mr. President, I thank the Senator from South Carolina for his courtesy in allowing me to proceed as we had planned this afternoon.

Mr. President, we have heard a great deal in the course of this now extended debate about what authorities of one kind or another think about this legislation. Prominent names and organizations have been invoked, both in favor of and in opposition to these measures. And we have had our share, as is the case with most political debates these days, even in representative bodies, of public opinion polls invoked in support of or in opposition to the measures before us. I have felt, in all events, the absence of the voice of American workingmen speaking of the meaning of trade unions and trade unionism to them in their own lives as workers, speaking to the proposals before us as workers and as citizens.

Some time ago, I took it upon myself to send a letter to a representative sample of trade union members. In many cases, they were officers, because in that way, I got the addresses across the State of New York—a quite large State. It has the largest union membership of any

State. I suggested to them that, in the course of this debate, we would need to hear from workers about their own experience. I asked if they would write me describing their own personal encounters with collective bargaining and what, in their judgment, had been the benefits to them and to the fellow workers they represent and what they hoped would come of the changes, the small and moderate, sensible changes we have proposed.

Mr. President, I have received quite an extraordinary number of no less extraordinary replies and I ask unanimous consent that a sample of these letters, which I have with me today, be printed in the CONGRESSIONAL RECORD as part of this day's debate. I have these letters here.

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

(See exhibit 1.)

Mr. MOYNIHAN. I should like to take the occasion, having seen that the full text will be part of the RECORD, to read some of the excerpts from working men and women in New York, telling what it has meant to them. Here is a letter from James F. Ryan, who is president of the IBEW Local 43—that is the International Brotherhood of Electrical Workers—in Liverpool, N.Y., which is a community adjacent to Syracuse, a heavily industrial part of our State.

He described how his father passed away in 1936 when he was 2 years old and made it necessary for his mother to go to work in a not particularly promising period of, the American economy, making enough money to raise three children through long, hard years of work. College was out of the question for himself, said Mr. Ryan, both for financial reasons and because of the family obligations. So, after high school, he set to work at one menial job after another.

Then, in 1956, obviously, the best thing that has ever happened to him took place. He was accepted into the 5-year apprenticeship program of the International Brotherhood of Electrical Workers Local 43, and he said:

. . . for 21 years, I have practiced the trade taught me by this organization. I am a viable, contributing member of my community. My position has enabled me to provide comfortably for my family, look optimistically to the future, and experience the pride of being a skilled craftsman.

Over the years, I have derived peace of mind and stability as a result of the collective bargaining system. Should I become ill or disabled, this system has made it possible for my family to survive independent of government handouts. If I were to die tomorrow, my wife and two children are adequately protected by the benefits won through the collective bargaining process.

"How has collective bargaining affected me?" asked Mr. Ryan. "It has in essence made it possible for me to live with pride."

Pride in his family, in his community, in his union, in what they have built for themselves.

One of the things I find so surprising and at times even disappointing in this debate, which has gone on for very long now, is that persons in this Chamber for whom I have a special regard, in that they have expressed their concern at the evergrowing dependence of ordinary Americans on Government for a livelihood, for security, for welfare—these very persons seem even more alarmed at the existence of a trade union movement which, from its beginning, has had as its most fundamental objective the prospect that workers should not be dependent either on their employers or much less on government; that independent and self-respecting and self-financing arrangements can be made in cooperation with management as part of a labor contract.

It is well known that the oldest of the trade unions in the United States are the printing unions. If I am not mistaken, the CONGRESSIONAL RECORD, in which my remarks will appear tomorrow, is printed by printers who belong to the Columbia local of the typographers union, which—I could be somewhat wrong in this, but not very wrong—dates back to 1825. There are not many institutions in the world, other than the American Government—very few in this country or the world—that can point to a continuous existence of 1½ centuries.

The trade unions that organized in the late 19th century are, in the main, the ones which began the large movement into industries. First, there were the railroads and then the mines. The object of the railroad unions, from the first—one of their primary concerns—was to provide protection for men mangled and maimed and killed in the railroad industry, an extraordinarily hazardous occupation then and less so now. It is less so now because of the work of a century of American trade unionism.

It was once said that it took about 20 years for the Westinghouse airbrake, which George Westinghouse developed, finally to be adopted by the American railroads generally. It took some legislation to do that. The comment was made that as long as brakemen were cheaper than airbrakes, the American railroads were never going to provide these safety features.

Well, the trade unions commenced to do that for themselves. They have always done things for themselves, for their class of workingmen.

It is very much to the question of independence and pride that the American workers from whom I have solicited communications speak.

Here is a letter from Mr. Morris Chayut, who lives in Brooklyn, N.Y., who talks about his experience with collective bargaining. It goes back to 1929, when, as a young man of 16, he went to work.

For the first several years he was without any help at all, he says, from any union or other labor organization. He says:

We were completely at the mercy of the employers. Any attempt to organize for better conditions or other benefits was met with instant dismissal as soon as the employer became aware of the actions. Working conditions were dismal, and requests to improve them were met with, "If you don't like it, leave."

That was in New York, in 1929 and 1930. I fear there are parts of the United States where it is still true, where any attempt to organize for better conditions or other benefits is met with instant dismissal.

That, Mr. President, is what this legislation is about.

Mr. Chayut says:

The Wagner Act came like another Declaration of Independence. It gave both the employer and the members of my union better labor relations, with less strikes, better working conditions and more and better production on the job.

One of the constant themes of these letters is the stability and efficiency that trade unionism has brought to the industries involved, because men whose pride has been crushed—pride in their own selves and in their own organizations—cannot take much pride in their work. This is a constant theme.

Here is a letter from a newer member of the labor movement, Michael Murphy, who is the recording secretary and chairman of the political action committee of Local 448 of the United Brotherhood of Carpenters and Joiners, who are a local of the South Bronx. Mr. Murphy writes:

After service with the United States Marine Corps in half the swamps and deserts in the United States and in Asia, I decided I wanted a job which would give me a skill and adequate financial remuneration. Having worked under non-union conditions as a stockboy and other jobs as a youth, I knew the value of a union.

I was admitted to the carpenter's union in 1971 through a program of referral by the New York State Department of Labor, established for returning veterans.

In spite of or perhaps because of the insight into the problems of the labor movement, I have developed a deeper respect for and understanding of American labor now and past sacrifices. Perhaps this is what has led me to be so outspoken in regard to labor law reform. My concern for my union has sharpened my concern for the larger community, for on many of these jobs I have picketed and have been in the forefront of a carpenter seeking a better union. I have found an increasingly vocal and community-minded minority membership.

Our Government is the one form of rule that offers a viable alternative to the Godless creed of communism. As our Pilgrim forefathers saw us, as the light under the barrel and as the example of God's rule on earth, so we must strive to realize that dream.

As United States Senators, I can only urge you to remember your responsibility, as the senior body of lawmakers, as representatives of entire States, to vote for labor law reform as a means to justice and equity for the American worker, who has nothing but the sweat of his brow to exchange in the marketplace for means of sustenance and adequate life.

Mr. President, here is a letter from an older trade union member, Mr. James Kurtz, a member of Local 123 of the Communications Workers of America, located in East Syracuse, N.Y. He says:

A number of random thoughts come to mind.

Belonging to the union I do and working for the company I do has enabled me to reach this point of life with a satisfactory degree of financial dignity—for instance, in being able to help a son through Cornell and a daughter through nursing school.

Aside from the financial advantages, I feel the grievance procedure is probably the best reason I can think of for belonging to a union.

The fact that I can go to my supervisor with a complaint, and not receiving a satisfactory answer, I can then institute the grievance procedure without fear of retalia-

tion is, to my way of thinking, a real plus for unionism.

Mr. President, one of the things that persons who have studied industrial and labor relations have frequently pointed out is the degree to which trade unions have brought a sense of fairness to the plant floor. No longer are grievances a matter of the person who complains the most because he most likes to complain. No longer is it random. No longer is it insensitive, nor is it essentially disruptive of the kind of orderly work that is required in any serious workplace.

The point about a trade union is that it will tell management when there is a real grievance, tell management things it needs to know and about which it has to do something. A plant with a trade union is not one in which just anyone can complain and have his complaint be the object of no one's judgment but his and the employer's. To the contrary, the sense of the community of the work force comes into play at moments such as this. If a complaint is not thought to be just, the trade union itself polices the procedure for the employer and brings forward things that are seen not just by the individual but by his workmates as a legitimate source of complaint and concern. Ask the great automobile manufacturers, the steel companies, the chemical and electrical companies how they would organize their plants and their production without the cooperation of democratic, forward-looking, progressive trade unions. They would not know how. Those industries have come into being almost simultaneously with the trade unions which have provided organization, structure, and continuity to the work force which is as essential to management as any single element in production could be.

Some of our unions, of course, are very old. I have mentioned the typographers who print our CONGRESSIONAL RECORD with a continuous existence as a chapel. They use that wonderful word "chapel" to this day, as they have since the time of President Monroe. The lithographers union is a more recent one. These locals were about one century old when lithography came into development in the second half of the 19th century.

The New York Lithographers and Photoengravers Union No. 1 is one of the oldest of its kind in the world.

I have a letter here from Stanley Aslanian, who writes:

> Working persons and their families are most sensitive to the impact, or lack of impact of government regulations on their jobs and working conditions. For next to the family, the job is of most importance. And to the millions who have experienced good unionism, that job and unionism cannot be divorced.
>
> Fair wages, a real interest in the working and safety conditions of the people employed and mutual respect, all these we can enjoy, thanks to the fact that we have the right of collective bargaining, this right denied so many others throughout the world.
>
> The alienation felt by so many can be softened when they see that their government is sensitive to their protection at their place of employment.

Mr. Aslanian, in what is a characteristic reference for American trade unionism, speaks of the denial of the rights of collective bargaining not only in other parts of the world, but also right here in the United States. There are huge regions of our country where it may simply be stated that the Federal writ does not run, where the national law adopted on labor relations under President Roosevelt has never made its way. That is precisely the purpose of this moderate, sane, sensible legislation before us which is, I fear, being so insensibly opposed.

Here is a letter from a trade unionist in Troy from a union with which I have not had any close relations in the past, although I have known of its existence, the Brush Workers Union Local 20,468. I am not sure whether there are altogether 20,468 locals of the Brush Workers Union, but it is an old union, a respected one, and Mr. Richard Field writes with the feeling that comes from his experience on several negotiations committees. He says:

> The members received protection so that the company has to treat them with respect and dignity.

Respect and dignity—is there anything more important to a man? Is there anythink more deserving of the support and encouragement of this Congress? Is there any piece of legislation in which that concern for the respect and dignity of American workingmen was more embodied than in the Wagner Act, a monument to the capacity of the American Government to adapt to a changing economic situation, to expand democracy, to take democracy, not just take it, but move it beyond the realms of government to the workplace? Is there any other legislation which better embodies the sense that ours was not simply a political arrangement that in no way suggested larger values of our lives, but rather that the values of our lives dictated our political arrangements no less than the economic?

Mr. President, I am sorry to see that those opposed to our legislation who have been delaying it for so many weeks now appear to have abandoned the floor altogether. I view with rising hopes and emergent expectations the thought that they have finally realized that the time has come to stop filibustering this legislation and vote on it, to vote on its substance. There is not one Member of the Senate opposed to this legislation on the floor and yet they will not let us go forward to the substantive consideration of these measures.

Mr. President, this is alarming. Well, I suppose the day had to come when my good friend from Utah did return, and I appreciate this opportunity to continue to instruct him in the impact of trade unionism on the lives of American workingmen and not just blue collar workingmen.

Here I have a letter from Mr. James L. Peek, who is a member of a trade union at the Prudential Company.

Mr. President, I am once again forced to draw to the attention of the Chair the lamentable fact that until just this moment there was no member of the opposition to this legislation on the floor.

But my good friend, and formidable advocate, the Senator from North Carolina, has now made his appearance here, and he will find he can put this occasion to good use by learning that trade unionism has characteristically responded to changes in the structure of the American economy.

(Mr. CULVER assumed the chair.)

Mr. MOYNIHAN. As I said several times this afternoon, I do think—I do not absolutely know—but I believe the oldest continuous trade union local is the Columbia local of the printers union which prints the CONGRESSIONAL RECORD and which has done so from the time of President Monroe.

From the early craft unions, labor organization led into the great railroads and communications, which were an early locus of trade union activity, and then the great mines and steel mills, the great mass-production industries. Beginning in the 1930's, we began to see the number of white collar workers grow and find themselves in circumstances in which some negotiated arrangements with their employers were appropriate. We then found white collar workers were organizing as well.

Here is a letter from Mr. James L. Peek from Batavia, N.Y. Batavia—some people may know this—the land office in Batavia, which was opened in 1805, is the place from which we obtained the figure of speech "a land office business." Actually much of the land in that part of New York was owned in Holland, and after the Napoleonic invasions, the House of Orange fled, the Republic of Batavia was founded. Batavia thus came to be a reference for the republican form of government in its antifeudal and antimonarchical context, as represented by the ancient Batavians.

Mr. Peek writes:

> For the first 20 years of my life I had no union protection at all. I was completely at the mercy of the employer and had no real job security. While such never happened to me, I observed several of my coworkers being fired for no real reason other than the whim of the employer over petty things that under good representation would hardly have been given a second thought.
>
> In my present job I have been represented by the union for the past 13 years. The protection and security provided by it has been most gratifying, and I feel had I a valid complaint I would have a definite recourse.

This again is so characteristic of the American trade union movement. I referred earlier to the degree to which trade unions bring a sense of fairness and community to the matter of labor relations. Mr. Peek says:

> Had I had a valid complaint I would have had a definite recourse.

Why would it have to be valid? Because it would have to be so judged by his fellow workers, not just by the employer with which he is necessarily in such matters in an adversary relationship.

White collar workers were followed by an increasing organization of the growing, soon nationwide, food chains and stores that provide the general range of

shopping that we associate with department stores in America, with shopping malls, and with the great merchant and merchandising organizations that began to come into being in the 20th century.

Here is a letter from Mr. John F. Frank of South Farmingdale, N.Y., a community on Long Island, who is a member, has been for over 30 years, of local 342 of the Amalgamated Meat Cutters Retail Food Store Employees Union. The Meat Cutters is as old a craft as we would know in the West, and yet a union that responded to the great industrialization of the meatpacking industry that began in Chicago in the late 19th century.

Mr. Frank serves on the negotiating team for the local 342, and he says:

I must say it is a great feeling to know that you belong to a good responsible union, and that you, as a committee member, can voice your opinion loud and clear in regard to your union's proposals in forthcoming contracts. We have always come to an agreement that was suitable between our rank and file and management in the past because we have been able to iron out our differences across the bargaining table.

Mr. President, again we see the migration of trade unionism across new forms of activities as they emerge in the economy, which is always a measure of the liveliness and the functional quality of so much that has been done. We see trade unions making their way into the heavens, indeed, through the airline pilots; we see them crossing the seas with the maritime unions. One of the great struggles of the 19th century was to organize seamen, traditionally among the most savagely exploited of workingmen. And we see unions down in the subways, those old subways that were dug as the first rapid transits for our cities, not the easiest life, and certainty not the least important for the cities that depend on them.

I have here a letter from Mr. Jerry Fancher, who is a member of local 1056 of Amalgamated Transit Union of New York City—he lives in Queens Village—and he says:

You asked for a letter describing my own experience with collective bargaining. I do not know what kind of answer you are looking for, and I have only one contract under my belt, but I will try.

He is new to this. He says:

My local union represents the bus operators in Queens.

They have expanded now to that area.

Our local has only 1,200 members. When we bargain with the City of New York we bargain at the same time as the Transport Workers Local No. 100 since Local 100 has 33,000 members, and they carry in the imagery of our city the most clout.

I am not happy with the bargaining as it is now, however. I would like to say that my members do not benefit as much as they should.

Now, this is characteristic of trade union leaders and trade union rank and file to be very open when they think things are not going well, and to say so openly.

It is the whole point of trade unionism that it may give an opportunity for the redress of grievances and for communication between workers and their employers.

Mr. President, for the third time this afternoon I am forced to call to the attention of the Chair the fact that there is no Member of the U.S. Senate opposed to this legislation, none of those who have embarked upon this filibuster, even listening to the reasoned arguments we have set forth for getting on with the work of the Congress in voting on this measure.

I see, Mr. President, that the distinguished Senator from Arizona (Mr. GOLDWATER) has entered the Chamber, and I, of course, welcome him, as I do my very good friend to whom we are all so much indebted these days, the junior Senator from Indiana (Mr. LUGAR).

Mr. President, I was commenting that this last letter observed that the negotiations with the transport workers were with the city of New York, and, of course, the emergence of trade unionism among municipal and State employees is a recent one, reflecting the growth of Government employment in recent years. But there is one union of Government employees which goes as far back as the American labor movement. That is—I do not know why I should say this; I certainly do not mean to make any invidious comparisons—but I do not know of a trade union which has more friends in this country nor in Congress than the National Association of Letter Carriers.

I have a letter here from Mr. John Yaworski, who is secretary of branch 5503 of the ALCA, up at Tupper Lake, N.Y.

Mr. President, I had the great privilege to serve in the administration of President John F. Kennedy; and in 1961, as a young Assistant Secretary of Labor, it fell to me to carry forward a promise which President Kennedy had made, or rather which had been made for him on his behalf by the man who, apart from Robert Kennedy, was, I think, closest to him of any person in the Government, the man who was his appointment secretary, who was at his side in so many knotholes right up until the very last one, Kenneth P. O'Donnell.

A letter had been written to the National Association of Letter Carriers, saying that he, the President, believed some form of collective bargaining should be made available, made possible for Government employees. A committee was set up by President Kennedy in keeping with this promise, and I was asked to be executive secretary to the committee. It was the President's Committee on Employee Management in the Federal Government.

I remember that when we began to consider how we would proceed, I had to reassure a nervous management right in the Federal Government, a management in the Pentagon and in the other large bureaucracies, that wondered what trade unionism would mean to the Federal Government if it ever happened.

I found myself making the point that it already had happened, that far from being a disruptive and demeaning and threatening, nay, an incendiary force, that some Federal employees—the largest number at the time—the letter carriers, had organized themselves as a trade union in the late 19th century, and that at this point, almost one century had gone by in which the letter carriers had basically waited to be recognized by their Government. Almost a century had gone by.

Now, they had made some friends in Congress in the interval who had done some things for the letter carriers themselves; but they had kept the faith with the dignity and the probity of this Government in such an extraordinary way. Can you imagine, in this era of instant gratification, people willing to organize and wait a century to be recognized?

Well, we finally produced Executive Order No. 10968, which took place in 1962. We have had 16 years' experience with Executive Order 10968. It has been updated and improved a little bit, but it is successful—a successful relationship and an honorable one. And, Mr. President, I would like to make the point that all we are doing here today is seeking to insure that through government, through legislation, when American workers in communities where the major powers oppose the rights of unionism, those rights are protected as the rights of American citizens, for that is what is involved here: rights of citizenship established through careful and patient creation of voluntary organizations that go back a century and a half in our society.

Something of value exists when a voluntary organization can sustain itself for a century and a half. Something is being said about the contributions of such institutions to the society, and it will be a curious thing if the U.S. Senate, having boldly recognized the value of trade unionism to this Nation almost a half-century ago, should now be so fearful and supine in the face of unreasoning opposition as to be unwilling to reaffirm that value and recommit this Nation to the extension of one of the great successes of the democratic dogma in our society.

The Greeks thought up political democracy. Industrial democracy grew up in the United States, and it is no less an achievement. Being ours, one would suppose we might value it even more.

Mr. President, I have had the opportunity to stand in this Chamber today to read to the Senate some letters from trade unionists in New York, telling about their experience. I regret that on three separate occasions I have found that none of those opposed to this measure was present to hear what I had to say; but the RECORD will now contain these letters, and I hope they will be taken as a genuine testament by working men and women who responded to a request to tell it like it is, and say what it means to them.

I would like to close my remarks by calling the attention of those who might have occasion to look at the RECORD to two things. One is how the words "dignity and pride," honest pride of workmanship, constantly appear in these letters and, thus, come into this legislation. Second, I would like to take this indirect way of acknowledging to the

members of the Columbia local of the printers union that there are those of us in the U.S. Senate who note that they have been continuously organized since the time of President Monroe himself: 150 years of trade unionism involved in the CONGRESSIONAL RECORD. It is still a miracle the way it is produced by the professional staff here in the Senate itself, and then by those typographers who print it up overnight, proofread it, run it, bind it, and have it on our desks in the morning.

That, too, is what trade unionism is about, Mr. President.

EXHIBIT 1

JUNE 10, 1978.

Hon. DANIEL P. MOYNIHAN,
*U.S. Senate, Washington, D.C.*

DEAR SENATOR MOYNIHAN: This is in reply to your letter of 5/19/78 concerning the labor law reform bill and the benefits of collective bargaining.

First, let me thank you for the attention and concern you have given this matter—your actions and example are watched and applauded by millions of us in the American labor force.

On a personal level, the collective bargaining process has literally shaped my life. My father passed away when I was 2 years old, in 1936, making it necessary for my mother to work many long, hard years to raise her three children alone. College was out of the question for me, both for financial reasons and because of family obligations. So, after completing high school, I spent two years working one menial job after another.

In 1956 I applied to, and was accepted into, IBEW, Local 43 (Construction Electricians) here in Syracuse, New York. I completed the five year apprenticeship program, and for 21 years I have practiced the trade taught me by this organization. I am a viable, contributing member of my community. My position has enabled me to provide comfortably for my family, look optimistically to the future, and experience the pride of being a skilled craftsman.

Over the years, I have derived peace of mind and stability as a result of the collective bargaining system. Should I become ill or disabled, this system has made it possible for my family to survive independent of government "handouts". If I were to die tomorrow, my wife and two children are adequately protected by the benefits won through the collective bargaining process.

How has collective bargaining affected me? It has, in essence, made it possible for me to live with pride.

The collective bargaining process came into existence simply because it was vitally necessary that it exist. The millions of men and women in America's labor force must have a voice in America's industrial system. Collective bargaining provides benefits for both management and labor in that both are given the opportunity to bargain in good faith for the betterment of each. If the collective bargaining process were to disappear tomorrow, it would signal the eventual disappearance of the American middle class, and finally the destruction of our entire economy. The greatness of America's industry is directly related to the progress of the collective bargaining process. Who would voluntarily return to the American labor situation of 100 years ago?

Thank you, Senator, for your time and attention, and for this opportunity to air my views.

Sincerely,

JAMES F. RYAN,
*President, IBEW, Local 43.*

MAY 27, 1978.

Hon. Senator DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR: My experience with Collective Bargaining and the Wagner Act goes back to 1929 when as a young man of sixteen I went to work. For the first several years it was without the help of any Union or other labor organization and completely at the mercy of the employers. Any attempt to organize for better conditions or other benefits was met with instant dismissal as soon as the employer became aware of the actions. Working conditions were dismal and requests to improve them were met with, "If you don't like it leave."

The passage of the Wagner Act came like another Declaration of Independence and for the first time gave me the feeling of being something more than a piece of machinery. But, more important it gave both the employer and the members of my union better labor relations, with less strikes, better working conditions and more and better production on the job.

As a result of the Wagner Act my job and the Industry has had comparative freedom from any kind of Labor-Employer troubles, and those we have had have been quickly and satisfactorily settled to the point where everyone involved was content with the result.

Thank you for the opportunity to express myself on the matter.

Sincerely yours,

MORRIS CHAYUT.

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MAY 30, 1978.

Senator DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DAN: With respect for your achievements and social accomplishment let me address you as a friend because you have demonstrated your integrity and concern for the workers of America. I am an officer of the South Bronx Carpenters Local 488, but I'm a part-time officer. I worked with my hands and mind for a living as I have ever since I was seventeen.

After service with the United States Marine Corps in half the swamps and deserts in the United States and in Asia, I decided I wanted a job which would give me a skill and adequate financial renumeration. Having worked under non-union conditions as a stock-boy and other jobs as a youth, I knew the value of a union. I was admitted to the Carpenters Union in June 1971, through a program of referral by the New York State Department of Labor established for returning Veterans. For the next four years, I learned the skills required of a construction carpenter through a combination of work and attendance at the New York City District Council of Carpenters Joint Apprenticeship Committee (a Committee of representatives of both Labor and Management) Labor Technical College. Since becoming a Journeyman, I have continued my trade education at the Carpenters school through the on going program of Journeymen's courses. This program is one of the finest in the country and is something that our union members can point to with pride.

Having fought quite a battle to improve my union's responsiveness to the needs of its membership, I know full well the abuses that individual labor leaders are sometimes capable of. But it was the very National Labor Relations Board (so thoroughly denounced as highly Pro-Labor by opponents of Labor Law Reform) to which I turned for redress of my grievances. Though unable to completely satisfy my demands due to the slowness of remedial action etc., the Board was able to greatly mollify my problems.

In spite of or perhaps because of the insight into the problems of the labor movement I have developed a deeper respect for and understanding of American Labor now and its past sacrifices. Perhaps, this is what has led me to be so outspoken in regard to Labor Law Reform.

In the past three years, I have picketed one to two dozen jobs, sometimes alone and sometimes with my brother carpenters, to protect our hard won wage and benefit victories. My concern for my union has sharpened my concern for the larger community. For on many of these jobs, I have picketed and in the forefront of carpenters seeking a better union, I have found an increasingly vocal and community-minded minority membership. Coming from the streets, many of our members have worked for non-union contractors before becoming members. Even on jobs where Davis-Bacon and OSHA conditions were required, these carpenters did not have those conditions, because the contractor found it profitable to ignore such regulations. To organize such jobs, our Business Representative and the members with him have faced attempted intimidation, physical assault, outright falsehood, and prevarication, legal legerdemain and a complete assortment of tricks. In one instance I went to work for a corporation named Jacsal Realty, which has rental and other agreements with the Social Security Administration. This firm was represented by one Aaron Marks, who agreed to a collective bargaining agreement, verbally. After two weeks of procrastination during which time my benefits were at issue, I was forced to turn to the National Labor Relations Board for assistance. With a wife and seven children, my welfare and other benefits are almost as important as my wages. The Board, after investigation, found my claim was previous commitment and my benefits were restored.

In another instance, our Business Representative was able to organize a Rehabilitation Job, by invoking the Davis-Bacon Act, but in other cases we have told the employer that we were going to go to the National Labor Relations Board and were told that it would be months before we received tangible results. Our government is the one form of rule that offers a viable alternative to the godless Creed of Communism. As our Pilgrim forefathers saw us as the "light under the Bushel" and as the example of God's Rule on Earth, so must we strive to realize that dream. As United States Senators, I can only urge you to remember your responsibility as the senior body of law-makers as representatives of entire states to vote for Labor Law Reform as a means to Justice and Equity for the American worker who has nothing but the sweat of his brow to exchange in the marketplace for the means of sustenance and a good life.

Fraternally,

MIKE MURPHY,
*Recording Secretary, Chairman, Political Action Committee.*

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EAST SYRACUSE, N.Y.,
*June 13, 1978.*

Sen. DANIEL P. MOYNIHAN,
*U.S. Senate, Washington, D.C.*

DEAR SENATOR MOYNIHAN: Regarding your letter dated May 19, 1978, a number of random thoughts come to mind.

Belonging to the union I do, and working for the company I do, has enabled me to reach this point in life with a satisfactory degree of financial dignity. For instance, in being able to help a son through Cornell and a daughter through nursing school.

Aside from the financial advantages enjoyed through membership in the union, I feel the grievance procedure is probably the best reason I can think of for belonging

to a union. The fact that I can go to my supervisor with a complaint, and not receiving a satisfactory answer, I can then institute the grievance procedure without fear of retaliation, is, to my way of thinking, a real plus for unionism.

Another reason I'm in favor of unions, with the transition period that the industry (especially New York Telephone) is experiencing with C.P.E. (Customer Provided Equipment) the company is looking to cut back on its labor force. I sleep better at night knowing there is a seniority clause in the contract, and the company won't be able to arbitrarily pick my name out of a hat, and say we no longer need your services.

I trust the above will be of assistance to you.

Sincerely,

JAMES C. KURTZ,
*Member of 1123 Local CWA.*

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JUNE 12, 1978.

Re your letter of May 19, 1978.
Hon. DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: Rather than inflation or unemployment many of us feel that the alienation from their government, felt by many citizens, is the greatest problem facing our Country. This feeling is the cause of the poor voter turn-out that we experience as well as the other incidents of citizen apathy. A distrust by the people in their own government must in the long run be more destructive than any of the other great problems we face.

The working person and their families are most sensitive to the impact, or lack of impact, of government regulations on their jobs and working conditions. For next to the family, the job is of most importance. And to the millions who have experienced good Unionism, that job and unionism cannot be divorced.

There is no need to recount the many benefits that unions have brought to their members. What is so often forgotten is, that all people have had their living standards elevated as a result of our fight to better conditions. We who have been privileged to work in the printing industry have seen the results that fair and good faith collective bargaining bring to an industry. Stability, the most important result of true collective bargaining has been the blessing bestowed on our industry. Fair wages, a real interest in the working and safety conditions of the people employed and mutual respect, all these we can enjoy, thanks to the fact that we have the right of collective bargaining, this right denied so many others throughout the world.

And this is why we feel that labor law reform is so essential. That a minority of unfair employers must not be allowed to frustrate through delay tactics, to the point of justice being denied.

The alienation felt by so many can be softened when they see that their government is sensitive to their protection at their place of employment.

Sincerely,

STANLEY A. ASLANIAN,
*President, Local 1-P.*

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BRUSH WORKERS UNION,
LOCAL NO. 20468,
*June 7, 1978.*

DANIEL PATRICK MOYNIHAN,
*Senate Office Building,*
*Washington, D.C.*

Hon. DANIEL P. MOYNIHAN: Upon receipt of your letter and remarks from the Congressional Record and after reading and digesting the contents thereof, it behooves me to try to help you in your total dedication for the passage of Labor Reform Legislation S2467.

I am a member of a D.A.L.U. Brush Worker's Union, Local No. 20468, A.F.L.-C.I.O. and have been since January of 1955. Since that time I have acted in many capacities beginning with being a Regular Member, then a Union Committeeman, Steward and presently Recording Secretary and Chief Steward.

Tek-Hughes a division of International Playtex Inc. is located in Watervliet, New York. Tek-Hughes is a small factory, total population approximately 325, of which 243 belong to the bargaining Union. Being a small division of a large Corp. located in a state where the tax structure is not conducive to living or running a business but where if there were no Union, our employees would be approaching the poverty level.

While serving on several negotiating committees, I realized the value of a good Union and what it has done for me and the members of the local. Without the local some of the Benefits we would receive would be a complete abortion. The Members receive protection so that the company has to treat them with respect and dignity.

We offer our complete support to the Capitol Labor Law Reform Act of 1978 and we can see with its passage a more uniform system in these United States for Labor and Management to work toward these goals. We appreciate your efforts in sending this information so that we may be totally aware of the ramifications if this Labor Legislation is beaten.

I cannot condone Mr. Hatch's interpretation of this Bill nor can I condone the way J. P. Steven's have treated their employees over the years in total disregard of their God given Rights. Passage of this Bill would be a big step toward a better America.

God Bless You.

I remain Respectfully yours,

RICHARD FIELD.

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JUNE 7, 1978.

Hon. DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: Thank you for your letter of May 19, 1978 and the material you enclosed.

I must admit that I am no expert in labor matters and many of the points noted are completely "greek" to me. However, I do have some very definite ideas on the value of labor organization. Perhaps some of what follows will be of help to you.

For the first 20 years of my working life, I had no union protection at all. I was completely at the mercy of the employer and had no real job security. While such never happened to me, I observed several of my coworkers being fired for no real reason other than the whim of the employer over petty things that under good representation would have hardly been given a second thought.

In my present job, I have been represented by the union for the past 13 years. The protection and security provided by it has been most gratifying and I feel that had I a valid complaint, I would have definite recourse.

During the the time I have been represented by this union, several contracts have been negotiated and each one has improved the lot of the worker, both financially and with job security.

I would not consider the union I belong to one of the more militant unions. However, I do feel that it is a very valuable asset to my working life and anything I can do to strengthen it in the future, shall be done.

To sum it all up, I definitely want to see strong union representation continue and will support you in your efforts to see that this continues and improves in the coming years.

Very truly yours,

JAMES L. PEEK,
*CLU, Agent.*

JUNE 3, 1978.

DEAR SENATOR MOYNIHAN: I received your letter concerning labor law reform and I appreciate very much the fact that you have requested a letter from me in regard to my own experience in collective bargaining.

I have been a member of Local 342, The Amalgamated Meatcutters Retail Food Store Employees Union for over thirty years.

In that time I have had the opportunity and have been elected by the rank and file to serve on contract negotiations many times. I must say that it is a great feeling to know that you belong to a good responsible union and that you as a committee member can voice your opinion loud and clear in regard to your union's proposals in forthcoming contracts.

We have always come to an agreement that was suitable between our rank and file and management in the past because we have been able to iron out our differences across the bargaining table. This is the reason why we have been able to enjoy a decent standard of living.

Each member on our negotiating team prepares and presents his or her own arguments with the council members and between the leaders of our union and the members of the negotiating committee, it is up to us to negotiate a responsible and suitable agreement that will suit our rank and file as well as the council members.

I dare say that in this great nation of ours today, I think that every worker should have an opportunity to be represented by a union if he or she wishes so that they may enjoy a decent living wage and benefits. The reason many workers in this country are working for substandard wages in my opinion is because they are being suppressed and exploited. If they mention union in their shops they are fired for any reason management can think of.

If a union has enough workers to vote for representation, it is usually drawn out so long that the will to be represented dissipates itself and management has succeeded in suppressing the workers. I think that it is high time that the Labor Reform Bill be passed so that all Americans in the country can make their own decision whether they want to be represented by a union or not and that the vote to be represented or not be consummated in a given time set down by the Department of Labor.

As a member of Local 342, the Amalgamated Meat Cutters Retail Food Store Employees Union, I can honestly say that the system works and works well.

I am indeed proud of my Local Union and the achievements that we have gained in the past. Labor and Management can get along very well in the country and all can enjoy the fruits of their labors.

Responsible people in labor and management can both benefit by collective bargaining. To stall an election for union representation is nothing more than suppression on the part of management.

I urge you and all of the house members to vote for labor law reform because not voting for it would be doing nothing more than suppressing the American worker yourself.

Sincerely yours,

Mr. JOHN F. FRANK.

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JUNE 6, 1978.

HON. DANIEL P. MOYNIHAN: This is an answer to your letter of May 19, 1978. I am answering your letter by hand because you asked for a personal expression. Please excuse the bad spelling and the poor grammar.

You asked for a letter describing my own experience with collective bargaining. I do not know what kind of answer you are looking for, and I have only one contract under my belt but I will try.

My local union represents the N.Y.C.T.A. bus operator in Queens, N.Y.C. Our local has only 12 hundred members.

When we bargain with the city of New York, we bargain at the same time as the Transport Workers Local No. 100. Since Local No. 100 has 33 thousand members they carry the most clout. I am not happy with the bargaining as it is now, however, I would be a fool to say my members do not benefit.

In the 14 years that I have been with the N.Y.C.T.A. we have accomplished many goals.

(1) Improved pension system;
(2) Greater medical coverage;
(3) Dental coverage;
(4) Drug prescription plans;
(5) Additional vacation;
(6) Additional holidays;
(7) Time off for a death in the family;
(8) Many improved working conditions.

Tuesday, June 20, 1978 through Thursday, June 22, 1978, I will be attending a joint A.T.U.–T.W.U. Legislative–COPE Conference in Washington. I know Labor Law Reform will be discussed.

I wish you the best and hope that the Labor Law Reform bill becomes law. Please ask Mr. Hatch, rather tell him, I am very sorry he "has not seen too many astute American people."

Cordially,

JERRY FANCHER.

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TUPPER LAKE, N.Y.,
*June 10, 1987.*

Hon. D. P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR: I am delighted to hear that a man of your experience in the labor movement is managing S. 2467 on the Senate floor.

Our experience with the Collective Bargaining System, was that we were excluded from it until the Postal Reorganization Act of 1970, which in my opinion was the result of the courageous strike by the Letter Carriers of Branch 36 of Manhattan.

Until that time we were negotiating directly with the U.S. Government through the Congress.

We would start negotiating with a busy Congress in January and with a lot of luck would finally come to some sort of an agreement in the late autumn with whatever the Congress and the President decided was right for our members.

It was a very poor system, this mixing of labor negotiations with national issues, and we are glad to be rid of it.

Since being included in the collective bargaining system we have made substantial monetary and fringe benefit gains, and truly have made letter carrying a good job.

We of Branch 5503 surely hope that S. 2467 will pass the U.S. Senate intact.

I would like to thank you for your past support of Postal Legislation on our behalf. We appreciate it very much.

Sincerely,

JOHN YAWORSKI,
*Secretary.*

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BINGHAMTON, N.Y.,
*June 6, 1978.*

Sen. DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: To answer your letter dated May 19, 1978. My personal opinion of our Labor Union is as follows:

An employee as a Union member can express himself without fear of retaliation from unreasonable management. When you can sit at a table and negotiate a decent contract for yourself and your family. You feel you can properly do a good day's work with no fear of poverty, and feel when you reach retirement age, you can retire with a decent income. We feel that a well adjusted and happy worker is a worker who could produce, putting our company in a good competitive position and we could enjoy full employment.

Sincerely yours,

DANIEL ORBAND.

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JUNE 6, 1978.

DEAR SIR: Having just returned from vacation I regret not being able to answer your inquiries on the Labor Law Reform Act. However, am writing to you in hopes it may not be too late to have it entered.

I myself, being a native of New York City didn't fully realize the importance of unionism and collective bargaining until I moved from the city to the Port Jervis area where unions are in their infancy.

Having always been a union member (the last 10 years with Local 3 of the I.B.E.W. in N.Y.) I took things for granted.

It wasn't 'til I heard, for the first time, "You'll go down the road, if you continue your efforts to unionize this place" that I became aware of the lack of protection I had without a union and bargaining agent. No argument there! I had to back off in order to feed my family.

Now, being employed at Picatinny arsenal at Dover, N.J., I can go to sleep at night, knowing at least that we who belong to the A.F.G.E. Local 225 are represented by people who care. And we do have a voice and certain rights.

I hope, sir, that the few words I've managed to put together will in some small way make your task easier. I am in favor of the Labor Law Reform Act and wish you great success.

Respectfully yours,

LEONARD J. WHARTON.

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Hon. DANIEL P. MOYNIHAN,
*U.S. Senator,*
*Washington, D.C.*

DEAR SIR: I read your speech in regard to the Labor Law Reform Act of 1978, with great interest. I have been a member of the I.L.G.W.U. Local 155 for many years. I have been a member of the negotiating committee of the knitgoods workers, and have the employers and the attorneys got up and leave the table without advising us why they did so. At a later time they returned and after much discussion and argument, we finally settled a new contract. The Labor movement is good for the workers, because I have seen it happening in my industry as of today, being the Knitgoods workers are in bad shape. I have seen in my shop where I am the shop chairman and have the employer approach me to allow him to furlough the slower worker and keep the better worker, which I did not allow. If the worker didn't have the support of the Union, the employer would no doubt fire the workers who do not satisfy the employer.

After reading your Senate speech which I think really expresses my thinking about amending the "Wagner Act," which you so vividly described, has me wondering why your fellow Senator Hatch, took so much pain, to try to take Msgr. Higgins to task for justifying the changes in the Labor Law. Being that the law was amended twice before, to penalize the Labor movement and being, that the amendments that are proposed would give the Unions equal rights, as the employers try to succeed in bringing the workers into the Union even on company time to hear both sides of the plan, to have the workers join or not join the union. Why would the Washington Star, and I am sure many more newspaper editorials no doubt across the country are so against the bill. The J. P. Stevens Co. violation which took so many years and millions of dollars and thousand of hours of hard work has finally been ended with J. P. Stevens agreeing to accept the Union.

Good luck and much success and continue your good work in the Senate.

Sincerely yours,

MAX SCHINDLER.

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INDUSTRIAL CHEMICALS DIVISION,
*Niagara Falls, N.Y., June 6, 1978.*

DEAR SENATOR MOYNIHAN: In response to your letter of May 19, I would personally like to tell you that if it were not for collective bargaining I would be out of work. I worked at NL Industries for 16 years and then a new young man was hired as office manager and he apparently couldn't relate to older women in the office. He went out of his way to try to force me to quit my job. I took my problems to the union representative and they in turn took it to management. The situation was finally resolved but he would have fired me if it were not for the union making management hear my side of the situation. I needed my job and in no way could have ever been hired for a job comparable. I am very grateful to this day.

My son at present has been terminated by Carborundum Company in Niagara Falls after 9 years of service. He was salaried and had many personal problems at a time he had a new young woman as his boss. There was a conflict of personalities and he is now trying to go thru the Labor Board for a hearing to get his job back. He had an excellent record up until the time, which was only 9 months, that she took over as his boss. If he had collective bargaining I am sure he would still be working there.

I personally appreciate all that you are doing for us and feel that New York State is fortunate to have you representing us in the Senate. Please keep up the good work and thank you.

MARGARET SHEPARD.

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ELMHURST, N.Y.

Hon. Senator MOYNIHAN: In regards to your letter as how the Unions have helped me in collective bargaining.

I've been a Union man 30 years this past March 1978. In all these years I've never missed a days work due to strikes. I drive over the road between Brooklyn, N.Y. and Akron, Ohio. Three trips a week and the pay is very good. The company I work for is well satisfied as they get top road men from the Union when they need them and are top experienced union men.

As of November 1, 1978 I will retire from the Teamsters with a pension of $550 a month for life, and I am only 60 years old.

I hope this information is what you need to help you along in your fight for right.

Thank you for your troubles.

Respectfully yours,

HENRY PETRUSKIMAN.

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BRIDGEPORT, N.Y.,
*June 11, 1978.*

DEAR HONORABLE MR. MOYNIHAN: In response to your letter to me on May 19, 1978, I am stating that I am a member in good standing with Plumbers Local #54 of Syracuse New York. My card number is 924343. I have been a plumber and welder for 13 years and I am very proud to be part of the United Association and my union. Without my union and its laws I would be working for low unfair wages. I would not have any job conditions such as safety and overtime pay. I know about scabs and how they operate with just a shoestring business. Their way of doing things in this free world of today is very wrong and I believe that it weakens the country's morale as well as a stepping stone for Communism. I ask you please to do all you can for the passage of this Labor Law Reform Bill. I am sure that if it passes the

union people all over will benefit greatly from it. Thank you.

Very truly yours,

ALLAN VAN AUCKEN.

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BUFFALO, N.Y.,
*June 9, 1978.*

Mr. MOYNIHAN: Honorable Sir, collective bargaining means to me that I could go onto the job and know what I was getting and not have to dicker my rate individually, and so doing, I'm sure, that I would be receiving a more livable and reasonable share of labors profits. I could expect a livable wage and commit myself to buying the necessities of life and some of the luxuries so other people could make these items. Thus ensuring a more stable economy.

Also I could see my way to earn my living within the confines of the trade and so strive to make myself a better mechanic.

I should think that it would be hard to argue to the contrary. Thank you Sir, for efforts to achieve the objects of the Wagner Act.

Yours truly,

CLIFFORD J. MONTGOMERY.

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JUNE 12, 1978.

You requested a personal account of my experiences with collective bargaining and the union shop. In its stead I already mailed you an article from the N.Y. Daily News of Nov. 6, 1977 regarding the quality of life at the Big Six Union Towers in Queens, N.Y.

Enclosed is a more personal report from a sister union member, Myra Weiss, who has been working in open shops with union consent in an attempt to organize them.

Since she still engages in this she hesitated to use her name and signed only her initials.

Respectfully yours,

SALVATORE PINO,
*New York Typographical Union No. 6, Representing Benj. Tyrrel.*

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JUNE 9, 1978.

As a volunteer organizer for the International Typographical Union during part of 1977, I worked in two non-union shops. As a result of this experience, I came to the conclusion that the central problem for unorganized workers is job security. The contrast between a union shop and an "open" shop would be quite astounding to a sociologist. In the former there is a free and open exchange of opinion among the people on the job. There is little concern that perhaps an expression of a dissident point of view might offend the employer or one of his representatives. There is confidence in the knowledge that one cannot be laid off discriminatorily. The seniority rights established by almost all union contracts permits a far greater degree of democratic practice on the job. And those of us who believe in democracy consider that of vital importance.

As one moves into a shop without a union contract, one senses immediately a pall on conversation. Almost before anything is said, people look around to see who will hear. And then they speak with caution. It's almost as if everyone were hostile. No easy-going friendly banter that one is accustomed to in a union shop. People seem afraid to look up from their work for a simple greeting.

In fact, in one of the shops, I heard the rumor that the employer was adamantly opposed to unions. That I believed easily. But I was really shocked to hear that he wore a gun to work, and that he had Mafia connections. So when a foreman spoke about dinner in Little Italy, knowing glances were passed around. Here there was real fear.

Wage differences are important. And some of the open shops attempt to hold their employees by paying close to the union scale the most skilled workers. But that results in an even greater discrepancy between the low paid and the better paid. The differential among employees therefore gets to be all out of any reasonable relationship. The skilled man or woman will make three or four times as much as the less skilled. This fact is a source of great discontent on the part of the majority and a source of servility and quiescence on the part of the few.

When misery gets too much to bear, instead of banding together and organizing, the tendency is to just quit and move on. So there is a huge turnover in those shops that I observed. These workers are mostly young with a large percentage of women. And their lives are very unstable. Almost every one of the people I got to know well had worked in one or more open shop and was looking around for still another change.

The fear of unemployment and employer reprisal makes organizing very difficult. The turnover of employees makes it necessary to work too fast in organizing work and matters frequently come to a head before confidence and strength are achieved. The absolute dictatorial power of the employer, unrestricted by a union contract, even in this period of acceptance of need for unions, makes organizing extremely difficult. Legislative help seems absolutely necessary if equity and democracy are to be won.

Sincerely yours,

M. W.

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ROCHESTER, N.Y.,
*June 12, 1978.*

DEAR SENATOR: The power and strength a union organization gains through sensible and fair bargaining is my experience with collective bargaining, Senator.

Following are a list of benefits to me and the industry I work in. (1) Adequate pension plan. (2) Health and welfare. (3) Industry advancement fund. (4) Job security. (5) Basic hourly rate. I want to assure that it will never be cheaper for an employer to violate the labor laws of this country than it would be for him to honor the law.

We need more cooperation between labor and industry to force government reorganization in regulatory capacities.

Senator Moynihan, I hope I have given you the desired information you requested.

Sincerely yours,

ROBERT L. ABEL.

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JUNE 1, 1978.

Hon. DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: In response to your request for my personal views relative to the collective bargaining process and its benefits to our industry and the members employed therein, I submit the following:

(a) Establishes an orderly mechanism with which to resolve grievances of all types.

(b) Provides for uniform hours of work, wages, safety, pension, health and welfare and most important, a sense of security for the individual employee.

(c) Eliminates a double standard whereby one employee is given preferential treatment over another.

(d) Elevates the living standard of the working man to one of dignity.

(e) While machinery, buildings and equipment are static, employees are dynamic; one without the other is useless.

(f) When you reflect on the European Labor-Management scene, you wonder why a sophisticated country like the United States of America is even questioning the need for Labor Law Reform.

Having worked in the field of Labor-Management Relations for more than 35 years, I can testify to the importance of the need for a strong Trade-Union movement in the United States. Collective bargaining has taken democracy from theory to the job site on a daily basis.

The key word in successful Labor-Management Relations is empathy. If this one word is analyzed and applied by our legislators, they will have no reservations about voting affirmatively for passage of Senate Bill 2467. When an employer deliberately delays the representation election, he is denying his employees their right to determine their economic destiny.

I appreciate your giving me the opportunity to provide you with my views relating to my personal experience in the area of collective bargaining.

Sincerely,

J. J. BARRY,
*International Vice President.*

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SCOTTSVILLE, N.Y.,
*June 5, 1978.*

DEAR SENATOR MOYNIHAN: I would be most happy to share my thoughts on the collective bargaining process with you.

I have been a member and associated with labor unions for a period of thirty years. During this time I have had first-hand knowledge and experience as a member, officer, and on occasion negotiator for these organizations.

These negotiations have encompassed areas of wages, benefits, apprentice and journeyman training, examinations, and other industry problems.

It has been my experience that a very special recognition of industry problems exists within these unions.

Contrary to popular opinion as perceive it, union members are well aware of not only their own problems but also the problems of their employers. These members are unusually receptive to suggestions and charges which can be shown to be of benefit to their particular industry if a fair need is demonstrated to exist. I see this awareness being developed by the education of members through the bargaining process.

This collective bargaining process is one of the few areas where people can have a direct influence on what affects their lives. This is extremely important to our memebrs and they view it as a responsibility as well as a privilege.

They handle it with maturity and good judgment and guard it with zeal. I would suggest this is the most important benefit of collective bargaining—That right to have a voice in your own future.

Wages, benefits, and working conditions are obviously an important factor in the equation but not the most important as I see it reflected by our members.

The negotiations for safety in our industry is also a very important consideration of our membership. I feel certain we help set the standards that exist to promote worker safety in all industries regardless of their union or non-union status.

The training of a competent work force is well demonstrated by the apprenticeship system trade unions and their employers have developed through a joint effort. This has been accomplished through negotiations and we are rightfully proud of our success.

I have listed a few of the accomplishments achieved through the bargaining process. I would however be remiss if I did not mention our shortcomings. We are all aware of our shortcomings but I would submit for your consideration that ours are the shortcomings of people making judgement mistakes in their pursuit of a better way.

I would further petition your support for passage of the Labor Reform Bill not because it is good for unions or bad for employers but *Because It Is Fair.*

Sincerely yours,

WALTER R. JOHNSON, Jr.

UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
*Johnson City, N.Y., May 30, 1978.*

Hon. DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR FRIEND: The experience I had with collective bargaining started in May 1951. Scale of wages $2.25 per hour on hours worked only with no fringe benefits. Worked in rain, snow, all kinds of bad weather. But this was a miracle compared to conditions and wages I had when I was all alone with no representation.

The benefits to me with collective bargaining are many. I have been able to build my own home, bring up three children and educate them properly, feed them with proper meals, drive a modern automobile and have time to help participate in youth activity. Also, have time to be on the Town Zoning Board for eight years, have health care for my family and myself, have a pension program for when I am ready for retirement at age 62. I have working conditions that every American workman should have, being free and able to have a voice in my way of earning a living. The collective bargaining in our industry is just as good for the industry as it is for me.

Almost all of the carpenters of our Local Union work for small business. The opportunities for training, through the apprentice program, and supervisory schooling make our industry highly skilled in all types of construction and the owner always gets a quality constructed building. The members I represent are the "Boss". They always give me the direction to go in achieving wages, work conditions and fringe benefits. They benefit through their own experience and continually strive to improve and correct the lives of many.

Free collective bargaining is good for the worker, good for the industry and good for our Country. It should be our way of life, free to voice my opinion and always abide by the will of the majority.

Sincerely,

RUDY COLTON,
*Business Representative.*

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MAY 30, 1978.

DEAR SENATOR MOYNIHAN: I received your letter of May 19, 1978 on Sat. May 28 asking for my experience with collective bargaining. I had just been to a union meeting the night before Fri. May 27 at which time we voted to accept a new 3 yr. contract.

I am a member of the Iron Workers union Local 60 Syracuse N.Y. Building trades. I have been a member for 25 yrs. and an elected member of the executive board for the last 12 yrs.

As you may know our union members erect steel, and do heavy rigging it is the most hazardous part of the building trades. Just this past Jan. we had 2 members killed and 6 injured badly at a Nuclear plant site in Oswego, N.Y.

The contractor on this job is a big one Stone & Websteer Eng. Co. They are also union and are more than fair to the employees. They are safety minded and if we see an unsafe condition we report it and it is taken care of. On some jobs with the smaller contractors we have to fight like hell for safety and if it wasn't for the Business Agent of the Union backing us up we would be run down the road.

Getting back to the contract we just accepted. Around the middle of May the contractors called us to arrange a meeting. We appointed a bargaining committee to sit down with the contractors. They bring back to the body whatever is offered and the body (we have around 450 members) accepts or rejects the offer.

At the first meeting they offered us 50 cents per hour for each of the 3 years (around 5 per cent) but they wanted us to give up our travel pay and show up time.

Our Local covers 8 counties. We get a maximum of 8 dollars over 55 miles from city hall in Syracuse. We get 2 hours pay if for any reason we cannot work once we arrive on the job, because of snow, heavy rain, or wind which is hazardous in steel erection. The Nuclear plant job in Oswego is the worst snow belt in the country. I have to leave home in Syracuse at six in the morning to be there at 8 in the morning in the winter. Travel pay to Oswego is 6 dollars. Which, by the way, the government is trying to tax. So we didn't want to give up our travel or show up time.

The bargaining committee told the Contractors that the membership would probably vote the offer down and when they could come up with something better to call us. Our contract expired May 31, tomorrow. We heard no more from them until last Wed., May 24. At that meeting they offered us 85 cents the first year, 75 cents the 2nd, and 70 cents the third year and keep the travel pay which we have had for 10 years with no increase. We voted on it Fri. night, May 27. It sounds like a large increase but from our hourly pay *we* pay our pension plan $1.10 per hour plus our own hospitalization (Blue Cross). So from our 85-75-75 cent per hour raise we will this year put 14 cents in our pension plan on top of the $1.10. Next year our Blue Cross insurance expires and as you know being from New York, that will mean another big bite from our raise just to stay even. We get no paid holidays, no vacation pay, or no sick pay. We are also lucky to get 40 hours per week in the winter but it is still 100 per cent more than we would get from a nonunion contractor.

I am sure you being in favor of labor have met our president, Mr. John Lyons, from Washington. D.C. He can tell you what a fine apprentice program we have. We train our own people. The Contractor calls the business agent at the Union hall when he needs men. He expects well trained men when he calls, and he gets them.

We have cleaned up our act since the old days. The business agent tells the Contractor when he calls that if the men don't produce run them off and he will send them some that will.

I hope this information will help you. We need the unions not only for a decent wage but for safety in our end of the building trades. Safety is our prime concern and without our Union representatives to back us up it is either work unsafe or go down the road. OSHA is a laugh. We were better off when we had N.Y. State safety inspectors.

If I can ever be of any help to you let me know. It is good to know we have some one like you on our side. Thanks.

Mr. CHARLES SANDERS,
*Nedrow, N.Y.*

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LOCAL UNION NO. 31,
INTERNATIONAL BROTHERHOOD OF
PAINTERS & ALLIED TRADES,
*Syracuse, N.Y., June 1, 1978.*

Senator DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR: I would like to convey to you what the Collective Bargaining System has meant to me and some of the benefits I have derived from it.

I was never a member of organized labor until the age of 28. Up until that time, I was a highly underpaid skilled tradesman. I was making about one-third of the wage of a skilled workman of my trade. Myself and many others were given what our employer chose to pay us. I watched my employer grow rich and live lavishly while I could not even support my family or pay my debts.

At the age of 28, I joined the Painters Union. Since that time, I have been making a decent living without the burden of not being able to support my family and pay my bills.

I honestly have to say that the Collective Bargaining System changed the course of my life completely. I would have to say that two-thirds of my membership has had pretty much the same experience.

Without the Collective Bargaining System many more people would be on the welfare rolls. There are already too many people in that situation because of their lack of knowledge of the Collective Bargaining System and because of the employers refusal to their employees to implement a Collective Bargaining System.

I am in hopes that some of the contents of my letter might possibly be conveyed to the Senate floor for the people who are undecided as to the rights and wrongs of the labor reform bill.

I would also like to take this opportunity to thank you on behalf of myself and my membership for your many efforts in support of the labor reform bill.

Best regards,

IVAN ELLSWORTH,
*Business Representative.*

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NEW YORK GLASS WORKERS
PROTECTIVE LEAGUE,
*Horseheads, N.Y., June 2, 1978.*

Senator DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: Have read, and am impressed by your statements and testimony in the "Congressional Record," regarding Labor Law Reform. Therefore I am writing to you today describing some experiences with collective bargaining in regards to the industry in which employs me, benefits to fellow workers and to my family and me.

I am a journeyman mold maker, having served a four year apprenticeship in a trade for which I have been employed for the past twenty four years without a single day of being laid off from work. The company responsible for this outstanding record of employment for me and my fellow workers is Thatcher Glass Company, a leading manufacturer of glass containers in this country. Throughout all these years I have been a member of "The American Flint Glass Workers Union." This is but one of three unions we have at our local plant, located in Elmira New York. By working together with management, we have created safer working conditions for all of us, our jobs have become more productive and easier for us to perform, we have been able to work out our mutual problems which we encounter from time to time in our daily work.

Over the years through collective bargaining, my family and I have been fortunate enough to enjoy a middle class standard of living. Our three children plan to attend college after graduating from high school. Because of the fine contracts which have been negotiated in our glass industry for the past one hundred years, we now have an Insurance program for active and retired members which is second to none among blue collar workers today, also included is a fine dental insurance for the members and their families. Eye examinations and glasses if needed, are furnished by the company at no charge to the employees. Our members receive up to five weeks of paid vacations each year, depending on the years of service. We enjoy eleven paid holidays off work each year. Upon completion of thirty years of service with the company, our members who are fifty five years of age or older may retire and live comfortably on a fine pension program which has been worked out over the years to meet current and future plans of all. Because of the continued steady growth of this fine company, the shop in which I work has more than doubled in size since I started in 1954. Our union membership has almost tripled.

as newer and more sophisticated machines are necessary to keep pace with modern day production and completion. From the production of the glass milk bottle which was this companys chief product in the 1930s and 40s to manufacturing of approximately one hundred various containers in all sizes and shapes which we use in our homes each and every day. It is this kind of team work which is necessary between Industry and Labor today to continue the success which both must have if this country is to maintain its Industrial leadership and remain the "Greatest" country of all.

Very truly yours,

WILLIAM A. JAMELSKI.

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JUNE 3, 1978.

Hon. SENATOR MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR: I am pleased to write you regarding my experience as I recall with collective bargaining.

More than thirty years ago myself and ten other colleagues petitioned the National Labor Relation Board for permission to join the Machinists Union, the vote was taken and we had our union.

There were grievances with the Company (unnamed) such as long hours and overtime pay on a reduction scale, the more hours of overtime, the less hourly wages we received.

After some hectic and bitter negotiation at first, we both, the company and the committee which I was part of, settled to a long and fruitful association.

Today I am retired for the past two years, I am now 67 years and enjoying a modest pension along with my social security earnings, my wife and myself are able to enjoy our twilight years with some serenity and less concern of financial embarrassment.

Trusting this letter will help you in your fight for your Labor Reform bill.

I am,

Yours Truly,

FRANK MARTIN.

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MAY 28, 1978.

Hon. DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: I would like to write and tell you about my own experiences in collective bargaining and the labor movement.

Thirty years ago I started working as a Journeyman Electrician in a non-union shop. I worked eight hours a day for five days and then I came in for four hours on Saturdays to clean up the shop or to finish any other work to be done without pay.

For the next ten years I worked in other non-union shops for Bosses who did not pay on the right days and who gave checks that bounced. In one shop, half of the men belonged to the union and were getting all the benefits whereas I, who did not belong to the union, received less.

About twenty years ago, I and four other men asked our non-union boss to join the union. He refused. We went to the union, which is the I.B.E.W. Local No. 3 and told them our problems. They contacted our boss and tried to persuade him to join. When he said no, the union took us all in and gave us working cards. Since then I have been a member of Local Union No. 3 I.B.E.W. enjoying a pension plan, paid vacations, an annuity plan, paid holidays, a hospital and surgery benefit plan and other benefits. But most of all, belonging to the union has given me dignity and now I feel I have someone to talk for me and look out for me.

Also, it should be mentioned that the boss benefits by having union men, happy workers who feel they are not being abused or being taken advantage of, content workers produce more than discontent workers. Moreover, the union provides an apprenticeship, training and continuous additional schooling for the benefit of the men and the industry.

I believe that every worker should have the right to chose whether they want to belong to a union or not. However, many non-union workers are afraid of losing their jobs, because they are alone and have no one to speak for them and to look out for them.

I hope I have been a help to you and I wish you success.

Sincerely yours,

SAMUEL B. GAREY.

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WILLIAMSON, N.Y.

DEAR SIRS: On the question of collective bargaining, I have nothing but the greatest of respect for such a fair and equal way for both employee and employer.

Being a member of a union most of my life, I have seen labor and management sit down at the table and come away with benefits for both sides.

Ten years ago in Rochester, N.Y. a company was formed by the name of Heuer Utility. I was the first laborer there. I have seen this company grow from myself to forty laborers, besides numerous other union trades.

As our contract has run out yearly, we have had nothing but benefits to both sides through collective bargaining.

I know that collective bargaining would help many others as it has helped me.

So, in closing sirs, I ask you to please pass the labor law reform bill.

Sincerely,

JACK WOODWORTH.

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MAY 29, 1978.

Hon. DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SIR: Read with great interest in the May 17, 1978 issue of the Congressional Record, your debate with the Hon. Senator Hatch concerning the Labor Reform Act. As far as I can judge, you cut to the heart of the matter by pointing out that the Labor Reform Act will bring peace to the labor-management negotiation and related fields, but, most important, strengthen the Wagner Labor Act which has been, during previous decades, weakened by the machinations of unscrupulous individuals who through false propaganda have deluded countless otherwise well meaning citizens.

Complying to your request concerning my background as related to collective bargaining, I submit the following:

My people were Swedish-Finns and emigrated to the United States at the turn of this century. My late father and uncles worked in New York City as union carpenters and helped build the Grand Central Station, Singer Building and the Woolworth Building. Unfortunately, my father was killed, in a fall, while working on the Flushing Power House during Christmas, 1916. Through the Workmen's Compensation Act, then recently passed, largely through the vigorous efforts of the then Assemblyman Alfred E. Smith, my widowed mother received a modest recompense to help the survival of our family. Working part time at the age of ten, I was forced to quit school when I was sixteen, found full time work at factories. In an effort to receive higher pay, I found work as a laborer in the construction field during the Great Depression. Working in open shops, I quickly learned how helpless a single individual was when confronted with the loss of his job as a reply to his justified grievances.

In 1935 the Wagner Act was enacted into law and while working as a machinist at International Projector Corp., I witnessed the organization campaign of the C.I.O. Electrical and Radio Workers of America and the counter measures that Mr. Hines, president of the International Projector Corp. used to thwart the union campaign, Mr. Hines speaking in every department in the shop, pointed out how we would suffer and probably lose our jobs if we voted for union representation. We voted for the C.I.O. Electrical and Radio Workers of America to represent us in 1937. Charlie Fay was chosen shop chairman and he did an excellent job for those times, our overdue increases, eight hour day, holiday pay and best of all our first paid vacations.

When World War II broke out, IPC quickly secured sub-contracts relating to the Norden Bomb Sight, Bendix Scintilla Magneto for fighter planes, Echo-Sound Sonic Sound for submarine Detection and our Simplex Projector for our armed forces instruction and entertainment. In 1942 we were working under the wartime Price and Wage Law and we worked ten hours, six days a week. I was elected shop steward and learned how to handle grievances. One day I was approached by our shop chairman, Charlie Fay, who requested me to temporarily forego my duties as a shop steward and machinist to assist Miss Julia D'Inzillo, also a machinist, on a similar leave to work creating Scrap Campaign posters to hang in every department in the shop. We also worked on a War Bond sign to show how the weekly War Bond purchases were destroying the Axis foe. This collaboration between the union and management was an excellent illustration of how we worked harmoniously together when we faced the destruction of our freedom and democratic ideals by our totalitarian enemies.

After the war, when the International Projector Corp. moved to Bloomfield, N.J., I decided to remain in New York City and I soon found a job with R. Hoe & Co., Inc., Printing Manufacturers, after thirty days, joined the International Association of Machinists, then an independent union. Through the efforts of Lodges 434 and 797, I received good pay and working conditions. After working twenty three years at R. Hoe & Co. Inc. and five years at Armer Elevator Co. Inc. I retired March 1975 with a monthly pension from the Machinist Pension Fund District 15.

In closing, I have enclosed a photo-copy that appeared in the Local 475 News, published during those war years. I hope that this contribution will make it possible for the workers of tomorrow to be rewarded fairly for their honest labor.

Respectfully yours,

RICHARD R. SODERMAN.

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MAY 30, 1978.

DEAR SENATOR MOYNIHAN: In answer to your letter of May 19th in which you requested my help describing my own experiences with collective bargaining and what to my judgement have been the benefits to me.

Considering that I'll be 75 years of age on my next birthday I remember quite clearly the events that took place so long ago in reference to the Wagner Act and the right to collective bargaining and to be represented by a union. During this hectic period in labor relations the CIO was very active in seeking to unionize unskilled workers. I was a mine lad at the time and I believe I was instrumental in a modest way when I contacted the CIO and was instructed to rent a meeting hall, get all the employees together and an organizer of the union would speak to us.

In brief we found it necessary to strike as full-fledged union men and after five weeks or so we returned to work with a considerable increase in wages and many other concessions. The membership of the local elected me president unanimously and for seven years we had a rough time attaining our rightful desserts. The right to collective bargaining was a boon to us all. We received periodic wage increases, fringe benefits, bet-

ter shop conditions and, last but not least respect from management and recognition as a union.

At the present I've been retired from the AFL Baking & Confectionary Union of America Local # 50. I put in seventeen years at Drake's Cake located in Bklyn near the Bklyn Navy Yard.

I trust that this letter will help to make with my personal expressions a more complete argument for labor law reform.

My very best wishes,

ANTHONY F. DIONISIO.

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THE NEWSPAPER GUILD,
*Washington, D.C., June 2, 1978.*

Hon. DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: You have asked us to tell you the benefits that collective bargaining has brought to employees of the newspaper industry so that that record can be incorporated into the ongoing debate on labor-law reform. Were we to answer that request with the full roll call of achievement, we would find ourselves, I am afraid, unwilling collaborators in the continuing Senate filibuster being promoted by the opponents of S. 2467.

But there is no problem in giving you the story in capsule form. For collective bargaining has brought a living wage, dignity and justice on the job to the tens of thousands of newspaper employees we represent.

Newspaper reporters, in particular, found that glamor constituted the better part of their reimbursement in the days before collective bargaining became a way of life in the newspaper industry. Oliver Pilat, the distinguished author and ex-political writer, tells how one reporter from the old Brooklyn Eagle, assigned to expose a local sweatshop, "slaved at a sewing machine in a pants factory" for two weeks. "The play she received on her stories gave her a warm feeling," Pilat recounted, "until she realized that at the Eagle her pay came to less than her wages in the sweatshop."

And that was the way it was. One of every five reporters earned less than $20 a week before the The Newspaper Guild was founded in 1933, according to a government report, and it took the average reporter 20 years to reach $38. Most employees in the advertising, circulation and business offices earned even less.

Security in the job was nonexistent. Dismissals were frequent and arbitrary, without notice or regard for length of service, and without dismissal pay. Classic—but not exceptional—is the story of Lucius Tarquinius Russell, publisher of the Newark Ledger, who announced one day: "I am serving notice that I am firing 25 percent of the staff now, and when I return from my vacation in Hot Springs I am going to fire 25 percent more."

Needless to say, Russell was not likely to have met any of the staff in Hot Springs. One of every eight newspaper employees received no vacation at all. Paid holidays were even rarer. Hours were long and irregular. The five-day week was unheard of, a seven-day week nothing out of the ordinary. Two of every three employees received neither extra pay nor compensating time for overtime work. Grievances were persistent and unremedied, working conditions poor.

Today, thanks to collective bargaining, nearly half of the employees represented by the Guild work under contracts guaranteeing salaries of $400 or more a week for key editorial, advertising, circulation or business-office jobs, and more than two-thirds work under contracts guaranteeing $375 or more. Minimum weekly salaries run as high as $530 for reporters, photographers and ad salespersons, $353 for classified-ad solicitors, $287 for stenographers and $256 for clerks.

Most employees enjoy the benefits of severance pay, in which the Guild pioneered—two or more weeks' pay for each year of employment, paid on dismissal or death and often on retirement or resignation.

Job security is standard. Employees cannot be discharged except for just and sufficient cause, with an arbitrator the final judge. No one can be fired because of automation.

Hours are shorter and regular. More than 70 percent of all Guild members enjoy work weeks of less than 40 hours. The five-day week is standard, with time and a half in cash for overtime.

Paid holidays are the rule, more than a dozen in many cases. Employees also enjoy paid vacations of up to six weeks, extra pay for night work. When they are ill, they receive sick pay and are covered by health-insurance plans, wholly or partially paid for by their employers.

They can plan for retirement; 94 percent of those working under the contracts we bargain are covered by pension plans. No longer does the end of work mean the end of income.

These are the benefits that collective bargaining has won for 40,000 employees now covered by our contracts. But tens of thousands more fail to enjoy some or all of those benefits because the shortcomings of the National Labor Relations Act have enabled their employers to effectively deny them the chance to organize. I have outlined some of The Newspaper Guild's experience with those shortcomings in testimony to the Senate Human Resources Committee during its consideration of S. 2467.

I am enclosing an impartial journalist's view of what collective bargaining has meant to newspaper employees in the form of an article, "Gentlemen and Scholars of the Press," by Judith Crist, the noted film critic. You may want to enter it, too, into the record.

Sincerely,

CHARLES A. PERLIK, Jr.,
*President.*

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MAY 28, 1978.

Hon. Senator MOYNIHAN: You requested me to describe my experience with collective bargaining.

I am a retired member of local No. 28 Sheet Metal Workers of America. I know what it is to work in non-union shops, the pay was lower, the hours longer and safety was a word only found in the dictionary.

When men got old their production started to slip, they were thrown out of work onto the human scrap heap to shift for themselves.

With collective bargaining men and women were able to obtain decent wages, shorter hours, safety measures and medical attention as well; something unheard of in non-union shops.

Their children were able to get an education and advance themselves politically and economically that spoke well for America.

At the present time in my local, unemployed members get supplementary unemployment checks paid for by the employed members.

I personally don't know of any non-union shop doing it.

There are a number of politicians who hold positions of trust within our government.

Their positions were made possible by members of their families who were union men and women, by being able to earn decent wages; sent them to schools to get an education.

In our troubled times unions with all their faults are still the bulwark of our democracy.

Wishing you success.

Yours truly,

NATHAN SKULOFF.

DEAR SENATOR: Today on May 30, 1978, I received your letter asking me for help. I have been president of Local No. 489 for over 20 years under the leadership of Mr. ——— ——— whom you know very well, and my experience with my judgment in collective bargaining. I find it very satisfactory, 2 years ago we received the best package ever, I find our relation with the Company I work for very good or I should say excellent. I have worked for this Company 45 years and will work here till I retire, I find it a good place to work along with my membership, I believe in unions, they do a lot for the rank and file, the unions protect the workers. Union shops are not slave shops, give the Company a days work and there is no argument. I wish you luck and success in the passage in the Labor Law reform, I voted for you and backed you on your election. Keep up the good work.

Your friend,

ANTHONY MURDICO.

P.S. Use this letter as you see fit.

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Senator DANIEL MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: I would like to relate to you my experiences with collective bargaining.

First let me explain that I have been a member of Local 139 I.B.E.W. for 14 years. During these 14 years neither local 139 or any electrical contractor with which we have a collective bargaining agreement, have been involved in a work stoppage. In fact I have been told that it has been 32 yrs. since 139 has been involved in a strike. This in itself is an example of the process of collective bargaining.

As a union member I realize that the union and the contractor have a mutual interest in the construction industry. It is through the collective bargaining system that we can best serve our mutual interest.

I believe that collective bargaining is the only medium by which both the employer and employee can serve each other on an equal and amicable way.

Sincerely,

THOMAS C. BLEEKER.

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SYRACUSE, N.Y.,
*June 2, 1978.*

Senator DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SIR: I thank you for your letter of May 19 in regard to the labor reform bill.

As a member of the I.B. of E.W., International Brotherhood of Electrical Workers, for twenty-five years, I hope I can help you. We have a no strike clause in our agreement with the electrical contractors. If we reach an impasse in negotiation we submit to binding arbitration. In this way there is no work time lost and both parties must abide by the decision of the impartial board.

In conclusion, we know that if our contractors don't make a profit, we won't hold a job.

Wishing you the best. I hope this is a help to you.

Sincerely,

ANDREW J. MOYNIHAN.

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CLAY, N.Y.

Hon. DANIEL P. MOYNIHAN,
*Senator for the State of New York, U.S. Senate, Washington, D.C.*

DEAR SENATOR MOYNIHAN: I am writing to you in response to your letter of May 19, 1978, and in support of your endeavors for the Labor Law Reform Act of 1978.

My first job after leaving high school was for the Delaware and Hudson Rail Road out of Albany, New York and I was proud to

belong to the International Association of Machinists.

A couple of years later I left the Albany area and moved to Syracuse, New York, where I become employed by the Elman Corporation where I was a member of the Amalgamated Clothing Workers Union of America.

In 1953 I became employed by Crouse-Hinds Company of Syracuse, New York. Shortly after I started working there, I became convinced of the need of Union Representation there. People who have worked in a plant with union representation know the value of seniority protection, a forum for expressing grievances and having a voice in your own destiny.

In 1960 through the efforts of many with views like mine, we were successful in having an NLRB election and Local 2084 of the International Brotherhood of Electrical Workers was chartered.

Since the Union came on the premises, Crouse-Hinds growth has been phenomenal. The owners, the stockholders and the workers have all shared in that growth. When originally chartered in 1960 there were less than 1,200 in the Bargaining Unit. Presently there are 1,900. This is despite the fact that many new machines to increase productivity have been introduced. I am aware that success due to proper collective bargaining is the rule rather than the exception.

I find it disturbing that knowledgeable persons in the business world work so hard to deny the majority their right to organize when they have expressed that right. I find it even more disturbing when a few in high elective office support this minority at the expense of the majority.

Fortunately I live and work in a great state that recognizes the dignity of those that labor. All the states of this nation should recognize that dignity. To deny this of those that labor is to deny fundamental constitutional rights. This country was founded on the principle of selecting ones own destiny. Labor, organized if sought, seek this through collective bargaining. May it always be so.

Sincerely,

ROBERT J. GARDNER.

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VALLEY COTTAGE, N.Y.,
*June 5, 1978.*

Senator DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

MR. MOYNIHAN: I read with great interest the text of the Congressional Record concerning the Labor Reform Bill and I am glad that labor has your very able support on this bill. I am also hopeful that labor does not have too many more "friends" like Senator Hatch.

My own experience in organized labor has not been long, but it has been eventful. I am an Electronics Engineer and work as a field service engineer on nuclear instrumentation. Until a few years ago, industries such as this had virtually no union representation. This was by no accident, as I was to learn, when we first sought union representation. The multi-national corporations, which control the medical, x-ray, and computer industries in this country and in fact the world, were capable of financing the most diabolical anti-union campaigns imaginable. In almost every union election, the companies would spend thousand of dollars to thwart the desires of their employees to obtain representation. If that failed and the employees won the NLRB election, the effort to negotiate a contract usually resulted in long strikes to obtain a first contract. In one instance the Burroughs Corporation spent an estimated $15,000,000 on a 65 week strike in an effort to deny their 170 New York employees a fair contract.

