He was an inhabitant but he could not vote. He met the qualifications for a Member of Congress, yet he could not vote in his own election.

They are not the same at all, and I hope the House will not have that point disturbing their minds. Citizenship consists of an aggregation of civil privileges. Inhabitancy depends entirely on where a man lives and has his ordinary home.

Mr. KINCHELOE. Will the gentleman yield?

Mr. BROWNING. Yes.

Mr. KINCHELOE. Does the evidence disclose whether or not Mr. BECK voted from the time he rented this apartment in Philadelphia until he was elected to Congress?

Mr. BROWNING. Here is what the record shows: In May, 1926, after it was determined that Mr. VARE was going to leave the House, while Mr. BECK was in Europe, out of order on the alphabetical list for assessment, Mr. BECK was listed exactly six months to a day before the election as a taxpayer for the payment of this occupational tax of 25 cents. If a man has been a citizen of Pennsylvania, he can go back and resume his citizenship with a six months' residence. He ignored that assessment. He was assessed twice in 1927, one time out of order, not on the regular alphabetical list, but picked up out of order. He ignored the first one, but the second one he paid just 11 days before the primary in which Mr. Hazlett, who had been elected to the House, was running for a county office. He voted in that primary on that poll-tax receipt, which was gotten as the chairman has indicated, 11 days after its purchase.

The law requires that the man shall either go to the office of the receiver of taxes and pay the poll tax himself or he must pay it to a deputy at one of the registration places on registration day, or he must have an agent do it on written authority from him. Mr. BECK had neither of these requirements complied with. There was no intention on his part, I concede, to violate the law; he is incapable of that; but I am asserting he had no right under the law to vote on that tax receipt in the primary election in September before he was elected in November.

Now, Mr. BECK very properly calls my attention to a statement I made in the minority report to the effect that a man had to have his poll-tax receipt 30 days, I believe, before the election. If I am wrong I want to correct that, because he insists that that does not apply to a primary. Since that time, when I told him I would correct it, I have gone further into the statute, and I confess I am not clear whether the law in Pennsylvania in that regard applies to primaries or not; but I know that in the State of Pennsylvania the law is specific that before a man can vote he must be a resident for a certain length of time, and the court goes on to describe this residence by saying:

> It means that place where the elector makes his permanent and true home, his principal place of business, and his family residence, if he has one; where he intends to remain indefinitely, and without a present intention to depart; when he leaves it he intends to return to it, and after his return he deems himself at home. (71 Pa. 302.)

This is a requirement for voting which Mr. BECK never met in the State of Pennsylvania.

Mr. GREEN. Will the gentleman yield?

Mr. BROWNING. Yes.

Mr. GREEN. How many times during the 20 years of his alleged residence in the city of Washington do the records disclose that he voted in Pennsylvania, if any?

Mr. BROWNING. The first time he voted was in this primary in 1927, and that is the only time he had voted for 20 years in the State of Pennsylvania when this proof was taken.

Now, as to inhabitancy, in the Bailey election case from Massachusetts which the chairman referred to——

Mr. STEAGALL. Will the gentleman yield for one question?

Mr. BROWNING. Yes.

Mr. STEAGALL. Reference has been made to Mr. BECK's membership in various clubs in the city of Philadelphia; did the committee ascertain whether or not he had membership in clubs in Washington or elsewhere as well as in Philadelphia?

Mr. BROWNING. Yes; I think he was a member of possibly one or two clubs in the city of Washington, but I will not be certain about that. But he always registered, when he registered away from the city of Washington, with his residence as Washington, D. C. He had all goods for his personal comfort sent to his residence here on Twenty-first Street. Everything tended to show he considered this his home and abode and, in reality, it was. There is no question about that in my mind.

Now, as to inhabitancy, in this Bailey case that has been referred to from Massachusetts, this man was appointed a clerk in the State Department by John Quincy Adams. He came here from his father's residence. He was a single man then and had lived in his father's home. He left his library back there. The proof tends to show he had expressed always the opinion and the conviction that he was still identified with Massachusetts and had his citizenship there, and even as great an authority as John Quincy Adams himself certified to that. He lived here for four years in a hotel and then he married in the District of Columbia. He had never exercised the rights of citizenship here, and people could vote here at that time. He had never done anything to contradict his conviction, often expressed, that he was still a citizen in full standing of Massachusetts. He was elected to Congress one year after he had married and moved into the home of his mother-in-law. They rejected him, and in the consideration of that case I want to read just this one statement:

After reviewing the circumstances attending the adoption of the clause of the Constitution, which I referred to a moment ago, the committee commented upon the fact that the word "resident" had first been proposed but had been put aside for "inhabitant" as being a "stronger term, intended to express more clearly their intention that the persons to be elected should be completely identified with the State in which they were to be chosen."

Now, here is a definition which, I think, is really the summing up of the definition of inhabitancy.

The SPEAKER pro tempore. The time of the gentleman from Tennessee has expired.

Mr. BROWNING. Mr. Speaker, I yield myself 10 minutes more.

This is from Burrill's Law Dictionary:

> The Latin habitara, the root of this word, imparts by its very construction frequency, constancy, permanency, closeness of connection, attachment, both physical and moral; and the word "in" gives additional force to these senses.

Mr. DALLINGER. Mr. Speaker, will the gentleman yield?

Mr. BROWNING. Yes.

Mr. DALLINGER. I understand that the gentleman is quoting from Bouvier's Law Dictionary?

Mr. BROWNING. No; from Burrill's.

Mr. DALLINGER. I notice that you do not cite Bouvier's Law Dictionary.

Mr. BROWNING. Oh, I am not willing to have the gentleman make my speech.

Mr. DALLINGER. Is the gentleman aware that in Bouvier's Law Dictionary the statement is made that "inhabitant" as used in the Federal jurisdiction act of 1789 means citizen, and there are two decisions of the Supreme Court confirming that?

Mr. BROWNING. I can cite the gentleman to cases from his own State that will refute that. An Illinois case decides that inhabitant is not synonymous with citizen. I will go on over to a Massachusetts case.

As used in the general statutes—section 11, paragraph 12—providing that all personal estate within or without the State shall be assessed to the owner in the city or town where he is an inhabitant on the 1st day of May, "inhabitant" does not mean any man who may happen to be personally in a town or a city, but means a man who has a home in a place, so any man who established a permanent home for himself and family, if he has one, and who there performs all the duties required of him.

There are a great many decisions, not only from the States of Illinois and Massachusetts, but from others, and this I get from the State of Delaware:

> A man may be a citizen without being an inhabitant of the State, as a man may be an inhabitant without being a citizen. This is not only an obvious distinction, but one which the Constitution itself makes, as in the qualification of voters it requires both citizenship and residence.

Here is another United States case:

> The term "inhabitant," as used in an act of Congress providing that no civil suit shall be brought before certain courts against an inhabitant of the United States by any original process in any other district than that whereof he is an inhabitant or in which he shall be found at the time of serving the writ, is a mere equivalent description of citizen and alien. A person might be an inhabitant without being a citizen, and a citizen might be an inhabitant though he retain his citizenship. Alienage or citizenship is one thing and inhabitancy, by which is understood local residence, animo manendi, quite another.

That is in the case of Piquet *v.* Swan (U. S. 19 Fed. Cas. 609, 613).

I cite another from Fifth Federal:

> "Inhabitant," as used in Civ. Code Or., sections 1051, 1053, which declared that the jurisdiction to current letters of administration on the estate of a deceased person is vested in the county courts of the county of which the deceased was at or immediately before his death an inhabitant, means one who has an actual residence in the county or who is

ordinarily personally present there, not merely in itinere, but as a resident and dweller therein. It is not the equivalent of the technical term "domicile."

The word "inhabitant" implies a more fixed and permanent abode than resident.

That is from another Federal case.

It comprehends locality of existence, the dwelling place where one maintains his fixed and legal settlement, not the casual and temporary abiding place which is required by the necessities of present surrounding circumstances. A mere sojourner is not an inhabitant in the sense of the act.

Mr. JACOBSTEIN. Mr. Speaker, will the gentleman yield?

Mr. BROWNING. Yes.

Mr. JACOBSTEIN. If the report of the committee is sustained, what would prevent any wealthy man from renting a room anywhere within a State and getting himself elected by that subterfuge?

Mr. BROWNING. I think the door is wide open. It is not the immediate effect of seating Mr. BECK in this House that I am contending against. It is the precedent that you are going to set by leaving the situation such that where any kind of an organization, whether it be good or bad, can select any individual it chooses in the United States, establish a temporary, fly-by-night residence by renting an apartment, and sending him to Congress to serve any purpose they want.

I think this is a very serious matter. I think this is one thing that the fathers had in their minds as possible when they laid down this inhibition. It does not matter to me, except I want to relieve my mind of being convicted with regard to the true construction of the Constitution.

Reference was made a while ago to the establishment here in the District of Columbia of homes by men to live in who are in public life. That is not under consideration. I confess to you that a man has a perfect right to establish a home here which is incident to the discharge of his public duties.

But in this case Mr. BECK certainly can not go back of 1926, and the things that have developed since that time must govern his case. And in the beginning we find him with his permanent home established in the city of Washington. He never established it for the temporary purpose of representing these people in Congress, but he went to the district and established a temporary residence there in an attempt to qualify as a Member of Congress. He reversed the order entirely. Nobody else is endangered. It is whispered around that somebody else may be hit. I must insist that nobody is disqualified because he has a home in the city of Washington, but if this situation is so widespread as has been intimated in some quarters, then it is high time that we asserted what we understand to be the true meaning of the Constitution.

Mr. GREEN. Mr. Speaker, will the gentleman yield?

Mr. BROWNING. Yes.

Mr. GREEN. Was anything brought out in the record to show whether or not Mr. BECK had church membership in that district?

Mr. BROWNING. I do not remember anything about church membership.

Mr. GREEN. How about any lodge membership?

Mr. BROWNING. We discussed that, the clubs to which he belonged, but no fraternities that I have any recollection of.

Mr. PERKINS. Does not the record show that he was a trustee of the Episcopal Academy in Philadelphia?

Mr. BROWNING. That may be true, but that does not mean membership.

Mr. PERKINS. It is pretty close to membership.

Mr. BROWNING. I happen to belong to another church and I do not know what the requirements of membership are in that church.

Mr. DEMPSEY. Does not the only authority of the State of Pennsylvania quoted in the minority report at the top of page 17, in the final part of the decision, lay this down as the indispensable requisite of citizenship:

It means that place where the elector makes his permanent or true home, his principal place of business, and his family residence, if he has one; where he intends to remain indefinitely; and without a present intention to depart; when he leaves it he intends to return to it, and after his return he deems himself at home.

Mr. BROWNING. Yes.

Mr. DEMPSEY. Making the question a question of intention, just as suggested by the previous question?

Mr. BROWNING. No. It does not do that at all. It says "return." I regret my inability to explain to the gentleman what I am trying to talk about, and that is, that the expressed intention must be followed by his action, and he never acted in this case. He has lived in the District of Columbia, and has every month since November, 1920. It has been his permanent place of abode, where his wife lives and he had his home life.

Mr. DEMPSEY. My understanding of what the gentleman said was that he had an apartment and residence in the city of Philadelphia which he rented previous to his——

Mr. BROWNING. Just as a pretext in order to come to Congress. Mr. Speaker, I do not yield any further.

Mr. PERKINS. Will the gentleman yield?

Mr. BROWNING. I will.

Mr. PERKINS. On page 34, Mr. BECK testified as follows:

The idea that I have not occupied that apartment constantly in the last year and a half is quite a mistake. That explains my allusion in my statement that a member of my family has occupied that apartment continually for the last year.

Mr. BROWNING. And, of course, he said he did not stay there while his sister was there after she came back from Europe six or eight months before he ran for Congress.

The SPEAKER. The time of the gentleman has expired.

Mr. VINCENT of Michigan. Mr. Speaker, I yield 10 minutes to the gentleman from West Virginia [Mr. BACHMANN].

Mr. BACHMANN. Mr. Speaker and gentlemen of the House, some question has developed as to whether or not Mr. BECK spent any time in his Philadelphia apartment, whether or not he lived there any part of the time. In this connection I want to refer the gentleman from Tennessee [Mr. BROWNING] to page 13 of the record in which Mr. BECK in his statement says:

On June 1, 1926, I rented an apartment at 1414 Spruce Street, which I have since maintained as my Philadelphia residence. It was an unfurnished housekeeping apartment, and I furnished it with all necessary furniture and equipment. This apartment my family and I have occupied from time to time, and one member almost continuously. Excluding the summer months, I am in Philadelphia nearly every week. My chief purpose in renting my Philadelphia apartment was not to obtain a seat in Congress, but to reidentify myself with my native city and Commonwealth as a citizen.

Let me, gentlemen of the House, take you a little further and show you exactly what Mr. BECK's intention was when he took this apartment. On page 58 of the record Mr. BECK says:

In taking that apartment when I rented it, the dominant purpose with me was to again establish a status in Philadelphia as one of its people. The seat in Congress was then a possibility undoubtedly, and I would not want to say, and could not say truthfully, that it had nothing to do with the renting of the apartment. It involved a very substantial sacrifice to me. But at least I would not want to be the kind of Washingtonian who was content to escape all civic responsibilities and duties, and I felt that I had all my life preached the duty of every citizen taking a part in politics and I wanted to have a status as a citizen, and that I could not have in Washington, and I established it in Philadelphia to do my civic duty.

Mr. DEMPSEY. Will you not read the next two sentences? Because there is a conflict with the previous statement. It is on page 58.

Mr. BACHMANN. I do not have a copy of the hearing before me.

Mr. DEMPSEY. I read:

Did you sleep there?

Mr. BECK. Many times.

Mr. BACHMANN. I understood that was the fact.

Mr. BRAND of Georgia. Mr. Speaker, will the gentleman yield?

Mr. BACHMANN. I yield to the gentleman from Georgia.

Mr. BRAND of Georgia. Does the record show that Mr. Beck's sister was a member of his family?

Mr. BACHMANN. Yes. She lived in that apartment in Philadelphia.

Mr. BRAND of Georgia. I know; but prior to that time, when he was living with his wife, was his sister living with him and his wife?

Mr. BACHMANN. My recollection is that his sister spent most of her time in Europe, and that at other times she visited in Washington.

Mr. BRAND of Georgia. I did not know whether the gentleman had in mind Mr. BECK's sister as a part of his family.

Mr. KINCHELOE. Mr. Speaker, will the gentleman yield?

Mr. BACHMANN. Yes, I yield.

Mr. KINCHELOE. I have not heard the gentleman from Tennessee [Mr. BROWNING] speak about Mr. and Mrs. Beck living in this apartment as man and wife.

Mr. BACHMANN. The only thing referred to by Mr. BECK as to that is that they would go there occasionally and occupy that apartment. If the gentleman wishes to bring out the fact

as to where Mr. and Mrs. Beck lived most of the time, I think the record will show that they lived most of the time in Washington.

Mr. GREEN. Mr. Speaker, will the gentleman yield?

Mr. BACHMANN. I yield.

Mr. GREEN. Does the record disclose whether or not Mr. BECK owned property in Philadelphia, in this district, at the time of his election?

Mr. BACHMANN. I understand he owns real estate in Pennsylvania, but whether it is in this district or not I do not know.

Mr. GREEN. Does the evidence show that he voted in Philadelphia before that?

Mr. BACHMANN. He was a resident there all his life until he came to Washington. While he lived in Philadelphia he was Assistant United States Attorney and then United States Attorney, and voted there.

Mr. VINCENT of Michigan. The record shows that Mr. BECK was assessed for $30,000 of personal property in Philadelphia.

Mr. BACHMANN. Yes. He was assessed in 1926 and 1927.

Mr. NELSON of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. BACHMANN. I yield to the gentleman.

Mr. NELSON of Wisconsin. The Constitution requires a man to be an inhabitant. Where was Mr. BECK's inhabitancy—in Philadelphia or in Washington?

Mr. BACHMANN. We think it was in Philadelphia.

Mr. NELSON of Wisconsin. Can you have it in two places at one time?

Mr. BACHMANN. Not in my opinion. A man may have a dozen residences if he so desires, or three or four; but I do not think he can have two inhabitancies at the same time.

Mr. NELSON of Wisconsin. That was what I was trying to settle in my own mind. It must be dependent upon what the Constitution provides. A man can not have two inhabitancies.

Mr. DEMPSEY. Will the gentleman read from the record as to Mr. BECK's membership in the clubs? It has been referred to by Members on the other side.

Mr. BACHMANN. That has all been put in the record by the chairman of the committee, Mr. VINCENT of Michigan.

Mr. BUSBY. Mr. Speaker, will the gentleman yield?

Mr. BACHMANN. Yes.

Mr. BUSBY. The fact that Mr. BECK remained in this apartment would not restrict his residence there if he was actually residing in Washington with his wife?

Mr. BACHMANN. No.

Mr. COCHRAN of Pennsylvania. I want to call the gentleman's attention to Mr. BECK's testimony on page 34 in answer to that question.

Mr. BACHMANN. Mr. Speaker and gentlemen of the House, the only question involved in the case of JAMES M. BECK is that growing out of Article I, section 2, of the Constitution, which provides:

> No person shall be a Representative who shall not have attained to the age of 25 years, and has been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Therefore, we are called upon to decide whether or not Mr. BECK was an inhabitant of the State of Pennsylvania within the meaning of the Constitution when he was elected.

The word "inhabitant" has many meanings. It has been construed to mean an occupant of lands; a resident; a permanent resident; one having a domicile; a citizen; a qualified voter. No exact definition can be given of the word "inhabitant" as applicable to all cases.

The Supreme Court of the United States has said that—

> In a statute providing that a majority of the inhabitants of the town, to be ascertained by an election, might authorize the issue of bonds the word "inhabitant" means legal voter. (Walnut *v.* Wade, 103 U. S. 683.)

That—

> "Inhabitant," as used in the statute of Henry the Eighth, concerning bridges and highways and providing that bridges and highways shall be made and repaired by the inhabitants of the city, has been construed to include those who hold lands within the city where the bridge is to be repaired lies, though they reside elsewhere. (Bank of the U. S. *v.* Deveaux, 9 U. S. (5 Cranch) 61.)

That—

> In the act of September 24, 1789, providing that no civil suit shall be brought against an inhabitant of the United States in any other district than that whereof he is an inhabitant, the term "inhabitant" means citizen. (Ex parte Shaw, 145 U. S. 444.)

That—

> On a change of domicile from one State to another citizenship may depend upon the intention of the individual. But this intention may be shown more satisfactorily by acts than declaration. An exercise of the right of suffrage is conclusive on the subject. (Shelton *v.* Tiffin, 6 Howard 163.)

That—

> The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words "subject," "inhabitant," and "citizen" have been used, and the choice between them is sometimes made to depend upon the form of government. "Citizen" is now more commonly employed. * * * It is understood as conveying the idea of membership of a nation. (Minor *v.* Happersett, 21 Wallace 162.)

One of the best definitions I have been able to find is that in the case of Howard College *v.* Gore (Mass. (5 Pick) 370):

> An inhabitant is one who, being a citizen, dwells or has his home in some particular town, where he has municipal rights and duties and is subject to particular burdens; and this habitancy may exist or continue notwithstanding an actual residence in another town or in another county.

The SPEAKER pro tempore (Mr. LAGUARDIA). The time of the gentleman from West Virginia has expired.

Mr. VINCENT of Michigan. Mr. Speaker, I yield to the gentleman five additional minutes.

The SPEAKER pro tempore. The gentleman from West Virginia is recognized for five additional minutes.

Mr. BACHMANN. In other words, gentlemen, we must reach a conclusion as to what the word "inhabitant" means.

It has been argued that the word "inhabitant" as used in the Constitution refers not to a political status but to physical presence. In this connection it is significant that the representation was to be for the State and not of the district, which in itself excludes the idea of physical presence in that neighborhood. This clearly indicates that the framers of the Constitution had in mind, by selecting the word "inhabitant," a political status and not a physical presence in a particular locality—the question of whether an individual owed allegiance, whether he was subject to the exactions of its laws, and whether he could share to the extent permitted in the benefits of the laws. To be an "inhabitant" of a State meant either an involuntary subjection to its laws by birth or a voluntary subjection to its laws by adoption. Always the idea has been one of political allegiance. Therefore it can be readily seen that the term "inhabitant" had no reference to the vague standard of whether an individual spent the greater part of a year in one place or another but referred to his political status.

I do not believe it can be seriously contended that Mr. BECK did not have a political status in Philadelphia. Therefore, if you believe to be an inhabitant of a State meant a political status, there is no question other than that Mr. BECK is clearly entitled to his seat.

Mr. NELSON of Wisconsin. If it was a political status it could not have any bearing on the District of Columbia at all?

Mr. BACHMANN. That is true. I am coming to that with respect to the Washington residence and the Philadelphia residence.

It should be kept in mind when talking about the Washington residence of Mr. BECK, whether we are talking about the same thing the Constitution requires in that portion requiring one to be an inhabitant of the State.

It is well settled throughout the United States that there are two kinds of residence—one permanent and legal, equivalent to domicile, the residence which makes citizenship, which establishes relation between the man and the State, and the other, the residence which consists in actual physical presence in a place other than a man's domicile. It has been held by courts of last resort over and over again that a man may have two residences, one his domicile and the other his actual residence.

It is clear, and no doubt will not be contradicted, that a man may have his domicile and the right to vote in Pennsylvania, and at the same time be a resident of the city of Washington.

Now, which of these two residences is meant by the Constitution. The universal rule throughout the Union is that the word "residence" when it refers to eligibility to office, means domicile; that is, permanent legal residence, and has no reference to where a man is actually living.

No man can be deprived of his citizenship, his domicile, his legal residence, against his will. No man can be deprived of it

except by his own intention. Will anyone doubt that JAMES M. BECK tells the truth when he solemnly declares, as he does, that?—

from the time I sold my home in New York I had but one desire, and that was to establish a residence in Philadelphia and become again a citizen of that city. (P. 75, record.)

The SPEAKER. The time of the gentleman from West Virginia has again expired.

Mr. VINCENT of Michigan. Mr. Speaker, I yield the gentleman three additional minutes.

Mr. BACHMANN. Can anyone doubt that Mr. BECK is telling the truth when he solemnly declares, as he does, that?—

I announced at a large public dinner in Philadelphia on April 30, 1925, that it was my intention to reidentify myself with Philadelphia. (P. 151, record.)

Can anyone doubt that Mr. BECK is telling the truth when he says?—

it being my intention to resume my citizenship in Philadelphia I ceased to vote in Sea Bright, N. J., after the presidential election of 1924. (P. 2 Beck statement.)

Can anyone doubt that Mr. BECK is telling the truth when in carrying out his intention to make Philadelphia his legal residence he said?—

I finally decided to acquire a permanent residence in that city, and on June 1, 1926, I rented an apartment at 1414 Spruce Street, which I have since maintained as my Philadelphia residence. (P. 3, Beck statement.)

Can anyone doubt that Mr. BECK is telling the truth, when in carrying out his intention to make Philadelphia his legal residence, he said?—

I was assessed as a taxpayer there in May, 1926, and again in December, 1926, and in May, 1927. I registered as a voter in Philadelphia in September, 1927, and voted in the primaries of September 20, 1927. (P. 3, Beck statement.)

Can anyone doubt that Mr. BECK is telling the truth when he said?—

Hardly a week goes by that I am not in Philadelphia, sometimes two or more nights. The fact that I transact my personal affairs there; that my personal fortunes are conducted in Philadelphia; that there I control my investments; and there I manage the property that I have; my identification with the city's civic interest—I think I can say without exaggeration, the unselfish identification that I have had in the civic enterprises in Philadelphia, all show my presence there is not an infrequent thing. (P. 17–18, extract from hearings.)

Will you believe, against the evidence, that Mr. BECK is still an inhabitant of New Jersey, and as well a citizen of that State, as contended by the gentleman from Pennsylvania [Mr. KENT] on page 32 of the record? Will you believe, against the evidence, that it was not the intention of Mr. BECK to abandon his political status in the State of New Jersey? Will you believe, against the evidence, that it was not the intention of Mr. BECK to reidentify himself with the city of Philadelphia and the State of Pennsylvania, the State of his birth, the home of his father; the city and State that had showered honors on his youth and had more honors in store for his manhood; the State of his nativity, of his ambition, and his pride.

Can anyone contend that he intended to abandon that and take up his residence in the one place in the United States where residence gives no political rights and offers no future to ambition and to hopes—the District of Columbia?

To Mr. BECK alone belongs the privilege of acquiring inhabitancy or citizenship in any State in the Union. That it was his intention to do so in Pennsylvania is beyond doubt. That his acts and deeds in furtherance of that intention beyond question establishes his inhabitancy and citizenship. Having thus subjected himself to the burdens of taxation, the burden of renting a habitation, the burdens of jury service, the burdens under the succession law under which the State of Pennsylvania will take some portion of his estate when he passes on, he surely is entitled to the enjoyment of those privileges similarly enjoyed by all other citizens and inhabitants of that great State. To deny him his seat as a Member of the House of Representatives from the State of Pennsylvania would only mean the taking from him of certain obligations and services and deprive him of his constitutional right of making himself an inhabitant and citizen of one of the States of this Union, a right enjoyed by all citizens and inhabitants of the United States under the Constitution. [Applause.]

The SPEAKER. The time of the gentleman from West Virginia has again expired.

Mr. BROWNING. Mr. Speaker, I yield five minutes to the gentleman from Maryland [Mr. COLE].

Mr. COLE of Maryland. Mr. Speaker, ladies, and gentlemen of the House, as a member of the same profession with Mr. BECK, as a member of the American Bar Association and the Supreme Court bar of this country, I have the greatest respect for his ability and learning; but when by an effort, such as this record presents, short of trickery he attempts to manipulate the provisions of the Constitution of this country to gain a seat in this House I am most willing to take my stand against him.

The majority report from the Committee on Elections No. 2, coupled with Mr. BECK's own statements before the committee, is such an ingenious and unprecedented manipulation of sound and common sense interpretation of the constitutional provisions involved it becomes necessary at the outset to consider the facts in order to locate, if possible, some reason therefor. The facts—taken from the committee's reports—bearing on the issues I shall discuss can be briefly stated as follows:

Mr. BECK's early life was spent in Pennsylvania, he being born and educated there. In 1900 he moved to Washington to accept an appointment as Assistant Attorney General of the United States. This position he resigned in 1903 when he went to the city of New York to practice law. At the same time he abandoned his residence in Philadelphia and acquired a fixed domicile in New York City. He continued to reside in New York City until November, 1920.

In the intervening period between 1903 and 1920 he acquired a summer home at Sea Bright, N. J., which property he still owns, and at which place he registered and voted as late as the presidential election in 1924. This voting status in New Jersey he retained in November, 1927, and, so far as we are advised, at the present time. So far as the New Jersey authorities are concerned, no act of Mr. BECK has shown withdrawal of claim for voting privileges in that State. Mrs. Beck enjoyed the same voting status, and it is fair to assume she still does, even from the standpoint of intention, because not by the greatest stretch of imagination could she qualify as a resident or inhabitant of Pennsylvania. In 1920 Mr. BECK sold his residence in New York City and came to Washington and purchased a home he has owned since at 1624 Twenty-first Street NW. Between June, 1921, and June, 1925, Mr. BECK served as Solicitor General of the United States. Upon resigning that position in June, 1925, he established a law office in Washington and also resumed his connection with the old law firm in New York. At no time since 1900 has he retained a law office in Pennsylvania or practiced law there. In the spring of 1926 he inspected several apartments in the first congressional district in Philadelphia, and on the 6th day of July following he executed a lease of date June 1, 1926, for a 2-room apartment at 1414 Spruce Street. The apartment is equipped with kitchenette, but Mr. BECK has never eaten a meal there; it has one bedroom and that has been occupied continuously by his unmarried sister, Miss Helen Beck; Mrs. Beck has lived at the Washington home continuously since its purchase and no claim is made that the apartment in Philadelphia aforesaid was for her use or convenience in any way. Mr. BECK always registers as from Washington when he goes to hotels throughout the country, this being true during the life of the aforesaid lease. He has his merchandise for personal comfort sent to his Washington home; he has his automobiles for every use registered in the District of Columbia. At no time has he treated the small 2-room apartment in Philadelphia, located—as I think fair to submit, in a locality as different in point of environment, value, and habit from that which Mr. BECK has been and is now accustomed to, as day is from night. It is fair to state that the facts in no particular indicate or convince one that Mr. BECK's rental of this apartment presented to him in any sense a real and bona fide habitation.

The lease must have been entered into as an attempt, now appearing to be of the weakest kind, to comply with the constitutional requirement for an inhabitant. On the 9th day of September, 1927, Mr. BECK has delivered to him in the office of Mr. VARE his occupational-tax receipt, for which the sum of 25 cents was paid. Considerable doubt exists as to his compliance with the registration laws of Pennsylvania, but this I shall not discuss. He then registered as a voter in the primaries in the city of Philadelphia in September, 1927, at which primary, Mr. Hazlett, a relative of Mr. VARE, was the candidate for Representative from the first district to succeed Mr. VARE. After the primaries, Mr. Hazlett, having been nominated, resigned, and to fill the vacancy so caused by the Republican authorities nominated Mr. BECK. The election was held November 6, 1927, but Mr. BECK did not come from his Washington home to vote, although it is reported on election night he attended a Washington dinner party.

It is certainly germane to the issue before the House to discover, if possible, some reason for Mr. BECK—a man standing high in the legal profession and enjoying an enviable reputation as a constitutional lawyer—to attempt such a flimsy, loose, and unprecedented plan to gain a seat in this House. Let us remove the smoke screen which is prevalent all through Mr. BECK's testimony and argument and try to find some reason. It is a known fact that Mr. VARE in 1926, then the Representative of the district Mr. BECK now represents, was a candidate for the United States Senate, and on November 2 of that year was elected to the United States Senate. Difficulty in sustaining his right to a seat in the United States Senate was anticipated, and Mr. BECK during the year 1926 must have been counseling and advising Mr. VARE, because in that year Mr. BECK published his book entitled "The Vanishing Rights of the States." It takes but a child to read this book and discover it to be nothing but a brief in behalf of Mr. VARE. It is interesting also to know that the morning after the election in Philadelphia, at which Mr. BECK did not vote but was elected, that he issued from his Washington office a statement to the press, declaring the Philadelphia election has "vindicated Mr. VARE."

Our familiarity with developments in the Vare case before the Senate during the present session of Congress, and the knowledge that Mr. BECK is still chief counsel for Mr. VARE, coupled with the prior association I have attempted to discuss, presents most forcibly reasons as to why Mr. BECK so hastily attempted to secure the status of an inhabitant of Pennsylvania, and later a Representative from a boss-ridden district in Philadelphia, where his election was at the will of his client and the vote so certain and meaningless from a personal standpoint that he himself did not take the time to journey from his real residence and habitation in Washington to participate therein.

The doctrine of State's rights is not involved in this controversy. However, I am not surprised it is brought forth, because in Mr. BECK's desperation, he, like a drowning man grabbing at a straw, seeks to maintain his rights through the help of every conceivable line of reasoning. It is doubtful if Mr. BECK, when he penned his work, The Vanishing Rights of the States, expected the issue of State's rights to be presented in a case such as his personal claim for a seat in this House now presents, for he says in that book (p. 49):

> This provision (speaking of the section of the Constitution designating each House as the judge of the qualifications of its Members) unquestionably invests each House with the right to determine whether a man who claims to have been elected to either House was in fact elected, and if so, whether he possesses the requisite qualifications, but these qualifications are obviously those which have already been prescribed in the Constitution as to age, the period of his citizenship, and the fact that he is an inhabitant of the State which he seeks to represent.

Was Mr. BECK at the time of his election an inhabitant of the State of Pennsylvania in the sense that the law requires?

Paragraph 2 of section 2, article 1, of the Constitution provides as follows:

> No person shall be a Representative who shall not have attained the age of 25 years and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

It is the last part of the aforegoing paragraph of the Constitution which this House is called upon to interpret at this time. The answer given by the House to-day is, therefore, one of national policy and of extreme importance.

The majority report in this matter, discussing the aforesaid constitutional provisions of page 4 of that report, says:

> To determine whether the facts applicable to the case of Mr. BECK places him within the meaning of the framers of the Constitution in their use of the word "inhabitant," it is of the the greatest importance to consider the debate which occurred at the time this provision was adopted.

I quote this because the majority report recognizes the fact that in disposing of Mr. BECK's rights the word "inhabitant" must not be too strictly construed, but that the intent and purpose thereof as disclosed by the debate upon that provision as contained in the Madison Papers be considered. These debates, as furnished us by Mr. Madison and set forth to some extent in the committee reports and in Mr. BECK's brief, are very interesting; but as they are all used finally by Mr. BECK as a basis for the argument that Washington and Franklin were not inhabitants of Virginia and Pennsylvania, respectively, unless he, Mr. BECK, is regarded by the Members of this House as an inhabitant of Pennsylvania, I ignore that argument, because obviously it contains no merit. This House has to determine whether Mr. BECK was an inhabitant of Pennsylvania in a sense that the Members of this House approve, and I can not conceive of the issue being disposed of upon party alignment or personal prejudice. It should be met in fairness and in furtherance of the commonly accepted understanding of the people of this country as to the status of citizenship a Representative in this House should enjoy. Mr. BECK is most desperate in his own behalf in this case. It is astounding (in view of what I shall say hereafter), to read on pages 5 and 6 of his brief the following language:

> You will thus see that the convention divided upon the use of the word "resident," thereby meaning a stricter physical presence, and "inhabitant," thereby meaning a member of a political community. It can not be questioned that the word "resident" was a stricter term, for it imported the idea of containing physical presence.
>
> If, however, as I shall argue, to be an "inhabitant" referred not to physical presence but to a political status, he could not, when elected, be an inhabitant of the State unless he had previously accepted by birth or adoption, as a member of that political community.
>
> Moreover, it is significant that the Representative was to be for the State, and not of the district, which in itself excludes this idea of neighborhood and of physical presence in that neighborhood. This indicates that they had in mind by selecting the word "inhabitant" a political status, and not a physical presence in a particular locality.
>
> * * * And yet the Constitution provided that the people of Pittsburgh might, if they chose, select as their Representative a citizen of Philadelphia who had never lived in their midst, and whom, personally, none of them ever knew. In fact, all of the 35 Members of the Pennsylvania delegation could, if the people of Pennsylvania so elected, be selected from the residents of one particular district even at this time.

Further quoting, page 13:

> What they [framers of the Constitution] wanted to do was to lay down a rule that would be easily susceptible of application. In this they wholly failed, if by "inhabitant" they meant resident in the physical sense.

Further quoting, page 15:

> Having thus given my interpretation of the Constitution, which at least has the advantage of being practical and reasonable and not general and indeterminate—then I may add that it at least has the advantage of the sanction of history—it is not necessary to say much in applying it to the facts in my case.

Further quoting, page 16:

> Where I purchased and maintained a home, by the maintenance of a house in Washington, meaning thereby a legal residence in Washington, has never been regarded as an abandonment of the right to retain or acquire the rights of citizenship in one of the States.

I think all of us will admit that inhabitancy and citizenship and residence is largely a question of intention on the part of the individual. At the same time it is admitted with equal force that such intention is always gathered from the facts and not by some secret resolve on the part of the individual. It is an insult to the intelligence of this House to argue from the facts presented in Mr. BECK's behalf that he was a bona fide inhabitant of Pennsylvania at the time of his election. Aside from the secret resolve on his own part, which he himself now says he possessed to become an inhabitant of Pennsylvania, the record presents nothing of force and merit to his advantage.

May I have two more minutes?

Mr. BROWNING. Mr. Speaker, I yield the gentleman two additional minutes.

Mr. BACHMANN. Will the gentleman yield?

Mr. COLE of Maryland. Not at this time. I have no doubt had some hack politician instead of a man of Mr. BECK's standing attempted a trick of this kind, we would have been enjoying the mastery and sound interpretation of our Constitution by Mr. BECK protesting against the assault upon the Constitution which such a case would have presented.

I recall on one occasion, before the Supreme Court of the United States, a certain lawyer of recognized ability was presenting his argument and in doing so submitted certain legal propositions as being sound and applicable to his case. He was interrupted, as I recall, by Justice Holmes, with this remark, "Mr. (Blank), the reasoning you have just advanced is directly contrary to that which you state in your work on Pleading and Practice." The lawyer answered, "If that is the case, then my book is wrong." It is needless for me to say that the court sustained the authority in this great lawyer's book, which was, of course, his sound, sane, and real interpretation of the law and not that which happened to fit the particular case he was arguing at that time. Mr. BECK, you know, is the author of a very delightful book entitled: "The Constitution of the United States." It was published in 1924. As a caption to chapter 10, page 124, he places these words from Lowell:

> Once to every man and nation comes the moment to decide,
> In the strife of truth with falsehood, for the good or evil side.

Bearing in mind what I have heretofore said and supplementing that with the knowledge you possess of Mr. BECK's argument and the effort of the majority report in this matter to sustain his right to a seat in this House, see if you can reconcile that attitude and that interpretation of the Constitution with Mr. BECK's own language in the very wonderful work by him which I have just quoted. On page 281 we find Mr. BECK discoursing as follows:

Lord Brunnel then suggests that the governmental institutions of England and France give a greater opportunity to public service than America. Unquestionably, our institutions, with their tendency toward localization, do not make for national leadership. For example, in England a man can run for Parliament in any district. Even if defeated in one district he may stand for another seat, but in America a man can not run for Congress unless he is a citizen of the State in which he is situated; and while in theory, if a Pennsylvanian he can be a candidate for any congressional district of that populace Commonwealth, yet in actual practice—because the habits of the people are always as much a part of its constitution as the written law—the opportunity to serve the Nation in the Halls of Congress is dependent upon the consent of the district of his residence.

[Applause.]

I might add that Mr. BECK is not alone in the aforegoing interpretation of our Constitution as to the requirements of one seeking representation in Congress, for we find Beard, on American Government and Politics, page 232, expressing a similar view. I find comfort and satisfaction in the position I have taken in this controversy from the language of the Court of Appeals of Maryland, the State I represent. Naturally there is confusion from time to time as to the right of certain residents of the District of Columbia temporarily residing in Maryland, voting there. Permit me to quote therefore the language of Justice Bryan in the case of Thomas *v.* Warner, Eighty-third Maryland, pages 19, 20, and 21:

Warner was undoubtedly a resident of Washington from 1885 to 1892. It was in his power to remove his residence to Maryland if he thought proper to do so. It was a very easy thing to do. If he had broken up his establishment in Washington, abandoned his residence there, and made his home in Montgomery, there could have been no question about the matter. But sometimes the change of residence can not be proved by clear and unambiguous evidence. It must, however, always appear that the former residence has been abandoned. There must be an actual acquisition of a new abode; and in the case of a married man the settlement of the family there with all the incidents and associations belonging to a home according to their circumstances. The idea of residence is compounded of fact and intention; to effect a change of it there must be an actual removal to another habitation, and there must be an intention of remaining there. It is not required that the purpose to remain shall be unalterable; for a person may change his residence whenever his wishes or his interests may induce him to do so. But there must be an adoption of the new abode as a place of fixed present domicile; it would ordinarily be the "center of his affairs," and the place where the business of his life was transacted. Of course, no one thinks that a man is obliged to remain at home as if he were a prisoner. His business might require him to be absent on frequent occasions for longer or shorter periods. But his home is the place where he and his family habitually dwell; which they leave for temporary purposes, and to which they return when the occasion for absence no longer exists. * * *

We have seen that Mr. Warner's election to change his residence would not be sufficient without making the new habitation a place of fixed present domicile. Now, we see in the evidence no change in the course of his life in Washington after he purchased the land and built the house in Montgomery. He continued to live at his former dwelling and, as far as we can see from the evidence, under the same conditions and circumstances. He paid taxes on his personal property in the same way as formerly, as only a resident is required to do; and there is no external mark or indication which would designate him as a transient dweller or sojourner. Although he and his family paid visits to his country house, we have seen that such visits were by no means inconsistent with a residence in Washington. * * * Judge Story tells us that: "In a strict and legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (animus revertendi). We find it impossible to infer that these conditions are fulfilled in the case of the Montgomery house."

This House is one of the most precious instruments of our Government, and I for one believe the good people of this country intend that its membership shall in every way respect the sane, common-sense construction of paragraph 2, section 2, Article I, of the Constitution, and comply with its provisions before they should knock at the doors for entrance, and above all else before they should attempt to hold a seat in this House. Sad and unfortunate as it may be in the case of Mr. BECK, a man who has served this Government; a man who at a time when his better judgment was not influenced as it evidently has been since 1926, gave to us his splendid work on the Constitution from which I have quoted; and a man who necessarily stands high in the legal profession of this country, of which I am a member. I hope the intelligence of this House will assert itself to-day and, free from party alignment, political affiliation, stamp its disapproval upon the manner in which Mr. BECK has gained his seat on this floor. It is a sad spectacle to find a living being serving as a pallbearer at the funeral of his own reputation, but to present that commitment to Mr. BECK is in my judgment our solemn and binding duty.

The SPEAKER. The time of the gentleman from Maryland has expired.

Mr. VINCENT of Michigan. Mr. Speaker, what is the situation with respect to the time?

The SPEAKER. The gentleman from Michigan has 22 minutes remaining and the gentleman from Tennessee 28 minutes.

Mr. BROWNING. Mr. Speaker, I would like to inquire if that is not a wrong check of the time? I have used only 47 minutes.

The SPEAKER. The Chair is informed by the time clerk that that is correct.

Mr. BROWNING. Mr. Speaker, I yield the balance of my time to the gentleman from Pennsylvania [Mr. KENT].

The SPEAKER. The gentleman from Pennsylvania is recognized for 28 minutes.

Mr. KENT. Mr. Speaker, with the permission of the Speaker and Members of the House, this House has an unusual and extraordinary opportunity of reestablishing and reaffirming a precedent in this case which has come down from the very foundation of the Government; and in this connection may I call attention to the fact that the Elections Committee was the first committee that was appointed by the First Congress. So, we have the extreme pleasure of participating before the first committee that was ever established by the Congress of the United States, which has always been extremely jealous of its dignity and of its ability to control the proceedings of the House of Representatives, according to the precedents of the House itself.

Somewhere throughout the arguments in some of the precedents it was endeavored to be established that upon this question of inhabitancy, or any other question affecting the qualifications of Members of Congress, the Congress should leave the matter to the particular States from which a representative claimed a seat, in order that that particular State should itself fix what it believed was the proper rule affecting inhabitancy. But I do not believe that it will be even slightly contended that the State, or any State of the Union, has, under our Constitution, any right to fix the qualifications for a Representative.

The qualifications, of course, are fixed in the Constitution, and by a separate section of the Constitution, only the time and the manner and the place of holding elections are left to the States themselves.

Therefore, in the principal case which has come down to us, the Congress at the very outset called attention to the fact that it was jealous of its jurisdiction, and that it was the exclusive judge in determining the qualifications of its Members.

Before going into an analysis of the facts, as I will read them in chronological order, I may again state what the minority leader stated in bringing this matter to the attention of the committee.

No possible political advantage can be gained in this matter by any party now represented in this House of Representatives. Numerically we all understand how the great political parties are represented in this House. We also understand, from common knowledge, that the minority in this House could not possibly procure a seat if this matter were decided adversely to the sitting Member. By a long line of precedents it has been definitely established that even though the gentleman who received the second highest number of votes in this matter were contesting, he could not possibly be entitled to this seat if Mr. BECK were held to be disqualified.

So, from the first congressional district of Pennsylvania, if Mr. BECK is not qualified to sit, unquestionably some one of the same political faith will succeed him, and no party advantage can therefore be obtained by the minority in this House; and by reason of the minority now existing, no party advantage can be obtained by the majority in this House.

The second section of Article I of the Constitution provides—and in order that it may be fresh in our minds I will read it now:

The House of Representatives shall be composed of Members chosen every second year by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the

most numerous branch of the State legislature. No person shall be a Representative who shall not have attained the age of 25 years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

The facts are as follows:

1. JAMES M. BECK was born in Philadelphia on July 9, 1861, and was educated in the public schools there and later in Moravian College at Bethlehem, Pa.

2. In 1884 he was admitted to the Philadelphia bar.

3. His statement read in the record from the printed statement released for publication January 7, 1928, is silent upon the fact that in the first term of President Cleveland he was appointed assistant United States district attorney for the eastern district of Pennsylvania and served in that capacity for four years. (See p. 38 of hearings.)

4. As the result of presidential appointment of President Cleveland in the latter's second term, Mr. BECK served for four years as United States district attorney for the same district.

5. In 1900 he was appointed Assistant Attorney General by President McKinley, moved to Washington, retained his voting residence in Philadelphia, and resigned that position in 1903. (See p. 38.)

6. At the age of 42 Mr. BECK went to New York in 1903 to practice law in order to secure a competence. (See p. 39.)

7. He remained in New York until November, 1920. (See p. 39.)

8. He owned at different times two homes in New York City, both of which were sold at or about November, 1920. (See p. 39.)

9. He purchased a property in Sea Bright, N. J., about 25 years ago, owning the fee simple. He is still possessed of the fee-simple title to that real estate.

10. He voted in New York up until the time of his removal from that State.

11. He paid personal-property and real-estate taxes in Sea Bright, N. J., in 1921 and having removed to Washington was qualified to vote in New Jersey in 1921, and did then and thereafter, until 1926, at least, maintain intentionally a voting status in New Jersey.

12. He was in a similar position in 1922 and voted in Sea Bright, N. J., in the congressional elections of that year.

13. He paid personal-property and real-estate taxes in Sea Bright, N. J., in 1923 but failed to vote that year.

14. He paid personal-property and real-estate taxes at Sea Bright, N. J., in 1924 and voted by mail, as did his wife, at Sea Bright, N. J., in the presidential elections of that year.

15. He paid personal-property and real-estate taxes at Sea Bright, N. J., for 1925.

16. He paid personal-property and real-estate taxes at Sea Bright, N. J., for 1926.

17. He paid personal-property and real-estate taxes at Sea Bright, N. J., for 1927.

18. The Sea Bright, N. J., property is a large, handsome, and expensive property on the ocean front. Mr. BECK rented that property and had it for sale until the summer of 1927, and in that summer he withdrew the property from sale and used it himself.

19. The Sea Bright, N. J., property is in the custody of the caretaker, who lives upon it, and he together with his wife are qualified voters of New Jersey.

20. After the presidential elections in 1924 in which Mr. and Mrs. Beck voted, no other acts were performed by them until 1926 showing they were not entitled to vote in the State of New Jersey nor showing withdrawal of claims to voting privileges in that State.

21. In November of 1920, being assured that he would be connected with the Harding administration in some capacity, he sold his property in New York and acquired, about November, 1920, the fee simple at 1624 Twenty-first Street NW., in Washington, D. C. He resided in Washington from November, 1920, until June of 1921 without any official connection with the United States Government.

22. He retained his law office in New York City from November, 1920, up to the time he became Solicitor General in June, 1921, by President Harding's appointment.

23. He still owns that property in Washington, D. C. (See p. 40.)

24. In 1925 he resigned as Solicitor General and opened a law office in the Southern Building in Washington, D. C. (See p. 65.)

25. He is now, and was when elected to Congress, residing principally and exclusively at 1624 Twenty-first Street NW., Washington, D. C., without change of status which began in November, 1920, excepting that he in May, 1925, long prior to his election to Congress, opened a law office in the Southern Building in the National Capital.

26. He has no law office in Philadelphia, having ceased to practice there in 1900, and has nothing more in that city than an alleged voting residence acquired through the execution of an alleged lease on July 6, 1926. (See p. 43.)

27. Mr. BECK is married and has two children. Both children are in Europe and he resides with his wife at his Washington address, excepting that in the summer of 1927 he resided with her at Sea Bright, N. J.

28. He is associated in the law practice in Washington, D. C., with several other lawyers in the same suite of offices, and department records show that these lawyers practice before all governmental departments.

29. His name appears in the telephone book in Washington, D. C., as a resident at 1624 Twenty-first Street NW. and as an attorney in the Southern Building, and he maintains telephones at both places.

30. His automobiles are registered in Washington, D. C., and he never had an automobile registered or licensed in the State of Pennsylvania. (See p. 66.)

31. The home in Washington, D. C., is large and commodious, containing on the ground floor leading from Twenty-first Street a reception room, a den or office in which Mr. BECK spends some of his time with some of his books; on the second floor there are many books in the large library, sitting room, reception room, dining room, and other rooms. On the next two floors there are rooms for Mr. BECK's family, guests, and servants. There are four servants in the Washington home and a chauffeur who operates two of Mr. BECK's automobiles which are in operation and cares for an additional one not in operation. (See pp. 64–65.)

33. Mr. BECK has been for his entire lifetime a voracious reader and has written several books. He has, according to his estimate, a large comprehensive library of several thousand volumes, covering a wide variety of subjects.

34. In Philadelphia he has no books, estimated by himself at less than half a dozen.

35. According to his own statement, all that he holds dear in life, including his books, furnishings, works of art, and things of like character, are in his Washington home.

36. At 1414 Spruce Street, Philadelphia, there is an apartment house known as the Richelieu, partly owned and altogether controlled by Albert M. Greenfield, Philadelphia real-estate operator, prominent in organization politics in Philadelphia.

37. On July 6, 1926, a lease was alleged to have been entered into between Greenfield and Mr. BECK for two rooms, kitchenette, and bath on the second floor of that apartment house.

38. In this apartment Mr. BECK has never eaten a meal. (See p. 59.)

39. According to his claim, his sister resides there almost continuously, and when she occupies it he himself does not sleep there. Since she occupies the same continuously, he does not sleep there except perhaps rarely.