In light of my own experience with representation elections, I find the opposition to the Labor Reform Bill by the extreme right and left very closely related to the actions of the most flagrant labor law violators.

Thank you again for your support on this vital bill.

Yours truly,

JOHN HORAN.

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MAY 31, 1978.

DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MOYNIHAN: Thank you for your communication of May 19, 1978.

In answer to this, I wish to advise you we are a household of two retired Union Members.

I have been a member of the United Brotherhood of Carpenters and Joiners of America, Local No. 1019 for over 35 years. My working life was just as hard as a non-union person, but without my membership, I would have worked for a poor wage level and no fringe benefits, such as life insurance, medical and health insurance, plus a fine retirement system which is a must today if we, as retirees, are to be a self-supporting productive segment of society.

When bids are let, nonunion bids come in just as high as the union bids, and with no benefits to the employee as listed above. This makes it very important that the Wagner bill be passed. Several years ago, we seemed to be making progress, however here in Cortland County it is now reported to be at least 95 percent nonunion. This makes it more important than ever that the construction industry especially needs binding laws for decent pay and fringe benefits.

Nonunion built houses sell for as much or more than union built housing with the employees receiving a much lower wage level and very rarely receiving any of the necessary fringe benefit.

My wife too was privileged to have the opportunity to join the IBEW Union in her place of employment during her working career. This helped her to receive more equal pay with the male employees plus all of the above mentioned benefits. In her instance, nonmembership would have meant she would not have been in line for progressive pay level increases.

Kind regards,

MARTIN H. GIBSON.

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POUGHKEEPSEE, N.Y.,
*June 1, 1978.*

DEAR SENATOR MOYNIHAN: Thank you so much for your letter of May 19th.

I have been a member of Local 215 IBEW for the past 27 years. I feel that without collective bargaining it would have been impossible for me to make a living wage. It has made the electrical industry what it is today. As a tradesman you have only your talent to sell. Quality workmanship in this day and age it seems although, along with everything else, no one seems to care as long as it gets done. Through collective bargaining achievements can be made to everyone's satisfaction. I wish you success on your endeavor with this labor bill, and urge your support.

Best regards,

JOSEPH CREGER.

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MASSAPEQUA PK., N.Y.
*June 4, 1978.*

Hon. DANIEL P. MOYNIHAN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR: This letter contains the material you requested. I hope.

I have been a member of the 128 year old International Typographical Union for over 30 years. I belong to Local No. 6. I work in the book and job branch.

I raised three children and sent two through college. Our life style is modest but we have always had enough of the basics. I own the house I live in free and clear of any mortgage.

Our union contract provides myself and my family with medical, hospital and limited dental care. I get one pair of glasses a year with funds provided by the union. (Naturally our dues provide these funds.)

Unions enable a man or woman to perform their daily tasks with skill and dignity. In all the years I belonged to the union we had one five day strike in the book and job field. We have had labor peace ever since.

One thing was instilled in us at the New York School for Printers Apprentices—"A days work for a days pay". That is just as true today as it was when I attended school. The men I worked with in the shop all felt the same way (at least 99% of them).

A century ago, printers suffered physical-cultural-spiritual impoverishment (worked 16 hours a day, averaging $6.00 a week). Misery begets desperation which demands action. Twenty eight courageous printers assembled at Stonewall's Hotel (131 Fulton St.) on Saturday night Jan. 12, 1850, to organize a union for their mutual welfare. During the following century, this union—sired by misery and born of despair—experienced the inevitable ups-and-downs incidental to the industrial expansion of a growing young nation.

A new industrial revolution is taking place in our industry today. The computer has made it possible to set type using electronics in place of hot metal and hand typesetting. The combination of electronics and photography have created a whole new field called Photo Typography.

The new process requires fewer men to turn out the work that was done by the old method.

This new process enables many more people to enter the typesetting field. The equipment is cheaper to buy than the old systems and there is greater variety. Most of the shops that are going into business are non-union. We need this new legislation in order to stay alive as a union.

To stay alive and well our union has to organize. The labor legislation now in the U.S. Senate will enable us to have a fighting chance. That'll all we ask for.

The computer is a product of our space age technology bought and paid for with billions of dollars—tax dollars. Are we paying to put ourselves out of business? Think about that for a few minutes.

Years ago we were told that the space age technology would enable us all to live a more productive life. We were to have more leisure time—time to develop our creative and God given talents. I still believe this can come true with the proper leadership at the head of our government. We need honest men to lead—men of courage.

Our form of government is only possible when individual men can govern their lives on moral principles, and where duty and justice are more important than expediency. The sense of duty is present in each detail of life. The obligatory, *must*, which binds the will to a course which right principle has marked out for it, produces a fibre like the fibre of the oak.

This is the special characteristic which distinguishes human beings from the rest of animated beings: every other creature exists for itself, and cares only for its own preservation. Nothing larger or better is expected from it or possible to it, but to man, it is said, you do not live for yourself. If you live for yourself you will come to nothing.

If the unions are destroyed the rest of the country will follow (back to the sweat shop). We will then have the same situation they have in Italy today—who wants to live like that?

If we continue to allow the National Association of Manufacturers to bring unlimited

numbers of illegal aliens in to raise our taxes and at the same time steal the bread from the lawabiding citizens—we deserve what we get.

The unions built the billion dollar newspaper and publishing industry—why should we give up our right to what belongs to us or have it stolen from us.

Sincerely,

GEORGE T. HODGES.

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BINGHAMTON, N.Y.,
*June 5, 1978.*

DEAR SENATOR MOYNIHAN: I am a retired Member of the Bakery and Conf. International Union of America—

I retired from Spauldings Bakers, Inc., on the 29th of February 1960. I am drawing a Union pension and my S.S. check giving me a modest income for my wife and I to live on—quite naturally I am interested in the Labor Bill S. 2467. It does not advocate to change the Wagner Act of 1935—(as amended twice during the intervening yrs.)—but rather to guarantee prompt union elections under the law—and hopefully to provide remedies for the victims of those employers who willfully break the law prompt union elections is the medicine. Would and is the answer to this seemingly simple problem: lets have a vote "Yes or no"—let democracy work—"stop hiding behind false pretentions. Thanks Senator for your honest and good work.

My very best regards,

EDWARD T. MCAVOY.

Mr. MOYNIHAN. Mr. President, I see that the distinguished chairman of the Committee on Human Resources is here. Is it my understanding he would wish to take the floor at this point?

Mr. WILLIAMS. Well, I am prepared to sit here and listen to the Senator from New York for as long as the Senator could illuminate the situation, and that would be a long time. He made such an important contribution to this debate. We needed it.

I see behind me our majority leader, who might also want to make a statement at this time.

Mr. MOYNIHAN. Right.

Mr. ROBERT C. BYRD. Mr. President, I have nothing to say at his particular moment. I expect to shortly, perhaps.

But I, too, would like to sit at the foot of the table and listen to the continued flow of wisdom from the lips of the distinguished Senator from New York (Mr. MOYNIHAN).

Wherever he sits, that is the head of the table. Where MOYNIHAN sits, that is the head of the table when it comes to our listening pleasure.

Mr. MOYNIHAN. I thank the distinguished majority leader.

I know he might share some of my disappointment that so few Members, our friends opposing this legislation, were able to be present this afternoon. Indeed, that on more than one occasion. I fear on three occasions, none of them were present, such that they will have to do a lot of reading to catch up with what they have missed.

I am happy to yield to the Senator.

Mr. ROBERT C. BYRD. May I say to the distinguished Senator from New York (Mr. MOYNIHAN) that if none of the opponents were present at a given point, he demonstrated great fairness and courtesy toward them because all he would have had to have done would have been to have sat down, the Chair would have had to put the question, and the vote would have occurred on the Byrd amendment. But the Senator from New York did not want to take advantage of the absence.

Mr. MOYNIHAN. I thank the Senator.

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## ORDER OF PROCEDURE ON TUESDAY, WEDNESDAY, AND THURSDAY

Mr. ROBERT C. BYRD. Mr. President, since I am standing here with my distinguished friend and the acting Republican leader, both of whom are one, I am ready to propound some unanimous-consent requests.

Mr. President, several of our colleagues will be absent tomorrow and Wednesday, at some points during the days. There will be a funeral on tomorrow for a Member of the other body who has departed this life, the Member being from the State of Tennessee, and this of course, will necessitate the absence of Senator SASSER, I am sure. On Wednesday it will be impossible to accommodate all Senators on both sides of the aisle who wish to be recorded on the cloture vote by designating a particular hour, as we have been able to do thus far.

Therefore, in order to accommodate all Senators, it being the desire of Senators to be present when cloture votes are being conducted, I ask unanimous consent that the cloture vote on the pending motion occur on Thursday next at 3 o'clock p.m. with no quorum call to occur prior thereto.

Mr. TOWER addressed the Chair.

Mr. ROBERT C. BYRD. The Senator will have time to reserve and to object.

I say this, Mr. President, because it would be impossible tomorrow to schedule a vote that would accommodate two of my Republican friends and colleagues whom I know about, and there may be others, in addition to the problem created by the funeral.

On Wednesday, the situation is as difficult with Senators on both sides of the aisle who wish to be recorded being absent or returning at a point in the day when other Senators who will have been here will already have departed from the city, and there is no way to arrange a vote tomorrow or Wednesday that will accommodate all Senators unless such a vote were to extend for a period of, say, 3 hours, and I do not think we want to go down that road.

So I have asked unanimous consent that the vote on the motion to invoke cloture be held on Thursday at the hour of 3 o'clock p.m. with no quorum call in order just prior thereto.

Mr. STEVENS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. The distinguished minority leader is absent and he has informed me that he would object to such a motion since it assumes the Senate would be in session on Tuesday and Wednesday, and he would object to that unanimous-consent request.

The Senator from Texas is also objecting.

The PRESIDING OFFICER. Does the Senator from Texas object?

Mr. TOWER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. May I ask the distinquished Senator from Texas his reasons for objecting?

Mr. TOWER. Well, I think that most people are on notice that the vote will be tomorrow. There was a consent request to that effect, and I think most Members of this body are relying on that and made their plans, accordingly, to be here tomorrow.

Mr. ROBERT C. BYRD. I appreciate what the Senator says. Of course, nobody foresee the exigencies of a funeral which would necessitate the absence of at least one Senator tomorrow, and perhaps two.

I would hope the Senator would consider that fact.

Secondly, this would allow the Senate to continue to debate tomorrow and Wednesday and would accommodate all Senators, as I say, on both sides of the aisle, who wish to be present, some of whom are staring me in the face right now, who want to be present, who want to be recorded, but who, because of previous arrangements cannot be.

Now, the Senator was very kind to me just the other day when he relented from his objection and allowed us to proceed by setting a time. He has objected in this instance. May I give him a second opportunity, an opportunity to rethink?

Mr. TOWER. I will concede that the funeral could not be foreseen.

I might, No. 1, ask what time is the funeral, and could we perhaps accommodate the vote to occur before or after, or something like that? Or, absent that, there was a discussion on the floor Thursday about holding the vote on Wednesday, and why then cannot the vote be held on Wednesday?

Mr. ROBERT C. BYRD. Well, for the reason I have already expressed. I hope to accommodate Senators on my side of the aisle, Senators on the side of the aisle which is so ably represented by the distinguished Senator from Texas (Mr. TOWER), who will want to be present. Some want to vote against cloture, some want to vote for it.

But it is just an effort to accommodate them, and Wednesday, as I said a moment ago, is even more difficult than tomorrow from the standpoint of accomplishing this accommodation.

Mr. HELMS. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. Mr. President, the distinguished majority leader is certainly helpful as to Senators who want to attend the funeral, and I thoroughly agree with that. I certainly hope our distinguished colleague from Texas will withdraw his objection as to Tuesday. But, really, I do not see any excuse for including Wednesday.

Mr. TOWER. If I may respond, I would certainly not object to the vote going over until Wednesday.

Mr. STEVENS. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. STEVENS. It is my understanding that the distinguished majority leader, in our discussions, indicated that he could move to recess the Senate until

Thursday and accomplish the same objective as the unanimous-consent request; that the request is for the convenience of Senators who are returning to the city; that the majority leader seeks to have the vote occur at 3 o'clock on Thursday; that that could be accomplished by the leadership motion to recess until that time, and that the unanimous-consent request is in lieu of that motion under the circumstances that exist here today. Is that correct?

Mr. ROBERT C. BYRD. Yes. I thank the distinguished Senator from Alaska for his statement. I had hoped to get unanimous consent to go over until Thursday for the vote rather than have the vote occur tomorrow, but, in the meantime, to meet tomorrow and Wednesday so that the debate could continue.

Mr. STEVENS. Will the Senator consider putting the unanimous-consent request that we stand in recess until Thursday, until the time it is necessary to come in and have the vote, in lieu of the motion which I am sure the majority leader could make, which would have the effect of having us not come into session tomorrow and Wednesday? It would accomplish the same objective.

I understand the objections of my good friend, the Senator from Texas. The original motion the majority leader made would have had us in session on Tuesday and Wednesday, as I understand it, and debating until Thursday, until whatever time the vote on the cloture petition would take place. I suggest that maybe if we were clear by the fact that we would not be in session on Tuesday and not be in session on Wednesday, and as I understand it the majority leader is prepared to not come in until noon on Thursday, perhaps it might be viewed in a different light. I am not certain, but I feel it might.

Mr. ROBERT C. BYRD. I thank the acting minority leader. I know he is trying and has tried to work out a solution which would accommodate Senators, as I have indicated. I am very grateful for his efforts, which have continued to this moment. I had hoped to get consent to put the vote over until Thursday so that the Senate would be in tomorrow and would be in Wednesday and would continue to debate the issue. That request has been objected to. I can move to recess the Senate until Thursday at 1:30 p.m., which will accomplish the objective of having the vote at circa 3 p.m. on Thursday. I prefer not to do that. I would still prefer that the Senate be in so that the issue could continue to be discussed. Am I to understand that the opponents of the bill do not want to debate during these next 2 days?

Mr. TOWER. If the Senator will yield, the opponents of the bill did not file the cloture petition. It was my understanding that the reason the distinguished majority leader and others of his colleagues filed the petition is that they wanted to vote on it Tuesday, to try to bring the debate to a close.

Mr. ROBERT C. BYRD. We would have liked to have voted it last week.

Mr. TOWER. The question is, Why was the cloture petition filed if the Senator did not want to vote on it Tuesday?

Mr. ROBERT C. BYRD. I can answer that question by asking a question, Why have not the opponents allowed us to vote just on the Byrd amendment? Why not on the Ford amendment as amended by the Byrd amendment? When we get to talking about who does not want whom to vote and why have we not voted and why do not we vote, I would simply remind the opponents that the proponents have been ready to vote at any time, and are ready right now to vote on the Byrd amendment, to vote on the Ford amendment right now, and to vote on the substitute right now.

Mr. HATCH. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HATCH. And we are prepared to vote on cloture tomorrow. We are prepared to meet the Senator's petition for cloture tomorrow or Wednesday. Since tomorrow is inconvenient because of the funeral, and all of us have great sympathy for that, certainly, then why not Wednesday? Why not get this petition over with?

Mr. ROBERT C. BYRD. I am not saying it would be over if we voted Wednesday. I have not indicated that.

Mr. HATCH. I do not think it would be. We have had five cloture votes.

Mr. ROBERT C. BYRD. That does not make any difference to me.

Mr. HATCH. That has expressed the will of the Senate.

Mr. ROBERT C. BYRD. It has not, so far as I am concerned. I do not care whether it is 5, 6, or 7. I am simply saying we can have a vote Wednesday, Thursday, and tomorrow. We can have three. I am simply trying to accommodate Senators, and I am not one of them. The Senator is not one of them. I am trying to accommodate Senators on both sides of the aisle who want to vote. They can all be accommodated, as I have looked over the attendance sheets from both sides of the aisle, by a vote on Thursday. It was my hope that we could continue to debate the bill tomorrow and Wednesday, possibly voting on the Byrd amendment tomorrow. It is a good amendment for small business. Possibly we could vote on that one and then vote on the Ford amendment. That is a good amendment. And then be ready for the substitute by the time we get to cloture. But I gather that Senators are not going to agree to a unanimous-consent request to that effect.

Mr. TOWER. That appears to be the case.

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

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. Does the Senator suppose that if the Senator from North Carolina and the Senator from Texas had business out of town on Thursday, and I shall have none, the majority leader be willing to accommodate us and not have a cloture vote on Thursday? How far are we going in this business of accommodating Senators?

Mr. ROBERT C. BYRD. The way the present rule XXII is written, and I had something to do with that, it does not make any difference whether the opposition is here to deliver one vote. The opponents have that advantage. If only one opponent is here to prevent the Chair from putting the question and getting a vote, with the opposition not here, as Mr. MOYNIHAN very thoughtfully protected the minority on this question, it will not make any difference. We have to deliver 60 votes. So if the Senator from Texas wants to be absent and the Senator from North Carolina wants to be absent, it will not make any difference as to the outcome.

Mr. HELMS. I do not want to be absent.

Mr. ROBERT C. BYRD. It does not make any difference as far as the outcome.

Mr. President, aside from that, recognizing that I can move to go over until Thursday at 1:30 p.m., which will accomplish the same purpose, to wit, that the Senate will vote on the pending cloture motion at around 3 p.m., but I would like for it to be precisely 3 so that all Senators will know——

Mr. TOWER. Reserving the right——

Mr. ROBERT C. BYRD. And with recognition of the fact that in order to accommodate Senators on both sides of the aisle who are for cloture, and they are on both sides of the aisle, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12 o'clock noon on Thursday, provided that the vote on the cloture motion occur at 3 o'clock p.m., with no quorum call in order just prior thereto. This would mean that the Senate would go over, the Senate would not be in tomorrow and the Senate would not be in Wednesday, and the vote on the cloture motion would occur on Thursday.

The PRESIDING OFFICER. Is there objection?

Mr. TOWER. Reserving the right to object, there are some of us who feel very strongly about proceeding in an orderly fashion with a vote on Tuesday and, indeed, one on Wednesday and one on Thursday, if the leadership would like to vote that often. We can accomplish three cloture votes in the timeframe suggested for one.

Mr. ROBERT C. BYRD. We can do more than that. We can accomplish four or five in the same number of days. All we have to do is file the cloture petitions. We can file three cloture petitions today and then we can vote. If what the Senator wants is to vote, we can accommodate him all he wishes. But that is not my purpose.

Mr. TOWER. I understand. The Senator from West Virginia can accomplish his purpose by a motion and that does not put some of us who feel strongly about this in the position of not having objected to a consent agreement to this end. I have no doubt but what the Senator from West Virginia would carry the vote if he puts it in the form of a motion. I, for one, would not want to suggest a rollcall vote on it. But I would urge the Senator from West Virginia to reconsider his formal motion.

Mr. PERCY. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. PERCY. Just to clear the record, I should like to indicate that the Senator

from Illinois has been able to tighten his schedule for the trip with the Secretary of the Air Force to Chanute Air Force Base. Instead of touching down at Andrews at 6:30, which would have been a most inconvenient time, we are now touching down at 5:15. So I should certainly be in the Chamber no later than 6 o'clock and, if the vote could start at 5:30 and it would be of 45 minutes' duration, I could make it. I think the Senator from Illinois now has been able to arrange the schedule so that a Tuesday vote, from this Senator's standpoint, at least, would be all right.

Mr. ROBERT C. BYRD. The problem there—and I thank the distinguished Senator for trying to rearrange the situation, and for rearranging it, but it still does not meet two problems: One, the necessary absence of one Senator because of a funeral tomorrow. The second is that there are two Senators—one on this side of the aisle and one on that side of the aisle—who have to leave the Senate at 4:30 p.m. tomorrow, no later than that. This would mean that we would have to start the vote at 4:30 and carry it on until 6 o'clock.

Mr. President, I take it that I cannot now get consent—and the Senator has explained why, and I respect his reasons.

Mr. TOWER. I would be reluctant to give it under the circumstances.

Mr. ROBERT C. BYRD. All right.

The PRESIDING OFFIICER. Does the Senator withdraw his unanimous-consent request?

Mr. ROBERT C. BYRD. I withdraw the unanimous-consent request.

Shortly, I shall move that when the Senate completes its business today, it stand in recess until the hour of 1:30 p.m. on Thursday. Before I do that, I want to ask unanimous consent—I do not believe there has been any morning business, has there?

The PRESIDING OFFICER. There has not been.

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with no automatic call of the calendar.

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

(Routine morning business transacted and additional statements submitted will be printed later in today's RECORD.)

## SPECIAL ORDERS FOR THURSDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Thursday, after the prayer, Mr. STEVENS be recognized for not to exceed 15 minutes and that that 15 minutes come out of the hour under the cloture rule.

The PRESIDING OFFICER. The Chair did not hear the request.

Mr. ROBERT C. BYRD. I ask unanimous consent that on Thursday, after the prayer—are there any other orders for the recognition of Senators on Thursday?

The PRESIDING OFFICER. No.

Mr. ROBERT C. BYRD. I ask unanimous consent that after the prayer on Thursday, Mr. STEVENS be recognized for not to exceed 15 minutes, and that that 15 minutes be charged against the 1 hour under the cloture rule.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. If the Senator will yield on that, I may want 15 minutes on Thursday, but I shall take it at the beginning and guarantee to use it, so I shall not interfere with the vote. In other words, the time will be the same.

Mr. ROBERT C. BYRD. Very well.

Mr. President, I ask unanimous consent that Mr. STEVENS, Mr. JAVITS, and Mr. DURKIN be recognized for 15 minutes each on Thursday.

May I say, this is all coming out of the hour, which is all right with me. Otherwise, we would have to come in earlier. Under the rule, the call for the quorum occurs 1 hour after the Senate comes in. So, if it is agreeable that the 15 minutes—that is the only way we can do it.

Mr. JAVITS. Why do we not cut it to 10? We can take half an hour then.

Mr. ROBERT C. BYRD. Very well.

I ask unanimous consent, Mr. President, that on Thursday, Mr. STEVENS, Mr. JAVITS, and Mr. DURKIN each be recognized for 10 minutes, with the understanding, of course, that the 10 minutes will come out of the hour. That is automatic under the rule.

Mr. HATCH. Reserving the right to object, what happens to the other half-hour?

Mr. ROBERT C. BYRD. On the other half-hour, if there is nothing that has been done with it, I can ask unanimous consent, also, that that half-hour be equally divided.

Mr. HATCH. We have three proponents of the bill——

Mr. STEVENS. Reserving the right to object, I do not intend to talk on the bill. I wonder if the majority leader might just ask unanimous consent that the quorum call be dispensed with and take it out of that. Under the rule, 1 hour would be equally divided. We could use the half-hour that normally would be taken in quorum calls for our special orders if no one objected.

Mr. ROBERT C. BYRD. The problem here arises in the possibility that if we say no quorum, coming in at 1:30, saying no quorum is possible, that vote would occur at 2:30.

Mr. STEVENS. What I am saying, if the majority leader will yield, is that these three 10-minute special orders take a half-hour and then that the 1-hour period start running thereafter, equally divided in accordance with the rule, with the vote to take place at 3 o'clock.

Mr. ROBERT C. BYRD. That would be better.

Mr. STEVENS. The majority leader could make that request and make his motion based on that consent.

Mr. TOWER. In other words, let the 1 hour run after the special orders.

Mr. ROBERT C. BYRD. And not have a quorum? How is that?

Mr. HATCH. How long would the vote be?

Mr. ROBERT C. BYRD. Well, let us make it a 30-minute vote.

Mr. HATCH. Let us make it a 20-minute vote.

Mr. ROBERT C. BYRD. Make it a 30-minute vote.

Mr. HATCH. Let us make it a 20-minute vote.

Mr. JAVITS. I will tell the Senators the problem, if they will yield. The problem is not mine. We are having controller trouble. I have had the scare coming down from New York, so we had better give ourselves a little latitude.

Mr. HATCH. Very well.

Mr. ROBERT C. BYRD. Mr. President, let me sum it up like this, with the understanding that I shall shortly move, after the Senators have been accommodated in morning business, to recess the Senate over until Thursday; with the understanding that when I move, it will be that we go over until——

Mr. STEVENS. If my good friend will yield, I suggest that it be 1:10. If the two leaders desire their normal amount of time and we start at 1:30——

Mr. ROBERT C. BYRD. I think we should eliminate the leaders' time. I would like to eliminate the quorum.

Mr. STEVENS. I thought we had done that.

Mr. TOWER. I do not think there will be any objections.

Mr. ROBERT C. BYRD. That means we shall have a half-hour to be divided among three Senators, 1 hour under the rule, then the vote.

Mr. JAVITS. Mr. President, if the Sentor will yield for another problem, New York City is up against the gun here. We have June 30 coming up with no legislation. We have a report due from the committee. As I recall it, though I have just looked at the calendar and I do not know whether this is just a promise of the leader or an agreed upon consent, we are supposed to have a treaty up right after this labor bill.

May I ask the Chair, is there unanimous consent that the treaty follows this?

Mr. ROBERT C. BYRD. There is.

Mr. JAVITS. It is not on here.

Mr. ROBERT C. BYRD. The order was entered that, upon the disposition of the labor reform bill, one way or another, the Senate would proceed to the consideration of the treaty in executive session.

Mr. JAVITS. The question I would like to ask the leader, because I do not know the President's views or any other considerations, I am really asking a question in connection with trying to lay out our situation: Should we now dispel that order in order to leave us free, at least, even if we do not agree, to take up the New York bill because of the shortness of time which will remain after Thursday? After all, we are just going over for 2 days.

Mr. TOWER. If the Senator will yield, in behalf of the committee, or at least the minority side of the committee, I would not be prepared at this point to agree to take up New York City. That is not to say we ultimately will not agree

to it, but I am not prepared to agree to it now.

Mr. JAVITS. So the Senator would not want to do this?

Mr. TOWER. No.

Mr. JAVITS. OK. I just raised the question to give him notice, and the leader and everybody else, that we are up against the gun.

Mr. TOWER. Perhaps it can be agreed, but I am not prepared to do so now.

Mr. PERCY. Mr. President, reserving the right to object—and I do not intend to do so—just as a point of clarification, we have been waiting to have a colloquy with the two floor managers of the labor reform bill. I wanted to be certain that the present order being asked for would not preclude our having that colloquy before the beginning of the morning hour.

Mr. ROBERT C. BYRD. No, it will not.

Mr. PERCY. Then we could go into that immediately.

Mr. ROBERT C. BYRD. Yes.

The order that was entered with respect to the UK Treaty was as I stated: We are to go to it after the Senate dispenses with the current unfinished business. But there was also the proviso that if emergency legislation needed to come up, the leader could call it up ahead of the UK Treaty.

Mr. JAVITS. The leader is very farsighted.

Mr. ROBERT C. BYRD. I had forgotten that. So we can take care of the New York City legislation.

Mr. JAVITS. I thank the Senator.

Mr. ROBERT C. BYRD. Now, Mr President, with the understanding tha I will move to go over until Thursday, at the close of business today, by way of recess, until 1:30 p.m. on Thursday, I ask unanimous consent that on Thursday, after the prayer, the following three Senators be recognized, each for not to exceed 10 minutes: Mr. STEVENS, Mr. JAVITS, and Mr. DURKIN; that the 1 hour under the cloture rule then immediately begin running; that upon the completion of that hour, the vote occur on the cloture motion, with no quorum call in order prior thereto.

Mr. STEVENS. And the time to be equally divided.

Mr. ROBERT C. BYRD. And that the time under the hour be equally divided between Mr. HATCH and Mr. WILLIAMS, and that the rollcall vote extend for 30 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. TOWER. Mr. President, reserving the right to object——

Mr. GOLDWATER. Mr. President, reserving he right to object——

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I think we have yielded about all this side has to yield, and I object to a 30-minute vote. We are giving them 2½ days.

I canceled plans in the West over the whole weekend because I was assured the vote would be tomorrow, and I see no need for this side to yield an extra 10 minutes, and I will object to a 30-minute vote.

Mr. ROBERT C. BYRD. I say to my friend from Arizona, whom I respect greatly and whom I admire exceedingly, that we have no way of knowing what the air controllers' situation is going to be or what problems may arise in flight because of weather. This is one of those votes that Senators do not want to miss, and I hope the Senator would let us have 30 minutes.

Mr. TOWER. I recommend that they catch early flights.

Mr. GOLDWATER. Mr. President, reserving the right to object, I have already approached my airline friends—I am a members of the controllers' organization—and I have told them that if they did not want to lose a friend, they had better stop fiddling around.

Mr. ROBERT C. BYRD. Do not use the word "fiddling" carelessly.

Mr. GOLDWATER. I have to go to Arizona; it is 2,000 miles away. I was supposed to be in Wyoming right now for a good friend. I have to arrange my schedule to get back.

If they are going to fool around in the tower, and I do not think they will, I do not like that to be used as an excuse. I still object to 30 minutes. I have been waiting around here since last week.

Mr. ROBERT C. BYRD. I wish the Senator could have prevailed on the other opponents to let us vote. We could have had some votes since last week and prior to that time.

Mr. President, I repeat the unanimous-consent request, with the one modification which the Senator from Arizona has objected to, that being a 30-minute rollcall vote. How about 20 minutes?

Mr. GOLDWATER. That is fine.

Mr. ROBERT C. BYRD. Twenty minutes on the rollcall vote.

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

Mr. ROBERT C. BYRD. Mr. President, I thank the opponents. They have responded in their usual good humor and with good cooperation.

## ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I understand that the Senator from Illinois and the Senator from New Jersey will have a colloquy. Could we have some understanding as to how long that will be? There are people interested in a morning hour.

Mr. PERCY. I should take no more than 5 or 6 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the completion of the colloquy between Mr. PERCY and Mr. WILLIAMS there be a period for the transaction of routine morning business, with no call of the calendar being automatic.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, it is my understanding that at the close of the morning hour, the Senator intends to make his motion, subject to the unanimous-consent request just made.

Mr. ROBERT C. BYRD. Yes.

I ask unanimous consent that Senators be permitted to speak during the period for morning business for not to exceed 10 minutes each.

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

The Senator from Illinois is recognized.

## LABOR LAW REFORM ACT OF 1978

The Senate continued with the consideration of H.R. 8410.

Mr. PERCY. Mr. President, while I believe the Byrd substitute for the Labor Reform Act is an improvement, there are still remaining a number of disturbing provisions. I also believe that there are several provisions which could expedite the work of the NLRB, but which have been misinterpreted and may therefore be feared by the business community. One, in particular, is the requirement in the original bill and also in the substitute proposed by the distinguished majority leader, that the National Labor Relations Board promulgates rules to determine whether certain units of employees are appropriate for the purposes of collective bargaining.

A number of Illinois business leaders, among them representatives of the retail industry, have come to me and expressed the concern that this provision will result in locked-in, inflexible requirements that do not respond to the unique variations among types of businesses and that, therefore, they will be forced by law to conform to a mold that does not fit. It has raised questions in my own mind as well.

Can the floor manager clarify the intention of the committee with respect to this provision? Will labor relations suffer, because the Board will decrease the number of questions it handles on a case-by-case basis?

Mr. WILLIAMS. Mr. President, I am happy to respond to the question of the Senator from Illinois, and I appreciate his raising this particular question for clarification of what can be expected from this bill in this regard.

I think this is another provision of the Labor Reform Act which has been misinterpreted, and I suggest that it has been distorted beyond recognition. I refer the Senator from Illinois to the committee report on the bill, where four simple principles which go to the heart of the provision are stated.

First, the National Labor Relations Board, for 42 years, has had experience in the case law. We have had cases for all this time, and it makes only good sense that those findings of the Board with respect to what constitutes an appropriate bargaining unit, for which the law is well settled, should be codified through rulemaking. This is consistent with good administrative procedure and should both expedite the work of the Board and avoid confusion for the benefit of both business and labor.

The second point: The committee intends that the rules with respect to bargaining units apply only where it is apparent that the unit applied for is plainly appropriate under the rule.

The third point: The committee realizes that in many industries, such as the retail industry, which the Senator from Illinois just singled out, the Board law respecting unit determination is presently not well settled. The Board is not expected to establish appropriate units by rule in such cases initially. The Board would continue its present procedure, determining the unit in a preelection hearing on a case-by-case basis, until such time as a settled formula in that industry is established.

Point four: Although the Board is not expected to codify the law as to a particular unit until a settled formula is reached for that industry, it is the Board's obligation to find such formulas and then issue bargaining unit rules.

These are the provisions we have developed and which are contained in the report that is important history in this regard.

Mr. PERCY. I thank my distinguished colleague for that explanation.

On each of these points, the Senator from Illinois would welcome the minority floor leader's opinion; though I assume that unless the Senator from Illinois hears to the contrary, the Senator from New York, the minority floor manager of the pending measure, concurs with the remarks of the majority floor leader.

Mr. JAVITS. Yes.

If the Senator will yield, it is my view to concur with that of the floor leader for the majority and also that the text of the law which is contained in both substitute as well as in the original bill. In the substitute it is found at page 6, lines 8 to 11 and reads:

> The Board shall to the fullest extent practicable exercise its authority under section (a) of this section to promulgate rules declaring certain units to be appropriate for the purposes of collective bargaining.

And the words which have been interpreted in these floor provisions are the words "to the fullest extent practicable."

I, therefore, concur in Senator WILLIAMS' definition of these terms.

Mr. PERCY. I thank Senator JAVITS.

In further reference to this provision, what would be the procedure for an employer, once a union has filed a petition for an election for a certain bargaining unit based on a Board rule promulgated, because of the Labor Reform Act, if he does not agree that the unit applied for is covered by a unit rule?

Mr. WILLIAMS. To reply to that, the employer, if he chose to do so, could ask for a meeting with the National Labor Relations Board regional director and be able to make an informal presentation to the regional director about why an existing Board rule is not applicable in that particular situation. Of course, the regional director does not have to agree with that presentation, and he need not hold a formal preelection hearing. But if he does agree with the employer, he could then order a formal hearing to be held.

Mr. PERCY. No one, then, would be forced to submit to the determination of a bargaining unit without first having the opportunity to tell the regional director why he or she thinks the Board's rule does not apply to that particular situation?

Mr. WILLIAMS. Mr. President, that is correct. The point of this provision is not to immediately set in concrete an answer to every possible question that may arise in the future about what constitutes an appropriate bargaining unit. The point is to codify the unit decisions of the Board that are well settled.

Mr. PERCY. On the assumption that the regional director would disagree with the employer's presentation on a certain unit of employees, what is the employer's recourse?

This is a matter of considerable concern to a great many business people with whom the Senator from Illinois has discussed this problem.

If the employer does not agree that the unit is properly covered by a promulgated rule, can he appeal this matter to the full Board? If the employer loses that appeal, may he then, as under current law, and assuming the election has been held, won by the union and the union has been then certified as the bargaining agent, refuse to bargain in order to bring this question into Federal court?

Mr. WILLIAMS. This is the procedure under the law. It is a technical unfair labor practice. That procedure would still be available for the later appeal.

Mr. PERCY. So the employer is not locked in. He would have several avenues of appeal, as we have just specifically discussed?

Mr. WILLIAMS. The Senator is correct.

Mr. PERCY. I very much appreciate the Senator's willingness to clarify these questions. Of course, this strikes at the heart of the "make-whole" provision which the Senator from Illinois has discussed at great length and for which he has introduced a substitute, which would protect to some extent the technical refusal to bargain. But I shall not get into that point at this particular time. It is, however, a relevant point in the minds of a great many business people.

The Senator from Illinois has wondered, along with others, if rulemaking is so advantageous in expediting the work of the Board, why has it not been used to any great extent in the last 42 years?

Mr. WILLIAMS. This is the way it appears to this Senator. When the Board first began its work, it began work in unchartered territory. There were no precedents. The Board had to make them. Once they became accustomed to working on a case-by-case basis, quite frankly it appears to me they just saw no reason to change.

Mr. PERCY. I can fully understand that argument. The Governmental Affairs Committee, on which I serve and have served for a number of years with my distinguished colleague from New York, the minority floor manager of the present legislation, has been tackling the process of regulatory reform. We have found it very difficult to get an agency to change its ways.

Mr. WILLIAMS. I wish to make reference to that, and I mention that it is the Senator's committee which has issued a series of reports on regulatory reform. One of them is quoted in our committee's report on this bill. I wish to read it:

> Because of its speed and utility, agencies should make every effort to resolve as many issues as possible through informal rulemaking procedures.

Mr. PERCY. We agree on that principle wholeheartedly. It is going to be very difficult to get the agencies to change, and for those from the private sector who are used to working with an agency under one set of circumstances to get used to working with it again on another, but it has to be done. We have legislation before us to reform the Labor Board in this way. Let us start now with this agency and do it.

In fact, in 1970, the President's Advisory Council on Executive Reorganization, chaired by Roy Ash, and composed entirely of business leaders, recommended that Government agencies engage in rulemaking as a course of action preferable to adjudication. So we have had on record all these years an indication from business leaders that rulemaking is the way to go. I shall just read the names of the members of the Council, because they are outstanding recognized leaders of industry.

Roy L. Ash was Chairman. He was at that time president of Litton Industries. The members were: George P. Baker, former dean, Harvard University Graduate School of Business Administration; John B. Connally, former Governor of Texas; Frederick R. Kappel, former chairman, American Telephone & Telegraph Co.; Richard M. Paget, president, Cresap, McCormick & Paget, Inc.; Walter N. Thayer, president of Whitney Communications Corp.

Many of them were outstanding constituents of our distinguished colleague, the senior Senator from New York, and I think he would testify to the fact that a group of that competence, with the prestige they enjoy in the business community, must indeed carry a great deal of weight. And their recommendation was made 8 years ago.

Mr. WILLIAMS. We agree with them. We agree with the Senator from Illinois, and I am sure the Senator from New York will want to express that agreement, also, and that is why we have written this approach into this bill.

Mr. JAVITS. Mr. President, let me sum up my views, if the Senator will yield, as follows:

Mr. President, in the first place, in answer to Senator PERCY's proper queries, we must revert to the law itself. No rulemaking can be contrary to the law and, therefore, the issue is "that the authority to make rules shall be to the fullest extent practicable." That should be read in connection with the next subsection 3, which is also in the substitute on page 6, line 12, to line 5 on page 7, which provides for a limited judicial review of the rulemaking, so that businessmen as those who have come to the Senator from Illinois and have come to me and asked exactly the same question will have that opportunity in accordance with the procedure

as outlined by Senator WILLIAMS. So I do think there are very strong safeguards in this bill respecting the exercise of that rulemaking authority to make it fair and not vexatious.

Mr. PERCY. I thank my distinguished colleague very much indeed. I thank the floor managers, and I appreciate the time they have taken on this matter. I think it is important to spell out what the bill will do and what it will not do.

I feel assured by the remarks of both my distinguished colleagues and will do what I can to make this provision more widely understood. I think it makes a great deal of sense to proceed in this fashion, to simplify matters while preserving everyone's right to make a substantive and legitimate appeal.

Mr. HANSEN. Mr. President, there has been some commentary recently that a final vote on the labor law bill could occur quickly if cloture were invoked, notwithstanding the hundreds of amenments that remain to be acted on. Some of these accounts refer to the parliamentary tactics used during the natural gas filibuster last October and allege that new precedents were adopted to break that filibuster. As I was intimately involved in that situation, I would like to review those actions taken in the natural gas debate and correct these misimpressions.

Briefly, nothing was done that would prevent the taking of rollcall votes on each properly drafted amendment at the desk when cloture is invoked, nor was anything done that would prevent quorum call at any time a quorum was not present. The natural gas filibuster was not broken. It was called off when the administration signaled its opposition by the rulings of the Vice President. The rulings themselves did nothing more than slightly diminish the number of amendments pending by expediting the disposal of a number of poorly drafted, nongermane, or otherwise out-of-order amendments.

Two significant new precedents were set by ruling of the Chair and vote of the Senate. The first was that under cloture, the Chair has the duty to take the initiative in ruling out of order any amendment that is dilatory or out of order on its face (S. 16144–47). The second was that the refusal of the Senate to transact business, such as a refusal to order a yea-and-nay vote, or the offering of a motion or amendment ruled out of order, was not business for the purpose of allowing another quorum call (S. 16153–54).

In addition, the Chair held and an appeal was tabled by voice vote that the Chair could rule a request for a quorum dilatory when a quorum had been established by a previous rollcall and was obviously still present (S. 16154).

Two other actions occurred, which some may have mistakenly thought precedents, but are emphatically not so. The majority leader asked the Chair to rule that an amendment to a bill was dilatory at a time when a substitute was the pending business, and when cloture had been invoked with regard only to the substitute. After some discussion, wherein it was forcefully argued that Senators were entitled to modify the bill in an effort to make it a more attractive alternative to the substitute, the point of order was abandoned and was never ruled on or voted on (S. 16146).

The second action involved the majority leader calling up a series of amendments, each of which was ruled out of order by the Chair, either as attacking the bill in two places or as being nongermane. During this series of amendments, the Chair did not recognize anyone other than the majority leader, thus foreclosing the opportunity of other Senators who sought recognition to appeal the Chair's rulings.

It should be noted, however, that after considerable discussion, no Senator took up an offer that there be votes on appeals from each or any of the rulings. Also, a request for a prospective ruling that the majority leader should not be recognized so as to cut off the right to appeal was withdrawn after the majority leader assured the Senate that he would call up no further amendments beyond those just disposed of (S. 16154–58).

In short, even if cloture is invoked, Senators will have every right, under the rules and the precedents, to call up and have considered all properly drafted amendments at the desk when cloture is invoked.

Mr. WILLIAMS subsequently said:

Mr. President, earlier today, in colloquy with the Senator from Utah (Mr. HATCH), I discussed the special interest groups concerned with this legislation now before us.

I discussed how some of the groups that oppose this legislation are preying on, indeed are encouraging and fomenting, public misunderstanding of this bill and its provisions.

This morning, I read and introduced into the RECORD, a questionnaire which was covered by a letter from the Senator from Nebraska (Mr. CURTIS). The questionnaire asked first, whether the respondent favored legislation permitting common situs picketing, which this bill does not deal with; then, whether the respondent favored legislation requiring public employees to join unions, which this bill clearly does not; then whether the respondent favored legislation authorizing the use of union dues for partisan political purposes, which this bill does not, and which is currently prohibited by law. Then, after this string of misleading questions, the final question asks, Have you sent your Senators the enclosed postcards expressing your opposition to the labor law reform bill?

And you have seen these post cards, Mr. President. All Senators have seen them. Thousands upon thousands of preprinted, preaddressed post cards, sent in by people who receive junk-mail such as this questionnaire, and do not stand even the remotest chance of understanding this bill before us.

Thousands of post cards, inaccurate on their face, sent in by thousands of people who have been deliberately misled—that is the so-called expression of the will of the people which the opponents would have us heed in the U.S. Senate.

This barage of mail to our citizens is deliberately intended to encourage an aura of hysteria on the part of the general public—hysteria which these special interest groups hope will extend to the Senate.

Mr. President, the Senate should know how this hysteria is generated—how the pot is kept at a high boil.

Here is another communication of the so-called right-to-work committee. For some reason, and I cannot explain how it happened, the communication is sent to me.

It is something called a "right-to-work actiongram" done up to look like a telegram. It is dated May 5, 1978. It starts out by saying: "The union bosses are making their move on the so-called labor law 'reform' bill! It is urgent (urgent, it says—just to heighten the sense of hysteria) urgent that you send the enclosed postcards to your Senators today."

The "actiongram" then notes that the bill, which is called "the phony labor law 'reform' bill will be taken up soon. The bill is styled as a "pushbutton unionism bill."

To keep up the sense of urgency, the sense of hysteria, this "actiongram" repetitively urges immediate action by the recipient, hopefully before he or she (in this case, me) hears the true facts about the bill.

The recipient is told that if the bill "doesn't pass in May, it will never pass." Later: "It is crucial that you act at once." Later: "The battle could be won or lost in the next few weeks."

Still later: "Only by acting together right now can we beat big labor's pushbutton unionism scheme."

Finally, in a postscript: "The next 2 weeks will be key."

Not only does the "actiongram" use this sense of urgency to promote a hysterical reaction on the part of the reader, but the text itself is filled with adjectival references to the bill which are highly colored. The bill is called "phony," twice it is referred to as "vicious legislation." Twice as a "pushbutton unionism bill." All in a document which is a page and a half long.

This "actiongram" is of course an appeal for funds, and it is quite clear from the document itself that the only purpose for which these funds are to be used is to "support the filibuster." That is the only objective mentioned in the letter—support the filibuster.

Not a word—not a single word is mentioned about using the legislative process to achieve amendment and to formulate a fair and workable bill.

Then, just in case the message in the "actiongram" is too subtle, there are enclosed four post cards, two for me to send to my Senators, two for me to give to a friend. These post cards say:

I'm opposed to any legislation that gives union officials more power to impose compulsory unionism on unwilling workers.

Please cast every vote against S. 1883 or any similar bill that promotes compulsory—pushbutton—unionism.

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

Then there is the so-called emergency reply form—it says:

Yes, I understand that my action is urgently needed to defeat the union bosses push button unionism bill * * * enclosed is my contribution.

Mr. President, I ask unanimous consent that this entire mailing—the so-called actiongram, the canned post cards to Senators, the so-called emergency reply form—be printed in the RECORD at the conclusion of my remarks. I think it is important for Senators to see these communications. Because I think it is important for Senators to understand the misinformation which in turn generates the avalanche of mail which buries us all.

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

EMERGENCY REPLY FORM

DEAR MR. LARSON: Yes, I understand that my action is urgently needed to defeat the union bosses' pushbutton unionism bill.

I have:

---- Sent the postcards to my Senators.
---- Asked my friends and family to send the extra postcards to their Senators.
---- Enclosed is my contribution to help pay part of the cost of the Committee's fight against this vicious union power grab.

$500— $100— $50— $25— $— Other

(Mr.) (Mrs.) (Miss) _____

Address _____

National Right to Work Committee
8316 Arlington Blvd.,
Fairfax, Virginia 22038

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Senator _____,
United States Senate,
Senate Office Building,
Washington, D.C. 20510

Dear Senator _____:

I'm opposed to any legislation that gives union officials more power to impose compulsory unionism on unwilling workers.

Please cast every vote against S. 1883 or any similar bill that promotes compulsory-pushbutton-unionism.

Sincerely,

_____

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

---

[ACTIONGRAM]

NATIONAL RIGHT TO WORK COMMITTEE,
*Fairfax, Va., May 5, 1978.*

DEAR COMMITTEE MEMBER: The union bosses are making their move on the so-called labor law "reform" bill!

And it's urgent that you send the enclosed postcards to your Senators today.

I just got word that Senate Majority Leader Robert Byrd plans to bring up S. 1883/S. 2467, the phony labor law "reform" bill, for Senate action in the next two weeks.

The union lobbyists are stepping up their campaign to push this pushbutton unionism bill into law. They're putting all the pressure they can on Senators to get them to help break the filibuster against S. 2467.

Privately, many of Big Labor's allies are saying that if S. 2467 doesn't pass in May, it will never pass.

That's why they're making a last-ditch effort to push this vicious legislation through the Senate now.

Throughout this spring, your actions and those of other Right to Work supporters have kept the pushbutton unionism bill stalled in the Senate. And by delaying the bill for so long, you've made the union bosses' job harder.

But now as they make their major attempt to push S. 2467 through the Senate, it's crucial that you act at once.

If you and other concerned citizens make your voices heard on Capitol Hill now, I'm sure that we can persuade the Senators we need to support the filibuster and keep S. 1883/S. 2467 from coming to a vote.

Please, can I count on you to:

1) Send the enclosed postcards, personal letters, or telegrams to your Senators. Urge them to actively support the filibuster against S. 2467.

2) Pass the extra cards on to your family and friends. Ask them to contact their Senators, too.

3) Send the largest contribution you can to help the Committee defeat this blatant union power grab.

We've dug deep into our resources in the past few months to fight this vicious legislation. And because of your participation, we've succeeded—so far.

But the battle could be won or lost in the next few weeks.

Only by acting together right now can we beat Big Labor's pushbutton unionism scheme, and keep them from forcing hundreds of thousands more working men and women into unions against their will.

Your help is urgently needed.

Sincerely,

REED LARSON.

P.S. The next two weeks will be key. We must persuade those Senators who are uncommitted to support the filibuster against S. 1883/S. 2467. Please contact your Senators today.

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## SUPPLEMENTAL APPROPRIATIONS, FEDERAL GRAIN INSPECTION SERVICE

(The following proceedings occurred earlier:)

Mr. ROBERT C. BYRD. Mr. President, while the Senator from North Dakota (Mr. YOUNG) is on the floor, on behalf of the Senator from Missouri (Mr. EAGLETON), I ask unanimous consent to proceed out of order for not to exceed 3 minutes.

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

Mr. ROBERT C. BYRD. On behalf of Senator EAGLETON, I ask unanimous consent that the Chair lay before the Senate House Joint Resolution 944.

The PRESIDING OFFICER. The joint resolution will be stated.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 944) making urgent grain inspection supplemental appropriations for the Department of Agriculture, Federal Grain Inspection Service, for the fiscal year ending September 30, 1978.

Mr. ROBERT C. BYRD. I ask unanimous consent that the joint resolution be considered as having been read the second time, and that the Senate proceed to its immediate consideration.

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

The Senate proceeded to consider the joint resolution.

Mr. EAGLETON. Mr. President, on June 16, the House passed H.J. Res. 944, Urgent Grain Inspection Supplemental. This legislation appropriates $6,488,000 to meet the urgent needs of the Federal Grain Inspection Service resulting from legislation passed late last year.

The Food and Agriculture Act of 1977 amended the U.S. Grain Standards Act of 1976 to require that the costs of supervision of official inspection and weighing be paid from federally appropriated funds instead of by user fees. When the 1978 budget was considered, it was assumed that user fees would continue to be collected, so now the Federal Grain Inspection Service is likely to run out of money at approximately 3 p.m. today.

I think it is important that the Senate provide speedy approval of this resolution without amendment in order to avoid disruption in orderly grain inspection activities. The Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies carefully considered this request and recommended that it be approved. Last Thursday, the full Appropriations Committee decided to defer action on the request in hopes that the House would send over a resolution speedily—which they did on Friday when the Senate was not in session.

Mr. President, this legislation has been approved on both sides. I urge its immediate passage.

Mr. YOUNG. Mr. President, this is an urgent matter involving the continuing operation of our new grain inspection program. We have had a problem with the grain inspection for many years, and the Senate Agriculture Committee held hearings to try to resolve this problem. One of the things we did was authorize the establishment of the Federal Grain Inspection Service. Last year, we amended this legislation to pay for supervision of licensed grain inspection and weighing with appropriated funds.

As a result of that, the appropriations for this agency are insufficient, and they are running out of money as of today. That is why the joint resolution was held at the desk and not referred to the Senate Committee on Appropriations. However, the full committee did discuss this problem last week, and agreed that this was the way to handle it, and there has not been a single objection to this procedure that I know of.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from North Dakota (Mr. YOUNG) for his explanation of the measure, and also for his reference to the actions by the Appropriations Committee thereon.

The PRESIDING OFFICER. The question is on the third reading of the joint resolution.

The joint resolution (H.J. Res. 944) was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Conclusion of earlier proceedings.)

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## ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. PROXMIRE). Under the previous order the Senate will now have a period for the transaction of routine morning business with speeches confined to 10 minutes.

## MESSAGES FROM THE PRESIDENT

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

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## REORGANIZATION PLAN NO. 3—MESSAGE FROM THE PRESIDENT—PM 183

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

*To the Congress of the United States:*

Today I am transmitting Reorganization Plan No. 3 of 1978. The Plan improves Federal emergency management and assistance. By consolidating emergency preparedness, mitigation and response activities, it cuts duplicative administrative costs and strengthens our ability to deal effectively with emergencies.

The Plan, together with changes I will make through executive action, would merge five agencies from the Departments of Defense, Commerce, HUD, and GSA into one new agency.

For the first time, key emergency management and assistance functions would be unified and made directly accountable to the President and Congress. This will reduce pressures for increased costs to serve similar goals.

The present situation has severely hampered Federal support of State and local emergency organizations and resources, which bear the primary responsibility for preserving life and property in times of calamity. This reorganization has been developed in close cooperation with State and local governments.

If approved by the Congress, the Plan will establish the Federal Emergency Management Agency, whose Director shall report directly to the President. The National Fire Prevention and Control Administration (in the Department of Commerce), the Federal Insurance Administration (in the Department of Housing and Urban Development, and oversight responsibility for the Federal emergency broadcast system (now assigned in the Executive Office of the President), would be transferred to the Agency. The Agency's Director, its Deputy Director, and its five principal program managers would be appointed by the President with the advice and consent of the Senate.

If the Plan takes effect, I will assign to the Federal Emergency Management Agency all authorities and functions vested by law in the President and presently delegated to the Defense Civil Preparedness Agency (in the Department of Defense). This will include certain engineering and communications support functions for civil defense now assigned to the U.S. Army.

I will also transfer to the new Agency all authorities and functions under the Disaster Relief Acts of 1970 and 1974 now delegated to the Federal Disaster Assistance Administration in the Department of Housing and Urban Development.

I will also transfer all Presidential authorities and functions now delegated to the Federal Preparedness Agency in the General Services Administration, including the establishment of policy for the National Stockpile. The stockpile disposal function, which is statutorily assigned to the General Services Administration, would remain there. Once these steps have been taken by Executive Order, these three agencies would be abolished.

Several additional transfers of emergency preparedness and mitigation functions would complete the consolidation. These include:

- Oversight of the Earthquake Hazards Reduction Program, under Public Law 95–124, now carried out by the Office of Science and Technology Policy in the Executive Office of the President.
- —Coordination of Federal activities to promote dam safety, carried by the same Office.
- —Responsibility for assistance to communities in the development of readiness plans for severe weather-related emergencies, including floods, hurricanes, and tornadoes.
- —Coordination of natural and nuclear disaster warning systems.
- —Coordination of preparedness and planning to reduce the consequences of major terrorist incidents. This would not alter the present responsibility of the Executive Branch for reacting to the incidents themselves.

This reorganization rests on several fundamental principles. *First, Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other officials at the highest levels.*

The new Agency would be in this position. To increase White House oversight and involvement still further, I shall establish by Executive Order an Emergency Management Committee, to be chaired by the Federal Emergency Management Agency Director. Its membership shall be comprised of the Assistants to the President for National Security, Domestic Affairs and Policy and Intergovernmental Relations, and the Director, Office of Management and Budget. It will advise the President on ways to meet national civil emergencies. It will also oversee and provide guidance on the management of all Federal emergency authorities, advising the President on alternative approaches to improve performance and avoid excessive costs.

*Second, an effective civil defense system requires the most efficient use of all available emergency resources.* At the same time, civil defense systems, organization, and resources must be prepared to cope with any disasters which threaten our people. The Congress has clearly recognized this principle in recent changes in the civil defense legislation.

The communications, warning, evacuation, and public education processes involved in preparedness for a possible nuclear attack should be developed, tested, and used for major natural and accidental disasters as well. Consolidation of civil defense functions in the new Agency will assure that attack readiness programs are effectively integrated into the preparedness organizations and programs of State and local government, private industry, and volunteer organizations.

While serving an important "all-hazards" readiness and response role, civil defense must continue to be fully compatible with and be ready to play an important role in our Nation's overall strategic policy. Accordingly, to maintain a link between our strategic nuclear planning and our nuclear attack preparedness planning, I will make the Secretary of Defense and the National Security Council responsible for oversight of civil defense related programs and policies of the new Agency. This will also include appropriate Department of Defense support in areas like program development, technical support, research, communications, intelligence, and emergency operations.

*Third, whenever possible, emergency responsibilities should be extensions of the regular missions of Federal agencies.* The primary task of the Federal Emergency Management Agency will be to coordinate and plan for the emergency deployment of resources that have other routine uses. There is no need to develop a separate set of Federal skills and capabilities for those rare occasions when catastrophe occurs.

*Fourth, Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions.* This reorganization would permit more rational decisions on the relative costs and benefits of alternative approaches to disasters by making the Federal Emergency Management Agency the focal point of all Federal hazard mitigation activities and by combining these with the key Federal preparedness and response functions.

The affected hazard mitigation activities include the Federal Insurance Administration which seeks to reduce flood losses by assisting states and local governments in developing appropriate land uses and building standards and several agencies that presently seek to reduce fire and earthquake losses through research and education.

Most State and local governments have consolidated emergency planning, preparedness and response functions on an "all hazard" basis to take advantage of the similarities in preparing for and responding to the full range of potential emergencies. The Federal Government can and should follow this lead.

Each of the changes set forth in the plan is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. The Plan does not call for abolishing any functions now authorized by law. The provisions in the Plan for the appointment and pay of any head or officer of the new agency have been found by me to be necessary.

I do not expect these actions to result in any significant changes in program expenditures for those authorities to be

transferred. However, cost savings of between $10–$15 million annually can be achieved by consolidating headquarters and regional facilities and staffs. The elimination (through attrition) of about 300 jobs is also anticipated.

The emergency planning and response authorities involved in this Plan are vitally important to the security and well-being of our Nation. I urge the Congress to approve it.

JIMMY CARTER.

THE WHITE HOUSE, *June 19, 1978.*

## MESSAGES FROM THE HOUSE

At 10:04 a.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to H.R. 7581, an Act to amend the Internal Revenue Code of 1954 to provide that certain income from a nonmember telephone company is not taken into account in determining whether any mutual or cooperative telephone company is exempt from income tax, with amendments, in which it requests the concurrence of the Senate; and that the House agrees to the amendment of the Senate to the title of the bill.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

H.R. 5176. An act to lower the duty on levulose until the close of June 30, 1980;

H.R. 10823. An act to amend the National Advisory Committee on Oceans and Atmosphere Act of 1977, to authorize appropriations to carry out the provisions of such act for fiscal year 1979, and for other purposes; and

H.R. 11465. An act to authorize appropriations for the U.S. Coast Guard for fiscal year 1979, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. HODGES).

At 2:25 p.m. a message from the House of Representatives delivered by Mr. Berry, announced that the House agrees to the amendment of the Senate to H.R. 11779, an act to provide for an expanded and comprehensive extension program for forest and rangeland renewable resources.

The message also announced that the House agrees to the amendments of the Senate to H.R. 11777, an act to authorize and direct the Secretary of Agriculture to provide cooperative and forestry assistance to States and others, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to H.R. 11778, an act to authorize and direct the Secretary of Agriculture to carry out forest and rangeland renewable resources research, to provide cooperative assistance for such research to States and others, and for other purposes.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 12927. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 12928. An act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 12934. An act making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 12935. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1979 and for other purposes; and

H.J. Res. 944. A joint resolution making urgent grain inspection supplemental appropriations for the Department of Agriculture, Federal Grain Inspection Service, for the fiscal year ending September 30, 1978.

The message further announced that the House disagrees to the amendments of the Senate to H.R. 8149, an act to provide customs procedural reform, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. VANIK, Mr. GIBBONS, Mr. ROSTENKOWSKI, Mr. JONES of Oklahoma, Mr. STEIGER, and Mr. FRENZEL were appointed managers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to H.R. 11713, an act to create a solar energy and energy conservation loan program within the Small Business Administration, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to H.R. 9757, an act entitled "Grazing Fee Moratorium of 1978," with an amendment in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message also announced that the House agrees to the amendments of the Senate numbered 2, 3, 4, 5, and 6 to H.R. 11832, an act to authorize appropriations for fiscal year 1979 under the Arms Control and Disarmament Act; that the House agrees to the amendment of the Senate numbered 1, with an amendment in which it requests the concurrence of the Senate; and that the House agrees to the amendment of the Senate to the title of the bill.

## HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 12927. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes; to the Committee on Appropriations.

H.R. 12928. An act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1979, and for other purposes; to the Committee on Appropriations.

H.R. 12934. An act making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1979, and for other purposes; to the Committee on Appropriations.

H.R. 12935. An acting making appropriations for the legislative branch for the fiscal year ending September 30, 1979, and for other purposes; to the Committee on Appropriations.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MAGNUSON, from the Committee on Appropriations, with an amendment and an amendment to the title:

H.J. Res. 945. A joint resolution making an urgent supplemental appropriation for the black lung program of the Department of Labor for the fiscal year ending September 30, 1978 (Rept. No. 95–937).

By Mr. BAYH, from the Committee on Appropriations, with amendments:

H.R. 12933. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1979, and for other purposes (Rept. No. 95–938).

By Mr. CHILES, from the Committee on Appropriations, with amendments:

H.R. 12930. An act making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1979, and for other purposes (Rept. No. 95–939).

By Mr. ROBERT C. BYRD (for Mr. MUSKIE), from the Committee on the Budget, without amendment:

S. Res. 467. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3151 (Rept. No. 95–940).

S. Res. 470. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2937, a bill to amend the Speedy Trial Act of 1974 to provide further authorization for appropriations for pretrial services agencies (Rept. No. 95–941).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Human Resources:

Anita M. Miller, of California, to be a member of the Board of Trustees of the Harry S Truman Scholarship Foundation.

(The nomination from the Committee on Human Resources was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

## ORDER FOR STAR PRINT OF S. 2920

Mr. HOLLINGS. Mr. President, on April 17, I introduced my bill, S. 2920, amending the Trade Act of 1974 so that textile and apparel products would be included among those items not subject to tariff cuts during the current MTN talks in Geneva. Since my earlier statements on the matter, the situation for textiles has worsened dramatically.

Sad to report, the textile and apparel trade deficit for the first 4 months of this year has set an all-time record—exceeding $1.3 billion. For the first quarter

of this year, the deficit is running 87 percent above that of last year's first quarter—and last year was a record-setter, too.

Yet earlier this year, as my colleagues know, the administration tabled significant tariff cuts for textiles at the Geneva negotiations. Our textile workers already work at tremendous disadvantages. They are competing against low-wage countries. They are competing with industries backed and subsidized and encouraged by foreign governments. They are competing without a domestic American trade policy to back them up by creating a fair trade environment. And that is all that our textile workers and leaders are asking—an equitable environment in which to compete. Our firms are modern, they are competitive. They are fully capable of holding their own if the cards are not stacked against them. But how they can be expected to survive—let alone compete—when the competition is unfair and when our own Government is intent upon pulling the rug out from under them, is beyond my power of comprehension.

Mr. President, on April 17 of this year, I introduced legislation to exempt textiles from the tariffcutting talks, just as shoes and television sets and stainless steel and other products are exempted. When we talk about textiles, we talk about an industry fundamental to the health of our economy. Textiles and apparel constitute the largest employer of manufacturing labor in the United States—one of every eight manufacturing jobs. It is a $70 billion-a-year business with 2.3 million paychecks going out each pay period. These paychecks go to some very critical segments of our economy. They go at double the national average to women and minority groups, who comprise such a disproportionate share of our unemployment problem. And they go to rural area and inner city, where job dislocation has inflicted such a heavy toll.

The response to my bill has already been very encouraging. Twenty-five Senators are sponsoring this measure, including the Democratic and Republican leaders.

Mr. President, my bill is limited to textile and apparel products. Someone indicated to me recently that the way the language was drawn in my bill, conceivably it could be construed that other commodities were also being included for exemption. This was not the intention of my measure, nor should it be the effect. Therefore, I ask unanimous consent for a star print of my bill, S. 2920, with the change noted herein.

Mr. President, I also ask unanimous consent that the bill, together with the cosponsors, be printed in the RECORD.

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

Mr. HOLLINGS. Mr. President, I urge upon my colleagues the necessity for action on this measure. Our textile and apparel industry is suffering grievous blows, and its very survivability is at stake.

LIST OF COSPONSORS

By Mr. Hollings (for himself, Mr. Allen, Mrs. Allen, Mr. Anderson, Mr. Baker, Mr. Bumpers, Mr. Robert C. Byrd, Mr. DeConcini, Mr. Durkin, Mr. Eagleton, Mr. Eastland, Mr. Ford, Mr. Hansen, Mr. Hatch, Mr. Hathaway, Mr. Helms, Mr. McIntyre, Mr. Morgan, Mr. Moynihan, Mr. Nunn, Mr. Pell, Mr. Randolph, Mr. Sasser, Mr. Sparkman, Mr. Stennis, Mr. Talmadge, and Mr. Thurmond).

S. 2920

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 127(b) of the Trade Act of 1974 (19 U.S.C. 2137) is amended by inserting immediately following "section 203 of this Act": ", section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), insofar as such section relates to textiles and textile products."

## EXTENSION OF TIME FOR COMMITTEE CONSIDERATION OF S. 2939

Mr. HARRY F. BYRD, JR. Mr. President, S. 2939, a bill to authorize appropriations for the intelligence activities of the U.S. Government, was reported by the Select Committee on Intelligence on April 19. Pursuant to section 3(b) of Senate Resolution 400, the bill was sequentially referred on May 1 to the Armed Services Committee for consideration of issues involving the Defense Department.

The Armed Services Committee has nearly completed its review of the bill and is now attempting to discuss certain differences between its recommendations and those of the Intelligence Committee with members of that committee.

I am about to propound a unanimous-consent request, but before doing so I say that I have discussed this unanimous-consent request with Senator BAYH, the chairman of the Select Committee on Intelligence, and I can report that he has no objection to it.

So I ask unanimous consent that the sequential referral of S. 2939 to the Armed Services Committee under section 3(b) of Senate Resolution 400 be extended through June 30.

Before putting that request, I might say that I have not had the opportunity to discuss this request with the ranking Republican Member, who is Senator GOLDWATER, but Senator GOLDWATER is a member of the subcommittee of which I am the chairman, and I feel certain he would have no objection, but if he does then I would ask unanimous consent in the future to withdraw this unanimous consent if Senator GOLDWATER. should have any objection to it, but I feel confident that he does not. But I state for the RECORD that I have not had an opportunity to discuss it with him.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Mr. President, reserving the right to object, we have no objection to this, with the express understanding that if Senator GOLDWATER disagrees, the distinguished Senator from Virginia can immediately withdraw it, and that will be part of the unanimous-consent request.

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

## EXTENSION OF TIME FOR COMMITTEE CONSIDERATION OF S. 3077

Mr. CULVER. Mr. President, I ask unanimous consent that S. 3077, the Export-Import Bank Act Amendments of 1978, be referred to the Committee on Environment and Public Works through July 24, 1978, rather than through July 6, 1978, as previously agreed to.

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

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HEINZ (for himself and Mr. SCHWEIKER):

S. 3207. A bill to authorize the Secretary of the Interior to enter into a cooperative agreement with the Franklin Institute to aid in the continued preservation of the Benjamin Franklin National Memorial; to the Committee on Energy and Natural Resources.

By Mr. HEINZ:

S. 3208. A bill for the relief of Mr. and Mrs. Edward Cohen and their adopted daughter, Leah Mi Cohen; to the Committee on the Judiciary.

By Mr. PROXMIRE:

S. 3209. A bill to promote the vitality of communities by encouraging comprehensive State Strategies of increased and better-coordinated State assistance and State-initiated governmental reforms, which focus primarily upon those communities experiencing distress or decline, and by facilitating the coordination of Federal actions and activities to complement and enhance such Strategies, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs and the Committee on Governmental Affairs, jointly, by unanimous consent.

S. 3210. A bill to provide Federal assistance to encourage community and neighborhood artistic and cultural activities, to promote sound urban design, and to contribute to neighborhood conservation and revitalization, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs, and when and if reported, to the Committee on Human Resources for not to exceed 45 days.

S. 3211. A bill to provide assistance for specific neighborhood conservation and revitalization projects, to improve the capabilities of neighborhood organizations in planning and carrying out such projects, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PROXMIRE (by request):

S. 3212. A bill to increase the number of class C directors of Federal Reserve Banks; to the Committee on Banking, Housing, and Urban Affairs.

S. 3213. A bill to expand the class of collateral eligible for use as security for Federal Reserve notes; to the Committee on Banking, Housing, and Urban Affairs.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEINZ (for himself and Mr. SCHWEIKER):

S. 3207. A bill to authorize the Secretary of the Interior to enter into a co-

operative agreement with the Franklin Institute to aid in the continued preservation of the Benjamin Franklin National Memorial; to the Committee on Energy and Natural Resources.

BENJAMIN FRANKLIN NATIONAL MEMORIAL ASSISTANCE ACT

● Mr. HEINZ. Mr. President, today it is my pleasure to introduce the Benjamin Franklin National Memorial Assistance Act. On behalf of my distinguished colleague from Pennsylvania, Senator SCHWEIKER, and myself, I take this opportunity to urge the passage of this legislation which will allow the Franklin Memorial to continue to function as this country's only national memorial to Benjamin Franklin.

The Benjamin Franklin National Memorial serves as a living tribute to one of our Nation's Founding Fathers. Since the famous 21-foot statue of Franklin was installed in the rotunda of the Franklin Institute in 1938, approximately 20 million people have visited the great hall. Over the past 40 years the Franklin Institute has performed in an exemplary fashion in memorializing Benjamin Franklin. Recent developments at the time of the Bicentennial include installation of a major audiovisual program designed to enable visitors to understand Franklin's life and achievements in the context of the Bicentennial. The program met with great success. However, it must now be replaced with a program suited to the post-Bicentennial period. In addition, it is important to develop and nationally distribute a range of educational materials on Franklin.

The Franklin Institute has functioned in a superlative manner with a limited budget. In recent years, deficit operations have made it impossible for the Benjamin Franklin National Memorial to continue to operate and be maintained in a manner befitting a man who many feel was America's foremost citizen.

The Franklin National Memorial is our only national memorial to Franklin and it is important that we restore it and provide funds to preserve it. The Benjamin Franklin Memorial Assistance Act will accomplish this goal by authorizing the Secretary of the Interior to enter into a cooperative agreement with the Franklin Institute to assist in the programs and maintenance of the memorial. The estimated cost for the first fiscal year authorized will be $475,000. This sum is needed for restoration and cleaning of the rotunda area and other nonrecurring costs. The amounts requested in future years are substantially smaller than the first year's authorization.

Benjamin Franklin was an urbanite in a rural society. He was a scientist, technologist, dissident, businessman, statesman, practical philosopher, printer, idealist, and exponent of religious freedom. Franklin personified in his own nature the ideals on which this country was built. With the enactment of this bill we can be assured that a living memorial will continue to pay tribute to this great American.

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

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

S. 3207

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized and directed to enter into a cooperative agreement with the Franklin Institute of Philadelphia, Pennsylvania, to assist in the preservation of the Benjamin Franklin Nation Memorial (hereinafter referred to as the "Memorial") and the programs conducted by the Memorial so that the Memorial may continue to honor the memory and accomplishments of Benjamin Franklin.

SEC. 2. The cooperative agreement authorized by section 1 shall contain, but not be limited to, provisions which—

(1) permit the Secretary, through the National Park Service, the right to access to the Memorial at all reasonable times;

(2) require that no changes or alterations substantially changing the character or appearance of the Memorial shall be undertaken except by mutual agreement between the Secretary and the Franklin Institute; and

(3) detail the extent of the participation by the Secretary in the restoration, preservation, maintenance, interpretation and utilization of the Memorial.

SEC. 3. There are authorized to be appropriated $500,000 for fiscal year 1979, $200,000 for fiscal year 1980, and such sums as may be necessary for the succeeding fiscal years to carry out the provisions of this Act.●

● Mr. SCHWEIKER. Mr. President, I am pleased to join Senator HEINZ in the introduction of legislation which will insure that the Franklin Memorial will continue to stand as this Nation's monument to one of its greatest Founding Fathers, Benjamin Franklin. All of our lives have been touched by the great achievements of Benjamin Franklin; perhaps most remarkably, so many different aspects of our lives have been affected by the actions of one of the world's true renaissance men. Benjamin Franklin was one of our first patriots—his contributions in domestic and foreign affairs were invaluable to the development of a secure republic. His influence on the statesmen of his day and in the following generations has been profound.

In Philadelphia we have a monument to Benjamin Franklin which has been a source of inspiration to the many visitors who come to the Franklin Institute each year. Approximately 20 million have visited the great hall in which a 21-foot statue of Franklin sits, since it was placed there in 1938. Over the years, the Franklin Institute has borne the financial burden of maintaining the hall, and the displays which highlight Franklin's life and achievements in the fields of government, publishing, printing, science, philosophy, and many other areas. As the cost of maintenance has increased over the years, the institute has found that it can no longer take care of the memorial in the way it should be maintained. It is now time for the Federal Government to assist the Franklin Institute in preserving this monument to one of our greatest citizens.

The Benjamin Franklin Memorial Assistance Act will provide this much needed help by authorizing the Secretary of the Interior to work out a cooperative agreement with the Franklin Institute to assist in the maintenance of the building and in the development of the programs offered in the hall. The first year expense of this arrangement would be approximately $475,000, with the majority of this appropriation going to provide some initial, one-time restoration. The expense to the Federal Government in ensuing years would be substantially less than the first year, at approximately $200,000.

Mr. President, I urge my colleagues to consider this legislation as soon as possible.●

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By Mr. PROXMIRE:

S. 3209. A bill to promote the vitality of communities by encouraging comprehensive State strategies of increased and better-coordinated State assistance and State-initiated governmental reforms, which focus primarily upon those communities experiencing distress or decline, and by facilitating the coordination of Federal actions and activities to complement and enhance such strategies, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs and the Committee on Governmental Affairs, jointly, by unanimous consent.

S. 3210. A bill to provide Federal assistance to encourage community and neighborhood artistic and cultural activities, to promote sound urban design, and to contribute to neighborhood conservation and revitalization, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs, and when and if reported, to the Committee on Human Resources for not to exceed 45 days.

S. 3211. A bill to provide assistance for specific neighborhood conservation and revitalization projects, to improve the capabilities of neighborhood organizations in planning and carrying out such projects, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

PRESIDENT'S URBAN INITIATIVE LEGISLATION

Mr. PROXMIRE. I am introducing today, at the request of the administration, three bills which are designed to carry out the President's recently announced urban initiatives.

I ask that the first of these bills, the State Community Conservation and Development Act of 1978, be referred jointly to the Committee on Banking, Housing, and Urban Affairs and the Committee on Governmental Affairs.

I ask that the second bill, the Livable Cities Act of 1978, be referred to the Committee on Banking, Housing and Urban Affairs and, if and when reported, to the Committee on Human Resources for not to exceed 45 days.

The third bill is titled the Neighborhood Self-Help Development Act of 1978 which I introduced for appropriate referral.

Mr. President, I have some concerns about the additional requirements these bills will place on our already overburdened Federal budget. Nevertheless, I believe that recommendations of the administration should be considered promptly, and I intend to bring these proposals before the Committee on Banking, Housing and Urban Affairs as soon as the Committee calendar permits.

The first of the bills, the State Community Conservation and Development Act of 1978, would authorize the Secretary of HUD to make grants to States to assist them in implementing State community conservation and development strategies. The legislation would authorize $200 million in appropriations for this purpose in fiscal year 1979, and an additional $200 million in fiscal year 1980. In order to receive grants, States would be required to prepare an analysis of the problems and needs of the State and its communities, to describe State strategies for improving coordination of Federal and State development programs and for carrying out needed governmental and fiscal reforms to promote the vitality of communities, particularly those with existing or incipient conditions of economic distress. Grants would be made to States to encourage the efficient use of public resources in promoting the redevelopment of declining communities, and the expansion of private sector investment.

The second bill, the Livable Cities Act of 1978, would authorize HUD to make grants to States, local governments, nonprofit and neighborhood organizations for cultural and artistic activities which promote neighborhood conservation and renewal, and promote economic opportunities, particularly for low- and moderate-income residents. The legislation would authorize expenditure of up to $20 million in each of the fiscal years 1979 and 1980. Under the bill, HUD and the National Endowment for the Arts would be required to establish criteria and approve projects in close collaboration.

The legislation would identify among criteria for selecting projects, cultural and artistic quality, availability of other public and private resources, and the involvement of local citizens and officials.

The livable cities program would build on local cultural, artistic and historic resources to restore and maintain the vitality of neighborhoods and the urban environment.

The third administration proposal, the Neighborhood Self-Help Development Act of 1978, would authorize HUD to provide up to $15 million in grants and other forms of assistance during each of the next 2 years. This assistance would be used to help neighborhood organizations plan and carry out programs to rehabilitate and reuse existing housing, to renew and expand retail businesses, to make better use of underutilized land and existing structures, to improve energy conservation, and to revitalize low- and moderate-income neighborhoods in partnership with local governments and the private sector.

Under the proposed legislation grants would be made available to neighborhood groups only if the unit of local government certifies that the assistance is consistent and supportive of the locality's programs to renew the city's housing and public facilities, and promote the expansion of its economic base. The proposed Neighborhood Self-Help Development Act would encourage voluntary nonprofit organizations of residents, in conjunction with other local groups, including business and financial institutions, to carry out specific projects to enhance distressed neighborhoods.

Mr. President, I ask unanimous consent that the letters from Secretary of HUD, Mrs. Harris, transmitting these proposals be printed in the RECORD.

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

SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
*Washington, D.C., May 22, 1978.*

Subject: Proposed "Livable Cities Act of 1978"

Hon. WALTER F. MONDALE,
*President of the Senate,*
*Washington, D.C.*

DEAR MR. PRESIDENT: I am enclosing proposed legislation to establish within this Department a program to provide Federal assistance to encourage community and neighborhood artistic and cultural activities, including sound urban design, which will contribute to neighborhood conservation and revitalization. Also enclosed for your convenience is an explanation and justification of the proposed legislation.

The proposal represents the "Livable Cities" component of the President's recently announced urban policy initiatives. It contains a funding authorization of $20 million for each of the fiscal years 1979 and 1980 for carrying out a program of grants to selected States, localities, public agencies, non-profit organizations and neighborhood groups. These grants would be made for initiating or supporting programs or activities which will use or develop artistic, cultural or historic resources to revitalize urban communities and neighborhoods and provide a more suitable living environment and expanded cultural opportunities for the residents of such communities or neighborhoods. It also would authorize the Secretary, in appropriate cases, as determined by the Secretary, to enter into contracts with profit-making organizations in connection with such projects. Particular emphasis would be placed upon projects or activities which would encourage or support initiatives related to other Federally assisted housing or community development activities, or undertaken in communities with a high proportion of low-income residents.

The proposal would provide for close collaboration between this Department and the National Endowment for the Arts in approving projects and in establishing criteria for project selection. In addition, the proposal would require the Secretary and the Chairman to issue jointly regulations and procedures for review and recommendations regarding applications for funding by public officials and private citizens with expertise in the fields of art, community development, and neighborhood revitalization. The use of an outside review mechanism is predicated upon the highly successful mechanism utilized by the Endowment for reviewing applications under the Endowment's programs.

The proposed legislation represents the cooperative efforts of this Department and the National Endowment for the Arts. It has its basis in the recognition of the significant contribution that the development or preservation of artistic, cultural and historic resources can make as a catalyst for generating a sense of community identity, spirit and pride, for improving decaying or deteriorated urban communities, and for restoring and maintaining the vitality of the urban environment.

We believe that the program which would be authorized by this legislation would provide an innovative and important vehicle for neighborhood revitalization.

The Office of Management and Budget has advised that there is no objection to the presentation of this legislative proposal and that its enactment would be in accord with the program of the President.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

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SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
*Washington, D.C., May 25, 1978.*

Subject: Proposed "State Community Conservation and Development Act of 1978"

Hon. WALTER F. MONDALE,
*President of the Senate,*
*Washington, D.C.*

DEAR MR. PRESIDENT: I am enclosing proposed legislation which would authorize the Secretary of Housing and Urban Development to make grants to States to assist in the implementation and execution of State Community Conservation and Development Strategies. This proposal is an important element of the President's recently announced National Urban Policy.

State Strategies would be required to set forth an analysis of the problems and needs of the State and its communities, and describe State actions to bring about programs of coordinated State investment and development and of governmental, structural and fiscal reform, which focus primarily upon distressed or declining communities, as determined by the State. The Strategies would have as their purpose promoting the vitality of communities by addressing existing and incipient conditions of distress or decline and inefficient or disorderly development patterns; providing greater housing and employment opportunities; concentrating Federal and State resources and assistance upon communities and residents of communities most in need; reducing fiscal disparities among communities; and increasing the fiscal capacity of communities, particularly those experiencing distress or decline. There would be authorized to be appropriated $200 million for each of fiscal years 1979 and 1980 for grants under the Act.

The measure would also set forth a mechanism for facilitating the coordination of Federal and federally-assisted programs and activities within the State to complement and enhance approved Strategies.

State governments play a fundamental role in determining the viability and health of their local general purpose governments and the welfare of their residents. State law shapes and defines local government—establishing its boundaries, powers and revenues, as well as providing assistance and mandating responsibilities which affect all of its budgeted services. Many reforms, such as redressing fiscal disparities, permitting tax base broadening, assuming the cost of public services, permitting the formation of metropolitan service districts, and targeting State and State-controlled Federal funds, can only be effected by State governments. The States also have the geographic scope required to deal with areawide and regional problems that increasingly are beyond the reach of municipalities and, in many cases, even counties.

Too often in the past, Federal programs have not sufficiently recognized the dependence of local government on States for all fundamental governmental, structural, and fiscal changes in local-State responsibilities and capacities. Nor have Federal programs always brought about much-needed coordination of major public investment and development activities. Indeed, Federal and State programs and actions have sometimes contributed to, or exacerbated conditions of, distress, decline and disorderly or inefficient development patterns currently facing many of the Nation's communities.

This proposed legislation recognizes the critical position States occupy with respect to their communities, and offers Federal incentives to encourage States to carry out

a comprehensive program of increased and better coordinated State assistance and State-initiated governmental reforms, focusing primarily upon their distressed or declining communities. The bill also recognizes the necessity of coordinating Federal and federally-assisted programs and activities directly concerned with the purposes of the Act in States with approved Strategies, and is designed to help assure that such programs and activities complement and enhance these Strategies.

Also enclosed for your convenience is an explanation and justification of the proposal. I ask that this proposed legislation be referred to the appropriate committee and urge its early enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this legislative proposal and that its enactment would be in accord with the program of the President.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

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SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
*Washington, D.C., May 17, 1978.*

Subject: Proposed "Neighborhood Self-Help Development Act of 1978."

Hon. WALTER F. MONDALE,
*President of the Senate,*
*Washington, D.C.*

DEAR MR. PRESIDENT: I am enclosing proposed legislation which would authorize appropriations of up to $15 million for each of the next two fiscal years for grants and other forms of assistance to neighborhood organizations. The assistance is designed to provide additional resources needed to assist neighborhood organizations in their efforts to develop and implement neighborhood conservation and revitalization projects in partnership with local government and the private sector. This proposal is one of the elements of the President's recently announced National Urban Policy.

The proposed legislation would focus assistance on low and moderate income or otherwise distressed neighborhoods. It would require a certification from the unit of general local government within which the neighborhood is located that any assistance given would be consistent with, and supportive of, the community development and other objectives of that unit of government.

Also enclosed for your convenience is a section-by-section summary and an explanation and justification of the proposal. I ask that this draft legislation be referred to the appropriate committee and urge its early enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this legislative proposal to the Congress and that its enactment would be in accord with the program of the President.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the first bill introduced by Mr. PROXMIRE (S. 3209) be referred jointly to the Committees on Banking and Governmental Affairs.

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

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By Mr. PROXMIRE (by request):

S. 3212. A bill to increase the number of class C directors of Federal Reserve Banks; to the Committee on Banking, Housing, and Urban Affairs.

FEDERAL RESERVE BANK PUBLIC DIRECTORS ACT

Mr. PROXMIRE. Mr. President, the Board of Governors of the Federal Reserve System has asked me to introduce legislation that would amend the Federal Reserve and thereby allow the Board to designate three additional Class C directors for each of the 12 Federal Reserve Banks.

In his letter to me requesting that I introduce this legislation, Chairman Miller indicated that by increasing the number of Class C directors from three to six, the Board would be able to more expeditiously implement that portion of the Federal Reserve Reform Act of 1977 that calls upon the Federal Reserve System to increase the representation of consumers, labor and service interests on the boards of directors of the Reserve Banks.

Under current law each Federal Reserve Bank has a board of directors composed of nine members. Class A directors consist of three members chosen by and representing the member banks holding stock in the Federal Reserve Banks. Class directors consist of three members who represent the public with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers. The Class B directors are also selected by the member banks holding stock in the Federal Reserve Banks. Class C directors consist of three members designated by the Board of Governors of the Federal Reserve System, again with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.

One of the problems that the Federal Reserve faces in implementing the provisions of the Federal Reserve Reform Act of 1977 to broaden the representation of Reserve Bank directors is that the Board only designates three of the nine directors. The member banks select the other six directors. Of the three selected by the Board of Governors one director must meet the requirements to serve as Chairman and another as Deputy Chairman of the Board. By providing for 3 more Class C directors the Board would designate 6 out of 12 directors and the 3 new directors could be chosen in a manner to satisfy the Federal Reserve Reform Act of 1977 immediately. This bill would also correct what many consider to be an imbalance in the selection of directors of the Reserve Banks by having the Board designate one-half rather than one-third of the directors.

Mr. President, I ask unanimous consent that Chairman Miller's letter and the text of the legislation I am introducing by request of the Federal Reserve Board be printed at this point in the RECORD.

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

S. 3212

*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 "Federal Reserve Bank Public Directors Act."

SEC. 2. Boards of Directors of Federal Reserve Banks.

(a) The ninth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. § 302) is amended by striking out "nine" and inserting in lieu thereof "twelve."

(b) The twelfth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. § 302) is amended as follows:

(1) by striking out "three" in the first sentence and inserting in lieu thereof "six."

(2) by adding at the end thereof the following:

"Of the three new Class C members appointed by the Board of Governors of the Federal Reserve System after the date of enactment of the Federal Reserve Bank Public Directors Act, initially one shall be designated to serve for a term ending December 31, 1979, one for a term ending December 31, 1980, and one for a term ending December 31, 1981, and thereafter each member so appointed shall serve for a term of three years as provided in paragraph 9 of section 4 of this Act (12 U.S.C. § 302)."

(c) The last sentence of the twentieth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. § 305) is amended by striking out "third class C director" and inserting in lieu thereof "class C director designated by the chairman".

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FEDERAL RESERVE SYSTEM,
*Washington, D.C., June 9, 1978.*

Hon. WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN PROXMIRE: For several years, the Board has been endeavoring to broaden the representative aspect of the directors of Federal Reserve Banks. These efforts have been accelerated with the passage of the Federal Reserve Reform Act of 1977, which urges the System to increase the representation of consumers, labor and service interests on the boards of directors. The law also calls upon directors to be appointed "without discrimination on the basis of race, creed, color, sex or national origin."

The Board, however, has encountered difficulties in fulfilling the Congressional mandate since under present law it is only able to appoint directly the three class C directors of Reserve Banks, two of whom must also meet the qualifications to serve as Chairman and Deputy Chairman of the board. The number of class C vacancies that occur in any year is further limited since directors are appointed for three-year terms.

The Board in considering this problem has concluded that, in order to implement the Federal Reserve Reform Act of 1977 as expeditiously as possible, additional legislation is desirable to increase the number of class C directors at each Reserve Bank from three to six. Enactment of this legislative recommendation would permit the Board to appoint immediately three new class C directors at each Reserve Bank. The terms of office for these new directors would be three years, but initially would be staggered with one director being appointed to a one-year term, one director to a two-year term, and the third director to a three-year term.

Enclosed is a draft bill setting forth the Board's recommendations. The Board would be grateful for your introduction and prompt consideration of this proposal.

Sincerely,

WILLIAM MILLER.

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By Mr. PROXMIRE (by request):

S. 3213. A bill to expand the class of collateral eligible for use as security for Federal Reserve notes; to the Committee on Banking, Housing, and Urban Affairs.

SECURITY FOR FEDERAL RESERVE NOTES

Mr. PROXMIRE. Mr. President, I am introducing legislation by request of the Federal Reserve Board that would broaden the class of collateral that is eligible for use as security for Federal Reserve notes to include obligations of the U.S. Government agencies.

The need for this legislation is explained in a letter from Chairman G. William Miller. The letter also indicates that the Federal Reserve currently holds $8 billion of agency securities that are not currently eligible as backing for Federal Reserve notes, and that if there was an increased need for such collateral the System could be forced to sell all or part of its holdings.

Mr. President, I ask unanimous consent that Chairman Miller's letter and the text of the legislation be printed at this point in the RECORD.

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

S. 3213

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* that the third sentence of the second paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended by striking the words "direct obligations of the United States" and inserting in lieu thereof the words "any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof."

FEDERAL RESERVE SYSTEM,
*Washington, D.C., May 2, 1978.*

Hon. WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN PROXMIRE: I am submitting for Congressional consideration proposed legislation that would broaden the class of collateral eligible for use as security for Federal Reserve notes to include obligations of United States government agencies. The Board believes that this legislation is of vital importance to the Federal Reserve System and strongly recommends its adoption.

The need for legislation arises from the fact that Section 16 of the Federal Reserve Act requires that Federal Reserve notes issued to the Reserve Banks be backed dollar for dollar by collateral pledged by the Banks. The collateral must consist of the following legally specified assets, in any combination: (1) gold and special drawing right certificates, (2) direct obligations of the United States, (3) acceptances, and (4) certain other paper, chiefly loans outstanding to member banks.

United States government agency obligations were made eligible for the purchase by the Reserve Banks through an amendment to Section 14 of the Act in 1966 (P.L. 89–597) for the primary purpose of increasing the potential flexibility of open market operations and to place agency obligations on the same footing as direct United States obligations. By apparent oversight, however, no corresponding change was made to Section 16 to make these obligations eligible as collateral for Federal Reserve notes. This situation has created the following two anomalies. First, notes evidencing loans to member banks secured by United States government agencies may be pledged as collateral for Federal Reserve notes whereas the same agencies purchased by the Reserve Banks may not be pledged to secure Federal Reserve notes. Secondly, during periods of increased need for collateral for Federal Reserve notes, the System could be forced to sell all or part of its $8 billion current holdings of agency securities or greatly curtail its purchase of such securities, with possible adverse consequences for that market.

In view of the System's current agency holdings, its present excess collateral to secure Federal Reserve notes is substantially diminished. In the event of any further substantial tightening in collateral, the System would either have to sell the agencies, greatly curtail its purchase of such issues, cease to issue additional Federal Reserve notes, or possibly retire notes held by the Reserve Banks, since continued issuance of the notes without adequate collateral is unlawful. The Federal Reserve's inability to provide additional Federal Reserve notes would make it impossible for the System to satisfy the needs of an expanding economy.

We believe that this legislation deserves immediate attention by the Congress. I and other members of the Board would be pleased to discuss this matter more fully with you and other members of your Committee.

Sincerely,

BILL.

## ADDITIONAL COSPONSORS

S. 1967

At the request of Mr. ROBERT C. BYRD, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of S. 1967, a bill to amend section 218 of the Social Security Act to require that States having agreements entered into thereunder will continue to make social security payments and reports on a calendar-quarter basis.

S. 2627

At the request of Mr. GRAVEL, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2627, a bill to amend the Internal Revenue Code of 1954 to defer from income certain amounts deferred pursuant to State or local public employee deferred compensation plans.

S. 2856

At the request of Mr. MORGAN, the Senator from Texas (Mr. TOWER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Utah (Mr. GARN) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 2856, the Uniformed Services Survivor Benefit Plan Amendments Act of 1978.

S. 3007

At the request of Mr. DOLE, the Senator from Alaska (Mr. GRAVEL), the Senator from Missouri (Mr. EAGLETON), and the Senator from New Mexico (Mr. SCHMITT) were added as cosponsors of S. 3007, a bill to disregard certain changes since 1975 with treatment to individuals as employees.

S. 3058

At the request of Mr. HEINZ, the Senator from Pennslyvania (Mr. SCHWEIKER) was added as a cosponsor of S. 3058, to promote steel trade negotiations under the Trade Act of 1974.

S. 3147

At the request of Mr. DOLE, the Senator from Utah (Mr. GARN), the Senator from North Carolina (Mr. HELMS), and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of S. 3147, a bill with regard to the taxation of fringe benefits.

SENATE RESOLUTION 477

At the request of Mr. CULVER, the Senator from Minnesota (Mr. ANDERSON), the Senator from Colorado (Mr. HART), the Senator from Florida (Mr. CHILES), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Kentucky (Mr. HUDDLESTON) were added as cosponsors of S. Res. 477, to disapprove the meat imports quota suspension.

## AMENDMENTS SUBMITTED FOR PRINTING

### LABOR LAW REFORM ACT OF 1978—H.R. 8410

AMENDMENTS NOS. 3033 THROUGH 3035

(Ordered to be printed and to lie on the table.)

Mr. TOWER submitted three amendments intended to be proposed by him to Amendment No. 2445 proposed to H.R. 8410, the Labor Law Reform Act of 1978.

### DEPARTMENT OF TRANSPORTATION APPROPRIATIONS—H.R. 12933

AMENDMENT NO. 3036

(Ordered to be printed and to lie on the table.)

Mr. MELCHER submitted an amendment intended to be proposed by him to the bill (H.R. 12933) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1979, and for other purposes.

Mr. MELCHER. Mr. President, I submit an amendment to H.R. 12933 and I ask unanimous consent that it be printed in the RECORD.

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

AMENDMENT NO. 3036

On page 8, line 6, strike the period and add the following: no part of the foregoing appropriation shall be available to reduce hours of service at Flight Service Stations.

## NOTICES OF HEARINGS

CONTRACT DISPUTES ACT OF 1978

● Mr. CHILES. Mr. President, the Subcommittee on Federal Spending Practices and Open Government and the Subcommittee on Citizens and Shareholders Rights and Remedies will continue joint hearing on the Contract Disputes Act of 1978 (S. 2292, S. 2787, S. 3178) on Tuesday, June 20, at 9 a.m., in room 235, Russell Building.

For further information regarding the hearings, please contact Mr. Ronald A. Chiodo, Federal Spending Practices Subcommittee chief counsel and staff director (224–0211).●

COMMITTEE ON GOVERNMENTAL AFFAIRS

● Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Maine (Mr. MUSKIE), I advise the Senate that the Committee on Governmental Affairs is announcing 2 days of hearings to be held on Tuesday, June 20, at 11:15 a.m., and Wednesday, June 21 at 10 a.m. Both days of hearings will be held in room 6202 Dirksen Building. These hearings will be on reorganization plan No. 3, the disaster/preparedness reorganization Plan.

Any person or organization that wishes to submit a statement for the record on this reorganization plan may do so by sending statements to room 508, Carroll Arms Building.●

## ADDITIONAL STATEMENTS

### IRISH LEADERS VISIT THE UNITED STATES AND SPEAK ON NORTHERN IRELAND

● Mr. KENNEDY. Mr. President, in the past month the United States has been honored with visits by the Prime Minister of Ireland, Mr. John M. Lynch, as well as by Dr. Garret FitzGerald, who is the leader of the opposition in the Irish Parliament and of the Fine Gael Party, and by Mr. Frank Clusky, who is the leader of the Irish Labour Party.

In the course of their visits, these Irish leaders addressed themselves in particular to the situation in Northern Ireland. They expressed their strong appreciation for the efforts of those in the United States who have endorsed the path of peace, and their equally strong opposition to the few in this country who have been associated with the cause of violence.

Mr. President, the remarks by Prime Minister Lynch, Dr. FitzGerald, and Mr. Clusky on this point deserve careful attention and study by all of us. Their statements reflect, as Dr. FitzGerald stated in his address in New York City, a united position supported by the entire spectrum of political opinion in the Republic, and the leadership of the SDLP in Northern Ireland, the party that represents the vast majority of Catholics in Northern Ireland.

Mr. President, I ask that the important statements of these Irish leaders may be printed in the RECORD.

The statement follows:

TEXT OF SPEECH BY THE TAOISEACH (PRIME MINISTER OF IRELAND) JOHN M. LYNCH, AT A RECEPTION ON WEDNESDAY, MAY 24, 1978, AT THE ST. REGIS HOTEL, NEW YORK CITY

You, the Irish in America, are among our best and most warmly regarded friends. That is why I am glad to be here this evening and bring you warm wishes from Ireland. I hope that you will continue to visit us frequently and renew and consolidate the old ties of blood and friendship, which symbolise for the world our common heritage, our common history and the human values that we share. You have always done us great credit in the United States and we take pride in your achievements.

I needn't tell you that all the news from Ireland is not always good. But perhaps you don't hear or read of some of our good news.

Despite continuing severe difficulties in the world, the Irish economy is currently growing at a faster rate than that of any other country in the European Community. Inflation is falling and employment is rising. We still have a lot of leeway to make up, but I am confident that we can maintain the momentum of growth that is building up, and provide a secure and lasting prosperity for our people.

A key element in my Government's programme is the creating of conditions which will enable all our people to find jobs in Ireland. We have set ambitious targets for new job creation—a hundred thousand new jobs by 1980: involving more than two billion dollars additional investment. We shall be looking to you in the United States to help us to achieve these goals. Indeed, the United States is already the largest single foreign source of investment in Ireland, and we are gratified that this country, which has become the home of so many Irish people, should now be playing such a key role in our development.

Fortunately for all of us, prosperity cannot be contained. The benefits of Irish development help the country of your adoption, though because of our size, this assistance cannot be as large in proportion to the United States economy as we would like. It is, however, well worth bearing in mind that over the past five years what we in Ireland have bought from the United States has more than doubled in value. Our economic advance to which America has contributed so much makes us better customers and enables us, in turn, to contribute, in our own small way, to the prosperity and well-being of our friends in America.

Like any country, we have our problems too. The last ten years have shown us all that a violent victory of one side over the other in Northern Ireland, be it a Nationalist or a Unionist victory, would only breed further violence for generations to come and that the mere withdrawal of Britain would not of itself unite Irish men and women who are divided by a legacy of bitterness and mutual fear and distrust. No substitute for agreement between the Irish people will work. No substitute for consent will last. No substitute for the political process will produce a just and viable solution. We are committed to the unity of the Irish people, which we are now, more than ever, convinced can be secured only by agreement between the two main traditions in Ireland, which would respect the rights and safeguard the interest of all concerned. The benefits in terms of peace and stability—which Northern Ireland has never truly enjoyed—and in economic terms, not only for the island of Ireland but for the United Kingdom, would be immense. The cost of the present troubles to both Ireland and Britain is measured in hundreds of millions of pounds. Their cost in human life and suffering is immeasurable. That is what makes the attainment of stability such an imperative. That is what makes a solution based on a just and lasting peace so much in the interest of the people of the two countries.

Since returning to Government, I have met twice with my British counterpart, Prime Minister Callaghan, and I have told him clearly that my Government and our people see British support for Irish unity as being in the interest of the British as well as the Irish peoples. The British Government have not so far supported this policy. But I can report a number of concrete achievements from our talks.

Firstly, because of a proposal to increase Northern Ireland representation in the Westminster Parliament, there was some apprehension of a move towards integration of Northern Ireland with Britain; I have the assurance of Mr. Callaghan that there is not a scintilla of movement towards integration. Such a move would of course produce the consequences which nobody could foretell.

Secondly, both the Irish and the British Governments have agreed that in the short-term they will encourage the political parties within Northern Ireland to come together in a system of devolved government based on the principle of power-sharing, partnership or participation—however described—which both sections of the community can support and sustain.

Next, both Governments have, at our suggestion, taken practical steps to develop economic cooperation, particularly within the context of the European Community. Within the Community, the interests of Northern Ireland are often closer to those of the rest of the island than they are to those of Britain. This is true of agriculture, of the industrial and competition policies of the Community and, particularly of regional policy and regional development. The problems of Northern Ireland—like our own—are acute. We are particularly anxious to work in friendship and peace with its people in a common effort to eradicate the unemployment and low growth which have plagued both parts of our island and to which the present divisions contribute in no small way. We have achieved a fair measure of success in our policies in the Republic. In 1965, the gross domestic product per head was three-quarters of that of Northern Ireland. It is now about the same level—or possibly even a little more. Our progress within the European Community has contributed to this development. We want to see this progress shared and we believe that this can best be done within the framework which geography and economics dictate. It is towards this unity of approach that logic points: and above all, it is that way that history is moving.

President Carter in his policy statement last year on Northern Ireland undertook to provide American help in the event of a political solution. We welcomed this and so did most of the political leaders in Ireland. The prospect of practical assistance of this kind is what is necessary and what will tell in the end.

Your President, as you know, revealed in the course of a tribute to Speaker O'Neill two weeks ago, that his policy statement on Northern Ireland was formulated in consultation with the Speaker. I would like to take this opportunity to express the sincere gratitude and appreciation of my Government and people to Speaker O'Neill, Senators Kennedy and Moynihan and Governor Carey for their support for moderate and workable policies in Ireland and for their rejection of violence. With us they share the hope that our people will be united by agreement. With us they are concerned that the British Government should be more active in promoting political progress. These activities and statements are welcomed by all sides in Ireland because all sides know that these men are motivated by genuine concern.

I said earlier that a victory in Northern Ireland of one side over the other would be no victory but a disaster. It would not unite the people there: rather it would divide them even more deeply. Now, I want to say this to all our friends in America, public officials and private citizens alike. Any lobby or organisation which has or has had associations with the violence of the fanatics on one side or the other cannot help the Irish on the road to unity. It can only put obstacles on that road and divide both the Irish in Ireland and the Irish in America. Any person in this country who aligns himself with such a group for whatever reason is not helping us, because in Ireland his role will be seen as exploiting the differences between our people and not reconciling them. I make no apology for saying this here. The divided people of Northern Ireland have suffered more than enough.

Your leaders have indeed shown compassion, courage and responsibility in dealing with Ireland. Thousands of private citizens in this country have in their own way tried to help. I have already instanced the very real way that Irish-Americans can help Ireland by supporting our tourism, our exports, our investment programme. Americans can and do help also by supporting worthwhile and legitimate funds such as the Ireland Fund, Ireland's Children and Inter-Church Emergency Fund. Only two weeks ago an

Irish-American, Mr. William O'Donnell, whose parents had been evicted many decades ago from their farm in Ireland, pledged 100,000 dollars to a new trust, the O'Neill Trust, set up under the Ireland Fund to promote jobs and not destruction in Ireland. To him, to countless others in the great Irish-American community and to you, the friends of Ireland gathered here this evening, let me on behalf of the Irish Government and people say, "Nar laga Dia bhur lamha, May God Keep up Your Strength".

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STATEMENT BY DR. GARRET FITZGERALD, T.D. LEADER OF THE OPPOSITION IN THE DAIL (IRISH PARLIAMENT) AND LEADER OF THE FINE GAEL PARTY, WASHINGTON, D.C., JUNE 14, 1978

Dr. FitzGerald expressed his satisfaction at the strong lead that has been given by Speaker O'Neill and Senator Kennedy, and other prominent political leaders, to Irish-American opinion in relation to Northern Ireland. He said that the statement issued jointly by the Speaker and the Senator, in conjunction with Senator Moynihan and Governor Carey fifteen months ago, at the time when Dr. FitzGerald last visited Washington as Minister for Foreign Affairs, had a beneficial effect in reducing support in the United States for violence in Ireland and in promoting support for political action in favour of power-sharing in Northern Ireland. Dr. FitzGerald also expressed his concern at the lack of political progress in Northern Ireland arising in large measure from the political deadlock at Westminster, which could endanger the whole political process in the North.

Dr. FitzGerald supported strongly the stand on violence in Northern Ireland taken by the Taoiseach (Prime Minister), Mr. Jack Lynch, during his recent visit to the United States and condemnation of the Irish National Caucus and of the public identification of Congressman Mario Biaggi with supporters of violence in Ireland.

Congressional hearings under the auspices of Congressman Biaggi could be very damaging indeed to the cause of peace in Northern Ireland and to the promotion of human rights. Human rights could not be advanced by being associated through such a hearing with those most hostile to the basic human right to live and to be free from viz the IRA and its supporters in the United States and Ireland. Nor could the cause of peace in Ireland be served by a hearing which is clearly being pressed by people linked to the promotion of violence.

During the course of his visit to Washington, Dr. FitzGerald also visited the State Department and had discussions on Northern Ireland with Counselor Nimitz and other officials.

Dr. and Mrs. FitzGerald left later to-day for Atlanta where he will to-morrow address the Southern Centre for International Studies on Direct Elections to the European Parliament. On Thursday, with other members of the Irish delegation to the Trilateral Commission, including Senator and Mrs. Myles Staunton, Dr. and Mrs. FitzGerald will attend a dinner given by the IDA in New York, and on Friday he will address the Foreign Policy Association in New York on "Brussels and Washington—New Perspectives on the Northern Ireland Issue."

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STATEMENT BY MR. FRANK CLUSKEY, T.D., LEADER OF THE IRISH LABOUR PARTY, WASHINGTON, D.C., JUNE 14, 1978

Mr. Cluskey issued the following statement today:

"On the occasion of my visit to the United States I would like to associate myself with the statements on the question of violence in Northern Ireland made by the Taoiseach (Irish Prime Minister) Jack Lynch T.D. when he recently visited the United States. I share Mr. Lynch's view that the use of violence in Northern Ireland is not alone morally reprehensible but is a major obstacle to the unity of the Irish people and to political progress in Northern Ireland. As leader of the Irish Labour Party I join with the Irish Prime Minister Mr. Lynch, and indeed with the leader of the other Opposition Party Fine Gael, Dr. Garret FitzGerald, in condemning the activities of the Irish Northern Aid Committee and the Irish National Caucus. These Organizations thus stand condemned by the entire spectrum of Irish political leadership. Together with the leaders of the other two Parties, I would wish to express my deep concern about the activities and associations of Congressman Mario Biaggi and in particular his public identification when in Ireland with supporters of violence.

The cause of human rights is a basic goal of my Political Party. That cause will not be helped if it is abused by those who have or who have had a public identification with the cause of violence. It is for this reason that I am concerned to learn of efforts being made to arrange Congressional hearings under the auspices of persons in the United States who have had an association with violence. Hearings under such auspices would not alone provide a platform for those who are destroying Irish lives but would create an impression, which would be tragic, that the cause of violence enjoys considerable political influence in the Capital of this great country".

Mr. Cluskey said that when in meeting American leaders he had expressed the gratitude of his Party particularly to Speaker O'Neill and Senator Kennedy for their activities in support of a peaceful solution. He also indicated that his Party warmly welcomed President Carter's policy statement on Northern Ireland of August 30, 1977, as a significant encouragement to those who are seeking a political solution in Northern Ireland by agreement which would involve participation by the elected leaders of the two sections of the community.

Mr. Cluskey told American leaders with whom he spoke that he saw the need for British active support for a power-sharing solution as imperative. Mr. Cluskey said that all the energies of these political leaders who wished to help bring about a solution in Northern Ireland should be concentrated specifically on the promotion of power-sharing, and the apparent lack of political will by the British Government in pursuing their own declared policy with regard to power-sharing was potentially extremely dangerous and could in fact undermine the position of these people in Northern Ireland particularly from the minority group who have been endeavouring, under very difficult and dangerout circumstances, to engage in rational politics over the years. The preoccupation of the British Government with their own internal political difficulties is obviously a major factor in the lack of progress on the political front in Northern Ireland and one which persons concerned with the preservation of human life in Northern Ireland must find deeply disturbing.

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BRUSSELS AND WASHINGTON—NEW PERSPECTIVES ON THE NORTHERN IRELAND ISSUE

(Speech to Foreign Policy Association, New York City, by Dr. Garret FitzGerald, June 16, 1978)

The Northern Island problem will be resolved in Northern Irsland, and by the people of Northern Ireland, just as the wider problem of the political future of the island of Ireland will be settled by the people of that island, in eventual agreement with each other. No outside force can impose a solution that will work or will last.

At the same time, no solution can be conceived which does not involve constructive British participation; Britain as the existing sovereign power in Northern Ireland has indeed a particular and onerous responsibility to discharge. Its present ability to discharge this responsibility is weakened by the fact that it is governed by a minority administration, which is at times dependent for support on the votes of members of parliament from Northern Ireland.

It is against this background that my party last February took the decision, which was speedily followed by the governing Fianna Fail Party under the Premier, Jack Lynch—to undertake a study of the economic and political implications of eventual Irish political unity and of the form this might take—most probable federal or confederal. In recent years, all the political parties in the Republic have been inhibited from clarifying their policies with respect to the eventual shape of Irish political unity by concern lest public in-depth discussion of this issue, might undermine the prospects for a favourable outcome to discussions between the political parties in Northern Ireland, which during most of this recent period have either been under way, or in prospect. The fact that no such discussions can now take place in a serious way until after the British General Election has eliminated this obstacle to the clarification by parties in the Republic of the concept of political unity, and my party's decision to initiate this process was widely welcomed, by the unionist press in Northern Ireland as well as by other sectors of opinion.

Given the persistence of political stalemate in Northern Ireland for so many years, at the cost of almost 2,000 lives, the vast majority of them Irish, through the IRA campaign of violence and the reactions it has created on the other side, the question is sometimes asked whether countries outside the two States directly concerned can help in some way to a further solution. The significance of EEC membership has also been raised in this connection.

Hitherto the EEC has made relatively little psychological impact in the Northern Ireland community, which has understandably been almost totally preoccupied with its own internal convulsions. The contrast with the Irish State, which is a full member of the nine member Community, and has benefited notably from this membership, is very marked. South of the border, the EEC looms very large indeed—possibly absorbing a greater share of public interest than in any other member State.

Yet the EEC is subtly beginning to work a change in the relationship between Northern Ireland on the one hand and the rest of Ireland and Great Britain on the other. Amongst political sophisticates, at least, and, outside the political arena, amongst the farming community in Northern Ireland, a realization is growing that the area's interests within the Community are not being adequately served, indeed cannot be adequately served, through its representation in Brussels by a British Government. Any British Government must necessarily be concerned above all with the interests of the 97¼ % of the people of the United Kingdom who live in Great Britain—and whenever a conflict arises between British and Northern Ireland interests in the Community context, there can be no doubt as to which will prevail.

Such conflicts of interest in fact arise frequently. Thus in relation to the Common

Agricultural Policy, Britain's 'cheap food' orientation is clearly antithetical to the interests of Northern Ireland, where agriculture still looms large in the economy. By contrast, when the Government of the Irish State is fighting its corner in Brussels, to defend the Common Agricultural Policy against British onslaughts, it is Irish not British Ministers who are working in the interest of Northern Ireland and its farmers. Even the most Loyalist of Northern Ireland farmers is aware of this fact, and recognizes as do Unionist politicians privately, the importance to him of the Republic's actions in EEC farm negotiations.

The same is true in respect of regional policy, where the Irish Government's plea for a greater measure of financial recognition for the most depressed areas of the Community—Southern Italy, and Ireland, North as well as South—was blocked four years ago by British insistence that equal weight be given to the needs of all areas whose income per head fell below an arbitrarily constructed level. The result was that Britain, followed inevitably by France, secured almost half the Regional Fund, so that Germany (understandably perhaps in the circumstances), decided to cut the Fund in half, as it had no wish to find itself subsidizing its two main commercial rivals in the Community, France and Britain, rather than Southern Italy and Ireland.

The Irish Government again had to defend the interests of Northern Ireland in the debate on the composition of the new directly-elected European Parliament which is to come into existence next June. It was on the insistence of the Irish Government that the Parliament was enlarged to give Northern Ireland three rather than two seats, as Britain had proposed.

These examples of how the common interest of Ireland, North and South—which was a feature of the Irish situation up till the period of industrialization in Northern Ireland in the first half of the last century—has reemerged under the conditions of EEC membership. For the moment, this common interest is not clearly visible to the two sections of the people in Northern Ireland, who are preoccupied with the—to them—more vital questions of their senses of identity as different kinds of Irish people. But, in the long run, the common economic interests of the two parts of Ireland, and the notable divergence of these interests from those of Britain, will undoubtedly prove a significant factor in the evolution of the political situation between North and South.

In recent times, the United States has come to be seen as having a potentially important role to play also. Quite a part from the great contribution to Irish peace made by the Irish-American political leaders, Speaker Tip O'Neill, Senator Edward Kennedy, Senator Pat Moynihan and Governor Hugh Carey, in giving a lead to the Irish-American opinion in support of the democratic will of the whole Irish people in favour of a peaceful solution, and against the provision of money and arms to the small group of IRA-men who still seek to hold the whole island of Ireland to ransom, there has been President Carter's initiative. His offer of major financial assistance for the recovery of the shattered economy of Northern Ireland after its politicians have found a way of working together in Government, has yet to yield fruit, but its existence is a potentially important factor in the struggle to secure peace and a just solution to the Irish problem.

To appreciate the significance of these initiatives by Irish-American leaders and by President Carter, one has to understand the true nature of the Northern Ireland problem today. Whatever may have been the case in the past, this problem does not now derive from a British desire to retain a strategic foothold in this corner of the island—indeed there are many indications that Britons would prefer to disengage from this commitment if they could do so without risking a breakdown of order in Northern Ireland. The heart of the problem today lies rather in the relationship between the two sections of the community in the North, and most particularly in the intransigence of the majority Unionist protestant community deriving from their fears of extremist Irish nationalists within Northern Ireland, in the Republic and around the world.

Among the encouraging developments of recent years have been the constant support for moderate policies and the constant rejection of violence by the overwhelming majority of the Nationalist catholic population in Northern Ireland. This has done much to undermine the Unionist myth that their Nationalist fellow citizens in Northern Ireland pose a threat to their security and civil rights.

At the same time, all three political parties in the Republic have unambiguously rejected violence and are united in their support for the principle of unification by consent. Successive Irish Governments, alternating in power during this decade, have taken effective action against that tiny minority of extremists, mainly from Northern Ireland, who have sought to use the Republic as a base from which to foment violence in the North. All this has gone a long way towards removing the suspicion of Northern Unionists that the people or the leaders and the Governments of the Republic wish to undermine their survival as a community.

One further step remained if the fears of the Northern Unionists, which lie behind their intransigence, were to be stilled, thus opening the way towards a solution of the problem of governing Northern Ireland. It was essential to establish also that neither the Government of the United States nor the leaders of the Irish-American community planned or even wished to force the Unionists of Northern Ireland to join with their fellow Irishmen in the Republic against their will. The repeated calls for an end to violence and an end to American support for violence by these eminent Americans of Irish descent, Speaker O'Neill, Senators Kennedy and Moynihan and the Governor of this State, have helped to achieve this further reassurance, laying to rest a great deal of Unionist paranoia about the Irish in America and establishing the credibility of those very Irish-American leaders to help solve the problem of Northern Ireland. The actions of these leaders are now clearly seen to be responsible, constructive, generous and even-handed rather than narrow, one-sided, selfish or potentially destructive.

We in Ireland, North and South, catholics and protestants, know that these leaders do not gain any votes or even any ephemeral support by taking the stand they have taken, but we can assure them that by their words and their actions they have helped to save lives and to improve the atmosphere in Northern Ireland for political negotiations.

We recently heard President Carter himself tell us that his policy statement on Northern Ireland last summer was in fact formulated in consultation with Speaker O'Neill. It is precisely because the Speaker and indeed the President have, with the Speaker's other Irish-American colleagues, effectively tried to address both tradition in Ireland, without giving one side or the other the advantage of claiming American influence, that they have earned the right to play a role in the solution of this problem. They have also earned this right because they have recognized the delicacy of the situation and the dangers inherent in any thoughtless actions by American leaders. In doing this, they are in marked contrast to Congressman Mario Biaggi who visited Ireland at the request of the Irish National Caucus, an organization that has repeatedly supported the cause of violence; who, while in Ireland, identified publicly with extremists on the nationalist side; and who has argued that leading supporters of the cause of violence in Ireland should, despite in some cases a proven record of involvement with violence, be permitted and indeed encouraged to visit the United States.

In speaking of the role the United States might play in helping solve the problem of Northern Ireland, I could not let this opportunity pass without strongly associating myself as leader of the opposition of the Republic of Ireland with the recent warning by the Irish Prime Minister, Mr. Jack Lynch, to Americans in relation to groups such as Noraid and the Irish National Caucus and activities such as those of Congressman Biaggi. The Irish Labour Party, the other party in our Parliament, also associates itself with our Prime Minister in this matter. The same warnings have been made to Irish-Americans by the leadership of the party that represents the vast majority of the Nationalists in Northern Ireland, the SDLP.

We, therefore, have a position where the entire spectrum of political opinion in the Republic, and the leadership of the SDLP in Northern Ireland, are united in asking Irish-Americans who would like to help those of us in Ireland who support Irish unity by agreement, to reject Noraid and the Irish National Caucus and to be aware that the activities of Mr. Biaggi are profoundly unhelpful so far as we are concerned.

President Carter on August 30 of last year joined those responsible Irish-American leaders I have mentioned calling for an end to violence and an end to support for violence in the United States. The President also joined the British and Irish Governments in calling for a just solution that would involve both sections of the community in Northern Ireland and protect human rights, and which the people of Northern Ireland as well as the British and Irish Governments could support. While I should say that the President in a telegram to me of October, 1976 had already before his election set out his support for such a policy, it is important to note that his statement of August 30 last was the first by an American President in office to outline the form of solution of the Northern Ireland problem that his Administration would like to see. I would add that this form of solution has the support of the British and Irish Governments and, as recent polls have demonstrated, of the vast majority of people in Northern Ireland.

The President in this statement also committed the United States Government to provide job-creating aid to Northern Ireland in the event that a peaceful settlement could be achieved. This commitment was welcomed by the Irish and British Governments and the leaders of all moderate parties in the island of Ireland because it clearly provides an inducement to politicians in Northern Ireland to work for a solution. All politicians like to play a role in bringing new jobs into their areas and there are very few politicians of even the most extreme views in Northern Ireland who would wish to be seen to reject the opportunity of helping to find jobs for their very many unemployed constituents.

Against this EEC and North American background, it seems to me that we should, together with the British Government and those other Governments with which we have intimate and important connections, notably our partners in the European Community and the United States, (towards which all the Irish people, North and South, look with almost unique affection) examine ways in which we could together ensure the long-term stability and development of our island.

I have said that it is my firm belief that it is now increasingly in the objective interest of all the people of Northern Ireland that in some key areas they should work jointly with us rather than with Britain. I would hope that their understanding of this as a sensible and materially worthwhile approach would grow as violence dies out and reconciliation promotes trust and confidence between the two traditions in Irish life. A major obstacle to securing understanding and support for such a development is the sense of economic dependence on the British Government that has grown up particularly in recent years on the part of the people of Northern Ireland. A principal source of this attitude has been the British subsidy to maintain the public services of Northern Ireland at the level of the rest of the United Kingdom—a subsidy which, partly because of special costs imposed by violence in the North, now amounts to one and one-half billion dollars over and above revenues collected in Northern Ireland.

In short, a very difficult problem in developing a new Irish understanding would be the replacement of this subsidy, were it to be withdrawn even gradually. Now, while the Carter policy statement in no way envisages at this point that the United States Government itself is committed to support for Irish unity, there is in this initiative a definite implication that the United States Government would like to help if it could in implementing any solution of the Irish problem that had the support of the people in Northern Ireland.

My position, and the position of public opinion in the Republic of Ireland, is that Irish unity should come only by consent of the people of Northern Ireland. It is my view that if we can secure the consent of the majority of the people of Northern Ireland to seeing a form of Irish unity as the long-term solution to their problems, it would be important, that not alone the British Government but the United States Government and the Governments of our partners in the European Community should be willing to help to implement the will of the people of Northern Ireland in that regard.

Perhaps the most important aspect at this moment of President Carter's statement is that it shows concern and provides encouragement to those who are trying to find a solution. Like the position taken by the four Irish-American leaders, President Carter's statement is a compassionate, generous and encouraging policy that has helped to clear the way for a political solution to the immediate problem of the achievement of developed self-government within Northern Ireland on a basis of shared responsibility between the two sections of the community there, and that may also have pointed a way forward toward an eventual agreed solution of the problem of Irish unity.●

## THE SUPREME COURT DECISION ON RIGHTS OF THE PRESS

● Mr. MARK O. HATFIELD. Mr. President, on Wednesday, May 31, 1978 the United States Supreme Court, in the case of Zurcher v. the Stanford Daily, announced that the first amendment does not protect newspaper offices from being searched by police, with a warrant, for information on evidence they expect to find.

In reaching the decision, the Supreme Court rejected the argument of the Nation's press that subpenas, and not search warrants, were a more appropriate means for obtaining information from the newspaper files, as long as no member of the staff was suspected of criminal involvement.

The case evolved from a 1971 search of the offices of the Stanford Daily at Stanford University. The search occurred after police and demonstrators clashed at the Stanford University Hospital resulting in the injury of nine policemen. A warrant was obtained by the police to search the files, photo laboratory, desks and wastebaskets of the Stanford Daily in a fruitless search for the identity of the demonstrators responsible for the injuries to the policemen.

Mr. President, I am concerned about the implications of the Supreme Court decision on the 4th and 14th amendment rights of the Nation's press to be free from unreasonable searches. Legislation has been proposed to insure that these rights will be protected and I will be considering this bill very closely. Because of the far reaching potential impact of this decision, I ask that the decision be printed in the RECORD.

The decision follows:

[NOS. 76–1484 AND 76–1600]

SYLLABUS

James Zurcher, Etc., et al., Petitioners, 76–1484 *v.* The Stanford Daily et al.

Louis P. Bergna, District Attorney, and Craig Brown, Petitioners, 76–1600 *v.* The Stanford Daily et al.

On Writs of Certiorai to the United States Court of Appeals for the Ninth Circuit.

(May 31, 1978)

Respondents, a student newspaper that had published articles and photographs of a clash between demonstrators and police at a hospital, and staff members, brought this action under 42 U.S.C. § 1983 against, *inter alia*, petitioners, law enforcement and district attorney personnel, claiming that a search pursuant to a warrant issued on a judge's finding of probable cause that the newspaper (which was not involved in the unlawful acts) possessed photographs and negatives revealing the identities of demonstrators who had assaulted police officers at the hospital and deprived respondents of their constitutional rights. The District Court granted declaratory relief, holding that the Fourth Amendment as made applicable to the States by the Fourteenth forbade the issuance of a warrant to search for materials in possession of one not suspected of crime unless there is probable cause, based on facts presented in a sworn affidavit, to believe that a subpoena *duces tecum* would be impracticable. Failure to honor the subpoena would not alone justify issuance of a warrant; it would also have to appear that the possessor of the objects sought would disregard a court order not to remove or destroy them. The court also held that where the innocent object of the search is a newspaper First Amendment interests make the search constitutionally permissible "only in the rare circumstances where there is a *clear showing* that (1) important materials will be destroyed or removed from the jurisdiction; *and* (2) a restraining order would be futile." The Court of Appeals affirmed. *Held:*

1. A State is not prevented by the Fourth and Fourteenth Amendments from issuing a warrant to search for evidence simply because the owner or possessor of the place to be searched is not reasonably suspected of criminal involvement. The critical element in a reasonable search is not that the property owner is suspected of crime but that there is reasonable cause to believe that the "things" to be searched for and seized are located on the property to which entry is sought.

2. The District Court's new rule denying search warrants against third parties and insisting on subpoenas would undermine law enforcement efforts since search warrants are often used early in an investigation before all the perpetrators of a crime have been identified; and the seemingly blameless third party may be implicated. The delay in employing a subpoena *duces tecum* could easily result in disappearance of the evidence. Nor would the cause of privacy be served since search warrants are more difficult to obtain than subpoenas.

3. Properly administered, the preconditions for a search warrant (probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness), which must be applied with particular exactitude when First Amendment interests would be endangered by the search, are adequate safeguards against the interference with the press' ability to gather, analyze, and disseminate news that respondents claim would ensue from use of warrants for third-party searches of newspaper offices.

550 F. 2d 464, reversed.

WHITE, J., delivered the opinion of the Court, in which BURGER C. J., and BLACKMUN, POWELL, and REHNQUIST, JJ., joined. POWELL, J., filed a concurring opinion. STEWART, J., filed dissenting opinion, in which MARSHALL, J., joined. STEVENS, J., filed a dissenting opinion. BRENNAN, J., took no part in the consideration or decision of the cases.

Mr. Justice White delivered the opinion of the Court.

The terms of the Fourth Amendment, applicable to the State by virtue of the Fourteenth Amendment, are familiar:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

As heretofore understood, the Amendment has not been a barrier to warrants to search property on which there is probable cause to believe that fruits, instrumentalities, or evidence of crime is located, whether or not the owner or possessor of the premises to be searched is himself reasonably suspected of complicity in the crime being investigated. We are now asked to reconstrue the Fourth Amendment and to hold for the first time that when the place to be searched is occupied by a person not then a suspect, a warrant to search for criminal objects and evidence reasonably believed to be located there should not issue except in the most unusual circumstances, and that except in such circumstances, a subpoena *duces tecum* must be relied upon to recover the objects or evidence sought.

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Late in the day on Friday, April 9, 1971, officers of the Palo Alto Police Department and of the Santa Clara County Sheriff's Department responded to a call from the director of

the Stanford University Hospital requesting the removal of a large group of demonstrators who had seized the hospital's administrative offices and occupied them since the previous afternoon. After several futile efforts to persuade the demonstrators to leave peacefully, more drastic measures were employed. The demonstrators had barricaded the doors at both ends of a hall adjacent to the administrative offices. The police chose to force their way in at the west end of the corridor. As they did so, a group of demonstrators emerged through the doors at the east end and, armed with sticks and clubs, attacked the group of nine police officers stationed there. One officer was knocked to the floor and struck repeatedly on the head; another suffered a broken shoulder. All nine were injured.[1] There were no police photographers at the east doors, and most bystanders and reporters were on the west side. The officers themselves were able to identify only two of their assailants, but one of them did see at least one person photographing the assault at the east doors.

On Sunday, April 11, a special edition of the Stanford Daily (Daily), a student newspaper published at Stanford University, carried articles and photographs devoted to the hospital protest and the violent clash between demonstrators and police. The photographs carried the byline of a Daily staff member and indicated that he had been at the east end of the hospital hallway where he could have photographed the assault on the nine officers. The next day, the Santa Clara County District Attorney's Office secured a warrant from the municipal court for an immediate search of the Daily's offices for negatives, film and pictures showing the events and occurrences at the hospital on the evening of April 9. The warrant issued on a finding of "just, probable and reasonable cause for believing that: Negatives and photographs and films, evidence material and relevant to the identification of the perpetrators of felonies, to wit, Battery on a Peace Officer, and Assault with a Deadly Weapon, will be located [on the premises of the Daily]." App. 31–32. The warrant affidavit contained no allegation or indication that members of the Daily staff were in any way involved in unlawful acts at the hospital.

The search pursuant to the warrant was conducted later that day by four police officers and took place in the presence of some members of the Daily staff. The Daily's photographic laboratories, filing cabinets, desks, and waste paper baskets were searched. Locked drawers and rooms were not opened. The officers apparently had opportunity to read notes and correspondence during the search; but contrary to claims of the staff, the officers denied that they had exceeded the limits of the warrant.[2] They had not been advised by the staff that the areas they were searching contained confidential materials. The search revealed only the photographs that had already been published on April 11, and no materials were removed from the Daily's office.

A month later the Daily and various members of its staff, respondents here, brought a civil action in the United States District Court for the Northern District of California seeking declaratory and injunctive relief under 42 U.S.C. § 1983 against the police officers who conducted the search, the chief of police, the district attorney and one of his deputies, and the judge who had issued the warrant. The complaint alleged that the search of the Daily's office had deprived respondents under color of state law of rights secured to them by the First, Fourth, and Fourteenth Amendments of the United States Constitution.

Footnotes at end of article.

The District Court denied the request for an injunction but on respondents' motion for summary judgment, granted declaratory relief. *Stanford Daily* v. *Zurcher*, 353 F. Supp. 124 (ND Cal. 1972). The court did not question the existence of probable cause to believe that a crime had been committed and to believe that relevant evidence would be found on the Daily's premises. It held, however, that the Fourth and Fourteenth Amendments forbade the issuance of a warrant to search for materials in possession of one not suspected of crime unless there is probable cause to believe, based on facts presented in a sworn affidavit, that a subpoena *duces tecum* would be impracticable. Moreover, the failure to honor a subpoena would not alone justify a a warrant; it must also appear that the possessor of the objects sought would disregard a court order not to remove or destroy them. The District Court further held that where the innocent object of the search is a newspaper, First Amendment interests are also involved and that such a search is constitutionally permissible "only in the rare circumstances where there is a *clear showing* that (1) important materials will be destroyed or removed from the jurisdiction; *and* (2) a restraining order would be futile." *Id.*, at 135. Since these preconditions to a valid warrant had not been satisfied here, the search of the Daily's offices was declared to have been illegal. The Court of Appeals affirmed *per curiam*, adopting the opinion of the District Court. 550 F. 2d 464 (CA9 1977).[3] We issued the writs of certiorari requested by petitioners. —— U.S. —— (1977).[4] We reverse.

II

The issue here is how the Fourth Amendment is to be construed and applied to the "third party" search, the recurring situation where state authorities have probable cause to believe that fruits, instrumentalities, or other evidence of crime is located on identified property but do not then have probable cause to believe that the owner or possessor of the property is himself implicated in the crime that has occurred or is occurring. Because under the District Court's rule impracticability can be shown only by furnishing facts demonstrating that the third party will not only disobey the subpoena but will also ignore a restraining order not to move or destroy the property, it is apparent that only in unusual situations could the State satisfy such a severe burden and that for all practical purposes the effect of the rule is that fruits, instrumentalities, and evidence of crime may be recovered from third parties only by subpoena, not by search warrant. At least, we assume that the District Court did not intend its rule to be toothless and anticipated that only subpoenas would be available in many cases where without the rule a search warrant would issue.

It is an understatement to say that there is no direct authority in this or any other federal court for the District Court's sweeping revision of the Fourth Amendment.[5] Under existing law, valid warrants may be issued to search *any* property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found. Nothing on the face of the Amendment suggests that a third-party search warrant should not normally issue. The warrant clause speaks of search warrants issued on "probable cause" and "particularly describing the place to be searched and the persons or things to be seized." In situations where the State does not seek to seize "persons" but only those " things" which there is probable cause to believe are located on the place to be searched, there is no apparent basis in the language of the Amendment for also imposing the requirements for a valid arrest—probable cause to believe that the third party is implicated in the crime.

As the Fourth Amendment has been construed and applied by this Court, "when the State's reason to believe incriminating evidence will be found becomes sufficiently great, the invasion of privacy becomes justified and a warrant to search and seize will issue." *Fisher* v. *United States*, 425 U.S. 391, 400 (1976). In *Camara* v. *Municipal Court*, 387 U.S. 523, 534–535 (1967), we indicated that in applying the "probable cause" standard "by which a particular decision to search is tested against the constitutional standard of reasonableness," it is necessary "to focus upon the governmental interest which allegedly justifies the official intrusion" and that in criminal investigations, a warrant to search for recoverable items is reasonable "only when there is 'probable cause' to believe they will be uncovered in a particular dwelling." Search warrants are not directed at persons; they authorize the search of "places" and the seizure of "things," and as a constitutional matter they need not even name the person from whom the things will be seized, *United States* v. *Kahn*, 415 U.S. 143, 155 n. 15 (1974).

Because the State's interest in enforcing the criminal law and recovering evidence is the same whether the third party is culpable or not, the premise of the District Court's holding appears to be that State entitlement to a search warrant depends on the culpability of the owner or possessor of the place to be searched and on the State's right to arrest him. The cases are to the contrary. Prior to *Camara* v. *Municipal Court*, *supra*, and *See* v. *City of Seattle*, 387 U.S. 541 (1967), the central purpose of the Fourth Amendment was seen to be the protection of individual against official searches for evidence to convict him of a crime. Entries upon property for civil purposes, where the occupant was suspected of no criminal conduct whatsoever, involved a more peripheral concern and the loss intense "right to be secure from intrusion into personal privacy." *Frank* v. *Maryland*, 359 U.S. 360, 365 (1959); *Camara* v. *Municipal Court*, *supra*, at 530. Such searches could proceed without warrant, as long as the State's interest was sufficiently substantial. Under this view, the Fourth Amendment was more protective where the place to be searched was occupied by one suspected of crime and the search was for evidence to use against him. *Camara* and *See*, disagreeing with *Frank* to this extent, held that a warrant is required where entry is sought for civil purposes, as well as when criminal law enforcement is involved. Neither case, however, suggested that to secure a search warrant the owner or occupant of the place to be inspected or searched must be suspected of criminal involvement. Indeed, both cases held that a less stringent standard of probable cause is acceptable where the entry is not to secure evidence of crime against the possessor.

We have suggested nothing to the contrary since *Camara* and *See*. Indeed, *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970), and *United States* v. *Biswell*, 406 U.S. 311 (1972), dispensed with the warrant requirement in cases involving limited types of inspections and searches.

The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought.[6] In *Carroll* v. *U.S.* 267 U. S. 132 (1925), it was claimed that the seizure of liquor was unconstitutional because the occupant of a car stopped with probable cause to believe that it was carrying illegal liquor was not subject to arrest. The Court, however, said:

"If their theory were sound, their conclusion would be. The validity of the seizure then would turn wholly on the validity of the arrest without a seizure. But the theory is unsound. The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offered against the law." *Id.* at 158–159.

The Court's ultimate conclusion was that "the officers here had justification for the search and seizure," that is, a reasonable "belief that intoxicating liquor was being transported in the automobile which they stopped and searched." 267 U.S., at 162. See also *Husty* v. *United States*, 282 U.S. 694, 700–701 (1931).

Rule 41 of the Federal Rules of Criminal Procedure, which reflects "[t]he Fourth Amendment's policy against unreasonable search and seizures." *United States* v. *Ventresca*, 380 U.S. 102, 105 n. 1 (1965), authorizes warrants to search for contraband, fruits or instrumentalities of crime or "any . . . property that constitutes evidence of the commission of a criminal offense. . . ." Upon proper showing, the warrant is to issue "identifying the property and naming or describing the person or place to be searched." Probable cause for the warrant must be presented, but there is nothing in the Rule indicating that the officers must be entitled to arrest the owner of the "place" to be searched before a search warrant may issue and the "property" may be searched for and seized. The Rule deals with warrants to search, and is unrelated to arrests. Nor is there anything in the Fourth Amendment indicating that absent probable cause to arrest a third party, resort must be had to a subpoena.[7]

The Court of Appeals for the Sixth Circuit expressed the correct view of Rule 41 and of the Fourth Amendment when, disagreeing with the decisions of the Court of Appeals and the District Court in the present case, it ruled that "[o]nce it is established that probable cause exists to believe a federal crime has been committed a warrant may issue for the search of any property which the magistrate has probable cause to believe may be the place of concealment of evidence of the crime." *United States* v. *Manufacturers Nat. Bank of Detroit*, 536 F. 2d 699, 703 (1976), cert. denied *sub nom. Wingate* v. *United States*, 429 U.S. 1039 (1977). Accord, *State* v. *Tunnel Citgo Services*, 149 N. J. Super. 427, 433, 374 A. 2d 32, 35 (1977).

The net of the matter is that "[s]earches and seizures in a technical sense, are independent of, rather than ancillary to, arrest and arraignment." American Law Institute. A Model Code of Pre-Arraignment Procedure, Commentary 491 (1975). The Model Code provides that the warrant application "shall describe with particularity the individuals or places to be searched and the individuals or things to be seized, and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that such individuals or things are or will be in the places, or the things are or will be in possession of the individuals to be searched." § SS 220.1 (3). There is no suggestion that the occupant of the place to be searched must himself be implicated in misconduct.

Against this background, it is untenable to conclude that property may not be searched unless its occupant is reasonably suspected of crime and is subject to arrest. And if those considered free of criminal involvement may nevertheless be searched or inspected under civil statutes, it is difficult to understand why the Fourth Amendment would prevent entry onto their property to recover evidence of a crime not committed by them but by others. As we understand the structure and language of the Fourth Amendment and our cases expounding it, valid warrants to search property may be issued when it is satisfactorily demonstrated to the magistrate that fruits, instrumentalities, or evidence of crime is located on the premises. The Fourth Amendment has itself struck the balance between privacy and public need, and there is no occasion or justification for a court to revise the Amendment and strike a new balance by denying the search warrant in the circumstances present here and by insisting that the investigation proceed by subpoena *duces tecum*, whether on the theory that the latter is a less intrusive alternative, or otherwise.

This is not to question that "reasonableness" is the overriding test of compliance with the Fourth Amendment or to assert that searches, however or whenever executed, may never be unreasonable if supported by a warrant issued on probable cause and properly identifying the place to be searched and the property to be seized. We do hold, however, that the courts may not, in the name of Fourth Amendment reasonableness, forbid the States from issuing warrants to search for evidence simply because the owner or possessor of the place to be searched is not then reasonably suspected of criminal involvement.

III

In any event, the reasons presented by the District Court and adopted by the Court of Appeals for arriving at its remarkable conclusion do not withstand analysis. First, as we have said, it is apparent that whether the third-party occupant is suspect or not, the State's interest in enforcing the criminal law and recovering the evidence remains the same; and it is the seeming innocence of the property owner that the District Court relied on to foreclose the warrant to search. But as respondents themselves now concede, if the third party knows that contraband or other illegal materials are on his property, he is sufficiently culpable to justify the issuance of a search warrant. Similarly, if his ethical stance is the determining factor, it seems to us that whether or not he knows that the sought-after articles are secreted on his property and whether or not he knows that the articles are in fact the fruits, instrumentalities, or evidence of crime, he will be so informed when the search warrant is served, and it is doubtful that he should then be permitted to object to the search, to withhold, if it is there, the evidence of crime reasonably believed to be possessed by him or secreted on his property, and to forbid the search and insist that the officers serve him with a subpoena *duces tecum*.

Second, we are unpersuaded that the District Court's new rule denying search warrants against third parties and insisting on subpoenas would substantially further privacy interests without seriously undermining law enforcement efforts. Because of the fundamental public interest in implementing the criminal law, the search warrant, a heretofore effective and constitutionally acceptable enforcement tool, should not be suppressed on the basis of surmise and without solid evidence supporting the change. As the District Court understands it, denying third-party search warrants would not have substantial adverse effects on criminal investigations because the nonsuspect third party, once served with a subpoena, will preserve the evidence and ultimately lawfully respond. The difficulty with this assumption is that search warrants are often employed early in an investigation, perhaps before the identity of any likely criminal and certainly before all the perpetrators are or could be known. The seemingly blameless third party in possession of the fruits or evidence may not be innocent at all; and if he is, he may nevertheless be so related to or so sympathetic with the culpable that he cannot be relied upon to: retain and preserve the articles that may implicate his friends, or at least not to notify those who would be damaged by the evidence that the authorities are aware of its location. In any event, it is likely that the real culprits will have access to the property, and the delay involved in employing the subpoena *duces tecum*, offering as it does the opportunity to litigate its validity, could easily result in the disappearance of the evidence, whatever the good faith of the third party.

Forbidding the warrant and insisting on the subpoena instead when the custodian of the object of the search is not then suspected of crime, involves hazards to criminal investigation much more serious than the District Court believed; and the record is barren of anything but the District Court's assumptions to support its conclusions.[8] At the very least, the burden of justifying a major revision of the Fourth Amendment has not been carried.

We are also not convinced that the net gain to privacy interests by the District Court's new rule would be worth the candle.[9] In the normal course of events, search warrants are more difficult to obtain than subpoenas, since the latter do not involve the judiciary and do not require proof of probable cause. Where, in the real world, subpoenas would suffice, it can be expected that they will be employed by the rational prosecutor. On the other hand, when choice is available under local law and the prosecutor chooses to use the search warrant, it is unlikely that he has needlessly selected the more difficult course. His choice is more likely to be based on the solid belief, arrived at through experience but difficult, if not impossible, to sustain in a specific case, that the warranted search is necessary to secure and to avoid the destruction of evidence.[10]

IV

The District Court held, and respondents assert here, that whatever may be true of third-party searches generally, where the third party is a newspaper, there are additional factors derived from the first Amendment that justify a nearly *per se* rule forbidding the search warrant and permitting only the subpoena *duces tecum*. The general submission is that searches of newspaper offices for evidence of crime reasonably believed to be on the premises will seriously threaten the ability of the press to gather, analyze, and disseminate news. This is said to be true for several reasons: first, searches will be physically disruptive to such an extent that timely publication will be impeded. Second, confidential sources of information will dry up, and the press will also lose opportunities to cover various events because of fears of the participants that press files will be readily available to the authorities. Third, reporters will be deterred from recording and preserving their recollections for future use if such information is subject to seizure. Fourth, the processing of news and its dissemination will be chilled by the prospects that searches will disclose internal editorial deliberations. Fifth, the press will resort to self-censorship to conceal its possession of information of potential interest to the police.

It is true that the struggle from which the Fourth Amendment emerged "is largely a

Footnotes at end of article.

history of conflict between the Crown and the press," *Stanford* v. *Texas*, 379 U.S. 476, 482 (1965), and that in issuing warrants and determining the reasonableness of a search, state and federal magistrates should be aware that "unrestricted power of search and seizure could also be an instrument for stifling liberty of expression." *Marcus* v. *Search Warrant*, 367 U.S. 717, 729 (1961). Where the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with "scrupulous exactitude." *Stanford* v. *Texas*, *supra*, at 485. "A seizure reasonable as to one type of material in one setting may be unreasonable in a different setting or with respect to another kind of material." *Roaden* v. *Kentucky*, 413 U.S. 496, 501 (1973). Hence, in *Stanford* v. *Texas*, the Court invalidated a warrant authorizing the search of a private home for all books, records, and other materials relating to the Communist Party, on the ground that whether or not the warrant would have been sufficient in other contexts, it authorized the searchers to rummage among and make judgments about books and papers and was the functional equivalent of a general warrant, one of the principal targets of the Fourth Amendment. Where presumptively protected materials are sought to be seized, the warrant requirement should be administered to leave as little as possible to the discretion or whim of the officer in the field.

Similarly, where seizure is sought of allegedly obscene materials, the judgment of the arresting officer alone is insufficient to justify issuance of a search warrant or a seizure without a warrant incident to arrest. The procedure for determining probable cause must afford an opportunity for the judicial officer to "focus searchingly on the question of obscenity." *Marcus* v. *Search Warrant*, *supra*, at 732; *A Quantity of Books* v. *Kansas*, 378 U.S. 205, 210 (1964); *Lee Art Theatre, Inc.* v. *Virginia*, 392 U.S. 636, 637 (1968); *Roaden* v. *Kentucky*, *supra*, at 502; *Heller* v. *New York*, 413 U.S. 483, 489 (1973).

Neither the Fourth Amendment nor the cases requiring consideration of First Amendment values in issuing search warrants, however, call for imposing the regime ordered by the District Court. Aware of the long struggle between Crown and press and desiring to curb unjustified official intrusions, the Framers took the enormously important step of subjecting searches to the test of reasonableness and to the general rule requiring search warrants issued by neutral magistrates. They nevertheless did not forbid warrants where the press was involved, did not require special showings that subpoenas would be impractical, and did not insist that the owner of the place to be searched, if connected with the press, must be shown to be implicated in the offense being investigated. Further, the prior cases do no more than insist that the courts apply the warrant requirements with particular exactitude when First Amendment interests would be endangered by the search. As we see it, no more than this is required where the warrant requested is for the seizure of criminal evidence reasonably believed to be on the premises occupied by a newspaper. Properly administered, the preconditions for a warrant—probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness—should afford sufficient protection against the harms that are assertedly threatened by warrants for searching newspaper offices.

There is no reason to believe, for example, that magistrates cannot guard against searches of the type, scope, and intrusiveness that would actually interfere with the timely publication of a newspaper. Nor, if the requirements of specificity and reasonableness are properly applied, policed, and observed, will there be any occasion or opportunity for officers to rummage at large in newspaper files or to intrude into or to deter normal editorial and publication decisions. The warran issued in this case authorized nothing of this sort. Nor are we convinced, anymore than we were in *Branzburg* v. *Hayes*, 408 U.S. 665 (1972), that confidential sources will disappear and that the press will suppress news because of fears of warranted searches. Whatever incremental effect there may be in this regard if search warrants, as well as subpoenas, are permissible in proper circumstances, it does not make a constitutional difference in our judgment.

The fact is that respondents and *amici* have pointed to only a very few instances in the entire United States since 1971 involving the issuance of warrants for searching newspaper premises. This reality hardly suggests abuse; and if abuse occurs, there will be time enough to deal with it. Furthermore, the press is not only an important, critical, and valuable asset to society, but it is not easily intimidated—nor should it be.

Respondents also insist that the press should be afforded opportunity to litigate the State's entitlement to the material it seeks before it is turned over or seized and that whereas the search warrant procedure is defective in this respect, resort to the subpoena would solve the problem. The Court has held that a restraining order imposing a prior restraint upon free expression is invalid for want of notice and opportunity for a hearing, *Carroll* v. *Princess Anne*, 393 U.S. 175 (1968), and that seizures not merely for use as evidence but entirely removing arguably protected materials from circulation may be effected only after an adversary hearing and a judicial finding of obscenity. *A Quantity of Books* v. *Kansas*, 378 U.S. 205 (1964). But presumptively protected materials are not necessarily immune from seizure under warrant for use at a criminal trial. Not every such seizure, and not even most, will impose a prior restraint. *Heller* v. *New York*, *supra*. And surely a warrant to search newspaper premises for criminal evidence such as the one issued here for news photographs taken in a public place carries no realistic threat of prior restraint or of any direct restraint whatsoever on the publication of the Daily or on its communication of ideas. The hazards of such warrants can be avoided by a neutral magistrate carrying out his responsibilities under the Fourth Amendment, for he has ample tools at his disposal to confine warrants to search within reasonable limits.

We note finally that if the evidence sought by warrant is sufficiently connected with the crime to satisfy the probable cause requirement, it will very likely be sufficiently relevant to justify a subpoena and to withstand a motion to quash. Further, Fifth Amendment and state shield law objections that might be asserted in opposition to compliance with a subpoena are largely irrelevant to determining the legality of a search warrant under the Fourth Amendment. Of course, the Fourth Amendment does not prevent or advise against legislative or executive efforts to establish nonconstitutional protections against possible abuses of the search warrant procedure, but we decline to reinterpret the Amendment to impose a general constitutional barrier against warrants to search newspaper premises, to require resort to subpoenas as a general rule, or to demand prior notice and hearing in connection with the issuance of search warrants.

V

We accordingly reject the reasons given by the District Court and adopted by the Court of Appeals for holding the search for photographs at the *Stanford Daily* to have been unreasonable within the meaning of the Fourth Amendment and in violation of the First Amendment. Nor has anything else presented here persuaded us that the Amendments forbade this search. It follows that the judgment of the Court of Appeals is reversed.

*So ordered.*

MR. JUSTICE BRENNAN took no part in the consideration or decision of this case.

FOOTNOTES

[1] There was extensive damage to the administrative offices resulting from the occupation and the removal of the demonstrators.

[2] The District Court did not find it necessary to resolve this dispute.

[3] The Court of Appeals also approved the award of attorney's fees to respondents pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988. We do not consider the propriety of this award in light of our disposition on the merits reversing the judgment upon which the award was predicated.

[4] Petitioners in No. 76–1484 are the chief of police and the officers under his command who conducted the search. Petitioners in No. 76–1600 are the district attorney and a deputy district attorney who participated in the obtaining of the search warrant. The action against the judge who issued the warrant was subsequently dismissed upon the motion of respondents.

[5] Respondents rely on four state cases to support the holding that a warrant may not issue unless it is shown that a subpoena is impracticable: *Owens* v. *Way*, 141 Ga. 796, 82 S. E. 132 (1914); *Newberry* v. *Carpenter*, 107 Mich. 567, 65 N. W. 530 (1895); *People* v. *Carver*, 172 Misc. 820, 16 N. Y. S. 2d 268 (County Ct. 1939), and *Commodity Mfg. Co.* v. *Moore*, 198 N. Y. S. 45 (Sup. Ct. 1923). None of these cases, however, stands for the proposition arrived at by the District Court and urged by respondents. The District Court also drew upon *Bacon* v. *United States*, 449 F.2d 933 (CA9 1971), but that case dealt with arrest of a material witness and is unpersuasive with respect to the search for criminal evidence.

[6] The same view has been expressed by those who have given close attention to the Fourth Amendment. "It does not follow, however, that probable cause for arrest would justify the issuance of a search warrant, or, on the other hand, that probable cause for a search warrant would necessarily justify an arrest. Each requires probabilities as to somewhat different facts and circumstances—a point which is seldom made explicit in the appellate cases . . .

This means, for one thing, that while probable cause for arrest requires information justifying a reasonable belief that a crime has been committed and that a particular person committed, a search warrant may be issued on a complaint which does not identify any particular person as the likely offender. Because the complaint for a search warrant is not 'filed as the basis of a criminal prosecution,' [citation omitted] it need not identify the person in charge of the premises or name the person in possession or any other person as the offender." LaFave, Search and Seizure: "The Course of True Law . . . Has Not . . . Run Smooth," Law Forum, Summer 1966, 255, 260–261. "Furthermore, a warrant may issue to search the premises of anyone, without any showing that the occupant is guilty of any offense whatever." T. Taylor, Two Studies in Constituntional Interpretation 48–49 (1969). "Search warrants may be issued only by a neutral and detached judicial officer, upon a showing of probable cause—that is, reasonable grounds to believe—that criminally related objects

are in the place which the warrant authorizes to be searched, at the time when the search is authorized to be conducted." [Citations omitted.] Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 358 (1974).