40. The apartment contains one bedroom.

41. The janitor of the apartment, admittedly without credibility, stated on one occasion that he had seen Mr. BECK in the apartment house only three times in 1927 and about 15 times from July, 1926, to the present time. He was friendly to Mr. BECK on the stand.

42. After having used the apartment himself, he turned the same over during a part of 1926 for the temporary use of a Mr. Ackerson, who held a position with the Sesquicentennial Exposition at Philadelphia.

43. Mr. BECK had not and has no clothes in that apartment, nor has any other member of his family except perhaps his sister. His clothes are taken in and out of the apartment only when he visits the same. (See p. 59.)

44. He has bank accounts in Washington, New York, Philadelphia, London, Paris, and Geneva.

45. Up to the present time he has paid only 25 cents in taxes in the State of Pennsylvania since his alleged removal back to Pennsylvania.

46. He has not submitted himself to taxation in 1926 and 1927, although claiming to be an inhabitant of Pennsylvania and subject to its laws.

47. He failed to submit himself to the taxing power of Pennsylvania by making full disclosure of taxable property in that State when requested so to do at or about the time of his election and by default after the election he was arbitrarily assessed at $20,000. At no time did he perform any legal duty requiring him to submit himself to taxation.

48. At the time of his election and with his knowledge he was a nonresident member of the Art Club, Philadelphia, and the Franklin Inn Club, of Philadelphia, and at the same time he was a resident member of the Metropolitan Club, of Washington, D. C. In the Art Club, of Philadelphia, a nonresident

member is one who resides more than 50 miles beyond the city. In the Metropolitan Club, of Washington, a nonresident member is one who resides 30 miles beyond the city. (See p. 70.)

49. Mr. BECK knowingly remained upon the nonresident members' list of the Art Club of Philadelphia until January 1, 1928.

50. During 1926, up to his election on November 8, 1927, he registered at hotels in Philadelphia without exception as a resident of Washington, D. C. After his election in 1927 he, without exception, continued to register at Philadelphia hotels as a resident of Washington, D. C.

51. In his correspondence with the Union League of New York in ordering cigars and directing his bills to be sent to certain designations Mr. BECK always referred to "my residence at 1624 Twenty-first Street NW., Washington, D. C.," and "my Sea Bright, N. J., home." On one occasion, in a lengthy correspondence extending through 1926, 1927, and 1928, he directed cigars to be sent to the Art Club at Philadelphia. At no time did he refer to a home residence, habitation, or domicile at 1414 Spruce Street, Philadelphia.

I have read the clause in the Constitution which refers to qualifications for a Representative in Congress. I will ask the House to bear with me while I read that part of the clause in the Constitution which fixes the qualifications for Senators.

On page 12 of the House Manual and Digest we find the following:

> No person shall be elected a Senator who shall not have attained to the age of 30 years and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

It will be noted that the Constitution retained the word "inhabitant" in both classes, fixing qualifications for both branches of the Congress.

Then, in fixing the qualifications for the Executive, on page 48 of the House Manual, we find the framers used the following language:

> No person except a natural-born citizen or a citizen of the United States at the time of the adoption of this Constitution shall be eligible to the office of President. Neither shall any person be eligible to that office who shall not have attained to the age of 35 years and been 14 years a resident within the United States.

It will there be noted that the framers used the word "inhabitant" of particular States when they fixed qualifications for both branches of the National Legislature; but when fixing the qualifications for President, intentionally and in order to care for certain persons like Alexander Hamilton and others, they fixed 14 years as the period of residence, but used, distinctly and unqualifiedly, the word "resident" instead of the word "inhabitant," so that it would not be necessary for the President to be at the particular time an inhabitant of a particular State, but he could be a resident out through the United States.

In the twelfth amendment, in article 12, the following language is again significantly used. This is with regard to the meeting of the Electoral College. It is found at page 78 of the House Manual.

> The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom at least shall not be an inhabitant of the same State with themselves.

Again designedly using the word "inhabitant."

But, very significantly, in our Constitution, in article 14, a great many of our difficulties have been swept away when we come to define the word "inhabitant" with regard to the qualifications for membership of the House of Representatives. There citizenship is defined, on page 82 of the House Manual and Digest:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside.

So it would appear, as we go through the different sections of the Constitution, that the framers were endeavoring to define citizenship. They were not insisting that a citizen be an inhabitant of a State. They did not insist that the President should be a specific inhabitant of a State, or any particular State of which he was an inhabitant at the time of his election, but that he needed to be only 14 years a resident of the United States.

But, significantly—so significantly that it must challenge the attention of the committee—when they fixed the qualifications for Members of the National Legislature they insisted that they be inhabitants of the State from which they came when elected.

In a discussion of this character it is well to go to the fountainhead of our knowledge upon the subject, and I therefore quote from volume 3 of Documentary History of the Constitution, December, 1899, beginning on page 471. On Wednesday, August 8, 1787, and, of course, prior to the report of the committee on style the identical article and section in question were before the convention for consideration. We find the following language on the above page:

> Mr. Sherman, moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.
>
> Mr. Madison 2ded the motion. both were vague, but the latter ("less liable" stricken out) least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virg^{a}. concerning the meaning of residence as a qualification of Representatives which were determined more according to the affection or dislike to the man in question, than to any fixt interpretation of the word.
>
> Mr. Wilson preferred "inhabitant."
>
> Mr. Gov. Morris was opposed to both and for requiring nothing more than a freehold. He quoted great disputes in N. York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely chose a nonresident—It is improper as in the 1st. branch, *the people at large,* not the *States* are represented.
>
> Mr. Rutlidge urged & moved that a residence of 7 years shd be required in the State Wherein the Member shd be elected. An emigrant from N. England to S. C. or Georgia would know ("as" stricken out) less of its affairs and could not be supposed to acquire a thorough knowledge in less time.
>
> Mr. Read reminded him that we were now forming a *Nat^{l} Gov^{t}* and such a regulation would correspond little with the idea that we were one people.
>
> Mr. Wilson enforced the same consideration.
>
> Mr. MERCER. Such a regulation would present a greater alienship among the States than ("n" written upon "t") existed under the old federal system. It would interweave local prejudices & State distinctions in the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland ("under these" stricken out) concerning the term "residence."
>
> Mr. Elseworth thought seven years of residence was by far too long a term but that some fixt term of previous resident would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.
>
> Mr. Dickenson ("s" effaced) proposed that it should read inhabitant actually resident for ——— year. This would render the meaning less indeterminate.
>
> Mr. WILSON. If a short term should be inserted in the bank, ("it might" stricken out) so strict an expression might be construed to exclude the members of the Legislature, who could not be said to be actual residents in their States whilst at the Seat of the Gen^{l} Government.
>
> Mr. MERCER. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original State; Although a want of the necessary knowledge could not be in such case be presumed.
>
> Mr. Mason thought 7 years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan that the Representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, Rich men ("may" stricken out) of neighboring States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State. This is the practice in the boroughs of England.
>
> On the question for postponing in order to consider Mr. Dickinson's motion.
>
> N. H. no. Mas. no C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a}. no. N. C. no. S. . ay. Geo. ay.
>
> On / question for inserting "inhabitant" in place of "resident"—Ag^{d} to mem. com.

From the foregoing it would clearly appear that the founders of the Constitution had definitely in mind a case exactly similar to the present one. If there was one thing that the founding Fathers desired to prevent in their new experiment upon this hemisphere it surely was the rotton borough system of Great Britain. The entire tenor of the debate just above cited demanded that a Representative should come to the seat of government from the State in which he was a bona fide inhabitant, not a resident only and mere voting citizen, nor one having temporary or actual or permanent domicile for purposes of taxation and other purposes for the exercise of the right of citizenship. But it was desired that he should be an actual inhabitant completely identified with the State which he chose to represent. He was not to be a person, rich, or poor, coming into one State from another in which he was an inhabitant and then attempting to seek a place in the public councils of one State after having failed in his political ambitions elsewhere.

This view was debated in the most famous and best considered case upon the subject in the history of our legislative procedure, namely, the case of Mr. John Bailey, claiming to be entitled to

a seat in the Eighteenth Congress from the State of Massachusetts. Before the House passes definitely upon this question it would be well for every Member to read the Annals of Congress, volume 42, in subvolume 18, part 2, 1824, Eighteenth Congress, first session, beginning at page 1794. This case has been very thoroughly considered in Hinds' Precedents, volume 1, published in 1907, beginning at page 419. I deem this case to be of sufficient importance that I quote copiously from it. That case in the Eighteenth Congress was decided without party lines being taken into consideration. We are fortunate in this regard because the House of Representatives of the Seventieth Congress has an unusual opportunity of laying down and fixing a precedent. Mr. Bailey opened the debate (see p. 1794, above quoted) and admitted practically all of the facts showing conclusively that on October 1, 1817, while a resident of Massachusetts, he was appointed as a clerk in the Department of State. He immediately repaired to Washington and entered upon the duties of his position and continued to hold the position and reside in Washington until October 3, 1823, when he resigned the appointment.

It did not appear that he exercised any of the rights of citizenship in his district and there was evidence to show that he considered Massachusetts as his home and his residence in Washington only temporary. It was shown that Mr. Bailey resided in Washington only temporarily. It was shown that Mr. Bailey resided in Washington at a public hotel with occasional absences on business to Massachusetts until his marriage in Washington, at which time he took up his residence with his wife's mother. The election at which Mr. Bailey was chosen a Representative was held September 8, 1823, at which time he was actually residing in Washington in his capacity as a clerk in the State Department. He actually had, however, a large law library in the State of Massachusetts. He never claimed any other State as a place of inhabitancy, residence, domicile, or citizenship. The House had only to deal with the question of his status in the State of Massachusetts and District of Columbia (see p. 1799):

The report proceeds to state "that the true theory of representative government" requires that the representative be "selected from the bosom of that society which is composed of his constituents"; and that he should possess a knowledge of their character and political views, and for that purpose should "mingle in their company and join in their conversations"; and "that he should especially have that reciprocity of feeling and identity of interest which exist only among members of the same community." This is a beautiful theory, but happens to make no part of our Constitution, and therefore has no application to the case in question. We are all prone to fancy to ourselves what ought to be a rule of action, and thence to infer that such is in fact the established rule. This is an error. Our inquiry now is, What is the Constitution? Not, what ought it to be? That the above picture is ideal, and unsupported by the Constitution, is easily shown.

If the people of a country, by common consent, consider a person as an inhabitant of a State, though he is temporarily absent in public employment, this must be received as the true meaning of the word, even if there were not a single formal decision on the point. Such general practice shows what is the common-sense interpretation of the word, and is conclusive of the question.

It was further argued:

What are the facts in the case before us? The Member is a native of Massachusetts; he is intimately acquainted with the policy and interest of that State; he is presumed to participate in the feelings of his immediate constituents; he has been reared up in the bosom of that society, where his father still resides, and is bound to them by the strongest ties; he has been honored, on several occasions, with a seat in their State legislatures. A few years past, he was appointed to discharge the duties of a clerk in the State Department, within this District; that truce was accepted, with the positive declaration that he did not intend to renounce his native State; and that Massachusetts was his home. During his residence here, he boarded at a tavern, until within some few months previous to his selection, and occasionally returned to Massachusetts. He purchased no property here; and that which he possessed consisting of near 800 volumes was left in that State. He has declined all participation in the concerns of this District. His constituents and himself had intercourse with each other, and understood, much better than we can know, the relations which existed between them. Considering him a citizen and inhabitant of their State, they called upon him to know whether he was willing to serve them in Congress. He yielded to their solicitation, and was elected by a majority of all the votes in the district. No person has claimed his place. But his eligibility has been contested, in a remonstrance signed by 26 persons only, and inclosed under a blank cover, to a Member of Congress, and we are called upon to vacate his seat.

Against the seating of Mr. Bailey it was argued as follows:

Let us discard, sir, these subtle refinements, which only lead us from perplexity to absurdity, and construe this Constitution as we should, according to the plain common acceptation of words. It is a question of common sense merely. The gentleman has resided in this city more than seven years; his family is here; his dwelling place is here; it is his home. He is eligible to any office under the corporation of the place—a subject in the District—liable to jury duties. I repeat the question which I put to the committee before. It has not yet been answered. If this District was entitled to a Delegate in this House, whose qualification should be that he was an inhabitant of the District of Columbia, would he not be eligible to the place? Is he not now entitled to every privilege or right of an inhabitant of this District, be those rights what they may, civil or political? These questions must be answered in the affirmative; and unless it can be shown that he has a sort of double capacity, which may constitute him an inhabitant of two distinct places at one time, and furnish him with two different domiciles, he must be considered as an inhabitant of this District. When the nature of his rights may be here, or their extent, is a question of no importance. Be they greater or less, he is entitled to them, whatever they may be. It is enough for us that he has become an inhabitant of the District, and has lost his inhabitancy in Massachusetts, and is thereby rendered obnoxious to that clause of the Constitution which forbids his eligibility in that State.

A powerful argument was used on page 1838 relative to those who are inhabitants of the District of Columbia:

An inhabitant of one State is deprived of the right of being elected in all the other States. Is there any reason in the imagination of any part of the House why this District, or those who are inhabitants here, should be more highly favored and gifted with more unlimited privileges than the inhabitants of the States? Where, then, is the disfranchisement which has been so often complained of and resounded in this debate, and in what does it consist? The inhabitants of this District are, in this respect, on a perfect equality with all others. If they have not the right of sitting in this House as Members, the fault, if anywhere, is in the Constitution which has denied the District a representation because it is a union of the State and not of Territories.

See also the following, on page 1838:

If, by removing to this District, he loses his inhabitancy in his original State, it is his free act, and he must submit to the disability in return for the advantages, if any, which he may have supposed himself to acquire by changing his previous residence. The whole question, therefore, results in the inquiry whether the facts in the case do not show a change of domicile—whether, under all the circumstances existing in relation to the residence of the gentleman in this city, he must not be deemed to have been so established here as to create an inhabitancy in this District? Had his residence here been transient and not uniform; had he left a dwelling house in Massachusetts, in which his family resided for any part of the year; had he left there any insignia of a home—furniture or any property which usually accompanies a household establishment—all or any of these would be deemed indications that his domicile in Massachusetts was not abandoned. Instead of any indications of this nature we find him here for years, discharging the duties of an office permanent in their nature—establishing domestic connections in this city, and residing here with all the characteristics of a permanent inhabitant. Common sense seems to teach us that he is so; that he has emigrated from Massachusetts in search of better fortunes which perhaps he has acquired. In forming my opinion, sir, I disregard the declarations which have been occasionally expressed by him, that he considered Massachusetts as his home; that this city was a temporary residence. Every man doubtless intends to change his domicile when better prospects elsewhere are presented. It is probable he came here for the enjoyment of the public office which he has held, and that whenever it became convenient or necessary to leave it he intended to return to Massachusetts, unless he could more beneficially establish himself elsewhere. All these vague and contingent intentions are entertained by every man.

In a powerful argument, beginning on page 1838, Mr. Storrs uses the following language:

The circumstances of the case now before us call upon us to maintain with vigilance some of the most important principles of the Constitution—principles which were established for the preservation of the purity and independence of the House of Representatives. We are not only asked to allow a seat here to one whose inhabitancy is not bona fide among his constituents, but one who comes from the executive departments. If this District is to furnish Members for this House, it is the more dangerous if they are to be educated under the immediate eye of their political patrons. The framers of the Constitution intended that a Representative here should come from the bosom of his constituents; that he should live among them; be conversant with their feelings; their wishes, and their wants; that he should know their political principles, and be identified with the people whom he represents. They entertained no notions of that technical inhabitancy which has been set up here to fritter away the most salutary purposes of the Constitution. The example of England was before them where, under the form, though in mockery, of representative government, the Parliament was filled with placemen and pensioners. They never intended to turn the States of this Union into rotten boroughs or to make this

District the great and common borough of all the States. There is something so pregnant with mischief to the character of this House in the doctrines which have been advanced, and so threatening in its purity, that I feel as if, in giving up or relaxing the construction of this part of the Constitution, we give up the Constitution itself, or render it an idle mockery. If there is anything to be feared in this Government, it is the corrupting influence of patronage. The Constitution considers all placement of the Government as unfit to represent the people in the legislative department. I speak, sir, with no allusion to the gentleman whose seat is now questioned; but all history and experience, our observation of human nature, and our knowledge of the motives and springs of human action, warn us to look with jealousy to any interpretation of this part of the Constitution which shall approximate to a relaxation of its spirit and intention. If we sanction the principle that the incumbents of office here are to be universally eligible in the States, I beg, gentlemen, to reflect what an enormous and irresistible weight of influence may be brought to bear upon the State elections, to promote the views of government and fill this House with the creatures of executive power. The patronage of government in the States will be devoted to this end. The connections of men in office here are powerful and numerous elsewhere. The officers of your Government scattered throughout the Union are multiplying every day. Dependent on governmental favor, they naturally rally round the power which feeds them, and will be found subservient to its will. This vast machinery, when once organized and put in motion, will exercise a powerful control in the States, and the election will feel the worst of all influence in a free government. Candidates for this House, furnished from the departments here, will be supported by your marshals, judges, and hosts of customhouse and other executive officers of the States.

The Treasury of the Nation will sustain, through the dispensations of Executive bounty, this pernicious system. We have no reason to believe that, in all our future history, administrations may not be found which might avail themselves of such means to sustain their influence in this House. The only barrier to Executive power is here—its only effectual restraint is in preserving the identification of this House with the people and closing every avenue to the approach of Executive influence in our deliberations. Sanction the doctrine that the officers of the departments are eligible and we may find here, at some future day, a semiofficial cabinet, a bench of ministers—men who have merely laid aside the forms of office, but whose political feelings and partiality and obligations center in the Executive will; a packed Parliament—men who are taught to look anywhere but where they should look for support, to the approbation of their constituents. Why has the Constitution prohibited any officer of the Government from holding a seat in Congress? *It is*, sir, because they are presumed to be politically unfit for legislation—because the influence of patronage is often too strong to be resisted—because their interests and partialities are not in unison with the mass of the Nation; and because all experience has proved that they are the most pliant instruments of the power which supports them in office and dispenses the public emoluments.

Mr. Hall, of North Carolina, beginning on page 1854, argued as follows:

Gentlemen seem to have fallen into some strange hallucination on this subject. In maintaining their doctrine they undertake to subvert a plain and imperative requisition of the fundamental statute of this land, by applying to it, constructively, the principles of the common law of nations. Suppose that in some of the State courts any lawyer in a plain case of law and fact, a case where a statute applied explicitly to some crime, a case in which the evidence was completely made out and the law and the fact in entire unison—what would be thought, in such a case, of any lawyer who should attempt to overthrow, by applying to it the principles of the British common law from Blackstone, or by preaching a politico-moral homily from Paley and Beccaria? And, yet, it would be of a piece with what is now attempted.

Mr. Speaker, I have prescribed to myself a very plain and simple method of construing this instrument which I hold in my hand, the Constitution of the United States—a method which, if pursued with a view solely to the truth, will generally be right. It is, to take the plain vernacular meaning of the words in which any subject is couched, and endeavor, in their plain sense, to find what was the intention of its framers. Having to the best of my judgment done this, I adhere to that interpretation without attempting to bend or twist it to answer, by a strained construction, any other purposes which, were I to do, I should be guilty of treason against my understanding and my moral sense.

I have applied this rule to that part of the Constitution which says "that no person shall be a Representative who shall not have attained to the age of 25 years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen." From which, it appears to me, that the framers of the Constitution meant to exclude two orders of persons from the House of Representatives as Members—persons who are not citizens of the United States, and citizens who are habitual nonresidents of the States in which they are elected. So that the Constitution demands, in so many words, that to be a Representative it is not only necessary to be a citizen of the United States, but, in addition to this, a person to become so must live among those who are to become his constituents, evidently drawing a plain and marked line of distinction between citizenship and inhabitance.

Gentlemen fall into this error by confounding the abstract political right of citizenship with the act of inhabitance which the Constitution requires; but, sir, I consider them doubly disqualified from becoming Members of this House by habitual residence out of the State for which they were or might be elected (I know of no better definition of inhabitance than habitual residence; I would thank any gentleman for a better), and officeholding under the United States, which, so long as they continue to do, is a disqualification in the face of that part of the Constitution which requires that "no person holding any office under the United States shall be a Member of either House during his continuance in office"—showing clearly an intention to keep distinct and immiscible the executive and legislative functions of the Government; and, sir, to return to the gentleman from Massachusetts, I feel no hesitation in saying that his seat ought to be vacated upon this ground, if he labored under no other disability.

Hinds' Precedents, volume 1, beginning at page 420, digests the famous Bailey case in part as follows:

The committee comment upon the fact that the word "resident" had first been proposed but had been put aside for "inhabitant" as being a "stronger" term, intended to express more clearly their intention that the persons to be elected should be completely identified with the State in which they were to be chosen.

The word "inhabitant" comprehended a simple fact—locality of existence; that of "citizen" a combination of civil privileges, some of which may be enjoyed in any of the States of the Union. The word "citizen" might properly be construed to mean a member of a political society, and, although he might be absent for years and cease to be an inhabitant of its territory, his rights of citizenship might not be thereby forfeited. The committee quote Vattel and Jacob's Law Dictionary to show that the character of inhabitant is derived from habitation and abode and not from political privileges.

See also page 421:

The construction put on the word "inhabitant" by the various States was not particularly pertinent, as it might import a different sense in different States. The construction merely. Mr. Bailey's residence was in the District. He was eligible for office there. If the District were entitled to a Delegate in the House whose qualifications should be that he should be an inhabitant of the District, he would certainly be eligible for that place. Therefore he must have lost his inhabitancy in Massachusetts. So far as inhabitancy was concerned, the District stood on the same basis as the other Territories of the United States.

Also see the following:

An inhabitant of one State was deprived of the right of being elected in all the other States. Was there any reason why the inhabitants of the District should be more highly favored than the inhabitants of the States? It was inevitable that in moving from State to State political and even personal rights must suffer modification or extinction with the changed condition of law. So in moving to the District certain rights enjoyed in the States were lost. If the residence of Mr. Bailey here had been transient and not uniform, had he left a dwelling house in Massachusetts in which his family resided a part of the year, had he left there any of the insignia of a household establishment, there would be indication that his domicile in Massachusetts had not been abandoned. It had been argued that the expressed intention to return to Massachusetts should govern. But the law ascertained intention in such a case by deducting from facts. The danger of allowing the Executive to furnish Members of Congress from the public service was discussed at length. The committee did not contend that a Member must be actually residing in a State at the time of his election. Foreign ministers going abroad, but from the nature of the case precluded from becoming citizens of a foreign power or obtaining the rights of inhabitancy, did not lose their inhabitancy at home by absence.

It will be argued in behalf of the sitting Member that the case of Phillip B. Key is of importance (see Hinds' Precedents, vol. 1, p. 417):

As to his inhabitancy in the State, the committee report facts showing that Mr. Key was a native of Maryland and a citizen and resident of the State at the time of the adoption of the Constitution of 1787; that he was never a citizen or resident of any other of the United States; that in 1801 he removed from Maryland to his house in Georgetown, about 2 miles without the boundaries of Maryland, where he continued to reside until 1806, when, on September 18, he removed with his family and household to a partially completed summer home (intended for himself and not for an overseer), which he was building on an estate in Maryland bought by him in 1805, and which was part of an estate owned many years by Mrs. Key's family. Here he was residing October 6, 1806, the date of his election. On October 20, 1806,

he removed with his family and household to his house near Georgetown which he lived in until July, 1807, when they returned to the Maryland house and lived in and inhabited it until October 23, 1807. On that date they returned to the house near Georgetown, that he might attend to his duties in Congress. It further appeared that he had continud the practice of law in Maryland and had declined practice in the District of Columbia; and that in January, February, and March, 1806, he had declared that he intended to reside in Maryland, and that he bought the land with that intention. It was urged and admitted that the Maryland house was fitted only for a summer residence, and was much inferior to the house near Georgetown; and that the latter was left practically with its furnishings complete whenever the family went to Maryland.

But that case is so readily distinguished from the present one that it is amazing that the Key case should have been even referred to. First he was a native of Maryland. He was never a resident or citizen of any other of the United States. He moved into the District of Columbia. But at the same time he was constructing a summer home in the State of Maryland on his own property or at least the property of his wife. He was residing on that property on the date of his election. He continued the practice of law in Maryland and declined to practice in the District of Columbia. He bought 1,000 acres of land about a year before his election in the State of Maryland, declaring it as his intention to use it as his permanent residence. In the present case Mr. BECK left Pennsylvania in 1903 with the intention of securing a competence. He bought property in New York and voted there. He bought property in New Jersey and voted there. He established a law office in the District of Columbia and resides in that District, practicing law actively here and no other place, in law offices with a firm of lawyers which practices before the governmental departments in matters which have a direct and positive bearing upon the Treasury and governmental policies of the United States. His one act in Pennsylvania had to do with an attempt to establish a voting residence there, whereas the Constitution requires that he must be an inhabitant.