"Two conclusions necessary to the issuance of the warrant must be supported by substantial evidence: that the items sought are in fact seizable by virtue of being connected with criminal activity, and that the items will be found in the place to be searched. By comparison, the right of arrest arises only when a crime is committed or attempted in the presence of the arresting officer or when the officer has 'reasonable grounds to believe'—sometimes stated 'probable cause to believe'—that a felony has been committed by the person to be arrested. Although it would appear that the conclusions which justify either arrest or the issuance of a search warrant must be supported by evidence of the same degree of probity, it is clear that the conclusions themselves are not identical.

"In the case of arrest, the conclusion concerns the guilt of the arrestee, whereas in the case of search warrants, the conclusions go to the connection of the items sought with crime and to their present location." Comment, 28 U. Chi. L. Rev. 664, 687 (1961).

[7] Petitioners assert that third-party searches have long been authorized under California Penal Code § 1524, which provides that fruits, instrumentalities and evidence of crime "may be taken on the warrant from any place, or from any person in whose possession [they] may be." The District Court did not avert to this provision.

[8] It is also far from clear, even apart from the dangers of destruction and removal, whether the use of the subpoena *duces tecum* under circumstances where there is probable cause to believe that a crime has been committed and that the materials sought constitute evidence of its commission will result in the production of evidence with sufficient regularity to satisfy the public interest in law enforcement. Unlike the individual whose privacy is invaded by a search, the recipient of a subpoena may assert the Fifth Amendment privilege against self-incrimination in response to a summons to produce evidence or give testimony. See *Maness* v. *Myers*, 419 U.S. 449 (1975). This privilege is not restricted to suspects. We have construed it broadly as covering any individual who might be incriminated by the evidence in connection with which the privilege is asserted. *Hoffman* v. *United States*, 341 U.S. 479 (1951). The burden of overcoming an assertion of the Fifth Amendment privilege, even if prompted by a desire not to cooperate rather than any real fear of self-incrimination, is one which prosecutors would rarely be able to meet in the early stages of an investigation despite the fact they did not regard the witness as a suspect. Even time spent litigating such matters could seriously impede criminal investigations.

[9] We reject totally the reasoning of the District Court that additional protections are required to assure that the Fourth Amendment rights of third parties are not violated because of the unavailability of the exclusionary rule as a deterrent to improper searches of premises in the control of nonsuspects. 353 F. Supp., at 131–132. In *Alderman* v. *United States*, 394 U.S. 165 (1969), we expressly ruled that suppression of the fruits of a Fourth Amendment violation may be urged only by those whose rights were infringed by the search itself and not by those aggrieved solely by the introduction of incriminating evidence. The predicate for this holding was that the additional deterrent effect of permitting defendants whose Fourth Amendment rights had not been violated to challenge infringements of the privacy interests of others did not "justify further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth." *Id.*, at 175. For similar reasons, we conclude that the interest in deterring illegal third-party searches does not justify a rule such as that adopted by the District Court. It is probably seldom that police during the investigatory stage when most searches occur will be so convinced that no potential defendant will have standing to exclude evidence on Fourth Amendment grounds that they will feel free to ignore constitutional restraints. In any event, it would be placing the cart before the horse to prohibit searches otherwise conforming to the Fourth Amendment because of a perception that the deterrence provided by the existing rules of standing is insufficient to discourage illegal searches. Cf. *Warden* v. *Hayden*, 387 U.S. 294, 309 (1967). Finally, the District Court overlooked the fact that the California Supreme Court has ruled as a matter of state law that the legality of a search and seizure may be challenged by anyone against whom evidence thus obtained is used. *Kaplan* v. *Superior Court*, 6 Cal. 3d 150, 491 P. 2d 1 (1971).

[10] Petitioners assert that the District Court ignored the realities of California law and practice that are said to preclude or make very difficult the use of subpoenas as investigatory techniques. If true, the choice of procedures may not always be open to the diligent prosecutor in the State of California.

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MR. JUSTICE POWELL, concurring.

I join the opinion of the Court, and I write simply to emphasize what I take to be the fundamental error of MR. JUSTICE STEWART's dissenting opinion. As I understand that opinion, it would read into the Fourth Amendment, as a new and *per se* exception, the rule that any search of an entity protected by the Press Clause of the First Amendment is unreasonable so long as a subpoena could be used as a substitute procedure. Even aside from the difficulties involved in deciding on a case-by-case basis whether a subpoena can serve as an adequate substitute,[1] I agree with the Court that there is no constitutional basis for such a reading.

If the Framers had believed that the press was entitled to a special procedure, not available to others, when government authorities required evidence in its possession, one would have expected the terms of the Fourth Amendment to reflect that belief. As the opinion of the Court points out, the struggle from which the Fourth Amendment emerged was that between Crown and press. *Ante*, at 15. The Framers were painfully aware of that history, and their response to it was the Fourth Amendment. *Ante*, at 17. Hence, there is every reason to believe that the usual procedures contemplated by the Fourth Amendment do indeed apply to the press, as to every other person.

This is not to say that a warrant which would be sufficient to support the search of an apartment or an automobile necessarily would be reasonable in supporting the search of a newspaper office. At the Court's opinion makes clear, *ante*, at 16, 17, the magistrate must judge the reasonableness of every warrant in light of the circumstances of the particular case, carefully considering the description of the evidence sought, the situation of the premises, and the position and interests of the owner or occupant. While there is no justification for the establishment of a separate Fourth Amendment procedure for the press, a magistrate asked to issue a warrant for the search of press offices can and should take cognizance of the independent values protected by the First Amendment—such as those highlighted by MR. JUSTICE STEWART—when he weighs such factors. If the reasonableness and particularly requirements are thus applied, the dangers are likely to be minimal.[2] *Ibid.*

In any event, considerations such as these are the province of the Fourth Amendment. There is no authority either in history or in the Constitution itself for exempting certain classes of persons or entities from its reach.[3]

FOOTNOTES

[1] For example, respondent had announced a policy of destroying any photographs that might aid prosecution of protestors. App. 118, 152–153. While this policy probably reflected the deep feelings of the Vietnam era, and one may assume that under normal circumstances few, if any, press entities would adopt a policy so hostile to law enforcement, respondent's policy at least illustrates the possibility of such hostility. Use of a subpoena, as proposed by the dissent would be of no utility in face of a policy of destroying evidence. And unless the policy were publicly announced, it probably would be difficult to show the impracticality of a subpoena as opposed to a search warrant.

At oral argument, counsel for respondent stated that the announced policy of the Stanford Daily conceivably could have extended to the destruction of evidence of *any* crime:

"Question: Let us assume you had a picture of the commission of a crime. For example, in banks they take pictures regularly of, not only of robbery but of murder committed in a bank and there have been pictures taken of the actual pulling of the trigger or the pointing of the gun and pulling of the trigger. There is a very famous one related to the assassination of President Kennedy.

"What would the policy of the *Stanford Daily* be with respect to that? Would it feel free to destroy it at any time before a subpoena had been served?

"Mr. Falk: The—literally read, the policy of the Daily requires me to give an affrmative answer. I find it hard to believe that in an example such as that, that the policy would have been carried out. It was not addressed to a picture of that kind or in that context.

"Question: Well, I am sure you were right. I was getting to the scope of your theory.

"Mr. Falk: Our—

"Question. What is the difference between the pictures Justice Powell just described and the pictures they were thought to have?

"Mr. Falk: Well, it simply is a distinction that—

"Question: Attacking policy officers instead of the President. That is only difference."

While the existence of this policy was not before the magistrate at the time of the warrant's issuance, 353 F. Supp. 124, 135 n. 16 (ND Cal. 1972), it illustrates the possible dangers of creating separate standards for the press alone.

[2] Similarly, the magnitude of a proposed search directed by *any* third party, together with the nature and significance of the material sought, are factors properly considered as bearing on the reasonableness and particularly requirements. Moreover, there is no reason why police officers executing a warrant should not seek the cooperation of the subject party, in order to prevent needless disruption.

[3] The concurring opinion in *Branzburg* v. *Hayes*, 408 U.S. 665, 709–710 (1972) (POWELL, J., concurring), does not support the view

that the Fourth Amendment contains an implied exception for the press, through the operation of the First Amendment. That opinion noted only that in considering a motion to quash a subpoena directed to a newsman, the court should balance the competing values of a free press and the social interest in detecting and prosecuting crime. The concurrence expressed no doubt as to the applicability of the subpoena procedure to members of the press. Rather than advocating the creation of a special procedural exception for the press, it approved recognition of First Amendment concerns within the applicable procedure. The concurring opinion may, however, properly be read as supporting the view expressed in the text above, and in the Court's opinion, that under the warrant requirement of the Fourth Amendment, the magistrate should consider the values of a free press as well as the societal interest in enforcing the criminal laws.

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MR. JUSTICE STEWART, with whom MR. JUSTICE MARSHALL joins, dissenting.

Believing that the search by the police of the offices of The Stanford Daily infringed the First and Fourteenth Amendments' guarantee of a free press, I respectfully dissent.[1]

I

It seems to me self-evident that police searches of newspaper offices burden the freedom of the press. The most immediate and obvious First Amendment injury caused by such a visitation by the police is physical disruption of the operation of the newspaper. Policemen occupying a newsroom and searching it thoroughly for what may be an extended period of time[2] will inevitably interrupt its normal operations, and thus impair or even temporarily prevent the processes of newsgathering, writing, editing, and publishing. By contrast, a subpoena would afford the newsppaer itself an opportunity to locate whatever material might be requested and produce it.

But there is another and more serious burden on a free press imposed by an unannounced police search of a newspaper office: the possibility of disclosure of information received from confidential sources, or of the identity of the sources themselves. Protection of those sources is necessary to ensure that the press can fulfill its constitutionally designated function of informing the public,[3] because important information can often be obtained only by an assurance that the source will not be revealed. *Branzburg* v. *Hayes*, 408 U.S. 665, 725–736 (dissenting opinion),[4] And the Court has recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Pell* v. *Procunier*, 417 U.S. 817, 833.

Today the Court does not question the existence of this constitutional protection, but says only that it is not "convinced . . . that confidential sources will disappear and that the press will suppress news because of fears of warranted searches." *Ante*, at 17. This facile conclusion seems to me to ignore common experience. It requires no blind leap of faith to understand that a person who gives information to a journalist only on condition that his identity will not be revealed will be less likely to give that information if he knows that, despite the journalist's assurance, his identity may in fact be disclosed. And it cannot be denied that confidential information may be exposed to the eyes of police officers who execute a search warrant by rummaging through the files, cabinets, desks and wastebaskets of a newsroom.[5] Since the indisputable effect of such searches will thus be to prevent a newsman from being able to promise confidentiality to his potential sources, it seems obvious to me that a journalist's access to information, and thus the public's will thereby be impaired.[6]

A search warrant allows police officers to ransack the files of a newspaper, reading each and every document until they have found the one named in the warrant,[7] while a subpoena would permit the newspaper itself to produce only the specific documents requested. A search, unlike a subpoena, will therefore lead to the needless exposure of confidential information completely unrelated to the purpose of the investigation. The knowledge that police officers can make an unannounced raid on a newsroom is thus bound to have a deterrent effect on the availability of confidential news sources. The end result, wholly inimical to the First Amendment, will be a diminishing flow of potentially important information to the public.

One need not rely on mere intuition to reach this conclusion. The record in this case includes affidavits not only from members of the staff of The Stanford Daily but from many professional journalists and editors, attesting to precisely such personal experience.[8] Despite the Court's rejection of this uncontroverted evidence, I believe it clearly establishes that unannounced police searches of newspaper offices will significantly burden the constitutionally protected function of the press to gather news and report it to the public.

II

In *Branzburg* v. *Hayes*, *supra*, the more limited disclosure of a journalist's sources caused by compelling him to testify was held to be justified by the necessity of "pursuing and prosecuting those crimes reported to the press by informants and in thus deterring the commission of such crimes in the future." 408 U.S., at 695. The Court found that these important societal interests would be frustrated if a reporter were able to claim an absolute privilege for his confidential sources. In the present case, however, the respondents do not claim that any of the evidence sought was privileged from disclosure; they claim only that a subpoena would have served equally well to produce that evidence. Thus, we are not concerned with the principle, central to *Branzburg*, that " 'the public . . . has a right to every man's evidence.' " *id.*, at 688, but only with whether any significant societal interest would be impaired if the police were generally required to obtain evidence from the press by means of a subpoena rather than a search.

It is well to recall the actual circumstances of this case. The application of a warrant showed only that there was reason to believe that photographic evidence of assaults on the police would be found in the offices of The Stanford Daily. There was no emergency need to protect life or property by an immediate search. The evidence sought was not contraband, but material obtained by the Daily in the normal exercise of its journalistic function. Neither the Daily nor any member of its staff was suspected of criminal activity. And there was no showing the Daily would not respond to a subpoena commanding production of the photographs, or that for any other reason a subpoena could not be obtained. Surely, then, a subpoena *duces tecum* would have been just as effective as a police raid in obtaining the production of the material sought by the Santa Clara County District Attorney.

The District Court and the Court of Appeals clearly recognized that *if* the affidavits submitted with a search warrant application should demonstrate probable cause to believe that a subpoena would be impractical, the magistrate must have the authority to issue a warrant. In such a case, by definition, a subpoena would not be adequate to protect the relevant societal interest. But they held, and I agree, that a warrant should issue only after the magistrate has performed the careful "balanc[ing] of these vital constitutional and societal interests." *Branzburg* v. *Hayes*, *supra*, at 710 (concurring opinion of MR. JUSTICE POWELL).[9]

The decisions of this Court establish that a prior adversary judicial hearing is generally required to assess in advance any threatened invasion of First Amendment liberty.[10] A search by police officers affords no timely opportunity for such a hearing, since a search warrant is ordinarily issued *ex parte* upon the affidavit of a policeman or prosecutor. There is no opportunity to challenge the necessity for the search until after it has occurred and the constitutional protection of the newspaper has been irretrievably invaded.

On the other hand, a subpoena would allow a newspaper, through a motion to quash, an opportunity for an adversary hearing with respect to the production of any material which a prosecutor might think is in its possession. This very principle was emphasized in the *Branzburg* case:

"[I]f the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the court on a motion to quash and an appropriate protective order may be entered." 408 U.S., at 710 (concurring opinion of MR. JUSTICE POWELL); see also *id.*, at 707–708.

If, in the present case, The Stanford Daily had been served with a subpoena, it would have had an opportunity to demonstrate to the court what the police ultimately found to be true—that the evidence sought did not exist. The legitimate needs of government thus would have been served without infringing the freedom of the press.

III

Perhaps as a matter of abstract policy a newspaper office should receive no more protection from unannounced police searches than, say, the office of a doctor or the office of a bank. But we are here to uphold a Constitution. And our Constitution does not explicitly protect the practice of medicine or the business of banking from all abridgment by government. It does explicitly protect the freedom of the press.

For these reasons I would affirm the judgment of the Court of Appeals.

FOOTNOTES

[1] I agree with the Court that the *Fourth* Amendment does not forbid the issuance of search warrants "simply because the owner or possessor of the place to be searched is not then reasonably suspected of criminal involvement." *Ante*, at 11. Thus, contrary to the understanding expressed in the concurring opinion, I do not "read" anything "into the Fourth Amendment." *Ante*, at 1. Instead, I would simply enforce the provisions of the *First* Amendment.

[2] One search of a radio station in Los Angeles lasted over eight hours. Note, Search and Seizure of the Media: A Statutory, Fourth Amendment and First Amendment Analysis, 28 Stan. L. Rev. 957, 957–959 (1976).

[3] See *Mills* v. *Alabama*, 384 U.S. 214, 219; *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 269; *Grosjean* v. *American Press Co.*, 297 U.S. 233, 250.

[4] Recognizing the importance of this confidential relationship, at least 26 States have enacted so-called "shield laws" protecting reporters. Note, The Newsman's Privilege After *Branzburg:* The Case for a Federal Shield law, 24 U.C.L.A. L. Rev. 160, 167 n. 41 (1976).

[5] In this case, the policemen executing the search warrant were concededly in a position to read confidential material unrelated to the object of their search; whether they in fact did so is disputed.

[6] This prospect of losing access to confidential sources may cause reporters to engage in "self-censorship," in order to avoid

publicizing the fact that they may have confidential information. See *New York Times Co.* v. *Sullivan, supra.* at 179: *Smith* v. *California,* 361 U.S. 147, 154. Or journalists may destroy notes and photographs rather than save them for reference and use in future stories. Either of these indirect effects of police searches would further lessen the flow of news to the public.

[7] The Court says that "if the requirements of specificity and reasonableness are properly applied, policed, and observed" there will be no opportunity for the police to "rummage at large in newspaper files." *Ante,* at 17. But in order to find a particular document, no matter how specifically it is identified in the warrant, the police will have to search every place where it might be—including, presumably, every file in the office—and to examine each document they find to see if it is the correct one. I thus fail to see how the Fourth Amendment would provide an effective limit to these searches.

[8] According to these uncontradicted affidavits, when it becomes known that a newsman cannot guarantee confidentiality, potential sources of information often become unavailable. Moreover, efforts are sometimes made, occasionally by force, to prevent reporters and photographers from covering newsworthy events, because of fear that the police will seize the newsman's notes or photographs as evidence. The affidavits of the members of the staff of The Stanford Daily give examples of how this very search produced such an impact on the Daily's own journalistic functions.

[9] The petitioners have argued here that in fact there was reason to believe that the Daily would not honor a subpoena. Regardless of the probative value of this information, it is irrelevant, since it was not before the magistrate when he issued the warrant. *Whitely* v. *Warden,* 401 U.S. 560, 565 n. 8: *Spinelli* v. *United States,* 393 U.S. 410, 413 n. 3: *Aguilar* v. *Texas,* 378 U.S. 108, 109 n. 1; see *Johnson* v. *United States,* 333 U.S. 10, 13–14.

[10] E. g., *United States* v. *Thirty-Seven Photographs,* 402 U.S. 363; *Carroll* v. *Princess Anne,* 393 U.S. 175; *Freedman* v. *Maryland,* 380 U.S. 51; cf. *Roaden* v. *Kentucky,* 413 U.S. 496; *A Quantity of Books* v. *Kansas,* 378 U.S. 205; *Marcus* v. *Search Warrant,* 367 U.S. 717.

Mr. JUSTICE STEVENS, dissenting.

The novel problem presented by this case is an outgrowth of the profound change in Fourth Amendment law that occurred in 1967, when *Warden* v. *Hayden,* 387 U.S. 294, was decided. The question is what kind of "probable cause" must be established in order to obtain a warrant to conduct an unannounced search for documentary evidence in the private files of a person not suspected of involvement in any criminal activity. The Court holds that a reasonable belief that the files contain relevant evidence is a sufficient justification. This holding rests on a misconstruction of history and of the Fourth Amendment's purposedly broad language.

The Amendment contains two clauses, one protecting "persons, houses, papers, and effects, against unreasonable searches and seizures," the other regulating the issuance of warrants: "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." When these words were written, the procedures of the Warrant Clause were not the primary protection against oppressive searches. It is unlikely that the authors expected private papers ever to be among the "things" that could be seized with a warrant, for only a few years earlier, in 1765, Lord Camden had delivered his famous opinion denying that any magistrate had power to authorize the seizure of private papers.[1] Because all such seizures were considered unreasonable, the Warrant Clause was not framed to protect against them.

Nonetheless, the authors of the Clause used words that were adequate for situations not expressly contemplated at the time. As Mr. Justice Black noted, the Amendment does not "attempt to describe with precision what was meant by its words 'probable cause' "; the words of the Amendment are deliberately "imprecise and flexible."[2] And Mr. JUSTICE STEWART, when confronted with the problem of applying the probable cause standard in an unprecedented situation, observed that "[t]he standard of reasonableness embodied in the Fourth Amendment demands that the showing of justification match the degree of intrusion."[3] Today, for the first time, the Court has an opportunity to consider the kind of showing that is necessary to justify the vastly expanded "degree of intrusion" upon privacy that is authorized by the opinion in *Warden* v. *Hayden,* 387 U.S. 294.

In the pre-*Hayden* era warrants were used to search for contraband,[4] weapons and plunder, but not for "mere evidence."[5] The practical effect of the rule prohibiting the issuance of warrants to search for mere evidence was to narrowly limit not only the category of objects, but also the category of persons and the character of the privacy interests that might be affected by an unannounced police search.

Just as the witnesses who participate in an investigation or a trial far outnumber the defendants, the persons who possess evidence that may help to identify an offender, or explain an aspect of a criminal transaction, far outnumber those who have custody of weapons or plunder. Countless law abiding citizens—doctors, lawyers, merchants, customers, bystanders—may have documents in their possession that relate to an ongoing criminal investigation. The consequence of subjecting this large category of persons to unannounced police searches are extremely serious. The *ex parte* warrant procedure enables the prosecutor to obtain access to privileged documents that could not be examined if advance notice gave the custodian an opportunity to object.[6] The search for the documents described in a warrant may involve the inspection of files containing other private matter.[7] The dramatic character of a sudden search may cause an entirely unjustified injury to the reputation of the persons searched.[8]

Of greatest importance, however, is the question whether the offensive intrusion on the privacy of the ordinary citizen is justified by the law enforcement interest it is intended to vindicate. Possession of contraband or the proceeds or tools of crime gives rise to two inferences: that the custodian is involved in the criminal activity, and that, if given notice of an intended search, he will conceal or destroy what is being sought. The probability of criminal culpability justifies the invasion of his privacy; the need to accomplish the law enforcement purpose of the search justifies acting without advance notice and by force, if necessary. By satisfying the probable cause standard appropriate for weapons or plunder, the police effectively demonstrate that no less intrusive method of investigation will succeed.

Mere possession of documentary evidence, however, is much less likely to demonstrate that the custodian is guilty of any wrongdoing or that he will not honor a subpoena or informal request to produce it. In the pre-*Hayden* era, evidence of that kind was routinely obtained by procedures that presumed that the custodian would respect his obligation to obey subpoenas and to cooperate in the investigation of crime. These procedures had a constitutional dimension. For the innocent citizens' interest in the privacy of his papers and possessions is an aspect of liberty protected by the Due Process Clause of the Fourteenth Amendment. Notice and an opportunity to object to the deprivation of the citizen's liberty are, therefore, the constitutionally mandated general rule.[9] An exception to that rule can only be justified by strict compliance with the Fourth Amendment. That Amendment flatly prohibits the issuance of any warrant unless justified by probable cause.

A showing of probable cause that was adequate to justify the issuance of a warrant to search for stolen goods in the 18th century does not automatically satisfy the new dimensions of the Fourth Amendment in the post-*Hayden* era.[10] In *Hayden* itself, the Court recognized that the meaning of probable cause should be reconsidered in the light of the new authority it conferred on the police.[11] The only conceivable justification for an unannounced search of an innocent citizen is the fear that, if notice were given, he would conceal or destroy the object of the search. Probable cause to believe that the custodian is a criminal, or that he holds a criminal's weapons, spoils, or the like, justifies that fear,[12] and therefore such a showing complies with the Clause. But if nothing said under oath in the warrant application demonstrates the need for an unannounced search by force, the probable cause requirement is not satisfied. In the absence of some other showing of reasonableness,[13] the ensuing search violates the Fourth Amendment.

In this case, the warrant application set forth no facts suggesting that respondent was involved in any wrongdoing or would destroy the desired evidence if given notice of what the police desired. I would therefore hold that the warrant did not comply with the Warrant Clause and that the search was unreasonable within the meaning of the First Clause of the Fourth Amendment.

I respectfully dissent.

FOOTNOTES

[1] "Papers are the owner's goods and chattels; they are his dearest property; and are so far enduring a seizure, that they will hardly bear an inspection; and though the eye cannot by the laws of England be guilty of a trespass, yet where private papers are removed and carried away the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and therefore it is too much for us, without such authority, to pronounce a practice legal, which would be subversive of all the comforts of society." *Entick* v. *Carrington,* 19 How. St. Tr. 1029, 1066 (1765).

[2] "Obviously, those who wrote this Fourth Amendment knew from experience that searches and seizures were too valuable to law enforcement to prohibit them entirely, but also knew at the same time that while searches or seizures must not be stopped, they should be slowed down, and warrants should be issued only after studied caution. This accounts for use of the imprecise and flexible term, 'unreasonable,' the key word permeating this whole Amendment. Also it is noticeable that this Amendment contains no appropriate language, as does the Fifth, to forbid the use and introduction of search and seizure evidence even though secured 'unreasonably.' Nor does this Fourth Amendment attempt to describe with precision what was meant by its words, 'probable cause'; nor by whom the 'Oath or affirmation' should be taken; nor what it need contain." *Berger* v. *New York,* 388 U.S. 41, 75 (Black, J., dissenting).

[3] *Id.,* at 69 (STEWART, J., concurring).

[4] It was stated in 1967 that about 95% of the search warrants obtained by the office of the District Attorney for New York County were for the purpose of seizing narcotics and arresting the possessors. See T. Taylor, Two Studies in Constitutional Interpretation 48, and n. 85 (1969).

[5] Until 1967, when *Warden* v. *Hayden* was decided, our cases interpreting the Fourth

Amendment had drawn a "distinction between merely evidentiary materials, on the one hand, which may not be seized either under the authority of a search warrant or during the course of a search incident to arrest, and on the other hand, those objects which may validly be seized including the instrumentalities and means by which a crime is committed, the fruits of crime such as stolen property, weapons by which escape of the person arrested might be effected, and property the possession of which is a crime." See *Warden* v. *Hayden*, 387 U.S., at 295–296, quoting from *Harris* v. *United States*, 331 U.S. 145, 154.

[6] The suggestion that, instead of setting standards, we should rely on the good judgment of the magistrate to prevent abuse represents an abdication of the responsibilities this Court previously accepted in carefully supervising the performance of the magistrate's warrant-issuing function. See *Aguilar* v. *Texas*, 378 U.S. 108, 111.

[7] "There are three considerations which support the conclusion that private papers are central to the concerns of the fourth amendment and which suggest that, in accord with the amendment's privacy rationale, private papers should occupy a type of preferred position. The first consideration is the very personal, private nature of such papers. This rationale has been cogently articulated on a number of occasions. Private papers have been said to be 'little more than an extension of [the owner's] person,' their seizure 'a particularly abrasive infringement of privacy,' and their protection 'impelled by the moral and symbolic need to recognize and defend the private aspect of personality.' In this sense, every governmental procurement of private papers, regardless of how it is accomplished, is uniquely intrusive. In addition to the nature of the papers themselves, a second reason for according them strict protection concerns the nature of the search for private papers. The fundamental evil at which the fourth amendment was directed was the sweeping, exploratory search conducted pursuant to a general warrant. A search involving private papers, it has been noted, invariably partakes of a similar generality, for 'even a search for a specific, identified paper may involve the same rude intrusion [of an exploratory search] if the quest for it leads to an examination of all of a man's private papers.' Thus, both their contents and the inherently intrusive nature of a search for them militates toward the position that private papers are deserving of the fullest possible fourth amendment protection. Finally, not only is a search involving private papers highly intrusive in fourth amendment terms, but the nature of the papers themselves may implicate the policies of other constitutional protections. In addition to the 'intimate' relation with fifth amendment values, the obtaining of private papers by the government touches upon the first amendment and the generalized right of privacy." McKenna, The Constitutional Protection of Private Papers: The Role of a Hierarchical Fourth Amendment, 53 Ind. L. J. 55, 68–69 (footnotes omitted).

[8] "Whether the search be for rubbish or narcotics, both innocent and guilty will suffer the loss of the proprietary right of privacy. The search for evidence of crime, however, threatens the innocent with an injury not recognized in the cases. That is the damage to reputation resulting from an overt manifestation of official suspicion of crime. Connected with loss of reputation, standing, or credit may be humiliation and other mental suffering. The interests here at stake are the same which are recognized in the common law actions for defamation and malicious prosecution. Indeed, the loss of reputation and the humiliation resulting from the search of one's home for evidence of a heinous crime may greatly exceed the injury caused by an ill-grounded prosecution for a minor offense." Comment, Search and Seizure in the Supreme Court; Shadows on the Fourth Amendment, 28 U. Chi. L. Rev. 664, 701 (footnotes omitted).

[9] Only with great reluctance has this Court approved even the seizure of refrigerators or washing machines without notice and a prior adversary hearing; in doing so, the Court has relied on the distinction between loss of property, which can often be easily compensated, and loss of less tangible but more precious rights; "[w]here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process." *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600, 611, quoting from *Phillips* v. *Commissioner*, 283 U.S. 589, 596–597. See also *Michigan* v. *Tyler*, — *U.S.* —, — (STEVENS, J., concurring).

[10] Even before *Hayden* had repudiated the mere evidence rule, scholars had recognized that such a change in the scope of the prosecutor's search authority would require a fresh examination of the probable cause requirement. It was noted that the personal character of some evidentiary documents would "justify stringent limitation, if not total prohibition, of their seizure by exercise of official authority." T. Taylor, Two Studies in Constitutional Interpretation 66 (1969).

It is ironic that the Court today should adopt a rigid interpretation of the Warrant Clause to uphold this search when the Court was prepared only a few years ago to rely on the flexibility of the Clause to create an entirely new warrant in order to preserve the government's power to conduct unannounced inspections of citizens' homes and businesses. See *Camara* v. *Municipal Court*, 387 U.S. 523, 534–535 and 538.

[11] "There must, of course, be a nexus—automatically provided in the case of fruits, instrumentalities or contraband—between the item to be seized and criminal behavior. Thus in the case of 'mere evidence,' probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction. In so doing, consideration of police purposes will be required." *Warden* v. *Hayden*, 387 U.S., at 307.

[12] "The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice." *Fuentes* v. *Shevin*, 407 U.S. 67, 93–94, n 30.

[13] Cf. *Marshall* v. *Barlow's Inc.*, — U.S. —. — (STEVENS, J., dissenting).

## LOCAL NOISE CONTROL PROGRAMS

● Mr. CULVER. Mr. President, the Senate Subcommittee on Resource Protection this year conducted oversight hearings in Des Moines, Iowa, and Washington, D.C., on the implementation of the Noise Control Act of 1972. These hearings were the first comprehensive congressional review of this law since it was enacted 6 years ago.

Until recently, our national noise abatement strategy has been based primarily on regulating and setting standards for major sources of noise. One of the most significant points discussed by the witnesses, however, is the growing importance of State and local noise control initiatives. As an interesting article, entitled "Noise: A Challenge to Cities," in a recent issue of Nation's Cities explains, an increasing number of our communities have begun many innovative local programs to reduce unwanted sounds.

Reflecting this local interest, the Environmental Protection Agency (EPA) has now established the each community helps others (ECHO) program to assist cities in sharing their experiences in noise control with other towns. Des Moines was the first city in the Nation to apply to participate in this program, and this article documents the strong enthusiasm which local officials have for this and similar programs.

The Committee on Environment and Public Works recently approved S. 3083, the Quiet Communities Act of 1978. This bill gives a new focus to the Federal noise program and directs EPA to undertake a comprehensive program of research, technical assistance, and discretionary grants to support State and local government efforts. In addition, it provides a new procedure for assuring participation by State and local governments in EPA's regulation of noise emissions of new products.

I believe my colleagues will find the article from Nation's Cities useful, Mr. President, and I ask that it be printed in the RECORD.

The article follows:

NOISE: A CHALLENGE TO CITIES

Like all pollution, noise is an unwanted by-product of our industrialized society. Unlike air and water pollution, noise pollution is tasteless, odorless, and invisible. Yet its effects on the cities and towns of America are no less pervasive than the effects of impure water or dirty air. Noise interferes with our health, our communication, our work, our rest and recreation, and our sleep.

Most of us have been disturbed by noise—a barking dog, a siren in the night, a garbage truck in the morning. Noise is all around us. And many people are subjected to almost constant levels of excessive noise in their homes or at work. Each of us contributes to the noise problem which is more acute where there are more of us—in our urban areas.

Nearly half the population is regularly exposed to levels of noise that interfere with normal activities, such as speaking, hearing, and sleeping. Noise is no longer just an urban problem. The suburbs near our urban centers are beginning to experience the same levels of traffic and industrial noise once confined to our cities and some higher levels as well: the noise of blaring stereos, clattering lawn mowers, low-flying aircraft. Even deep in the country's parks and forests where people go to escape the noise of the cities, quiet is often shattered by motorcycles, airplanes, snowmobiles, and chain saws.

AN AGE-OLD PROBLEM

Noise is not a new problem. In the first century B.C., Julius Caesar passed the first noise ordinance by banning chariots from the streets of Rome at night. In early America, wagons and horses clattering on cobblestone streets produced enough noise to annoy the citizens and move them to action. But it wasn't until the beginning of the Industrial Revolution in this country that serious noise problems began to develop.

Since then, noise levels have been accelerating, and in the more than thirty years since World War II, the number of high-intensity noise sources has increased dramatically: more cars, trucks, motorcycles, and other vehicles on our highways than ever before; more office buildings and houses equipped with air conditioners; more industrial plants. Obviously, the noise problem is woven into the fabric of modern life. Although we enjoy a high standard of living, we pay for it in part with the noise our remarkable technological society creates.

WHAT CAN WE DO ABOUT NOISE?

Most Americans do not adequately understand the noise problem. We are annoyed by

noise, but we don't realize two important things about it. First, it has serious health consequences. Second, there are many things we can do to reduce noise. Some actions can give immediate relief; others will not produce tangible effects for years to come. Noise is a problem which most of us have seen as too big, too complex, and too remote from our daily lives to do very much about. It would seem that noise, like the weather, is something that everybody complains about but very few do anything about.

This special report will describe some of the ways in which people all across the country are seeking to find lasting solutions. Failure to begin now and continue vigorously to reduce noise is to consign future generations to a world even noisier than the one we inhabit now.

NOISE AFFECTS THE QUALITY OF OUR LIVES

The sounds we hear; whether or not they are considered noise, are measured in units called decibels. The human ear perceives a very wide range of sounds measured in decibels (see chart). Decibels are computed logarithmically; each step up the decibel scale represents a dramatic change in sound intensity or loudness. For instance, the amount of noise a dishwasher makes (70 decibels) sounds twice as loud as conversational speech (60 decibels), and four times as loud as the noise inside an average house (50 decibels). Decibels will be used to characterize the sound levels of various products throughout this supplement. By referring to the chart (on page 22) you can compare the decibel levels with the sound levels of familiar everyday sounds.

HEARING LOSS

Noise loud enough to cause hearing loss is virtually everywhere today. Our jobs, our entertainment and recreation, and our neighborhoods and homes are filed with potentially harmful levels of noise. It is no wonder that 20 million or more Americans are estimated to be exposed daily to noise that is permanently damaging to their hearing.

Hearing loss usually occurs gradually. The first awareness of the damage usually begins with the loss of occasional words in general conversation and with difficulty understanding speech heard on the telephone. Unfortunately, this recognition comes too late to recover what is lost. By then, our ability to hear the high frequency sounds of, for example, a flute or piccolo or even the soft rustling of leaves will have been permanently diminished. As hearing damage continues, it can become a handicap for which there is no cure. Hearing aids do not restore noise-damaged hearing although they can be of limited help to some people. The idea that hearing loss is solely the result of industrial noise is dangerously erroneous. Noise levels in many places and in some of the vehicles we use are well above the levels believed to cause hearing damage over prolonged periods.

NOISE INTERFERES WITH CONVERSATION

Losing the ability to speak at a normal level and be heard may be far more damaging than we realize. People who live in noisy places tend to adopt a lifestyle devoid of communication and social interaction. They stop talking, they change the content of the conversation, they talk only when absolutely necessary, and they frequently repeat themselves. These reactions are probably familiar to all of us.

Outdoors, a combination of continuous daytime noise (traffic, construction equipment, aircraft) interrupts speech and discourages conversation as well.

INTRUSION AT WORK AND AT HOME

Where excessive noise is present, the accuracy of work suffers. Errors in people's observations tend to increase, perception of time may be distorted, and greater effort is required to remain alert. Even when noise does not interfere with the work at hand, the quality of that work may suffer after the noise stops. Studies and reports from individuals also suggest that people who work in the midst of high noise levels during the day are more susceptible to frustration and aggravation after work.

Relaxing at home after a noisy workday may not be an easy thing to do. When the home itself is noisy, the tired, irritated worker may never be able to work out the days accumulated stress during the course of the evening.

Industrial noise may have the most pronounced effects on human performance and health. A coal industry study indicated that the intermittent noise of mining causes distraction which leads to poor work. Other studies have confirmed additional effects of exposure to noise including exhaustion, absent-mindedness, mental strain and absenteeism. In the words of Leonard Woodcock, former president of the United Auto Workers, "They (auto workers) find themselves unusually fatigued at the end of the day compared to their fellow workers who are not exposed to as much noise. They complain of headaches and inability to sleep and they suffer from anxiety. . . . Our members tell us that the continuous exposure to high levels of noise makes them tense, irritable, and upset."

SLEEP

Noise can interrupt and prevent sleep. The effects of interrupted sleep may be no more serious than the feeling of fatigue the next morning. But repeated interruption of sleep over long periods of time, such as experienced by many persons living near highways and airports, may have more serious effects. Some experts believe that noise which is not loud enough to fully wake a sleeping person can have serious effects by interfering with dreaming. It has been established that long term interruption of a person's dreaming can cause serious mental and physical problems such as aches, pains, depressions, and even psychotic states.

THE BODY'S OTHER REACTIONS

Growing evidence strongly suggests a link between noise and heart problems. The explanation? Noise causes stress and the body reacts with increased adrenaline, changes in heart rate, and elevated blood pressure. Noise, however, is only one of several environmental causes of stress. For this reason, researchers cannot say with confidence that noise alone caused the heart and circulatory problems they have observed. What they can point to is a statistical relationship apparent in several field and laboratory studies.

The best studies come from industrial settings. Steelworkers and machine shop operators, laboring under stress of high noise levels, had a higher incidence of circulatory problems than did workers in quiet industries. A German study documented a higher rate of heart disease in noisy industries. In Sweden, several researchers noted more cases of high blood pressure among workers exposed to high levels of noise than among other workers.

Some laboratory tests produced observable physical changes. In one, rabbits exposed for ten minutes to the noise levels common to very noisy industries temporarily developed a much higher level of blood cholesterol than did unexposed rabbits on the same diet. Similarly, a monkey subjected to a day-long tape recording of the normal street noises outside a hospital developed higher blood pressure and increased heart rate.

Among recent findings is the preliminary conclusion that grade school children exposed to aircraft noise in school and at home had higher blood pressure than children in quieter areas. Because the danger of stress from noise is greater for those already suffering from heart disease, physicians frequently take measures to reduce the noise their patients are exposed to. For instance, a town in New Jersey moved a fire house siren away from the home of a boy with congenital heart disease when his doctor warned that the sound of the siren could cause the boy to have a fatal spasm. Another doctor ordered a silencing device for the phone of a recuperating heart patient. While the precise role of noise in causing or aggravating heart disease remains unclear, the illness is such a problem in our society that even a small increase in the percentage of heart problems caused by noise could prove debilitating to many thousands of Americans. "Although it has not proven definitely that prolonged exposure to loud noise shortens the life span," says Jeffrey Goldstein, an Environmental Protection Agency (EPA) bioacoustical scientist, "it figures that if stress shortens the life span, and noise causes stress, noise can shorten the life span."

To get ready for danger our bodies make automatic and unconscious responses to sudden or loud sounds. Of course, most noise in our modern society does not mean danger but our bodies don't know that. They still react as if these sounds were a threat or a warning. In effect the body shifts gears. Blood pressure rises, heart rate and breathing speed, muscles tense, hormones are released into the bloodstream, and perspiration appears. These changes occur even during sleep.

The idea that people get used to noise is a myth. In studies dating back to the 1930s, researchers noted that workers chronically exposed to noise develop marked digestive changes which were thought to lead to ulcers. Cases of ulcers in certain noisy industries have been found to be up to five times as numerous as what normally would be expected. A five-year study of two manufacturing firms in the United States found that workers in noisy plant areas showed greater numbers of diagnosed medical problems, including respiratory ailments, than did workers in quiet areas of the plants.

Newspaper files and police records report incidents that point to noise as a trigger of extreme behavior. A man shot one of two boys who refused to stop a disturbance outside his apartment. Sanitation workers have been assaulted, construction foremen threatened, and motorboat operators shot at—all because of the noise they were making. A study of two groups of people playing a game found that the subjects playing under noisier conditions perceived their fellow players as more disagreeable, disorganized, and threatening.

Several industrial studies indicate that noise can heighten social conflicts both at work and at home. And reports from individuals suggest that noise increases tensions between workers and their supervisors, resulting in additional grievances against the employer.

Although no one would say that noise by itself brings on mental illness, there is evidence that noise-related stress can aggravate existing emotional disorders. Research in the United States and England points to higher rates of admission to psychiatric hospitals among people living close to airports. And studies of several industries show that prolonged noise exposure may lead to a larger number of psychological problems among workers.

NOISE AND THE UNBORN

Even the womb offers no refuge from noise. While still in its mother's womb, the developing child is responsive to sounds in the mother's environment. Particularly loud noises have been shown to stimulate the fetus directly, causing changes in the heart rate of the fetus.

For mothers who work in factories or other noisy places, it is possible that noise has a direct and negative effect on the fetus. High levels of noise may pose a threat to the hearing and other capacities of the unborn child. A Japanese study of more than 1,000 births produced evidence of a high proportion of low weight babies in noisy areas. These birth weights were under 5½ pounds, the World Health Organization's definition of prematurity. Low birth rates and noise also were associated with lower levels of certain hormones thought to affect fetal growth and to be a good indicator of protein production. The difference between the hormone levels of pregnant mothers in noise versus quiet areas increased as birth approached.

Studies show that stress causes constriction of the uterine blood vessel that supply nutrients and oxygen to the developing baby. Additional links between noise and birth defects have been noted in a recent preliminary study of people living near a major airport. The abnormalities suggested included harelips, cleft palates, and defects in the spine.

EFFECTS ON CHILDREN

Adults long have worried about the effects of noise on children. In the early 1900s, "quiet zones" were established around many of the nation's schools to increase educational efficiency by reducing noises believed to interfere with children's learning and even to hamper their thinking.

Today, researchers looking into the consequences of bringing up children in this less than quiet world have discovered that learning difficulties are likely byproducts of the noisy schools, play areas, and homes in which our children grow up. Because they are just learning, children have more difficulty understanding language in the presence of noise than adults do. As a result, if children learn to speak and listen in a noisy environment, they may have great difficulty in developing such essential skills as distinguishing the sounds of speech. For example, against a background of noise, a child may confuse a sound of "v" in "very" with a "b" in "berry" and may not learn to tell them apart. Another symptom of this problem is the tendency to distort speech by dropping parts of words, especially their endings.

Reading ability also may be seriously impaired by noise. A study of reading scores of fifty-four youngsters in grades two through five indicated that noise levels in their four adjacent apartment buildings were detrimental to the children's reading ability. The influence of noise in the home was found to be more important than even the parents' educational background, the number of children in the family, and the grades the youngsters were in. The longer the children had lived in a noisy environment, the more pronounced the reading impairment.

Assuming a child arrives at school with language skills underdeveloped because of a noisy home, will he or she fare any better at school? In a school located next to an elevated railway, students whose classrooms faced the tracks did significantly worse on reading tests than did similar students whose classrooms were farther away. In Inglewood, Calif., the effects of aircraft noise on learning were so severe that several new schools had to be built. As a school official explained, the disruption of learning went beyond the time wasted waiting for noisy aircraft to pass over. Considerable time had to be spent after each flyover refocusing students' attention on what was being done before the interruption.

NOISE IS ALL AROUND US

Noise in modern offices often results in similar losses of concentration and is often at levels that can cause hearing impairment. The noise of typewriters, Xerox machines, telephones, and computers reaches nearly intolerable levels.

Even in the House, there are a large number of noisy applicances—dishwashers, vacuum cleaners and garbage disposals. The combined din from household appliances may be literally deafening. The full extent of the noise problem is difficult to gauge. Only a relatively small percentage of people who studies show are bothered by noise actually register complaints about noise or otherwise act to control all the noise around them.

The noise problem in America is very real. And it is growing steadily worse. The EPA's Urban Noise Survey, conducted in 1977, disclosed that about half the U.S. population regularly is exposed to levels of noise that bother and annoy as well as interrupt normal activities. It is estimated that 15 million U.S. workers are exposed to noise potentially hazardous to their hearing. At least 100 million Americans are exposed to noise levels that may be detrimental to their health and welfare. Most serious, about one person in twenty—or more than 20 million people—have some degree of irreversible hearing loss. Something can and should be done about noise. The remainder of the report will present some ideas as to how cities and their citizens can seek solutions to the problems of noise.

CITIES ARE MEETING THE NOISE CHALLENGE

*Boulder, Colo.*

Boulder, Colo. has a noise ordinance because one man was disturbed by the increasing number of loud motor vehicles going up and down the street in front of his house. "Donald Billings is the kind of guy who likes to putter around in his yard and flower beds, and the noise really bothered him," says Jim Adams, environmental protection officer for Boulder. Billings decided to do something about the problem, formed a committee of citizens, and started working on an ordinance. His committee, composed of an acoustician, some professional engineers, and a few high school students, published a questionnaire in the local newspaper asking people which noise sources annoyed them most. The responses, in order, were motorcycles, traffic, barking dogs, and aircraft. The committee collected evidence for about a year and a half, including a survey on the health effects of noise. That survey revealed that noises over 70 decibels could result in up to a 20 percent loss of effectiveness in jobs that required concentration. "We have about 20,000 students at the University of Colorado, and they can't afford to lose 20 percent of their learning power," Adams says.

Billings contacted the city manager and city attorney and presented the committee's findings. An ordinance was drafted and the city council passed it in January, 1970.

The ordinance includes noise level standards for both vehicular and non-vehicular noise. The maximum acceptable level for vehicles under 10,000 pounds in 80 decibels at 25 feet distance and for vehicles over 10,000 pounds is 88 decibels at 25 feet.

When a violation occurs, the police department summons the offender either to appear in court or have his car repaired and inspected. If the car then tests in compliance with the ordinance, the environmental protection officer can recommend dismissal to the court. The city is experiencing better than 85 percent dismissals and is writing an average of 800 summonses a year (almost 4,000 since 1972). Owners of vehicles not brought into compliance face up to $300 in fines, depending on the level of violation. The louder the noise, the higher the fine. "We don't issue warnings, because we want the offending vehicle repaired," Adams says. But the objective of our ordinance is to achieve quiet, not to collect fines. We call this the 'soft fuzz' approach," he says.

The Boulder ordinance provides that citizen complaints about noise be registered and a letter of warning be sent to the alleged violator. Anonymous complaints are not accepted. Non-vehicular noise is restricted according to zones. For instance, allowable levels between 7:00 A.M. and 11:00 P.M. are 55 decibels for residential areas, 65 decibels commercial and 80 decibels for industrial. Between the hours of 11:00 P.M. and 7:00 A.M. the levels are 50 decibels for residential, 60 decibels for commercial and 75 decibels for industrial. We have answered more than 4,000 complaints of environmental noise, and have only had to issue six summonses because the problem was corrected," Adams says.

Noise enforcement is handled by Adams and two policemen. They monitor vehicular noise about twenty hours a week from a chase care equipped like a police car, except that it is green and white and is marked "Noise Control." The car has special noise monitoring equipment. The salaries of all three enforcement officers and the cost of their equipment come out of a $36,000 budget.

Adams and his staff worked very closely with the EPA regional office in Denver, especially to amend and improve the original noise ordinance in Boulder. We drew a lot from the EPA model ordinance," Adams said.

After the ordinance was passed, Boulder launched a public education campaign. Adams and his staff taught classes from first grade all the way up to physics and environmental design courses at the University of Colorado. "We also have good relations with the local press and radio stations," Adams says. "We capitalized on that and developed several radio public service announcements which are still being broadcast," he says. They also developed a brochure which explained what the ordinance entailed, what noise levels were permitted, and what the fines were. "The local civic organizations have also been a big help," Adams says. "Every time we have the opportunity we speak to these groups."

Boulder's basic noise philosophy is to address noise problems as they arise. Adams is also involved in developmental reviews so he has an effect on land use and construction decisions. "We have good relations with our commercial neighbors," Adams says. "Several industries have cooperated voluntarily in noise control."

"The Boulder story illustrates the possibilities of citizen and community action to initiate noise control and enforce it," says Charles Elkins, director of noise programs for the EPA. "One person was able to make a difference."

*New York City*

"We're one of the cities that pioneered in noise abatement," according to Ethan C. Eldon, New York City commissioner of air resources. "The New York City noise control code was the first in the state, and our standards are stricter than those in many other areas of the country. Although we've experienced serious cutbacks in manpower and fundings, we have a viable program and one we feel is successfully lowering noise levels," Eldon says.

The strategy of the city's forty-four-person Bureau of Noise Abatement is to identify sources of noises that affect the most people and then find technological solutions. One noise which affects about 4.5 million people every day comes from the subway. "We have many areas in the subway system where noise equals that of jet planes at takeoff," Eldon says. With the aid of the federal Urban Mass Transportation Administration, the New York Transit Authority has begun a ten-year program to lessen subway noise. "We are already beginning to see some progress," Eldon adds.

New York City tried an experiment a few years ago to see how serious the noise problem really was. The Department of Air Resources sent a van around the city and tested the hearing of more than 2,000 people. The results showed a significant hearing loss in most people tested. Tests also were

conducted on people before and after they rode the subway for half an hour and findings showed a temporary hearing loss.

The city regulates all kinds of construction equipment, including pavement breakers and air compressors. It specifies the types of equipment that can be used, and requires mufflers for most machines. "We work with the manufacturers and the operators of the equipment to determine technologically feasible solutions. We also build noise level standards into the law so that industry knows that in so many years its equipment has to be so many decibels quieter. This way you get everyone involved with the equipment into compliance," Eldon says.

An ambient noise zone law is being reviewed by the city council. The proposed law would establish one allowable day sound level for industrial areas and a much tougher allowable level in residential areas. A mixed-use zone would be somewhere between these two. Night levels would be even lower, a help in controlling noise from private garbage collectors.

Since early 1974, New York City has had a truck noise enforcement program, which Eldon believes is exceptionally effective. The state followed this example and passed a truck noise law last year, as did New Jersey, ensuring regional control over truck noise. "The citizens in our city don't have to be reminded that noise is a big problem, that it affects the quality of their lives. And, we're experiencing good cooperation because of that public awareness," Eldon says.

EA noise program Director Elkins says, "Solutions to noise problems are technologically feasible and currently available. Even small communities can benefit from New York's experience. These methods work in communities of all sizes."

*San Francisco*

San Francisco has a noise task force comprised of the Police, the Public Works, and the Public Health departments. Public Works handles all construction noise during the day, Public Health handles fixed source noises, and the Police Department handles everything else including complaints about bars, discotheques, sporting events, garbage trucks, and motorcycles, says Joe Bodisco, San Francisco police officer and the community noise officer.

"I would say we handle 175 to 200 community noise complaints a month," Bodisco says. The Public Works and Public Health departments handle between forty and fifty complaints per month. Barking dogs used to account for an extra 350 complaints. That responsibility has been transferred to the animal control unit, which is run by the Police Department.

Each complaint results in both written and verbal warnings to the violator. The second complaint usually results in a $25 fine, a third complaint $50, and so on. A fifth complaint usually leads to misdemeanor charges. If the violator is a dog, the Society for Prevention of Cruelty to Animals might take the dog away.

Bodisco says, "The city people are wise to the effectiveness of our program, and keep the noise down. The majority of the people that have been cited for noise violations since 1976 are commuters." More than 90,000 vehicles cross the two bridges into San Francisco each day. Bodisco and his task force find most of the noise in areas adjoining the bridges.

EPA director of noise programs Elkins says, "A good noise program draws on the talents of many departments. The police, health, animal control, transportation and planning departments all have important roles to play."

*Florida*

"Our program is geared to local governments," says Jesse O. Borthwick, administrator for noise control for Florida. "Over the past five years we've helped more than 100 cities and counties to develop some types of noise program," he says.

The noise control section in the Department of Environmental Regulations is staffed by two people, Borthwick and an assistant, and is limited by a very small budget. Yet in five years the office has trained more than 500 officials from more than 100 state and local agencies in various aspects of environmental noise or motor vehicle noise enforcement.

"If a city is interested in noise control we provide counseling and technical assistance. First we do an area-wide survey of the city to see what kinds of noise levels they have and where the problem areas are. On the basis of this survey we develop an ordinance or noise level standards to recommend to the city. We also provide training for police officers or other enforcement personnel. We train and certify these people and try to provide the necessary noise-monitoring equipment. After that we act as a consultant to the community until the program is well underway," Borthwick says. All of these services are provided to the community free of charge. "Noise is often a low priority," he says. "You almost have to pay people to get them involved. But once a community has been introduced to a noise program, the citizens usually become extremely interested, and become advocates for the program."

The department also has written a comprehensive plan to control motor vehicle noise. "Our first priority is to try to reduce noise at the source. Then we try to do something at the receiver end of the noise through land use planning. As a last resort we encourage building noise barriers along highways," he says. But Borthwick believes source control is the most effective method of controlling motor vehicle noise.

"We also have a law that went into effect in 1974 that sets standards for all new motor vehicles sold in the state. Every vehicle must meet specific standards." Borthwick's group provides the state Department of Motor Vehicles with a list of certified vehicles. "Before you can register a new vehicle, you've got to be on that list," Borthwick says.

Florida also has a muffler certification program. All muffler and exhaust systems for motor vehicles sold in the state must be certified to meet certain noise standards.

"Regulations are the first step in handling the noise problem," Borthwick says. "The second step is having a strong enforcement program." The Florida Highway Patrol has provided a seven-man motor vehicle noise enforcement team. The enforcement team also provides instruction to other law enforcement officers in the state. "Our philosophy is that the problem is really a local one that can best be solved at the local level. So we've geared our whole program towards training and certifying local law enforcement officers," Borthwick says. There are currently more than 300 persons throughout Florida that have been trained and certified in a one-week school on motor vehicle noise enforcement. Each agency is required to provide monthly statistics on their enforcement actions.

Sixty-four percent of the respondents considered noise harmful to their health or well-being; 72 percent said they were aware of noise and sometimes bothered by it. Another 12 percent said they were easily bothered by noise. Eighty-eight percent of the respondents believed that noise sources should be controlled by rules or laws. Of those, 65 percent felt local governments should handle the noise problem, 30 percent said state governments, and 21 percent said it should be the job of the federal government.

Borthwick's office is doing research to determine average noise levels throughout the state. More than 30,000 vehicles have been monitored by his office with help from several Florida universities which serve as consultants. Truck noise also is being monitored. "Since 1974, when our regulation went into effect, we have experienced a three-decibel reduction in noise from trucks. We also have experienced a reduction in the number of violations of the truck noise standards. About 20 percent of the trucks monitored at the start of our program were in violation of the law. That number is now less than 5 percent," Borthwick says.

Florida is just beginning to plan to prevent future noise problems." A lot of the problems we have are a result of poor planning," Borthwick says. "When you develop a residential area under a flight pattern, or when you build a hospital next to an eight-lane interstate, you are creating noise problems." The Florida Noise Office has just provided host positions for two "older American" workers made available under Title IX of the Older Americans Act which is administered by the U.S. Department of Labor. The program provides employment for retired or unemployed persons over fifty-five years old. The noise office plans to utilize these people to help make decisions on where to put new industry and other heavy noise makers.

"People just don't think of noise as a problem," Borthwick says. "We've lived with it for a long time and have grown to accept noise as something that goes along with modern technology. But we don't have to live with it; we can control noise and improve the quality of our lives."

"States can play a very helpful role in assisting local communities to get a noise control program started," says EPA noise programs Director Charles Elkins. "The local interest is there. Often all it takes is an experienced state noise official to tell community leaders what similar communities have been able to do."

*Colorado Springs, Colo.*

The biggest noise problem in Colorado Springs is caused by motor vehicles—cars, motorcycles, and trucks. "It's a difficult challenge. Our town is growing every day and so are noise levels," said Joe Zunich, administrator of the city's noise abatement program.

But Zunich believes he's making some headway. "We have three enforcement officers who issue summonses to violators and test the vehicles for compliance," Zunich said. "We issued 645 summonses last year," he said. To help reduce motorcycle noise, Zunich thinks he has a solution. "We are going to put an officer on a dirt bike (off-road motorcycle) clearly marked, with the officer in uniform, and we're going to send him into drainage ditches, railroad right-of-ways, and big lots. These are areas where we get a lot of complaints about motorcycles and minibikes," Zunich says.

The public seems to be appreciating Zunich's efforts. "People have a place to go now when they have a noise problem," Zunich says. "Even the city councilmen are calling us now and asking us to help solve problems. I believe we've become a permanent fixture in the city's government."

"The most successful noise programs today are those that identify the noise problems that really 'bug' the citizens and get those problems solved first," says Elkins, EPA noise programs director. "Once they show they can produce results, community leaders are willing to back programs when they take on more difficult noise problems."

*El Segundo, Calif.*

El Segundo, Calif. has tried a different approach—purchasing only quiet equipment whenever possible. According to City Councilman Dick Nagel, "When quiet equipment is available, we specify noise levels, and if the horsepower and side of the engine are sufficient, we buy the quietest product available." (Standards for most vehicles average

under 75 decides, 25 feet from the vehicle, 5 feet above ground). "When we're shopping for a product, we ask the vendors who are bidding to indicate the noise level of their product. For instance, we recently contracted for quiet garbage trucks by adding noise qualifications to the bid specs and prohibiting trash pick up before 7:00 A.M. in residential areas," Nagel says. All seven bidders said they could meet the qualifications, so El Segundo chose the lowest bidder.

EPA noise programs Director Elkins say, "The best noise control is that which is designed into a product, not just added on as an afterthought. Communities can use their purchasing power to induce manufacturers to produce quieter products for all."

EPA IS HELPING

The U.S. Environmental Protection Agency is helping cities and states cope with noise problems. Through the Noise Control Act of 1972, Congress directed EPA "to promote an environment for all Americans free from noise that jeopardizes their health and welfare." It specified that EPA regulate new products in commerce that are "major sources of noise" and also work with state and local governments to create a quieter environment.

Although much of their recent activity has been directed toward regulation of new products, the EPA noise office has begun emphasizing state and local programs. Activity in noise control at the local level is increasing, with the number of local programs more than doubling in the last several years.

While the primary responsibility for noise control rests with local governments, EPA offers technical assistance to cities and communities and has started two antinoise programs: the Quiet Communities Program (QCP) and Each Community Helps Others (ECHO).

*Quiet communities*

The Quiet Communities Program is a pilot project intended to show how to apply the best available techniques to control noise at the local level. The emphasis is on action by the local government aided by technical assistance and support from EPA in an all-out effort to control noise.

Allentown, Penn. was chosen to be the first Quiet Community. The city has a wide variety of noise problems that are considered to be manageable; its citizens expressed a strong concern for reducing noise and the city government actively sought participation in the program. According to Allentown's QCP coordinator, Jeffrey Everett, "Allentown runs the gamut as far as noise problems are concerned: highway, industrial, and airport. Our primary problems are traffic-related or from domestic sources. That's where we get the most complaints." In the twelve-month period July 1, 1976 to June 30, 1977, there were 1,600 domestic complaints registered—everything from loud parties to barking dogs.

In the next two years several other communities will join the QCP, each of which will be supported by EPA for two years. With technical assistance provided by EPA, each Quiet Community will develop and implement noise control strategies through local ordinances, legislation, public information and education. Emphasis will be on involving citizens, neighborhood groups, and social and civic organizations in reducing their noise problems.

*Each community helps others*

Another program designed to assist communities in solving their noise problems is EPA's Each Community Helps Others (ECHO) program. Communities will share their experiences in noise control with other cities and towns. Community noise advisors, who have been selected by EPA, will assist certain communities in solving particular noise problems.

A noise advisor might help community residents locate the sources of noise, determine which noises are most annoying or harmful, and assist in reducing noise by helping draft legislation and ordinances. The program will not provide the community with a solution to every noise problem, but will help with individual problem solving.

Several cities and towns that have employed noise control experts endorse this concept as an important asset to communities trying to initiate or improve noise programs. "A well-trained noise advisor can be a tremendous help and can benefit several communities through a sharing process," says Sally Parsons, president of the Littleton Col. City Council.

EPA has accepted applications from several communities with serious but manageable noise problems and has assigned a community noise advisor to each. Some of these communities are: Council Bluffs, Iowa; Norfolk; Charleston; Des Moines; Sioux Falls; Tempe, Ariz.; and Anchorage. By the end of June, 1978, at least twenty more communities will have been matched with qualified noise advisors.

*Standards and regulations*

Congress also assigned the EPA the task of setting noise standards and regulations for new products sold in commerce. This part of the noise control effort attacks the major cause of noise problems—the basic noisiness of many products and types of equipment. This effort is a necessary complement to state and local efforts to manage the noise problem.

Federal action ensures uniformity of standards and provides local officials the means to solve their noise problems. The EPA encourages public participation in the rule making process and is also considering the costs to manufacturers.

*Sources and resources: Use what you have*

Noise control programs at all levels of government are notoriously underfunded and understaffed.

How can city governments with limited budgets locate the people and money to conduct a noise control program? The simplest and best way to bypass that problem is to use what you have.

Because noise-monitoring equipment is easy to operate, using it could become a function of the local police department. City officials can be responsible for administering and supervising the program.

A successful noise control program in a city with major noise problems was carried out in El Segundo, for less than $25,000. The city tapped local resources and avoided hiring new staff by using appointed city officials to administer the program. In Florida, the legislature directed the state's Department of Environmental Regulations to establish standards for environmental noise. "But the legislature didn't give the department enough resources to enforce statewide standards," according to Jesse Borthwick, Florida administrator of noise control. So the department contracted with five universities in the state to assist in the areas of research and development. "Our goal was to help cities and towns develop their own local noise programs," he says. The universities provided technical assistance, expertise, labor (by graduate students), and a lot of equipment.

A noise control program should emphasize public education and support. An effective liaison to the public is the local intermediary group—civic, religious, business, and professional. The program should also provide outlets for interested citizens and groups to control noise.

Several resource programs are available from federal agencies, and cities can take advantage of these programs. The EPA provides technical assistance for any city or community that is working to develop a noise control program. Tools are available such as model building codes, mechanical equipment codes, model enforcement procedures, equipment loans, model state noise legislation, and public education materials. Assistance often involves a federal official working directly with communities to train local officials or help them solve specific problems.

Workers are available from such programs as Comprehensive Employment and Training Act Programs (CETA) and programs for the aging. CETA programs are managed by Department of Labor approved prime sponsors to provide job training and employment opportunities for economically disadvantaged, unemployed, and under-employed people. Programs for the aging are administered by the Department of Labor and the Department of Health, Education and Welfare's Administration on Aging. These programs are designed to mobilize the millions of older Americans and retired people who have the time and talent to contribute to community and state noise programs. For example, additional people were hired for the ten EPA regional noise offices through the Senior Enviromenntal Employment (SEE) program, one of several programs which are part of an interagency agreement between the EPA and the Administration on Aging. EPA has published a booklet describing these programs and indicating how local officials can obtain these resources for their noise control programs.

Although grant money is not available, EPA can guide communities through the necessary steps in developing a noise control program.

QUIETING THE NOISE MAKERS

Noise is a constant source of complaints for government officials in large cities and small. But even where state, local, and regional noise programs are active, controlling noise has proven a difficult task to accomplish. It is safe to say that state and local efforts alone, though imperative, are not sufficient to solve the problem. Although noise is at heart a community problem, its ubiquitous nature makes it a significant national problem, meriting federal attention.

This report illustrates some of the ways state and local government officials have dealt with noise issues in their communities. Their strategy generally has been to govern by law the actual operation of a variety of noisy products, including construction equipment, motorcycles, automobiles, and trucks. Other everyday noise sources, as well as people and animals, also are the subject of such "in-use" noise laws in many communities in this country. But, as necessary as these operational controls are, they do not solve the basic cause of noise problems: the inherent noisiness of many products and types of equipment. Community noise abatement strategies generally attack the problem after it has been created.

The Noise Control Act of 1972 directed the EPA to identify and regulate major noise sources most detrimental to the public's health and welfare. The EPA has authority to regulate only newly-manufactured products, but using it will ensure national uniformity of treatment and can be the most cost-effective way of reducing noise at the point of its manufacture. States and local governments retain responsibility for controlling the operation of noisy products.

Since 1972, the agency has identified nine products as major noise sources. They are: portable air compressors, medium and heavy trucks, wheel and crawler tractors (used in construction), truck refrigeration units, garbage trucks, motorcycles, buses, power lawn mowers, pavement breakers (or jack hammers), and rock drills. Initial standards for air compressors and trucks become effective January 1, 1978. In late 1977, proposed regulations were issued for wheel and crawler tractors, garbage trucks, and buses. The

public comment periods have ended and the EPA is reviewing the public docket in preparation for issuing final rules within the year. Regulation for motorcycles and their replacement mufflers were proposed March 15, 1978 and a final rule is expected in mid-1979, although motorcycle manufacturers would not be required to meet initial standards until 1980.

Several other products are being investigated by the EPA to see if their noise levels warrant regulation. They include automobiles and light trucks, tires, mufflers, snowmobiles, chain saws, air conditioners, guided mass transit motorboats, and earth moving equipment. The agency also has undertaken several programs to examine the feasibility of noise labeling requirements for a variety of products, including air conditioners, vacuum cleaners, chain saws, mufflers, and snowmobiles.

Under a separate category of the Noise Control Act, EPA has set in-use standards for interstate railroads and motor carriers. These standards preempt state and local in-use as well as federal standards which must be met before products are sold. Congress chose to impose this preemption because of the interstate nature of these two classes of noise sources. Other sections of the act assign EPA limited regulatory responsibilities, such as recommended aviation noise standards to the Federal Aviation Administration (FAA). In general, the FAA has chosen not to implement EPA's proposals.

*Aircraft and airport noise*

Noise is an integral part of aviation and the busy airports that serve countless communities across the country. But every day, many people living near airports suffer excessive levels of noise which are not only annoying, but also may be harmful to their health and welfare.

As airports and air traffic continue to grow, the aviation noise problem is becoming more severe. No ideal solutions are known, particularly where airports are already surrounded by hundreds of thousands of people, but many communities are discovering they can work together with the airport proprietor and reduce noise.

The FAA has primary responsibility for aircraft noise and has established noise level standards for all newly-manufactured aircraft. But often the problem stems from such sources as the pattern of surrounding land uses. City officials and interested citizens can help by effecting noise abatement programs and land use programs. If the community and the airport join together to present a plan to the FAA, they can promote comprehensive noise abatement planning and control.

Citizens have had success in gaining a voice in the planning process for operation procedures at airports. For instance, in Minneapolis, the Metropolitan Aircraft Sound Abatement Council, a group composed of citizens, airport operators, and industry representatives, has dramatically reduced aviation noise around the Minneapolis-St. Paul airport. The EPA worked with airport authorities during the development of EPA's airport noise evaluation process (ANEP), a method for determining how much noise aircraft add to an area.

The ANEP involves determining the general noise in the area of the airport and estimating aviation noise in the same area. By comparing aviation noise to total noise, an effective airport noise abatement and land-use plan can be developed.

In El Segundo, citizens lobbied for quieter planes, and worked directly with the airport to bring about changes in operations, take-off, and landing. "We've had a fair amount of success with the problem," according to city Councilmember Dick Nagel. "We're putting pressure on industry and other groups to get quieter planes and we've had pretty good success. Most newly-purchased planes are meeting quieter standards," Nagel said.

By changing flight patterns, a city ordinance in Tempe, Ariz. has significantly reduced noise that was disturbing the community. The Phoenix-Sky Harbor Airport is monitored continually by a noise abatement committee that includes several citizen representatives.

There are limits to aircraft noise abatement. Noise is a part of aviation. Airplanes are subject to physical laws which restrict the manner in which they fly. Safety is and must be the primary concern. But excessive noise caused by airplanes and airports can be reduced. Cooperative effort by the community and the airport to explore the possibilities for noise abatement is an important first step in conquering the problem.

*Motorcycle noise*

Motorcycles are one of the greatest sources of citizen noise complaints in this country. For example, in a recent EPA urban noise survey, respondents cited automotive noise sources; particularly motorcycles, as the most annoying of all noise sources. A 1977 statewide survey conducted in Florida disclosed that noise from motorcycles and minibikes annoyed more people (41 percent) than any other noise source. (Next behind motorcycles were airplanes and helicopters chosen by 9 percent of the respondents.) In San Francisco, a 1967 newspaper survey found motorcycle noise to be the number one source of citizen annoyance.

Motorcycle noise affects almost everyone. People living in urban and suburban areas complain about the annoyance. Excessive noise from motorcycles is even polluting wilderness areas where appropriate use restrictions are not enforced. A large part of the problem comes flrom motorcycles that have been modified by their owners to make even more noise than they did when they came from the factory. Many bike owners are under the mistaken impression that they can achieve better performance by tampering with their mufflers. What is usually achieved is merely more noise—not just for the rider but for everyone else. Some motorcyclists even desire noisier bikes than can be bought new from retail stores. As a result, a large market has grown up over the years dealing in the manufacture and sale of noisier replacement mufflers considerably less effective than the originals.

Whose responsibility is it to solve the problem of motorcycle noise? The federal government's? The states'? The cities'? The answer is that the problem will be solved only through the combined efforts of both local and federal governments. Each level of government can achieve different results. State and local governments are ideally suited to enforcing in-use noise laws, many of which already have been adopted. The federal government is ideally suited to requiring manufacturers to reduce the noise of new motorcycles and replacement mufflers before they are sold. All fifty states asked the federal government for motorcycle noise regulations.

The EPA proposed a regulation for motorcycles and replacement mufflers on March 15, 1978. The proposed rule addresses the problem of owner modification as well as the noise levels of several types of new motorcycles. The proposed standards will require street motorcycles and off-road motorcycles to be quieted from current levels by some 2–9 decibels over a six-year period. (See chart.) The standards also will apply to replacement muffler systems.

Mufflers intended for use on motorcycles built after 1980 would have to meet the new standards. However muffler manufacturers can continue to build noisy systems for older bikes that are not subject to the regulation and it is likely that some of these noisy systems will appear on 1980 and later models. To counter this, the proposed regulation would require mufflers intended for older, non-federally regulated bikes to be labeled as not meeting EPA standards. This label would enable police or other enforcement personnel to detect mufflers which are used on the wrong motorcycles.

Requiring quieter motorcycles and mufflers will not, by itself, solve the problem, of course, State and local governments will have to complement these proposals with active enforcement if they want to realize significant noise reduction. Tampering with quieted products is a violation of federal statute, but there is no federal police force to punish tamperers.

The EPA proposal contains several tools that are intended to make the state and local enforcement job a lot easier. Several labels are required to be placed on motorcycles and mufflers. One is a compliance label indicating that a motorcycle is in conformance with EPA standards. It also tells whether a motorcycle is a street, off-road, or competition bike. A label on the muffler states which individual models it can be used on or that it is intended for older motorcycles and should not be used on motorcycles manufactured after 1980. Finally the motorcycle will carry a label indicating that model's sound level on a simple stationary test (not the acceleration test that defines the standard). An enforcement officer can run this same test in a field with a sound level meter. If the sound level significantly exceeds the level on the label, he has objective evidence that tampering or severe deterioration has taken place.

The proposed regulation will result in a significant reduction in motorcycle noise. In combination with state and local enforcement efforts, the regulation is expected to result in a 55-75 percent decrease in street motorcycle noise. Off-road motorcycle noise should be reduced by 25-33 percent. The health and welfare benefits to the community are obvious. Millions of Americans are exposed each day to motorcycle noise levels that can cause stress, tension, and other physiological and psychological reactions. Much of this excessive noise will be reduced by the proposed regulations and its enforcement.

The proposed regulation is still open for public comment. The EPA is especially anxious to have responses from public officials. Is motorcycle noise a problem in your community? Does the proposed EPA regulations complement your own local enforcement program? Do you need additional assistance from the EPA? Use the enclosed card to comment on the motorcycle noise regulation and to request noise information. Letters are welcome and should be sent to:

Motorcycle Noise, EPA, Washington. D.C. 20460.

This is an opportunity to be involved in the decision process and be part of the official record.

The agency is strongly committed to involving local officials and the American public in its rule making process. Now is the time to help the EPA design a viable federal program to answer your needs. To be successful, a motorcycle noise control program must be supported by interested state and local agencies. Whether you are for or against the regulation the EPA wants to know what you think.

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Region I: Mr. Al Hicks, JFK Building, Rm 2113, Boston, Ma 02203, (617) 223–5708.

Region II: Mr. Tom O'Hare, 26 Federal Plaza, Rm 907G, New York, NY 10007, (212) 264–2109.

Region III: Mr. Patrick Anderson, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa, 19106 (215) 597–9118.

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land Street, N.E., Atlanta, Georgia 30308, (404) 881-4861.

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## DO WE FEEL TOO GUILTY TO DEFEND OURSELVES?

● Mr. HATCH. Mr. President, Alexander Solzhenitsyn's speech to the Harvard graduating class which appeared in its entirety in the June 11 issue of the Washington Post, is not one to be read and forgotten. Instead, its points should be seriously considered by all Americans.

We cannot hope to judge always accurately our own society. We are too culture-bound to recognize many of the faults Mr. Solzhenitsyn warned about in his speech. None of us have ever lived in a concentration camp or struggled in secrecy to write a book. We have never lived in constant fear that we would be taken away from our families at any moment. Who could value freedom or have more courage than Alexander Solzhenitsyn?

If Mr. Solzhenitsyn says that "the West has lost its courage," then we should listen and consider his words rather than attack them and in so doing illustrate the very faults we are denying.

Mr. Solzhenitsyn bases his conclusions on conditions of our existence that we find embarrassing and, therefore we do not want to accept his ideas. The West is over-legalized and its laws do not always advance the cause of freedom. The people of the West are overly concerned with material things. We have denounced ourselves excessively and let down allies. Much of our press and many of our leaders are mostly concerned with their own welfare, and they operate accordingly. The spiritual atmosphere of this country, in which our freedom was created, has declined.

We must not shun Solzhenitsyn's criticism of the West when it is that very criticism wherein lies the way for us to understand our predicament. The Washington Post's editorial concerning Solzhenitsyn's speech proves many of his points even as it attempts to discredit them. It accuses Mr. Solzhenitsyn of "a gross misunderstanding of western society," a misunderstanding it attributes to Mr. Solzhenitsyn being an outsider—a Russian. Does the Post's editorial writer claim to understand both Americans and Russions better than Solzhenitsyn does?

In his speech Mr. Solzhenitsyn recognizes the press as "the greatest power within Western countries," and he points out the fact that the press is unified in a pattern of fashionable judgment. One of these fashionable judgments is that the real enemy is the cold war produced by anti-Communists. The editorial proves Solzhenitsyn's point perfectly by attempting to discredit him for insisting that we recognize our Soviet enemy and for leading a crusade to insure a boundless cold war. Is it really true that our main weaknesses are that we are not liberal enough and do not trust the Soviets enough?

I hope that everyone will consider Mr. Solzhenitsyn's speech very carefully, and I ask that his speech be printed in the RECORD.