Another case that will be cited is the case of Charles H. Upton (Hinds' Precedents, vol. 1, p. 297). No case could possibly be a stronger one than the Upton case against the right of Mr. BECK to a seat in this body. Mr. Upton for 25 years prior to consideration of his case had been a freeholder in the State of Virginia. For most of the time he had been a resident and inhabitant of the county of Fairfax, where he and his family were domiciled. For some time prior to the month of November, 1860, the sitting Member had lived in Zanesville, Ohio, where he owned an interest in a newspaper and helped to conduct it. The committee was satisfied that shortly after the Ohio elections Mr. Upton had returned to the county of Fairfax, Va., where his family had remained and there was. From that time forward he continued to be a resident and inhabitant of the State of Virginia. In the present case Mr. BECK at no time disassociated himself or his family from the State of New Jersey or from the District of Columbia. He went to the State of Pennsylvania apparently, and his first entry into the civic life of that State appears to have been through a fraudulent registration on May 3, 1926. In no way has there been complete identification of Mr. BECK with the State of Pennsylvania. As we shall presently argue, he did not become a qualified voter of the State nor did he establish a bona fide residence there.

It is interesting to note that the case of Bayley against Barbour has been cited. It begins with section 435, on page 432, of volume 1 of Hinds' Precedents. At the time of Mr. Barbour's election from Virginia his wife owned real estate in the city of Alexandria. Barbour was a native of Virginia, had always been a citizen of that State, never claimed to have lived elsewhere in a permanent sense, and never exercised the rights of citizenship in any other State or Territory. In the present case Mr. BECK voted in New York and New Jersey for over 21 years, then established a law office in Washington, D. C., and continued at the time of his election and still continues to hold permanent residence here as well as permanent occupation as a legal practitioner. Barbour had his post office, business headquarters, and residence required by statute for service of legal process in Alexandria. He had a temporary winter residence in Washington, but also had a house in Alexandria, where with his family he was residing on the date of the congressional election at which he was elected. Service of process was also made upon him at Alexandria as president of a railroad company. When traveling away from Virginia he invariably registered himself as from Virginia. The House in that case took the same position as did the House in the Bailey case, when they said that Mr. Barbour was in point of fact before and at the time of his election an actual inhabitant of Virginia enjoying all the rights and subject to all the burdens as such.

It is also further remarkable that the case of Eldridge *v.* Underwood (vol. 2, Hinds' Precedents, p. 631) has been cited. An examination of the hearings as well as the debates show conclusively that at the time of the election the contestant was actually an inhabitant of Alabama and that his wife resided in Ohio temporarily only because of inability at that time to reside in Alabama.

Applying the foregoing precedents in the House of Representatives to the particular facts of this case, it is quite clear that Mr. BECK when elected was not an inhabitant of Pennsylvania, either actually or in the constitutional sense. The framers of the Constitution had clearly in mind a case exactly like the present, and therefore they had before them in the original draft the words "resident," "inhabitant," "voter," "occupant," and words having similar and cognate meanings. The original draft, without debate, had carried the word "resident," whereupon, after mature deliberation and without a dissenting voice, the word "inhabitant" was used in this particular clause. The word "inhabitant" then meant exactly what "inhabitant" means now. The States which had been raised up then still exist as States of the same, though enlarged, Federal Union. It was contemplated then, as now, that there were people residing in cities, towns, villages, and upon farms and plantations. A large number of the people in the Nation had been born in Europe and had cast their lots with the Colonists in the Revolution. The English common law had been transferred to America. The old English idea was, according to one text writer, that one of the best tests of inhabitancy in England in determining classifications under acts of Parliament was whether or not an owner, tenant, or occupant manured the land which he occupied and tilled. The theory was that permanency was evidenced by such action, that he who tilled and enriched the soil was an inhabitant, as against one who made barren the soil by temporary use and occupation, and so after many centuries the idea of permanency of occupation and habitual occupation came into use when the word "inhabitancy" was considered. It was conceded then that a man might reside temporarily in several places, but the place which he occupied with the greatest degree of permanency was the place in which he was an inhabitant. And so this theory concerning inhabitancy has become so fixed and determinate in all the law of every State that it is hard to believe that anyone could get another meaning out of it than actual, permanent, and habitual residence, and in addition thereto actual, permanent, habitual residence in a domicile in the place in which he claims to be an inhabitant. Black's Law Dictionary (2d ed., p. 625) defines the word as follows:

> Inhabitant: One who resides actually and permanently in a given place, and has his domicile there. (Ex parte Shaw, 145 U. S. 444, 12 Sup. Ct. 935, 36 L. Ed. 768; The Pizarro, 2 Wheat. 245, 4 L. Ed. 226.)
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> The words "inhabitant," "citizen," and "resident," as employed in different constitutions to define the qualifications of electors, mean substantially the same thing; and one is an inhabitant, resident, or citizen at the place where he has his domicile or home. (Cooley, Const. Lim. *600.) But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and permanent abode than the former, and importing privileges and duties to which a mere resident would not be subject. (Tazewell County *v.* Davenport, 40 Ill. 197.)

The latest authentic definition upon the subject is contained in Corpus Juris, volume 31, page 1194. The term "inhabitant" has been conceived to be entirely free from technicality and declared to have a known and universally accepted meaning, all agreeing in considering "inhabitant" as directly connected with habitation and abode. (Spraggins *v.* Houghton, 3 Ill. 377–397.)

On page 1195 of the same work we find the statement of the general law, both Federal, State, and municipal; "in law the term 'inhabitant' is used technically with varying meaning in respect to permanency of abode." It embraces locality of existence or fixed permanent home and excludes the idea of a temporary residence. All lexicographers distinguish an inhabitant as one who dwells in a place with the intention of making it his home and not a mere transient or temporary sojourner therein. The term embraces the fact of residence at a place with intent to respect and make it his home. The act and intent must concur and the intent may be inferred from declaration and conduct.

See note 86 at bottom of page 1195 of the same volume of Corpus Juris:

> The Latin habitara, the root of this word, imparts by its very construction frequency, constancy, permanency, closeness of connection, attachment, both physical and moral, and the word "in" serves to give additional force to these senses.

Cases in practically all of the States of the Union are quoted to substantiate this doctrine and particularly do cases in Illi-

nois, Indiana, Alabama, Nebraska, Minnesota, Mississippi, New Jersey, New York, Pennsylvania, Texas, Michigan, Kansas, West Virginia, California, Missouri, and Tennessee stand out.

A very leading case is that of Sharp *v.* Casper (36 N. J. L. 387), in which the following language is used:

> One who has an actual, but merely temporary, residence in a place is not in any proper sense an inhabitant of that place. An inhabitant of a town or ward is one who has his domicile there, his fixed habitation and home from which he has no present intention of removing.

See also the following:

> Absence as affecting: Actual residence—that is, personal presence in a place—is one circumstance to determine the domicile or the fact of being an inhabitant, but it is far from being conclusive. A seaman on a long voyage and a soldier in actual service may be, respectively, inhabitants of a place, though not personally present there for years. It depends, therefore, upon many other considerations besides actual presence. Where an old resident and inhabitant, having a domicile from his birth in a particular place or country, the great question whether he has changed his domicile or whether he has ceased to be an inhabitant of one place and become an inhabitant of another will depend mainly upon the question, to be determined from all the circumstances, whether the new residence is temporary or permanent; whether it is occasional, for the purpose of a visit or of accomplishing a temporary object; or whether it is for the purpose of continued residence and abode, until some new resolution be taken to remove. If the departure from one's fixed and settled abode is for a purpose in its nature temporary, whether it be business or pleasure, accompanied with an intent of returning and resuming the former place of abode as soon as such purpose is accomplished; in general, such a person continues to be an inhabitant at such place of abode for all purposes of enjoying civil and political privileges and of being subject to civil duties. (Sears *v.* Boston, 1 Metc. (Mass.) 250, 251.)

And so all the States, as well as the higher courts of the United States, establish that an "inhabitant" is an habitual resident, and that he must have about him a degree of constancy, permanency, and steadiness in an actual domicile in the place of abode.

Therefore the framers of the Constitution recognize clearly the distinction between the words "inhabitant," "resident," "citizen," and "voter," because in the particular clause in question they use the words "citizen of the United States" in fixing the length of time of residence and the word "inhabitant" prescribing qualifications with regard to actual, habitual residence. This is further signified, since in section 2 of Article I the word "inhabitant" was used fixing the qualifications of a Representative, and in section 3 of Article I they also used the word "inhabitant" when fixing the qualifications of Senators, and in section 1 of Article II, clause 4, the framers establish that the President must merely have been a resident for 14 years within the United States, but, of course, it was found nenecessary that he be a natural-born citizen. In the twelfth amendment to the Constitution it is specifically provided that the presidential electors shall vote by ballot for President and Vice President, but one of them, at least, could not be an inhabitant of the same State with such electors. The fourteenth amendment specifically defines "citizenship" as follows:

> All persons born or naturalized in the United States and subject to jurisdiction thereof are citizens of the United States and of the State wherein they reside.

Therefore the framers of the Constitution clearly and concisely gave to the word "inhabitant" a meaning which they expected would run without interruption through the course of existence of the Republic which they were constituting. A Representative and a Senator had to be an inhabitant of his State, but the President needed only to have been a natural-born citizen or a citizen at the time of the adoption of the Constitution and a resident for at least 14 years.

JAMES M. BECK was not an habitual resident nor an inhabitant of Pennsylvania in November, 1927, nor was he a bona fide resident of that State. Furthermore, he was not even a qualified voter.

Under the fourteenth amendment, of course, Mr. BECK was then and is now a citizen of the United States, but he could not possibly be a citizen of the State of Pennsylvania, not being a resident there, but he is a citizen of the United States residing in the District of Columbia, and is therefore a citizen of that District. If the right to vote were given to the citizens of that District, and if it were given by constitutional amendment a Representative or Senator in Congress, or both, would anyone say sincerely that Mr. BECK would not be qualified to represent the District in Congress? There could be no possible question about that, because he is an inhabitant of the District of Columbia, filing his income-tax returns from this District, registering his automobile as a resident of the District of Columbia, residing here with his home, books, paintings, furniture, and his family permanently, and returning his intangible taxes to the taxing authorities within the District.

At the outset of the hearings it was suggested that a man could be an inhabitant of several States. That is clearly an erroneous doctrine, especially in the constitutional sense; because if that were possible under the Constitution, he could qualify for Representative and Senator from several States at one and the same time. This idea, upon mature reflection, runs violently against every constitutional interpretation. But a man can be a resident of several States. He can reside in each of them temporarily, but in order to be an inhabitant under the Constitution it is necessary that he have his domicile in the State in which he claims inhabitancy. On page 10 of the hearings, Mr. DOUGLAS of Arizona, from the committee, suggested by his questions that a bad precedent would be established if we went outside of the Constitution and allowed outsiders to come into the State in order to be elected to Congress. Further answer is made to the inquiry of Mr. BACHMANN, on the committee, who inquired as to whether it would not be a controlling factor to determine the State in which the Representative voted.

This, of course, is not controlling, because the word "citizen," as pointed out in the Bailey case, means nothing more than a member of a political society and is wrapped up about a combination of civil privileges, some of which may be enjoyed in any State or in several States at the same time. Further, the word "citizen" of the United States and of any State is clearly defined by the fourteenth amendment, but no one will dispute that the construction of the word "inhabitant" in this case is purely within the jurisdiction of Congress. The construction put upon the word in any State or all the States is important merely as throwing light upon the general subject. The House of Representatives, always jealous of its own dignity, integrity, as well as its perpetuity, stands out under the Constitution as being the exclusive judge of the qualifications of its Members, and so the House in this case must determine from all the precedents whether the person elected was an inhabitant at the time of his election of the State from which elected, irrespective of his privilege of franchise.

I can conceive of a situation where one State might relax in the stringency of its election laws and permit a man to vote on a property qualification merely, without requiring residence or inhabitancy. Therefore that same person could be an actual inhabitant of another State and be eligible to come to Congress from a State in which he was not a qualified voter, because if he voted in one State he certainly could not be a voter in another. But in this case, it is argued, because of an argument made by one of the members of the Constitutional Convention, the word "inhabitant" would not exclude persons who had been absent for a time upon public or private business; that is true, but Mr. BECK does not come within that classification. His statement and testimony seem to indicate that he believes that having been born in Pennsylvania and having resided there until 1903, he went away, emulating Benjamin Franklin, to secure a competence, and was away from Pennsylvania on public and private business until 1926, but within the terms of the Constitution he was an inhabitant of Pennsylvania until 1903, or at least until he became Assistant Attorney General, and, by his own testimony, he was an inhabitant of New York until 1920. Then he sold his property and became a bona fide inhabitant of the District of Columbia, moving to that District all that he held dear and of which he was most fond. Of course, in 1922 and 1924, under the laws of New Jersey, he may have been qualified to vote, so, therefore, we go back to the old doctrine which the House laid down after seven days of debate over a hundred years ago, when it said that a person in Mr. BECK'S position could be a citizen of the United States with his residence in the District of Columbia.

By choosing citizenship in New Jersey, because he there had real estate, personal property, and a voting residence, and a certain status in New Jersey wrapped up in a combination of civil privileges, Mr. BECK was authorized to vote, but what has he done to change the condition which existed from 1920 until 1926? He did not move his residence; he did not create a domicile; he attempted merely to add to an already existing status, to wit, while he owned property in New Jersey and had his home in Washington and was a mere private citizen engaged in the practice of the law at his permanent home in Washington, D. C., he attempted by artificial means to add to an already existing status by creating the combination civil privileges in Philadelphia which would do nothing more than transfer his voting status from New Jersey to Pennsylvania. But he has performed no act of a permanent nature, nor has engaged in a continuous, habitual, and permanent source of conduct which

would justify him in saying that he is an inhabitant of Pennsylvania or that he has been such an inhabitant since 1903.

At no point in Mr. BECK's testimony does he do any more than claim that he had resumed his citizenship in Pennsylvania. Nowhere does he make the claim that he became again an inhabitant. (See p. 21 of the hearings.)

On page 40, he admits that in 1924, having no vote in Washington, and having lost his vote in New York, he voted from his summer home in New Jersey, but that he took no steps whatever after 1924, until the present time, in New Jersey, to show that he had abandoned his civil privileges there.

Therefore if he had done nothing in Philadelphia, attempting to add to an already existing status, he would still have been a qualified voter in New Jersey, with his habitation in Washington, D. C.

Can it be supposed that the claimant is an inhabitant of Pennsylvania when he does not eat or sleep in what he claims to be his residence there? On page 59 it is shown that he has no wearing apparel in this so-called habitation. He has less than six books and perhaps none in this apartment, his sister resides continuously at the apartment and has done so for the past year. In the summer of 1927 Mr. BECK was at his Sea Bright, N. J., home and for another month of that year he was in Europe. His children both live in Europe. His wife has scarcely ever occupied this apartment—there is only one bedroom in it; therefore, when his sister is there, he testified he slept at the Art Club, Philadelphia, of which he was, knowingly, a nonresident member. If his sister occupied the apartment continuously, Mr. BECK, therefore, never slept in it, having never eaten in it, having no clothes and no books in it, and since his wife rarely, if ever, occupied it, it is difficult to understand just what Mr. BECK's argument is, and how he, as a man of high intellect and legal attainments, can indulge himself with the belief that he is an inhabitant of Pennsylvania. The strongest thing that can be said for him is, taking his statement at its face value, he intended to resume his citizenship in Pennsylvania.

Residence is, in some degree, a matter of intention, inhabitancy is in every degree a question of fact, shown by the acts of him who claims to be an inhabitant. There may be some element of intention about it, but the intent must be shown by unqualified acts, showing a consummated desire to become an habitual resident, with continuous acts showing conclusive degree of permanency.

On page 58 it is shown in his testimony that Mr. BECK established this apartment that he might have the status of a citizen:

Mr. BECK. I do not know as to that. But what I do want to impress upon the committee is this: That in taking that apartment when I rented it, what was the dominant purpose with me was to again establish a status in Philadelphia as one of its people. The seat in Congress was then a possibility undoubtedly, and I would not want to say, and could not say truthfully, that it had nothing to do with the renting of the apartment.

But I was by no means clear in my mind that I wanted to go to Congress. It involved a very substantial sacrifice to me. But, at least, I did not want to be the kind of Washingtonian who was content to escape all civic responsibilities and duties, and I felt I had all my life preached the duty of every citizen taking a part in politics, and I ought to have a status as a citizen and that I could not have it in Washington, and I established it in Philadelphia to do my civic duty.

On pages 53 and 54, may we call attention to the fact that Mr. BECK practically admits, although in a very hesitating way, that his sister occupied the apartment continuously and, therefore, he could not have done so.

Mr. KENT. Now, when did you go back to Philadelphia after that? What was your first trip back?

Mr. BECK. I could not tell you about my first trip after that.

Mr. KENT. How long had you been there before you made the three speeches?

Mr. BECK. I doubt very much whether I was in Philadelphia except those three nights before the election—I mean in the immediately antecedent days. I could not tell you exactly. The situation is this, Mr. KENT: I have been in Philadelphia, as my statement shows, if you exclude the summer months, almost every week. I have business in New York. I will break my journey in Philadelphia, then go to New York and transact my business there; then spend another night in Philadelphia, and then come here. Sometimes I have public addresses to make in Philadelphia, and then I will stay there longer. But if you want to prove that—I am going to admit it—and I want to admit anything that is true, whether it helps or hurts my case—if you want to prove that I spend more time in my Washington home than in my Philadelphia home, I admit it. And if that is fatal to my case that is the end of the case.

See pages 53 and 54. This apartment, the testimony shows conclusively, was rented solely for the purpose of establishing a voting residence in the erroneous belief that such procedure would satisfy the Constitution of the United States fixing qualifications for Representatives. We quote from pages 51 and 52 of the hearings:

Mr. KENT. Now, may we have the name of the sister, please?

Mr. BECK. Miss Helen Beck.

Mr. KENT. Now, you have stated that when she occupied the apartment at night, you did not. You have also stated in your statement before the committee that she resides there almost continuously?

Mr. BECK. I say, since she has returned from Europe. I mean in the last year, I think it was, she has been there right along.

Mr. KENT. In Europe?

Mr. BECK. No; I mean to say that she has been at that apartment.

Mr. KENT. I see—and she has occupied it at night?

Mr. BECK. Yes. But whenever I wanted it, I would take it.

Mr. KENT. She goes down, now, does she not, a couple of times to get the mail?

Mr. BECK. She does not go down. She is there.

Mr. KENT. All the time?

Mr. BECK. Well, you do not mean 24 hours a day. She goes out like anybody else.

Mr. KENT. But she inhabits this apartment continuously?

Mr. BECK. Mr. Kent, outside of a visit she has made down to Washington, I suppose my sister has been there continuously.

Mr. KENT. Then it was suggested to you that you could take this seat?

Mr. BECK. Oh, yes.

Mr. KENT. By whom?

Mr. BECK. Well, it is fair to say that I sought the place.

Mr. KENT. Yes; I see.

Mr. BECK. When I say I sought it, I mean I sought it not six months ago; but I expressed a desire when I reidentified myself with Philadelphia to represent, if possible, the city in Congress. I had no desire for any local office, or rather, that did not appeal to me. But I did think I could do something for my native city in Congress, and therefore I am not posing as having had this thing thrust upon me. I expressed a desire to go to Congress, and that desire was acceded to.

Mr. KENT. And promptly, therefore, you suggested to friends that you had the desire to go to Congress from Philadelphia?

Mr. BECK. Yes.

Mr. KENT. And represent your native city?

Mr. BECK. Yes.

See also page 61 of the hearings, in which it is definitely and conclusively shown that Mr. BECK, in his search for apartments in Philadelphia, with Albert Greenfield, Mr. VARE's lieutenant and principal financial supporter, was confined to the first congressional district, that the apartment was selected in full anticipation of the fact that he might run for Congress and that the selection of the locality had in mind a possibility of his going to Congress.

Mr. KENT. The location of the apartments then, that you and Mr. Greenfield visited was fixed, not because of the fact that they were in the first congressional district and that Mr. VARE is likely to be nominated for the United States Senate, thus causing a vacancy in the congressional seat, but because of your love for that particular section of the city?

Mr. BECK. No; I do not pretend that. The apartment was selected in full anticipation of the fact that I might run for Congress. My point is that my taking any habitation in Philadelphia had as its dominant purpose the desire to be reidentified with the political life of Philadelphia, quite irrespective of whether I ran for Congress or not. But the selection of that locality had in mind the possibility of my going to Congress; and it also had in mind that it was very accessible to the main thoroughfare of Philadelphia, and right around the corner from my club.

Mr. KENT. This was, then, in anticipation of becoming the successor to Mr. VARE?

Mr. BECK. In anticipation of the possibility.

Mr. KENT. And therefore Mr. Hazlett became a candidate for Congress in order to hold the seat until you should become a qualified voter?

Mr. BECK. No; on the contrary. I can not interpret Mr. Hazlett's views. But I think Mr. Hazlett was unwilling to give up his seat unless he could be elected recorder of deeds. He preferred the local office. If he had been defeated for recorder of deeds I imagine that he would be occupying the seat and I would be out of it.

On pages 74 and 75, of the hearings, is the following, very interesting colloquy between Mr. CRAIL, of the committee, and Mr. BECK. It shows that at the 1926 primary, when Mr. VARE was nominated, Mr. BECK contemplated the possibility of going to Congress and therefore rented the apartment in the first congressional district, shortly thereafter, in order that he might be the legatee to Mr. VARE's seat.

Mr. CRAIL. At the primary of 1926, did you contemplate in your mind somewhat the possibility of running for Congress from the first district of Pennsylvania?

Mr. BECK. I contemplated the possibility of it. That is undoubtedly true. I had no assurance at that time of any support, and it is needless for me to say that it was not a question of entering the primary. It was a question of getting the support of the organization leaders. I had nothing to do with the primary in that year. As I said before, I was in Europe. I took no part in the primaries. I did not feel I had reestablished my citizenship sufficiently to take any part in them.

Mr. CRAIL. Mr. Hazlett was the candidate at that time, was he not?

Mr. BECK. Yes.

Mr. CRAIL. At that time was he holding the office of recorder?

Mr. BECK. I think he was.

Mr. CRAIL. He was holding the two offices for a while?

Sergeant at Arms ROGERS. Yes.

The Bailey case and all the precedents which follow it hold that an inhabitant in the constitutional sense must be one who is an habitual resident, completely identified with the State from which he comes, entitled to all the rights and privileges of the State, and subject to all its duties and responsibilities, and yet Mr. BECK was fraudulently placed upon the registry assessor's books on May 3, 1926. He did not take trouble to render himself liable to taxation; he paid no taxes for 1926 and none for 1927, and in 1927 found in his mail an assessment blank directed to him, stating that if he made no returns for 1928 he would be arbitrarily assessed by the taxing authorities. He did pay 25 cents for a poll-tax receipt in September, 1927, but we have the interesting spectacle of him who has written volumes upon civic duty and in defense of the American Constitution attempting to say to the House of Representatives that he was subject to the civic duties and responsibilities, as an inhabitant of the State of Pennsylvania, when he utterly ignored and neglected the taxing power of the State, without the taxes of which the State would fall into dissolution. If he were a bona fide resident or inhabitant, he would have gone to the taxing authorities. He would have caused himself to be assessed for 1926, which is the year he says he began his residence there. He would have become assessed or paid taxes for 1927, because his testimony shows that he had a financial agent in Philadelphia who for 10 years had handled his personal business, and that he had at all times taxable securities in Philadelphia. On December 31, 1927, after his election to Congress, Mr. BECK was arbitrarily assessed by the taxing authorities for $20,000. Mr. BECK filed no returns, although return sheets were presented to him. He stated that he chose to permit the arbitrary assessment to stand. He does not even say that it was too high or too low; then, if it was too low, as a good citizen it was his duty to make an honest return to the city of which he was an inhabitant, the city of his birth, in which he sought to represent a large constituency in the halls of the most important legislative body in the civilized world. (See pp. 66-67.)

In the Bailey case Mr. Hall, of North Carolina, might be heard saying in this House about Mr. BECK as he said about Mr. Bailey:

> A person must live among those who are to become his constituents. * * * He is confronting the abstract political right of citizenship with the act of inhabitancy which the Constitution requires. * * * I know no better definition of "inhabitance" than habitual residence.

Mr. BECK continued to file his income-tax statements, and still does so, from the District of Columbia, although it is made out by an agent in Philadelphia. (See p. 72.) There is no significance in the fact that he has a bank account in Philadelphia, because he has had one there for 10 years and also has accounts in New York, Washington, London, Paris, and Geneva. These are incidents showing the intent of Mr. BECK in connection with his failure to exhibit any intent he may have had to become a bona fide inhabitant of Philadelphia. Another indication is the fact that he continued as a nonresident member of the two clubs in Philadelphia of which he was a member. He did not change his status in the Art Club until the matter was called to his attention (see p. 70):

Mr. BECK. A couple of months ago. But I was utterly unaware that I was a nonresident member of the Art Club. I paid no attention to it. I paid the dues and that was all I know.

Mr. KENT. Was it at the time of your election that you learned that you were a nonresident member?

Mr. BECK. I think it was about that time that some member of the club, attracted by the discussion—I imagine that it was shortly after the election, and there was some little discussion, and some member said to me, "Are you a resident or a nonresident member of the Art Club?" And I found I was a nonresident member, and I told them to transfer me to resident membership, which they did.

Mr. KENT. And when was the transfer made?

Mr. BECK. I have no recollection, except that it was a short time after that.

Mr. KENT. But it was after the election.

Mr. BECK. It was after the election.

In Washington, D. C., he has continued his membership as a resident member. With the desire to reidentify himself with his native city, it would seem that he would have been meticuously careful about his club membership, just as careful about establishing his family in Philadelphia, and still more careful about rendering proper tax returns to his city, his county, and his State, rather than "permit himself to be assessed whether the amount was just or unjust." In this case Mr. BECK stands before the highest tribunal on this subject which can adjudicate his title to this public office, and he must be treated in the same way as any other citizen. There is only one conclusion to be drawn from this conduct, namely, Mr. BECK did not regard himself as a bona fide inhabitant of Pennsylvania, or he would have rendered proper tax returns. His failure to do so and his acceptance of the arbitrary assessments lead one irresistibly to believe that the assessment was too low and not too high. It could not have been accurate because it was an arbitrary guess.

On the subject of assessments it is further interesting to note the manner in which Mr. BECK permitted himself to be carried upon the books of the registry assessor in the city of Philadelphia. We must bear in mind that Mr. BECK contends that the apartment was the habitation of himself and his wife and yet, after he was fraudulently placed upon the assessor's list in May of 1926, there were three separate assessments. In September, 1926, the name of Mr. BECK only appears—that was the assessment of May 3, 1926, concluded in September; Mrs. Beck's name does not appear. Mr. BECK's name appears at the end of the column in different ink and apparently in different handwriting from the names preceding it. In December of 1926 the name of Helen Beck appears, that being Mr. BECK's sister, and again Mr. BECK's name apppears at the end of the column. In the following assessment the name of Helen Beck has dropped out. Mr. BECK's name appears twice and Mrs. Beck's name appears for the first time. In the following assessment of December, 1927, the name of Mr. BECK only appears. The assessor placed upon the said report that they had gained their information from the janitor and superintendent of the building and in one instance by copying the names as they appeared on a directory on the first floor of the building. Mrs. Beck has never paid any taxes, was not assessed for real or personal property taxes, and never voted. This same condition existed so far as Helen Beck is concerned. Here, again, we have a condition wherein Mr. BECK failed to subject himself to the duties and liabilities of citizenship in Pennsylvania. That testimony shows lack of complete identification in Pennsylvania and its interests.

In order further to show that Mr. BECK had no intent to establish a habitation but a mere voting residence we quote from page 45, showing that he campaigned very little and was glad to get back to Washington. The intent is herein shown in that Mr. BECK was glad to get back home to his family, his habitation, books, and the things that he held dear. On page 45 of the hearings it is shown that he went out to dinner on the night of the election. Page 48 of the hearings shows that he did not even know the names of the gentlemen who nominated him. On pages 48 and 49 is told the remarkable story of Mr. BECK having heard from Senator VARE'S secretary that he was to be nominated for Congress waited alone in this apartment, was later told to come to a said meeting room and there he met a committee which he did not then know and does not now know, which committee nominated him for Congress. He does not know the location of that place or the voting place where the voting booth is. This is all perfectly conclusive—that Mr. BECK'S sole intent and inclination was to establish a voting residence to comply with the legal qualifications necessary for voting and he never intended to become an inhabitant of Pennsylvania. In this connection it is of extreme importance to again note that establishing a home and becoming an inhabitant are quite different from reidentifying one's self with his native city.

We have thus gone to considerable length to prove that Mr. BECK was not completely identified with Pennsylvania when elected nor was he an habitual resident at that time entitled to all the rights and privileges of inhabitancy and subject to all the duties and obligations arising therefrom, nor did he have an habitual abode or domicile in that city.

If there had been any doubt that Mr. BECK was not a qualified voter of Philadelphia, it certainly ought to be set at rest after referring to the decisions cited and the argument made by the Hon. Alexander Simpson, jr., a justice of the Supreme Court of Pennsylvania. (See vol. 69, No. 1, University of Pennsylvania Law Review, beginning on p. 1.)

If Mr. BECK was not such a resident of Pennsylvania under its particular election laws that he could become a qualified voter, then, under all conditions, he certainly was not an inhabitant of Pennsylvania. Having in mind that inhabitant is a stronger word than resident and requires not only locality of existence but permanency and habitual residence, we must know that an inhabitant of Pennsylvania clearly would be entitled to vote in that State by going through the technical process of assessment and registration. No one who reads Justice Simpson's article could possibly believe thereafter that Mr. BECK was an inhabitant of Pennsylvania. And we quote only a few of the paragraphs therefrom, in the hope that the committee will read carefully all the decisions cited thereunder. Beginning at page 4 of that volume may we quote as follows:

The question under consideration divides itself into two others, viz: (1) What does the word "resided" mean in the foregoing constitutional provisions and (2) under what circumstances may an elector choose which of two or more places shall be his voting residence? These questions naturally and inevitably run into one another, rendering it difficult to consider one without, in a large degree, considering the other; but an endeavor will be made herein to answer them separately, as far as it is possible so to do.

As the maxim expressio unius est exclusio alterius is applicable to the Constitution, and has been expressly applied to this part thereof (Page *v.* Allen, 58 Pa. 338 (1868)), it follows that, save in the excepted cases, a voter must have his actual residence in a particular election division of the State, in order to qualify him to vote there; and no expedient or excuse will avail him if he has not. Since the Constitution contains nothing antagonistic to this conclusion, it alone should solve the question in issue.

It is obvious, therefore, that even a technical construction of the constitutional provisions compel the conclusion that, save in the excepted cases, the voter must have an actual, fixed residence, in fact, in the place where he offers to vote; and that no other character of occupancy will suffice. Moreover, under the first of the foregoing principles of interpretation the Constitution is not to be technically construed, but as the average voter probably understood it. Every such man would unhesitatingly say that, in order to "have resided in the election district where he shall offer to vote at least two months immediately preceding the election," the voter must have actually lived there; it must have been his home as we know and love that term; not an imaginary or technical home, but an actual, established one; one which every unbiased citizen and neighbor would unhesitatingly say is the voter's home.

Fry's election case, herein repeatedly referred to, is the leading case in Pennsylvania upon the question as to whether or not students temporarily living in college, solely for the purpose of pursuing their studies are entitled to vote in the election district in which the college is situated, if they have complied with the other constitutional requirements in regard to suffrage. It was held they were not, for the reason that the word "resided" refers to a real home and not to a mere temporary stopping place; and this is substantially the unanimous American view.

See also Jacobs on the Law of Domicile, section 325:

I apprehend that if a citizen of the United States, formerly living in another State, abandons his residence there and moves into a house in Pennsylvania, which thereafter is his only home, and is occupied as such during the year prescribed by the Constitution, he would be entitled to vote here though he always intended to move away at some time in the future. Having given up his old home, there is no place to which the animus revertendi could apply; and the intention to move away from the new home at some time thereafter is at most a floating intention (Gilvert *v.* David, 235 U. S. 561 (1915); 19 Corpus Juris 407, 97, H. I. Cases, 124, 160 (1858)), which may float out of sight when the beauties of spring and fall lead him to feel he can not improve his condition by going elsewhere, but he may reappear with the chills of winter and the heat of summer.

And so it may well be said that in case one may be subject to a floating intention and Mr. BECK may have abandoned his intention to reside in the first congressional district of Pennsylvania, as the beauties of the Pennsylvania autumn and the exhilaration of a Pennsylvania election had passed away. He may have felt then that his law office and magnificent home in Washington, where his wife lived, and among his books, furnishings, and portraits would be a more acceptable place. Of course, under Mr. BECK's contention, his intention to inhabit Pennsylvania could again return with each succeeding election.

In this connection, it is important to note that in the event of Mr. BECK's death, there would be a question as to the particular taxing laws which would attach to the distribution of his estate. No matter where he may have voted or claimed the right to vote, yet his actual domicile would govern and it would appear quite conclusive that he would be taxed in accordance with the taxing laws of the District of Columbia. By a peculiar coincidence also under the law of Pennsylvania, Mr. BECK's property could not be attached in Pennsylvania under the attachment laws.

See also from Mr. Justice Simpson's opinion:

It is repeated, therefore, as a matter of law, that, subject to the exceptions specified in the Constitution, the residence prescribed by it must be an actual residence in the physical occupancy of the voter, his real home, in fact, and not in expression merely.

While it is doubtless true, as stated by Lord Cranworth in Whicker *v.* Hume, "By domicile we mean home, the permanent home," and if you do not understand your permanent home I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it.

The rule stated in this latter case, namely, that the party's acts must accord with the choice he makes, applies even where there are two homes occupied at different seasons of the year; and a fortiori it does so where one thereof is but a perfunctory stopping place. In all such cases the statement that the voter has selected a certain place as his home must necessarily give way to proof of his acts; for one can not be heard to say, if in fact his actions show that some other place is his real home, "That actions speak louder than words is sound law as well as proverbial wisdom." (Graham *v.* Dempsey, 169 Pa. 460, 462 (1895).)

Therefore Justice Simpson has truly stated the law of Pennsylvania in a very few words to be as follows:

2. If he is a family man, the actual established home is ordinarily where the family actually lives. If not it is where he normally and usually resides; and no temporary use of any other house, whether or not he formerly lived there, will justify a choice by him, or avail as against the actual established home.

3. If he has two or more actual established homes, he may select which of them shall be his voting residence; but not otherwise.

4. He can not legally vote elsewhere than in the election district in which is situated his actual established home, as hereinbefore defined.

We have already pointed out by citations in the Bailey case what would be the result if officeholders in the District of Columbia were permitted, although being actually inhabitants there, to run for Congress and become elected in districts in the States of the Union. The Executive would thus have a powerful influence in shaping legislation and could eventually control Congress through the appointing power.

But there is a still greater evil which ought to be avoided. Congress, according to Champ Clark, will some day be almost in continuous session. The great, expanding, and varied interests of our people and the great population of our country have made it necessary, at least, to conduct one long session of Congress from December to June. Congressmen must, therefore, be understood to be in Washington temporarily, as temporary residents representing States in which they are inhabitants, but since Representatives must necessarily be in Washington for the temporary purpose of representing their people, a great danger would arise if they were permitted to have their chief occupation in Washington, as the actual practice of the law with Washington offices as headquarters for that practice. Mr. BECK has his office in the Southern Building. Twelve other lawyers, or persons engaged in business, have their offices in the same suite. These attorneys, according to official records of which this House in its judicial capacity will take judicial notice, appear before all the governmental bureaus and departments representing clients throughout the United States and foreign nations. No wrongdoing is imputed to Mr. BECK, but we can not conceive of conditions where, if Mr. BECK is permitted to retain his law practice in Washington and his established home here, and still be called an inhabitant of Pennsylvania, will other lawyers—as Members of Congress, not want to do the same thing?

If we establish this precedent, Members of Congress can practice law in Washington, own homes here, have their principal residence here, have law offices here, receive here fees for conducting the private business who employ associates of such Congressmen in matters affecting legislation on domestic and foreign affairs. Under article 198 of title 18 of the Criminal Code (see the Code of Laws of the United States of America, in force December 6, 1926, vol. 44 pt. 1, p. 474, and also under sections 202, 203, and 204 of the same volume and other penal laws) it would be unlawful for a Congressman to act in any matter against the United States or in which the United States was interested. In other words, a Representative could not be active in an individual capacity against his Government nor could he accept a fee nor be interested in compensation directly or indirectly growing out of any matter in which his Government was interested. It is doubtful whether he could even represent his Government in such matters. A Representative is wholly separated as a legislator from acting in any executive or judicial way, but if Congress should sink to a low ebb or

level, can not we visualize a large proportion of a particular Congress made up of men of high intellectual attainments having offices in Washington, being secretly interested in matters affecting their Government, living in Washington, being inhabitants here, having permanent habitations here, controlled by persons and corporations whose sole interests would be to shape legislation in particular ways? Personally, I can see in the future probable conditions arising which would make such Congressmen the actual balance of power and the dominating influence in legislation. Such a condition would without doubt eventually bring about a dissolution of this powerful Government.

Other nations in the past have felt as secure of themselves as we now do. They were just as absolute. They felt that they had just as sure a grip on themselves as we feel that we now have. But they became careless. They allowed executive power to run on without restraint. They permitted the legislative authority to usurp functions that they did not possess and to-day they are no more than ashes and dust.

To seat Mr. BECK in this case would definitely set aside every leading precedent governing similar cases before the House of Representatives. We have quoted freely from the Bailey case, but another very important case is found in volume 1 of Hinds' Precedents, page 426, in the case of McDonald against Jones. At the same time of the election in 1894, and prior to and since that time, the contestant was engaged in business and resided with his family in the city of Washington in the District of Columbia. He had no place of business or residence of any description in the State of Virginia. It was held that he was not an inhabitant of the State of Virginia at or near the time of his election and was not eligible to his seat. That case is exactly like the present one, since Mr. BECK never claims to have been an inhabitant of Pennsylvania. But merely claims to have endeavored to reidentify himself with Pennsylvania in establishing a voting residence therein.

It is held in volume 1 of Hinds', page 381, in the case of William McCreery, that the States have no right or power to add to the qualifications of a Representative and so it became the sole and absolute duty of this House to decide this question according to the true intent and spirit of the Constitution.

Mr. VINCENT of Michigan. Will the gentleman yield there?

Mr. KENT. I am happy to yield to the chairman of the committee.

Mr. VINCENT of Michigan. I want to correct the statement that the gentleman made. Mr. BECK was on the resident list of all the clubs he belonged to except only two clubs, and the resident list of the Metropolitan Club here in Washington includes people living anywhere within the United States.

Mr. KENT. The resident list of the Metropolitan Club in Washington consists of members who live within 30 miles of the city of Washington.

Mr. BROWNING. My recollection is that the only two clubs on which he was on the nonresident list were the ones he belonged to.

Mr. WELLER. Mr. Speaker, will the gentleman yield?

Mr. KENT. I do.

Mr. WELLER. I do not see whether it makes any difference whether he was on the residential list or nonresidential list. If he maintained after he left Philadelphia his membership in the clubs of Philadelphia, it would indicate that he intended to go back there.

Mr. KENT. Perhaps; but the same conclusion would apply to clubs in London and to the Union League Club in New York, of which he was a member. Retaining his memberships there would indicate he intended returning to those places.

Mr. JACOBSTEIN. Mr. Speaker, will the gentleman yield?

Mr. KENT. Yes.

Mr. JACOBSTEIN. Did the character of the district where the apartment he rented was located comport with the high position of Mr. BECK?

Mr. KENT. I had hoped that that point would not be brought up.

Mr. JACOBSTEIN. It concerns me as a question whether it was a subterfuge or not.

Mr. KENT. I had hoped that that would not be brought up. I was hoping that I myself, being a Representative from the State of Pennsylvania and a colleague of Mr. BECK's from the same State, would not be asked a question of that kind. But Mr. BECK, in my judgment, who has such a fine library and has so many art treasures and so beautiful a home in Washington, would not attempt to add to his already existing status—that is, the status of a citizen and inhabitant of the District of Columbia and a qualified voter under the statutes of New Jersey—by going into South Philadelphia, into this particular district, to live there. It does not seem probable.

Mr. DOUGLAS of Arizona. Mr. Speaker, will the gentleman yield?

Mr. KENT. Certainly.

Mr. DOUGLAS of Arizona. Is it not a fact that in October, 1927, the secretary or some other official of the Art Club of Philadelphia wrote to Mr. BECK and called his attention to the fact that Mr. BECK had been publicly identified as a resident of Philadelphia, and asked the question as to whether or not Mr. BECK did not desire his membership to be transferred from the nonresident roster to the resident roster?

Mr. KENT. That is partially right. Mr. BECK, when his attention was called to the fact that he was a candidate for Congress from Philadelphia and on the nonresident list of the club, suggested that he go on the resident list on the first of the next year.

Mr. DOUGLAS of Arizona. And is it not further the fact that on November 7, 1926, before Mr. BECK was elected, he replied by letter that he desired to be transferred to the resident roster of that club?

Mr. KENT. I have answered that. But that does not affect the fact that he had no residence in Philadelphia. A man who is completely identified with the interests of Pennsylvania pays taxes therein, and from the time some one registered him on the registration books when he was in Europe, on May 3, 1926, until the hearings the testimony shows that he paid only 25 cents taxes, and no more. He was carried on the assessment lists in 1926 and 1927 and was adversely notified to make returns for personal-property taxes. He did not do so, but was arbitrarily assessed. But he paid no taxes except 25 cents up to the time of the hearings. [Applause.]

Mr. VINCENT of Michigan. Mr. Speaker, I yield 20 minutes to the gentleman from Massachusetts [Mr. DOUGLASS].

The SPEAKER. The gentleman from Massachusetts is recognized for 20 minutes.

Mr. DOUGLASS of Massachusetts. Mr. Speaker and Members of the House, I do not desire to discuss the question at issue on such points as where a man sends his wash or how many books he has in his library or the clubs he belongs to. As the Democratic member of the committee who joined in the majority report, I have a brief outline of my ideas to give you.

This matter gave me great concern as a member of the committee. My position was not at all clear in the beginning of the hearings. In fact, I might say I was a bit prejudiced against the case of Mr. BECK. But as I listened to the evidence and as I heard the arguments advanced before the committee I was compelled to arrive at the conclusions of the majority.

I am first impressed by the debate in the Constitutional Convention itself. That debate as copied here in the report of the committee, taken from the Madison papers, occupies only a page in small type. However, the real argument was had upon the question of the word "inhabitant." What very brief statements were made I desire to take the time to read to you. In the first place, remember that the original draft of the Constitution contained the word "resident," and that word "resident" was afterward changed to "inhabitant," and the debates on the meaning of the words "inhabitant" and "resident" ensued.

Mr. Madison said, seconding the motion to have the word "inhabitant" inserted:

> Both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virginia concerning the meaning of residence as a qualification of Representatives which were determined more according to the affection or dislike to the man in question than to any fixed interpretation of the word.

And from the day of the Constitutional Convention down to the present time, in all our courts there have been disputes and various interpretations of the words "resident" and "inhabitant." My judgment in this case has been formed because of the historical meaning of the word "inhabitant," as understood at the time of the framing of the Constitution, and at that time, as I gathered from my study of the question, the word "inhabitant" did not mean so much a resident as it meant a person who had a location in the colony, a person who was familiar with the local needs and conditions of the colony, and as I gather from the debate here and from the commentaries made upon it by historians, the meaning of the word "inhabitant," as used in our Constitution—and with the true meaning of that word we are engaged here to-day—is a person with a habitation in the community, one who is familiar with the local needs and conditions. So, when the Constitution provided that a man must be an inhabitant of the district from which he was elected, it meant that he should be a man who knew his people, who knew their interests, who knew their

conditions, and who was one of them in the commonly accepted sense.

With that understanding of the word "inhabitant" I have gone down in my own mind to the case of JAMES M. BECK, and I find that Mr. BECK was born in the city of Philadelphia, the city from which he has had the honor to be elected. I find he was educated in the public schools of the city of Philadelphia and in the colleges of the great State of Pennsylvania. I find that his life, outside of his public service here in Washington in the service of the United States Government, his whole life, has been devoted to the interests of the city of Philadelphia and of the great State of Pennsylvania. His real interest was not in the clubs and in the social institutions alone but in the progress and in the development of his native city, so that when the Sesquicentennial Exposition was talked about and a true representative of that city was to be sent to Europe to interest foreign countries in that exposition, it was this JAMES M. BECK, of whom we are speaking, who was chosen by the mayor of Philadelphia to represent the people of Philadelphia, to represent the interests, the local interests and conditions of Philadelphia in the countries of Europe. [Applause.] And that man, a native of Philadelphia, a son of Pennsylvania, knowing that he was an inhabitant of the city of Philadelphia, desired to renew his connections with his native city, as was his right, and, I doubt not, he had an ambition to become a Member of Congress, as all of you men here had, otherwise you would not be here. With that honorable ambition to become a Member of this great legislative body and serve his Nation, as he had served his city, he comes to the city of Philadelphia and there builds a home, and under the Constitution and within the meaning of the word "inhabitant" he becomes a voter. I care not for the technicalities that have been raised here. He became a voter substantially and within the law. At the time he voted in the primaries of Philadelphia, in 1927, JAMES M. BECK was a bona fide, legal voter of the city of Philadelphia, a registered voter, and he was assessed and taxed as such. He had a right to vote for himself. No one disputes that, and if he had a right to vote for himself I can not see how the people of Pennsylvania, particularly the people of the city of Philadelphia, had not the right to vote for him for any office to which they wanted to elect him, and they did vote for him as a citizen and as an inhabitant of Philadelphia. They elected him to Congress by an overwhelming majority; they knew he was one of them; they knew that under the meaning of the debates in the Constitutional Convention JAMES M. BECK was familiar with local conditions; that he was able to represent them, and they elected him to represent them.

This case is simple, and I shall be brief. In conclusion, I say that under all the conditions he is entitled to a seat in this body. When the great State of Pennsylvania chose Mr. BECK to represent it in this House the people there believed he was their coinhabitant; they believed he was within his rights under the spirit and the letter of the American Constitution, and if they elected him with that understanding we can seat him with the same understanding. [Applause.]

Mr. VINCENT of Michigan. This closes the debate, Mr. Speaker, and we call for a vote.

The SPEAKER. The question is on the substitute offered by the gentleman from Tennessee [Mr. BROWNING].

Mr. BROWNING. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DOUGLASS of Massachusetts. Mr. Speaker, may we have the resolution and the substitute again reported?

The SPEAKER. Without objection, the Clerk will again report the resolution and the substitute therefor.

There was no objection.

The Clerk read the resolution and the substitute.

The question was taken; and there were—yeas 78, nays 248, answered "present" 3, not voting 99, as follows:

[Roll No. 8]

YEAS—78

Abernethy	DeRouen	Hill, Ala.	O'Connor, N. Y.
Almon	Dominick	Huddleston	Peavey
Arnold	Drewry	Jacobstein	Quin
Aswell	Edwards	Johnson, Okla.	Rankin
Bankhead	Eslick	Johnson, Tex.	Romjue
Beck, Wis.	Fisher	Kading	Sanders, Tex.
Black, Tex.	Fletcher	Kent	Sandlin
Bland	Fulbright	Kincheloe	Sinclair
Box	Fulmer	Lanham	Steagall
Briggs	Gardner, Ind.	Lowrey	Stedman
Browning	Garrett, Tenn.	Lozier	Steele
Busby	Garrett, Tex.	Lyon	Swank
Byrns	Gilbert	McReynolds	Tarver
Carss	Goldsborough	Major, Mo.	Williams, Mo.
Cartwright	Green	Mead	Williams, Tex.
Cole, Md.	Greenwood	Morrow	Wilson, La.
Collier	Hall, Ill.	Nelson, Me.	Woodrum
Cooper, Wis.	Hammer	Nelson, Mo.	Yon
Cox	Hare	Norton, Nebr.	
Davis	Hastings	O'Connor, La.	