The speech follows:

SOLZHENITSYN'S INDICTMENT: "THE WEST HAS LOST ITS COURAGE"

(By Alexander Solzhenitsyn)

A loss of courage may be the most striking feature which an outside observer notices in the West in our days. The western world has lost its civil courage, both as a whole and separately, in each country, each government, each political party and of course in the United Nations.

Such a decline in courage is particularly noticeable among the ruling groups and the intellectual elite, causing an impression of loss of courage by the entire society. Of course there are many courageous individuals but they have no determining influence on public life. Political and intellectual bureaucrats show depression, passivity and preplexity in their actions and in their statements and even more so in theoretical reflections to explain how realistic, reasonable as well as intellectually and even morally warranted it is to base policies on weakness and cowardice.

And decline in courage is ironically emphasized by occasional explosions of anger and inflexibility on the part of the same bureaucrats when dealing with weak governments and weak countries, not supported by anyone, or with currents which cannot offer any resistance. But they get tongue-tied and paralyzed when they deal with powerful governments and threatening forces, with aggressors and international terrorists.

Should one point out that from ancient times decline in courage has been considered the beginning of the end?

When the modern western states were created, the following principle was proclaimed: governments are meant to serve man, and man lives to be free and to pursue happiness. (See, for example, the American Declaration of Independence).

Now at last during past decades technical and social progress has permitted the realization of such aspirations: the welfare state. Every citizen has been granted the desired freedom and material goods in such quantity and of such quality as to guarantee in theory the achievement of happiness, in the morally inferior sense which has come into being during those same decades.

In the process, however, one psychological detail has been overlooked: The constant desire to have still more things and a still better life and the struggle to obtain them imprints many western faces with worry and even depression, though it is customary to conceal such feelings. Active and tense competition permeates all human thoughts without opening a way to free spiritual development.

The individual's independence from many types of state pressure has been guaranteed; the majority of people have been granted well-being to an extent their fathers and grandfathers could not even dream about; it has become possible to raise young people according to these ideals, leading them to physical splendor, happiness, possession of material goods, money and leisure, to an almost unlimited freedom of enjoyment. So who should now renounce all this, why and for what should one risk one's precious life in defense of common values, and particularly in such nebuous cases when the security of one's nation must be defended in a distant country?

Even biology knows that habitual extreme safety and well-being are not advantageous for a living organism. Today, well-being in the life of western society has begun to reveal its pernicious mask.

Western society has given itself the organization best suited to its purposes, based, I would say, on the letter of the law. The limits of human rights and righteousness are determined by a system of laws; such limits are very broad.

People in the West have acquired considerable skill in using, interpreting and manipulating law, even though laws tend to be too complicated for an average person to understand without the help of an expert. Any conflict is solved according to the letter of the law and this is considered to be the supreme solution. If one is right from a legal point of view, nothing more is required, nobody may mention that one could still not be entirely right, and urge self-restraint, a willingness to renounce such legal rights, sacrifice and selfless risk; it would sound simply absurd.

One almost never sees voluntary self-restraint. Everybody operates at the extreme limit of those legal frames. An oil company is legally blameless when it purchases an invention of a new type of energy in order to prevent its use. A food product manufacturer is legally blameless when he poisons his produce to make it last longer: after all, people are free not to buy it.

I have spent all my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either. A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses.

And it will be simply impossible to stand through the trials of this threatening century with only the support of a legalistic structure.

In today's western society, the inequality has been revealed of freedom for good deeds and freedom for evil deeds. A stateman who wants to achieve something important and highly constructive for his country has to move cautiously and even timidly; there are thousands of hasty and irresponsible critics around him, parliament and the press keep rebuffing him. As he moves ahead, he has to prove that each single step of his is well-founded and absolutely flawless. Actually an outstanding and particularly gifted person who has unusual and unexpected initiatives in mind hardly gets a chance to assert himself; from the very beginning, dozens of traps will be set out for him. Thus mediocrity triumphs with the excuse of restrictions imposed by democracy.

It is feasible and easy everywhere to undermine administrative power and, in fact, it has been drastically weakened in all western countries. The defense of individual rights has reached such extremes as to make society as a whole defenseless against certain individuals. It is time, in the West, to defend not so much human rights as human obligations.

Destructive and irresponsible freedom has been granted boundless space. Society appears to have little defense against the abyss of human decadence, such as, for example, misuse of liberty for moral violence against young people, motion pictures full of pornography, crime and horror. It is considered to be part of freedom and theoretically

counter-balanced by the young people's right not to look or not to accept. Life organized legalistically has thus shown its inability to defend itself against the corrosion of evil.

And what shall we say about the dark realm of criminality as such? Legal frames (especially in the United States) are broad enough to encourage not only individual freedom but also certain individual crimes. The culprit can go unpunished or obtain undeserved leniency with the support of thousands of public defenders. When a government starts an earnest fight against terrorism, public opinion immediately accuses it of violating the terrorists' civil rights. There are many such cases.

Such a tilt of freedom in the direction of evil has come about gradually but it was evidently born primarily out of a humanistic and benevolent concept according to which there is no evil inherent to human nature; the world belongs to mankind and all the defects of life are caused by wrong social systems which must be corrected. Strangely enough, though the best social conditions have been achieved in the West, there still is criminality and there even is considerably more of it than in the pauper and lawless Soviet society. (There is a huge number of prisoners in our camps who are termed criminals, but most of them never committed any crime; they merely tried to defend themselves against a lawless state resorting to means outside of a legal framework.)

The press too, of course, enjoys the widest freedom. I shall be using the word press to include all media. But what sort of use does it make of this freedom?

Here again, the main concern is not to infringe the letter of the law. There is no moral responsibility for deformation or disproportion.

What sort of responsibility does a journalist have to his readers, or to history?

If they have misled public opinion or the government by inaccurate information or wrong conclusions, do we know of any cases of public recognition and rectification of such mistakes by the same journalist or the same newspaper?

No. it does not happen, because it would damage sales. A nation may be the victim of such a mistake, but the journalist always gets away with it. One may safely assume that he will start writing the opposite with renewed self-assurance.

Because instant and credible information has to be given, it becomes necessary to resort to guesswork, rumors and suppositions to fill in the voids, and none of them will ever be rectified, they will stay on in the readers' memory.

How many hasty, immature, superficial and misleading judgments are expressed every day, confusing readers, without any verification? The press can both stimulate public opinion and miseducate it.

Thus we may see terrorists heroized, or secret matters, pertaining to one's nation's defense, publicly revealed, or we may witness shameless intrusion on the privacy of well-known people under the slogan: "Everyone is entitled to know everything."

But this is a false slogan, characteristic of a false era: people also have the right not to know, and it is a much more valuable one. The right not to have their divine souls stuffed with gossip, nonsense, vain talk. A person who works and leads a meaningful life does not need this excessive, burdening flow of information.

Hastiness and superficiality are the psychic disease of the 20th century and more than anywhere else this disease is reflected in the press. In-depth analysis of a problem is anathema to the press. It stops at sensational formulas.

Such as it is, however, the press has become the greatest power within the western countries, more powerful than the legislature, the executive and the judiciary. One would then like to ask: By what law has it been elected and to whom is it responsible?

In the communist East, a journalist is frankly appointed as a state official. But who has granted western journalists their power, for how long a time and with what prerogatives?

There is yet another surprise for someone coming from the East where the press is rigorously unified: one gradually discovers a common trend of preferences within the western press as a whole. It is a fashion; there are generally accepted patterns of judgment and there may be common corporate interests, the sum effect being not competition but unification.

Enormous freedom exists for the press, but not for the readership, because newspapers mostly give enough stress and emphasis to those opinions which do not too openly contradict their own and the general trend.

Without any censorship, in the West fashionable trends of thought and ideas are carefully separated from those which are not fashionable; nothing is forbidden, but what is not fashionable will hardly ever find its way into periodicals or books or be heard in colleges.

Legally your researchers are free, but they are conditioned by the fashion of the day. There is no open violence such as in the East; however, a selection dictated by fashion and the need to match mass standards frequently prevent independent-minded people from giving their contribution to public life. There is a dangerous tendency to form a herd, shutting off successful development.

This gives birth to strong mass prejudices, to blindness, which is most dangerous in our dynamic era. There is, for instance, a self-deluding interpretation of the contemporary world situation. It works as a sort of a petrified armor around people's minds.

Human voices from 17 countries of Eastern Europe and Eastern Asia cannot pierce it. It will only be broken by the pitiless crowbar of events.

It is almost universally recognized that the West shows all the world a way to successful economic development, even though in the past years it has been strongly disturbed by chaotic inflation.

However, many people living in the West are dissatisfied with their own society. They despise it or accuse it of not being up to the level of maturity attained by mankind. A number of such critics turn to socialism, which is a false and dangerous current.

I hope that no one present will suspect me of offering my personal criticism of the western system to present socialism as an alternative. Having experienced applied socialism in a country where the alternative has been realized, I certainly will not speak for it.

But should someone ask me whether I would indicate the West such as it is today as a model to my country, frankly I would have to answer negatively. No, I could not recommend your society in its present state as an ideal for the transformation of ours.

Through intense suffering our country has now achieved a spiritual development of such intensity that the western system in its present state of spiritual exhaustion does not look attractive. Even those characteristics of your life which I have just mentioned are extremely saddening.

A fact which cannot be disputed is the weakening of human beings in the West while in the East they are becoming firmer and stronger. Six decades for our people and three decades for the people of Eastern Europe; during that time we have been through a spiritual training far in advance of western experience. Life's complexity and mortal weight have produced stronger, deeper and more interesting characters than those generated by standardized western well-being.

Therefore, if our society were to be transformed into yours, it would mean an improvement in certain aspects, but also a change for the worse on some particularly significant scores.

It is true, no doubt, that a society cannot remain in an abyss of lawlessness, as is the case in our country. But it is also demeaning for it to elect such mechanical legalistic smoothness as you have.

After the suffering of decades of violence and oppression, the human soul longs for things higher, warmer and purer than those offered by today's mass living habits, introduced by the revolting invasion of publicity, by TV stupor and by intolerable music.

All this is visible to observers from all the worlds of our planet. The western way of life is less and less likely to become the leading model.

There are meaningful warnings which history gives a threatened or perishing society. Such are, for instance, the decadence of art, or a lack of great statesmen.

There are open and evident warnings, too. The center of your democracy and of your culture is left without electric power for a few hours only, and all of a sudden crowds of American citizens start looting and creating havoc.

The smooth surface film must be very thin, then, the social system quite unstable and unhealthy.

But the fight for our planet, physical and spiritual, a fight of cosmic proportions, is not a vague matter of the future; it has already started.

The forces of evil have begun their decisive offensive, you can feel their pressure, and yet your screens and publications are full of prescribed smiles and raised glasses. What is the joy about?

Very well-known representatives of your society, such as George Kennan, say: We cannot apply moral criteria to politics. Thus we mix good and evil, right and wrong and make space for the absolute triumph of absolute evil in the world.

On the contrary, only moral criteria can help the West against communism's well-planned world strategy. There are no other criteria. Practical or occasional considerations of any kind will inevitably be swept away by strategy. After a certain level of the problem has been reached, legalistic thinking induces paralysis, it prevents one from seeing the size and meaning of events.

In spite of the abundance of information, or maybe because of it, the West has difficulties in understanding reality such as it is. There have been naive predictions by some American experts who believed that Angola would become the Soviet Union's Vietnam or that Cuban expeditions in Africa would best be stopped by special U.S. courtesy to Cuba.

Kennan's advice to his own country—to begin unilateral disarmament—belongs to the same category. If you only knew how the youngest of the Moscow Old Square officials laugh at your political wizards!

As to Fidel Castro, he frankly scorns the United States, sending his troops to distant adventures from his country right next to yours.

However, the most cruel mistake occurred with the failure to understand the Vietnam War. Some people sincerely wanted all wars to stop just as soon as possible; others believed that there should be room for national, or communist, self-determination in Vietnam, or in Cambodia, as we see today with particular clarity.

But members of the U.S. antiwar movement wound up being involved in the betrayal of Far Eastern nations, in a genocide and in the suffering today imposed on 30 million people there. Do those convinced pacifists hear the moans coming from there? Do they understand their responsibility today? Or do they prefer not to hear?

That American intelligentsia lost its nerve, and as a consequence thereof danger has come much closer to the United States. But there is no awareness of this.

Your shortsighted politicians who signed the hasty Vietnam capitulation seemingly gave America a carefree breathing pause; however, a hundredfold Vietnam now looms over you.

That small Vietnam had been a warning and an occasion to mobilize the nation's courage. But if a full-fledged America suffered a real defeat from a small communist half-country, how can the West hope to stand firm in the future?

I have had occasion already to say that in the 20th century western democracy has not won any major war without help and protection from a powerful continental ally whose philosophy and ideology it did not question.

In World War II against Hitler, instead of winning that war with its own forces, which would certainly have been sufficient, Western democracy grew and cultivated another enemy who would prove worse and more powerful yet, as Hitler never had so many resources and so many people, nor did he offer any attractive ideas, or have such a large number of supporters in the West—a potential fifth column—as the Soviet Union.

At present, some western voices already have spoken of obtaining protection from a third power against aggression in the next world conflict, if there is one; in this case the shield would be China. But I would not wish such an outcome to any country in the world.

First of all, it is again a doomed alliance with evil; also it would grant the United States a respite, but when at a later date China with its billion people would turn around armed with American weapons, America itself would fall prey to a genocide similar to the one perpetrated in Cambodia in our days.

And yet—no weapons, no matter how powerful, can help the West until it overcomes its loss of willpower. In a state of psychological weakness, weapons become a burden for the capitulating side. To defend oneself, one must also be ready to die; there is little such readiness in a society raised in the cult of material well-being.

Nothing is left, then, but concessions, attempts to gain time and betrayal. Thus at the shameful Belgrade Conference free western diplomats in their weakness surrendered the line where enslaved members of Helsinki watchgroups are sacrificing their lives.

Western thinking has become conservative; the world situation should stay as it is at any cost, there should be no changes. This debilitating dream of a status quo is the symptom of a society which has come to the end of its development.

But one must be blind in order not to see that oceans no longer belong to the West, while land under its domination keeps shrinking. The two so-called world wars—they were by far not on a world scale, not yet—have meant internal self-destruction of the small progressive West which has thus prepared its own end. The next war—which does not have to be an atomic one and I do not believe it will—may well bury western civilization forever.

Facing such a danger, with such historical values in your past, at such a high level of realization of freedom and apparently of devotion to freedom, how is it possible to lose to such an extent the will to defend oneself?

How has this unfavorable relation of forces come about? How did the West decline from its triumphal march to its present sickness? Have there been fatal turns and losses of direction in its development?

It does not seem so. The West kept advancing socially in accordance with its proclaimed intentions, with the help of brilliant technological progress. And all of a sudden it found itself in its present state of weakness. This means that the mistake must be at the root, at the very basis of human thinking in the past centuries.

I refer to the prevailing western view of the world which was first born during the Renaissance and found its political expression from the period of the Enlightenment. It became the basis for government and social science and could be defined as rationalistic humanism or humanistic autonomy: the proclaimed and enforced autonomy of man from any higher force above him. It could also be called anthropocentricity, with man seen as the center of everything that exists.

The turn introduced by the Renaissance evidently was inevitable historically. The Middle Ages had come to a natural end by exhaustion, becoming an intolerable despotic repression of man's physical nature in favor of the spiritual one.

Then, however, we turned our backs upon the Spirit and embraced all that is material with excessive and unwarranted zeal. This new way of thinking, which had imposed on us its guidance, did not admit the existence of intrinsic evil in man nor did it see any higher task than the attainment of happiness on earth.

It based modern western civilization on the dangerous trend to worship man and his material needs. Everything beyond physical well-being and accumulation of material goods, all other human requirements and characteristics or a subtler and higher nature, were left outside the area of attention of state and social systems, as if human life did not have any superior sense.

That provided access for evil, of which in our days there is a free and constant flow. Merely freedom does not in the least solve all the problems of human life and it even adds a number of new ones.

However, in early democracies, as in American democracy at the time of its birth, all individual human rights were granted because man is God's creature. That is, freedom was given to the individual conditionally, in the assumption of his constant religious responsibility.

Such was the heritage of the preceding thousand years. Two hundred or even 50 years ago, it would have seemed quite impossible, in America, that an individual could be granted boundless freedom simply for the satisfaction of his instincts or whims.

Subsequently, however, all such limitations were discarded everywhere in the West; a total liberation occurred from the moral heritage of Christian centuries with their great reserves of mercy and sacrifice.

As humanism in its development became more and more materialistic, it made itself increasingly accessible to speculation and manipulation at first by socialism and then by communism. So that Karl Marx was able to say in 1844 that "communism is naturalized humanism."

This statement turned out to be not entirely senseless. One does see the same stones in the foundations of a despiritualized humanism and of any type of socialism; endless materialism; freedom from religion and religious responsibility, which under communist regimes reach the stage of anti-religious dictatorship; concentration on social structures, with a seemingly scientific approach.

This is typical of the Englightenment in the 18th century and of Marxism. Not by coincidence all of communism's meaningless pledges and oaths are about Man, with a capital M, and his earthly happiness.

At first glance it seems an ugly parallel: common traits in the thinking and way of life of today's West and today's East? But such is the logic of materialistic development.

We are now experiencing the consequences of mistakes which had not been noticed at the beginning of the journey. We have placed too much hope in political and social reforms, only to find out that we were being deprived of our most precious possession: our spiritual life.

In the East, it is destroyed by the dealings and machinations of the ruling party. In the West, commercial interests tend to suffocate it. This is the real crisis. The split in the world is less terrible than the similarity of the disease plaguing its main sections.●

## TRIBUTE TO SENATOR JOSEPH A. MONTOYA

● Mr. WILLIAMS. Mr. President, all the Members of the Senate were deeply saddened to learn of the passing of our friend and former colleague Joseph A. Montoya.

Truly a devoted public servant, he held his first elected office, that of Representative in the New Mexico Legislature, at the age of 21, while still attending college.

From there Montoya went on to build a notable reputation as champion of the laborer, and the farmer, spending virtually his entire adult life working for the people of his State. The elderly, handicapped, and disadvantaged, too, were his prime concerns.

During more than 40 years in public office, in positions ranging from Lieutenant Governor to U.S. Senator, he never forgot his humble beginnings or heritage and was ever sympathetic to the plight of minorities, earning the title of spokesman for Hispanic-Americans not only in New Mexico, but across the country. He rightly stressed the importance of education as the key to success and became a leader in the fight to insure every citizen access to a quality education.

This unending commitment earned him respect and admiration here in Washington, and at home in New Mexico, and though he will be sorely missed, his reputation and legislative contributions will not soon be forgotten. Senator Montoya was a loyal and dedicated statesman, and one whom we can all be proud to have known.●

## EAT PEANUTS AND BRING A FLASK

● Mr. GARN. Mr. President, the President has called for tax reform; the papers want tax reform; the California vote on proposition 13 indicates that the voters want tax reform. But the kind of tax reform we get is rarely in line with what the voters want and need.

I have obtained, by a circuitous route, an example of the kind of tax reform we are much more likely to get. It illustrates perfectly why Government looms ever larger and more oppressive in our lives.

I ask that "Eat Peanuts and Bring a Flask," by R. A. Mulshine, be printed in the RECORD.

The article follows:

EAT PEANUTS AND BRING A FLASK!

(By R. A. Mulshine)

During my morning euphoria on Conrail I read with some interest about President Carter's proposal to allow as a tax deduction only

one-half of the cost of business meals. Frankly, my reaction was why one-half, why not three-sixteenths or seventy-eight four hundredths, and in my fantasy, I hope, the following income tax regulation appeared before me, reflecting the absurdity which may involve itself in the legislative process. Considering the extent of federal influence in our lives I assume for example, regulations in the future may even include lists of appropriate foods and on what days they may be eaten in order to ensure deductibility.

REGULATION $162.62-ALLOWANCE OF BUSINESS MEAL DEDUCTIONS

(a) In general. Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with taxpayer's trade or business.

(b) Business meals. Except for subsection (b)(1) thru (4) only one-half of a business meal is ordinary and necessary, the other is not. The nondeductible half shall be capitalized and written off pursuant to Section 167 depreciation rules over the useful business life of the consumer of such nondeductible food. Accelerated depreciation will be allowed on food acquired and consumed at fast food restaurants located within four hundred and eighty-two kilometers of taxpayer's place of business.

(1) Notwithstanding (b) all vegetables ordered, and delivered must be consumed in toto in order to qualify for any deduction whatsoever. This subsection is meant to include all beets, lima beans and brussels sprouts. Compliance with this subsection must be certified by attaching to the taxpayer's tax return Form 10000000 the Vegetable Consumption Verification Certificate which must be attested to by the applicable waiter or waitress.

(2) Notwithstanding (b), the cost of acquiring any peanuts or peanut derivatives is deductible in full without regard to whether it is consumed during a business meal, and a peanut credit of 10% is allowed against the taxpayers tax liability for the cost of all peanuts acquired and consumed in connection with business meetings or outings.

(3) Notwithstanding (b), except as follows the cost of all alcohol consumed at business lunches is nondeductible unless consumed pursuant to medical prescription. The cost of alcoholic beverages ordered and consumed in the District of Columbia and Plains, Georgia is deductible. The Plains exception relates only to beer.

(4) Subject to (b), but without regard to Subtitle F or Section 334(b)(2), no deduction shall be allowed for any food ordered, delivered and not consumed. All food shall be weighed when served, unfinished food shall be weighed at the end of the repast and the taxpayer's deduction shall be limited to one-half of the total cost of the meal times a fraction, the numerator of which is the weight of the finished food over the aggregate weight of the meal.

Example—A taxpayer eats lunch neither in the District of Columbia nor Plains with a client at a business club the cost of which is $27.80. Assuming $3.50 was spent on alcoholic beverage, all vegetables were eaten, the cost of peanuts consumed was $.30 and the weight of the food served was 2.8 lbs. and unfinished was .7 lbs., what is the taxpayers' tax deduction?

| | |
|---|---|
| Total cost of meal | $27.80 |
| Less: | |
| Cost of alcoholic beverage | 3.50 |
| Peanut acquisition cost | .30 |
| Total | 24.00 |
| Times: Ratio of consumed to unconsumed food 2.1 to 2.8 lbs—75% | ×.75 |
| Base cost | 18.00 |
| Deductible—one-half of base cost | 9.00 |
| Plus peanut cost | .30 |
| Total deduction | 9.30 |

The taxpayer is entitled to a peanut credit of $.03 which is eligible for a three year carryback and ten year carryover. It should be noted, that if either the taxpayer *or* his client failed to eat all of his vegetables the only deduction available would be the cost of the peanuts.●

## JUDGE MOULTRIE

● Mr. HOLLINGS. Mr. President, as many of my colleagues are no doubt aware, the Honorable H. Carl Moultrie I was recently selected Chief Judge of the District of Columbia Superior Court, an appointment the Washington Post described as "excellent" in an editorial comment on June 9.

Fewer of my colleagues, however, are probably aware that Judge Moultrie is a native son of South Carolina, having been born and raised in Charleston and gaining his education at Avery Institute there in the early 1930's.

I like to think that Judge Moultrie's childhood spent in our lovely hometown was the single greatest influence in the tremendous personal and professional success he has enjoyed over the years. That is stretching credibility, to be sure, but it is not indulging in hyperbole to say that Judge Moultrie's career has been first rank from the start.

From his early involvement in newspapering and civic work in Wilmington, N.C., through his academic achievements in the law to a long and distinguished record as an attorney and member of the bench in Washington, D.C., Judge Moultrie has displayed a concern for his fellow man, compassion in the administration of justice, and a thorough intellectual grasp of the legal issues at hand.

Listing his achievements and honors would fill this RECORD. Suffice it to say that Judge Moultrie's selection by the District of Columbia Judicial Nomination Commission is the best possible choice that body could have made. The Washington Post editorial makes that point most clearly, and I ask that it be printed in the RECORD with congratulations of the Senate to Judge Moultrie.

The editorial follows:

JUDGE MOULTRIE: A SUPERIOR CHOICE

After weeks of difficult deliberation and public speculation, H. Carl Moultrie I has been selected to succeed Harold H. Greene as chief judge of the D.C. Superior Court—and the decision is an excellent one. Though Judge Greene is a tough act to follow—for it was he who guided that court to an unprecedented level of respectability—Carl Moultrie has been an outstanding member of the bench. Indeed, the difficulty in choosing the new chief judge was not due to any dearth of judicial talent in Superior Court; on the contrary, the selection commission found the court blessed with a number of highly qualified and respected candidates.

Judge Moultrie certainly brings to his new position a special sensitivity to this community—for he has served it long and well and always with distinction. Before his judgeship, he was an active and effective president of the NAACP's Washington chapter and a leader in a remarkable number and range of civic groups. While that sort of participation doesn't automatically produce a good judge, Mr. Moultrie has drawn on his extensive experience with the judicial system before becoming a judge to improve the court's image in the community.

Now, as Judge Greene moves to the federal bench, Judge Moultrie takes over the administration of a court that in the last few years has been transformed from an old, disorganized Court of General Sessions into a Superior Court of state-court rank—which was estimated last year to have touched the lives of more than 300,000 people in this community. Judge Moultrie says he intends to present a plan to his colleagues for "participatory management" of the 44-judge court, which, given his record on and off the bench, is not expected to be merely a frivolous or obstructionist exercise in citizen "involvement." We'll see. But he is aware of many troubles that still plague the court's operations, not to mention just about any other court of its rank in the nation: backlogs in civil and small-claims divisions, some sharp differences in the way his colleagues dispense justice, and tight budgets. At least as he begins to address those challenges, Judge Moultrie should enjoy strong popular support.●

## JEFFERSON DAVIS

● Mr. MARK O. HATFIELD. Mr. President, I wish to call the attention of my colleagues to the latest edition of "Jefferson Davis," a biography by Herman S. Frey. Most biographies of Davis, particularly those of a generation ago, are hopelessly romanticized or forbiddingly long. Mr. Frey's book is much more accessible, providing the reader with a thorough and accurate summary of Davis' life, and I commend it to any and all who would like to know more about this remarkable man.

Last year, Mr. President, I introduced Senate Joint Resolution 16, to posthumously restore the citizenship rights of Jefferson Davis. The resolution passed the Senate on April 27, 1977, and has been pending since that time in the House Judiciary Subcommittee on Immigration, Citizenship, and International Law, of which Mr. EILBERG is chairman. It is my sincere hope that the bill will move through committee and be approved by the full House before the end of the year.

Mr. President, I ask that the foreword from Mr. Frey's biography of Davis be printed in the RECORD.

The material follows:

FOREWORD

In his *History of the American People*, Woodrow Wilson wrote of the "masterful characteristics of Mr. Jefferson Davis:"

He had the pride, the spirit of initiative, the capacity in business, which qualify men for leadership, and lacked nothing of the indomitable will and impervious purpose to make his leadership effective. He moved, direct, undaunted by any peril, and heartened a whole people to hold steadfast to the end.

The calibre of this man has for too long been hidden by the clouds of propaganda and myth surrounding his leadership of a

benighted cause. Herman Frey has pierced these clouds to illuminate the life of a distinguished Mississippian and a great American. Other biographies of Davis sacrifice scholarly research for romanticized narrative, and are usually forbidding in length. Mr. Frey has not only given us an accurate story of an extraordinary life, he has done so with commendable brevity.

Jefferson Davis said that the purpose of writing his memoirs was to "keep the memory of our heroes green. Yet they belong not to us alone; they belong to the whole country; they belong to America." So it is with Davis himself, and in these days when expedience is more ardently practiced than conviction defended, it is even more important that we keep green the memory of a man so devoted to principle.

I hope that Herman Frey's *Jefferson Davis* will lead many more Americans to an understanding of a remarkable man.●

## ALLOCATION OF BUDGET AUTHORITY

● Mr. TALMADGE. Mr. President, in compliance with section 302(b) of the Congressional Budget and Impoundment Control Act of 1974 the Senate Committee on Agriculture, Nutrition, and Forestry is herewith submitting to the Senate its allocation of budget authority to programs under its jurisdiction as included in the first concurrent resolution on the budget for fiscal year 1979 (S. Con. Res. 80). I ask that it be printed in the RECORD.

The material follows:

SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY—ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS PURSUANT TO SEC. 302(b) OF THE CONGRESSIONAL BUDGET ACT

[In millions of dollars]

| Function—Program: Subcommittee | Direct spending | | Entitlements | |
|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays |
| 300—Forest service and soil conservation: Environment, Soil Conservation and Forestry | 108 | 82 | | |
| 350—Commodity programs: Agricultural Production, Marketing, and Stabilization of Prices | 34 | 6,620 | | |
| Dairy and beekeeping indemnity: Agricultural Production, Marketing, and Stabilization of Prices | | | 4 | -4 |
| Research and services: Agricultural Research and General Legislation | 58 | 57 | | |
| Function total | [1] 92 | [1] 6,678 | 4 | 4 |
| 450—Farmers Home Administration Rural Development Insurance Fund: Rural Development | 260 | 73 | | |
| 600—Food stamps: Nutrition | | | 5,779 | 5,950 |
| Women, infants and children (WIC): Nutrition | | | 555 | 526 |
| Child nutrition programs: Nutrition | | | 2,624 | 2,663 |
| Function total | | | 8,958 | [1] 9,138 |
| 850—Forest service permanent appropriations: Environment, Soil Conservation and Forestry | 242 | 242 | | |
| Committee total | [1] 701 | [1] 7,073 | [1] 8,962 | [1] 9,143 |

[1] Columns may not equal total due to rounding. ●

## DOE NOW SUPPORTS ALCOHOL FUELS

● Mr. JAVITS. Mr. President, I am firmly committed to the development of renewable resources as a major source of energy. Alcohol derived from urban waste, agricultural residues, timber, coal, and even algae presents immediate opportunities for liquid fuel.

Assistant Secretary Alvin L. Alm spoke before the National Gasohol Commission Conference in Washington, D.C. this week. His speech signifies a major turning point for the Department of Energy on the alcohol fuel issue. Mr. Alm reasserts DOE's commitment to resolve economic, supply and other issues that affect the potential of alcohol fuels. I would like to place his speech in its entirety in the RECORD.

The speech follows:

REMARKS OF ALVIN L. ALMS, ASSISTANT SECRETARY FOR POLICY AND EVALUATION, DEPARTMENT OF ENERGY, BEFORE NATIONAL GASOHOL COMMISSION CONFERENCE JUNE 13, 1978

I am pleased to be here today to address the first Washington meeting of the National Gasohol Commission. This Commission is playing a key role in promoting on a national basis, an agriculturally derived, domestically produced alternative source of fuel. The Department of Energy congratulates this Commission and its member states on their efforts in this important area.

Before talking about the progress we have made in the Department regarding alcohol fuels, and the particular activities that are taking place in support of gasohol, I would like to take a moment to discuss the severity of the energy crisis.

As you know, our nation is in a period of transition. Each new estimate of future world oil production capacity underscores our need to reduce dependence on foreign sources of petroleum, and to take efforts to become more energy self-sufficient.

Our current estimate of the World Oil picture indicates that by the middle of the next decade, world demand will exceed production capacity. The world oil production level is currently about 60 million barrels a day and is not likely to increase much beyond 70 million barrels a day. In the course of the next decade, we shall reach a limit on the world's production capacity for petroleum products, its principal source of energy, and sometime in the 1990's conventional production of oil will peak, and begin a steady decline. Even with successful energy programs by major importing countries other than the United States, there is likely to be a gap between worldwide demand and worldwide supply of some 3 to 8 million barrels of oil a day by 1985.

The slight and transitory excess of productive capacity—caused in large part by increased production from the Alaskan North Slope, the North Sea and Mexico, and by lower rates of economic growth, particularly in Western Europe—will quickly be overtaken by continued increases in world demand. To meet such increases in world demand would require a new Alaskan North Slope every six months or a new North Sea every year and a half. It is highly unlikely that finds of that magnitude will occur—and virtually impossible, anyway, for such finds to be translated into production by the mid-1980's.

Last year alone, our nation consumed over 30% of the world's entire crude oil production and our 1977 oil imports rose 20% over the previous year. These imports cost this nation $45 billion and are a major contributor to our national trade deficit.

The National Energy Plan has laid out a series of objectives for developing a viable short and long term national energy policy. The objectives of the plan include:

In the near term, reducing dependence on foreign oil to protect national security and minimize adverse balance of payments.

In the mid-term, keeping imports sufficiently low to weather the period in the mid-1980's when world oil production will approach a capacity limit, and in the long term, developing renewable and essentially inexhaustible sources of energy.

In order to meet those objectives, a variety of measures, including the promotion of alternative sources of energy, to permit the timely and orderly transition from fossil fuels to renewable resources, will be necessary. In this regard, the Department of Energy is deeply interested in the potential of alcohol fuels to: reduce dependence on foreign oil, extend our limited supplies of liquid fuel, and spur development of renewable sources of energy.

The Department has made considerable progress in evaluating the potential of alcohol fuels. Last December, in response to Congressional concern, a special Department-wide Task Force was created by Secretary Schlesinger to address the potential of alcohol fuels. This task force represented for the first time an integrated approach to the technical and policy issues surrounding alcohol fuels. In April of this year, that Task Force concluded its work, and released its findings in a report, entitled the Alcohol Fuels Program Plan.

The major findings of the task force are that:

The high cost of alcohols relative to conventional sources of petroleum appears to be the major obstacle to widespread commercialization.

Alcohol fuels are suitable fuels for the internal combustion engine, as well as gas turbine peaking units, utility boilers, industrial heating, and fuel cells. The technological problems that do remain can be overcome in a reasonable time-frame, and certainly within the next five years.

Alcohol fuels technology has progressed to the point where a broader assessment of its commercialization potential is warranted.

On a technical basis, ethanol is considered to have advantages over methanol because of its higher energy content, and better phase stability and volatility in gasoline blends.

The findings of the Alcohol Fuels Task Force represent a preliminary assessment on the part of the Department to assess the potential of alcohol fuels. While this assessment identified several obstacles, such as economics, supply potential, and energy efficiency, it in no way represents a final verdict by the Department on the feasibility

of alcohol fuels. Instead, we are moving ahead aggressively to reassess the uncertainties that exist and to evaluate what role the Federal Government should play in the development of such fuels.

In this regard, the Department is currently conducting an intensive near-term comprehensive review of alcohol fuels. Specific attention will be given to the addressing economic, technological, supply, and institutional barriers that exist to prevent or deter commercialization We are taking a fresh approach to this issue by ensuring that our evaluation includes such key developments as state experience, and the potential of new experimental technologies to reduce ethanol production costs and increase energy efficiency. We will also assess the impact on the economy of reduced agricultural price supports and set aside programs, utilization of surplus and distressed crops, reductions in oil imports, and greater domestic energy self-sufficiency. In short, we will expand our vision and comprehensively explore some of the broader economic impacts of alcohol fuels.

This intensive near-term review will be undertaken by a new Department-wide Alcohol Fuels Policy Review Group. This Group will have the mission of directing a series of key policy studies affecting alcohol fuels decisions. Because the results of these studies will be a primary input into the ongoing work of the Department's National Energy Supply Strategy, which is the Department's key mechanism for evaluating various alternative fuel options, we see this as a major step forward in our efforts. While we cannot guarantee that a decision will definitely be made to commercialize alcohol fuels on a national basis, we are as hopeful as you are, that the efforts of our work will lead to alcohol fuels playing and important role in meeting the Nation's energy needs.

REGULATORY ACTIVITIES

In addition to the initiatives we are taking in our policy and research activities, the Department is firmly committed to removing regulatory barriers that obstruct commercialization of alcohol fuels. Earlier this year, the Economic Regulatory Administration granted temporary stays of the mandatory petroleum allocation and price regulations to allow gasoline retailers in Illinois to market gasoline-alcohol blends at costs that include the alcohol component of the fuel.

Within the last month, a more permanent and comprehensive approach to alcohol fuels pricing has been taken. The regulatory actions taken were designed to remove regulatory obstacles to commercialization and provide incentives for marketing of gasohol through state and private programs. These measures include:

Inclusion of synthetic fuels made from biomass and solid waste, including alcohol made from crops residues, in the entitlement program which effectively gives it a subsidy of $2 per barrel.

Issuance of a permanent price rule permitting retailers of gasohol to include in the selling price the higher costs associated with the ethanol portion of the blend.

Both of these regulations take effect July 1, 1978.

STATE ROLE

The role of the States in this important effort is crucial. Despite some of the uncertainties regarding alcohol fuels, States have moved ahead to produce and market gasohol. States serve as laboratories for the nation in a way that the Federal Government is not equipped to do. Certainly one of the most important initiatives is the formation of this National Gasohol Commission.

State activities such as road testing programs, research on alcohol production technology, and legislation to encourage gasohol usage and marketing provide a variety of "real life" experience data that is an invaluable tool for policy makers in Washington.

The use of gasohol in the state programs appears to support The Department's initial assessment that the technological problems associate with the use of 10% ethanol blends in motor vehicle applications can be overcome. The state programs also show the octane boost given gasohol by the ethanol component enables it to compete with higher octane grades of unleaded fuel.

CONCLUSION

The Department of Energy is firmly committed to pursuing the potential of alcohol fuels. We will be putting a great deal of effort into resolving economic, supply, and other issues that affect potential commercialization of alcohol fuels. While I cannot assure you of the results of our efforts, I can assure you that we are hopeful that gasohol and alcohol fuels can play an important role in stretching our energy supplies, because these fuels are environmentally sound and renewable sources of energy. I pledge that DOE will work closely with you in the development of both analysis and policy on alcohol fuels.●

## THE PANAMA CANAL TREATY-SIGNING CEREMONY

● Mr. SPARKMAN. Mr. President, on Friday, June 16, I had the distinct honor and pleasure of accompanying President and Mrs. Carter to the Panama Canal treaty-signing ceremony in Panama City.

The signing ceremony was, indeed, a historic occasion and served to bring down the final curtain on the Panama Canal treaty ratification process. The documents that were signed and exchanged at that time now belong to the history books. Therefore, I ask that these documents, including the protocol of exchange and related instruments of ratification, be printed in the RECORD.

The documents follow:

[Documents Involved in the Ratification Ceremony, Friday, June 16, 1978]

PROTOCOL OF EXCHANGE OF INSTRUMENTS OF RATIFICATION REGARDING THE TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL AND THE PANAMA CANAL TREATY

The undersigned, Jimmy Carter, President of the United States of America, and Omar Torrijos Herrera, Head of Government of the Republic of Panama, in the exercise of their respective constitutional authorities, have met for the purpose of delivering to each other the instruments of ratification of their respective governments of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and of the Panama Canal Treaty (the "Treaties").

The respective instruments of ratification of the Treaties have been carefully compared and found to be in due form. Delivery of the respective instruments took place this day, it being understood and agreed by the United States of America and the Republic of Panama that, unless the Parties otherwise agree through an exchange of Notes in conformity with the resolution of the Senate of the United States of America of April 18, 1978, the exchange of the instruments of ratification shall be effective on April 1, 1979, and the date of the exchange of the instruments of ratification for the purposes of Article VIII of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and Article II of the Panama Canal Treaty shall therefore be April 1, 1979.

The ratifications by the Government of the United States of America of the Treaties recite in their entirety the amendments, conditions, reservations and understandings contained in the resolution of March 16, 1978, of the Senate of the United States of America advising and consenting to ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the reservations and understandings contained in the resolution of April 18, 1978, of the Senate of the United States of America advising and consenting to ratification of the Panama Canal Treaty.

Said amendments, conditions, reservations and understandings have been communicated by the Government of the United States of America to the Government of the Republic of Panama. Both governments agree that the Treaties, upon entry into force in accordance with their provisions, will be applied in accordance with the above-mentioned amendments, conditions, reservations and understandings.

Pursuant to the resolution of the Senate of the United States of America of March 16, 1978, the following text contained in the instrument of ratification of the United States of America of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and agreed upon by both agreements is repeated herewith:

"Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate.".

The Republic of Panama agrees to the exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal on the understanding that there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and which consequently both States are bound to implement in good faith, such as Article 1, paragraph 2 and Article 2, paragraph 4 of the Charter of the United Nations, and Articles 18 and 20 of the Charter of the Organization of American States.

It is also the understanding of the Republic of Panama that the actions which either Party may take in the exercise of its rights and the fulfillment of its duties in accordance with the aforesaid Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, including measures to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by those Treaties is based.

In witness thereof, the respective Plenipotentiaries have signed this Protocol of Exchange at Panama, in duplicate, in the English and Spanish languages on this sixteenth day of June, 1978, both texts being equally authentic.

For the United States of America:

_____ _____.

For the Republic of Panama:

_____ _____.

U.S. INSTRUMENT—PANAMA CANAL TREATY

Jimmy Carter, President of the United States of America—

*To all to whom these presents shall come, greeting:*

Considering that:

The Panama Canal Treaty was signed at Washington on September 7, 1977; and

The Senate of the United States of America by its resolution of April 18, 1978, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty, subject to the following:

(a) Reservations:

(1) Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of the Panama Canal Treaty, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the resolutions of ratification thereto, shall be only for the purpose of assuring that the Canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

(2) The instruments of ratification of the Panama Canal Treaty to be exchanged by the United States of America and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under paragraph 2 of Article XII of the Treaty.

(3) Notwithstanding any provision of the Treaty, no funds may be drawn from the Treasury of the United States of America for payments under paragraph 4 of Article XIII without statutory authorization.

(4) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Treaty at the date of termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the duration of the Treaty, and nothing in such paragraph may be construed as obligating the United States of America to pay, after the date of the termination of the Treaty, any such unpaid balance which shall have accrued before such date.

(5) Exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall not be effective earlier than March 31, 1979, and such Treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

(6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by the Congress of the United States of America, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government of the United States of America and not reimbursed before the date of entry into force of the Treaty. Such reimbursement for such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under section 62 of title 2 of the Canal Zone Code.

(b) Understandings:

(1) Before the first day of the three-day period beginning on the date of entry into force of the Treaty and before each three-year period following thereafter, the two Parties shall agree upon the specific levels and quality of services, as are referred to in paragraph 5 of Article III of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of the Canal operating areas and the housing areas referred to in paragraph 5 of Article III. If payments made under paragraph 5 of Article III for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Panama Canal Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both Parties, of any costs of services disputed by the two Parties pursuant to the reexamination of such costs provided for in this understanding.

(2) Nothing in paragraph 3, 4, or 5 of Article IV of the Treaty may be construed to limit either the provisions of the first paragraph of Article IV providing that each Party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of the Treaty.

(3) Nothing in paragraph 4(c) of Article XIII of the Treaty shall be construed to limit the authority of the United States of America, through the United States Government agency called the Panama Canal Commission, to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to the Republic of Panama described in paragraph 4(c) of Article XIII.

(4) Any agreement concluded pursuant to paragraph 11 of Article IX of the Treaty with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both Parties.

(5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

Now, therefore, I, Jimmy Carter, President of the United States of America, ratify and confirm the Panama Canal Treaty, subject to the aforementioned reservations and understandings, and on behalf of the United States of America undertake to fulfill it faithfully. I further hereby waive, in the name of the United States of America, the rights of the United States of America under paragraph 2 of Article XII of the Panama Canal Treaty and release the Republic of Panama from its obligations under paragraph 2 of Article XII of the Panama Canal Treaty.

In testimony whereof, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

Done at the city of Washington, this —th day of June in the year of our Lord one thousand nine hundred seventy-eight and of the independence of the United States of America the two hundred second.

By the President:

_____ _____.

Secretary of State:

_____ _____.

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PANAMANIAN INSTRUMENT—PANAMA CANAL TREATY

Whereas the Panama Canal Treaty was signed in Washington on September 7, 1977, by the authorized representatives of the Government of the Republic of Panama and of the Government of the United States of America;

Whereas the Republic of Panama, by means of the plebiscite stipulated by Article 274 of its Political Constitution, ratified the aforementioned Panama Canal Treaty;

Whereas the Senate of the United States of America gave its advice and consent to the ratification of the Panama Canal Treaty with the following understandings and reservations:

(a) Reservations:

(1) Pursuant to its adherence to the principle of non-intervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of the Panama Canal Treaty, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the resolutions of ratification thereto, shall be only for the purpose of assuring that the Canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

(2) The instruments of ratification of the Panama Canal Treaty to be exchanged by the United States of America and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under paragraph 2 of Article XII of the Treaty.

(3) Notwithstanding any provision of the Treaty, no funds may be drawn from the Treasury of the United States of America for payments under paragraph 4 of Article XIII without statutory authorization.

(4) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Treaty at the date of termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the duration of the Treaty, and nothing in such paragraph may be construed as obligating the United States of America to pay, after date of the termination of the Treaty, any such unpaid balance which shall have accrued before such date.

(5) Exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall not be effective earlier than March 31, 1979, and such Treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

(6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by the Congress of the United States of America, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama

Canal Company by the Government of the United States of America and not reimbursed before the date of entry into force of the Treaty. Such reimbursement for such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under section 62 of title 2 of the Canal Zone Code.

(b) Understandings:

(1) Before the first day of the three-year period beginning on the date of entry into force of the Treaty and before each three-year period following thereafter, the two Parties shall agree upon the specific levels and quality of services, as are referred to in paragraph 5 of Article III of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of the Canal operating areas and the housing areas referred to in paragraph 5 of Article III. If payments made under paragraph 5 of Article III for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Panama Canal Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, of any costs of services disputed by the two Parties pursuant to the reexamination of such costs provided for in this understanding.

(2) Nothing in paragraph 3, 4, or 5 of Article IV of the Treaty may be construed to limit either the provisions of the first paragraph of Article IV providing that each Party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of the Treaty.

(3) Nothing in paragraph 4(e) of Article XIII of the Treaty shall be construed to limit the authority of the United States of America, through the United States Government agency called the Panama Canal Commission, to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragarph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to the Republic of Panama described in paragraph 5(c) of Article XIII.

(4) Any agreement concluded pursuant to paragraph 11 of Article IX of the Treaty with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both Parties.

(5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

The Republic of Panama agrees to the exchange of the instruments of ratification of the Panama Canal Treaty on the understanding that there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and which consequently both States are bound to implement in good faith, such as Article 1, paragraph 2 and Article 2, paragraph 4 of the Charter of the United Nations and Articles 18 and 20 of the Charter of the Organization of American States.

It is also the understanding of the Republic of Panama that the actions which either Party may take in the exercise of its rights and the fulfillment of its duties in accordance with the aforesaid Panama Canal Treaty, including measures to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by that Treaty is based.

The Republic of Panama declares that its political independence, territorial integrity, and self-determination are guaranteed by the unshakeable will of the Panamanian people. Therefore, the Republic of Panama will reject, in unity and with decisiveness and firmness, any attempt by any country to intervene in its internal or external affairs.

The Head of Government of the Republic of Panama, availing himself of the powers granted by Article 277 of the Constitution, after having considered the aforementioned Panama Canal Treaty, hereby ratifies it and, in the name of the Republic of Panama, undertakes to comply with it faithfully. The Head of Government further hereby waives, in the name of the Republic of Panama, the rights of the Republic of Panama under paragraph 2 of Article XII of the Panama Canal Treaty and releases the United States of America from its obligations under paragraph 2 of Article XII of the Panama Canal Treaty.

In witness thereof, this instrument of ratification is signed by the Head of Government of the Republic of Panama.

Done at Panama City, Republic of Panama, this sixteenth day of June 1978.

OMAR TORRIJOS HERRERA.

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U.S. INSTRUMENT—NEUTRALITY TREATY

Jimmy Carter, President of the United States of America

*To all to whom these presents shall come, greeting:*

Considering that:

The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (Neutrality Treaty) was signed at Washington on September 7, 1977; and

The Senate of the United States of America by its resolution of March 16, 1978, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Neutrality Treaty, subject to the following:

(a) amendments:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

" 'Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

" 'This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.'."

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the statement of Understanding mentioned in Article IV above: 'The Neutrality Trea*y provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transmit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly' ".

(b) Conditions:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate.".

(c) Reservations:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States of America by the American Battle Monuments Commission, including the display of the flag of the United States of America, such part of Corozal Cemetery in the formal Canal Zone as encompasses the remains of citizens of the United States of America.

(2) The flag of the United States of America may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(3) The President—

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America; and

(B) shall have announced, immediately after the date of exchange of instruments of ratification, plans, to be carried out at the expense of the Government of the United States of America, for—

(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States of America from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and

(ii) transporting to the United States of America for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i); and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B) (i) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such Article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) Understandings:

(1) Paragraph 1(c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal, that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

(A) the costs of operating and maintaining the Panama Canal;

(B) the competitive position of the use of the Canal in relation to other means of transportation;

(C) the interests of both Parties in maintaining their domestic fleets;

(D) the impact of such an adjustment on the various geographical areas of each of the two Parties; and

(E) the interests of both Parties in maximizing their international commerce.

The United States of America and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this Treaty" in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxiliary vessel of the United States of America or the Republic of Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in Annex A or B thereto, in the Protocol relating to the Treaty, or in any other agreement relating to the Treaty, obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(5) The President shall include all amendments, conditions, reservations, and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

Now, therefore, I, Jimmy Carter, President of the United States of America, ratify and confirm the Neutrality Treaty, subject to the aforementioned amendments, conditions, reservations and understandings, and on behalf of the United States of America undertake to fulfill it faithfully.

In testimony whereof, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

Done at the city of Washington, this th day of June in the year of our Lord one thousand nine hundred seventy-eight and of the independence of the United States of America the two hundred second.

By the President:

_____ _____.

Secretary of State:

_____ _____.

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PANAMANIAN INSTRUMENT NEUTRALITY TREATY

Whereas the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal was signed in Washington on September 7, 1977, by the authorized representatives of the Government of the Republic of Panama and of the Government of the United States of America;

Whereas the Republic of Panama, by means of the plebiscite stipulated by Article 274 of its Political Constitution, ratified the aforementioned Neutrality Treaty;

Whereas the Senate of the United States of America gave its advice and consent to the ratification of the aforementioned Neutrality Treaty with the following understandings, reservations, conditions, and amendments:

(a) Amendments:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"'Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"'This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.'"

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: 'The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall be so interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.'."

(b) Conditions:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate."

(c) Reservations:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States of America by the American Battle Monuments Commission, including the display of the flag of the United States of America, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(2) The flag of the United States of America may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(3) The President—

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama

Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America; and

(B) shall have announced, immediately after the date of exchange of instruments of ratification, plans, to be carried out at the expense of the Government of the United States of America, for—

(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States of America from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and

(ii) transporting to the United States of America for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i); and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B) (i) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such Article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) Understandings:

(1) Paragraph 1(c) of Articles III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal, that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

(A) the costs of operating and maintaining the Panama Canal;

(B) the competitive position of the use of the Canal in relation to other means of transportation;

(C) the interests of both Parties in maintaining their domestic fleets;

(D) the impact of such an adjustment on the various geographical areas of each of the two Parties; and

(E) the interests of both Parties in maximizing their international commerce.

The United States of America and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this Treaty' in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxiliary vessel of the United States of America or the Republic of Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in Annex A or B thereto, in the Protocol relating to the Treaty, or in any other agreement relating to the Treaty, obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(5) The President shall include all amendments, conditions, reservations, and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

The Republic of Panama agrees to the exchange of the instruments of ratification of the aforementioned Neutrality Treaty on the understanding that there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and which consequently both States are bound to implement in good faith, such as Article 1, paragraph 2 and Article 2, paragraph 4 of the Charter of the United Nations, and Articles 18 and 20 of the Charter of the Organization of American States.

It is also the understanding of the Republic of Panama that the actions which either Party may take in the exercise of its rights and the fulfillment of its duties in accordance with the aforesaid Neutrality Treaty, including measures to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by that Treaty is based.

The Republic of Panama declares that its political independence, territorial integrity, and self-determination are guaranteed by the unshakeable will of the Panamanian people. Therefore, the Republic of Panama will reject, in unity and with decisiveness and firmness, any attempt by any country to intervene in its internal or external affairs.

The Head of Government of the Republic of Panama, availing himself of the powers granted by Article 277 of the Constitution, after having considered the aforementioned Neutrality Treaty, hereby ratifies it and, in the name of the Republic of Panama, undertakes to comply with it faithfully.

In witness whereof, this instrument of ratification is signed by the Head of Government of the Republic of Panama.

Done at Panama City Republic of Panama, this sixteenth day of June 1978.

OMAR TORRIJOS HERRERA.●

## THE TAX REVOLT

● Mr. GOLDWATER. Mr. President, it is perfectly clear, as a result of the overwhelming adoption of Proposition 13 in California and developments elsewhere in the Nation, that the American taxpayers are in full revolt. At long last, it seems that the people who pay the freight have decided they have had enough of wasteful spending and Government extravagance in all areas of public and private life. The only surprise in that what is currently taking place has taken so long to happen.

Mr. President, I have seen this revolt coming for many years. In my travels across this country, I have heard a small rumble grow into a loud protest and finally an angry growl as governments piled more and more tax burdens on the hard working people of this Nation. In fact, as far back as my campaign for President in 1964, I began warning that the time would come that the American people, exercising their constitutional rights, would some day rebel against the liberal concepts of tax and tax; spend and spend. More and more Americans even then were beginning to question why they should work their hearts out all their lives only to find their hard earned savings disappearing down the rathole of excessive and unfair taxation. More and more Americans were beginning to question why they should stand for such treatment by a Government which had always promised rewards for the industrious and the thrifty. It is not that I believe the American citizen objects to paying taxes so long as he feels those taxes are going for worthwhile causes. No, I feel the average American is responsible and conscientious and wants to meet his fair obligation to help to defray the legitimate costs of Government. But he has a natural tendency, and every right, to question and object to the legitimacy of many of the things which he sees Government squandering his money on.

Mr. President, what do you think the American taxpayer thinks when he hears news broadcasts to the effect that the Department of Health, Education, and Welfare has admitted to a $7 billion blunder? What must the American taxpayer think when he hears and reads about the waste and extravagance and corruption in the General Services Administration; when he sees waste exposed on every hand in the expenditures of the Department of Agriculture; when he sees a bureaucracy so bloated that no one, including the President, can do anything about the wasteful Civil Service system? The question all American officials should start asking themselves is how long will our hard-pressed taxpayers stand for letting over 40 percent of their income go to support a wasteful and heedless Government?

Mr. President, it has taken a long time, but the taxpayers are finally beginning to understand that they are not being taxed merely to defray the costs of national defense and to care for people who cannot through no fault of their own take care of themselves. The objections arise when the taxpayers see people who can afford to buy food using Government-supplied foodstamps; when they see people who could get jobs loafing on unemployment compensation; when they see students of well-to-do people ripping off the Government for scholarships; when they see rackets of all kinds being devised to chisel Government out of the taxpayers' money. I repeat, it surprises me that the revolt has taken this long to form and develop.

Mr. President, the voters of California took the bit in their teeth on June 6. In effect, they told the Government to shape up and do it quickly. They ignored all the threats raised by frightened bureaucrats and politicians. They said with their ballots that they would run the risk of having less services jammed down their throats. And Mr. President, they said something more. They told the Government to find the right ways to cut the costs. They instructed their elected officials to do something about the waste and the inefficiency and the duplication which is the hallmark of

Government spending in this era. The events taking place now in California were entirely predictable. The bleeding hearts and the "big spend" liberals are running around closing or threatening to close schools and issuing dire warnings to the effect that police and fire protection will be curtailed. I see little determination being expressed by the California officials that efforts will be made to cut bureaucratic excess and cheating and waste. There is plenty of it there—more than enough to make up for the loss in property taxes which the adoption of proposition 13 brought about.

But, regardless of how California handles the problem, it is my hope and prayer that my colleagues in the Congress will get the message loud and clear and will take to heart what the American taxpayers are saying. It is long past the time when the governments of our country, local, State, and Federal, should be told that the taxpayers are willing to spend just so much and no more; that Government frills and political handouts must cease. Government is being told that it must cut its spending because the people who provided that spending are going to cut it off.

Mr. President, over the years in arguing for limited Government and fiscal responsibility, I have constantly warned that someday the chickens would come home to roost. That prophecy is being fulfilled today and irresponsible Government is finding the henhouse of waste and inefficiency being filled with the chickens of revolt. I say this is a healthy development.

The adjustments may be difficult but the voters at long last have gotten the attention of the big spenders. I suspect they plan to hold that attention until some kind of sense emerges from the bureaucratic nightmare which has engulfed so many American taxpayers.●

## FOREIGN CURRENCY REPORTS

● Mr. ROBERT C. BYRD. Mr. President, in accordance with the provisions of the Mutual Security Act of 1954, as amended (22 U.S.C. 1754(b)), the Secretary of the Senate submits, for the RECORD, the following additional report, concerning the foreign currencies and U.S. dollars utilized during the calendar year 1977 in connection with foreign travel.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL, U.S. SENATE COMMITTEE ON APPROPRIATIONS (AMENDED REPORT), EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1977

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency[1] | Foreign currency | U.S. dollar equivalent or U.S. currency[1] | Foreign currency | U.S. dollar equivalent or U.S. currency[1] | Foreign currency | U.S. dollar equivalent or U.S. currency[1] |
| Amount brought forward | | | 5,513.70 | | 5,949.02 | | | | 11,162.72 |
| Burkett Van Kirk: | | | | | | | | | |
| United Kingdon | Pounds | 151.10 | 278.04 | | | | | 151.10 | 278.04 |
| Kenya | KSHS | 2,432.75 | 303.87 | | | | | 2,432.75 | 303.87 |
| Zambia | Kwacha | 42.00 | 52.75 | | | | | 42.00 | 52.75 |
| South Africa | Dollars | | 150.00 | | | | | | 150.00 |
| Total | | | 6,298.36 | | 5,949.02 | | | | 11,947.38 |

[1] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RECAPITULATION

| | Amount |
|---|---|
| Foreign currency (U.S. dollar equivalent) | $11,872.38 |
| Appropriated funds | 75.00 |
| Total | 11,947.38 |

Warren G. Magnuson,
Chairman, Committee on Appropriations.

June 12, 1978. ●

## A VOTE FOR ERISA'S PRUDENT MAN

● Mr. JAVITS. Mr. President, I ask unanimous consent to include in the RECORD the substance of an article by Bruce W. Marcus, entitled "A Vote for ERISA's Prudent Man" which appeared in the May 14 New York Times. Mr. Marcus is a financial consultant and author of "The Prudent Man—Making Decisions Under ERISA."

I think this article is a valuable addition to the public discussion of ERISA's prudent man rule. Senator WILLIAMS and I recently introduced the ERISA amendments Act of 1978, which does not amend ERISA's prudent man rule, because we consider the rule sound as is. Mr. Marcus has some interesting observations in this regard.

However, my inclusion of this article in the RECORD should not be viewed as an endorsement of any statement or position taken by the author:

[From the New York Times, May 14, 1978]

A VOTE FOR ERISA'S "PRUDENT MAN"

(By Bruce W. Marcus)

The proposed legislation attacks the regulatory mechanics of ERISA—mechanics such as multiple-agency reporting requirements and burdensome and expensive paperwork that contributed to the termination of many plans. But of prudence, the more complex problem, it says nothing, and for good reason. A closer look at the law as it now stands indicates that the Senators are on exactly the right track. There is no basis for amending it at this time.

Problems ERISA did cause. There was polarization of the two-tier market as fund managers, seeking safety in conservatism, moved an overwhelming portion of the $400 billion in pension funds into blue chips and fixed income securities. Index funds, patterned after stock-market indexes in an attempt to eliminate stock-market risk by matching the performance of the overall market, were practically nonexistent in 1974. They grew to $4 billion by late 1977. The law was dubbed the Lawyers and Consultants Retirement Security Act, as confused pension professionals turned to advisers in droves. Many plans were terminated, as much because of the fear of liability under the prudent-man rule as because of the increased costs imposed by ERISA's administrative burden.

Why should the prudent-man idea, a time-honored staple of trust law, have caused such problems?

In 1830, the Massachusetts Supreme Court admonished trustees of other people's money to conduct themselves as "men of prudence, discretion and intelligence manage their affairs." Simple enough, perhaps, in 1830. And subsequently, under most state law governing trusts, it was further simplified with approved lists of investments. Barring flagrant fraud or outright mismangement, the traditional trustee has faced little problem with the prudent-man rule. He has but to preserve the body of capital in the basic trust, and perhaps appreciate it reasonably through "prudent" investment.

ERISA also demands prudence—but with several slight, albeit significant, differences. For example, ERISA is the first Federal trust law, and supercedes all state trust law in its management of pension funds. For example, the pension-fund fiduciary must not only preserve the body of the fund, but if he doesn't increase it sufficiently through investments to be able to pay benefits when they are due, his corporation must make up the difference from earnings, or else face a suit for being imprudent. This is made even more difficult in the face of inflation. Moreover, there is liability for not only the manager of the fund, but for all of the trustees. Add to this the fact that the disclosure rules of ERISA expose all of a fund's management, including investment advisers, to both the Government and employees. Everybody is watching.

Most pension professionals are not trained as trustees, and many of them were struck by their new and unaccustomed responsibility. Nor was there great depth of understanding of sophisticated investment principles. The reflexive move was toward defensiveness in investment practice. Another and more significant move has been to change the law to "clarify" liability under the prudent-man rule.

Beyond that, strong attempts to alter the law have been made by special-interest groups. Venture-capital managers, troubled by the shift of pension-fund money into larger companies, have lobbied to change the law to mandate a portion of pension-fund investment into smaller companies for economic development. Public-service groups believe the law should be changed to mandate a portion of investment to serve public

needs, such as housing. Regional development advocates want the law changed to mandate investment into minority companies, or companies that will generate jobs for a particular reason.

The fact is that ERISA, properly understood, can, under appropriate circumstances, answer all of these needs. These appropriate circumstances evolve from the needs of the fund to serve its beneficiaries. The law, remember, was devised to protect the employee, and not the capital markets. This fact seems too often lost as people view the vast pool of capital created by pension funds.

In devising ERISA, Congress sought not to change pension fund or investment practice, but to raise standards to those of the best-run funds. They sought to emphasize the fact that pension-fund money—even that money contributed by the corporation—belonged to the beneficiaries. The corporation is merely the trustee, an unfamiliar role for corporations. It is also clear that all judgments of prudence will be made in light of whether the interests of the beneficiaries, and not the corporation or the fund's trustees, are served.

But in a burst of wisdom, Congress recognized that to apply traditional trust standards to pension-fund management would be inadequate. Each fund, they recognized, is different. So, therefore, must be the investment policies for each fund, and to impose or prescribe specific invesment practices could very well defeat the aim of the law—the well-being of the beneficiaries. Thus, the prudent-man rule.

In both its statement and intent, the law says that the investment policy for each fund must be devised to meet the clearly stated (and, as the fund manager knows, written and documented) objectives of the fund. Each fund has a different configuration of needs, based upon such factors as size and age of work force, nature of industry, degree to which liabilities are currently funded, and so forth. This means that the return on investment for each fund, and the risk necessary to attain that return, will also be different for each fund.

To further protect the beneficiary, Congress also mandated diversification—but diversification to minimize risk, and not for diversification's sake. It is the portfolio, then that will be judged, and not the individual investment. This is perfectly consistent, of course, with standard investment practice, and is part of the reason for including the mandate to diversify in ERISA. It became clear, very early on, that the failure of any single investment, assuming that it had a rationale within the total portfolio, does not constitute a liability. This point has been made official in the proposed Federal regulation on prudence issued by the department on April 21.

What it really means, of course, is that any investment that can be justified in the rationale of the total portfolio is prudent, if the rationale for the entire portfolio is based upon the specific needs and objectives of the individual fund.

It requires that the objectives of the fund be clearly delineated and documented, that investment policies to meet those objectives also be clearly delineated. Conservative postures that are inconsistent with the needs of the funds, such as arbitrarily limiting investment to an index fund, could well be imprudent, particularly if they are taken primarily for the protection of trustees and fiduciaries.

It means, as well, that if the fund's portfolio can sustain the risk, or if the investment is consistent with the total portfolio, a fund may invest in venture capital, in public works, in regional economic development projects, in new or thinly capitalized companies—even in speculative ventures that are not downright foolhardy.

For Congress to mandate investment of private pension funds in any specific area might well be imprudent of Congress, simply because such investment might very well not be in the interest of the beneficiaries of a particular fund. This, clearly, is why Congress is not likely to alter the prudent-man rule in ERISA, nor should it.

ERISA's multiple-agency structure as well as several other of its aspects, obviously warranted change and correction, and this is what the new Javits-Williams bill sets out to do. For those who understand what ERISA's prudent-man rule really means, it is abundantly clear that it is sound in its present form, and needs no legislative amendment.●

## MORTIMER M. CAPLIN'S COMMENCEMENT ADDRESS

● Mr. KENNEDY. Mr. President, at the graduation ceremonies last month of the National Law Center of George Washington University, an excellent address was delivered to the graduating students by Mr. Mortimer M. Caplin, the former Commissioner of Internal Revenue.

In his address, Mr. Caplin emphasized the mushrooming opportunities for young lawyers in our complex society and the innovative areas in which lawyers are now participating. He also spoke perceptively of the widely felt frustrations of average citizens with the growing legalism involved in so many aspects of their lives, especially the delays and ethical ambiguities, or worse, that raise questions in the people's minds about the role of lawyers in our society.

Mr. Caplin also urged the graduates to remember that, as lawyers, they always wear two hats—as representatives of their clients, and as responsible citizens in society, with a mission to contribute to the public good.

Mr. President, I believe that Mr. Caplin's remarks will be of interest to all of us, and I ask that they may be printed in the RECORD.

The remarks follow:

ADDRESS OF MORTIMER CAPLIN, GEORGE WASHINGTON UNIVERSITY (NATIONAL LAW CENTER) COMMENCEMENT

THE STATE OF THE LEGAL PROFESSION—1978

It is a privilege for me to join with you in these graduation ceremonies, and I want to express my thanks for your kind invitation.

Let me first respond to the reference to my service as Commissioner of Internal Revenue. My years there were the most challenging, stimulating—I was going to say "taxing"—of my life. It was an intense, sometimes explosive, post-graduate course on Washington and the democratic process—a form of tutelage and learning that somehow could not be gotten from the books and even from my professors. I am forever grateful for the opportunity I had to serve.

Frequently, I am asked how it was that President John F. Kennedy appointed me Commissioner. One of the White House staff members had a cryptic answer: "Oh, that's simple. It was Caplin's 'good judgment'—his good judgment in having Bob and Ted Kennedy as students, and his good judgment in giving them passing grades." I must confess that, as the years go by—and my memory grows dimmer—their grades become brighter and brighter. This is particularly true about my former student and friend, Senator Ted Kennedy, soon to be Chairman of the Senate Judiciary Committee.

I remember well my own graduation from the University of Virginia in 1940. The Nazis were overrunning Europe and most of the members of my class were registered for military service. Just as Italy was pouring troops into beleaguered France, President Franklin Delano Roosevelt came to Charlottesville for our Law School graduation and delivered his unforgettable "dagger-in-the-back" speech. With diploma in hand, I then drove off to my first job as law clerk to U.S. Circuit Judge Armistead M. Dobie, and I literally shouted with joy at the thought of having finally completed my formal schooling.

But it was not long before I realized that I was only at the beginning; and that, in addition to mastering a mind-boggling range of technical rules of law and procedure, I would now have to absorb an entirely different set of disciplines—exemplified by such words as experience, maturity, ethics and propriety, compassion, and judgment. And only later did I begin to appreciate the whole process of the law illuminated by Mr. Justice Holmes in his book, "The Common Law": "The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." Holmes isn't saying that "reason" and "logic" do not have a significant role in legal operations. Rather, he wants us to do more than merely increase our technical capacity; he wants us to be more than technocrats; he calls on us for understanding.

You graduate at an exciting time, a time of extraordinary expansion and change in our profession—advertising by lawyers is now possible and new competitive pressures are developing. The emergence of large, prepaid group legal services plans—sort of a "legal" Blue Cross or Blue Shield—is creating uncertainty and concern among some elements of the bar. Then there is the enormous growth factor—the mass entry of law firms into Washington, and the mushrooming of firms of 200 lawyers or more on a nationwide and even worldwide basis. Demand for competent lawyers is at a high point and is likely to increase even further.

More and more statutes, enlarged government regulation, added complexity in conducting business, novel legal remedies, and a more litigious public attitude—all are parts of the current scene. New areas of specialization are developing rapidly, and old specialties are being subdivided and refined:

Energy, environment, housing, consumerism, public interest law.

New names, too, such as ERISA, OSHA and FOIA—Employee Retirement Income Security Act, Occupational Safety and Health Act, Freedom of Information Act.

With the uncovering of Watergate slush-funds, and foreign and domestic bribes and kickbacks, cases in "white collar crime" are becoming an important part of the practice; and many law offices which eschewed any contact with criminal law now find it necessary and profitable to enter this sensitive field.

Litigation abounds all over the country, and the demand for able trial and appellate lawyers seems never-ending, although Chief Justice Warren E. Burger continues to question the courtroom competency of many practitioners.

This is the age of the young lawyer—men and women who are prepared to seize the nettle and to devote themselves to new specialities which entrenched practitioners are often slow to learn.

Despite this bullish report on the "State of the Legal Profession", lawyers today also attract great criticism. This is not news, for they have always had their detractors.

Shakespeare, you'll recall, had a simple solution in Henry VI, Part II: "The first thing we do, let's kill all the lawyers". Or ambiguously as Carl Sandburg put it, "Why does a hearse horse snicker hauling a lawyer away?" I think that Daniel Webster, a lawyer himself, may have been more on target: "Most good lawyers live well, work hard and die poor."

President Carter, in his recent Law Day address before the Los Angeles Bar, placed himself among the detractors. His views were sharply critical of the legal profession:

"Ninety percent of our lawyers serve ten percent of our people. We are over-lawyered, and under-represented."

"Excessive litigation and legal featherbedding are encouraged."

"Too often the amount of justice that a person gets depends on the amount of money he or she can pay."

"In my own region of the country . . . lawyers of great influence and prestige led the fight against civil rights and economic justice."

"One of the greatest failings of the organized bar in the past century since the American Bar Association was founded is that it has fought innovation."

What I think about most . . . is the enormous potential for good within an aroused legal profession, and how often that potential has not been and is not used."

This was President Carter's evaluation—harsh and, in the minds of some, not fairly balanced. Despite distortions, however, it does reflect certain troubling perceptions and does call upon lawyers to examine themselves candidly and by their conduct to reaffirm the highest ideals of their profession.

Clearly, the public is frustrated with the entangling web of laws and regulations and the need to call upon expensive lawyers to help them comply.

Then there is the intermittent questioning of the ethics and honesty of some lawyers. The heavy lobbying of trial lawyers against no-fault automobile insurance, for example, has raised many eyebrows. Also we are witnessing a growing number of lawsuits alleging malpractice or lawyers' liability on one ground or another.

Finally, there is the slowness of the legal process and the delay in resolving disputes. Art Buchwald captured the public mood when he said: "It isn't the bad lawyers who are screwing up the justice system in the country, it's the good lawyers. . . . If you have two competent lawyers on opposite sides, a trial that should take three days could easily last six months."

This was brought home to me poignantly the other day as I read the recent Tax Court opinion of Brimm against Commissioner—which, believe it or not, quoted from Dickens' "Bleak House", the same passage used by President Carter in his Law Day speech:

"Jarndyce and Jarndyce drones on. This scarecrow of a suit has in the course of time, become so complicated that no man alive knows what it means * * * Innumerable children have been born into the cause * * * innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce without knowing how or why; whole families have inherited legendary hatreds with the suit * * * There are not three Jarndyces left upon the earth, * * * but Jarndyce and Jarndyce still drags its dreary length before the court."

Even our society has yet to find a way to produce instant justice!

As members of the profession, what can we do to reverse these perceptions about lawyers? For one thing, a lesson can be learned from a survey of the Missouri Bar made some years ago by Prentice-Hall. The survey, which was recently revalidated, showed that clients selected lawyers for three reasons and in the following order—concern and attention, integrity . . . and winning.

1. Concern and attention. This is the primary want of a legal client. He wants a champion, someone who will worry about his problem and relieve him of this responsibility. He wants someone who will give the matter his primary attention, protect client confidences, devote himself fully to the cause and freely communicate with his client—keep him informed of all significant developments.

2. Integrity. This is a demand for honesty and fair dealing in the fullest sense, and a sensitivity to any possible conflict of interest. Both the actuality and appearance of conflict must be avoided if the confidence of a client is expected.

3. Winning. Oddly enough, this ranks only third in the tripartite profile of a client's demands—although I am sure we can all think of clients who place winning uppermost at any cost. Here we are talking about competence, professionalism and continued development of skills—legal imagination and a passion for accuracy.

To these, let me next add the important role that you will play in daily decisions on the fiduciary principle—the principle of undivided loyalty owed by all persons in positions of trust—not only lawyers in relation to clients, but partners and joint venturers among themselves, trustees and beneficiaries, bankers and depositors, corporate officers, boards of directors and their shareholders—the whole area of corporate governance which today attracts the special attention of the SEC and its chairman, Harold Williams.

Justice Cardozo gave us the touchstone in Meinhard against Salmon:

"A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."

The Bar inevitably sets the tone for integrity, ethics and morals. And, as Justice Stone admonished us, "whatever standards of conduct in the performance of its function the Bar consciously adopts must at once be reflected in the character of the world of business and finance."

Also, I would like to point to a road that leads to expanded satisfaction in life in the law—that permits a lawyer to "live greatly in the law," as Holmes put it. Here, I refer to the importance of a lawyer giving of his time to the public good—whether it be pro bono publico representation, activities with Bar groups, teaching or service to his community and his nation. The educated citizen, President Kennedy urged, may give his talents at the courthouse, the state house or the White House, as a precinct worker or President, civil servant or Senator, candidate or campaign worker, winner or loser. But, above all else, he must be a participant, not a spectator in our national life. He must "enter the lists."

I want to congratulate all of you on having completed your formal education. It is, and should be, a proud and happy day. I wish you well on your entry into the profession; and I know that you will want to live up to its highest ethical standards and finest traditions. At the same time, I hope that you will always remember that you wear two hats: not only that of a legal representative of your client, but also that of a responsible citizen in our democratic society—one who will make his voice heard as an individual and who will lend his skills to the strengthening of our government and the sound administration of its laws. As lawyers, you are particularly equipped to contribute to the public life and thought of your times.

And, please, let me not end on too serious note. For, needless to say, there are as many moments of pleasurable satisfaction in the law as there are of intense work and heavy responsibility. After all, a good lawyer is simply a good human being—with specialized training and experience, particularly in human behavior.

I like what an eminent lawyer (Harrison Tweed) once said of his peers:

"I have a high opinion of lawyers. They are better to work with or play with or fight with or drink with than most other varieties of mankind."

And that's a pretty fair note on which to close.●

## UNITED STATES-ROMANIAN ECONOMIC RELATIONS

● Mr. MARK O. HATFIELD. Mr. President, 2 months ago this week, Romanian President Nicolae Ceausescu made his fourth state visit to Washington since he came to power 13 years ago. During his discussions with President Carter, several issues of importance to both the United States and Romania were discussed, including the pending request for an extension of most-favored-nation (MFN) tariff status for Romania. The state visit underlined the growing importance of the devolping relationship between our two countries, particularly in the economic sphere.

The effort to solidify and expand our economic relationship with Romania is especially timely as in 1977, the United States had her worst trade deficit in history. It reached $27 billion, a fourfold increase from 1976. Among the reasons for this record trade deficit was the lack of an "export consciousness" in the American business community.

Presently, exports account for less than 7 percent of our gross national product. That is the lowest percentage GNP of any industrialized nation. Japan, for example, has a comparable figure of 12 percent, and Great Britain has one of over 20 percent. According to Department of Commerce statistics, of some 300,000 manufacturing firms in the United States, only about 25,000 export at all. This situation must change if we are to restore the United States' economy to one of renewed vitality and strength.

Of course, in pursuit of such improvements in the U.S. trade position, new markets must be developed in countries where trade has either been nonexistent or minimal due to a variety of factors. The major avenues available to the United States at this time are those opportunities in expanded East-West trade. With a third of the world's population, the Communist nations represent an enormous potential market for U.S. products and commodities. Reflective of this are Department of Commerce figures which show that in the last 3 years, the United States exported almost $10 billion worth of goods to Communist countries, achieving a $6.3 billion surplus in the process.

One of the most promising developments in the expansion of East-West trade during the past decade has taken place between the United States and Romania. Trade between our two countries has increased ten-fold over this period, in large measure due to the granting of MFN tariff status to Romania in 1975. As evidence of the progress which has been made, particularly following the granting of MFN, U.S. trade with Romania reached $448 million in 1976. That was an increase of about 40 percent over the 1975 two-way figure. Moreover, the Commerce Department estimates that

United States-Romania trade topped the half-billion dollar level for the first time in 1977, and that barring unforeseen circumstances, it could reach $1 billion by 1980.

Mr. President, as many of my colleagues may be aware, the United States-Romanian Trade Agreement signed in 1975 is due to expire in August. However, unless either party chooses to withdraw from the agreement, it will be automatically renewed. MFN, on the other hand, must be reviewed annually in accordance with the Jackson–Vanik amendment to the 1974 Trade Act which ties most-favored-nation tariff treatment for Communist countries to their respective emigration policies. In accordance with the act, President Carter sent to Congress on June 2 a recommendation that the waiver for Romania under the Jackson-Vanik amendment relating to MFN be extended for another year. Most-favored-nation tariff status for Romania would have expired on July 2 had President Carter not recommended the extension.

I have risen on other occasions in support of a continuation of MFN for Romania, and I do so again. It is my belief that an expansion of our commercial relations with Romania can play a significant role in encouraging her economic and political independence. In fact, a central reason for urging a continuation of MFN treatment for Romania is the unique role she occupies among COMECON countries. The independence shown by President Nicolae Ceausescu in his political and economic relations with the Soviet Union and fellow Warsaw Pact and COMECON allies is well recognized and should be strongly encouraged. I do not pretend that fundamental differences are nonexistent between our two countries, but she is a country with whom we can minimize our differences as we broaden our ties.

I might add that while MFN for Romania has made a major difference in both the level of U.S. exports to Romania and Romania's economic development, the present policy of annual extensions has not been conducive to either long-term development planning in Romania or sustained and rapid growth in U.S. exports to that country. The Commerce Department has gone on record as stating that while the United States could and should pursue expanded East-West trade, its inability to offer official export credits and nondiscriminatory tariff treatment in all dealings with Communist countries puts the United States at a disadvantage in many situations compared with competitors of other Western nations. Moreover, in announcing last year's MFN extension for Romania, the National Association of Manufacturers stated in the January 1978 issue of International Economic Issues, that "the year-to-year renewal provision remains * * * an impediment to longer term corporate planning." Because of the independence shown by Romania and because of the expressed interest by many parties in this country to seek a longer extension of MFN for Romania, I believe that it would be timely for discussions to take place between the appropriate congressional committees and the State Department regarding such a proposal.

This is not to suggest that I am abandoning my long-term concern for and support of human rights throughout the world. As the author of a human rights amendment to last year's Omnibus Multilateral Institutions Act of 1977 (which was defeated on the Senate floor, because some thought it too strict), I am naturally interested in questions surrounding Romania's emigration policies. However, from the information that I have received, it appears that Romania is making positive efforts to liberalize its emigration policies. Certainly when compared with the situation before MFN, there have been marked improvements. While I firmly believe that the emigration issue should continue to be monitored closely to insure that emigration remains an option for those wanting to leave the country, I am convinced that it is only within the framework of a firm relationship between our two countries, of which MFN forms a part, that such positive results as we have seen in the past few years can be encouraged and expanded.

Mr. President, the successful visit of Romanian President Nicolae Ceausescu in April brings us closer toward greater understanding and cooperation between our two countries. I was particularly pleased to note in the joint declaration signed by the two leaders that both the United States and Romania together determined among other things "to seek ways to put existing nondiscriminatory trade relations on a more stable and long-term basis * * *." It is my hope that this goal will be actively pursued by the Carter administration to the benefit of the people of Romania and the United States at every possible opportunity.●



## AFGHANISTAN

● Mr. GOLDWATER. Mr. President, one of the greatest concerns of Iran, particularly of their Shah, has always been that Afghanistan would come under the control of the Soviet Union. This I am afraid has already happened and, in my opinion, it will not be long until the great fear of Iran and what should have been a fear of ours, will be accomplished when the Soviets merely use Afghanistan as a launch pad to go across the western end of Pakistan, which is virtually unsettled and as barren a desert as I have ever seen or flown over. This will give the Russians a seaport or more if they want them, on the Indian Ocean, and this coupled with the occupancy of the Horn of Africa by Cuban and Soviet forces, plus our unconscionable treatment of South Africa will virtually deny the Indian Ocean to our forces, and deny transport across those waters for the oil so badly needed on our east coast and on the shores of our Pacific allies. I don't know what it takes to force this country of ours to recognize what is going on around the world. This step by the Soviets could be the most meaningful step they have taken in modern times because it will give them what they have always sought, access to waters which would control the economies of the world. I ask that an article written by Mr. John K. Cooley of the Christian Science Monitor on this subject be printed in the RECORD.

The article follows:

[From the Christian Science Monitor, June 9, 1978]

IRAN WATCHES AFGHANISTAN FOR SIGN OF SOVIET MOVE

(By John K. Cooley)

TEHRAN, IRAN.—Iran is keeping a watchful eye on signs of possible new Soviet expansion southward at Iran's expense.

Its foreign policy experts have noted the upheaval which produced a pro-Communist government in neighboring Afghanistan. They also are aware of the threatened unrest in neighboring Pakistan if Gen. Zia ul-Hag's military regime there executes former Prime Minister Zulfikar Ali Bhutto.

When India's External Affairs Minister Atal Bihari Vajpayee conferred here with Shah Muhammed Reza Pahlevi and his advisers recently, both sides were careful to avoid any public comment that might irritate the Soviet Union, the new Aghani rulers, or General Zia's Pakistani army officers.

On Afghanistan, Mr. Vajpayee said events there are "strictly an internal matter of that country. We as neighbors are affected and our only aim should be to ensure that these events do not turn back the healthy trend toward stability."

Iranian Deputy Foreign Minister Manucdehr Belli, in an interview with this reporter, was equally bland and careful in his comment that "we are continuing our relationship with the new government in Kabul."

But there are reports that the Pushtu (or Pathan) national movement in Afghanistan, which claims a large chunk of Pakistani for a tribal homeland, and Balcushi nationalists based in Afghanistan are again discussing a "Greater Baluchistan."

Questioned about this, Mr. Zelli warned: "Baluchistan is a matter between Iran and Pakistan. No other country in our opinion could have any interest. This is clear-cut, an area inhabited by Baluchis, part in Iran, part in Pakistan. No other country has the right to talk about this."

For years the Iranian Foreign Ministry has been in possession of a map, captioned in Persian, showing a corridor called "Greater Baluchistan," running in a swath southward to the Indian Ocean. Pro-Soviet or Soviet sources printed and distributed the map about eight years ago as a token of Soviet support for the idea.

Since then, both the Pakistani and Iranian armies have had to deploy considerable force against periodic outbreaks of Baluchi tribal violence.

The Baluchistan-Afghan-Pakistan situation is far too sensitive here for real public discussion, but the government takes it so seriously that one adviser of Prime Minister Jamshid Amouzegar said:

"This is like a knife at our jugular vein. The shortest cut for the Soviets to the oil of the Persian Gulf and the Indian Ocean sea lanes is through Iran and Pakistan, but we don't plan to allow anyone to start the carving process."

Since Pakistan's loss of Bangladesh in the Indo-Pakistani war of 1971, the Shah himself has frequently repeated that Iran would intervene with military force to prevent any new breakup of Pakistani territory.

This is why there is a careful watch here for results of the Shah's private messages to Pakistan urging mercy for Mr. Bhutto, who has appealed his capital sentence for complicity in a murder. Similar private ap-

peals have been sent by King Khalid or Saudi Arabia and other world leaders.

Iranian analysts believe that there could be considerable disruption of Mr. Bhutto's native Sind region of Pakistan and possibly elsewhere if his life is not spared. Such unrest also could signal or trigger Baluchi or other insurgency, especially if the Soviets are in a mood to help it along.

Pakistani's spokesmen in Islamabad denied a June 4 report in the Tehran newspaper Keyhan International that General Zia would spare Mr. Bhutto's life and allow him to go into exile if the Shah and King Khalid would guarantee Mr. Bhutto's future abstention from Pakistani politics.

But informed persons here believe that such an arrangement, if it could be worked out, may be the only way to defuse the Bhutto issue as a threat to this region's peace.●

## MEAT IMPORTS

● Mr. CULVER. Mr. President, on June 9, I introduced a resolution expressing the Senate's disapproval of the President's intention to suspend meat import quotas and allow an additional 200 million pounds of meat to be imported this year. At this time my resolution has been cosponsored by 19 other Senators from both cattle producing and cattle consuming States.

I believe this broad support reflects a general understanding around the country that beef producers and beef consumers should be allies and not adversaries. The vast majority of consumers understand that beef producers must make a fair return in order to continue producing ample supplies of beef. Producers in turn know that it is in their best interest to meet the consumer demand for beef with a high-quality, reasonably priced product.

Last week two Iowa newspapers published editorials which perceptively characterized the implications of the President's recent proposal to suspend meat import quotas. I ask that these editorials from the Cedar Rapids Gazette and the Waterloo Courier be printed in the RECORD.

The editorials follow:

[From the Cedar Rapids Gazette, June 12, 1978]

BEEF-IMPORT BLUNDER

If President Carter's grain-support errors suggested limited perception of farm issues, his decision to raise the beef import quota confirms suspicions.

Before the recent announcement, American livestock raisers worked happily to increase herds. They knew that vastly higher beef prices would make the investment rewarding—for a couple of years anyway. But having read that 200 million more pounds of beef will enter the country each year—bringing imports to 1.5 billion pounds—farmers must review the signals:

No sooner does beef production become profitable for recently harried cattlemen than the president invites importation of additional animals. Since Carter may be in office 6½ more years, the beef price outlook may not be so rosy after all.

Might livestock raisers now reduce their herd expansion goals?

That would be a reasonable bet. And if domestic marketing of beef fails to produce supplies sufficient to drop prices, will the president feel forced to allow still more beef imports?

That also seems likely, though the spectacle of a drastic rise in beef imports would be politically damaging—especially if accompanied by dropouts among American cattlemen.

It is true, as chief inflation fighter Strauss asserts, that grocery shoppers would appreciate the predicted five-cent drop per pound in the retail price of hamburger. (The reduction would come in hamburger because animals from Australia and New Zealand generally are used for hamburger. Many of the mother cows ordinarily turned into ground beef now are used for expansion of U.S. herds.)

But Agriculture Department analysts doubt that the import increase will knock a nickel from the price of hamburger. A two- to three-cent drop is a more probable result, they say.

To give consumers a nearly invisible saving, then, the president is clouding the future of cattle raisers. Surely farmers and grocery shoppers would fare better if the government let increased U.S. production answer the consumers' problems.

[From the Waterloo Courier, June 14, 1978]

BEEF IMPORT QUOTA HIKE ONLY SYMBOLIC BODES FUTURE ILLS

President Carter's symbolic gesture against inflation—and it appears to be only symbolic—in raising U.S. beef import quotas could boomerang against him and the nation in so many ways that one wonders why he took that action last week.

While some experts have said that the 15 percent increase in beef imports might lower consumer prices for beef by 5 or 6 cents a pound by next fall, many others expect a price drop of only a cent or two. The president's move may be a cruel hoax on consumers.

Even assuming Agriculture Secretary Bob Bergland is right in accepting the 5 cents per pound estimate, that would figure out to only about 12 cents in savings per person a week—since Americans consume an average of about 2½ pounds of beef each a week.

Now, there may be nothing wrong with symbolic gestures if they wreak no harm. But President Carter's action on beef imports threatens serious damage to the U.S. cattle industry and perhaps even to the nation's economy.

Cattlemen have repeatedly documented that only recently has their industry begun emerging from a long period—dating back to 1973—of relative economic hardship.

Whether the 15 percent boost in beef import quotas will significantly depress U.S. cattle prices in the short term is debatable. The Iowa Cattlemen's Association at Ames doubts it, especially, if cattlemen avoid a "stampede" to market their cattle but instead maintain "orderly" selling.

But the long-term impact of the president's action could be damaging indeed if U.S. cattlemen see it not only as symbolic against inflation but also symbolic against their business.

In other words, cattlemen might believe that they will be a continued target of the Carter administration's anti-inflation battle. They then might decide to cut back on future beef production.

Lower meat production could lead to even higher retail prices for consumers in the future.

Further, to use imports as a tool against inflation seems like twisted logic since this only worsens the U.S. balance of payments trade deficit—and that already is viewed as a major source of inflation.

If it is bad to rely so heavily on foreign oil, is it better to rely on foreign meat?

And if President Carter's action is a symbolic gesture against inflation, it is also a symbolic political slap in the face to a major Iowa industry and to Iowa and the nation's family farms—many of which raise cattle.

This seems particularly ironic since President Carter received his first major boost in his run for the White House via victories in Iowa's political caucuses.

So all in all, the president's decision to boost beef import quotas is almost incomprehensible—to say the least.●

## HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF 1978—S. 3084

AMENDMENT NO. 3032

● Mr. HEINZ. Mr. President, I am pleased to join the distinguished Senator from New Mexico, Mr. DOMENICI, in submitting an amendment to S. 3084, the Housing and Community Development Amendments of 1978.

The Committee on Banking, Housing, and Urban Affairs, on which I serve, recently reported out S. 3084, a major portion of which is focused on measures to house, protect, and provide social services for the elderly population residing in public housing in this country. Perhaps the most significant undertaking to assist the elderly is the $165 million, 5-year authorization to furnish congregate housing services for handicapped elderly and nonelderly, temporarily disabled, and frail elderly individuals.

The amendment which we introduce today broadens the eligibility for congregate housing services to include section 202 elderly housing projects. The amendment would authorize the Department of Housing and Urban Development to enter into 3-year renewable contracts with sponsors of section 202 housing projects to provide social services for temporarily disabled or frail elderly and nonelderly handicapped residents. A modest additional appropriation of $40 million over 5 years is authorized.

As far back as the 1937 Housing Act, Congress recognized the need for congregate housing, and authorized congregate housing in public housing developments. At that time, congregate public housing was defined as low-income housing in which some or all units lack kitchens, and in which central dining facilities exist for the preparation of meals. The Congress moved again in the 1970 Housing Act to require the Secretary of the Department of Housing and Urban Development to develop low-income congregate housing for nonelderly handicapped and frail elderly persons. Our colleague from New Jersey, Mr. WILLIAMS, upon introduction of the Congregate Housing Services Act of 1978, described the success of this effort after 8 years thusly—

. . . the number of congregate public housing projects in the country today can be counted on two hands.

Today we understand and accept the fact that the definition of congregate housing must be broader if we are to provide an opportunity for frail elderly and nonelderly handicapped persons to live with a maximum degree of independence for as long as they are able. Therefore a definition of congregate housing must include not only common dining facilities, but also homemaker services, assistance with personal care and grooming, nutritionally balanced meal services, and other nonmedical services provided in a residential setting. This approach of combining comprehensive

social services with residential shelter is, I believe, a far better alternative to institutionalization, which is a costly, often unnecessary, demoralizing, and frightening situation for those who are frail, but not ill.

The Banking, Housing and Urban Affairs Committee has unanimously endorsed this approach for the 293,000 elderly living in public housing. I believe it is appropriate and fair that we extend the promise of independence with dignity to those senior citizens residing in section 202 elderly housing projects as well.

Mr. President, in the Commonwealth of Pennsylvania, there are 3,643 units of section 202 elderly housing, only 11.53 percent of which are congregate housing. Few developments have incorporated such services because of the construction and renovation costs and the concomitant lack of a program to fund such costs. In Montgomery County, Pennsylvania, for example, consideration is being given to using scarce community development resources to renovate elderly public housing in order to add communal dining facilities. However, officials acknowledge that although the need is not limited to public housing, unless section 202 elderly housing is eligible for congregate housing services, the county will be unable to provide them.

Whether we consider the relative merits of congregate housing through examination of the measurable cost—$5,500 per patient per year in a nursing home as compared with $1,000 per person at home with congregate housing services—or the immeasurable human cost of displacement of frail elderly from their homes unnecessarily, I believe the benefits justify our extending the eligibility to section 202 elderly housing project residents because it is the right thing to do. If congregate housing services are a way of allowing elderly people to remain in the community enjoying the independence, autonomy, privacy and relationships that constitute the very essence of meaningful life, we should move quickly to support this amendment and enact this measure into law.

Mr. President, I respectfully ask my colleagues in the Senate to give favorable consideration to this amendment.●

## HUBBS–SEA WORLD RESEARCH INSTITUTE

● Mr. HAYAKAWA. Mr. President, last year, in connection with the extension of the Marine Mammal Protection Act of 1972, there have been extensive hearings by the House as well as by the Senate. While there was wide disagreement among the witnesses as to the best methods for the protection of dolphins, it was generally agreed that a successful solution of the underlying problems required improved international cooperation. The need for such cooperation was recently highlighted by the killing of more than 1,000 dolphins in the Sea of Japan by Japanese fishermen.

The House of Representatives has been duly upset about this incident and a House resolution was introduced to express its concern. Dr. William E. Evans, the director of the Hubbs-Sea World Research, Institute has testified recently in favor of H. Res. 1065. I believe Dr. Evans' incisive comments deserve the attention of my colleagues, and I therefore ask that his statement before the House Subcommittee on Asian and Pacific Affairs be printed in the RECORD.

The statement follows:

Thank you, Mr. Chairman, for the opportunity to present testimony on H. Res. 1065, a resolution expressing the concern of the House of Representatives regarding the killing of some one thousand dolphins in the Sea of Japan by Japanese fishermen on February 23 and 24, 1978.

My name is William E. Evans and I am Director of the Hubbs–Sea World Research Institute. The Institute is a non-profit research institute with headquarters in San Diego, California. For the Subcommittee's additional information, I am a member of the United Nations Advisory Committee on Marine Resources Research, Small Cetacean and Siernian Working Group and also presently a member of the Program and Steering Committee, marine mammal project, Group V, functioning under the auspices of the United States/U.S.S.R. Environmental Protection Agreement. I have also participated as a member of the U.S. advisory group for the joint United States-Japan Conference on the Utilization of Marine Resources. I have lectured in Japan at several universities and conducted cooperative research projects with many Japanese scientists. In conjunction with this program, the Japanese Government is sponsoring a one month work/study program for a young Japanese scientist from the Fisheries Faculty of the University of Nagasaki to work at our Institute on the potential uses of underwater sound to reduce the predation impact of marine mammals on the catch of commercial fishermen. This impact is, by the way, an international problem, having resulted in a significant loss in income by commercial fisheries throughout the world, including the United States.

As the Subcommittee knows, the taking of marine mammals for human consumption in Japan is not a new practice. It is, in fact, centuries old. However, it does appear that the events of February 23 and 24 of this year did constitute a departure from traditional Japanese Oikimi, or "drive fishery" operations. It is obvious that this departure from custom was provoked by the unknown, carried out with frustration and the fear that the livelihood of the fishermen might be at stake. The potential for this type of response was recognized by Japanese Fisheries scientists as early as 1970. This problem was discussed in detail in a scientific paper published in 1972 as a Bulletin of the Far Seas Fisheries Research Laboratory, Shimizu, Japan. At that time, the loss to Japanese fishermen was estimated at several billion yen per year and it was recommended that "small cetaceans should be studied not only for their protection from the exploitation, but also to determine their position in the food chain of the ocean ecosystem."

Encouraging the Government of Japan to join in discussions to be held by the International Whaling Commission's Small Cetacean Subcommittee in June 1978, as is recommended by H. Res. 1065, is indeed a good idea. It was, in fact, the practice of killing small cetaceans that provided the initial impetus for the creation of the Subcommittee following the 24th Annual Meeting of the International Whaling Commission in 1972. At that time, the Scientific Committee of the IWC recommended that members from countries engaged in killing small cetaceans provide information on their control of these operations, and also information relative to the catch and incidental kill of its small cetaceans. The Scientific Committee further recommended that the Subcommittee improve data collection of the world catches of these animals, and to review species, stock identification and other problems. Unfortunately, appropriate funds for research which could ultimately solve this international problem have not been readily available.

Since the highly-publicized events in February, our Institute has been in frequent contact with Japanese scientists long concerned with the growing conflict between marine mammals and local fishing interests. While they are genuinely sympathetic with the plight of the fishermen at Iki Island and elsewhere, they are equally concerned that without a major commitment on the part of the Japanese Government to promote intensified research efforts, the problem will go unsolved . . . to the detriment of the local economy, to the detriment of science and to the detriment of sound conservation and management practices.

Hopefully the passage of H. Res. 1065 will prompt the Japanese Government to reorder its marine science priorities in a way that will accommodate the very real concerns of the diverse community of marine mammal interests. If not, perhaps the Congress ought to consider its own funding legislation to assist our scientists in working cooperatively with the Japanese toward a better understanding of a problem plaguing the peoples of both countries.

Thank you.●

## ECONOMIC DEVELOPMENT: THE SHORT SURE ROAD TO DESEGREGATION

● Mr. GOLDWATER. Mr. President, at different times this year I have spoken on the foolishness, economic waste, and inappropriateness of inflicting embargos on other countries, particularly South Africa, to attempt to force that country to achieve desegregation, and I have tried to point out that instead of encouraging the Government to do this by making it easier for blacks to be employed, it is making it more difficult, because jobs disappear. An article recently published on this subject entitled "Economic Development: The Short Sure Road to Desegregation," is one that the Members of this body and the House should read, particularly those who are burdened down with the idea that the way to get someone to do something is to try and force them to do it. Therefore, I ask that this article be printed in the RECORD.

The article follows:

ECONOMIC DEVELOPMENT: THE SHORT SURE ROAD TO DESEGREGATION

(By C. W. Borklund)

Daniel ArapMoi, vice president of Kenya, complained recently of a "brain drain" of Africans emigrating to the U.S., seeking better working and living conditions than they can find in their own native lands. Noted Mal Whitfield—for more than 25 years a U.S. Information Agency representative in Africa (and, because his primary function has been organizing athletic programs, one of the most highly regarded Americans on that continent)—

"The more traditionally African the person, the less race means to him. Africans are interested in economic development and politics."

In the late 1950's and early '60's, U.S. blacks moved in massive numbers to the big, industrially energetic cities of the North not, as is now commonly reported, for the "big welfare checks" in most cases. (Those

showed only later under President Lyndon Johnson's "Great Society" program.) They came because they'd heard of the job opportunities—and are now flowing back to the South for the same reason.

Exporting Welfare—Blacks and other nonwhites have, over the past 30 years or so, congregated around the white-built cities of Johannesburg, Cape Town, Durban, et al, with the same goal, greater growth than all of them can ever hope to achieve in their native villages. Telling them their life styles, education, opportunities are greater in such places as Soweto than in other, black-African states makes little impression. They already know that.

What angers, and serves as a rich soil for radicals fomenting revolution, is what they consider the frustrating slowness they've suffered, reaching for those economic goals. Even in the U.S., the Emancipation Proclamation in 1863, and 100 years later the start of the Civil Rights Movement, have helped create a nucleus of well-to-do upper and middle-class blacks.

But, blocked ironically by a variety of States welfare and other regulations, a large number of race-minority citizens are still stymied in a no-growth existence. And, irony on top of irony, a number of black African nations, under the umbrella of U.S. foreign aid programs, also are becoming "welfare" States.

Lacking people trained to operate a modern, industrial society, and run in many cases by dictators, "these hypocritical African States see the U.S. as a giant 'social security' benefactor who will give just to fight the socialist attempts to rule. And the reason the OAU (Organization for African Unity) won't take a stand against Russia's 'colonizing' of Ethiopia is simple. They've put too many skeletons in their own countries' closets. They're afraid of being publicly accused by *them* and losing *our* 'welfare' payments," claims one American veteran observer of Africa.

In short, insists another, "Black African ordinary people feel about as much kinship to the black American civil rights movement—and to black Americans, for that matter—as an apple does to a pineapple. The sooner our State Department, especially (U.S. Ambassador to the United Nations) Andrew Young, and our President smarten up about that, the sooner we can start pushing polices that protect U.S. interests over there."

One such profitable-seeming policy, according to many U.S. industrial experts, would be to end that former CIA Director George Bush has called "an isolationist policy," e.g. supporting arms embargoes and urging economic ones, and, in fact, doing the reverse: urging, at least in southern Africa, U.S. industrial investment.

It is the one major area in all of Africa which (a) is vital to U.S. security interests; (b) has the people, raw materials, and nucleus of an education base to move, in relatively short order, from an underdeveloped or "intermediate" (as the World Bank labels South Africa) set of countries to developing and developed ones.

Woods Deliberate Error—A clue to just how valuable such an economic investment policy could be to U.S. diplomatic/political interests showed up recently in an exchange (via long-distance newspaper interviews) between escaped, white South African anti-government agitator Donald Woods and black leaders in South Africa. Claiming that only about 1.2 percent of South African blacks are affected by multi-national company operations and that the high return on investment there is possible "in part because of low wages paid blacks," Woods told a House International Relationss ubcommittee:

"All of the new generation of black leaders favor disinvestment."

Snapped back probably one of the ablest of these black leaders, Chief Gatsha Buthelezi, political leader of five million Zulus, "In other words, people like myself who have not advocated (sanctions) are not the authentic or real leaders . . . I am wary of adopting futile stances so that I can be popular in certain circles at the expenses of my people."

Retorted Lucy Mvubelo, general secretary of South Africa's largest black labor union (and last year elected first black vice president of the South African Trade Union Council), "I have opposed disinvestment in season and out. It can only serve to bring the greatest misery to my people."

Said Lucas Mangope, prime minister of the newly independent Bophuthatswana, "When . . . churches go all out to put pressure on big firms to disengage from South Africa, they know perfectly well all they achieve is to bring unemployment, hunger and despair into thousands of Black homes. They demonstrate a total lack of concern, of care, for any of us."

Similar angry sentiments were fired off by Chief Minister of the Ciskei, Lennox Sebe; Shangaan's leader, Professor Hudson Ntsanwisi; South African Indian Council Executive Committee Chairman, J. N. Reddy and Dr. William Bergins, a leader of the Coloured (mixed racially) people in South Africa. Even Percy Qoboza (who, in contrast to Woods, had achieved some journalistic fame inside South Africa *before* his arrest for, said the Government, allegedly "inflammatory" writing) said, in *Time* magazine, "To impose economic sanctions on South Africa would be to acknowledge total abandonment of a peaceful and negotiated settlement."

In spite of all that weight of evidence (uninformed possibly the kindest adjective for them) leaders of one group or another in the U.S. continue to pressure for what amounts to a declaration of economic war. Among the still festering: The National Council of Churches—long a financial backer of radical movements in southern Africa—has urged its 20 constituent churches to withdraw their funds from financial institutions that deal with South Africa and the businesses there.

The United Auto Workers has said it is pulling its funds out of such banks, and a handful of U.S. banks plus at least one major investment house have knuckled under to the pressure. City councils in several States have debated not using equipment, such as IBM computers, if the firms have divisions in South Africa.

Iowa Democratic Senator Dick Clark claims—in spite of massive evidence to the contrary—that investment in South Africa is "undermining the fundamental goals and objectives of U.S. foreign policy" in southern Africa. The House Banking Committee voted recently that South Africa be discriminated against in loan decisions of the Export-Import Bank because of its "racial segregation policies."

Topsy Syndrome—U.S. Embassy officials in South Africa "regularly host" lunches and other meetings with revolutionary elements there, according to South African intelligence sources, receiving as a result biased encouragement that caters to that embargo fever. And State Department issued a regulation last February—without permitting the usually allowed public comment—implementing the United Nations-passed arms embargo.

But the language is so wildly worded it could apply to shoelaces and toothpaste, indeed anything South African military and police forces buy, either for themselves or for someone else. Depending on how Commerce Department implements the rule, it could amount to the type of economic sanction the U.S. has never tried on anyone else in recent years, including Cuba right after the missile crisis.

Though such knee-jerk reactions get considerable publicity in the U.S., the decisions of more carefully reasoning persons are starting to catch up. Among them:

The United Auto Workers may choose to ignore their dues-paying members in South Africa but Henry Ford, for one, has not. There for 55 years, Ford Motor Company "intends to stay," he said, because "we do more for the people of South Africa by staying here."

Bill Norris, head of Control Data, has answered pressures to pull out with the succinct answer that "withdrawal cannot be considered because we have a commitment to our 150 employees there which neither they nor we take lightly. We believe U.S. corporations must use their influence to be a positive force for social change."

"The withdrawal of U.S. companies, imposition of economic sanctions, or other means of slowing economic activity in South Africa," he said to a House Subcommittee on International Trade, "would deepen the poverty of the underprivileged and if carried far enough, eventually force an uprising and many millions of people needlessly killed."

More than 50 U.S. firms with plants in South Africa have endorsed a set of employment principles first drawn up by Dr. Leon Sullivan of Philadelphia's Zion Baptist Church. The six principles: nonsegregation of races in all eating, comfort and work facilities; equal and fair employment practices; equal pay for comparable work; training programs to prepare Blacks and other non-whites for supervisory, administrative, clerical and technical jobs in substantial numbers; more Blacks and other non-whites in management and supervisory positions; and improvements in employees' lives outside the work environment.

Dr. Connie Mulder, South Africa's Minister of Plural Relations and Development—who has done a great deal already, since last Fall's election of the White Government, to brighten race relations in his country—has praised the list; also encouraged the other 270 U.S. firms with plants in South Africa to adopt the same code.

South African industrialists and businessmen, themselves, have adopted a South African Code of Employment similar to the U.S. one—seeking to eliminate discrimination in hiring practices as well.

A London Fleet Street writer, Andrew Alexander, wrote in the Johannesburg *Star* an article originally published in the London *Daily Mail*. It's thesis: the way to wipe out apartheid is to "flood South Africa with capital, thus diminishing the white monopoly and opening up improved prospects for blacks, Indians, coloured people."

"Sanctions certainly would not kill your country," British shipping magnate, Sir Nichalos Cayzer, told a reporter in Cape Town recently. "The British people will be the ones to suffer. Sanctions, in fact, would be madness."

In contrast to that "madness," South Africa looks like one of the best spots in the world for investment. In addition to the opportunities to "do something" about apartheid, the abundant labor force (an estimated 3 million or so unemployed), the strong education and training base (more than 22% of the black population in school, highest in all Africa, and companies receiving tax credits for running on-the-job training programs), adequate energy sources and lots of undeveloped real estate (especially in the Homelands), South Africa is "one of the great growth countries of the world," thinks John van Eck, President of International Investors.

"It should achieve a growth of about 6% a year, which is high by comparison to the world's average." Backing that up, South Africa Standard Bank Chairman, Dr. Frans Cronje pointed out recently in *To The Point* magazine that "dividend and earnings yields in South Africa are now twice as high as

those in the U.S. and well above those in Britain."

Capital Works—As one example of what investment can produce, Allegheny Ludlum President Richard Simmons has pointed out they went to South Africa in 1974 when a world shortage of chromium developed. (The only other two sources are Russia and Rhodesia.) Chrome is irreplaceable in the manufacture of stainless steel—and a recent University of California study concluded:

"The United States is strategically more vulnerable to a long-term chromium embargo than to an embargo of any other natural resource, including petroleum."

In concert with a South African firm, Allegheny Ludlum built a facility for making ferro chromium from chromium ore—received government assistance both in loans from South Africa's Industrial Development Bank and in government setting up a transportation and utility infrastructure.

Today, says Simmons, of some 450 employees, 330 are blacks and 70 of them high school graduates. "It's indicative of the kinds of jobs that we are making available." Added he, "I've been going there (to South Africa) for many years and I've seen dramatic changes; the black man's lot continues to improve there and when the possibilities of a better education and other opportunities come along, he too will assimilate and be productive in that society."

Among the more encouraging statistics: non-white purchasing power has increased from $919 million in 1970 to $6.7 billion in 1977. Disposable income of blacks is forcast to exceed $9.3 billion by 1980. Black per capita income is forecast to rise 29.5% between 1975 and 1980 as against 7.3% for whites.

A 1973 authorization to increase the factory-level black liaison committees helped produce a drop from 246 strikes in which black workers took part in 1973 to 105 strikes in 1976. Twenty of 25 categories of statutory job reservation were scrapped by the Government in 1977 and strong pressure is being exerted by them on unions and management to drop the other five.

The "pass book" system, designed initially in major part to hold down influx of black job seekers in already over-crowded factory areas, is being abolished. In both black "Homelands" and non-white urban communities, development levels have reached the stage where the government is giving urban blacks, among others, wide-ranging powers to manage their own local community affairs.

Government has taken the first steps toward compulsory education for blacks, indicating that, at least, the availability of trained teachers, schools, and teaching materials is beginning to catch up to non-white population explosions—or at least that the white government and taxpayer can find the money to pay for it.

With only 5% of the African continent's population and 4% of its land area, South Africa produces 22% of Africa's total output of goods and services, 90% of Africa's steel production and ranks fourth in the world in mineral production. And to the extent it is economically viable, its neighbors are helped, too. More than two million migrant workers from outside its borders find temporary employment in South Africa—which represents 25% of the GNP (Gross National Product) of those countries.

Since the inception of the Homelands policy, designed to reverse Black migration to the White man's already economically overtaxed cities, the per capita income is rising with the help of both white expertise and white funding; making these areas increasingly viable—and a source of considerable consternation to dictator-run central African states which, with the same amounts of people and natural resources, are nearly all on the verge of bankruptcy.

Summed up more than one white South African during a recent Government Executive visit, "If you'd asked me five years ago, I'd have said this 'Homelands' policy won't work. Now, I think if anything short of war has a chance, this does."

One clue that it is effective: in 1960, 62.4% of the nine different Black national peoples lived in White-owned areas, 37.6% in traditional tribal homelands. In 1976, 51.3% still lived in White areas, 48.7% in traditional homelands.

THE INSIDE STORY FROM NIGERIA

Since Government Executive began its series on South Africa last December, it has attracted a considerable amount of international interest. One such reader involvement is the following letter, sent shortly after President Carter's visit to Nigeria by a man who lives and works there. Obviously, from his letter, he cannot be identified by name.

"America's increasingly comic President, Carter, during his recent visit to Nigeria and discussions with the country's chief of state, Lt. Gen. Obasanjo, displayed his usual ignorance of facts by praising Nigeria as a great democracy. His short, carefully-controlled tour precluded his observing facts of life as they actually exist here, among which the following are common occurrences:

"1—Democracy, per se, does not exist, and has never existed; the country is run by a Military Junta, headed by Lt. General Obasanjo. It has about as much democratic content as Soviet Russia or Hitler's Germany—without the competence of either.

"2—Nothing can be accomplished, either by a black Nigerian or an expat white, without the payment of Dash, either in the governmental or private sector.

"3—Do you want to send a cable or post a letter? Lots of luck! Quite often, you will pay your money to the clerk at P&T, and happily assume your cable is on its way. Not necessarily so: in many instances, the clerk will pocket your money and throw your cable draft in the waste basket. If you post a letter, especially at a hotel, chances are 50–50 that one of the hotel clerks will steam off the stamps for resale. End of letter.

"4—Law and order? Virtually nonexistent! During recent months, a friend was stopped by two armed policemen not far from the entrance on the Airport Hotel at Ikeja about 11:00 P.M. while driving home in his Volks. At gun-point he was ordered to give them 20 Naira (about $30 U.S.); luckily, he had that much with him or he would have been arrested on some trumped-up charge. And, at night, expats live in constant fear in their residential neighborhoods, as armed gangs—often in collusion with district police officials—roam, break into, and loot houses, terrorizing residents. In the harbor area, foreign ships are in constant fear of boarding by pirates—just a few months ago, a Danish ship was boarded, its Captain murdered and his daughter molested. Yet, the initial Government comment was to the effect that the Danish crew had mutinied against the ship's master!

"5—Many expats, having completed their business, feel they are safely on the way home when going through immigration and customs formalities at Murtalla Mohammed Airport, Ikeja (Lagos). Perhaps. Perhaps not. If they don't pay the proper Dash to officials, they may wind up in jail on a bogus charge rather than being allowed to board the departing aircraft.

"Wake up, Mr. Carter. Before you call a country a "Democracy," get the facts from unbiased, trained observers who have been there!"●

## TOBACCO RESEARCH BENEFITS MANY CROPS

Mr. HELMS. Mr. President, there is a success story in Bladen County, N.C., that should be of interest to all of us who appreciate the good work being done by the Agricultural Extension Service of USDA.

Over the past several years extension agents working through the School of Agriculture and Life Sciences at North Carolina State University have been making tremendous strides in biological control of pests that plague our tobacco, peanut, and soybean crops. In an effort to avoid too much dependence upon costly and sometimes toxic chemicals used to prevent damage to crops, scientists and farmers have been working together to develop a practical use of stilt bugs to prey upon damaging horn worms and bud worms.

The success of this research in North Carolina gives promise of even greater strides in the future, and demonstrates the tremendous importance of applied research conducted by our land grant universities.

Additionally this research has been made possible by the existence of the Oxford Tobacco Production Research Station. And while the benefits to tobacco farmers will be enormous, it is especially interesting to note that peanuts and soybeans—both very important sources of highly nutritional food—are two other commodities that will benefit directly as well.

These research activities have received recent attention in the press in North Carolina, and I ask unanimous consent that there be printed in the RECORD an article from the Wilmington, N.C., Morning Star of June 7, 1978, entitled "Bugs War on Bugs To Advance Cause of Farms, Environment."

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

BUGS WAR ON BUGS TO ADVANCE CAUSE OF FARMS, ENVIRONMENT

(By Leslie Gruber and Dewey Bruce)

ELIZABETHTOWN.—The battle of "the good guys" versus "the bad guys" has come to some tobacco fields in Bladen County this year.

The good guys are stilt bugs, the bad guys are bud worms and horn worms, long time serious pests of tobacco.

In a pest management control program, stilt bugs were spread over test fields. They are native, natural predators of the worm eggs.

The combination of environmental problems and increased resistance of insects to pesticides is turning research emphasis back toward improvement of natural controls. This directly to the stilt bug experiment in Bladen tobacco fields.

Here, in Bladen County, a pest management control program has been in progress for several years, first on tobacco, then on tobacco and soybeans. Soon peanuts will probably be added to the program, according to Extension Chairman Ralph Sasser.

Field scouts have been used during the summer to check fields of cooperating farmers for pest infestations. On basis of the counts farmers were able to determine when to treat their fields or if treatment was needed. The amount of insecticide and the number of field treatments among cooperating farmers decreased sharply.

The stilt bug program is a cooperative effort of the U.S. Department of Agriculture research divisions and the state and county extension service. Al Baumhover is coordinator of the program.

The stilt bugs have been raised in quantity at the Oxford Research Station.

Baumhover said the insect is a native of the eastern United States. Its numbers were low in the Border Belt area because of seasonal incompatability with tobacco and heavy in secticide applications. The area's tobacco crop is simply too early for the natural spring increase of the stilt bug population and the fields are cleaned out too early in the fall for a good carry over.

However, he said the initial application of stilt bugs at a rate of 2,000 per acre is showing good liveability.

A Bladen County farmer who is participating in the program, Edwin Peterson, said he had long thought too much insecticide was being used and he hopes the new approach will help the situation.

In past years Border Belt farmers in particular, because of decreasing numbers of beneficial insects and parasites have applied chemicals to tobacco in increasing quantities. In 1975 farmers felt one adverse effect of the chemical infestation when West German companies refused to buy tobacco on the belt because of residues.

Efforts have been made to improve pest control, partly through stressing inspection to determine exactly what is needed and when, partly through banning of the use of some chemicals by the U.S. Government and through a beginning resurgence of study of natural predators, diseases and parasites of these pests.

The new stilt bug program is just a week old in Bladen County—too young for definitive results, Billy Dunham, pest management control extension agent, said.

However, Baumhover's first preliminary report appeared encouraging.

Baumhover explained the format of the Bladen stilt bug testing program. In one group of farm fields stilt bugs were released at a rate of 2,000 per acre. In another group of 10 fields a bacillus was used to control the worms. In the third group of 10 fields handled in the conventional manner, farmers were to apply whatever chemical they chose.

The first week's report showed only three out of the 15 fields with stilt bug control needed chemical treatment. Half of the fields on which the bacillus had been applied needed treatment and eight out of the 10 conventionally managed fields needed prescribed treatment.

One week's result does not provide sufficient evidence to make a permanent conclusion, Sasser said. One year's result isn't enough, either. The program should be continued for at least three years, he explained this week to the Bladen County Board of Commissioners.

Concerning value of the experiment, if successful, Braxton Edge of Ammon, a tobacco grower and county commissioner, commented, "if we can cut down on use of insecticides we can sell our tobacco better overseas."

Almost half of the flue-cured tobacco grown in the United States is exported, either as raw tobacco or in the form of cigarettes.

Cost of stilt bug application is $6 per 1,000 bugs, and at present "we have 200,000 surplus bugs at Oxford," Baumhover said.

Theoretically, he noted, one application of the bugs should carry through at least one season. He noted the stilt bug population seemed to be maintaining itself in the test fields.

Sasser noted "we used to spray once a week whether our tobacco needed it or not. The scouting program has caused many farmers to rethink their spraying programs."

One application of pesticide now costs close to $12, Sasser observed, so from an economic standpoint in the field it could pay growers to look into the possibilities of the new program for the future.

Baumhover said there is a new emphasis on research into natural controls of plant pests in face of rising criticism of excessive use of chemicals and rising costs of chemicals. Long-term effects of some of the chemicals that have been used are appearing harmful. Insects that once fell before the chemical onslaught are showing more resistance to the materials.

He explained the hiatus on research in this area from the early 1940s until recent years as brought about by invention of powerful pesticides in the 1940s. "Everyone thought they were the ultimate pest control and results were spectacular."

He said much work is being done in a number of lines including breaking up the procreation pattern through male sterility or spreading of specific female hormones to confuse would-be mating insects, development of specific parasites and study of means of increasing predators.

There have been some notable examples of successful suppression or eradication of insect pests, such as the Mediterranean fruit fly in this country, a pest of citrus fruits, and the screw worm, a pest of cattle.

Efforts are now being made to suppress or destroy the cotton boll weevil primarily through a cotton tillage and management program. The program includes use of chemicals, but in the long run may decrease need for pesticides and thus may lower cost of cotton production.

Baumhover said the Bladen program will be checked carefully through the season with the Bladen field scouts carefully taking counts in test fields.

If tests such as the one on tobacco in Bladen prove successful, the possibility of a balance being achieved between natural and chemical pest management offers much toward lessening environmental problems and possibly lessening costs of production.

"We see no way in which chemical pesticides can be eliminated, but their use can be brought into line with need," Dr. Baumhover added.

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## THE REMARKABLE FAMILY OF JOHN W. THOMAS, JR.—FIVE SONS, FIVE EAGLE SCOUTS

Mr. HELMS. Mr. President, yesterday was Father's Day, and it is safe to say that most fathers across the country were counting their blessings in having children and grandchildren whom they love, and of whom they are immensely proud.

In fact, I could brag a little bit myself—in the context of Dizzy Dean's declaration that "braggin' ain't braggin' if you can prove it." But that is not the purpose of these remarks.

My purpose, Mr. President, is to pay my respects to a fine family in North Carolina, the family of John W. Thomas, Jr., of High Point.

John is my friend, and he is a splendid citizen—as is his lovely wife, Tommie. They are folks of character, and it shows clearly in the kind of sons they have reared.

It is always risky, Mr. President, to declare flatly that someone has set a record. But I wonder how many other families can claim to have five sons who have achieved the rank of Eagle Scout?

John and Tommie Thomas have worked hard to instill in their sons a love of God and country. Obviously they have succeeded. The fact that all five of their sons have earned the rank of Eagle Scout speaks volumes in that regard.

The first to achieve the rank of Eagle Scout was John W. Thomas III. That was on August 9, 1965. Next came Michael Andrew Thomas—he is known as "Mat" Thomas. Mat made it on April 28, 1968. The third and fourth sons—Bruce R. Thomas and Christopher P. Thomas—became Eagle Scouts on the same day, May 18, 1971. The fifth son, Stuart C. Thomas, achieved the rank of Eagle Scout on February 12, 1978.

Where are these young men now?

The oldest son, John, was graduated from Washington and Lee University in 1970. After serving in the Army, he earned his M.A. degree in business administration, and is now associated with his father's business in High Point.

Mat Thomas is a graduate of the University of North Carolina with a degree in international studies. I am very proud of the fact that Mat is now working in a U.S. Senate campaign in my State this year. Having Mat with us means a very great deal to me.

Bruce Thomas was graduated last year from Washington and Lee University, and has been working to become a certified flight instructor. At last report, he had completed much of the work, and was soon to finish the required flying time.

Chris Thomas has finished Appalachian State University this year, with a degree in accounting. He intends to become a certified public accountant. During his years at Appalachian State University, he was active in the student government at that fine institution.

Stuart Thomas has just completed his sophomore year at Woodberry Forest School in Virginia, and he can be counted upon to follow his older brothers into a successful career.

My friend, John Thomas—the father of these fine young men—credits his wife, Tommie, for the success of the sons. He said proudly:

> Tommie served as den mother for all five of our sons, starting in 1961.

Both John and Tommie are deeply grateful for the Scouting program, and the impact it had upon their son's lives. John Thomas say:

> It has meant a great deal to us as a family, drawing us together as a close-knit group.

Even though the young men grew up in rather turbulent times, he adds:

> They managed to keep their lives free of so many of the bad influences . . . We firmly believe that Scouting played a major part in this blessing.

Mr. President, I have only one son, and I shall never forget the Sunday morning at our church when he became an Eagle Scout. John and Tommie Thomas experienced this five times. As I said at the outset, having five Eagle Scouts in one's family may not be a record, but it surely does not happen often.

And it could not happen to a nicer family. I am confident that yesterday was a splendid Father's Day for my friend, John W. Thomas, Jr.

## THE DEMOCRATIC NATIONAL COMMITTEE FARM CAUCUS OPPOSES THE UNITED KINGDOM TAX TREATY

Mr. CHURCH. Mr. President, the Democratic National Committee (DNC) Farm Caucus has passed a resolution urging the Senate to reserve article 9(4) from the pending United Kingdom Tax Treaty. It opposes article 9(4) as a precedent-setting limitation on the States' abilities to tax United Kingdom-controlled corporations and an inappropriate way to resolve a Federal-State tax dispute. The treaty will cause significant losses to the treasuries of various States, and benefits only the multinational corporations.

I ask unanimous consent that the text of the resolution be printed in the RECORD.

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

RESOLUTION ADOPTED BY THE DEMOCRATIC NATIONAL COMMITTEE FARM CAUCUS

Whereas, Article 9(4) of the Tax Convention with the United Kingdom of Great Britain and Northern Ireland is a precedent-setting provision limiting the states' abilities to tax U.K.-controlled corporations, including those engaged in agricultural activities;

Whereas, using a tax treaty to resolve a federal-state dispute over the methods states use to tax corporations circumvents the normal legislative process and constitutes an abuse of the treaty process;

Whereas, the United Kingdom Tax Treaty results in significant losses to the treasury of the United States and to the treasury of various states of the Union while providing benefits only to multinational corporations;

Be it resolved that the Democratic National Committee Farm Caucus urges the Senate of the United States to reserve Article 9(4) and to deny its advice and consent to the United Kingdom Tax Treaty.

## TOM BRADBURY OF THE CHARLOTTE NEWS ON SOLZHENITSYN

Mr. HELMS. Mr. President, Alexandr Solzhenitsyn's recent speech at Harvard has brought forth a stream of bitter criticism from much of the news media by writers who either could not or would not understand what the Russian writer was saying. It seemed to many that Solzhenitsyn was rejecting the very basis of American civilization. Indeed, his critics spoke in the harsh terms used by rejected suitors.

But what critics did not understand was that Solzhenitsyn was not rejecting America as a whole, but only a narrow slice of America over which his critics reign triumphant—the America of the establishment elite, which dominates so much of our Government, our giant corporations, our universities, and, of course, the press. The problem is not that Solzhenitsyn is alien to America, but that the establishment itself has alienated itself from the vast bulk of the American people, their thinking, and their values.

Not all the media, however, found Solzhenitsyn's ideas so remote. Tom Bradbury, who is fast becoming recognized as one of North Carolina's most perceptive writers, is associate editor of the Charlotte News. In a recent editorial on the Solzhenitsyn speech, Mr. Bradbury noted that the picture of America seen by Solzhenitsyn is a picture distorted by the national leadership:

In truth, we'd say that life in the West is finer and stronger than Solzhenitsyn suggests. In particular, it is finer and stronger in this country at the level of ordinary folk, whose courage and faith are deeper than might be suspected by one who sees only their reflection in the national media and the national leadership.

But there is much to recognize in his sketch of the West. There is a chilling ring of truth in his assessment of the world balance. If he is wrong about how many things mostly are in this country, he is right about how some of them are tending to be. Despite affluence, despite undeniable economic and social progress, America does continue to wrestle with crime, legalism, decadence, and purposelessness.

Mr. President, the fact is that Solzhenitsyn is not speaking from an alien point of view. He represents a train of thought in the West that reaches back to Aristotle, Cicero, Augustine, Hooker, Pascal, Thomas More, Burke. In our own country, he is closer to Patrick Henry, John Randolph, John Calhoun, and Henry Adams, than to Jefferson and Franklin. It is a tradition of thought far more ancient than that of the so-called enlightment. It is a tradition that built up the intellectual capital of our civilization, a capital that has been squandered in the past 200 years.

Mr. Bradbury understands that Solzhenitsyn is pointing to a spiritual crisis in the West, a crisis that both the American people and the American leadership have to face:

But the same moral sight that has pierced to the heart of the Soviet soul has understood this about the West: That the malaise is not economic nor social nor political, but profoundly spiritual. The fundamental questions have to do not with energy or inflation, but with the meaning of life and society. . . .

The most telling thing is not that so many of the respondents disputed his answers, but that they could not hear his questions.

Mr. President, I ask unanimous consent that the editorial by Tom Bradbury, "A Russian Exile Sees to the Heart of the West's Spiritual Crisis," from the Charlotte News, of June 13, 1978, be printed in the RECORD at this point.

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

A RUSSIAN EXILE SEES TO THE HEART OF THE WEST'S SPIRITUAL CRISIS

(By Tom Bradbury)

Alexander Solzhenitsyn is a man as uncompromising as the icy winters he loves in his native Russia and his adopted Vermont. Years of pounding, imprisonment and harassment by the Soviet terror appartus served not to weaken him, but to forge in him a soul of steel. He is a man from whom the impurities and distractions of life have been driven, a mind finely honed and directed to the single purpose of his work.

That work is to remember and tell the truth. It is perilous work. In the Soviet Union it brought him imprisonment and, eventually, exile. In the West, it has brought him wealth from his writings, but only so long as they limited themselves to exposing the true nature of the Soviet system. When he undertakes to speak the truth about the western society in which he is an exile, as he did in delivering the commencement address at Harvard last week, he can find himself once again a prophet without honor in the country of his residence.

It was a speech as uncompromising as the man. He found western society without courage, cut loose from its spiritual moorings, hell-bent on the worship of man and materialism, heedless of the relentless march of evil in the world. It was a criticism not only of the surface of things ("TV stupor, . . . intolerable music") but the core of things, the turning away from God. It was nothing less than a call to repentance.

If sinners' were of a mind to repent, prophets would not be needed. The response from some of Solzhenitsyn's targets might best be described as patronizing. Editor Norman Cousins explained that Solzhenitsyn has not "yet discovered enough about the West to be either a pitiless critic or an enthusiastic advocate." Solzhenitsyn scored western accommodations with communism; former Secretary of State Dean Rusk said "we have to think about how everybody lives on this speck of dust in the universe at the same time." Solzhenitsyn asked if antiwar activists hear the moans from Communist Indochina; the Rev. William Sloane Coffin explained that the terror in Cambodia is essentially the fault of the United States, which gave the Communists the will to fight when it struck at North Vietnamese bases in Cambodia. And so on.

That is only natural. It was a wintry blast from the prophet at Harvard. Few would volunteer to accept the full force of such a storm. Like the others buffeted by his words, those of us in the news media are prepared to argue that the landscape is not so bleak as he suggests.

In truth, we'd say that life in the West is finer and stronger than Solzhenitsyn suggests. In particular, it is finer and stronger in this country at the level of ordinary folk, whose courage and faith are deeper than might be suspected by one who sees only their reflection in the national media and the national leadership.

But there is much to recognize in his sketch of the West. There is a chilling ring of truth in his assessment of the world balance. If he is wrong about how things mostly are in this country, he is right about how some of them are tending to be. Despite affluence, despite undeniable economic and social progress, America does continue to wrestle with crime, legalism, decadence and purposelessness.

Solzhenitsyn is Russian to the core; his vision for society is fundamentally alien; we wouldn't want him to write the new American Constitution. But the same moral sight that has pierced to the heart of the Soviet soul has understood this about the West: That its malaise is not economic nor social nor political, but profoundly spiritual. The fundamental questions have to do not with energy or inflation, but with the meaning of life and society:

"Is it true that man is above every thing? Is there no Superior Spirit above him? Is it right that man's life and society's activities have to be determined by material expansion in the first place? Is it permissible to promote such expansion to the detriment of our spiritual integrity?"

The most telling thing is not that so many of the respondents disputed his answers, but that they could not hear his questions.

## EXAMINING THE NATURAL GAS COMPROMISE

Mr. HANSEN. Mr. President, staff members in the joint House-Senate Conference on Energy are now drafting legislative language to embody the "compromise" adopted by a narrow margin by the House and Senate conferees. As it is possible that this body as a whole will be called upon some time this fall to vote

on that language, when drafted, I would like to bring to the Senate's attention some of the many problems connected with that compromise.

Starting today and over the next few days, I and others will present a selection of the problems that exist in the compromise. Today, I would like to discuss an anlysis request made by the Energy Information Administration, at the request of Senator JACKSON. They analyzed the effects of the compromise proposal, as well as of the House and Senate bills that were submitted to the conference.

I do not state that the material in this analysis is perfect. In fact, I believe that the amount of extra production available through deregulation under the Senate bill is probably understated. The EIA figures are certainly well below independent estimates made by non-Government sources and are even below the recent claims made by the administration and some of the Senators who favor regulation, who have newly discovered the effectiveness of price incentives. Nevertheless, this EIA analysis is a serious-minded effort to analyze the actual effects of these proposals.

Let's look at some of the conclusions that they reached:

One. Wellhead prices in the Southwest, where nearly 90 percent of our gas is produced, would be considerably higher under the compromise proposal than under the Senate bill. In the median estimate, the price would be 23 cents higher in 1985, largely because the free market pricing under the Senate bill would allow the market to clear at a lower level than under the compromise.

Second. The analysis shows the compromise bill providing only 0.2 Tcf more natural gas in 1985 than the House bill would provide. Since almost every analysis has concluded that the House bill would have been a complete disaster for production, and for the American energy picture, this does not speak well for the compromise. It is also interesting that this conclusion supports Senator BUMPERS' assertion in conference committee that the compromise would produce no new gas, rather than the optimistic estimates of Secretary Schlesinger and Senator JACKSON that 1.5–2 Tcf additional would be produced.

Third. Perhaps more interesting, in light of the "consumerist" rhetoric used in supporting the compromise, the EIA analysis finds that the compromise results in the smallest increase in price to industrial users. On the other hand, residential prices increase under the compromise while the Senate bill would cause them to decrease. After the reams of copy alleging that the compromise would help homeowners and place all of the costs on evil business users, this is a most interesting finding.

Fourth. The report indicates that the compromise would reduce oil imports by barely 3 percent of current demand, and would create less of a reduction of imports than does the Senate bill.

The EIA study is very complex, and undoubtedly provides some information that can be of comfort to all sides, but it basically shows that there is little correlation between the claims being made for the compromise proposal and the actual effect that proposal will have. This is not really surprising, since the claims made for the compromise have been extremely contradictory. In addition, the compromise has been touted as the greatest thing since snake oil, curing all diseases from baldness to gout. Unfortunately, as we shall show in this series of statements analyzing the compromise, these claims have no more substance that the usual run of claims made for snake oil.

## PETER F. VAIRA'S NOMINATION AS U.S. ATTORNEY FOR PHILADELPHIA

Mr. PERCY. Mr. President, Peter F. Vaira, chief of the Justice Department's organized crime strike force in Chicago, was nominated by the White House to replace David Marston as U.S. Attorney for Philadelphia. Although the circumstances of the dismissal of Mr. Marston are a cause for concern, I applaud and endorse this nomination most heartily.

With nearly 10 years of experience in organized crime matters, Mr. Vaira is one of the Justice Department's most knowledgeable and diligent prosecutors. In his previous posts he has displayed dedication and commitment in the battle against crime and corruption. He also possesses a deep respect for the law and the rights of individuals which will serve him well as U.S. attorney.

Born and educated in the Pittsburgh area, Mr. Vaira served for 4 years as an attorney in the Navy's Judge Advocate General Corps before joining the Justice Department in 1968. He worked with the Chicago strike force, obtaining numerous convictions in difficult corruption cases. In 1972, he became strike force chief in Philadelphia when he won the conviction of Maurice Osser, a local political figure involved in kickback schemes. He then became Chicago strike force chief, a position he has held since 1973.

Under Mr. Vaira's leadership, the Chicago strike force has compiled an impressive record, exploring new approaches in criminal investigation and prosecution. For example, Mr. Vaira's office was the first to file and win a civil suits under the racketeer influenced and corrupt organizations statute (RICO). He also pioneered the so-called "sting operation" for apprehending thieves and burglars dealing in stolen goods. In that operation, investigators set up phony fence enterprises through which they are able to directly observe and record criminal activities. Responding to these early successes in Chicago, strike forces in other major cities have adopted similar methods with excellent results.

In one of Mr. Vaira's most important cases, he recently won the conviction of a steward in Teamster Local 714 in Chicago, who defrauded exhibitors at McCormack Place Exhibition Hall, collecting large sums of money for work never performed. Convicted under provisions of the Taft-Hartley Act and the RICO statute, that steward was also permanently bared—through an injunction under the RICO statute—from any future union activity.

In addition, under Mr. Vaira's leadership, the Chicago strike force has launched a successful initiative against organized crime and corruption in northern Indiana. Already that initiative has brought about the conviction of an East Chicago sanitary district commissioner in a case involving a $2 million bribe.

Last month, Mr. Vaira—along with eight other strike force leaders from around the country—testified before the Permanent Subcommittee on Investigations concerning the upsurge in crime syndicated influence over labor unions. Mr. Vaira gave a frank and startling account of labor-management racketeering involving Chicago unions. His valuable testimony highlighted a problem to which the subcommittee will continue to pay close attention.

In his 1976 election campaign, President Carter promised that partisan politics would not determine who would be the Nation's prosecutors and judges. Unfortunately, the removal of David Marston revealed that this administration is as likely as previous ones to play politics with public office.

In the words of Samuel K. Skinner—former U.S. attorney in Chicago—Mr. Vaira's nomination is "a silver lining in what otherwise has been a very black cloud that has hung over the Justice Department." The nomination of Mr. Vaira reveal a praiseworthy effort by the administration to fill the Government's top law-enforcement posts with dedicated, distinguished individuals.

In sum, Mr. Vaira combines outstanding leadership qualities and a proven record of prosecutorial expertise. It is, therefore, my hope, Mr. President, that the Senate will speedily confirm Mr. Vaira as U.S. attorney in Philadelphia, a post for which he is eminently qualified.

## CONGRESS MUST ACT SWIFTLY TO PROTECT FREEDOM OF THE PRESS AND RIGHT TO PRIVACY

Mr. PERCY. Mr. President, last week I was pleased to join my distinguished colleagues, Senators BAYH and METZENBAUM, in cosponsoring S. 3164, the Citizens Privacy Protection Amendment of 1978.

This legislation is urgently needed as a result of the recent 5 to 3 Supreme Court decision, Zurcher against Stanford Daily. This decision permitted police, armed with a warrant, to conduct surprise searches of newsrooms for evidence of a crime, even though no newsperson is suspected of any complicity in that crime.

The idea of policemen rummaging around a newsroom—opening drawers, rifling files, searching through wastebaskets—is totally contrary to our fundamental belief in a free press. It is an image drawn from a police state.

A reporter's stock-in-trade is the ability to gather information, often from confidential sources. If we permit these police searches, such sources will soon dry up, and with them, the public's access to information independent of government.

The Zurcher decision is not only a blow to freedom of the press, but it is also a serious infringement of our right to privacy. Clearly, reporters are not the only ones threatened by this decision. As Jus-

tice John Paul Stevens perceptively pointed out in his dissent—

Just as the witnesses who participate in an investigation or a trial far outnumber the defendants, the persons who possess evidence that may help to identify an offender, or explain an aspect of a criminal transaction, far outnumber those who have custody of weapons or plunder. Countless law abiding citizens—doctors, lawyers, merchants, customers, bystanders—may have documents in their possession that relate to an ongoing criminal investigation. The consequences of subjecting this large category of persons to unannounced police searches are extremely serious. The *ex parte* warrant procedure enables the prosecutor to obtain access to privileged documents that could not be examined if advanced notice gave the custodian an opportunity to object. The search for the documents described in a warrant may involve the inspection of files containing other private matter. The dramatic character of a sudden search may cause an entirely unjustified injury to the reputation of the person searched.

This ruling unlocks the doors of innocent citizens' homes and offices for surprise police searches for evidence. It renders almost meaningless the confidentiality promised by clergymen, doctors, psychiatrists, and lawyers.

For many years, observers have complained of Supreme Court decisions that expanded the rights of the accused. The Zurcher decision could be even more momentous because it drastically reduces the rights of the innocent. Noninvolvement in a crime grants no privileges; the person who is not suspected is equally subject to the same police powers as is the criminal suspect.

This is precisely what the fourth amendment was meant to protect against. As the late Justice Felix Frankfurter said:

It makes all the difference in the world whether one recognizes the central fact about the Fourth Amendment, namely, that it was a safeguard against recurrence of abuses so deeply felt by the colonies as to be one of the potent causes of the Revolution, or one thinks of it as merely a requirement for a piece of paper.

This broadening of police powers and the corresponding loosening of fourth amendment protections touches the very core of the constitutional rights of every American.

It may be that at some future date the Supreme Court will reconsider its decision. Harvard Law School Prof. Paul Freund, an influential scholar and student of our Constitution, has said:

The Supreme Court of the United States owes much of its prestige to its readiness to reconsider its own decisions, yielding, as Justice Brandeis put it, to the lessons of experience and the force of better reasoning.

I do not believe, however, that we can afford to wait for that eventuality. This type of search is potentially subject to tremendous abuse and must be curbed. The time to act is now.

Justice Byron White, in his majority opinion, wrote that nothing in the Constitution prevents the Congress from providing more protection than the Court finds embodied in the first and fourth amendments. Congress ought to accept this "invitation" immediately, and properly close the doors to our homes, offices, and newsrooms that this decision has left wide open.

S. 3164 requires Federal, State, and local law enforcement officials to forego a search warrant and, instead, obtain a subpena for the evidence of a crime, when that evidence is in the possession of someone not suspected of involvement in the crime. Unlike a search warrant, a subpena will provide prior notice to the person affected, eliminate the need for a search by permitting the person to produce the evidence requested, and allow the opportunity for a prior court challenge before compliance.

The measure would still allow police to obtain a search warrant if there is probable cause to believe that the evidence would be destroyed, hidden or removed. To insure compliance, the bill provides that violations would result in civil damages, including up to $10,000 in punitive damages.

I know that many of my colleagues are distressed by the Zurcher decision. Hearings should be held in the very near future. Swift action is necessary to insure full protection to our right of privacy and the freedom of the press.

This past Sunday, June 11, 1978, an excellent analysis of this decision by former counsel to the Senate Watergate Committee, Samuel Dash, appeared in the Washington Post. I ask unanimous consent that "Police Power: An Ominous Growth" be printed in the RECORD along with the text of the Citizen's Privacy Protection Amendment of 1978 at the conclusion of my remarks.

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

[From the Washington Post, June 11, 1978]

POLICE POWER: AN OMINOUS GROWTH—CONGRESSIONAL ACTION NEEDED TO VOID COURT RULINGS NARROWING INDIVIDUAL RIGHTS

(By Samuel Dash)

The Supreme Court's recent ruling endorsing surprise police searches of the innocent is part of a broad expansion of police powers in the United States and a corresponding erosion of liberties protected by the Fourth Amendment. It deserves to be struck down as soon as possible by both the Congress and state legislatures.

One bill on the issue already has been introduced in the Congress by Democratic Rep. Robert F. Drinan of Massachusetts, but it would nullify the High Court ruling only so far as it threatens the press with police raids on its files. Important as the press issue is, much more is at stake and much wider remedies are needed.

Indeed, the ruling means that police now suddenly can search through any innocent person's home or office or other property, that they can seize whatever they might think important to their investigations, that use of such property in court cannot be blocked, that all this can be done despite the Fourth Amendment's guarantee that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . ."

The Supreme Court majority and the Justice Department, in its friend-of-the-court brief, have told us not to worry, that police will not abuse this new power. But the Fourth Amendment was written precisely because we as a nation worry about government abuse of power. We should indeed worry, and worry a great deal.

ANTIWAR DEMONSTRATION

The facts of the immediate case, *Zurcher v. Stanford Daily*,—a case which easily could and should have been avoided entirely—are straightforward. An antiwar demonstration in 1971 at the Stanford University Hospital resulted in the injury of a number of police officers. The officers themselves were able to identify only two of their attackers. Two days after the demonstration, The Stanford Daily, a student newspaper, published stories and photographs on the protest, and police thought the photographer might have gotten pictures of other demonstrators assailing policemen.

Rather than ask the paper about any such photos, rather than ask a prosecutor to issue a subpoena specifically for the photos if they existed, rather than obtain a court order that no such evidence be destroyed, the police obtained a broader search warrant from a magistrate and suddenly descended on the newspaper's office. After rummaging through files, desk drawers and wastebackets, they came up emptyhanded, at least so far as the photos they had hoped for were concerned.

From these basic facts, Justice Byron White, in his opinion for the five-member majority, sweepingly concludes that "warrants may be issued to search any property, whether or not occupied by a third party, at which there is probable cause to believe that * * * evidence of a crime will be found." that first subpoenaing the potential evidence "involves hazards to criminal investigations * * *

Remarkably, his opinion seems to regard the Fourth Amendment as intended to provide a police tool for searches. The Fourth Amendment, fundamental to our existence as a nation, is rooted in the outrage of American colonists over British intrusions into their homes, not in a concern for police investigations. The late Justice Felix Frankfurter perhaps put it best when he stated:

"It makes all the difference in the world whether one recognizes the central fact about the Fourth Amendment, namely, that it was a safeguard against recurrence of abuses so deeply felt by the colonies as to be one of the potent causes of the Revolution, or one thinks of it as merely a requirement for a piece of paper."

Justice White leans far toward viewing it as "merely a requirement for a piece of paper."

He concentrates narrowly on the Amendment's second clause—"and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized"—and mechanically finds that a valid warrant was present in the Stanford Daily case. He declares that the critical element in a "reasonable" search is that there is reasonable cause to believe the "things" to be searched for might be on the property, not whether it is a reasonable intrusion into an innocent person's life and work.

He is far more worried about the expediency of law enforcement. He speculates that the "seemingly blameless third party * * * may not be innocent at all." He speculates that "the delay involved in employing the subpoena * * * offering as it does the opportunity to litigate its validity, could easily result in the disappearance of the evidence.* * *"

But the police did not tell the magistrate in the Stanford Daily case that they worried about such problems, although ironically, they could have. The little-reported fact is that The Stanford Daily had announced that it would destroy any photographs that might aid in the prosecution of the protesters. If the police had told the magistrate that a subpoena would have been impractical because of this policy, a search warrant certainly would have been reasonable under the Fourth Amendment. In short, a defiant student paper evidently prompted the police to overlook a procedural step that could have avoided a sweeping High Court ruling affect-

ing all of us and further expanding police powers.

1886 SUPREME COURT RULING

Until 1967, a police search anywhere just for evidence of a crime was prohibited as an invasion of privacy and of property. This standard was based on a long English tradition and, in this country, chiefly on an 1886 Supreme Court ruling. The only things police legally could search for were stolen goods, contraband and weapons or other instruments of a crime, not "mere evidence."

But in 1967, flushed with victory after ruling that state court judges must suppress illegally seized evidence, liberals on the High Court beleived they could bow to new demands by law enforcement groups that the "mere evidence" prohibition be abandoned. That year, in *Warden v. Hayden,* the court held that evidence of a crime in itself could be a proper target of a search.

Even then, however, the court clearly was not contemplating searches of innocent parties. *Warden v. Hayden* had involved police pursuit of a fleeing robber into a house, where the police found some of his discarded clothes in the basement. The court held that the clothes could be used by the prosecutor as evidence against the defendant for identification puposes. Nothing in the opinion suggests that the court even thought it might be paving the way for police to ignore the use of subpoenas in the case of innocent parties, to willy-nilly obtain warrants to search their homes and offices.

After searches for "mere evidence" were permitted, as Justice John Paul Stevens noted in his Stanford Daily dissent, searches of innocent parties did become a possibility. But in such cases the police could not automatically conclude that a request for cooperation or a subpoena might imperil the suspected evidence. Therefore, as Justice Stevens stated, determination of probable cause for such a search must include a finding that a subpoena would be impractical.

But, in its apparent effort to further expand police power, the majority held otherwise, unfortunately ignoring what the late Justice Tom C. Clark once wrote for the court: "We cannot forgive the requirements of the Fourth Amendment in the name of law enforcement."

The majority offers feeble assurances that police will not abuse the new search power they have been given. According to the court, protection for innocent third party is to be found in police restraint, the requirements for probable cause and the magistrate's discretion to refuse to issue a warrant.

But the history of police and magistrate practices runs the other way. It was police abuse of Fourth Amendment rights, despite repeated warnings by the court, which led the court finally to require the suppression of illegally seized evidence in state cases. The court repeatedly has held that protection of constitutional rights cannot be left to the untrammeled discretion of the police. This statement is equally applicable to state magistrates and lower court judges.

Even if we could trust the police and the magistrates to adhere to the legal requirements of probable cause for search warrants, the protection provided by these requirements has become somewhat illusory because of recent Supreme Court decisions.

Most police searches on warrants are based on information received from informers. Earlier Supreme Court decisions sought to assure that the magistrate would independently determine probable cause rather than depend on police conclusions. The court had held that affidavits for a warrant must provide facts supporting the reliability of the informer, such as how many times he had given information that proved correct, as well as facts from the informer supporting his statements about the existence and location of the evidence sought.

But in later opinions written by Chief Justice Warren Burger and Justice William Rehnquist, the court held that a tip from a first-time informer could be the basis for a probable-cause determination.

This questionable source is made all the more perilous by the court's consistent holding that the police have a right to conceal the identity of informers. While he was on the court, Justice William Douglas referred to these sources as "faceless informers" and warned that we could never be sure they actually existed.

So, the protection of the probable-cause requirement amounts to this: A police officer tells a magistrate that an unnamed informer told him that while he was in some office or home he saw evidence incriminating someone else who is not connected with the office or home. A warrant is issued and, without warning, the innocent party's office or home is searched by police. How much is left of the Fourth Amendment?

Both the majority of the court and the Department of Justice, in its friend-of-the-court brief, tell us not to worry because police will rarely use the power given them. After all, we are told, police will take the easier route and seek voluntary cooperation, or a subpoena. As a rule, maybe. But in times of conflict, in times of anger, how benevolently can we hope the police will exercise this discretion?

We should indeed worry, particularly since the court has now put innocent parties in a worse position than criminal suspects. If incriminating evidence is unlawfully taken from his home, a criminal suspect has a right to prevent the government from using that evidence against him by having the court suppress it. But the court has ruled in other cases that innocent third parties have no standing to suppress evidence illegally seized from them. This means police have less reason to worry about making illegal searches of the homes or offices of innocent persons than they do in the case of those suspected of a crime.

In 18th century England, William Pitt was able to say: "The poorest man may in his cottage bid definance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter; the rain may enter—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement!"

Because of the Supreme Court's ruling, we are unable to say the same of our homes or cars or offices or other property in America today.

Clearly, there is a need not only to worry but to press for legislative action.

MINIMUM STANDARDS SET

Although the miserly interpretation of the Fourth Amendment in the *Stanford Daily* case provides little protection from police for innocent parties, the court's interpretation of constitutional provisions—narrow or broad—sets only minimum standards. Congress and state legislatures may not be able to authorize practices below these standards, but they certainly can provide greater protection than the Supreme Court found constitutionally necessary.

In this case, Congress in federal searches and state legislatures in state searches can quickly moot the Supreme Court ruling by requiring that when police apply for warrants to search homes or offices of innocent parties, magistrates must find as part of "probable cause" that a subpoena is impractical. Such a provision would protect everyone, ordinary citizen, doctor, lawyer, journalist or whatever.

Instances of such legislative remedying of High Court rulings abound. Recently, for one example, numerous state legislatures have passed newspaper shield laws after the Supreme Court held that the First Amendment did not provide a privilege to newspaper reporters who refuse to testify under subpoena about the identity of their news sources.

The House has pending now, in fact, a massive federal penal code revision bill already passed by the Senate; there appears to be sufficient outrage among the public over the Supreme Court ruling in *Stanford Daily* to make it easier to pass a provision changing that ruling than many other provisions of the penal reform bill. Alternatively, Congress could amend the federal rules of criminal procedure, relating to searches and seizures, or it could enact special legislation dealing with the specific facts of the *Standford Daily* case.