NAYS—248

Ackerman	Drane	Knutson	Rayburn
Adkins	Driver	Kopp	Reed, N. Y.
Allen	Dyer	Korell	Reid, Ill.
Andresen	Eaton	LaGuardia	Robsion, Ky.
Andrew	Elliott	Langley	Rogers
Auf der Heide	England	Lankford	Rowbottom
Bacharach	Englebright	Larsen	Rutherford
Bachmann	Estep	Lea	Sabath
Bacon	Evans, Calif.	Leavitt	Sanders, N. Y.
Barbour	Fenn	Leech	Schafer
Beedy	Fish	Lehlbach	Sears, Nebr.
Beers	Fitzgerald, W. T.	Letts	Selvig
Black, N. Y.	Fitzpatrick	Lindsay	Shallenberger
Bloom	Fort	Linthicum	Shreve
Bohn	Foss	Luce	Simmons
Bowles	Free	McCormack	Smith
Bowman	Freeman	McDuffie	Somers, N. Y.
Boylan	French	McFadden	Sproul, Kans.
Brand, Ga.	Furlow	McKeown	Stalker
Brand, Ohio	Gambrill	McLaughlin	Stobbs
Brigham	Garber	McLeod	Strong, Kans.
Britten	Gifford	McSwain	Strong, Pa.
Buchanan	Glynn	McSweeney	Summers, Wash.
Buckbee	Goodwin	Maas	Sumners, Tex.
Bulwinkle	Graham	Major, Ill.	Swick
Burdick	Guyer	Manlove	Swing
Burtness	Hale	Mansfield	Taber
Bushong	Hall, Ind.	Mapes	Tatgenhorst
Butler	Hall, N. Dak.	Martin, Mass.	Taylor, Tenn.
Campbell	Hancock	Menges	Thatcher
Carew	Hardy	Merritt	Thompson
Carter	Haugen	Michener	Thurston
Casey	Hersey	Miller	Tilson
Chalmers	Hickey	Monast	Tinkham
Chase	Hill, Wash.	Moore, N. J.	Tucker
Chindblom	Hoch	Moore, Ohio	Underhill
Christopherson	Hoffman	Moore, Va.	Underwood
Clague	Hogg	Moorman	Vestal
Clarke	Holaday	Morehead	Vincent, Iowa
Cochran, Mo.	Hooper	Morgan	Vincent, Mich.
Cochran, Pa.	Hope	Morin	Vinson, Ga.
Cohen	Houston, Del.	Murphy	Wainwright
Cole, Iowa	Howard, Nebr.	Nelson, Wis.	Wason
Collins	Howard, Okla.	Newton	Watres
Colton	Hudson	Niedringhaus	Watson
Combs	Hughes	Norton, N. J.	Welch, Calif.
Connery	Hull, Morton D.	O'Connell	Weller
Connolly, Pa.	Hull, Wm. E.	Oliver, Ala.	Welsh, Pa.
Cooper, Ohio	Irwin	Oliver, N. Y.	White, Me.
Cramton	James	Palmer	Whitehead
Crosser	Jeffers	Palmisano	Whittington
Cullen	Jenkins	Parker	Wigglesworth
Dallinger	Johnson, Ind.	Parks	Williams, Ill.
Darrow	Johnson, S. Dak.	Perkins	Wingo
Davenport	Johnson, Wash.	Porter	Wolverton
Deal	Jones	Prall	Wood
Dempsey	Kahn	Pratt	Wright
Dickinson, Iowa	Kelly	Purnell	Wurzbach
Dickstein	Kemp	Quayle	Wyant
Douglas, Ariz.	Kendall	Ragon	Yates
Douglass, Mass.	Ketcham	Ramseyer	Zihlman
Doutrich	Kiess	Ransley	

ANSWERED "PRESENT"—3

Ayres	Beck, Pa.	Kvale

NOT VOTING—99

Aldrich	Dickinson, Mo.	Kunz	Snell
Allgood	Doughton	Kurtz	Speaks
Anthony	Dowell	Lampert	Spearing
Arentz	Doyle	Leatherwood	Sproul, Ill.
Begg	Evans, Mont.	McClintic	Stevenson
Bell	Fitzgerald, Roy G.	McMillan	Strother
Berger	Frear	Magrady	Sullivan
Blanton	Garner, Tex.	Martin, La.	Taylor, Colo.
Boies	Gasque	Michaelson	Temple
Browne	Gibson	Milligan	Tillman
Canfield	Golder	Montague	Timberlake
Cannon	Gregory	Mooney	Treadway
Carley	Griest	Moore, Ky.	Updike
Celler	Griffin	O'Brien	Vinson, Ky.
Chapman	Hadley	Patterson	Ware
Clancy	Harrison	Peery	Warren
Connally, Tex.	Hawley	Pou	Weaver
Corning	Hudspeth	Rainey	White, Colo.
Crail	Hull, Tenn.	Reece	White, Kans.
Crisp	Igoe	Reed, Ark.	Williamson
Crowther	Johnson, Ill.	Robinson, Iowa	Wilson, Miss.
Culkin	Kearns	Schneider	Winter
Curry	Kerr	Sears, Fla.	Wolfenden
Davey	Kindred	Seger	Woodruff
Denison	King	Sirovich	

So the substitute was rejected.

The Clerk announced the following pairs:

On this vote:

Mr. Canfield (for) with Mr. Griest (against).
Mr. Kerr (for) with Mr. Kurtz (against).
Mr. Ware (for) with Mr. Wolfenden (against).
Mr. Wilson of Mississippi (for) with Mr. Curry (against).
Mr. Chapman (for) with Mr. Golder (against).
Mr. Browne (for) with Mr. Igoe (against).
Mr. McMillan (for) with Mr. Montague (against).
Mr. Pou (for) with Mr. Snell (against).
Mr. Weaver (for) with Mr. Spearing (against).

General pairs:

Mr. Hawley with Mr. Garner of Texas.
Mr. Hadley with Mr. Crisp.
Mr. Timberlake with Mr. Martin of Louisiana.
Mr. Kearns with Mr. Doughton.
Mr. Aldridge with Mr. Rainey.

Mr. Crowther with Mr. Hull of Tennessee.
Mr. Sproul of Illinois with Mr. Corning.
Mr. Treadway with Mr. Carley.
Mr. Magrady with Mr. Bell.
Mr. Clancy with Mr. Cannon.
Mr. Culkin with Mr. Mooney.
Mr. King with Mr. Celler.
Mr. Temple with Mr. Doyle.
Mr. Gibson with Mr. Sullivan.
Mr. Dowell with Mr. Evans of Montana.
Mr. Arentz with Mr. Gasque.
Mr. Reece with Mr. Taylor of Colorado.
Mr. Denison with Mr. Kunz.
Mr. Seger with Mr. Hudspeth.
Mr. Schneider with Mr. Griffin.
Mr. Robinson of Iowa with Mr. McClintic.
Mr. Speaks with Mr. Warren.
Mr. Crail with Mr. Gregory.
Mr. Winter with Mr. Patterson.
Mr. Frear with Mr. Milligan.
Mr. Johnson of Illinois with Mr. Stevenson.
Mr. Lampert with Mr. Sirovich.
Mr. R. G. Fitzgerald with Mr. Peery.
Mr. Michaelson with Mr. Kindred.
Mr. White of Kansas with Mr. Reed of Arkansas.
Mr. Leatherwood with Mr. Blanton.
Mr. Begg with Mr. Dickinson of Missouri.
Mr. Williamson with Mr. Vinson of Kentucky.
Mr. Boise with Mr. Moore of Kentucky.
Mr. Anthony with Mr. Connally of Texas.
Mr. Strother with Mr. O'Brien.
Mr. Updike with Mr. White of Colorado.

Mr. BACHARACH. Mr. Speaker, the Ways and Means Committee is holding hearings, and the following gentlemen have asked me to get general pairs for them, as follows:

Mr. Hawley with Mr. Garner of Texas.
Mr. Hadley with Mr. Crisp.
Mr. Timberlake with Mr. Martin of Louisiana.
Mr. Aldrich with Mr. Rainey.
Mr. Crowther with Mr. Hull of Tennessee.
Mr. Kearns with Mr. Doughton.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

On motion of Mr. VINCENT of Michigan, a motion to reconsider the vote by which the resolution was adopted was laid on the table.

Mr. BECK of Pennsylvania. Mr. Speaker, I ask unanimous consent to speak for five minutes. [Applause.]

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. BECK of Pennsylvania. Mr. Speaker and my friends of the House of Representatives on both sides of the aisle, it seems strange that the first time I should crave the privilege of addressing the House of Representatives would be an occasion of this character; but when I entered the House and the right to my seat was questioned I determined then that until my right to sit in this House was cleared of any objection or question I would not take part in any debate, and I have consistently followed that principle.

But now I have at least the opportunity to thank the Members of the House—and I include those who voted "aye" as well as those who voted "no"—for the patience, care, and consideration with which they have heard a question of real difficulty and of profound constitutional importance.

It is idle to minimize the fact that the question is one of great importance in the future development of our political institutions. When I made my statement before the committee I made this statement which I venture to quote:

> This is my case, and if this committee and, later, the House of Representatives should place a narrower interpretation upon the Constitution I should accept the result without any resentment, for I not only recognize that the question is not free from difficulty, but I especially recognize that the distinguished Representative from Tennessee who assumed the responsibility of this challenge to my eligibility was actuated by no unworthy or partisan motive.

[Applause.]

That, gentlemen, was not a mere conciliatory gesture on my part. It was said because of my long knowledge and deep respect and esteem for the leader of the minority in this House, and I knew full well that for me personally he entertained none but the kindliest feeling, I knew full well that only convictions as to his interpretation of the Constitution led him as a matter of conscience to challenge my right to the seat at the beginning of the session. This was clearly within his rights. I did not resent it then and I do not resent it now.

There were certain things that happened during the committee meetings that I confess wounded me very deeply, but to show you how completely those wounds have long since healed, let me add that although I was besought in the recent campaign to go into the thirtieth Pennsylvania district, in which the gentleman from Pennsylvania, who made the final argument against me, was a candidate, and make some political addresses against his candidacy, and although it was a district in which my college is situated and in which I have many warm personal friends, I nevertheless declined to do anything that might seem to be actuated by any petty personal feeling of resentment or revenge. [Applause.]

And now, gentlemen, if you will pardon me, just a further word: I did seek an opportunity to represent the city of my birth in this House. I am not going to pose by suggesting that the seat was thrust upon me or that I, actuated by high purposes, simply yielded to irresistible pressure to run for office. [Laughter and applause.] I frankly sought it, and I sought the office because I had a very deep and abiding love for the city of my birth, which has never left me and will, I trust, last until my latest breath, and because I believed that with the little knowledge I have acquired in the judicial and executive branches of the Government I might be of some service to the city of Philadelphia in this House by being one of its Representatives. I may add that I had this further motive, that having been a student of our constitutional institutions for more than 30 years and having had some experience with the judicial and the executive branches of the Government, I thought I would like, as a matter of education, to serve in the House of Representatives and see the legislative department of the Government from the inside.

Well, I have had my education. [Laughter.] It has been long and laborious, but most educations that are worth anything are long and laborious; but it has had its compensation for me a thousandfold. When I first came into the House I confess that the apparent confusion which my superficial observations seemed to disclose, made me wonder why I had ever left the quiet decorum of the Supreme Court of the United States to come into so vociferous a body as the House of Representatives. I then found that my superficial views were erroneous and that the richest compensation for service in this House are the friendships that one makes on both sides of the aisle, and as the months passed these friendships made me covet ever more and more a wish to remain in this House; and in the vote that has just been passed I have had abiding proof of those friendships, and I want the gentlemen on the other side of the House, many of whom voted for me, to know how deeply I appreciate the fact that they rose above any question of party politics and ignored the fact that I was not of their political faith and voted to sustain my right to this seat.

I have already spoken more than I intended, and I will only say in the words of Hamlet—

> And what so poor a man as Hamlet is
> May do, to express his love and friending to you,

On both sides of the aisle—

> God willing, shall not lack.

[Applause.]

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Craven, its principal clerk, announced that the Senate had passed without amendment bills of the House of the following titles:

H. R. 14473. An act granting the consent of Congress to the city of Aurora, State of Illinois, to construct, maintain, and operate a bridge across the Fox River within the city of Aurora, State of Illinois;

H. R. 14474. An act granting the consent of Congress to the city of Aurora, State of Illinois, to construct, maintain, and operate a bridge across the Fox River within the city of Aurora, State of Illinois;

H. R. 14813. An act to authorize an appropriation for completing the new cadet mess hall, United States Military Academy; and

H. R. 15333. An act granting the consent of Congress to the South Park commissioners and the commissioner of Lincoln Park, separately or jointly, to construct, maintain, and operate a free highway bridge across that portion of Lake Michigan lying opposite the entrance to Chicago River, Ill.; and granting the consent of Congress to the commissioners of Lincoln Park to construct, maintain, and operate a free highway bridge across the Michigan Canal, otherwise known as the Ogden Slip, in the city of Chicago, Ill.

The message also announced that the Senate agrees to the amendments of the House of Representatives to the bill (S. 3779) entitled "An act to authorize the construction of a telephone line from Flagstaff to Kayenta on the Western Navajo Indian Reservation, Ariz."

were days when Congress reflected the opinions of the voters.

Consumers were informed because for years the fight between the Oleo Trust and the dairymen occupied the attention of each succeeding session of Congress. Now they are not so well informed. Millions of new consumers have come upon the scene and millions of the old have forgotten the reasons why the legislation was enacted. Ignorance of the reasons why oleo is taxed while butter is not is both appalling and widespread.

Many consumers, for instance, can't understand why the butter maker is permitted to use coloring matter in his product while the oleo maker is not unless he pays an additional tax. Just the other day the editor of a great city newspaper, in his efforts to justify coloring oleo yellow, asked "who started using color?" He inferred, of course, that if coloring a food product is wrong the butter maker is more guilty than the oleo maker.

Yes, the butter maker started it, but he didn't use color to make his product look like something else, thereby committing a fraud. He colored it and has continued to color it at certain seasons of the year in order to maintain a uniform color throughout the year. That was, and is, his sole object in using coloring matter. When the oleo maker uses coloring matter he does so in order to make his product look like something else—butter.

If the oleo maker is to be permitted to color his product to simulate butter, flavor it artificially to make it taste and smell like butter, and to fortify it with vitamins to approximate the nutritional value of butter there is nothing left to protect the consumer against fraud and the dairy industry against unfair competition. True, it must be labeled, but the whole history of oleo regulation proves the inadequacy of labeling. Labels are easily removed, and even when retained mean nothing when the product is removed from the package, as it must be before being consumed.

Space does not permit a recital of case records involving fraud in the sale of oleo, but the record is filled with them. The oleo business has, during its entire history, fought to kill or evade legislation to prevent fraud. Makers of oleo have always striven to make it easy for sellers of their product to substitute it for butter. They have always wanted to make it so that it would smell and taste like butter, and look like butter, not oleo.

No maker of butter ever wanted to make his product look like, smell like, and taste like something else.

Yes, dairymen have a fight ahead of them, but it is our firm conviction that right will eventually prevail and that a majority of consumers, now befuddled by shrewd propaganda, will again be in sympathy with adequate legislation to protect them against fraud and the Nation's greatest agricultural industry against unfair competition.

How the Court Martial Works Today

EXTENSION OF REMARKS

OF

HON. ANDREW J. MAY

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1941

ADDRESS BY MAJ. GEN. ALLEN W. GULLION

Mr. MAY. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following address by Maj. Gen. Allen W. Gullion, the Judge Advocate General and the Provost Marshal General, United States Army, before the junior bar conference of the American Bar Association, Indianapolis, Ind., September 28, 1941:

In my own behalf I thank the conference for the very great honor it has done me in asking me to address it. In behalf of the Army I thank the conference for the excellent work it has done through its committee on public information. I am well aware of the time and effort expended by many of your members in acquainting the country with the necessities of national defense. The Army is also grateful for the devotion and energy with which the conference has cooperated with the American Bar Association's committee on national defense, which has performed such splendid service in aiding soldiers and officers of all ranks in the solution of their personal problems.

The scene is Philadelphia and the year is 1776, but the historic event which I shall recall to your minds is not the Declaration of Independence. On this very day, 165 years ago, on September 28, 1776, the new Pennsylvania Constitution directed: "The penal laws as heretofore used shall be reformed by the future legislature of the State as soon as may be and punishments made in some cases less sanguinary, and in general more proportionate to the crimes." That constitutional mandate and the laws soon passed to implement it were the beginning of the reform throughout our country of the provincial criminal codes which, with their barbarities only slightly lessened, we had inherited or assimilated from England.

The year 1776 also marks the adoption for the Army of the United States of the first articles of war—substantially identical with the British articles then in force. Starting with that easily remembered year of independence, we have had in our country 165 years of experience with two separate criminal codes—the military code and the nonmilitary code—which, for convenience and with apologies to the Roman law for any terminological inexactitude, we Army lawyers sometimes call the civil code.

It may throw light on How the Court Martial Works Today if we look for a moment at the criminal nonmilitary codes in England and America as they existed at our point of departure—1776. Then when we examine the court martial today, both as to its procedure and as to sentences it adjudges, we may ascertain whether the military code has lagged too far behind—whether the conventional estimate of the military mind is correct, whether the military mind is too conservative and hidebound to adapt in its service enlightened modern methods of trial and punishment.

In 1776 in England over 200 offenses were punishable by death—among them larceny of 12 pence from a person, poaching, and consorting with a gypsy. Children of tender years were not exempt from capital punishment. In the Royal Services the punishments were, if possible, more severe, and soldiers and sailors were sometimes flogged to death. In the colonies, generally speaking, the assemblies had in many cases softened the English system, but it was still a ferocious code ferociously administered with retribution publicly made that the Pennsylvania Constitution of 1776 and its implementing statutes reformed. That reformation set an example followed sooner or later by the rest of the country.

I shall digress for a moment to pay tribute to the men who, appalled by "man's inhumanity to man," were principally instrumental in that reformation. The father of the humane Pennsylvania codes was William Bradford, attorney general of Pennsylvania, and later Attorney General of the United States. Bradford freely acknowledges the influence of Beccaria and of Montesquieu. Beccaria published his Essay on Crimes and Punishments in 1764. In that essay he clearly stated the principles of punishment which most of us today believe to be true ones. Those principles are: (1) The purpose of punishment is to deter, not to wreak vengeance; (2) deterrence is obtained not by undue severity but by the certainty and promptness of the punishment; and (3) the measure of punishment is the damage to society caused by the crime. Please bear in mind that last principle, "the measure of the punishment is the damage to society caused by the crime." I shall refer to it later in explaining why certain offenses are punished more severely under the military than under the nonmilitary code.

Although some ancient philosophers had similar ideas, Beccaria was influenced by certain eighteenth century French writings, particularly the Persian Letters and the Spirit of the Laws of Baron Montesquieu. I was once a week-end guest at La Brede, near Bordeaux, still the country seat of the Montesquieu family. The old chateau still stood with the baron's enormous study hall unchanged since his death in 1755, the year of the Lisbon earthquake and the building of Dr. Holmes' Wonderful One-Horse Shay. As I saw the dented leather chair in which Montesquieu sat as he dictated his great work to his daughter, Denise, I thought how he had indirectly influenced the reformation of the criminal code and how his views on the separation of powers, known to leading members of the Constitutional Convention, were importantly incorporated in our great charter of 1787.

Eight days before the adoption of the Pennsylvania Constitution Congress enacted new Articles of War, very similar, as I have said, to the contemporary British articles. In 1806 the articles were revised. In 1916, due to the leadership of my distinguished predecessor, Maj. Gen. Enoch H. Crowder, the articles were thoroughly revised and many changes in procedure made, especially with a view to insuring greater protection to the defendant who, in the Army, is always called the "accused." In 1920, following our experience in the first World War, other changes were introduced to guarantee more protection to the accused.

There are three kinds of courts martial—the summary court, the special court, and the general court. The summary court consists of one commissioned officer, the special court of three or more commissioned officers, and the general court of five or more commissioned officers. Punishing power of the two inferior courts, summary and special, is limited by statute, the summary not being empowered to adjudge confinement in excess of 1 month and forfeiture of more than two-thirds of 1 month's pay. The special court may not adjudge confinement in excess of 6 months and forfeiture of more than two-thirds per month pay for 6 months. The punishing power of the general court is usually, by the wording of the article of war denouncing a particular offense, left to the discretion of the court. That apparently unlimited power does not, however, exist. In a few instances the article itself prescribes the punishment for a particular offense. In all other cases the President under authority given him by an article of war has prescribed a table of maximum punishment which may not be exceeded by any court, inferior or general. The punishment of all purely military offenses has thus been restricted to a reasonable maximum by the President. The punishment of nearly all offenses which are denounced by the common law and by nonmilitary codes has been similarly limited by the President. In the rare event that an offense is committed which is not covered by the President's limit of punishment order the punishment may not exceed that fixed as a maximum for that offense by the United States Penal Code or the Criminal Code for the District of Columbia. The sentence of no court martial has validity until it has been approved by the officer appointing the court.

The sentences of all general courts martial are, as I shall explain a little later on, subject to a series of reviews and approvals or disapprovals in which the record of trial is examined not only to determine its legal sufficiency but also to insure that no sentence of unnecessary harshness is finally executed.

I shall take a general court-martial case and trace it from its beginning, that is, from the time of the commission of the offense to the time of the last review and final action in the War Department or in some cases by the President. Let us assume that the offense is the willful disobedience of the lawful order of a commissioned officer. And here let me revert to Beccaria's third principle, namely, "the measure of the punishment is the damage to society caused by the crime." Here, of course, we should read in place of the word "society" the words "discipline and efficiency of the Army and indirectly the defense of the country." Forgive the cliché but an Army without discipline is a mob and discipline cannot exist unless all lawful orders are accorded implicit and immediate obedience. This is true in peacetime; it is all the more true today when a grave public emergency exists. If in times like these willful disobedience is not sternly dealt with, it will be difficult to obtain from a command that unquestioning and instant obedience so necessary to success in battle. Let us now take the case of a private who has willfully disobeyed the orders of his battery commander and who after having been allowed a cooling-off period of 24 hours persists in his flagrant disobedience. The case against him is started by the writing out of a formal charge supported by formal specifications reciting the details of each instance of disobedience. These charges and specifications must be signed and sworn to by a person subject to military law. This is the first of the safeguards against unfounded accusations. The papers containing the charges and specifications, after having been sworn to, are then transmitted to the accused's commanding officer, normally his colonel. The colonel may investigate the case himself or he may refer it to a lieutenant colonel or some other officer, usually a field officer, for a thorough and impartial investigation. In that investigation the accused is present, is confronted by the witnesses against him, and is shown any documentary evidence against him. He may cross-examine the accusing witnesses and he may introduce witnesses in his own behalf. He is carefully warned of his rights, namely, that he is at liberty to make or not to make a statement as he pleases, but that if he makes a statement it may be used against him. At the close of the investigation the investigating officer makes a formal report in writing, summarizing the evidence for and against the accused and recommending trial or other disposition of the case. When the report of investigation is laid before the colonel he may decide that the case is unfounded, in which event so far as the accused is concerned, the case is closed, or the colonel may decide that the matter may be disposed of by a heart to heart talk with the accused, or by what is called summary punishment, that is, restriction of privileges or imposition of extra fatigue. The accused may, if he so desires, refuse to accept summary punishment and demand a trial. Or the colonel may decide that the case should be sent to a special or a general court martial. Suppose the colonel decides upon a general court martial. In that event he transmits the charges, specifications, report of investigation, and his recommendation to the officer exercising general court-martial jurisdiction, normally the major general commanding the division or similar unit. Up to this point the procedure under the military code is roughly analogous to the finding of a true bill by a grand jury, but it is readily seen that the military investigation prior to trial by a general court martial is much fairer to the accused than the ex parte showing made by a State's attorney to a grand jury in the absence of the accused or defendant.

When the charges and related papers reach the major general or other officer exercising general court-martial jurisdiction they must under the law be referred by that authority to his staff judge advocate, a trained military lawyer, for consideration and advice. The staff judge advocate is not a prosecutor but an impartial reviewer of the charges and the expected evidence. The staff judge advocate submits a written report to the general recommending trial, dropping of the charges, or other disposition of the case. Normally the general accepts the recommendation of his staff judge advocate. Let us suppose that trial is recommended. Thereupon all the papers are referred for trial to the trial judge advocate of a general court martial, consisting, as I have told you, of five or more commissioned officers. For each such court there are appointed a trial judge advocate and an assistant trial judge advocate, a defense counsel and an assistant defense counsel. The defense counsel serve the accused at no expense to him. The duty of the defense counsel is to defend, by all legitimate methods known to the law, any accused ordered for trial before their court. The accused is furnished with a copy of the charges and specifications, upon which he may not be tried until after 5 days have elapsed, unless he consents. He is informed of his right to be defended by the regularly appointed defense counsel and that he may if he so desires employ civilian counsel, in which event the military defense counsel may be excused or serve as assistant counsel as he may elect. He may request additional military counsel and his request will be granted if practicable. All proceedings of the trial are stenographically reported and transcribed and a carbon copy of the record furnished the accused, without cost to him. In the course of the trial every safeguard which a defendant has in nonmilitary trials is afforded the accused and the rules of evidence are applied as they are in nonmilitary courts. In order to prevent junior members of the court from being influenced by the senior members, voting on the question of guilt or innocence and on the question of the sentence is by secret written ballot. Two-thirds of the members of the court must concur in a finding of guilty, otherwise a finding of not guilty is rendered. Here there may be less protection than a civilian defendant has before a trial jury where all 12 members must concur in a finding of guilty. On the other hand, there is no such thing as a hung jury in the case of a general court martial. It may not be inappropriate to point out that the members of the average general court martial are certainly superior in education and probably superior in intelligence to the members of the average jury. They should, therefore, be less subject to prejudice and less subject to an oratorical appeal, whether it come from the trial judge advocate or defendant's counsel.