Whatever legislative method is adopted at the federal and state levels, there is a critical need to overrule the Supreme Court, to protect the innocent again from government abuse.

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## EXPLOITATION AND FRAUD IN MAGAZINE SALES

Mr. PERCY. Mr. President, on June 11 and 12 the Chicago Tribune printed the results of its probe into the magazine door-to-door sales industry. Led by investigative reporter James Coates, the Tribune found that the $50-million-a-year industry often exploits its young salesmen and defrauds customers.

The articles describe the following scenario:

One. An operator contracts with a publisher to sell subscriptions to the publisher's magazines.

Two. Other operators, working under the first operator, sell the subscriptions by recruiting young men and women as salesmen. Some operators allegedly use deception to lure the youths.

Three. The youths are transported often hundreds of miles away, where they become dependent on "crew chiefs."

Four. The crew chiefs set demanding quotas, and to meet them, the youths use false sales pitches about earning prizes for selling subscriptions.

Too often, when one of the young salesmen refuses to continue to be part of a con game, or when his crew chief decides it is no longer profitable to pay him, the salesman is simply left stranded—hundreds of miles from home with little or no money to get back.

And customers who have fallen for sales pitches about earning points for scholarships and prizes, or who have simply agreed to buy the magazines to get rid of the pushy salesmen, may or may not actually receive the magazines they order.

These are serious violations of Federal, State, and local laws. I urge law enforcement authorities to prosecute vigorously the fat-cat operators who profit from the sham. While many door-to-door sales operations are bona fide, those described by the Tribune clearly are not.

Mr. President, I ask unanimous consent that the Tribune articles be printed in full in the RECORD at this point.

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

MAGAZINE SALES CREWS FAN OUT ON $50-MILLION-A-YEAR HUSTLE

(By James Coates)

One morning last month, J. J. Malone brought 18 unemployed young men and

women from Cleveland's inner city to Chicago. He checked them into a south suburban motel and picked up the tab. J. J. Malone is no benefactor or social worker helping deprived black youths. Malone is a businessman—of sorts. He hustles magazines, door to door.

Soon his "crew" would be pounding on the doors of homes in predominantly white Downers Grove. Nervous residents would peer through their blinds at the strange faces and promptly call the police. They would complain about brash sales approaches, and loud and abusive language.

But other residents would buy magazine subscriptions from Malone's aggressive sales people. That's what keeps Malone in fancy cars and expensive suits.

The closest many of these youths will come to sharing Malone's wealth is to ride in his powder blue Lincoln Continental to the Loop Greyhound Bus depot as he casts them adrift, penniless and scared, after they have failed his demands to sell, sell, sell.

That morning, however, thoughts of failure were far away. Malone had gathered his salesmen in a meeting room of the Dixie-Governor Motel, 175th Street and Dixie Highway, Hazel Crest.

The "kids," recruited through a newspaper want ad, were getting a pep talk. "Sell them books!," urged Malone, "push hard." Don't leave the front room without a sale, "Sell them books!" In trade jargon, "books" are magazines.

After two hours of this, Malone's well-scrubbed, neatly dressed crew stormed out of the motel. Somebody had a radio blaring rock music. They piled into two of Malone's four station wagons. They clapped their hands and chanted, "Sell them books . . . Sell them books . . . Yeah."

A few hours later the switchboards at police stations in Lombard and Downers Grove lit up as residents began a deluge of complaints about the crew's sales techniques.

"These kids are loud and obnoxious," said Lt. R. J. Obert of the Downers Grove police. "They pound on the door. They won't leave once they get inside. They scare our people."

Malone's team was one of hundreds—black and white alike—who will work the nation's neighborhoods this year. They are the leading edge of a vicious and highly-competitive business that has reached millions of households in the last three decades.

Magazine industry sources estimate that traveling magazine sales crews gross more than $50 million annually in a time-tested and sophisticated scheme that produces the following:

Thousands of teen-agers are exploited after signing up as salesmen, only to wind up virtual slaves to glib and often ruthless "crew chiefs" who force them to use dishonest sales tactics, who terrorize poor performers, and who ultimately abandon most recruits with little or no money.

Homeowners are so harassed that thousands each year pay obnoxious sellers—usually between $10 and $20—just to get them out of the house.

Local police are plagued by mini-crime waves as crews hit town. Complaints range from "prowling" and over enthusiastic sales approaches to rape and assault.

A small group of men at the top become millionaires by keeping the crews supplied with contracts from reputable publishers, furnishing order blanks, and acting as a buffer against the thousands of consumer complaints the strong-arm selling tactics generate.

It is a money making scheme that extends from the publishers' ornate board rooms along Park and Madison Avenues in New York to the inner-city ghettos.

Many former salesmen told The Tribune in interviews that they were herded from city to city by crew chiefs who doled out $5 a day to each one, paid the motel bills, and pressured them to use fraudulent sales pitches.

Better Business Bureaus, Chambers of Commerce, police, and various government consumer agencies report thousands of complaints about sales tactics and failure to receive merchandise.

The entire operation is as ritualized as a ballet or a football game, regardless of the players.

It begins with a newspaper ad. "Attention Guys and Gals over 18,' began the ad J. J. Malone used in Cleveland. "Guys and gals to travel U.S. major cities [Chicago, Miami, Detroit, New York, and Boston] and return . . . no experience necessary. We train you. Transportation furnished. Immediate drawing account for expenses. . . . Parents welcomed at interview."

It ends for many at the local bus depot with a plea to the Travelers Aid People, "I just need money to get home."

Most of the complaints from both consumers and sales crews concern a loosely-knit group of companies with ties to Michigan City, Ind., Terre Haute, Ind., Ft. Worth, Atlanta, and Orlando, Fla.

Walter H. Lake Jr. of Michigan City during an interview said he serves as the contact between the company in New Jersey which Malone represents, and the magazine publishers. Lake explained that during his 30 years, in the door-to-door magazine sales business he has established contacts with publishers from coast to coast.

Lake formerly did not use middlemen such as Malone, he explained, and his company, Publishers Continental Sales Corp., 2601 N. Michigan Blvd., Michigan City, operated its own crews.

But in 1971 the Federal Trade Commission launched a sweeping investigation of Lake, several of his suburban Indiana colleagues, and other operators around the country.

The FTC found that Lake had engaged in widespread "receptive" business practices and exploited the young people hired for his crews. The agency charged that the youths were required to deliver phony sales talks about working for "points" to earn scholarships, cash prizes, or trips abroad.

Under threat of stiff fines and extensive litigation, Lake signed a "consent decree" with the FTC in which he agreed to refrain from certain practices—such as allowing his employees to mention contests in their sales pitches.

So publishers Continental abandoned its practice of directly hiring crews from the ranks of the young unemployed. Lake said his firm now acts as an intermediary and "clears" the business of the crews with his publisher contacts.

Lake denied that he sanctions sales crews' use of the practices condemned by the FTC, but he said that operators such as Malone are not specifically barred by the FTC from doing so.

"I cannot control what each of these agencies do," Lake said. "I can assure you that the moment I find they are stepping over the line I cut them off.

James Baumhardt of the Chicago Better Business Bureau; Kenan Heise, editor of The Tribune's Action Line column; and Natalie Allen of WAIT Radio's Call for Action heard when somebody "steps over the line."

Every year, according to these consumer-affairs experts, hundreds of Chicago area residents complain about not receiving magazines.

The Council of Better Business Bureau (BBB) in Washington estimated it received 5,000 complaints last year about door-to-door magazine salesmen. Ken Orr, a council official, said that for each complaint received as many as 10 other persons fail to receive magazines.

Sixty-one per cent of the complaints reaching BBB nationally say the magazines never arrived. Another 10 per cent cite the salesmen's behavior, Orr said.

Actually, The Tribune learned, the complaints are an integral part of the magazine sellers' scheme. Salesmen are trained to become such a nuisance that the customer often writes a check or hands over a small amount of cash just to get them out of the living room.

Nearly all the sales contracts used by crews such as Malone's involve a two-payment plan, in which the consumer pays half the price at the door and agrees to mail the remainder to the company.

Sources close to an FTC investigation said records kept by one Texas door-to-door sales firm, Mecca Enterprises, Inc., indicate that more than 40 per cent of those who sign contracts never bother to mail in the second payment.

Joe Edge, Mecca's president, denied the 40 per cent figure in a telephone interview. "It's not over 10 or 15 percent," he said.

Lake first told a reporter that 25 per cent of his door-to-door business is not followed up by a second payment. Later he estimated the figure at 10 per cent.

In the Mecca case, it was learned, the Internal Revenue Service has received allegations that company crews collected roughly $1.5 million from subscribers who never received a single magazine because they never sent the second payment.

Another source of complaints, according to Lake and several inside sources, is thievery by teen-age sellers who pocket money and never pass the order on to the crew chief.

"I'll tell you how bad [thievery] can get," said Lake. "We get kids out there who just go into business for themselves. They counterfeit my own [sales] forms and then go door to door and just steal all the money they are paid."

Frequently, sources said, the youth steals because he wants more than the $5 or so the crew chief hands him each day for food, candy, and cigarettes.

The out-of-pocket allowance is small, insiders explained, to keep the salesmen dependent on the crew chief and the job.

The use of young people to sell magazines door to door "evolved" after World War II, said Bernard Gallagher, a New York magazine sales millionaire now in his 70s.

Gallagher said that shortly after the war, magazines boomed because there was no television and publishers found that returning veterans—especially disabled men—were very effective salesmen.

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"WHO'S WHO" OF MAGAZINE SALES GAME

(By James Coates)

Here are some of the major figures behind the door-to-door magazine sales game that has plagued American households since the end of World War II:

Walter Lake Jr. of Michigan City, Ind., yachtsman and contact man between many publishers and the street operators who actually knock on doors.

Joe W. Edge, a Texan in the same business, who drives a rare Stutz Bearcat while his wife, Joy, favors her Rolls Royce.

John Suhler, youthful president of CBS Publications, Inc., magazine arm of the TV network, who works out of a richly-appointed suite of offices high above the New York theater district. Lake and Edge and several others sell Suhler's magazines.

Here's how the sales system works:

Lake operates Publishers Continental Sales Corp., 2601 Michigan Blvd., Michigan City. He contracts with Suhler and other publishers to obtain subscriptions for them.

The actual subscriptions are sold by other operators. Lake in an interview, acknowledged fronting for seven companies—com-

panies that place people in the field to recruit young men and women as salesmen, and then transport them around the country on selling forays.

Lake has two close business associates, Edward and Donald Scott, brothers who operate out of Lake's office in Michigan City and nearby New Buffalo, Mich.

The Scotts sell magazines, encyclopedias, Bibles, even tapes and records with door-to-door crews. Almost all their sales personnel are young blacks from northern ghettos and the rural South.

Edward Scott, president of Opportunities Service Co., also of 2501 Michigan Blvd., defended the practice, saying, "We hire kids nobody else wants and give them a chance to earn a living."

The Federal Trade Commission, in a series of rulings in the late 1960s and early 1970s, found Lake, Scott, and four other companies guilty of "deceptive" business practices in luring young people into their traveling sales operations.

The FTC charged that they sold magazines through fraudulent sales pitches about earning points towards scholarships, trips, or other prizes. The FTC obtained signed "consent" agreements from Lake, the Scotts, and others to refrain from such practices. Nobody admitted the charges, they merely promised not to engage in them in the future.

In Ft. Worth Joe and Joy Edge run Mecca Enterprises, Inc. Sources told The Tribune that an Internal Revenue Service informant supplied records showing Mecca sales totaled more than $3 million last year.

Reports from Vineland, N.J., and several other cities indicate Mecca crews display cards that claim the sellers are earning trips or cash prizes. Unlike Lake or Scott, the Edges never have been placed under an FTC "consent" order.

Another large operation is run by Robert and W. Michael Nace, father and son, in Orlando, Fla., and other cities. They work loosely under the corporate name of Publishers Certified Service. Michael Nace was cited along with Lake and the others by the FTC in the early 1970s. Recently he has been enjoined by state officials from doing business in Ohio and Texas.

Finally, in Atlanta, Charles Reinhardt operates Union Circulation Co., another business cited by the FTC. Reinhardt is apparently the smallest of the big operators.

Mecca and Lake are the largest. Last year Mecca operated about 30 crews, according to government sources. Lake "cleared" businesses for at least seven companies with names such as Capri Circulation and Metro Press International.

Suhler, defended CBS Publications' use of traveling crews. "They are only a fraction of our business, less than one half of all the outside agencies we hire," he said, adding that CBS relies on the Magazine Publishers Association [MPA], a trade group, to regulate field sellers.

Robert Farley, MPA spokesman, said the group operates a "field selling registration" service to help publishers keep track of companies running crews. Only a fraction of the companies are registered on the list however. Lake is not mentioned at all, nor are the Scotts.

Until 1971, Farley said, the MPA attempted to police the magazine sellers with a "central registry" program, which fielded consumer complaints and could fine or even blacklist a seller. After the FTC began filing its complaints, however, MPA disbanded the registry and let the government regulate the industry, Farley said.

Since 1975 the FTC has not moved against a single door-to-door magazine operation. The Tribune has learned, however, that the agency is now involved in at least a minor investigation of the industry.

Richard Kelly, FTC executive in charge of allocating funds for investigations, said "priorities" make it difficult for the FTC to monitor the sales operators.

In that vacuum, Suhler and other publishers say, companies have no choice but to allow door-to-door operators to handle their magazines.

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MAGAZINE HUSTLES A NUMBERS GAME TRAP

(By James Coates)

John Ellison's disastrous career as a door-to-door magazine salesman ended one night this spring when his "chief" abandoned him on a lonely Louisiana road.

Ellison, 21, was left in the cold and rain, as he put it, "to ponder why I wasn't selling good, why I wasn't trying hard enough."

Nearly everybody in America with a front door has met youths like Ellison, who appear unexpectedly with a spiel about selling magazines to earn "points" in a contest for a trip, a scholarship, or cash prizes.

For more than 30 years, despite efforts of the federal government and state and local authorities, these young recruits have continued to deliver their sales pitches in what has become a $50-million-a-year business.

It is a rough business that has made millionaires of a few people at the expense of thousands of former salesmen, such as Ellison, and millions of their customers.

"We figured it all out," Ellison said of himself and four friends who decided to quit together. "The people who buy the magazines aren't the biggest suckers. The people who are tricked into selling them are the real dopes."

Recalling how he was recruited, Ellison said, "I was working for my daddy as a spray painter in Bryan, Tex., and saw this ad about traveling to far-away cities with all expenses paid. We went to this motel and met the guy, and he said we would meet lots of girls and stay in nice places and our expenses would be paid.

"Daddy didn't like it, but I wanted to get out of Bryan so I signed up."

The next morning Ellison was walking the streets of a town 300 miles away. During eight hours of knocking on doors trying to sell magazines, he sold only two subscriptions. That night there was a sales meeting that began at 9 and lasted until midnight.

At the meeting unsuccessful salesmen, such as Ellison, were mocked by the boss and their fellow sellers.

But it was more than the ridicule that forced Ellison to make a nuisance of himself to sell magazines. Every dime he got to buy his meals and other personal needs was handed to him, one at a time, by the "crew chief."

A former operator in the door-to-door magazine sales business explained how the system works: "The crew chief becomes mother, father, minister, guidance counselor, and boss, all wrapped up in a $400 suit and a pinky ring. The crew chief makes his kids into absolute slaves . . . and he keeps them hundreds of miles away from home so they have to keep working."

As this insider and several other experts explained, running a magazine crew has been refined over the decades into a rigorous formula.

The source, who is cooperating with a Federal Trade Commission investigation, said that a typical crew has about 20 persons, although some have 40 or more, and each is expected to sell four subscriptions a day. The average sale amounts to about $25 worth of magazines. Usually only slightly more than half is collected at the time.

Ellison's crew, for instance, should have been taking in more than $1,000 a day. From this, a typical crew chief will hand each crew member $5 a day and pay for the motel rooms, usually shared by four. Usually, crew chiefs keep all the money collected by the salesmen, except a $3 or $4 "processing and handling" fee sent to company headquarters.

The young salesmen face obvious handicaps—the magazines are not the big names such as Readers Digest or Time; and consumers, wary of ripoffs and assaults, are apt to slam the door or call the police.

Into this climate the young salesman enters clutching his black book of order forms and a "rate card" listing the magazines [such titles as Camping Journal, American Girl, Humpty Dumpty, and Parents].

A Tribune Investigation discovered that about 100 crews are roaming around the nation. Interviews with former salesmen, former and current industry executives, consumer protection officials, and a look at training documents still in use, all disclose that the operators resort to time-proven techniques.

One manual, for example, lists 27 ways to remain inside a prospective customer's living room when he tries to get rid of the salesman.

When a customer is grieving over a death in the family and not interested in magazine subscriptions, salesmen are told to reply: "We've had a death in our family, too, so I know how you feel."

If the customer says he can't afford it, the response is: "This isn't the national debt, Mrs. Jones; it won't make you miss any meals or put you in the poorhouse, so what are your favorites?"

If the customer asks the salesman to leave because he has company, the seller is instructed to reply, "You have company? Good, I'll get them to vote for me, too."

Another pitch sheet advises the young salesmen to say "gee" and "swell" a lot, and to keep talking. That's the trick, keep talking.

The goal is to keep hounding the customer until he or she signs a contract, often just to get rid of an obnoxious salesman.

Naturally, the turnover in salesmen is extremely high, often 100 percent a month, an industry insider acknowledged. But before they muster the nerve to quit, most young sellers go through a period where they are desperate to bring back some sales to the crew chief.

As Ellison recalled "at the end of the day, after we had been on the streets eight or nine hours, they would come pick us up and take us back to the motel for another sales meeting. Kids who weren't selling would be forced to stand up and deliver the pitch while we criticized them.

"The sales meetings went until midnight, and then they let us spend an hour with the girls in their room. They told us we would meet lots of girls, only we were always so darn tired it wasn't fun."

Ellison took another disillusioned seller home with him, a youth named John Ronick. "John had $900 coming to him, only they just gave him $200 and said they would mail the rest to him later. He stayed at my place for three months and never got a cent," Ellison said. Ronick had worked for nine months to earn the money.

For years Regina Lowe has worked behind the Travelers Aid counter at the Loop Greyhound Bus depot helping young people left alone in Chicago.

Mrs. Lowe said she has watched a stream of tearful young magazine salesmen, penniless, frightened, and stranded here by their fast-talking crew chiefs.

Lately, she said, young blacks from Cleveland have been "dumped" at the depot.

The teen-agers all tell the same story, Mrs. Lowe said. They show her the newspaper ad that recruited them and promised transportation home.

Instead, their crew chief loaded them into his powder blue Lincoln Continental and dropped them at the depot leaving the Travelers Aid and the Cook County public aid department to pay their expenses home.

Mrs. Lowe said that the naive Cleveland

youths got off easy, far better than the teenage salesmen who stayed in a suburban Niles motel a few years ago.

"These girls told us they [the sales chiefs] were pressuring them to be prostitutes as well as saleswomen," Mrs. Lowe said. "And the boys said they were asked to sell drugs."

Travelers Aid files report that their crew chief, an employe of a now-defunct company, forced "pep pills" on the youthful salesmen to help them meet the pressures of their difficult job.

Last year allegations of prostitution and drug dealing involving traveling sales crews prompted an investigation by the Florida Department of Law Enforcement.

Last January, a Ft. Worth woman told police that a magazine salesman who claimed he was working to earn points for a trip to Bermuda, raped her at knife point. In February, another magazine salesman was charged by Arlington, Tex., police with stabbing a homeowner in a dispute over a subscription.

But the young salesmen and women sometimes are victims of crimes, too. At least two young women recruited for the traveling sales crews have been raped by prospective customers so far this year—one, a young Baltimore woman, was raped in a Detroit housing project by three men after she knocked on their door.

Early last month a 20-year-old Atlanta woman knocked on a door in a Maryland suburb of Washington. The man who answered smashed his fist into her face and then dragged her into the house and assaulted her, according to Prince Georges County police.

In February in Los Angeles a crew chief named Herbert Thompson was beaten to death by two of his young salesmen, according to Los Angeles police.

In Chicago, Mrs. Lowe recalled, a group of terrified young magazine salespeople came to Travelers Aid for help last year. "They told of being chased after people turned their dogs on them, and one young fellow said he was shot at," she said.

But, she added, the most common complaint is that the sellers didn't receive any money when they finally broke with the crew. Sellers usually are told that they get 25 cents of every dollar they collect at the front door.

Interviews with numerous former salesmen indicate that by the time the crew chief deducts his version of food, travel, and lodging costs "advanced" to the sellers, few receive anything.

But many youths do get something they never had before—a police record. Ellison said he was arrested once and that several of his fellow sellers told of being photographed, finger-printed, and booked on numerous occasions.

The source now giving inside information to the FTC under subpoena said a typical crew manager budgets as much as $500 a week for fines and making bond.

"That's a built-in cost of running a 'hot crew,'" the source said. "Hot crews" operate in deliberate defiance of local peddling ordinances, and are told by their bosses to hide in backyards and behind hedges if police cars pass by.

"Whatever a crew chief can take in is his to keep and every nickel he keeps away from a kid who quits is another nickel in his pocket," said the source.

Making a profit is a tight proposition even for the hustlers who run the crews. Motel rooms cost more than 10 years ago, and a fleet of station wagons to carry salespeople also is expensive.

"It's a dying business," said Walter Lake, a Michigan City, Ind., businessman who acts as liaison between many of the crew chiefs and the magazine publishing houses.

"Costs are killing those guys," Lake said. Magazine industry experts estimate today that door-to-door sales are only 40 percent of their peak volume, reached in the late 1960s and early 1970s.

Robert Nace, another top operator nearing the end of his magazine business career, agreed with Lake and added, "In four years there won't be any magazine crews. It is impossible to sell magazines strictly following the FTC's rules."

Nace predicted that operators skilled in assembling crews will begin selling other products such as "soap, records, tapes—you name it."

But dying business or not, door-to-door magazine sales continue to be a pressure cooker for the unsuspecting young people who join crews and a headache for consumers and law agencies.

## RESOLUTION OF ALASKA BOARDS OF FISHERIES AND GAME

Mr. STEVENS. Mr. President, recently I have been notified of the Joint Alaska Boards of Fisheries and Game Resolution No. 78–2–JB relating to the Alaska D–2 land legislation. The Alaska Boards of Fisheries and Game find those provisions of H.R. 39 specifically addressing access to public lands, subsistence, and land designations unacceptable to the State of Alaska.

As you are well aware, I too believe the provisions of H.R. 39 as presently drafted would have adverse effects on Alaska. I have been asked to place this resolution in the record, and I ask unanimous consent to print in the RECORD the Alaska Boards of Fisheries and Game Resolution No. 78–2–JB.

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

ALASKA BOARDS OF FISHERIES AND GAME RESOLUTION NO. 78–2–JB RELATING TO 17(d)(2) LEGISLATION

Whereas 17(d)(2) legislation (HR 39) has passed the House Interior and Insular Affairs Committee; and

Whereas the House Merchant Marine and Fisheries Committee is considering this bill; and

Whereas Senator Gravel has drafted proposed legislation with major titles similar to those in HR 39; and

Whereas the Senate Energy and Natural Resources Committee will be preparing for mark-up sessions on (d)(2); and

Whereas 17(d)(2) legislation involves critical provisions relative to the State of Alaska and states' abilities to manage state fish and wildlife resources.

Now therefore, the Alaska Boards of Fisheries and Game hereby resolve that the following provisions of HR 39 as now drafted are unacceptable to the State of Alaska:

1. Access to public lands and waters, including easements;

2. Fish and wildlife management provisions including those on subsistence which essentially supplant an integrated statewide management system with a fragmented system under federal government direction;

3. Excessive land designations that are closed or restrict hunting, fishing, trapping, and other recreational pursuits in much of the critical acreage of the State.

*Be it further resolved,* That the Boards of Fisheries and Game hereby direct the Department of Fish and Game to provide copies of this resolution with supporting information to all Fish and Game Advisory Committees in Alaska requesting their immediate consideration and action in the form of resolutions to be directed to Alaska's Governor and Congressional representatives.

*Be it further resolved,* That the Boards of Fisheries and Game request Governor Hammond, Senator Stevens, Senator Gravel, and Congressman Young to accept no compromise which in any way infringes upon the authority of the State of Alaska to manage the fish and wildlife within its boundaries.

GORDON JENSEN, *Chairman,*
*Alaska Boards of Fisheries and Game.*
Date: April 7, 1978, Anchorage, Alaska.

## THE NEED FOR IMPROVED DECISION PROCESS IN ENERGY R. & D.

Mr. STEVENS. Mr. President, it has been more than 3½ years since the Federal Government embarked upon an intensive program of research, development, and demonstration of nonnuclear energy technologies. But still, today, one of the most important elements of a sound R. & D. program is missing—a rational system for setting our national R. & D. priorities. Without such a system, we cannot be assured that the specific projects undertaken are the best we can do. We may be spending too much on energy R. & D. overall; or we may be spending too little. We may be spending too much on coal technologies relative to solar energy; or vice versa. Or we may be emphasizing the wrong technologies within a program—we may be spending our money on a particular set of coal technologies when there are others which have a greater probability of providing a greater national benefit. But we don't know.

These questions are illustrated by the upcoming decision which the Department of Energy—and the Congress in the appropriations process—must make regarding high Btu coal gasification demonstration plants. The Department of Energy currently has conceptual and process design underway for two different high Btu gasification concepts, with a third potential concept under consideration. Decisions must soon be made on whether or not to continue with detailed plant engineering and economic assessment for each of these concepts and whether or not to proceed to construction of the demonstration.

DOE has decided to curtail its activities in these areas and to place greater emphasis on more advanced technologies. Congress will have to decide whether or not the appropriations will match the administration's intent.

There is considerable difference of opinion as to whether or not DOE has taken the correct approach. Those who agree with DOE's plan to reduce spending on these particular technologies say that proceeding with three similar concepts will cost us a great deal and will not teach us much more than we could learn from just one of those concepts. But those who favor going ahead with all three argue that this route will significantly increase our odds of developing a technology that will be commercially successful.

There are three items which I wish to bring to the attention of the Senate today which deal with this issue. The first is an editorial in Chemical Week in support of DOE's proposed cutbacks. The second is a letter in reply to the editorial which supports full funding for each of

the concepts. And the third item is a report on recent experimental successes in research on the COGAS process, one of those concepts currently funded by DOE.

We lack the rationalized system we need to make these decisions. We need to be able to rank each energy R. & D. proposal in a way which reflects the potential energy benefits to the Nation, the probability of success, and the cost of the project. I urge my colleagues to join me in seeking the implementation of such a system of priorities.

Mr. President, I ask unanimous consent that the three items mentioned previously be printed in the RECORD.

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

THINKING SMALL ON COAL IS SMART THINKING

(By Donald P. Burke)

President Carter's energy program has drawn criticism from all sides. But we think that in the area of research and development at least, the Administration is setting off in the right direction. In the budget sent to Congress just two weeks ago (*CW, Feb. 1, p. 16*), the President signaled his intention to: (1) put more emphasis on federal funding of basic research and (2) cut down on the funds provided for large-scale demonstration programs.

The rationale for (1) is straightforward enough. Few would question the need for a vigorous U.S. effort in fundamental research. But schools and nonprofit institutes are strapped for funds to do much on their own. The Administration cites the lack of near-term marketable products or processes as the reason private concerns are not spending enough.

The decision to cut back on demonstration plants, particularly in energy projects, might be more controversial. But we think it makes a lot of sense. The Dept. of Energy, for example, proposes to phase out solar heating demonstration activities for homes and commercial buildings. It sees a rapidly growing market for such systems, wants to encourage it by "incentives such as tax credits."

We also give the Administration planners high marks for the decision to "avoid overinvesting in multiple demonstrations of somewhat similar technologies or technologies that promise only marginal improvements, as in the case of coal gasification."

It has long been the feeling here that the government has a preoccupation with the concept of outsized pilot plants and demonstration units. The Office of Saline Water, which has since been dissolved, spent $275 million during its lifetime. Five demonstration plants were built—three using distillation; one, freezing; one, electrodialysis. All have been abandoned. Present overseers of the program (in the Office of Water Research and Technology, Dept. of the Interior) feel the demonstration plants "advanced the technology." But we think the price extravagant, particularly in view of present emphasis on reverse osmosis.

As it is DOE is working with anything but a Spartan budget for big coal conversion projects. It is committed to a hefty portion of the funding for two liquefaction pilot plants totaling over $400 million. If the proposed solvent refined coal demonstration unit is built—as now seems likely—that figure could nudge to $1 billion. And DOE wants to continue its share of funding for three gasification projects calling for $400 million.

All the projects under consideration represent significant technological achievements. And admittedly there are some arguments for building big plants. It is necessary, for example, to make a product to find out how it performs under service conditions. There are psychological and political motivations, too, that cannot be ignored. But the approximately billion and a half dollars now being contemplated would seem more than ample to answer all arguments.

*Far better, we feel, is to concentrate on newer-generation technologies.* In liquefaction, considerable knowledge is being gained on methods such as flash hydropyrolysis, molten salt liquefaction and the manufacture of gasoline from methanol or synthesis gas. The same is true for projects like catalytic gasification. These programs are not cheap, but they are in the bargain-basement category when stacked up against the costs of building big plants. None may ever be commercial. But they indicate the kind of work that could result in big payoffs.

We agree with the President and DOE Secretary James Schlesinger of the U.S. energy plight. *What's really needed is to buy time.* And the means for that are available, through *conservation, strategic storage, more incentives for domestic exploration,* encouragement and development of methods that make coal a more satisfactory fuel (such as fluidized-bed combustion).

In the meantime, we should by all means, push ahead with new concepts for coal conversion and other new energy ideas. But let's keep in mind the great Leo Backeland's dictum: Make your blunders on the small scale and make your profits on the big scale.

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LETTERS—CHOICE OF THREE

Donald P. Burke's Viewpoint, "Thinking small on coal is smart thinking" (*CW, Feb. 8, p. 5*), presents controversial thoughts. Backeland's dictum, "Make your blunders on the small scale and make your profits on the big scale," is the very reason that we must provide demonstration of second-generation coal gasification processes. Responsible industry will not and cannot risk stockholder money in commercial-scale second-generation gasification plants that represent scale-up of as much as 80 times from even the most successful pilot operation.

Think of demonstration plants as semi-commercial plants, which are a common practice to the chemical industry and which absorb much of the scale-up risk enroute to commercialization. This is the rationale of the Dept. of Energy, which has awarded a contract to the Illinois Coal Gasification Group for design, construction and operation of a second-generation demonstration coal gasification plant based on the COGAS process licensed by COGAS Development Co.

Government participation in multiple demonstration plans minimizes the economic risk to industry when the technical risk is greatest, so as to minimize the technical risk in further scale-up to commercial-scale plant when the economic risk *undertaken by industry* is the greatest. DOE sharing in the funding of three gasification projects could reach more than the $400 million you describe—but even this large sum spread over 10 years is less than DOE's FY 78 budget for fusion and fission nuclear energy processes for generating electricity.

In research and development it is always tempting to abandon a good, solidly based program because "more promising technology is just around the corner." But the reality is that each gleaming new laboratory-proved technology often loses much of its glamor as it matures.

We have today three competing second-generation technologies—government support for demonstration plants for each will permit sound investment decisions to be made. The demonstration plants can be considered against each other in terms of coal feed (coal is heterogenous), cost, scheduling and performance; competition among technologies may improve performance of each; three demonstrated technologies give both industry and the investment community choices with which to proceed.

CARROLL A. HOCHWALT, JR.,
*General Manager,*
*COGAS Development Co., Princeton, N.J.*

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COGAS COMPLETES KEY COAL GASIFICATION TESTS

PRINCETON, N.J.—A test run of more than 200 hours to show the feasibility of a coal gasification process developed by COGAS Development Company has been completed successfully.

The long-run test is the latest of 22 tests conducted at the COGAS-designed pilot plant in Leatherhead, England, which show that substantial quantities of domestic, high-BTU synthetic natural gas and oil can be produced successfully using the COGAS process.

Key in the latest test, COGAS General Manager Carroll A. Hochwalt, Jr., explained, was demonstration of the process flexibility and process control.

"Successful gasification of three different types of char made from coal mined in Illinois, The United Kingdom and West Virginia was carried out. The test with the first two chars confirmed earlier data that will be used to design a proposed demonstration plant in southern Illinois and eventually other large-scale gasification facilities," Hochwalt said, adding that "a large demonstration plan could be operating by 1983."

The continuous-run test marked more than 1,400 hours of coal char gasification that is substantiating data for technology that will provide an efficient, economical and environmentally-sound source of synthetic natural gas and oil.

"Coal gasification presents a better way to use coal to its maximum," he said.

"In effect, the process gives us an additional gas supply. Gas is more efficient and cleaner than coal and is easily distributed through existing pipeline systems," Hochwalt added.

Recent tests were conducted under contract with the Illinois Coal Gasification Group and the U.S. Department of Energy, which calls for design, construction and operation of a proposed demonstration plant. Should a decision be made to proceed with construction, the plant would be built and operated through joint funding by the Illinois group and the U.S. Department of Energy. Total project cost is about $334 million.

The proposed southern Illinois plant would process 2,200 tons of high-sulfur coal a day, producing 18 million cubic feet of synthetic natural gas which is enough to heat 28,000 average homes, and also yielding 2,200 barrels of oil a day.

Successful operation of the demonstration plant is expected to lead to construction of commercial facilities.

The COGAS process is one of the most recent advances in extracting clean fuels from coal. Gas was first made from coal in commercial quantities in 1807, when it was used to light a portion of Pall Mall, a London street.

The COGAS Process was developed in the mid-1970s with private funding by COGAS partners, Consolidated Gas Supply Corporation, FMC Corporation, Panhandle Eastern Pipe Line Company and Tennessee Gas Pipeline Company, a division of Tenneco Inc.

COGAS, licensor of the COGAS Process, provides technical support and process design recommendations for the demonstraiton plant project.

Illinois Coal Gasification Group is a partnership of subsidiaries of Northern Illinois Gas Company, The Peoples Gas Light and Coke Company, Central Illinois Light Company, Inc., Central Illinois Public Service Company and North Shore Gas Company.

## U.S. POSTAL SERVICE

Mr. STEVENS. Mr. President, in this country where new forms of communication technology are continuously being tested, the U.S. Postal Service remains a primary channel for distribution of information and goods. Within its own sphere of influence, the mail has not only united our country, but is now linking us with all the people of the world. The Postal Service has become an essential and integral part of our daily lives. Despite the recent mail rate increase, the Service still offers its customers the most efficient and economical mailing system in the world.

The rising costs, however, do invite reevaluation of how efficiently we actually use our postal system. We must also look closely at the Postal Service to insure that it continues to be managed in the most efficient and economic manner. In the June issue of Kiwanis, Neesa Sweet contributes an excellent article entitled "Making the Mail Work for You." Mr. President, I ask unanimous consent that this article be inserted in the RECORD at the end of my remarks.

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

[From the Kiwanis magazine, June-July 1978]

### MAKING THE MAIL WORK FOR YOU

(By Neesa Sweet)

An executive at a large company in New Orleans signs a letter and places it in his "out" box. A clerk picks it up, takes it to the mail room, and from there it is delivered to the post office.

In Cleveland an insurance agent finishes his monthly billing. On the way home he drops the envelopes in a mail box where they are picked up in a matter of minutes, or as late as the next morning, and sent on their way.

No matter what the size of your business, you use the mail. In today's fast-paced world, speedy and efficient communication is more important than ever—and the mail plays a central role in getting messages, packages, and documents from one place to another.

But mail service is increasingly expensive, making postal efficiency more important than ever. Fortunately, you aren't at the total mercy of the US Postal Service. Good mailing practices begin at home—with you and your employees.

Expert handling of the mail on your end can save both money and delivery time, so don't entrust the job to someone who doesn't know the ropes. Larry Jandura, mail room manager for Blue Cross/Blue Shield in Chicago, describes the ideal mail manager as innovative and creative, able to grasp the latest technology and apply it to the mail problems of his company.

Traditionally, the mail room has been the place for transitional employees and beginners—a stepping stone to other job assignments. But mail services have become so complex that smart mail users are frowning on this concept. As Rudy Saleniek, mail room manager for the Chicago law firm of Kirkland and Ellis, points out, in a law firm there is no room for mistakes. That should be true of your business as well.

A well-trained mail clerk can save a large company up to $1,500 per month through correct postal knowledge. In a small firm, just ten thirteen-cent overstampings per day can add up to a loss of $325 per year—and much more when stamping errors are compounded by mistakes in classification. A smooth and cost-efficient mailing operation requires trained people who consult regularly with the post office's customer service representatives. And policies need to be set and incorporated in a booklet or memo to determine, for example, when the mail will be used instead of long-distance phone calls and to coordinate pickups and deliveries with post office dispatch times

At the giant Exxon office in Houston, Texas, where Bryant Burch manages the mail room, each clerk makes hundreds of time and money decisions each day. They know the company manual and postal regulations by heart. Several pickups and deliveries are made to the post office each day, the addresses of all outgoing mail are turned to face the same way in the trays, and the accuracy of classifications, zip coding, weight, and postage is checked.

One of the best ways to save money, Burch has discovered, is to bulk all the mail for individual Exxon field offices into large envelopes. This is good advice for any company with branch offices or numerous, frequent mailings to one address and can save as much as two thirds of the cost of individual letters.

Large firms such as Exxon aren't the only ones that need mail rooms. Tom Randolph runs a small company in Houston near Exxon. Several years ago it became apparent that he needed a mail room when secretary after secretary did not have enough knowledge of standard mailing procedures. Randolph worked out a booklet of mailing information and set aside an employee and a space for mail handling.

A mail room can be anywhere. All that is needed is space, a scale, and a few other pieces of equipment. The important thing is people who know how to prepare the mail.

The number-one postal problem, for example, is packages or bundles that fall apart. Be sure to put the address inside the wrapping as well as outside. Use number 10 envelopes instead of nine by twelve envelopes whenever possible. Stocking the right envelopes for your needs can mean dollars saved—a quarter of an inch off the envelope on large mailings, for example, can make quite a difference in total postage. Large envelopes may delay your mail if they do not fit automatic equipment.

A major question for all mail rooms is what kind of equipment to use. Even the smallest mailer needs a scale, and accuracy and applicability to your needs are vital. Scales are of four basic types: spring, beam, pendulum, and electric. Spring scales are the simplest and cheapest, but they have a tendency to weaken and weigh heavy. Beam scales, the balancing type, are more accurate but are slower. Pendulum scales are the most accurate, the fastest, and the most expensive. Electric scales use the pendulum principle with the added cost of automation.

As Rudy Saleniek points out, scales are important, and you can pay a fortune unnecessarily for the wrong one. So be sure to choose one that is accurate, right for your needs, and works well. Dirty scales waste postage, so clean and check your scales regularly. Also, scales that are not level do not weigh accurately.

There are advantages to even the smallest business in having a postage meter. Your mail will be marked and dated when it arrives at the post office, thus saving time. A free advertising message can be incorporated in your postage imprint. It won't be necessary to keep stamps of different denominations, and you'll never have to overpay. The postage meter's register will provide an automatic accounting of postage used each day. And the drudgery of stamp licking will be eliminated. Postage meters range from simple, manual machines to electronic models. Some seal as well as print, some have automatic feed, automatic tape dispenser, and other options. The best guide is your volume of mail.

Of course, your postage meter is only as good as its operator, and it is important to set the postage correctly for each piece of mail. The post office reports that the volume of overpaid mail far exceeds underpaid mail—money lost to you.

Underpaid mail, on the other hand, is poor public relations when your customers have to pay the postage due. Remember that you never waste money with a postage meter—unused postage can be redeemed at your post office.

Mailing machines can do many things for incoming, outgoing, and inter-office mail. They can fold, open, staple, insert, apply the address, print an ad, and sort. Check with your post office's customer service rep and salesmen for the various mailing machine companies to determine what you can really use. Your volume, whether you are shipping letters or packages, and whether you are mixing packages for private delivery services with US Postal Service packages are all relevant variables.

Mailing machines can help with incoming mail as well as outgoing mail. Larry Jandura, who handles more than 3,000 pieces of mail per hour for Blue Cross/Blue Shield, uses a machine that opens envelopes and deposits mail on a conveyor belt. Larry finds a 47 percent savings over doing incoming mail by hand.

Once you have your mail room and equipment set up, your next concern is to be sure you are using the correct mailing services for your needs. At a recent postal conference in Chicago many attendees could not answer simple questions about what mail classification to use and when, and these were people who had been managing mail rooms for years! A thorough knowledge of the rates, advantages, and disadvantages of the four basic classes of US mail is essential for every mail room employee.

The U.S. Postal Service also offers several special services that are important to most mail users from time to time. Certified mail, for example, is the service you want when you need to know when—or if—a letter or package was received, because it provides the sender with a receipt of delivery. If the material you are sending is valuable you will want to send it registered which provides the same receipt of delivery but also permits you to insure the item. Registered mail is not handled with regular mail and is the only type of mail that is truly "traceable," because each person who handles it must sign for it.

Roger Peterson, who manages the mail room of a mortgage company in Oklahoma City, says that in most cases the advantage is with certified mail. It travels with the first-class mail and doesn't go through the extra handling that registered items do, which can mean faster delivery.

Special delivery mail is delivered directly to the addressee by special carrier as soon as it arrives at the destination post office. This service is desirable under certain circumstances, but it can actually delay delivery if the addressee is not present when the delivery is made. A notice of attempted delivery is left instead, and your important communication is returned to the post office for eventual pickup by the addressee.

If your mail must be received the next day, express mail is for you. Frequently competing successfully with private delivery services, express mail guarantees next-day delivery or your money is refunded. Express mail service is available between specified major cities and can be used in several ways, with options that can be tailored to your particular needs.

If your volume is small, the best bet is to take express items to your post office for delivery to addresses. For larger volumes, arrangements can be made to have express mail picked up at your office, or you can take it directly to an airport. On the receiving

end, express mail can be delivered to addressees or to the airport for pickup. Many large companies have arranged for door to door, door to airport, airport to airport, or airport to addressee options on a major scale.

Rudy Saleniek reports that his company is an extensive user of express mail between New York, Washington, and other major cities. "Proof of delivery can be obtained on express mail, and we can declare value up to $50. Last year we sent more than six hundred pieces all over the country, and only three were not received the next day—and one of those was not the post office's fault."

The various mail classifications and rates can work for you and your company, but only if you are familiar with the requirements. Contact your post office's customer service representative to learn about mailing options and how your company can take best advantage of them. The CSR can tell you the best times to mail each day and otherwise help tailor a program to meet your needs.

Promotional mailings are one of the best ways to get your message to customers and clients—a message from you in their mail boxes is often much more effective than untargeted newspaper or television ads.

The postal service's bulk mail and permit imprint programs are ideally suited to help you carry out this task. Permit imprints, preprinted on your envelopes, eliminate both stamping and cancelling procedures, thus speeding mail both in your mail room and at the post office. You must pay in advance for the permit and for the specific number of pieces you are mailing. Your CSR can provide several examples of acceptable indicia that will work with your company's envelope design.

Prepaid indicia are used on first-class mailings, third-class mailings, and third-class bulk mailings. The third-class bulk rate, often used f r promotional purposes, is a special, nonpreferential rate that lets you do much of the sorting by zip code in exchange for a piece rate about half that of regular first class.

In addition to the bulk rate, a first class discount is available to large mailers who regularly sort their mail by zip codes in exchange for a one cent per piece reduction in postage. There is a five-hundred piece minimum on such mailings, which must be sorted to the five-digit code. Many mailers take advantage of this rate, especially if their mailing lists are computerized according to zip codes so that the computer can perform most of the work.

If you aren't computerized in this way, the discount isn't always profitable. Larry Stromm of CNA insurance points out that his firm's computer program sorts the mailing list according to other criteria, and zip code sorting would require two passes through the computer. "This would cost us more than the one-cent reduction per piece," he says. A small bank in New Jersey sorts mail by hand. "By the time we've paid someone $3 an hour to sort the mail, it's just not worth it, the bank's mail room manager says.

You and your CSR can gauge the profit margin for your company. The post office can also help you work out zip code sorting sequences that will best facilitate your mail's delivery and can even break down your list into carrier routes so your mail can bypass several sorting steps. No matter what mailing method you are using, your goal should be the least possible handling by the post office. This not only means faster service but mail in better condition when it arrives.

It's a good idea to keep your mailing list updated—customers who have moved don't buy if they don't know what you are selling. On mailings with an 883-piece return, the business reply envelope preprinted with your indicia becomes more economical than enclosing a stamped return envelope. The business reply services will cost you $30 per year for the permit and twenty-five cents per returned piece.

If an addressee is not likely to reply but you want to know his new address, you can request an address correction from the post office. The postal service will return mail to you when an addressee has moved, with a notation of the new address, for twenty-five cents per correction. Large mailing lists should be corrected at least once or twice per year.

Most new postal regulations are required because of the increasing use of automation in the postal service. Since April 15, for example, there has been a surcharge for odd-sized envelopes that don't fit postal machinery.

Automation can be used in many ways. Optical scanning units (OCRs) can now actually "read" the printed address on your mail. These machines greatly increase handling speed, so it's to your advantage to produce mail that can be handled by OCRs. To ensure that the machine can read your mail, don't use vertical lines on your envelope design and be sure that the last two lines of the address are used only for the address itself and the city, state, and zip code. Account numbers and attention lines should be printed at the top of the label. When typing addresses, use a clean typewriter and change ribbons regularly.

One other factor that the alert business mailers keeps in mind is the potential for theft in his mail room. Many cases are known in which a clerk regularly cashes in postage meter strips for lunch or cigarette money or adds sums to postal receipts a little at a time. A recent scheme in Texas involved a company clerk and a postal employee working together, setting the postage meter at only half the sum paid and splitting the difference.

A little money per day is seldom missed, but over a year the total can add up considerably. Your first security precaution should be to keep accurate records.

The post office, it seems, is like the weather—everyone complains about the service but no one does anything about it. But a variety of service options are available, and you can make the system work for you instead of against you. Mail early, we've all heard—but mail correctly too.

## PRIVATE FIRMS MUST COME THROUGH TO PROVIDE JOBS FOR THE YOUNG AND THE MINORITIES

Mr. PROXMIRE. Mr. President, one of the most consistently thoughtful economic writers is Thomas Mullaney of the New York Times. The Mullaney Sunday economic analysis combines good sense, a welcome understanding of the complexities of economic forces, and an openness to new ideas, all of which is welcome indeed in this period when our economic dilemma of stagflation seems so difficult to solve.

Mr. Mullaney's column in yesterday's New York Times was a case in point. He zeroed in on the difficulty we are having in providing jobs for teenagers and especially black teenagers in spite of a year of record job expansion in this country.

Although in the past year we have added 4 million jobs—the greatest job expansion in the history of the country—black unemployment remains at a depression-high 12.3 percent, with little improvement over the year, and black teenage unemployment is at an appalling 38.4 percent.

All this is true in spite of a Government program specifically designed to overcome unemployment among the young and particularly the minority young—that is the Comprehensive Unemployment Training Act program, known as CETA. Has the program been big enough?

Consider: Some 725,000 persons have been hired in jobs, and about a million and a half have been given training.

If this program—even with the billions it is costing—is not working, what is working? And what can we do about it?

Mr. Mullaney suggests that American corporations can and must do more. At the present time the business world is less involved in job training and creation for the hardcore unemployed than it was in the late 1960's.

Frank Schiff, the chief economist for the CED, points out one Government policy reason why this is so:

Less than 10 percent of this year's $11.4 billion budget for federally assisted employment and training programs is directly devoted to programs involving private business and only 7 percent of the 2.3 million persons who participate in local CETA programs are enrolled in on-the-job training, an activity primarily involving private employers.

Mr. President, on-the-job training is by far the best and most useful training. It is much more likely to lead to a permanent job.

If we are to make progress in meeting both our unemployment and inflation, that is to reduce unemployment while holding down inflation, business involvement—deep, consistent business involvement—is essential.

Mr. President, I ask unanimous consent that the article by Mr. Mullaney be printed in the RECORD at this point.

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

STRUCTURAL UNEMPLOYMENT

(By Thomas E. Mullaney)

PHILADELPHIA.—On the same day last week that one of the nation's most prominent economic-forecasting services here issued a fairly optimistic report on the American economy, a leading business-research organization convened a two-day meeting to discuss another crucial economic problem—how to find more jobs for vast numbers of minorities and other hard-to-employ individuals.

While Government officials and economic analysts have been concentrating on inflation as the No. 1 threat to economic stability, structural unemployment among youths, blacks, other minorities and the disadvantaged remains a critical problem, those attending the session were warned. And it's one that could worsen if inflation increases, a recession ensues and no meaningful programs are pursued to deal with these issues.

The latest economic data seem to confirm the general assessment that the United States is concluding a quarter that will rank among its best in the last decade from the standpoint of growth, production, employment and income, even though some darkening clouds loom over the scene.

Among the favorable developments reported last week were: the healthy six-tenths of 1 percent gain in industrial production for May, following an upward-revised advance of 1.4 percent in April; the $1.6 billion drop in business inventories during April, suggesting that no pattern of stagnation is in progress, the 2.2 percent increase in domestic

auto sales during the first 10 days of June and the nine-tenths of 1 percent rise in personal income in May.

Somewhat gloomier reports that offset those figures: indications that inflationary pressures were still rising, with meat and food prices up; the increase in the prime bank lending rate to 8¾ percent, growing fears of a recession and a credit squeeze forced by tighter money conditions, and resumption of weakness in the stock market.

The quarterly forecast of the University of Pennsylvania's Wharton School's econometric model predicts an economic slowdown in the second half of this year, continuing through 1980; a gradual reduction in unemployment, and a sustained rate of inflation near 7 percent. No recession was envisioned, but some other forecasters say that negative real growth may appear within the next year unless inflation is more effectively handled and new economic policy initiatives are undertaken in Washington.

Against this mixed background of rising concern over the economic future, some 200 local businessmen, civic officials, educators and labor leaders gathered at midweek at the University of Pennsylvania for a two-day conference, sponsored by the Committee for Economic Development, to determine what can be done to improve job opportunities for youth, minorities, the disadvantaged and the unskilled. It was the first of six such meetings to be held in major cities around the country this year.

The program is a follow-up to the comprehensive policy report issued earlier this year by the business-economic research group of 200 top corporate executives and academic leaders that urged a stronger private sector involvement in training and job creation for the hard core unemployed. The report detailed studies of some 60 "success stories" around the country where job-creation programs are working well.

The Federal Government has poured more than $11 billion this year into a large variety of job-creation programs under the Comprehensive Employment Training Act of 1973 now administered by state and local governments. Congress has been asked to extend the program, adding a new $400 million plan for job-training in the private sector.

No doubt considerable progress has thus been made in putting more minorities and disadvantaged persons to work—mostly in public-service jobs—but the C.E.T.A. program has also charged with mismanagement, fraud and unmet objectives.

Even though some 725,000 persons have been hired and double that number has been enrolled in training programs under C.E.T.A., youth and minority unemployment in the country remains large, despite the expansion of the economy, an historic peak in the number of persons at work, and a dramatic decline in the unemployment rate in the last three years.

More than 94 million Americans now hold jobs. The unemployment rate has been trimmed from 7.9 percent three years ago to 6.1 percent now. And about 3.5 million new jobs were added during the last year. But those figures don't tell the whole story. Total black unemployment remains at 12.3 percent, while teenage joblessness has risen to 16.5 percent, a figure boosted by the 38.4 percent unemployment rate among black youths aged 16 to 19.

If the nation has not been able to make enough progress on minority hiring while the economy was growing so substantially, asked the Rev. Leon H. Sullivan, the black pastor who has been a leader in job-training efforts for minorities, how can it expect to go forward in that obligation if the economy now begins to decline?

Mr. Sullivan, a director of the General Motors Corporation and the founder of Opportunities Industrialization Centers of America, called for a new commitment from business and Government to attack the jobs problem, not with Government make-work projects but in private industry. It was a theme that was stressed repeatedly by a host of business, civic and academic participants in this week's conference.

Ruben F. Mettler, chairman of TRW Inc., and head of the National Alliance of Businessmen, said there were "compelling reasons" for businessmen to join more actively in this effort, which is expected to win more Federal funding soon for private job-training activities. Unemployment among minorities, youth and the elderly, he said, "is a drag on the economy, and is inflationary." Such a response from the business community would give "added credibility," he said, to the movement to convince Government to control inflation and take other economic measures that businessmen advocate.

At the present time, the business world is less involved in job-training and creation for the hard-core unemployed than it was in the late 1960s, following the urban riots that destroyed corridors of Washington, D.C., Detroit and Watts. Red tape, lack of understanding, inadequate training facilities and Government confusion were cited as some of the reasons for the diminution of business participation in such programs during the last decade.

In a recent statement, Frank W. Schiff, chief economist for the C.E.D., spelled out the low level of total private sector involvement in special training and employment programs for seriously disadvantaged groups:

"Less than 10 percent of this year's $11.4 billion budget for Federally-assisted employment and training programs is directly devoted to programs involving private business, and only 7 percent of the 2.3 million persons who participate in local C.E.T.A. programs are enrolled in on-the-job training, an activity primarily involving private employers."

He and others believe the time is now "ripe" for significantly increased business involvement in such programs. Among the recommendations made by the C.E.D. was wider dissemination of information about existing and coming private-sector programs that work, more concerted interest in them by top corporate executives of small, as well as large, businesses, and better administration of the programs.

Mr. Sullivan asked the business world "for your money, your know-how and your commitment from the board of directors down" to solve the problem of finding jobs for the hard-core unemployed.

## INTERNATIONAL BANKING ACT OF 1978 AMENDMENTS

Mr. PROXMIRE. Mr. President, I am today introducing at the request of the Federal Reserve, amendments to H.R. 10899—the International Banking Act of 1978 passed by the House on April 6, 1978. This legislation is pending in the Senate Banking Committee. A hearing has been scheduled for June 21 and markup on the legislation is set for July 26 and 27. This schedule reflects an understanding reached in this Congress between Senator McINTYRE, chairman of the Financial Institutions Subcommittee of the Senate Banking Committee, and myself, and Chairman REUSS of the House Banking Committee, and Chairman ST GERMAIN of the House Financial Institutions Subcommittee, that the Senate Banking Committee would give prompt consideration to international banking legislation passed by the House in this Congress.

Legislation to control foreign bank operations in the United States is long overdue. Foreign banks operating in the United States have a significant impact on our economy. At the beginning of 1978 assets in foreign bank branches here had grown to $93 billion, up from $18 billion in 1972. Foreign banks operate in our domestic economy free from the branching restrictions which apply to our own banks, free from monetary policy controls of our central bank and without Federal deposit insurance. Foreign bank operations in the United States have become of such importance as to demand a national Federal policy to control their operations.

H.R. 10899 as modified by the Federal Reserve's amendments will do the job that needs to be done. Among the amendments that the Federal Reserve proposes is a restriction on foreign branching across State lines as applies to domestic banks. I strongly support this provision. Foreign banks should not be given a competitive advantage over domestic banks in their branching activities. Domestic banks operate loan production offices across State lines. If foreign banks are enabled to operate agencies across State lines—and the Federal Reserve has stated that it would have no objection to such agencies—competitive equality will be achieved between foreign and domestic banks. This is the prinicpal which I will strive to uphold as this legislation progresses.

Mr. President, I request unanimous consent that the full text of the Federal Reserve's amendments be printed in the RECORD following my remarks along with letters from Chairman Miller dated June 1, 1978, and Vice Chairman Gardner dated June 15, 1978, explaining the Federal Reserve's amendments.

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

WASHINGTON, D.C.,
*June 1, 1978.*

HON. WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: It is a pleasure to respond to your request for the Board's views on H.R. 10899, the International Banking Act of 1978 ("IBA") that was passed by the House of Representatives on April 6, 1978.

For several years the Board has supported legislation that would establish a system of Federal supervision and regulation over the growing United States banking operations of foreign banks. The principle that has guided these efforts has been one of national treatment, or, nondiscrimination towards foreign banks operating in this country. The Board is gratified that the House of Representatives again has seriously addressed this issue and passed legislation that would subject foreign banks to a degree of Federal supervision and regulation.

In several important areas, however, the IBA might be further improved in order to implement a system of national treatment with respect to foreign bank operations in the United States. For example, under section 5 of the IBA, foreign banks could continue to operate and expand their interstate banking operations while domestic banks would remain subject to the interstate strictures of the McFadden Act and various State statutes. The Board believes that the policy of restricting interstate banking (and particularly the McFadden Act) deserves review by the Congress and the Board is prepared to assist in that endeavor. In the meantime, however,

to allow foreign banks to establish branches and agencies in several States is inconsistent with the goal of national treatment and affords a distinct competititve advantage to foreign banks. To eliminate this imbalance, the Board believes that foreign banks should be subject to interstate banking restrictions comparable to those applicable to our domestic institutions.

As to supervision, in its present form, the IBA does not provide for Federal examination of U.S. offices of foreign banks. However, the assets and condition of a bank with operations in several States cannot be successfully analyzed by the banking authority of one particular State. In order to provide for adequate supervision, a central examining authority is essential. The Federal Reserve's experience as a bank regulator and its particular expertise in the area of international banking and finance make it uniquely suited to this task.

Although the treatment of the interstate banking and examination issues in the IBA are important deficiencies, the Board recognizes that the IBA contains many worthwhile provisions. For the first time, the United States operations of major foreign banks would be subject to Federal monetary controls; non-United States citizens would be permitted to acquire a majority of the shares of Edge Corporations and to serve on their boards of directors; foreign banks operating in the United States would be subject to the provisions of the Bank Holding Company Act and, in particular, the Act's nonbanking prohibitions. These objectives have been consistently supported by the Board.

While it supports these provisions, the Board believes that the IBA should be improved in several respects. The Board urges that the Committee consider the following issues in its deliberations on the IBA:

FEDERAL BRANCHES AND AGENCIES (§ 4)

Federal branches and agencies would only be permitted in a State in which the foreign bank does not operate a State branch or agency and which does not by law prohibit the establishment of branches and agencies of foreign banks. In effect, this provision permits States to veto the establishment of federally-sanctioned banking offices. This result is a clear departure from the dual banking system. The Board recommends that States be afforded a consultative role on the establishment of Federal branches and agencies but that the States not be placed in a position of vetoing such offices.

INTERSTATE BANKING (§ 5)

The IBA would perpetuate the present system which permits foreign banks to have banking facilities in several States, a privilege not currently afforded domestic institutions. This incongruous situation is pointed up by the recently announced proposals by large foreign banks to acquire controlling interests in two large domestic banks. In each instance, the foreign bank already has banking operations in States other than the State in which the domestic bank to be acquired is located. Furthermore, even after the acquisition, the new parent foreign bank would be at liberty to establish additional banking offices in various States. In effect, by simply changing ownership, a major domestic banking institution would become part of a banking organization with multi-State facilities.

As previously mentioned, the Board believes that, until such time as the McFadden Act is reviewed by the Congress, foreign banks should be subject to the same general restrictions on their interstate banking operations as apply to domestic institutions. The Board, therefore, recommends that section 5 be amended to make Federal branches and agencies subject to the branching restrictions of the McFadden Act and to make State branches subject to the same restrictions that State laws impose on domestic State banks. Any future changes in the McFadden Act would then apply automatically to foreign banks with Federal branches or agencies as well as to domestic banks. In the interim, foreign banks would be able to take advantage of any reciprocal branching statutes enacted by the States.

The Board believes that a reasonable compromise would be to exempt newly-established agencies from interstate restrictions so long as the agencies limit their operations to internationally-related activities as are permissible for Edge Corporations in the United States. Currently, an Edge Corporation may be established outside of the home State of its parent bank. Permitting agencies of foreign banks to operate on an interstate basis while limiting their activities to those permissible for Edge Corporations would enable foreign banks that do not choose to establish their own Edge Corporations (see § 3 of the IBA) to compete directly on an equal footing with U.S. institutions engaged in international banking and finance.

FEDERAL DEPOSIT INSURANCE (§ 6)

Section 6 would require Federal deposit insurance for a branch of a foreign bank where the law of the State in which the branch is located requires such insurance for State-chartered banks. While the great majority of States require deposit insurance for State-chartered banks, § 6 would leave the question of whether to require insurance up to the individual States. The Board believes that Federal deposit insurance should, as a matter of Federal law, be mandatory for branches of foreign banks in the United States. The Board also believes that deposits at such branches whether or not held by U.S. citizens and residents should be covered consistent with current practice and with the principle of nondiscrimination.

FEDERAL RESERVE AUTHORITY (§ 7)

(a) Although the IBA would subject branches, agencies and commercial lending companies of large foreign banks to monetary controls, it would not subject their State-chartered subsidiary banks to the same controls. The appropriate test for imposition of monetary controls is the capability of the parent institution to compete and participate in major money and credit markets and not the organizational form of operation. Since U.S. banks owned by large foreign banks generally do participate in major money and credit markets, they should be subject to monetary controls. Furthermore, subjecting branches and agencies, but not subsidiary banks, to monetary controls creates the situation whereby a major bank could shift its activities to an existing or newly-established subsidiary bank to avoid domestic Federal Reserve reserve requirements. The Board, therefore, recommends that § 7 be amended to permit imposition of Federal Reserve monetary controls on all U.S. operations of large foreign banks.

(b) Section 7 provides that the Board may request from State banking authorities copies of their examination reports of U.S. offices of foreign banks. The Board, however, is given no independent authority to examine the accounts, books and affairs of such offices. It is important that the Board be given examination authority with respect to the U.S. offices of foreign banks. Without search authority the Board would be ill-equipped to discover and deal with unsafe or unsound banking practices as it is charged to do by § 11 of the IBA. It would also be hampered in dealing with foreign bank offices that are granted access to System credit by § 7 of the IBA. More importantly, however, vesting the Board with examination authority would provide the only means of coordinated supervision of foreign banks' interstate banking operations currently subject to the jurisdiction of several banking authorities.

GUIDELINES (§ 9)

The Board does not believe that detailed guidelines are necessary to assist State or Federal supervisory authorities in acting on applications by foreign banks. The provisions of § 9 calling for consultation among bank regulatory authorities, the Secretaries of State and Treasury appear to be adequate to ensure that important foreign policy issues are considered.

In conclusion, the Board's view that the regulation of foreign bank operations in the United States is an appropriate matter of Federal concern has been strengthened by developments of recent years. The IBA and the Board's proposed amendments would address that concern by subjecting the United States offices of foreign banks to Federal statutory and regulatory requirements. Legislative language accomplishing the above recommendations and some more technical amendments to the IBA are being prepared by the Board's staff and will be furnished shortly. The Board earnestly hopes that the Committee will act favorably and expeditiously on the Board's recommendations and on the IBA.

Sincerely,

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WASHINGTON, D.C.,
*June 15, 1978.*

Hon. WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Enclosed for your consideration are proposed amendments to H.R. 10899—the International Banking Act of 1978 ("IBA"). Chairman Miller's letter to you of June 1, 1978, pointed out several important areas in which the IBA may be improved. The enclosed staff memorandum would implement the Board's recommendations with respect to Federal branches and agencies (amendment 5); interstate banking (amendments 14 and 15); Federal deposit insurance (amendments 16, 17 and 37–48); Federal Reserve authority (amendments 31 and 32); Federal guidelines for foreign bank entry to the U.S. (amendments 60–66). The staff memorandum also proposes several conforming and technical amendments that would improve the IBA.

I would like to call your attention to section 5 of the IBA dealing with interstate banking prohibitions. The Board has proposed that foreign banks with offices in the U.S. be subject to interstate banking prohibitions in the same manner as domestic banking organizations with the exception that foreign banks be permitted to operate agencies in more than one State so long as the agencies restrict their activities to international banking or finance such as is permissible for Edge Corporations in the U.S. The Board's proposal is designed to enable foreign and domestic institutions to compete on an equal footing. It has been argued, however, that foreign banks with offices in several States do not have a competitive advantage over U.S. banking organizations in that U.S. banking organizations are permitted to engage in domestic business through loan production offices and nonbanking subsidiaries outside of their home States. While not persuaded by this argument, the Board would not object if agencies and commercial lending company subsidiaries of foreign banks were permitted by the IBA to operate in more than one State without necessarily restricting their activities to international banking or finance.

I would like to again express the hope that the Committee will favorably consider these amendments and act expeditiously on the IBA. The Federal Reserve is, of course, ready to provide any further assistance on this proposal that may be necessary.

Sincerely,

STEPHEN S. GARDNER.

PROPOSED AMENDMENTS TO H.R. 10899, THE INTERNATIONAL BANKING ACT OF 1978

1. Page 4, line 18, insert the following new section "(b)":

"(b) The first sentence of the sixth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 615(a)) is amended by striking "in no event" and inserting "except with the approval of the Board of Governors of the Federal Reserve System not"; and the second proviso of the first sentence of the twelfth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 618) is amended by inserting ", except with the approval of the Board of Governors of the Federal Reserve System" after "That".

*Explanation:* Edge Corporations are prohibited by paragraphs 6 and 12 of section 25(a) of the Federal Reserve Act from issuing debentures, bonds, and promissory notes in an aggregate amount exceeding ten times their capital stock and surplus. This amendment would afford Edge Corporations an added degree of flexibility in their operations by permitting this limit to be exceeded with the approval of the Board of Governors of the Federal Reserve System.

2. Page 4, line 18, insert the following new section "(c)":

"(c) The last sentence of the sixth paragraph of section 25(a) of the Federal Reserve Act is amended by inserting a period after "prescribe" and striking 'but in no event less than ten per centum of its deposits' ".

3. Page 4, line 19, strike "b" and insert "d".

*Explanation:* The Edge Act currently requires that Edge Corporations maintain reserves on deposits received in the United States in such amounts as the Board may prescribe, but in no event less than 10 per centum of their deposits. The Board requires Edge Corporations to maintain the same reserves as member banks, subject to this statutory minimum. Pursuant to section 7 of the IBA, branches and agencies of large foreign banks would be subject to reserve requirements. To assure competitive equality between branches and agencies of foreign banks on the one hand and Edge Corporations and member banks on the other, it is recommended that the minimum statutory reserve requirement for Edge Corporations be eliminated so that all of these organizations may be subject to similar requirements.

4. Page 5, strike lines 19 through 24, and insert in lieu thereof the following:

"section. For the purposes of the preceding sentence of this paragraph, the terms 'controls' and 'controlling interest' shall be construed consistently with the definition of 'control' in section 2 of the Bank Holding Company Act of 1956, and the term 'foreign bank' shall have the meaning assigned to it in section 1(a)(7) of the International Banking Act of 1978."

*Explanation:* This amendment corrects certain typographical errors.

5. Page 6, line 6, strike "(1)" and line 7, insert a period after "law" and strike the remainder of that line and lines 8 and 9.

*Explanation:* Under the present section 4(a)(2) of the IBA, a foreign bank cannot establish a Federal branch or agency in any State where a foreign bank is "prohibited by State law" from establishing a branch or agency. The Board has recommended that the States not be given a right to veto foreign bank entry through a Federal branch or agency. Such veto power by the States would not be consistent with the treatment of other federally sanctioned banking organizations i.e., national banks and Edge Corporations. Vesting such authority in the States would, therefor, be a substantial departure from the dual banking system.

6. Page 7, line 6, strike the words "parent" and insert in lieu thereof the words foreign".

7. Page 7, line 7, strike accounts of" and insert in lieu thereof business transacted by".

*Explanation:* Substituting "foreign" for "parent" bank conforms to other sections of the Act. The phrase "business transacted by" more accurately reflects the limitations based on capital and surplus than does "accounts."

8. Page 8, line 15, strike "or".

9. Page 8, line 16, strike "agency".

10. Page 9, line 1, strike "or agency".

11. Page 9, line 8, strike "or agency".

12. Page 9, line 12, strike "or agency".

13. Page 9, line 23, strike or agency".

*Explanation:* Amendments 8–13 would remove the requirement of a capital equivalency deposit for Federal agencies. Foreign bank agencies are generally not required to maintain capital equivalency deposits under State laws because of their inability to accept deposits from the general public. Imposition of such a requirement on Federal agencies could put them at a competitive disadvantage.

14. Page 14, strike lines 2 through 15 and insert in lieu thereof the following:

SEC. 5. (a) Except as provided by subsection (b), (1) no foreign bank may directly or indirectly operate a Federal branch or agency outside its home State unless the State is one in which it could operate a branch or agency if it were a national bank located in its home State; (2) no foreign bank may directly or indirectly operate a State branch outside its home State unless (A) the statute laws of the State in which such branch is to be located specifically authorize a State bank organized under the laws of such foreign bank's home State to establish or operate such branch, by language to that effect and not merely by implication, and (B) the State branch is approved by the bank regulatory authority of the State in which such branch is to be located; (3) no foreign bank may operate a State agency outside its home State unless (A) the State agency is approved by the bank regulatory authority of the State in which such agency is to be located, and (B) the State agency limits its activities to those permissible for a corporation organized under section 25(a) of the Federal Reserve Act; (4) no foreign bank or company of which it is a subsidiary may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a commercial lending company located outside of its home State unless (A) the acquisition is approved by the bank regulatory authority of the State in which such commercial lending company is to be located, and (B) the commercial lending company limits its activities to those permissible for a corporation organized under section 25(a) of the Federal Reserve Act; and (5) no foreign bank may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a bank located outside of its home State unless such acquisition would be permissible under section 3 of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State."

(b) Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank may continue to operate, outside its home State, any branch, agency, or commercial lending company subsidiary, or bank subsidiary whose operation was lawfully commenced, or whose establishment had been approved by the appropriate State authority, prior to May 23, 1977."

*Explanation:* This amendment would impose interstate restrictions on the establishment of offices of foreign banks in the U.S. The standards of the McFadden Act would be applied to Federal branches and agencies while the permissibility of State branches of foreign banks outside of the foreign bank's home State would be left to State law. This will enable foreign banks to take advantage of any reciprocal State branching statutes that may be enacted. State agencies and commercial lending companies outside of the foreign bank's home State would be permitted so long as they limit their activities to international or foreign banking such as is permissible for Edge Corporations in the U.S. Offices established before May 23, 1977, the date of introduction of this legislation in the House of Representatives, would be grandfathered.

The Board believes that imposing interstate banking restrictions on foreign banks is consistent with the principle of national treatment. Nevertheless, the Board is cognizant of the argument that U.S. banking organizations operate on a multistate basis through loan production offices and nonbanking subsidiaries and that foreign banks do not have a competitive advantage as a result of their ability to establish offices in more than one State. While not persuaded by that argument, the Board would not object if State agencies and commercial lending company subsidiaries of foreign banks were exempted from the interstate banking prohibitions without being required to limit their activities to international banking or finance.

15. Page 14, strike lines 16 through 23 and page 15, strike lines 1 through 7 and insert in lieu thereof the following:

"(c) For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board."

*Explanation:* Because agencies and commercial lending companies perform many of the same banking functions as branches and subsidiary banks, they are of comparable signifiance in determining a foreign bank's home State. The fairest and the simplest method for determining a foreign bank's home state would be to allow the foreign bank to choose from among the States in which it has an office on the date of enactment, regardless of the form of organization.

16. Page 16, line 11, strike "in which the deposits of a bank organized and existing."

17. Page 16, strike line 12.

*Explanation:* These amendments would require that all branches of foreign banks be federally insured regardless of whether such insurance is required as a matter of State law for State chartered banks.

18. Page 16, strike line 25.

19. Page 17, strike lines 1 through 24.

20. Page 18, strike lines 1 and 2, renumber remaining section 6(c) accordingly.

*Explanation:* The stricken language would limit insured deposits to deposits payable in the U.S. to (1) a citizen or resident of the U.S. (2) firms created under U.S. or State law having their principal place of business in the U.S. or (3) individuals or firms which the Board of Directors of the FDIC determines to have such business or financial relationships in the U.S. to make the insurance of their deposits consistent with the purposes of the Federal Deposit Insurance Act. The Board of Directors of the FDIC would also be authorized to prescribe any additional criteria for insurance coverage.

Federal deposit insurance is not customarily limited to U.S. citizens or residents. It is the Board's judgment that deposits in insured branches of foreign banks should be covered in the same manner and to the same extent as deposits at domestic institutions. Should the Board of Directors deem it necessary to establish separate classifications of deposits at such branches, it appears that section 3(m) of the Federal Deposit Insurance Act affords adequate legal authority to do so.

21. Page 18, line 8, insert "or agency" after "branch".

22. Page 18, strike lines 13 through 16 and insert in lieu thereof the following:

"'(B) in the case of a State branch, agency or commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, and'".

23. Page 18, line 19, strike "or a foreign bank having an insured," and insert a period after "bank".

24. Page 18, strike line 20.

*Explanation:* The proposed amendment would establish the Federal Reserve rather than the FDIC as the "appropriate Federal banking agency" for foreign banks and their State branches, agencies and commercial lending company subsidiaries. Since section 7 provides that reserves shall be maintained on deposit liabilities of these facilities as if they were member banks, it is logical that the Federal Reserve assume general supervisory responsibilities. Moreover, this change is consistent with section 11 of the IBA and would minimize the undesirable situation where more than one Federal agency would be designated as the appropriate Federal banking agency for an institution.

25. Page 22, strike lines 15 through 24.

26. Page 23, strike lines 1 through 10, renumber remaining section 6(c) accordingly.

*Explanation:* These amendments would delete the requirements that foreign banks with insured branches submit reports of condition to the FDIC. Section 7(c)(2) of the IBA requires branches, agencies and commercial lending companies of foreign banks to submit reports of condition to the Board to the same extent and in the same manner as if the branches, agencies, or commercial lending companies were State member banks. Requiring foreign banks with insured branches to submit reports of condition to the FDIC would be duplicative. Moreover, pursuant to section 7(a)(2) of the Federal Deposit Insurance Act, the FDIC would have access to reports of condition submitted to the Board or the Comptroller.

27. Page 24, line 3, strike "of Directors" and insert "of Governors of the Federal Reserve System".

28. Page 24, lines 8 and 9, strike "in effect at the time such bank makes its application under section 5(b) of this Act,".

29. Page 24, lines 10 and 11, strike ", but the Board of Directors." Insert a period after "country" and insert "The Board of Directors in acting on applications by foreign banks under section 5(b) of this Act".

*Explanation:* These amendments conform to proposed amendments designating the Board as the appropriate banking agency for foreign banks and their branches, agencies and commercial lending company subsidiaries.

30. Page 25, add the following new subsection after section 6(c)(14) and renumber section 6(c) accordingly:

"(15) The second and third sentences of section 8(a) are amended by inserting 'or Federal branch of a foreign bank' after 'or a district bank,'; by inserting 'or State branch of a foreign bank' after 'State bank,'; and by inserting 'or insured foreign bank,' after 'State member bank,'" in each sentence.

*Explanation:* This amendment conforms the procedures for termination of deposit insurance to the fact that insured branches may be subject to various bank supervisory agencies.

31. Page 27, strike lines 19 through 25, and insert in lieu thereof:

"(16) The second sentence of section 10(b) is amended by inserting 'or insured branch of a foreign bank' after 'State member bank'".

32. Page 28, strike lines 1 through 6.

*Explanation:* One of the Board's major proposed amendments is that the Federal Reserve should have examination authority with respect to U.S. offices of foreign banks. These amendments and amendments to section 7(c)(2) of the IBA would authorize the Board to examine branches, agencies and commercial lending companies of foreign banks. The FDIC would be authorized to conduct special examinations of insured foreign bank branches for insurance purposes and, pursuant to section 7(a)(2) of the Federal Deposit Insurance Act, would have access to the reports of examination made by the Federal Reserve. Because examination would be required as a matter of Federal law, the Board does not believe that a commitment by the foreign bank to permit examination is necessary as a condition to insurance.

33. Page 29, added the following new subsection after section 6(c)(25) and renumber section 6(c) accordingly:

"(26) Section 18(c) is amended by adding "or an insured branch of a foreign bank" after "(except a district bank)" in section 18(c)(2)(B).

*Explanation:* This amendment would designate the Board as the "responsible agency" in the event of a merger, acquisition of assets or assumption of liability to pay deposits of an insured bank by an insured branch of a foreign bank.

34. Page 30, strike lines 3 through 5 and renumber section 6(c) accordingly.

*Explanation:* This amendment conforms to section 7(a)(1)(B) of the IBA which authorizes the Board to make provisions of section 19 of the Federal Reserve Act (including provisions regarding interest on deposits) applicable to branches, agencies and commercial lending companies of foreign banks.

35. Page 30, line 10, insert a period after "thereof" and strike the remainder of the line.

36. Page 30, strike lines 11 through 18.

*Explanation:* Foreign banks with insured branches (but not foreign banks with U.S. agencies) would apparently be subject to section 23A of the Federal Reserve Act by virtue of section 18(j) of the Federal Deposit Insurance Act. The proposed amendment would exempt foreign banks with insured branches from section 23A of the Federal Reserve Act.

Section 23A of the Federal Reserve Act sets restrictions as to amount and required collateral for loans to affiliates of member banks. The objective of the statute is to prevent misuse of a bank's resources stemming from large-scale "non-arm's-length" transactions. The complexities of interpreting section 23A, however, have created problems for the Board in enforcing the statute's provisions. These problems were described in a memorandum attached to the Board's letter of March 7, 1978, addressed to Chairman Proxmire. One problem in particular involves the question of the treatment to be afforded transactions among bank subsidiaries of the same holding company parent i.e. should sister banks be treated as the equivalent of a branching system or as separate corporate entities? The problems associated with enforcing section 23A with respect to domestic institutions would be even more complicated if applied to the interstate network of branches, agencies, and subsidiary banks operated by foreign banks.

Section 7(d) of the International Banking Act directs the Board to report to the Congress within two years its recommendations as to requirements "such as loans to affiliates" which should be imposed on foreign banks. It would be unwise to subject only one part of foreign bank operations in the United States to section 23A requirements. The better course would be for the Board to analyze the issue and, based on that analysis, submit recommendations as directed in section 7(d) of the IBA.

37. Page 32, line 3, insert the word "bank or" after "any".

38. Page 32, line 19, insert "bank or" after "A".

39. Page 33, line 13, insert "bank or" after "any".

40. Page 33, line 15, insert "bank," after "agency.".

41. Page 33, line 19, insert "bank," after "agency,".

42. Page 33, line 22, insert "bank," after "agency,".

43. Page 33, line 23, insert "bank," after "agency,".

44. Page 34, line 2, strike the word "and" and insert ", and 'bank'" after "'commercial lending company'".

*Explanation:* These amendments would authorize the Board to make reserve and interest rate requirements applicable to U.S. subsidiary banks of foreign banks. Other provisions of section 7 of the IBA are also made applicable to subsidiary banks. As the Board has stated previously, Federal monetary controls should apply to all operations of a foreign bank in the U.S. without regard to the organizational form or forms that the foreign bank chooses for its operations.

45. Page 34, strike lines 5 through 14.

46. Page 34 line 15, strike "(2)" and insert "(c)" before "Each".

47. Page 34, line 19, strike "paragraph 20 and the provisions requiring the" and insert in lieu thereof the following:

"(1) paragraphs 7, 8, and 20 and the reporting requirements of paragraphs 6 of section 9 of the Federal Reserve Act (12 U.S.C. 325, 326, 335 and 324); (2) subparagraph (a) of section 11 of the Federal Reserve Act (12 U.S.C. 248(a)); and (3) paragraph 5 of section 21 of the Federal Reserve Act (12 U.S.C. 483), to the"

48. Page 34, strike lines 20 and 21.

*Explanation:* An essential element of a Federal system of regulation and supervision of the U.S. operations of foreign banks is central examination authority. Such authority is necessary in order to carry out the various provisions of the IBA and to ensure the safety and soundness of the United States banking operations of foreign banks. Furthermore, examination authority is needed if the Federal Reserve is to adequately inform itself in the process of making the discount window available to U.S. offices of foreign banks.

49. Page 35, lines 4, insert the following new subsection:

"(d) Unless the Board determines that adequate provision exists under the laws of the State in which each agency or branch of a foreign bank is established or operating pursuant to State law, each foreign bank shall hold in each State in which it has a State branch or agency the same amount and types of assets that would be required of a Federal branch or agency in that State pursuant to section 4(g)(4) of the International Banking Act of 1978."

50. Page 35, line 5, strike "(d)" and insert "(e)".

*Explanation:* It is recommended in new section 7(d) that the domestic asset requirements for Federal branches and agencies (section 4(g)(4)) also be applied equally to all State branches and agencies. If State law contains an adequate provision to protect domestic depositors and creditors there would be no additional requirement.

51. Page 35, line 14, strike "banks covered by", strike lines 15 and 16, and insert in lieu thereof "foreign banks in order to carry out the purposes of this Act."

*Explanation:* The proposed amendment makes clear that the matters on which the Board is required to report in two years may involve issues of a general supervisory nature and issues of competitive equality in addition to issues involving the safety and soundness of banking operations.

52. Page 36, line 7, strike "After" and insert in lieu thereof "Until".

53. Page 36, line 7, strike the word "no" and insert in lieu thereof "a".

54. Page 36, line 14, insert a period after "date" and strike "unless author-".

55. Page 36, strike lines 15 to 17.

*Explanation:* Because subsection (b) is an exception to a prohibition, it should be phrased in the affirmative.

56. Page 36, line 18, strike "notwithstanding the pro-".

57. Page 36, line 19, strike "hibitions of subsection (b) of this section,".

*Explanation:* The prohibitions arise as a result of § 4(a) of the Bank Holding Company Act being made applicable to foreign banks by subsection (a).

58. Page 37, line 3, insert a semicolon after "acquisition)" and strike "and may retain".

Page 37, strike lines 4 through 11.

Page 37, line 12, strike "Company Act of 1956;".

*Explanation:* Section 8(c) of the IBA permanently grandfathers foreign banks' nonbanking interests commenced prior to May 23, 1977. According to section 8(c), a foreign bank or other company subject to the IBA on the date of enactment (a) may continue to engage in nonbanking activities in the U.S. in which directly or through an affiliate it was lawfully engaged on the grandfather date and (b) may retain direct or indirect ownership or control of any voting shares of any nonbanking company that it owned, controlled or held with power to vote on the grandfather date so long as the company whose shares are held does not engage in any activities other than those permissible under the grandfather clause or other exception to section 4 of the Bank Holding Company Act. For purposes of the grandfathering subsection, "affiliate" means any company more than five per cent of whose voting shares are held by a foreign bank or company.

Section 4(c)(6) of the Bank Holding Company Act permits the acquisition by a bank holding company of up to five per cent of the voting shares of any company. As described in "(a)" above, interests of five per cent or more of the voting shares of nonbanking companies i.e. affiliates, held prior to May 23, 1977, would be grandfathered. It appears, therefore, that the grandfather clause described in "(b)" above with respect to retention of voting shares is redundant and may be struck. In order to retain its grandfathered activities, whether engaged in directly or through an affiliate, the foreign bank or company would have to restrict its activities in the U.S. to those engaged in prior to the grandfather date.

59. Page 40, strike lines 8 throuh 14.

*Explanation:* The principal purpose of the definitional subsection was to prevent large U.S. banking organizations with significant foreign banking operations from being able to use the exemption of § 2(h) of the Bank Holding Company Act. In its present form, however, the subsection would have the unintended result of denying eligibility for § 2(h) exemption to a foreign bank that operates through branches outside the U.S. but operates in the U.S. through a subsidiary bank. In that case, even though the banking business conducted by the foreign bank's branches may be greater than that of its U.S. subsidiary, the U.S. subsidiary bank would technically be its "principal banking subsidiary" and the foreign bank would not be considered to be principally engaged in the banking business otuside the U.S. The Board believes that its authority under § 5(b) of the Bank Holding Company Act to issue regulations and orders to carry out the purposes of the Act and to prevent evasions thereof, is sufficient to prevent any U.S. banking organization from availing itself of the § 2(h) exemption. It is not expected that the question of what is a domestic office for purposes of § 2(h) will present a problem in administering that section.

60. Page 40, strike line 15 and insert in lieu thereof "STATEMENT OF POLICY AND INTERAGENCY CONSULTATION CONCERNING FOREIGN BANK OPERATIONS".

61. Page 40, lines 16 and 17, strike, "The Secretary of the Treasury in issuing guidelines under this section, and the" and insert in lieu thereof "The".

62. Page 41, line 2, strike ", but" and insert a period after "institutions".

63. Page 41, strike lines 3–18.

64. Page 41, line 19, strike "(c)" and insert "(b)".

65. Page 42, line 4, strike "(d)" and insert "(c)", line 13, strike "(e)" and insert "(d)".

66. Page 43, line 3, strike "(f)" and insert "(e)".

*Explanation:* These amendments would eliminate the requirement for detailed Federal guidelines for foreign bank entry into the U.S. The statement of national policy contained in section 9 and the requirement for interagency consultation, including consultation with the Departments of State and Treasury, will ensure that important national issues are considered.

67. Page 42, line 2, strike "He" and insert "Except in the case of an emergency or to prevent the probable failure of a bank, he".

68. Page 42, line 11, insert ", except in the case of an emergency or to prevent the probable failure of a bank," after the word "and".

69. Page 42, line 24, insert ", except in the case of an emergency or to prevent the probable failure of a bank," after the second word "and".

*Explanation:* These amendments would eliminate the necessity of a 30-day waiting period in case of emergency or failing bank takeovers.

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## JUNE 16—A DAY TO REMEMBER THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, this past Friday was June 16, not a date most of us remember. Friday was not a national holiday, an international day of mourning, or the date of an important battle.

It was on June 16, 1949 that Harry S. Truman transmitted a copy of the Genocide Convention to the Senate for its advice and consent. President Truman supported ratification of the treaty because he believed it would establish the moral leadership of this country in an area of international concern.

Twenty-nine years have passed since then. Not only have we failed to provide leadership in declaring genocide an international crime, but we have still failed to ratify this treaty. In fact, 82 nations have approved the treaty while we have not.

President Truman would be shocked if he were alive today, to hear that this treaty is still pending before this chamber. For Truman, and the six Presidents who followed him, the treaty clearly represented a contribution to world peace, a statement for human rights, and a condemnation of mass murder.

Today it means more. Our refusal to support the treaty signifies moral hypocrisy on the part of this Nation. Prolonged debate over this document illustrates indecision and the inability to define our responsibilities at home and abroad. It has been a constant source of embarrassment.

Over the last 29 years, the world has witnessed countless atrocities. Millions have been victims of genocide—the Kurdish people in Iraq, the Bengalis in East Pakistan, the Hutus in Burundi, the Ibos in Nigeria, and many peoples of the world today.

It is impossible to estimate how many lives might have been spared had we ratified the treaty in 1949. We will never know how much suffering we would have been able to relieve had we stood firmly behind the Genocide Convention 29 years ago. But, for every year that we wait, the list of genocidal crimes only grows longer.

Mr. President, I ask unanimous consent that a copy of President Truman's statement to the Senate 29 years ago today be printed in the RECORD.

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

INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

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Message from the President of the United States transmitting a certified copy of the convention on the prevention and punishment of the crime of genocide, adopted unanimously by the General Assembly of of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States on December 11, 1948

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June 16, 1949—Convention was read the first time and the injunction of secrecy was removed therefrom. The convention, the President's message of transmittal, and the report by the Acting Secretary of State were referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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THE WHITE HOUSE, *June 16, 1949.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of the convention on the prevention and punishment of the crime of genocide, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States on December 11, 1948.

The character of the convention is explained in the enclosed report of the Acting Secretary of State. I endorse the recommendations of the Acting Secretary of State in his report and urge that the Senate advise and consent to my ratification of this convention.

In my letter of February 5, 1947, transmitting to the Congress my first annual report on the activities of the United Nations and the participation of the United States therein, I pointed out that one of the important achievements of the General Assembly's first session was the agreement of the members of the United Nations that genocide constitutes a crime under international law. I also emphasized that America has long been a symbol of freedom and democratic progress to peoples less favored than we have been and that we must maintain their belief in us by our policies and our acts.

By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world-shocking crime of genocide, we have established before the world our firm and clear policy toward that crime. By giving its advice and consent to my ratification of this convention, which I urge, the Senate of the United States will demonstrate that the United States is prepared

to take effective action on its part to contribute to the establishment of principles of law and justice.

HARRY S. TRUMAN.

Mr. JAVITS. Mr. President, will the Senator yield to me at this point? I am so full of admiration for the Senator from Wisconsin. I said in a speech in New York the other day that the Senator from Wisconsin is so deeply convinced of the morality, let alone the propriety in international affairs, of the Genocide Treaty that he does not address it every week or every month but every day.

I must again, now that I am in the Chamber, express my admiration for the Senator.

Mr. PROXMIRE. Mr. President, I want to thank my good friend from New York, who is not only a staunch supporter of the Genocide Treaty but he has worked so hard for so many years as a member of the Foreign Relations Committee, sitting in the critical position to move it ahead, and I think if we ever get this adopted, and I hope and pray we will, that he will deserve a great deal of the credit for doing so.

## GAO REPORT ON LOCKHEED STEEL PURCHASE

Mr. PROXMIRE. Mr. President, last year the Chairman of the Renegotiation Board alleged that a large amount of steel purchased by the Lockheed Corp., was unaccounted for although it had been billed to the Government as part of the costs of constructing a number of Navy vessels. The allegation by the Renegotiation Board was denied by the Lockheed Corp.

I asked the General Accounting Office to investigate the charge and resolve the dispute. GAO has concluded its inquiry and finds that the allegation by the Renegotiation Board was unfounded. GAO believes the Board's miscalculation was based on an erroneous assumption that increased costs of the Navy ship program was due to increased steel usage.

GAO also found that Lockheed could not account for all of the steel purchased and charged to the Navy shipbuilding accounts. GAO points out that the Navy did not require Lockheed to keep such accounts. However, the failure to keep accurate detailed accounts of steel purchases on Navy ship contracts seems to me a questionable practice.

I request unanimous consent that the GAO June 8, 1978, letter response to my request for an inquiry into this matter be inserted in the RECORD at the close of my remarks.

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

COMPTROLLER GENERAL OF THE UNITED STATES,
*Washington, D.C. June 8, 1978.*

Hon. WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.*

DEAR MR. CHAIRMAN: In response to your August 8, 1977, request, we reviewed the Renegotiation Board's allegation that 117 million pounds of steel was unaccounted for and had been billed or was claimed to have been used for seven amphibious transport docks (LPDs) constructed by Lockheed Shipbuilding and Construction Company, Seattle, Washington. Lockheed, on the other hand, states that all steel is accounted for and that there is, therefore, no basis for the Board's claim. Our review included examinations of appropriate records and discussions with officials at Lockheed Shipbuilding and Construction Company, the Lockheed Corporation, the Department of the Navy, the Renegotiation Board, the Defense Contract Audit Agency, Arthur Young and Company, and the Shipbuilders Council of America.

We conclude that the allegation by the Chairman of the Renegotiation Board is unfounded. The Board estimated that Lockheed had charged $18.1 million for 208 million pounds of steel for the LPD program. Our review, a Lockheed internal audit, and an independent accounting firm study, indicate that Lockheed spent about $10.8 million for about 134 million pounds of steel. We have concluded that the primary reasons for the Board's miscalculation was an erroneous assumption that increased costs of the LPD program were due to increased steel usage.

Although Lockheed could not account for all of the steel purchased to the LPD cost accounts, this was not a contractual requirement. Since the contracts were competitive, firm fixed priced, the Navy did not require, and Lockheed did not keep, records showing how the steel was used. In addition, the amount of steel actually used did not affect the cost to the Government since the contract was firm fixed priced.

Our findings have been discussed with Navy, Lockheed, and Renegotiation Board officials. Renegotiation Board officials stated that their concern in raising this issue was whether renegotiable business data was improperly reported to the Board since profits would be reduced by overstated costs charged to the LPD contract. Navy and Lockheed officials concurred in our findings.

We regret that obtaining access to the work of the Federal Bureau of Investigation at Lockheed delayed our response to you. We trust the information provided is responsive to your needs.

We will contact your office at a later date to arrange for the release of the report.

Sincerely yours,

R. F. KELLER,
*Acting Comptroller General of the United States.*

## HOW CARTER CAN STOP INFLATION

Mr. PROXMIRE. Mr. President, Leonard Silk of the New York Times is as practical an economic observer and as astute an analyst as this country possesses.

Yesterday an article by Silk appeared in the New York Times Magazine section entitled "How Carter Can Stop Inflation."

Because I hope as many of my colleagues as possible will read it, I am calling it to the attention of Congress today.

Mr. Silk spells out how serious and dangerous the inflation problem has become. He discusses the various proposals to meet the problem and the immensely difficult problems each of them imposes, and then he concludes with a solution.

His solution is for the country to try the tax-based incomes policies that have been suggested by Gov. Henry Wallich of the Federal Reserve and Dr. Arthur Okun of Brookings.

Silk's support for TIP is probably the most significant the proposals have had.

TIP would work by providing a tax incentive for holding down wages and prices. We have just recently had hearings before our Senate Banking Committee on inflation and on TIP. The proposal has the serious weakness of all systems that would do anything about inflation, that is, it is vigorously opposed by management and labor, and it is called a gimmick that does not go to the heart of the problem by many others including some members of our committee.

On the other hand, it has the advantage of being the only—literally the only—show in town. There just is not any other proposal that has a prayer of being enacted and has any chance of doing anything significant to retard inflation.

TIP has the virtue of aiming at the heart of inflation, that is, wage increases that exceed productivity increases—in a word, wage costs. It provides not rhetoric, not Government-mandated price or wage fixing, but a fixed, easily determined, tax benefit that can tell a labor union or business executives engaged in making a pricing decision, precisely how much they have to gain if they hold down wages and hold down prices.

How about the cost to the Federal Government of providing this kind of tax cut? Okun gave the committee a very practical answer: The Congress and the President are intent on cutting taxes anyway this year—probably by $20 billion; why not use some of that tax cut, maybe even most of it, for the most useful present economic purpose? And that, of course, would be to retard inflation. And this is what TIP would do.

Mr. President, I have asked the authors of TIP to draft their proposal into legislative form, so it can be introduced, so we can have hearings on it, and determine whether or not to act on it.

The Senate and House may say no to this, and they may say no rather emphatically. Right now I think that is just what they would do. On the other hand, this is a practical, available way to fight inflation, without provoking a recession. It could work. So why not consider it?

I ask unanimous consent that the Leonard Silk article from the New York Times be printed in the RECORD at this point.

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

[From the New York Times Magazine, June 18, 1978]

HOW CARTER CAN STOP INFLATION

(By Leonard Silk)

Inflation begins as a social good, not as an evil. Take what happened during the French Revolution. It started out as a simple, Spartan reaction to the extravagant, lascivious, pleasure-loving habits of the aristocrats. But, because it frightened businessmen and drove capital out of the country, commerce and trade stagnated. To cure the stagnation, the Revolutionary Government printed paper money, the so-called *assignats*, issued against the security of the vast public lands confiscated from the church and the emigrant noblemen. At first the *assignats* got the country humming again and revived employment. But the initial success created demands for more. As more and more *assignats* rolled off the printing presses, prices soared and a new disease infected the

French character. Speculation and gambling became epidemic; some gamblers rushed to the stock market, others to the roulette wheel. Workers loafed; productivity lagged. Businessmen, looking for the big kill, stopped going after small gains by investing in plant and equipment or making step-by-step technical improvements. Corruption spread to government; the public grew cynical about politicians who enriched themselves while mouthing the rhetoric of popular reform.

Is the American character feeling the effects of the same deceptive potion, suffering from the same runaway disease? Inflation, brought on in large measure by well-intentioned governmental action designed to promote the public good, is now rampant: 30-cent candy bars, 50-cent shoe shines, $4 movie tickets, electric bills outrunning the cost of the old mortgage payments, three-bedroom houses going for $100,000; the price of beef jumping 6.6 percent in one month. Wall Street trading 50 million shares in a day; gambling casinos spreading from Las Vegas to Atlantic City, and, to complete a circle, gambling-company stocks booming on Wall Street. Money is flowing out of the country to pay oil bills, and flowing back in to bid up farm land in Iowa, California, South Carolina—and buy banks in New York, Atlanta, Washington. The national debt is growing, the value of the dollar eroding, and the nation is running faster and faster to stay in the same place.

So now the Carter Administration boldly proclaims that something must be done. It appoints a new inflation fighter, Robert S. Strauss, who says: "Obviously, we can't live with 6.6 percent increases every month." It declares inflation the nation's No. 1 problem, and it sets forth a "deceleration strategy" to clear up the trouble by enlisting the "voluntary cooperation" of business and labor.

That something must be done is correct. The question is whether what is being tried, or is likely to be tried, will work, or whether we must, inevitably, prepare ourselves for the emergence of some kind of 20th-century American Napoleon, or, at least, for the shock of another Great Depression Or, indeed, whether anything reasonably, acceptable to the many conflicting interests in this country has any chance of working.

To begin with, the very term "No. 1 problem" is a political cliché, implying, as an older cliché had it, that a solution is just around the corner. More accurately, one has to say that the country is in a broad, complicated economic mess. The name of the problem is not inflation; rather, it is inflation and unemployment—in an increasingly interconnected and complicated framework of world trade, limited world resources, endangered environment and important shifts in global power. To treat it in a vacuum is to guarantee failure.

In his early days in the White House, Jimmy Carter didn't greatly pretend to treat it in any serious way at all. He proclaimed national unemployment as the chief problem, but in actuality neither inflation nor unemployment seemed to be his true concern. This President's resistance to involvement in grand national economic policy (macroeconomics) has gone even below the grand national average of past Presidents. Rather, Mr. Carter's concern was energy, the moral equivalent of war. Or perhaps the reorganization of the Government. Or foreign policy and morality. Or politics. In any event, it was certainly not macroeconomics.

With the help of Congress, Jimmy Carter has, in fact, needlessly exacerbated inflation. The momentum of rising prices has been accelerated during his Administration by a whole series of Governmental actions: the removing of larger portions of farm acreage from production, to increase farm income; the forming of "orderly marketing agreements"—for instance, cutting the shipment of price-competitive Japanese goods to the United States; providing "trigger" prices to protect American steel and taking other protectionist measures to reduce competition from abroad and help raise prices here; benignly neglecting the dollar (or, as the Europeans charge, the "malign," deliberate efforts to talk the dollar down), pushing up both import costs and the prices of competing American goods; increasing, the minimum wage, which not only pushed up labor costs and hence prices but which also helped to shut those at the bottom—such as blacks and inner-city youth—out of jobs, thereby worsening both inflation and unemployment. While unemployment has been brought down from 8 to 6 percent—still high by postwar standards—the jobless rate remains at 12 percent for all blacks, 17 percent for teen-agers in the labor force and almost 40 percent for minority youth in the central cities.

On both the jobs and inflation fronts, there have been other self-inflicted wounds, as Arthur Okun, President Johnson's economic adviser, calls them: Higher payroll taxes for social insurance, which feeds directly into inflation and reduces employment; a federally promoted inflationary settlement to end the coal strike. And there were sins of omission—particularly Mr. Carter's abandonment right after the election of his campaign support of some sort of "incomes policy," including prenotification by business and labor of major wage and price actions.

The rate of rise in consumer prices accelerated from 4.8 percent in 1976 to 6.8 percent in 1977.

So countervailing pressure mounted on the President to put together a firmer and clearer anti-inflation policy, and, in his Economic Report in January, a vague guideline was set forth for business and labor: "Every effort should be made to reduce the rate of wage and price increase in 1978 to below the average rate of the past two years." This rate of deceleration was not expected by the Administration to be uniform; different industries were in different situations with respect to location, structure, profits, costs, etc. Yet industry and labor would be asked to cooperate with the Administration because, "if a program for deceleration of inflation is to succeed, it will require strong efforts and cooperation at the level of individual industries. Thus, early discussion between Government and individual industry and labor groups with respect to specific inflation problems would be an important part of the deceleration effort."

This seemingly urgent pronunciamento was then permitted to slip into apparent nothingness. Worse, it was replaced by three of the Administration's more important inflationary measures: the set-aside acreage program for farmers, the trigger-price system for steel and the inflationary settlement for the coal miners. There were strong political pressures on the President, admittedly, for all of these actions. But anti-inflation forces are not without political weight, and these gathered strength in the first quarter of 1978 as consumer prices, which had been assumed to have reached an inflationary plateau of about 6 percent, roared up at a 9.3 percent annual rate. Consumers moaned, and the President fell lower in the polls.

On April 11, after more than a year lost in dithering about inflation, Jimmy Carter began to take concrete action. He announced that he would take the dramatic step of putting a 5.5 percent "cap' on the pay raise of Federal white-collar employees, due next October. That would be about 1 percentage point less than assumed in his January budget. And he would freeze the salaries of executive-level Federal employees. Thus Government would set an example for private industry.

But that was only the beginning. The President would reduce regulations that imposed "unnecessary costs" on private business; he would look for ways to let more timber be cut on Federal lands; he would urge Congress to hold down hospital costs and deregulate the airlines. Most important, he made the Robert Strauss appointment. Mr. Strauss, you'll remember, was the fellow who, as the President's special trade negotiator, had provided the steel industry with the inflationary self-protection and who also settled the coal strike at a wage cost of about 40 percent over three years. Making him the No. 1 inflation fighter was a move that discomforted the Administration's No. 1 economic spokesman, Secretary of the Treasury Michael Blumenthal, but Strauss began immediately to apply his talents of friendly persuasion, learned in Texas politics in association with former Gov. John B. Connally.

Corporate executives, the leaders of General Motors, Ford, A.T. & T. and others, recently indicated that they would hold executive pay increases to about 5 percent. But not all companies thought they could do so, and George Meany, president of the A.F.L.–C.I.O., and other labor leaders were even less obliging; in fact, they were downright resistant to cutting their wage demands to fit the President's guidelines of smaller increases than in the past two years. "The thing to remember," said Albert Zack, a labor spokesman, "is that Jimmy Carter isn't labor's President, and we aren't his labor movement."

Mr. Carter has begun, also, to turn his budget policy around from stimulus to restraint. He trimmed his proposed $25 billion tax cut to $20 billion, and delayed it until the start of 1979; this would shave the budget deficit originally planned for fiscal 1979 of $60 billion by about $10 billion. And the President is promising severe spending cutbacks for fiscal 1980 no matter what the resistance of pressure groups: "I'm perfectly willing," he said combatively, "to meet any special interest group, no matter how benevolent, and hold my own in spite of the political consequences. And that includes business. It includes labor. It includes education. It includes transportation. It includes farmers. It includes all those groups who are very sincere and very good Americans but who have to recognize that this year at least, and perhaps next year as well, we have got to constrain inflation, and I'm willing to take the political heat to do it."

Will the President do what he says? Will the squeaky wheels stop getting the grease? On the record of the first year, skepticism persists. The President has simply not shown himself to be a determined and resourceful fighter against persistent opponents to his economic policy, whatever tentative policy that has been with regard to inflation.

This was particularly true in the always tricky area of monetary matters, where the Federal Reserve Board has a measure of independence "within the Government but not from the Government," as the late Allan Sproul, president of the New York Federal Reserve Bank, used to say, but where the President of the United States usually can get the monetary policy he wants, if he knows what he wants. But chairman Arthur F. Burns of the Fed did just as he pleased with monetary policy, unscathed, and was openly contemptuous of the Carter Administration's economic policy. As James Tobin of Yale, a member of the Council of Economic Advisers under President Kennedy said of Dr. Burns: "His monetary policy was inconsistent with the Administration's overall strategy and objectives; and he sniped at nearly every other aspect of Administration policy. Administration spokesmen not only refrained from the slightest challenge to the Fed on monetary policy, they also suffered Burns's extracurricular attacks in silence. The President pretended, even when finally replacing

Burns at the Fed, that there was never any policy conflict at all. Every informed observer knew he was either disingenuous or confused or both."

Whether Dr. Burns's successor, G. William Miller, former chairman of Textron, Inc., will have as easy a run during the remainder of the Carter Administration as Dr. Burns had in the first year remains to be seen. Mr. Miller did score a quick victory in getting President Carter to trim his tax-cut proposal. The switch at the White House came so suddenly that a Cabinet officer, Secretary of Commerce Juanita Kreps, was not even informed. On the very day she was telling a group of North Carolina bankers that "this is no time to waffle on a major tax cut," the White House was announcing that the President was doing just that.

But even if Mr. Carter becomes a more consistent, stronger and smarter maker of economic policy, could he do the job where so many Presidents have failed?

A review of the record since the Kennedy Administration suggests that Presidents are bound to err on one side or the other—by focusing too much on inflation, or too much on unemployment; by being too stimulative enough; being too willing to resort to controls or too noninterventionist. If Jimmy Carter wobbled, Gerald Ford was steadily hands off, and Richard Nixon leaped from one extreme to another. Lyndon Johnson, in his first major venture as President, swiftly pushed a tax cut through in early 1964. Congress had resisted because the Federal budget was deep in deficit. Mr. Johnson and his Keynesian economists persuaded Congress that the tax cut would not widen but would close the budget gap, by lifting the economy—and tax revenues—higher.

Congress, cajoled and massaged into line by L.B.J., went along in some bafflement, but the miracle worked: National output surged; unemployment declined and the budget gap narrowed, almost closed. In fiscal 1965, the Federal deficit got down to $1.6 billion (this year it is close to $60 billion).

By the end of 1965, the jobless rate was down to 4 percent—the rate that Walter Heller, President Kennedy's economic adviser, had first called the "full employment target." But, whatever you called it, at that point, as the economy kept expanding, prices began to climb. The President's economic advisers, worrying about the buildup in Vietnam, began to call for a tax increase to restrain demand and check inflation. Now L.B.J. would not yield, and he silenced them. He wanted to avoid a raucous debate in Congress over Vietnam, and he did not want to give Congress an excuse for cutting his Great Society social programs. But his "guns and butter" approach failed. By 1968, the Administration was battling to prevent the complete collapse of its economic policy, as well as its Vietnam policy. President Johnson had coerced his economists, made them swallow his guns-and-butter, when they knew the economy needed "symmetrical" Keynesian fiscal restraint.

At every stage, the economists can say that we might have done better if it were not for the politicians. But politics dominates economics in America's mixed economy and democratic political system. Where John Maynard Keynes said that politicians are slaves of some defunct economist, it is closer to the truth to say that most economists are slaves of some politician, soon to be defunct. Like Mr. Johnson, President Nixon also coerced his economists, made them accept rapid growth of the money supply and price-and-wage controls while swallowing the Milton Friedmanian steady-growth-of-the-money-supply doctrine and libertarian noncontrols philosophy. They knew that the President was simply hellbent for a landslide electoral victory. President Ford, in a sense, was the exception, and he probably sacrificed his Presidency to the steady-as-you-go-slow policy in which he and his closest economic advisor, Alan Greenspan, so ardently believed. President Carter has been political in his economics to a fare-thee-well, and, ironically, his farewell to the White House could happen sooner rather than later for just that reason. Gerald Ford was damned for not being political, in this sense, and Jimmy Carter may be damned for being too political.

Not only the last decade and a half but the last century and a half give cold response to the question of whether any President can end inflation and unemployment—that is, deal with stagflation, as it's become known—against an increasingly complex global background and within a system that is still essentially capitalist and free. Waves of boom and inflation have historically been followed by waves of depression and unemployment. Price stability and full employment have scarcely ever coexisted, except for brief periods. The so-called Phillips curve, laid out by A. W. Phillips, a British economist, tracing the trade-offs between unemployment and inflation, is thought of as a recent discovery, but the phenomenon it describes has been familiar through capitalist history. Selig Perlman, a great historian of the American labor movement, spelled out the social reality behind the Phillips curve half a century ago:

"When prices rose and margins of employers' profits were on the increase, the demand for labor increased and accordingly also labor's strength as a bargainer; at the same time, labor was compelled to organize to meet a rising cost of living. At such times trade unionism monopolized the arena, won strikes, increased membership, and forced 'cure-alls' and politics into the background. When, however, prices fell and margins of profit contracted, labor's bargaining strength waned, strikes were lost, trade unions faced the danger of extinction, and 'cure-alls' and politics received their day in court. Labor would turn to government and politics only as a last resort, when it had lost confidence in its ability to hold its own in industry. This phenomenon, noticeable also in other countries, came out with particular clearness in America."

George Meany and the American labor movement have ample confidence today in their ability to hold their own in the economic arena, and they care little about the politics of Jimmy Carter or any other politician. Paradoxically, in ending the threat of a massive depression that would break the confidence of labor—or other pressure groups—and restrain their money demands, modern governments, willing to use Keynesian policy to spur the economy to high levels of employment, have undermined their own political power over the pressure groups.

It is therefore the Keyenesian revolution that has created the problem of chronic inflation, since no downturn is likely to be deep enough, long enough, or catastrophic enough (as depressions were in the past) to turn inflations into deflations and thereby keep long-term price trends relatively stable.

It would be madness to bemoan the passage of the good old days of Depression, with their freight of human suffering and their common resolution in wars. Yet the new age of chronic inflation brings painful problems in its wake, including the need to keep the economy under a measure of fiscal and monetary pressure, lest the inflation get out of hand. The number of possible cures is not infinite. Otto Eckstein, president of Data Resources Inc., a leading economic research firm, has laid out some of the alternatives:

*Three to four years of rigid price and wage controls:* This system might end inflationary expectations—if it remained intact and no new disasters like a renewed world oil crisis, occurred. But long-lasting price-and-wage controls are probably unworkable over time except under wartime circumstances; political forces, including business, labor and agriculture, are powerfully against them.

*Five-to-seven years of unemployment:* Date Resources calculates that it would take that long with unemployment at 8 percent to bring the inflation rate below 3 percent. A deliberately induced long depression of that sort is also politically out of the question; even Gerald Ford's much milder version was rejected at the ballot box.

*Nibbling policies:* chew fractions of decimal point off the price index by a long list of measures to reduce Government subsidies and regulations; make private markets more competitive; free up labor markets; raise productivity; dip into stockpiles; reduce the minimum wage, etc. Some of this can be done; some of it will be done. But it's all politically difficult. And it barely keeps the dust down as new political demands for government help or regulation develop.

*Spurs to investment:* Tax breaks and investment tax credits may cause business to invest more in more efficient equipment, raise productivity, and thereby check inflation as well as stimulate output. Some of this, too, will be tried, but in the short run more investment may add to inflationary pressure—and it may make the system less stable, as rates of inflation swing up and down.

*Spurs to employment:* Public jobs programs, manpower training programs, incentives to encourage private hiring are means of targeting Government outlays on the groups hardest to employ; this helps to reduce the unemployment component of stagflation. Whether it reduces the inflation component is dubious; it may exacerbate it. But the job programs are desirable in their own right, as long as stagflation persists.

*Incomes policies:* A fundamental change in the tax system to provide incentives and disincentives to business, labor and other groups to hold their prices and wages down. Proponents believe that such tax-based anti-inflation policies can be incorporated into the system and still leave decision makers free to make their choices. Opponents believe that the policies will be horrendously complicated, difficult to administer and only constitute a new form of controls.

For the moment, those appear to be the only real choices. And the President still struggles to make up his mind about which one or which combination to try.

My own view is that the first requirement of a long-term program is an effective incomes policy. This has to involve more than jawboning, arm twisting and appeals to patriotism, whether overstated or understated. Most of all, it will require a legislated reform of the tax system to induce noninflationary behavior by both business and labor.

Such a tax-based incomes policy should focus on the largest 2,000 companies, which account for about 85 percent of total business output in the United States. These large companies are the pattern setters for the rest of the country. By sharpening the focus of an incomes policy, we can avoid an administrative jungle. But the sort of policy proposed by such economists as Henry Wallich of the Federal Reserve Board, Prof. Sidney Weintraub of the University of Pennsylvania and Arthur Okun, now of the Brookings Institution, should not be regarded as price-and-wage control. Because we do need a system that will permit prices and wages to play their proper role in allocating resources to their best and most efficient uses. No incomes policy can be expected to work flawlessly and untouched by human hands. However, even an imperfect

system can be better than no restraints at all, or than a clumsy and rigid system of controls.

A tax-based incomes policy holds out the hope of minimizing government interference, much as investment tax credits encourage business to spend money on new plant and equipment without requiring government planners to control just how much money corporations should spend and on what. Nor need the policy be unfair to either labor or business. From the standpoint of labor, and the nation as a whole, gains in living standards can be achieved only from increases in productivity. Inflation is both damaging to economic performance and an unfair way of shifting real income from the powerless to the powerful groups of society.

Therefore, a noninflationary incomes policy will require that wage gains be held to the rate of growth of national productivity. Admittedly, given the momentum of existing inflation, getting back to a productivity guideline will take time. In the year or two ahead, a wage guideline might begin at 5 percent, and then come down by 1 percentage point a year until the guideline reaches 3 percent per annum. That would insure a reasonable price stability. To get there, the largest business corporations be provided with a tax incentive leading them to make wage settlements at the guideline level, or with disincentives not to settle above that level. The deterrence should increase as the rate of wage settlements above the guidelines rises.

There are different ways of providing tax incentives or disincentives—for instance, by disallowing corporate income-tax deductions for any excess wage increases or by raising the corporation income tax. Or, as Arthur Okun has proposed, businesses and labor could be offered tax deductions for avoiding excess wage and price increases.

Keeping down the rate of nominal wage gains should not result in real sacrifices for labor, but should only arrest the rate of rise in prices. Wages and other compensation of labor constitute about 75 percent of gross national product and are the main factor in prices. A tax-based incomes policy that held wage gains roughly to productivity guidelines would end the wage-price spiral. It would not result in an explosion of profits, but it would prevent profits from being further eroded, thereby suppressing investment, national economic growth and the creation of more jobs, as has happened during the years of inflation.

Obviously, a tax-based incomes policy cannot work if it is accompanied by an overly stimulative fiscal and monetary policy. At the same time, however, an effective incomes policy would obviate the need for lurches aimed at stopping inflation, which have their main impact on the job market and worsen unemployment. Both fiscal and monetary policy should be designed, like the incomes policy, to be consistent with the long-term growth of national productivity. To deal with concentrated unemployment among minorities, young people, women or people in particularly depressed regions or central cities, the Government needs to target its job programs. It would be better if this targeting were done more toward the private sector, with Government and civic groups working in close collaboration with private business organizations at both the national and local levels.

This spring, the consumer-price rise hit the double-digit level—in effect, shouting out the pressing national need for sound economic policy. Shouting out just as loudly were taxpayers in revolt in California and elsewhere, slashing local-government property taxes, school assessments and bond issues, and the White House is feeling the pressure now from the voters directly. If it is going to adopt a sound economic policy, one that will be effective and enduring, the Government must be consistent and even-handed in its approach to all groups in the society. It loses all credibility when it makes politically expedient exceptions for powerful groups. This will apply not only on the wage-and-price front but also in appropriations in the national budget and tax cuts or "tax expenditures"—that is, special breaks to interest groups that cost other taxpayers more money or drive the Federal budget into deeper deficit.

Fiscal discipline will be essential not only to prevent unneeded and counterproductive budget deficits but also to make room both in the budget and in the national economy for the use of scarce resources to deal with the most urgent national problems, such as energy, urban rebuilding, education and health. When observed from day to day, inflation looks like a series of accidents—an unexpected jump in food prices, a steel strike or a coal strike, a drop in the dollar. But such episodic "accidents" reflect the underlying erosion of national will and purpose that threatens the dissolution of society into a game of threat and bluff among pressure groups. These continuously raise the ante of group against group. But the game is ruinous for the powerless, the poor, the unemployed, the ill, the aged and, in the end, for the whole society. This inflationary squeeze must now be ended. Presidential leadership, Congressional discipline and a change of the rules of the economic game will all be needed if the American system is to be moved away from the course on which it has been stuck through a dozen years of economic mismanagement.

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## OPENING OF A NEW COMMUTER RAIL STOP AT HARMON COVE, N.J.

Mr. WILLIAMS. Mr. President, this morning Hartz Mountain Industries, Inc., held a ribbon-cutting ceremony to mark the opening of a new commuter rail stop at Harmon Cove, N.J. Harmon Cove is part of a major development in the New Jersey meadowlands consisting of commercial and residential properties.

These meadowlands are familiar to all of those who travel through northern New Jersey, but for centuries the land had been unusable. Now, through the vision, industry and initiative of Hartz Mountain, these meadowlands are being developed for the benefit of our entire State.

I certainly commend Hartz Mountain Industries, particularly Leonard Stern, chairman of the board; Eugene Heller, president; and James Van Blarcom, vice president for residential development, for their foresight and leadership in making this entire project a reality. Too often, we have seen unplanned development which has left people totally at the mercy of cars and highways. Hartz Mountain, Mr. Stern, Mr. Heller, and Mr. Van Blarcom and their associates wisely saw that this magnificent project could best be served by mass transit.

Today's opening was only the second rail stop opening in New Jersey in over three decades. Thus this most innovative effort by a private company is fully deserving of our total praise and appreciation.

My only regret is that my duties here prevented me from being present at the opening this morning. However, I would like all of my colleagues to know of this event which is of great significance not only for New Jersey, but also for everyone who recognizes the importance of mass transit.

Therefore, Mr. President, I ask unanimous consent that the remarks I planned to make at Harmon Cove be printed at this point in the RECORD.

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

REMARKS BY SENATOR HARRISON A. WILLIAMS, JR.

Good morning.

It's a pleasure to be here with so many good friends to celebrate the opening of a new commuter rail stop.

I am sure all of you share with me the hope that this historic event is a harbinger of many more new initiatives in public transit.

We have all heard by now that this is only the second rail stop opening in New Jersey in over three decades.

During the same period, over 100 stops were closed.

This unfortunate trend paralleled a nationwide decline in public transit services and ridership.

The combination of cheap and plentiful fuel, massive expenditures for highways, and the American love affair with the automobile dealt a near-fatal blow to our nation's mass transit system.

It also had insidious effects on our cities, our environment and our lifestyles.

Fortunately, we realized the folly of allowing our transit network to fall into ruins before it was too late.

In 1964, the Federal government began for the first time to invest in the future of public transportation.

Through the joint efforts of federal, state and local governments, mass transit is making a comeback.

Recent surveys show that the public strongly supports these efforts and favors further upgrading of transit services.

Now Hartz Mountain has demonstrated that private industry can also play an important role in meeting public transportation needs.

The new rail stop shelter with free shuttle bus access and convenient parking will serve the residents and workers already located in Harmon Cove, and will help attract new commercial and residential occupants.

But more than that, with the help of the Hackensack Meadowlands Development Commission, the New Jersey Department of Transportation and ConRail, Hartz has contributed to an environmentally-sound, energy-efficient transportation system for the entire region.

What we see today is a fine example of corporate responsibility, of comprehensive planning and of close cooperation between the public and private sectors.

It is an example for the Nation to follow.

I am delighted to report that the Congress is currently taking action to further assist commuters here at Harmon Cove, throughout New Jersey and the Nation.

The Senate Banking Committee has recently approved legislation which I initiated to give a greater share of federal transit dollars to New Jersey and other urbanized, transit-dependent areas.

Substantially increased funding for New Jersey, both for operating subsidies and capital projects, could mean more trains for this line and better rail access into New York.

The bill will also help to streamline the administrative process and provide better coordination with other surface transportation programs.

I have also sponsored legislation specifically designed to assure the continuation

and allow the expansion of New Jersey's commuter rail services.

This bill, which I hope to incorporate in upcoming amendments to the ConRail legislation, would guarantee that future ConRail contracts for former Erie Lackawanna lines are in the best interests of the commuting public.

In addition, it would require ConRail to provide additional or modified commuter service at the request of the State.

This legislation will help the New Jersey Department of Transportation to meet the demand for more and improved rail service, as more people are attracted by the many benefits this region has to offer.

It will take an the support and cooperation of all levels of Government, private industry and the public to bring our transit system to its full potential.

Today's ceremony marks an important step in that direction.

## QUORUM CALL

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

The PRESIDING OFFICER (Mr. SARBANES). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## ORDER FOR PRINTING REVISED BROCHURE AS A SENATE DOCUMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a brochure, 16 pages in length, entitled "The Term of a Senator, When Does it Begin and End?", as revised, be printed as a Senate document.

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

## SOLAR ENERGY AND ENERGY CONSERVATION LOAN PROGRAM

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 11713.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 11713) entitled "An Act to create a solar energy and energy conservation loan program within the Small Business Administration, and for other purposes", with the following amendments:

Page 2, line 2, of the Senate engrossed amendment, strike out "architecturally design" and insert "design architecturally".

Page 3, strike out lines 6 and 7 of the Senate engrossed amendment and insert "Proceeds of loans under this subsection shall not be used primarily for research and development.".

Page 4, line 15, of the Senate engrossed amendment, strike out "concern" and insert "concern: *Provided further*, That such status need not be as sound as that required for loans under subsection (a) of this section.".

Page 5, strike out line 3 of the Senate engrossed amendment and insert "'days after the date of enactment of this subsection.".

"(9) It is the intent of Congress that the paperwork burden and regulatory impact on applicants under this subsection shall be minimized, and that to the maximum extent practicable, the Administrator may rely upon consultation with the Department of Energy and other agencies, upon paid consultants, and upon voluntary public submissions of information to obtain market data, industry sales projections, energy savings, and other economic information needed to carry out the provisions of section 7(1)(1)(D) and (E). Nothing in this subsection shall be construed as precluding the Administrator from using any of his lawful powers to obtain information from applicants."

Page 5, line 24, of the Senate engrossed amendment, strike out "(a)".

Page 6, strike out lines 6 through 15 of the Senate engrossed amendment and insert "$45,000,000 in guaranteed loans.".".

Page 6, strike out lines 16 and 17 of the Senate engrossed amendment and insert:

SEC. 6. Section 10(b) of the Small Business Act (15 U.S.C. 639(b)) is amended by adding the following: "Such report shall contain the number and amount

Page 6, line 25, of the Senate engrossed amendment, strike out "report." and insert "report.".".

Page 7, strike out lines 1 through 14 of the Senate engrossed amendment and insert:

SEC. 7. Section 20(f) of the Small Business Act (15 U.S.C. 649(f)) is amended by striking the first sentence and inserting in lieu thereof: "There are authorized to be appropriated to the Administration for fiscal year 1979 $1,601,750,000 to carry out the programs referred to in subsection (e), paragraphs (1) through (10)."

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a statement by the Senator from New Hampshire (Mr. MCINTYRE) explaining one of the House amendments.

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

STATEMENT BY MR. MCINTYRE

The purpose of this statement is to clarify those limited circumstances in which firms may use some of the proceeds of loans under this program to complete research and development or continue research and development on products that are going to market or being marketed. It is my understanding that the House, in making its amendment on this subject, concurs generally with the principles stated below.

LIMITATION ON RESEARCH AND DEVELOPMENT

The purpose of this loan program is to provide small firms with the capital to manufacture and market new energy conservation and renewable energy products and services. It is the intent of the Senate, therefore, that a firm will have completed most, if not all, research and development before obtaining a loan, and that the proceeds of such loans not be used to support extensive research and development efforts. When a small renewable energy or energy conservation firm needs funds primarily to support research and development, it is appropriate that the firm turn to the U.S. Department of Energy, which has substantial grant programs to aid small and large firms in developing these products and services. The SBA should prepare its loan officers to coordinate with the U.S. Department of Energy to assist small businesses in those cases in which research and development are the primary purpose for which funding is needed.

This limitation on the use of loan proceeds for research and development is further reinforced by the fact that Section 18 of the Small Business Act prohibits SBA from duplicating the work or activity of any other department or agency (except services to those engaged in agricultural industries). As a purely practical matter, however, in some instances a firm may need a small amount of funds to complete development of a product or service in order to move ahead successfully with manufacturing or marketing under a business plan. In other instances, good business judgment may indicate that additional development or improvement is warranted for a product which is already on the market. The Committee finds that it makes better policy sense to allow some portion of the proceeds of a loan to be used for research in such instances than to put the firm through two concurrent application processes.

Congress cannot, in advance, specify precisely an appropriate limit or limits on the use of loan proceeds for research and development within individual loan applications. The paramount issues in these cases are (1) whether the amount requested for research and development is large enough that public policy would be better served by having the client apply for a research grant at the Department of Energy, and (2) whether a firm's research/development plan and timetable are integral parts of a business plan that provides reasonable assurance of repayment under the terms of Section 7(1)(7) of the bill.

It is evident to the Committee that this issue will require threshold judgments by the SBA. Rather than leave such judgments to individual loan officers, the SBA may wish to solicit public comment and issue a regulation or a guideline concerning the use of loan proceeds for research and development under this bill. As the SBA gains experience under the program, such regulations or guidelines could be amended as necessary to meet the purposes of the bill.

Mr. ROBERT C. BYRD. In behalf of Senator MCINTYRE, I move that the Senate concur in the House amendments.

The motion was agreed to.

## BUDGET ACT WAIVERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 467. This is the budget waiver for S. 3151, the Department of Justice and related agencies authorization bill.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The resolution (S. Res. 467) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3151, was considered and agreed to, as follows:

*Resolved*, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of that Act are waived with respect to the consideration of S. 3151, a bill to authorize appropriations for the Department of Justice and related agencies for fiscal year 1979 and for other purposes.

Such waiver is necessary to permit consideration of S. 3151, the bill authorizing appropriations to be made for the Department of Justice for fiscal year 1979. Enactment of that bill is required by section 204 of Public Law 94–503 which required specific authorizing legislation for the Department of Justice commencing with fiscal year 1979.

Even though committee hearings were commenced on March 22, 1978, final action by the Committee on the Judiciary on

S. 3151 was inadvertently delayed by the press of business both within the committee and within the Senate.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 470, the Budget Act waiver to S. 2937, to amend the Speedy Trial Act of 1974 to provide further authorizations for pretrial services agencies.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The resolution (S. Res. 470) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 2937, a bill to amend the Speedy Trial Act of 1974 to provide further authorization for appropriations for pretrial services agencies, was considered and agreed to, as follows:

*Resolved*, That, pursuant to section 402 (c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 2937, a bill to authorize appropriations for fiscal year 1979 in the amount of $5,000,000 for pretrial services agencies.

Such waiver is necessary in order to insure that the pretrial services agencies will be able to carry out its statutory duties during the fiscal year 1979, on the last day of which its final report is due. The authorization involved is sufficiently small that its consideration will not significantly affect the congressional budget. Further, the authorization was of a kind under consideration and contemplated in the congressional budget for fiscal year 1979. Because the Committee on the Judiciary (1) was engaged in substantial efforts to report out a nomination and (2) was conducting the initial Department of Justice authorization of appropriations hearings which were inadvertently delayed by the press of business both within the committee and within the Senate, the committee was prevented from giving timely attention to the authorization of appropriations for the pretrial services agencies.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## CONSIDERATION OF CERTAIN MEASURES OF THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 835, 836, 853, and 870.

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

## FEDERAL ANNUITY RIGHTS

The Senate proceeded to consider the bill (H.R. 3447) to amend chapter 83 of title 5, United States Code, to grant an annuitant the right to elect within 1 year after remarriage whether such annuitant's new spouse shall be entitled, if otherwise qualified, to a survivor annuity, and to eliminate the annuity reduction made by an unmarried annuitant to provide a survivor annuity to an individual having an insurable interest in cases where such individual predeceases the annuitant, which had been reported from the Committee on Governmental Affairs with an amendment on page 3, line 14, to strike "1977" and insert "1978".

The amendment was agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-904), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 3447 is twofold:

First, it would amend section 8339(J) of title 5, U.S.C., in order to allow an annuitant, whose spouse has predeceased him, upon remarriage to have 1 year in which to make an election to take a reduced annuity in order to provide for his second spouse.

Second, it will correct an unintended inequity in the Civil Service Retirement system established by Public Law 93-474, by extending to the single Federal civil service annuitant the same benefit that a married annuitant now has, with regard to having his or her full annuity restored to them upon the death of an individual whom the single retiree has provided a survivor annuity for.

BACKGROUND

*Survivor annuity election upon remarriage*

Under the provisions of title 5, United States Code, relating to civil service retirement, the annuity of a married employee retiring under those provisions automatically is reduced by 2½ percent of the first $3,600 of such annuity and by 10 percent of any amount in excess of $3,600, unless the employee notifies the Civil Service Commission at the time of retirement that he does not wish to provide an annuity for any spouse surviving him. Unless the employee designates a smaller portion of his annuity as the basis for computing the survivor annuity, the survivor annuity is 55 percent of the employee's annuity. Thus, an employee who retires on an annuity of $10,000 may provide for his surviving spouse to receive an annuity of $5,500, and the reduction in his annuity to pay for the spouse's annuity will amount to $708 a year.

If the spouse who was designated to receive a survivor annuity predeceases the retired employee, or if the marriage otherwise terminates, the retired employee's annuity is automatically restored to the full amount which he would have received had he not accepted a reduced annuity in order to provide a survivor annuity. If the retired employee marries again, his annuity is once again reduced, automatically, and his subsequent spouse is automatically entitled to a survivor annuity.

The difficulty with the existing law is that although the retiring employee has the right to elect a survivor annuity at the time of his retirement (or at the time his annuity commences if he is entitled to a deferred annuity), he does not have that right of election if he remarries after the death of the spouse to whom he was married at the time of retirement. Regardless of the economic circumstances which may exist at the time of his subsequent marriage, the opportunity to elect to receive a full annuity, or to accept a reduced annuity with survivorship benefits, is precluded under existing law.

The first section of H.R. 3447 would amend the provisions of title 5, United States Code, relating to survivor annuities, to eliminate the automatic restoration of the annuity reduction and allow the annuitant to decide upon each subsequent remarriage whether to provide a surviving spouse benefit. If the annuitant determines that he does not wish to provide a survivor annuity, he would continue to receive the full amount of his annuity. In order to designate that a subsequent spouse be entitled to a survivor annuity, the annuitant must notify the Civil Service Commission in writing within 1 year after the date of his remarriage.

## REINSTATEMENT OF CIVIL SERVICE RETIREMENT SURVIVOR ANNUITIES

The Senate proceeded to consider the bill (H.R. 3755) to provide for the reinstatement of civil service retirement survivor annuities for certain widows and widowers whose remarriages occurred before July 18, 1966, and for other purposes, which had been reported from the Committee on Governmental Affairs with an amendment on page 3, line 13, to strike "1977" and insert "1978".

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-905), explaining the purposes of the measure.

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

PURPOSE

The primary purpose of H.R. 3755 is to provide for the restoration of civil service survivor annuities to certain surviving spouses whose annuities were terminated because of remarriage prior to July 18, 1966.

BACKGROUND

Prior to the enactment of Public Law 89-504, approved July 18, 1966, the annuity of a surviving spouse automatically terminated upon remarriage of the surviving spouse regardless of the spouse's age at the time of the remarriage. Public Law 89-504, as amended by Public Law 91-93 (October 20, 1969), modified the survivor annuity provisions to permit continued payment of annuities to survivors who remarried after attaining age 60. This law also provided that in the event of a remarriage by a surviving spouse prior to reaching age 60, the annuity

would terminate but would be restored upon subsequent dissolution of the remarriage. These changes in the survivor annuity provisions were applicable only to surviving spouses who remarried on or after July 18, 1966. Those who remarried before that date continued to be ineligible for survivor annuity benefits.

In addition, the survivor annuity provisions of Public Law 89-504, as amended by Public Law 91-93, applied only to the surviving spouses of employees. Public Law 91-658, approved January 8, 1971, extended similar treatment to the surviving spouses of Members of Congress who died on or after January 8, 1971.

In approving the July 18, 1966, amendments to the survivor annuity provisions (Public Law 89-504) the Congress recognized certain generalities with respect to the economic status of survivor annuitants. Generally, an individual who is 60 years of age or older will find it extremely difficult to obtain gainful employment to offset the loss of income as a result of termination of an annuity because of remarriage. In addition, the new spouse of the survivor annuitant normally will be similarly advanced in years, in many cases retired or approaching retirement with reduced income, and equally unable to provide for a new dependent. Thus, the Congress concluded that continuation of annuity benefits in the case of a survivor who remarried after attaining age 60 was fully warranted.

In the case of a surviving spouse who remarries prior to age 60, the Congress recognized merit in the proposition that the termination of such remarriage should revive the original annuity benefit, subject to an election of benefits in the event the survivor is entitled to a survivor benefit under the civil service retirement system or another retirement system for Government employees by reason of the remarriage. The loss of support again comes into play in such cases and should be relieved.

Obviously, these considerations which served to justify the action of the Congress in 1966 with respect to surviving spouses who have remarried are equally applicable to all surviving spouse regardless of the dates of their marriages. However, since the general policy of the committee has been to refrain from approving liberalizations in retirement benefits that would have retroactive application, the committee and the Congress limited application of the surviving spouse amendments to those who remarried on or after the effective date of those amendments.

On the basis of the testimony received during the hearings on this legislation, the committee now believes that it was wrong to deny similar relief to those surviving spouses who lost their annuities because they remarried prior to the effective date of the 1966 amendments. Clearly, the needs of these individuals are no less than those of surviving spouses who remarried after such effective date.

H.R. 3755 will finally eliminate the inequity created by Public Law 89-504 by providing for the restoration of annuities to surviving spouses of employees who remarried prior to July 18, 1966, and to surviving spouses of Members who died prior to January 8, 1971. Annuities of surviving spouses who remarried after reaching age 60 will be restored on the effective date of the bill. Annuities of spouses who remarried prior to age 60 will be restored on the effective date of the bill or on the first day of the month following the date the remarriage is dissolved, whichever date is later.

The committee urges quick approval of this legislation in view of the fact that the beneficiaries of this legislation—approximately 3,200—are continuously diminishing in number.

## PRETRIAL SERVICES AGENCIES

The bill (S. 2937) to amend the Speedy Trial Act of 1974 to provide further authorization for appropriation for pretrial services agencies, 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 section 203 of the Speedy Trial Act of 1974 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; and for the fiscal year ending September 30, 1979, to remain available until expended, the sum of $5,000,000.".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-917), explaining the purposes of the measure.

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

PURPOSE

S. 2937 would amend the Speedy Trial Act of 1974 to provide continued short-term authorization for appropriations for pretrial services agencies through their 4-year demonstration program, September 30, 1979. In addition, it would provide the necessary funding for completion of the final report to Congress of the Administration Office of the United States Courts on the operation of the pretrial services agencies and recommendations concerning the future of the program, as mandated by Congress, in the Speedy Trial Act of 1974, and due by September 30, 1979.

BACKGROUND

Title II of the Speedy Trial Act of 1974, Public Law 93-619, authorized the Director of the Administrative Office of the U.S. Courts to establish, on a 4-year demonstration basis, 10 pretrial services agencies in representative judicial districts. These districts, central California, northern Georgia, northern Illinois, Maryland, eastern Michigan, western Missouri, eastern New York, southern New York, eastern Pennsylvania, and northern Texas were selected in accordance with the criteria set forth in the statute.

The second title of the Speedy Trial Act is designed to improve the efficiency and deterrent of the criminal justice system. More specifically it is designed to reduce the likelihood that defendants released prior to trial will commit a subsequent crime before trial commences. When Congress passed the Speedy Trial Act it was of the view that more careful selection of pretrial release options for defendants would reduce pretrial crime. Congress further attempted to alleviate the fugitive problem by providing 10 Federal districts on a demonstration basis with sufficient resources to both conduct bail interviews and supervise conditions of release. This approach was applauded by nearly everyone who testified or commented on it during hearings held by the Senate Constitutional Rights Subcommittee prior to enactment of the Speedy Trial Act.

Pretrial service agencies perform two basic functions: First, the compilation and verification of background information on persons charged with the violation of Federal criminal law for the use of the district judge or a U.S. magistrate in setting bail and, second, the supervision of persons released from pretrial custody including the provision of counseling and other pretrial services. The stated objectives of the Act are to reduce pretrial detention and pretrial recidivism.

The funds provided by the Congress in the amount of $10 million for the operation of pretrial services agencies were made available in fiscal year 1975 to remain available until expended. The legislative history of the act indicated that as much as $1 million each year could be spent for the operation of each of the 10 pretrial services agencies and that Congress intended to monitor the operation of these agencies to determine whether additional authorizations for appropriations would be required. Through careful management the initial appropriation of $10 million will provide for the operation of the program through December of 1978. However, the final report of the Administrative Office of the U.S. Courts on the operation of the pretrial services agencies and recommendations concerning the future of the program is not due until September 1979. Sufficient funding is needed to insure the continuation of this program until the Congress has had ample time to consider the final report and determine the future of the program.

The 10 pretrial services agencies have been in operation for 27 months. In fulfillment of their responsibilities these agencies have interviewed more than 20,000 accused persons and provided information to judicial officers to assist them in their release decisions, have supervised more than 11,000 persons released to their supervision, and have provided services to persons released pretrial including counseling and assistance in securing employment, medical, legal, or social services. In certain situations specialized agencies such as drug treatment programs, provided the necessary pretrial services.

The Speedy Trial Act requires extensive data collection designed to satisfy the requirements for annual reports and a final, comprehensive report concerning the administration and operation of the pretrial services agencies by the director of the Administrative Office of the U.S. Courts, including the views and recommendations of the administrative office at the end of the 4-year demonstration program. Preliminary results of the administrative office noted that over 12,000 of the 20,000 persons interviewed have reached final disposition and the data from these cases is now available for analysis.

It is projected that more than 30,000 Federal offenders will have gone through the pretrial services program by the conclusion of the demonstration phase of the program in September 1979. It is anticipated that this data will provide, along with other information, a substantial basis for the evaluation of the program and its impact on the criminal justice system.

COST OF LEGISLATION

Pursuant to section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), the committee estimates the cost that would be incurred in carrying out this legislation is as follows:

For fiscal year 1979: $5 million, to remain available until expended.

## COUNTERING INTERNATIONAL TERRORISM

The Senate proceeded to consider the concurrent resolution (S. Con. Res. 72) countering terrorism, which had been reported from the Committee on Foreign Relations with amendments as follows:

On page 3, line 1, strike "(5)" and insert "(6)";

On page 3, line 15, strike "in committing acts of terrorism";

The amendments were agreed to.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

Whereas a series of unprovoked terrorist attacks have been conducted against citizens of Israel, Egypt, and Jordan since President Sadat's trip to Jerusalem last November;

Whereas the attacks have resulted in the loss of life and the wounding of civilians, including several Jordanian citizens living on the West Bank, the editor of the Egyptian newspaper Al Ahram on February 18, 1978, and men, women, and children who were trapped in a burning bus or deliberately shot during the attack in Israel March 11, 1978;

Whereas the Palestine Liberation Organization has publicly accepted responsibility for the March 11 attack: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That—

(1) such acts of terrorism are strongly condemned and are obstacles to peace in the Middle East and thus are against the national interest of the United States;

(2) the Congress extends its condolences and deep sympathy to those wounded and the families of those killed in the terrorist attacks;

(3) the President should direct the executive branch to intensify its efforts to counter international terrorism including use of diplomatic, economic, and security measures taken unilaterally or in cooperation with other nations to terminate assistance received by (a) organizations, groups, or individuals which commit or attempt to commit acts of terrorism and (b) governments which provide any assistance to organizations, groups, and individuals which conspire to commit or actually commit terrorism;

(4) the President should report to Congress within thirty days after the adoption of this resolution with respect to action the executive branch has taken to implement existing laws regarding terrorism, including section 3(8) of the Export Administration Act of 1969, as amended and section 18 of the International Security Assistance Act of 1977 in regard to countries cited under (6) which provide assistance to the Palestine Liberation Organization and other groups involved in terrorist activities;

(5) the President should report to Congress within thirty days on the nature and extent of the activities of the Palestine Liberation Organization office in New York; and

(6) the President should report to the Senate Foreign Relations Committee and the House of Representatives International Relations Committee within thirty days the names of nations which provide to the Palestine Liberation Organization and its constituent groups financial assistance, training, weapons, sanctuary, bases, escape routes, transportation assistance and documents, and other forms of assistance.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-936), explaining the purposes of the measure.

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

PURPOSE

The purpose of Senate Concurrent Resolution 72 is to express the sense of the Congress that acts of international terrorism are to be condemned as obstacles to peace in the Middle East and against the national interest of the United States. Senate Concurrent Resolution 72 recommends that the President should direct the executive branch to intensify efforts to counter international terrorism, including use of diplomatic, economic, and security measures taken unilaterally or in cooperation with other nations to terminate assistance received by (a) organizations, groups, or individuals which commit or attempt to commit acts of terrorism; and (b) governments which provide any assistance to organizations, groups, and individuals which conspire to commit or actually commit terrorism. The resolution also requests reports from the President on the implementation of existing statutes designed to combat international terrorism.

BACKGROUND

International terrorism continues to be an increasingly difficult problem for the world—not only because of the harm caused to individual victims but because of the impact on nations and relations between them. The terrorism problem is a continuing one, despite such efforts as tightening airport security and increased cooperation between some nations in the intelligence and security areas. Figures compiled by the Central Intelligence Agency indicated that between 1968 and 1976, there were more than 1,150 acts of international terrorism, claiming about 800 lives. A later set of figures covering the period between 1970 and November 1, 1977, listed 1,775 incidents with the loss of 996 lives.

In major incidents since then, Youssed el Sebai, the editor of Al Ahram and a close associate of President Sadat, was assassinated in Nicosia, Cyprus, on February 18, 1978. The Palestinian terrorists also took hostages, and in a rescue attempt the next day, 15 Egyptian commandoes were killed in Nicosia Airport.

On March 11, a group of eight terrorists landed by rubber boat on the Israeli coast north of Tel Aviv, killed an American woman near the landing spot, commandeered a bus, and, in the ensuing chase, blew up the bus. Thirty-four civilians, including women and children, were killed in the attack, the highest death toll of a terrorist attack inside Israel. According to reports from investigators after the attack, the terrorists intended to seize a hotel and foreign tourists. The terrorists were extremely well armed with Soviet-type weapons, grenades, RPG-7's, and machineguns. Al Fatah, the military arm of the PLO, publicly said it had conducted the operation. Harold Saunders, the Assistant Secretary of State for Near Eastern and South Asian Affairs, told the committee on March 17 that the operational preparations for the attack must have been "very detailed and very precise and long planned."

These incidents were only two of a series in the pattern of stepped-up terrorist attacks following President Sadat's trip to Jerusalem last November and indicate an effort to use terrorism to undermine the peace process.

In the wake of President Sadat's visit to Jerusalem and the attempt to foster peace talks, threats and attacks were made against some West Bank Arabs with a reputation as moderates. Telephone threats originating in the United States were made against some leading West Bank political personalities, according to reliable sources. Several of them were killed. In addition, bomb explosions took place on buses and in the market area of the old city of Jerusalem.

In Egypt, according to that country's media, officials also discovered an attempt to launch a terrorist attack against the peace talks between Egyptian and Israeli officials at the Mena House Hotel on the outskirts of Cairo.

The campaign also extended to Western Europe. A bomb was found at the Egyptian Embassy, in Bonn, fortunately before it exploded. However, there was an explosion in London attributed to the Middle East situation and, in another London incident, a prominent Palestinian with a reputation as a relative moderate was murdered.

Terrorist groups have obtained considerable amounts of money, weapons, and expertise. Some resources have been obtained through their own activities, such as through thefts of weapons and the collection of millions of dollars in ransom and payoffs from kidnapings and aircraft hijackings. However, the problem is enhanced because of the assistance and cooperation received from various national governments. Libya, Iraq, and South Yemen have been named by the State Department as contributing countries. Intelligence officials have said, however, that other countries, to a lesser extent, have supplied assistance of various types.

As originally introduced, section 6 of Senate Concurrent Resolution 72 provided that the President should report to Congress the names of nations "which provide to the Palestine Liberation Organization and its constituent groups financial assistance, training, weapons, sanctuary, bases, escape routes, transportation assistance and documents, and other forms of assistance in committing acts of terrorism." Because of the difficulties in ascertaining the end use of the specific assistance given by a national government, Senator Case, one of the original cosponsors of Senate Concurrent Resolution 72, moved to modify the resolution in committee to delete the final five words. The amendment was adopted. Thus, the reporting provision does not require the State Department to attempt to determine whether assistance was actually used "in committing acts of terrorism."

Also in its discussions, committee members raised with executive branch witnesses, the matter of whether existing laws are being fully utilized. A classified list of some of the actions taken by the executive branch was furnished to the committee. The resolution calls for the President to report to Congress action taken under existing laws, including section 3(8) of the Export Administration Act of 1969, as amended, and section 18 of the International Security Assistance Act of 1977 in regard to countries cited under section 6 of Senate Concurrent Resolution 72 as providing assistance to the PLO and other groups involved in terrorist activities.

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## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, at this point in the RECORD, may I say that a vote will occur on Thursday at about 3 o'clock on the motion to invoke cloture on the pending so-called labor reform bill.

I know that Senators will want to arrange their schedule to be present to vote on that cloture motion. It will be a 20-minute rollcall vote. As I say, it will begin at around 3 o'clock p.m.

There is no way of indicating precisely to the minute as to when the vote will occur. But under the order that has previously been entered, three Senators will be recognized, each for not to exceed 10 minutes, immediately after the prayer. They are Messrs, STEVENS, JAVITS, and DURKIN.

Whereupon, the 1 hour under the cloture rule will immediately begin running. It would be equally divided between the proponents and the opponents, and at the conclusion of that 1 hour the vote would occur on the motion to invoke with no quorum call being in order prior thereto.

So, as I see it, the vote would occur at around 3 o'clock p.m.

Now, in order that Senators may count on that vote occurring at around 3 o'clock p.m., I would object to the yielding back of any of the time under any one of the three orders.

I can do that, can I not, Mr. President?

The PRESIDING OFFICER. The Senator has the right to do so at that time.

Mr. ROBERT C. BYRD. I thank the Chair.

So this would assure Senators then that the vote would occur at around 3 o'clock p.m. on Thursday.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

### RECESS UNTIL THURSDAY, JUNE 22, 1978, AT 1:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until the hour of 1:30 p.m. on Thursday, next.

The motion was agreed to; and at 6:55 p.m., the Senate recessed until Thursday, June 22, 1978, at 1:30 p.m.

### CONFIRMATIONS

Executive nominations confirmed by the Senate June 19, 1978:

DEPARTMENT OF JUSTICE

Peter F. Vaira, Jr., of Illinois, to be United States Attorney for the Eastern District of Pennsylvania for the term of four years.

Russell T. Baker, Jr., of Maryland, to be United States Attorney for the District of Maryland for the term of four years.

(The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.)

# HOUSE OF REPRESENTATIVES—*Monday, June 19, 1978*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

*Wait on the Lord, be of good courage: and he shall strengthen thine heart: wait, I say, on the Lord.*—Psalms 27:14.

Eternal God, our Father, we invoke Thy blessing upon us and upon our country as we begin the work of this week. Enlighten these leaders of our people with wisdom, sustain them with power and give them strength to do their work with good will for the highest good of our Republic: May peace and love dwell in the hearts of our people and may our faith in Thee exalt our Nation in righteousness and truth.

We thank Thee for the life and spirit of our beloved Member, CLIFFORD R. ALLEN, who has gone home to live with Thee. We are grateful for his service to our country and may we remember him as one who would do justly, love mercy, and work humbly with Thee. Bless his wife and children with the comfort of Thy presence and the strength of Thy Spirit.

In Thy holy name we pray. Amen.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

### CONSENT CALENDAR

The SPEAKER. This is Consent Calendar Day. The Clerk will call the first bill on the Consent Calendar.

### DECLARING THAT THE UNITED STATES HOLDS IN TRUST FOR THE PUEBLO OF SANTA ANA CERTAIN PUBLIC DOMAIN LANDS

The Clerk called the bill (H.R. 3924) to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands.

The SPEAKER. Is there objection to the present consideration of the bill?

Ms. MIKULSKI. Mr. Speaker, I ask unanimous consent that the bill, H.R. 3924, be stricken from the Consent Calendar.

The SPEAKER. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

### DECLARING THAT THE UNITED STATES HOLDS IN TRUST FOR THE PUEBLO OF ZIA CERTAIN PUBLIC DOMAIN LANDS

The Clerk called the bill (H.R. 10240) to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands.

The SPEAKER. Is there objection to the present consideration of the bill?

Ms. MIKULSKI. Mr. Speaker, I ask unanimous consent that the bill, H.R. 10240, be stricken from the Consent Calendar.

The SPEAKER. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

### AUTHORIZING THE VA TO FURNISH MEMORIAL MARKERS TO COMMEMORATE CERTAIN DECEASED VETERANS

The Clerk called the bill (H.R. 12257) to amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to furnish cemetery memorial headstones or markers to commemorate veterans who die after being honorably discharged and whose remains are not recovered or identified.

There being no objection, the Clerk read the bill, as follows:

H.R. 12257

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 906(b) of title 38, United States Code, is amended to read as follows:

"(b) The Administrator shall furnish, when requested, an appropriate memorial headstone or marker to commemorate any veteran whose remains have not been recovered or identified or were buried at sea, for placement by the applicant in a national cemetery area reserved for such purposes under the provisions of section 1003 of this title or in any private or local cemetery.".

SEC. 2. The amendment made by the first section of this Act shall take effect October 1, 1978.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

### TO PAY TRIBUTE TO MEMBERS OF THE U.S. ARMED FORCES WHO SERVED HONORABLY IN SOUTHEAST ASIA DURING THE VIETNAM CONFLICT

The Clerk called the bill (H.R. 12261) to pay tribute to those members of the U.S. Armed Forces who served honorably in Southeast Asia during the Vietnam conflict.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. SCHULZE. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania.

There was no objection.

### NAMING OF THE PROPOSED NEW VETERANS' ADMINISTRATION HOSPITAL AT LITTLE ROCK, ARK., FOR JOHN L. McCLELLAN

The Clerk called the bill (H.R. 10287) to designate the proposed new Veterans' Administration hospital in Little Rock, Ark., as the "John L. McClellan Memorial Veterans' Hospital," and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?