We in the Army believe that while a guilty man has less chance of acquittal before a general court martial than he has in the hands of a trial jury, an innocent man on the other hand is less apt to be convicted by a general court martial than he is by a jury. When the record of trial is transcribed it is read and subscribed by the president of the court and trial judge advocate and then transmitted to the appointing authority who ordered the trial, or his successor in command. Before the appointing authority takes action he requires his staff judge advocate to submit to him a thorough written review. In that review the evidence for and against the accused is analyzed. The effect of errors, if any, is considered and if any error, considering the record as a whole, has substantially prejudiced the rights of the accused, the staff judge advocate recommends that the finding be disapproved. The staff judge advocate also makes a recommendation whether the sentence should be reduced. If, following the report of his staff judge advocate the appointing authority does not disapprove the finding, the record is transmitted to the Office of the Judge Advocate General in Washington. There at least two officers make an independent review of every record in which dishonorable discharge has been suspended. In the more serious cases in which dishonorable discharge is not suspended or in which a penitentiary is designated as the place of confinement, the record is read by a statutory board of review of three officers who make a careful, written review and submit it to the Judge Advocate General. All cases involving general officers, or the dismissal of an officer or cadet, or the suspension of a cadet, or involving the death penalty are submitted to the Secretary of War and the President. Any important case may be so submitted. All of these reviews (the entire appellate procedure) are automatic and cost the accused soldier not 1 penny. Since the present Judge Advocate General has been in office a systematic and successful effort has been made to harmonize and make uniform general court-martial punishments for approximately similar offenses arising throughout all our general court-martial jurisdictions, at present numbering about 100. A board of officers brings to the attention of the Judge Advocate General any sentence which seems unduly harsh or out of line with that customarily applied in other jurisdictions. If the Judge Advocate General agrees with that view of the sentence he sometimes writes to the officer who exercised general court-martial jurisdiction over the case, normally the major general of the division or similar organization, and suggests a reduction in the sentence. When this action is not effective, or if the need for immediate action is plain, the Judge Advocate General in cooperation with The Adjutant General takes the matter up with the Secretary of War or the Under Secretary of War with a view to having orders issued reducing the sentence to a proper limit. Mr. James V. Bennett, Director of the Bureau of Prisons, Department of Justice, who has been very helpful to the present Judge Advocate General in the latter's effort to harmonize all sentences, wherever practicable and to prevent the execution of harsh sentences, informs me that so far as he knows the Army affords the only example in American jurisprudence of effective procedure whereby sentences for approximately similar offenses are made reasonably uniform.

The problem of administering military justice lies not so much in preventing undue punishment as it does in preventing unnecessary trials. Reviewing authorities may and do, as we have seen, reduce excessive sentences, but it is the company commander who has most to do with reducing the number of trials for he is usually the first officer to whom knowledge comes of misconduct on the part of his men. He it is, therefore, who has most to do with whether an offender shall be tried. It is largely a question of personality and leadership. An alert, sympathetic, and firm company commander can control his men except in rare cases without preferring charges. As a rule, the best companies have the fewest trials. Ready resort to the court martial as an aid to discipline too often means laziness or inefficiency on the part of the company commander. Under the leadership of Secretary Stimson and General Marshall the Army today has the lowest peacetime court-martial rate in its history. On October 20, 1940, General Marshall addressed the Army, saying, among other things:

"The task * * * before us is the expeditious development of a unified, efficient fighting force of citizen-soldiers.

"The Army of the United States, keenly aware of its great responsibility, assumes this task as a profound privilege.

"First in importance will be the development of a high morale and the building of a sound discipline, based on wise leadership and a spirit of mutual cooperation throughout all ranks. Morale, engendered by thoughtful consideration for officers and enlisted men by their commanders will produce a cheerful and understanding subordination of the individual to the good of the team. This is the essence of the American standard of discipline, and it is a primary responsibility of leaders to develop and maintain such a standard."

At the same time the Judge Advocate General circularized all judge advocates as follows:

"In view of the rapid expansion of the Army, I am most solicitous that no case be recommended for trial by general court martial until it has had the most careful consideration of all facts involved, including the nature of the offense, moral and psychological factors, and the salvage value of the offender. I am confident that the exercise by staff judge advocates of imagination, humanity, and sound judgment, with attention to technical details only in cases in which law and justice demand it, will greatly assist in obtaining results which attest the wisdom of Congress in adopting selective service as a peacetime method of personnel procurement."

There has been an encouraging drop in the rate of all three kinds of courts martial in the last 10 years. In 1931, twenty-eight out of every thousand enlisted men were tried by a general court martial. When the present Judge Advocate General took office 4 years ago, sixteen men out of every thousand were tried by a general court martial. For the fiscal year ending last June only four and one-half per thousand were so tried. When the curve was plotted showing the general court-martial rate, it was feared that the decrease in trials by general courts martial would be offset by an increase in the number of trials by the inferior courts, but the curves for the special and the summary courts had fallen in lines roughly paralleling the descent in the general court-martial rate. In 1931, forty-six out of every thousand men were tried by special court. Last fiscal year only thirteen out of every thousand were so tried. In 1931, one hundred and five men out of every thousand were tried by a summary court. Last fiscal year only thirty-one out of every thousand were so tried. When you compare the present court-martial rate with that in President Cleveland's time, the result is amazing. In his first annual message to Congress on December 8, 1885, Mr. Cleveland reported that the Army numbered 24,705 enlisted men and that there had been 14,179 trials by all forms of court martial during the preceding fiscal year. Of course, some men had been tried more than once, but as Mr. Cleveland pointed out, probably over one-half the Army had been tried, the percentage being 57 percent. Last year the percentage was 4.85, but we are not satisfied with that. Four and eighty-five one-hundredths men out of every hundred tried by some form of court martial is not good enough, and we are constantly working to better it. The most vexatious problem arises out of petty thievery. Because of the close community in which soldiers live in barracks and in camps with no way of protecting their property at all times a petty thief disturbs harmony, causes mutual distrust, and breaks up the teamwork necessary to the success of a company in peace or in war. There is an old Army saying, "There is no place in the Army for a petty thief." So until recently the almost invariable custom has been to try by a general court martial all cases of prima facie petty thievery and to adjudge dishonorable discharge in the event of conviction. Dishonorable discharge for stealing brands a boy for life. So many distressing cases came to the attention of The Judge Advocate General that he recently circularized all staff judge advocates on the subject, saying among other things:

"Often a company commander may dispose of a case without trial or trial may be had by inferior court when the circumstances indicate that the taking of property was due to impulse or sudden temptation. The company commander should try to determine whether the taking was the act of a real thief or an unpremeditated act in disregard of property rights, unfortunately not very uncommon in youth. Such cases offer an opportunity for the company commander to exercise discrimination and true leadership to the end that the self-respect of the soldiers and military manpower may be preserved."

In the remarkable series of lectures on the common law which Oliver Wendell Holmes delivered at the Lowell Institute at Boston over 60 years ago, he restated the three theories of punishment, retribution, reformation, deterrence. He showed very clearly that he leaned to the theory of deterrence. Reformation may in some cases be worked by punishment. In its disciplinary barracks the Army employs psychiatry and other methods of modern penology, but in my view there is a point very soon reached beyond which further confinement ruins rather than mends a boy. I have never been able to understand, much less follow, Hegel, protagonist of the retribution theory, and my brain whirls when I try to unravel his cryptic statement: "Wrong being the negation of right, punishment is the negation of that negation, or retribution." Anyhow, retribution, like its analog vengeance, may well be left to the Lord, who has so emphatically laid claim to it. The Army will probably never reach the high plane of Clarence Darrow and proceed upon the theory that punishment does not deter. So the Army will continue in its effort to avoid trials wherever possible and to hold punishment down to that minimum which seems adequate to deter.

But should we go to war, there will be instances where severe sentences may be adjudged for purely military offenses. Those sentences will be reviewed by my successor—for I expect soon to be relieved, and devote my entire time to the office of provost marshal general—and reviewed by the Secretary or Under Secretary. If such sentences after review and final action still seem severe, I trust the country will realize that in the considered judgment of humane and sympathetic men the sentences were measured by the damage to military discipline and efficiency and to the safety of the country and were regarded as necessary.

Progress and Problems in Highway Building

EXTENSION OF REMARKS

OF

HON. WILBURN CARTWRIGHT

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1941

ADDRESS BY HON. JOHN M. CARMODY, FEDERAL WORKS ADMINISTRATOR

Mr. CARTWRIGHT. Mr. Speaker, under leave to extend my remarks in the RECORD, I include an address prepared by Federal Works Administrator John M. Carmody for delivery on September 29, 1941, before the annual convention of the American Association of State Highway Officials at Detroit, Mich. Because of illness, Mr. Carmody was unable to attend the convention and deliver his address in person, and it was read by Mr. H. S. Fairbank, Chief of the Division of Information of the Public Roads Administration.

Mr. Carmody's address follows:

My first appearance before this association occurred 2 years ago. Then I felt somewhat like a stranger among you. As Administrator of the newly created Federal Works Agency, I had been given supervision of the Public Roads Administration only about 3 months earlier.

For more than 2 years now, I have worked with you through the Public Roads Administration. I have seen highway construction under the Federal-aid plan progress in an orderly manner and at a rapid rate. The 11,724 miles of Federal-aid highways completed during the past fiscal year by the State highway departments represent an increase over the work of the previous year.

I have also seen the State highway departments respond to the exigencies of the defense program as completely as available funds and the limitations of the law would permit.

By the end of August, construction of 186 miles of access roads and elimination of 13 grade crossings on access roads had been approved under the Federal-aid highway program, and much of the work was under way. Surveys also have been authorized or engineering supervision is being supplied on over 1,450 miles of access road. This work is scattered over about three-fourths of the States and is to cost nearly sixteen and one-fourth million dollars, of which nearly nine million will be paid from Federal-aid funds.

A marked upswing in volume of work on the 78,000-mile strategic network of highways of military importance also is evident. By the end of August, Federal-aid projects completed during the fiscal year, under construction or approved for construction, included 4,288 miles of highway and 145 grade-crossing eliminations. This work is estimated to cost $172,505,000, of which $95,289,300 is to be paid with Federal-aid funds. An additional 1,500 miles to cost about $64,000,000 is programmed.

So I come before you this year not as a stranger but as one thoroughly acquainted with your work and deeply gratified with the cooperation between the Federal Works Agency (through its Public Roads Administration) and the State highway departments. I might add that I wish all my dealings as Administrator of the Federal Works Agency functioned as smoothly as those with the State highway departments.

So much for the past. Now about the future.

The apportionment of Federal-aid road funds for the fiscal year beginning next July 1 will be made in December. I am sure we can count on your continued cooperation in spending funds made available for the Federal-aid system to a desirable extent for the strengthening of weak links in the strategic system. After all, these roads are your main highways. All improvements will be serviceable in the future as well as in the present national emergency. But, above all, I am sure that you of the States, no less than we of the Federal Government, welcome the opportunity to be of service to our country at this critical time. I predict that next fall it will be possible to point with still greater pride to our accomplishments in reconditioning the strategic network.

I do not need to enumerate the weaknesses that exist in the roads of principal military importance. You are already thoroughly familiar with them. You also have a realistic

Resolved, That the city government congratulate Congress for this act which was passed during the administration of our late beloved President Franklin Delano Roosevelt with the hope that more benefits will be allowed and improvements made to allow workers 60 years of age and over to continue to enjoy their elderly age; and be it further

Resolved, That a copy of this resolution be sent to the President of the United States, our Senators and Congressmen, the Speaker of the House, and the President of the Senate.

JOSEPH B. GREENFIELD,
Alderman.

Capital Punishment

EXTENSION OF REMARKS
OF

HON. ABRAHAM J. MULTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, August 22, 1960

Mr. MULTER. Mr. Speaker, with further reference to my bill, H.R. 870, to abolish the death penalty, I commend to the attention of our colleagues the following article by Prof. Richard C. Donnelly, professor of law, Yale Law School, and retired member of the Connecticut Board of Parole:

CAPITAL PUNISHMENT

(By Richard C. Donnelly, professor of law, Yale Law School; retired member of the Connecticut Board of Parole)

The massive literature of capital punishment—commencing with Beccaria's influential essay "On Crimes and Punishment" published in 1764—presents special difficulties and frustrations. It is a curious fact that the main arguments against the death penalty have remained remarkably unchanged since the beginning of the debate. First of all, the arguments have been and are usually of a utilitarian character: capital punishment does not deter crime and its consequences are detrimental to social welfare. Secondly, and usually of much greater importance in accounting for the zeal of the advocacy, are allegations based on conceptions of moral value and humanitarian sentiment. These allegations, despite their priority, are rarely stated fully or precisely. To do so, while presumably not impossible, is difficult. They do not necessarily depend, for example, on an absolutist value of human life nor on a Tolstoian doctrine of nonviolence. There is also another attitude sometimes complicating analysis which, while not unrelated to the moral repugnance induced in many by the death penalty, is nevertheless distinct. This attitude is based on assumptions as to the nature of human behavior that create dissatisfaction and uneasiness with the whole concept of criminal responsibility and, indeed of moral responsibility. All of these factors, in large measure unanalyzed and unarticulated, bedevil communication and clear understanding.

It is probably safe to say that the crucial proposition in the abolitionist's case is that the death penalty is no more effective as a deterrent than other non-lethal sanctions. There is, of course, nothing in logic that requires this assertion to constitute the kingpin of an abolitionist position. Indeed, it would seem more logical to place the burden upon the advocates of the death penalty to establish that it does deter and is absolutely necessary for the protection of society. However, those who favor capital punishment have not accepted responsibility for demonstrating that the state kills only because of necessity and that there is no other means of societal protection. Their position appears to be that the existence of the law requires no justification and that its effectiveness may be assumed. It is for those who would change it to prove the desirability of doing so. Nevertheless, all realistic persons recognize that if the abolition movement is to be an effective political force, the nondeterrence point must be persuasively made.

It is a point of very real difficulty. This is true because we know virtually nothing about the deterrent effects of legal sanctions in general. We are ignorant, not only because investigation of the problem presents formidable difficulties, but because, apart from studies made as contributions to the death penalty debate, serious empirical investigation has rarely been undertaken. This is in itself a remarkable fact since, rightly or wrongfully, most criminal statutes become law on the assumption that their enactment and enforcement will eliminate or minimize the conduct for which sanctions are provided.

However, the practical necessities of recruiting popular support for the abolition movement have motivated the production of numerous studies designed to test the deterrent consequences of the death penalty. Although the studies employ several different modes of approach, they arrive at the common finding that, at most, no significant relation can be detected between the presence of the death penalty and the incidence of capital crime.

Putting aside studies of such relevant matters as the significance of mental disorder in the commission of capital offenses, these statistical inquiries tend to fall into one of several common types, the most characteristic of which are probably these: (1) studies of capital-crime rates in a particular country or American State before and after abolition of the death penalty; (2) comparative statistics on the incidence of murder in jurisdictions where capital punishment has been retained and those in which it has been abolished; and, less frequently encountered; (3) broader studies of general crime rates in abolition and death penalty jurisdictions. The abolition position, it seems to me, would be strengthened if it were frankly recognized that such inquiries rarely approach any minimum standards of decent scientific rigor. It is true that many public policy decisions are based on far less knowledge than these studies supply as to the probable deterrent effects of the death penalty. But the fallibility of such statistical inquiries is obvious, and it is important to be aware of what we do not know. In the first place, most of these studies require accurate statistics on the numbers of capital offenses actually committed. This presupposes a system of crime reporting that is both accurate and in such form as to make the information available. The fact is that, particularly in the United States, these conditions simply do not obtain. But even if this basic data were readily accessible, other difficulties would emerge. Suppose, for example, it is shown that in State X, murder rates declined in the 10-year period after abolition. Having learned this, what do we know? Simply that abolition did not prevent a decline. Whether there is a causal connection between the two occurrences, whether the crime rates would have been the same, higher or lower had the death penalty been retained, are questions that quite apparently remain unanswered. Comparisons of jurisdictions in which general economic and cultural factors are similar and where some have and some have not abolished capital punishment are afflicted by similar infirmities. These comparative studies, however, even if they do not succeed in measuring the actual consequences of the death penalty, at least strongly suggest that capital punishment as a factor in the incidence of crime is a matter of comparative insignificance. Now, all of this is not to assert that we can derive no useful inferences from the studies. We may say, first, that if additional deterrence results from the death penalty, it is not of enough importance to reveal itself through the rather crude measures afforded by these studies. Again, if the abolitionists fail to show that the death penalty does not deter, no one else has shown that it does.

There is another aspect of the deterrence argument that deserves attention. No reason occurs why one advancing the abolitionist position must assume, almost as an article of faith, that execution of the death penalty can, under no conceivable circumstances, be expected to enhance the deterrent effects of the criminal law. Rather, the crucial question would seem to be whether one can sensibly anticipate such a consequence, given the circumstances that actually surround the administration of criminal justice. Surely, realization of the deterrent potential of capital punishment, if it actually exists, requires that certain minimum conditions be satisfied. These include, at a minimum, reasonable certainty in the detection and apprehension of offenders, reasonable speed and certainty of conviction, and reasonable speed and certainty in the execution of the death sentence once it is imposed. The incontrovertible fact is that in the United States not one of these conditions is fulfilled today nor is likely to be in the years ahead. No one knows how many capital offenses are actually committed each year in this country. There are probably few believers in capital punishment who would consider it either just or desirable to put all murderers to death. It is because in practice we do not find the penalty of death appropriate that we execute for murder in the United States fewer than 50 persons a year—surely a trivial fraction of the cases in which it might legally be imposed. Our hesitancy and bad conscience in carrying out a sentence of death must largely nullify any exemplary benefits that could conceivably be gained. Perhaps it is sufficient to say that in the United States capital punishment should be opposed on the same grounds that induce one to reject any other futile and foolish course of action.

There are other considerations bearing on the death penalty debate that should be mentioned. It would require more faith than most could muster to assume that, when so few who commit capital offenses are actually executed, selection of offenders for the death penalty proceeds on anything approaching a rational basis. An examination of the cases of those who are executed would show, I am sure, that they are not more deserving of execution or more dangerous than those we do not kill; in fact, the most dangerous are likely to be the legally insane whom we do not execute and the few hired killers—those, perhaps, most deserving of punishment—who are rarely convicted and who are most likely to be killed by their competitors. Pure caprice must play a large part. Even more disturbing is the suspicion that selection is made on the basis of unacceptable criteria, such as, the race or poverty of the defendant, the status of the victim, and the like. In other words, capital punishment is the most difficult of sanctions to administer with even rough equality. Yet, most dramatically when life is at stake, equality is, as it is generally felt to be, a most important element of justice.

Apart from these considerations the possible imposition of the death penalty in a criminal trial has a discernible and baneful effect on the administration of criminal justice. A trial where life is at issue becomes inevitably a morbid and sensational affair. Mr. Justice Frankfurter, in his appearance as a witness before the British Royal Com-

mission on Capital Punishment, put it this way:

"When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the bar, the public, the judiciary, I regard as very bad. I think scientifically the claim of deterrence is not worth much. Whatever proof there may be in my judgment does not outweigh the social loss due to the inherent sensationalism of a trial for life."

The special sentiment associated with judgment of death is reflected in another way in the courts. It lends added weight to claims of error in the trial and multiplies and protracts the appellate processes, including postconviction remedies developed during recent years. In this regard, one needs only to recall the case of Chessman, who from June 1948 until May 2, 1960, successfully resisted the execution of his sentence. Nor is this situation peculiar to California. These delays, this sense of shame in administering the death penalty, must be symptomatic of a widespread distrust of what we are doing.

There is still another point, namely, the effects of the death penalty on the staff of penal institutions where executions occur. The accepted objective of any modern correctional system is the rehabilitation and reformation of offenders. Any hopes for a more rational penology must rest ultimately upon the development of a professional group committed to correctional work as a career. Progress toward this objective has not been impressive. I suspect the presence of the death penalty is a significant source of difficulty. And I imagine that an enlightened warden finds an execution almost as contrary to his professional standards and duties as would a physician executioner. It has, in fact, been suggested that capital punishment by injection would be simpler, swifter, less mutilating, and less painful than any other method. This proposal, however, gets little serious consideration because it is unlikely that any reputable physician would be willing to give such an injection. The death penalty must create a problem of personal recruitment for correctional institutions. It should not be surprising to discover that able men object to participating in the operations of an abattoir.

My next to last point is that the death penalty if carried out is the only irrevocable sanction authorized by law. Like all human endeavors, the administration of criminal justice is not error proof. Innocent men and women have been convicted of crime and some executed. A mature system of justice makes provision for the acknowledgment and effective rectification of mistakes. The death penalty prevents this.

My final point raises a question beyond my competence to answer but does fall, it seems to me, within the special competence of this audience and the other members of the panel. Many have argued that it is appropriate for a society to express its condemnation of murder by associating the offense with the highest sanction that the law can use, however much considerations of humanity should temper the exaction of the penalty when there are extenuations. For example, Lord Justice Denning, in giving testimony before the British Royal Commission on Capital Punishment, said:

"The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformative or preventive and nothing else. * * * The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime; and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty."

It would seem to me that if there is a social need for grevious condemnation of certain murders that it can be met, as it is met in abolition states and some 35 other countries, without resorting to capital punishment.

In conclusion, I think a persuasive case for the abolition of capital punishment can be made. At best, our handling of the death penalty is futile and not a little ridiculous. At worst, it may be positively pernicious.

Adrian van Koevering

EXTENSION OF REMARKS
OF
HON. GERALD R. FORD, JR.
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Tuesday, August 23, 1960

Mr. FORD. Mr. Speaker, the Fifth Congressional District of Michigan lost a highly respected citizen in the death of Adrian van Koevering, founder of the Zeeland Record, an outstanding weekly newspaper published in Ottawa County.

Under leave to extend my remarks, I include two editorials concerning the work and service of Mr. van Koevering. The first is from the Holland Evening Sentinel of July 16 and the second from the Grand Haven Daily Tribune for July 18, 1960:

[From the Holland Evening Sentinel, July 16, 1960]

ADRIAN VAN KOEVERING

Another pioneer in the publishing business has passed on after a long and useful life of 86 years. He had lived in this community all his life and had spent more than 50 years in the printing and publishing business in our neighboring city of Zeeland. During the more than 50 years he was active in local politics as well as charter member of Rotary, past president of the Michigan Press Association, member of the board of public works, the school board and spent many years as a member of the Zeeland City Council.

Adrian, as he was known by many people in the community, gave many hours of his life to public affairs. In his later years he was a contributing member of the Michigan Historical Society and just this year was elected to the Michigan Hall of Fame, a group that has few living members.

The community has lost another fine citizen, he will be missed by many people.

[From the Daily Tribune, July 18, 1960]

ADRIAN VAN KOEVERING

Adrian Van Koevering, who founded the Zeeland Record, an Ottawa County weekly newspaper, is dead. He was 86.

Although he had been retired for some time, many knew him as an energetic publisher, outspoken in his views and loyal to his chosen work. He had many friends and admirers in West Michigan.

Adrian founded the Record, which has remained in the Van Koevering family. The newspaper has frequently won recognition among Michigan weeklies. It is one of a very few publications in its circulation class to print on a rotary press—equipment normally associated with much larger publications.

We always admired Adrian Van Koevering. He was conservative in outlook but had the highest of ideals and a deep sense of values. He played a key role in helping to make Zeeland a major poultry and agricultural center and was active for decades in county as well as community affairs.

A facet of his character was revealed in a series of Christmas cards he sent to friends after the passing of Mrs. Van Koevering a a few years back. He composed his own verse and poetry to express the deep religious feeling he possessed.

Although his convictions and principles were often expressed in the unvarnished language of the oldtime editor, he was a kindly man concerned with the best interests of his readers. He was a strong-minded citizen in an era of great change. But his newspaper lives on.

Caribbean Crisis Widens

EXTENSION OF REMARKS
OF
HON. DANIEL J. FLOOD
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, August 23, 1960

Mr. FLOOD. Mr. Speaker, in a series of addresses to the House, I have stressed the widening crisis in the Caribbean and offered a program for the remedy. Thus, it was with the greatest interest that I read in the August 12, 1960 issue of U.S.A., a highly respected fortnightly weekly, an illuminating article by Anthony Harrigan dealing with this crucial subject.

I note particularly that the author includes among his suggestions the creation of what would be a reactivated Special Service Squadron as a "visible reminder to Caribbean peoples of the strength and good will of the United States, and of how military might can be a deterrent to Red aggression and shield against it."

The article, which is commended for reading by all concerned with the Caribbean questions, follows:

CARIBBEAN CRISIS WIDENS

(By Anthony Harrigan)

When finally the Castro dictatorship is overthrown by free Cubans supported by the United States and its Latin American partners, the danger of Communist victory in the Caribbean will not have disappeared. Indeed the island-studded vastness of that sea is the scene of unparalleled opportunities for subversion by Red regimes. Haiti, the Dominican Republic, Puerto Rico and the Caribbean Federation already are targets designated by the conflict-managers of the Kremlin. If efforts to turn the Pearl of the Antilles into a Soviet satellite are a failure, then the United States public can expect that Communist efforts will be shifted to other islands along the southern sea frontier of our country.

Already there are reports of new Communist activity in Haiti. Reds from Europe, including the Iron Curtain countries are being allowed to enter the country. Last May, a "student" demonstration took place in Port-au-Prince where 400 participants denounced "Yankee imperialism." Puerto Rico has harbored for a long time nationalists extremists who hate Uncle Sam. Gov. Luis Muñoz-Marín, while professing strong friendship for the United States, has declined

In the books by Ishbell Ross on the lives of Kate Chase, Rose Greenhow, Clara Barton, and Mrs. Jefferson Davis, we find excellent samples of what can be done to reveal the devotion, even though some were by intrigue, and the wholesome and sometimes almost unbelievable and thrilling influence women can have in difficult and challenging times.

In these books she has demonstrated, as others could if they were inspired to study as she has and do the exceptionally skillful job of investigating and fine writing, the spirit of the women. All of this could give us a new insight and a new and different angle from which to view and appreciate the Civil War.

So much more needs to be done for so many other women who have made significant, interesting, and worthwhile contributions in so many ways. People like Elizabeth Waring Duckett of Maryland; just the story of how she got to Lincoln and Stanton and others in behalf of her father and brother who were in prison and was able to get them out.

Then there is the mother of the 1st Tennessee Regiment, Mrs. Betsy Sullivan. We only know about her through searching the records and yet in some ways there was no greater inspiration that any regiment could receive than she furnished by her devotion to the solution of many problems for the average soldier.

The story of the girl who earned the title "The Florence Nightengale of the South," Mrs. Ella Trader, of Arkansas, is a thrilling one, too.

These are just a few examples that suggest areas that need research, study, reviving, and writing about.

A study and review of the life of Mrs. Jeb Stuart could be a very interesting and worthwhile contribution.

Yes, the histories of wars are records of the achievements of men, for the most part: The chroniclers have had to record that women, by their intrigues or their fatal gift of beauty, have been the cause of strifes innumerable; and it is confessed that they have inspired heroism and knightly deeds, but they have had small share in the actual conflicts. It has been their portion to suffer in silence at home, and to mourn the dead. For them it has been to hear of sufferings which they could not alleviate, to grieve or rejoice over results to which they had contributed only sympathy and prayers.

But, it was different in our conflict to save the Union. Other wars have furnished here and there a name which the world delights to repeat in terms of affection or admiration, of some woman who has broken through the rigidity of custom and been conspicuous either among armed men, like the Maid of Saragossa, or in the hospitals, like the heroine of Scutari. But, the Civil War furnished hundreds as intrepid as the one, and as philanthropically devoted as the other. Indeed, we may safely say that there was scarcely a loyal woman in the North or South who did not do something in aid of the cause—who did not contribute, of time, or labor, or money, to the comfort of the soldiers. No town was too remote from the scene of war to have its society of relief; and while the women sewed and knit, and made delicacies for the sick, and gathered stores, little girls, scarcely old enough to know what the charitable labor meant, went from house to house, collecting small sums of money, the fruitful energy of all keeping the storehouses and treasury of the sanitary commissions and comparable organizations full, and pouring a steady stream of beneficence down to the troops in the field.

Everywhere there were humble and unknown laborers. But there were others, fine and adventurous spirits, whom the glowing fire of patriotism urged to more noticeable efforts. There were those who followed their husbands and brothers to the field of battle and who went down into the very edge of the fight, to rescue the wounded, and cheer and comfort the dying with gentle ministrations; who labored in field and city hospitals, and on the dreadful hospital boats, where the severely wounded were received; who penetrated the lines of the enemy on dangerous missions; who organized great charities, and pushed on our sanitary enterprises; who were angels of mercy in a thousand terrible situations.

There are others who have illustrated, by their courage and address in times of danger, by their patience in suffering, and by adventures romantic and daring, some of the best qualities in our nature. Like the soldiers of the armies, they were from every rank in life, and they exhibited a like persistence, endurance, and faith.

There are many hundreds of women whose shining deeds have honored their country and, wherever they are known, the Nation holds them in equal honor with its brave men. But, they are not known.

The story of the war will never be fully or fairly written if the achievements of women in it remain untold. They do not figure in the official reports; they are not gazetted for deeds as gallant as ever were done; the names of thousands are unknown beyond the neighborhood where they live, or the hospitals where they loved to labor; yet there is no feature in the Civil War more creditable to us as a nation, none from its positive newness so well worthy of records of the U.S. Sanitary Commission, U.S. Christian Commission, the various State historical society records, the thousands of references to women's activity found in local publications of the time will make it easy for us to do something in this area that will give the women the credit that is their due.

In assuring this credit we will add to our own heritage and will be building on the gallant spirit of graciousness and tenderness toward women of that time that we know about but which never has been properly recognized in writing.

Now let me summarize very briefly by saying, again, that we must commemorate appropriately, adequately, and as completely as we can. We will do this better if we encourage and engage the very best of our scholarly efforts everywhere. When we do this we will have more, more accurate and more complete, historical literature of this very significant time in our history.

And, I reiterate, we must demonstrate our gallantry toward the gentler sex. This story is a thrilling one and will reflect great credit on the women from both sides of the Mason-Dixon line.

In addition, and in conclusion, it may be worthwhile at this point to suggest also that we can learn much from the lives of all the people, great and small, who served the cause of the people as they understood the demands of their time—for my purpose now I should like to refer to two of them.

One became great and immortal before and during the war and one during and after the war. Both left us needed sublime words and thoughts at the close of the tragedy which point to the goal and call us to the task.

Ninety-six years ago last March 4, one of them, Lincoln, left us words and suggestions about malice, charity, firmness, right and the task before us. Told us what to care for, what we should do, achieve and cherish for ourselves and for all nations.

Soon after that Robert E. Lee, seeking to serve against a united nation, left us some unforgettable words and then an incomparable example of unselfish citizenship.

Bruce Catton, in one of his great books, tells us of it in this way:

"Through the sheets of rain that fell on the morning of April 15, 1865, a Baptist minister living on the outskirts of Richmond caught sight of a man on a gray horse. His steed was bespattered with mud, and his head hung down as if worn by long traveling. The horseman himself sat his horse like a master; his face was ridged with self-respecting grief; his garments were worn in the service and stained with travel * * *." Robert E. Lee had returned at last from the wars.

Lee, a paroled prisoner, was indicted for treason but was never brought to trial; and on July 13 he applied for a Federal pardon, which was never granted. Courageous and resolute in war, Lee was never bitter in defeat. "The war being at an end * * *" he wrote in September 1865, "I believe it to be the duty of every one to unite in the restoration of the country, and the establishment of peace and harmony * * *."

That month he became president of Washington College in Lexington, Va., a position which he held for the 5 remaining years of his life. On the morning of October 12, 1870, the old warrior lay dying. His former opponent, Ulysses S. Grant, was in the White House; but Robert E. Lee was once more on the battlefield. "Strike the tent," he murmured as he died.

I'm loath to close but I must because there are others who also have important observations to make but it cannot be wrong for me to suggest that we, like our forefathers, must strive for a greater, more appropriate and devoted patriotism toward the self-same ideals that they gave to us through sacrifice and preserved for us through sacrifice. I know of no better way to develop this patriotic spirit in the hearts and minds of boys and girls and in the hearts and minds of all our citizens and liberty-loving people everywhere than by reviewing, rewriting, reliving and reviving the great American story and its magnificent struggle for freedom.

Good luck as together we do those things that will give assurance for a greater and finer America for ourselves, forever and for everyone.

Hail to Italy and Its Great People

EXTENSION OF REMARKS

OF

HON. PHILIP J. PHILBIN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 25, 1961

Mr. PHILBIN. Mr. Speaker, the 100th anniversary of the rebirth of the great and illustrious nation of Italy is an event that will be noted throughout the world with acclaim, enthusiasm, and gratitude.

The proclamation of Turin climaxed the rebirth of Italy under the constitutional rule of Victor Emmanuel the Second.

The great Italian philosopher and historian, Croce, observed that this event might more appropriately have been called a birth, because it was the first time in Italian history in which there was an Italian state with all and only its own people and molded by an idea.

Thus, Italy is no longer the Italy of the Romans, or the Italy of the middle ages, but the Italy of the Italians. But it would be quite impossible to try to separate modern Italy, and the Italy of the Italians, from the glorious ages of Italian history where high orders of civilization flourished, where art, literature, science and culture were nurtured, where fundamental principles of government and law were originated and developed.

That the unification of Italy under the Risorgimento brought desirable independence, liberty and unity to this great historic nation cannot be doubted, and this movement and its happy consequences constitute valuable milestones in the progress of man toward self-determination and individual liberty.

It would be a colossal task, however, to try even to outline the glorious, momentous contributions of Italy and the Italian people to the enlightenment and high state of civilization which we of the Western World enjoy today.

It would be equally formidable to try to describe the enduring effects of the great, invaluable contributions in war and peace which leaders and people of Italian blood have made to America and its progress. The American people can be very thankful for the truly monumental contributions of past and present generations of Italian blood, especially those that relate to the building and development of this country, which, in all our States, and in thousands of communities throughout the land, are so patently visible, and evoke the gratitude of our people for the gallantry and spirit of sacrifice in war and the long-sustained loyalty, steadfastness, and enlightened leadership and work in peacetime of Italians and Italo-Americans, to develop the strength and promote the progress of our Nation.

Italy is bound to us by many ties of blood, of kinship, of religion, of common law, and culture. It is a loyal and dedicated ally in the struggle to preserve human freedom, an integral and vital part of the free world, the beloved native land of very many noble, devoted American citizens, whose children, like themselves, are increasingly and influentially a meaningful part of the American dream.

I am very proud indeed, as a Member of this great legislative body who represents here many fine Americans of Italian blood, to join in the tributes that are being paid to Italy on its 100th birthday. My own bonds with the Italian people are deep and very dear. From early boyhood the Italian people have been among my closest and warmest friends and I dearly cherish them. They have sustained and inspired me in ways I could never forget.

I am indeed honored to express my words of congratulations and best wishes to the Italian nation and its wonderful people, on the occasion of Italy's centennial, and I hope and pray that the great Italian nation will continue to grow, prosper, and flower as it has throughout history in the arts, culture, and enlightenment for which it is famous, and in the ways of prosperity and individual liberty so fittingly symbolized by and worthy of its unity and independence.

The Italian people fill an honored place in this Nation and in the world. Their talents, zeal, courage and humane warmth are qualities this Nation and the whole wide world urgently need.

Here in our own land we will continue to hold them close to our hearts, just as they hold others who have won their trust and affection.

I rejoice with Italy and the Italian people on its 100th birthday and pray God that this beautiful, great land and its cherished people may go forward in good health, ever-growing prosperity and happiness and very many happy returns of the day.

Mr. Speaker, under unanimous consent I include a recent editorial entitled "Risorgimento Saluted," printed in the Worcester, Mass, Telegram Gazette, in the RECORD.

I thank the distinguished editor who wrote this brilliant piece for his inspiration and ideas:

RISORGIMENTO SALUTED

("If it were possible in political history to speak of masterpieces as we do in dealing with works of art, the process of Italy's independence, liberty and unity would deserve to be called the masterpiece of the liberal-national movements of the 19th century in Europe."—B. Croce, in his History of Europe of the XIX Century.)

One hundred years ago, Italy climaxed its "risorgimento," its "rebirth," with the proclamation in Turin, by the first Italian Parliament, of the Kingdom of Italy under the constitutional rule of Victor Emmanuel II.

Croce observed that it might more accurately have been called a sorgimento, a birth, because for the first time in all the ages there was born an Italian state "with all and only its own people, and molded by an idea." Italy, as Victor Emmanuel said, was no longer the Italy of the Romans or the Italy of the Middle Ages, but "the Italy of the Italians."

But whether a risorgimento or a sorgimento, Italy's unification under Victor Emmanuel was part of that same wave of humane enlightenment which swept Europe beginning in the 17th century and had its finest 18th century flowering in the American Revolution.

It is significant in this regard that the book "On Crimes and Punishments," by the Italian humanist Cesare Beccaria was read and annotated by Jefferson, who knew and spoke Italian, and was cited by John Adams in his defense of the English soldiers who were tried for the Boston massacre.

This year, we in America observe the centennial of a war in which our own national unity was preserved. It is therefore all the more fitting that we honor, also, the centennial of Italy's unity. A stanch free world ally—and the country of origin of so many fine Americans—deserves no less.

A Military Code of Ethics and a Step in the Right Direction by Secretary of Defense McNamara

EXTENSION OF REMARKS
OF
HON. F. EDWARD HÉBERT
OF LOUISIANA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, April 25, 1961

Mr. HÉBERT. Mr. Speaker, I ask unanimous consent that the directive of Secretary of Defense, the Honorable Robert S. McNamara, issued April 14, 1960, No. 1000.8, concerning the acceptance of gifts; use of Government facilities, and use of official representation funds, be printed in the RECORD.

I have long sought to see a code of ethics for guidance of officers and employees of the Department of Defense which would be enforced. As chairman of the Subcommittee for Special Investigations of the Committee on Armed Services of the House, I have conducted many inquiries into this general area.

Congress has been promised time and again that there would be a code of conduct set up; that action would be taken to curtail abuses; that direction would be given; and that there would be restored a standard of ethical values which could be clearly understood and enforced.

The standards contained in this directive reflect the Secretary's own personal high ethical standards. They are a decent set of rules by which the personal integrity and the official responsibility of members of his Department can live.

I am gratified at the spirit which prompts this directive. It follows soon upon the Secretary's assumption of office. I look forward, as I am sure do the Members of Congress and a waiting public, for the cure which it is intended to effect; and for the standard of personal integrity which it will create.

There is little time to be lost. Many excesses, in the past, have gone unchallenged and unpunished because there seemed to be a vacuum which personal standards did not always fill—sometimes at very high level.

Now there is a code of ethics.

I think, however, this code should be considered only as a beginning. Conscientious administration and observance will make it meaningful.

I congratulate the Secretary for this prompt and discerning action:

DEPARTMENT OF DEFENSE DIRECTIVE

(Subject: Acceptance of gifts; use of Government facilities, and use of official representation funds)

I. Purpose:

This directive sets forth standards of conduct for Defense personnel with respect to the acceptance of gifts, the use of Government facilities, property and manpower, and the use of official representation funds. Its provisions apply to all military personnel on active duty and to all civilian personnel.

II. Acceptance of gifts and use of Government property:

(A) Defense personnel shall not—

(1) Accept any gift, favor or hospitality for themselves or their families from any enterprise or person doing business or seeking to do business with the Department of Defense which might reasonably be interpreted by others as being of such nature that it could affect their impartiality;

(2) Personally use or permit the use by others of Government facilities, property, manpower or funds for other than official Government business.

(B) The tender of any gift, favor, or hospitality which might be considered to be in the nature of bribery shall be reported immediately through departmental procedures to the Department of Justice and the General Counsel of the Department of Defense. Any questions concerning what might be construed as bribery shall be resolved in favor of reporting the incident.

(C) Gifts from foreign governments shall be handled in accordance with DOD Directive 1005.3.

III. Official representation funds: Use of official representation funds shall be subject to the approval of the Secretary of Defense, the Deputy Secretary of Defense, or the Secretaries of the military departments. Funds

It is the responsibility of the businessman to make his views known.

THE RESPONSIBILITY OF GOVERNMENT

1. Government must provide the kind of service which will fit the export needs of business. The export services of the Departments of Commerce, Agriculture, and State, of the Export-Import Bank, and of the Small Business Administration must be coordinated and augmented so that they will effectively fill the requirements of the U.S. exporter.

The National Export Policy Act of 1961, which I have introduced in the Senate with the cosponsorship of several of my colleagues, is designed to meet this responsibility. It would create a Council for Export Promotion to coordinate the various services provided by the Government and to bring them closer to the Amercan businessman. It would set up a broad-scale export credit guarantee program in the Export-Import Bank with the participation of private banking and financial institutions, and it would greatly expand the foreign trade activities of the Departments of Commerce and State as well as of the Small Business Administration.

2. Government must provide assistance to those businesses, workers, and communities adversely affected by the concentrated increase of certain imports, resulting from the reciprocal trade policies pursued in the national interest. Businesses and workers must be helped to meet foreign competition, and communities must be helped to overcome the possibly depressing effects resulting from this temporary economic adjustment.

The National Import Policy Act of 1961, which I have introduced in the Senate with the cosponsorship of Senator CASE of New Jersey, is designed to meet the Government's responsibility in this respect. It would provide loans and technical assistance to businesses and communities suffering serious injury as the result of increased imports, and it would set minimum levels and periods of unemployment compensation for their workers. It would also provide for retraining and relocation assistance to those workers, as well as the opportunity for early retirement under the social security system.

In addition, it would authorize the President to set a time limit of up to 7 years, when he wishes to bring about the gradual reduction of additional tariffs or quota restrictions which he imposes as the result of Tariff Commission recommendations. This would give assurance to our trading partners throughout the world that, even if the United States increases some important barriers for the welfare of its citizens, these increases may be eliminated once they are no longer necessary. Such an assurance would make much easier the successful carrying out of another governmental responsibility: the constant negotiation for the reduction of high foreign tariff walls and the elimination of remaining discriminatory barriers against U.S. products.

CONCLUSION

The challenge to business and the responsibility of Government in the field of U.S. trade expansion can be met only through the closest possible cooperation between business and Government. But it must be emphasized that Government can only meet its responsibilities with the active support of the people—in this instance the people who, like you, have the most direct interest in foreign trade. Congressional renewal of the Reciprocal Trade Agreements Act and passage of other legislation on exports, as well as the implementation of policies for export expansion, are of continuous interest and concern to you.

[From the New York Times, May 3, 1961]

KENNEDY OFFERS TEXTILE AID PLAN; HINTS AT QUOTAS—DECLARES SEVEN-POINT PROPOSAL VITAL TO NATIONAL ECONOMY—INDUSTRY ENCOURAGED

(By Tom Wicker)

WASHINGTON, May 2.—President Kennedy announced today a program of assistance to the textile industry. There were indications that import quotas might be imposed on competing nations.

J. M. Cheatham, head of the American Cotton Manufacturers Association, said he was "highly encouraged." He said he did not know if quotas would result.

"We are encouraged that this is going to lead to some corrective action," he declared.

His organization has long urged quotas as a relief from the heavy import competition felt by domestic manufacturers, particularly in the last 2 years.

While the seven-point program did not mention quotas or tariffs, it was regarded by some in the administration as a "green light" for the Office of Civil and Defense Mobilization to impose quotas on such sources of competition as Hong Kong, Pakistan, and other low-wage countries.

RELIEF FOR OIL IN 1959

This view was based on the seventh of the actions, proposed by the President.

"An application by the textile industry for action under existing statutes, such as the escape clause or the national security provision of the Trade Agreements Extension Act, will be carefully considered on its merits" he said.

This was interpreted as possible encouragement for the Tariff Commission or the OCDM to favor applications for relief.

The Commission has rejected such applications made under the escape clause of the Trade Act. The clause is designed to assist an industry when it is suffering from foreign competition.

MEETING AT WHITE HOUSE

The OCDM considers requests for relief under the national security clause, designed to prevent damage to the national security through damage to essential industries. In 1959 it restricted crude oil imports, the only time it had granted such relief.

The OCDM, unlike the Commission, is part of the Executive Office.

Mr. Cheatham and other textile men met at the White House today with Commerce Secretary Luther H. Hodges, Gov. Ernest F. Hollings of South Carolina, a textile State; members of the White House staff, and Hickman Price, Jr., Assistant Secretary of Commerce, who heads a Cabinet study committee that developed the program.

Mr. Chatham, head of the Dundee Mills in Griffin, Ga., said the program showed "the President's recognition of the vital importance of the textile products industries to the national economy."

Mr. Kennedy's statement called the industry's problems "serious and deep rooted." He had firsthand knowledge of the subject when he was junior Senator from Massachusetts, another textile State.

After noting that the OCDM had already cited the industry as "essential to our national security," he added that "textiles had a direct effect upon our total economy."

The industry is "our second largest employer" with 2 million workers directly affected by its conditions and 2 million indirectly concerned, the President said.

He also proposed:

A conference of the principal textile exporting and importing countries to "seek an international understanding which will provide a basis for trade that will avoid undue disruption of established industries."

A study of the possibility of eliminating or offsetting higher prices paid by domestic manufacturers for domestic cotton. Because of an export subsidy paid to cottongrowers, manufacturers in this country now pay 6 cents a pound, or $30 a bale, more than foreign buyers. On August 1, the differential will be 8 cents and $42.50.

Expanded research on new products, processes, and markets, with the Commerce Department cooperating with union and management groups.

A review of depreciation allowances on textiles machinery, assistance in financing the modernization of this machinery by the Small Business Administration, and a proposal to be sent to Congress "shortly" to permit industries hurt or threatened by imports to receive Federal assistance.

No details on any of these points were given.

Mr. Kennedy said he hoped the measures "will strengthen the industry and expand consumption of its products without disrupting international trade and without disruption of the markets of any country."

A political factor underlying the move reportedly was the rise of protectionist sentiment in Congress, where the Trade Agreements Act must be renewed next year.

Congressmen from textile areas have been outspoken in demands for relief from import competition. Many, like Representative CARL VINSON, Democrat, of Georgia, are influential.

The views of these men endangered the Trade Agreements Act. Thus, the program announced today could have the effect of satisfying them without threatening the principle of reciprocal trade.

Mr. Vinson said the program "has started us on the right road." He expressed hope that the proposed international conference would do much to relieve the industry of "serious danger."

Senator JOHN O. PASTORE, Democrat, of Rhode Island and chairman of a Subcommittee on Textiles, said the administration's attitude, as expressed today, should be helpful in getting responsible action on the Trade Act next year.

Some informed sources thought that an international conference could not be effective in working out voluntary quotas for competing countries because there were too many such countries.

A possible consequence, however, was that some of the biggest exporters to the United States might move to establish quotas for themselves rather than have them imposed by the OCDM.

When Japan was the chief competitor, she imposed quotas on herself and abided by them in shipments to the U.S. market. That was in 1957. Imports dropped that year to 122,400,000 square yards of cotton cloth, from 188,200,000 in 1956.

The effect of this was short lived, as other low-wage nations developed textile industries and discovered that Japan had opened the way for them to enter the U.S. market.

As a result cotton cloth imports increased to 140,500,000 square yards in 1958; 240,400,000 in 1959, and 454,600,000 last year.

This drastic increase was accomplished by more than a dozen competitor nations, as diverse as West Germany, Switzerland, Hong Kong, Taiwan, and Spain. Now the 5-year Japanese agreement is expiring and she will no doubt seek to increase her quota for next year.

Textile imports totaled 7.2 percent of all domestic production last year.

LAW DAY OBSERVANCE

Mr. ALLOTT. Mr. President, on May 1 a ceremony was held in the Capitol which deserves widespread recognition. The occasion was Law Day, U.S.A., and

its observance in the Old Supreme Court Chamber took the form of official judicial proceedings. U.S. District Judge Luther H. Youngdahl, in naturalization proceedings, administered the oath to 25 new citizens. It is fitting indeed that a naturalization proceeding should keynote the observance of Law Day, U.S.A., in our Nation's Capitol, and it is interesting to observe that this marks the first time since the Supreme Court discontinued using the Chamber in 1935 that an official Court proceeding has taken place there. The commemoration of Law Day, U.S.A., here in Washington was only one of many observances throughout the Nation, all of which had as their objective the reaffirmation of the principle of world peace through law.

James E. Palmer, Jr., chairman of the Capitol Hill section of the Federal Bar Association, welcomed the other bar associations joining at the invitation of the attorneys on Capitol Hill in sponsoring this impressive and notable event. These included the bar association of the District of Columbia, the national organization of the Federal Bar Association, the Women's Bar Association, and the Washington Bar Association.

My colleague, the Senator from New York [Mr. KEATING], was the principal speaker. His message was not only inspiring for the new citizens, but merits the consideration of all of us. I ask unanimous consent that the text of his remarks be placed in the RECORD.

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

This grand occasion has historical significance. We meet here on Law Day 1961 in the same room in which the U.S. Supreme Court regularly met for 75 years. This is also the room in which the Senate met until 1860. It was in this very chamber that Senator Daniel Webster declared in immortal words for "liberty and union, now and forever, one and inseparable."

The idea of a Law Day is new, but the heritage we commemorate on this day is of ancient origin. Our law has its roots in antiquity—in the Torah of the Jews, the first five books of the Old Testament—in the Republic of Plato, the Greek philosopher of the ages—in the Code of Justinian, the Roman Emperor—in the Sermon on the Mount, Christianity's contribution to all mankind. In more modern periods, we have built the foundation of our legal system on the teachings of a German, Leibnitz; a Frenchman, Montesquieu; an Italian, Beccaria; an Englishman, Locke; and many other citizens of the world.

America is a land of immigrants. Our forefathers came to this land from different cultural backgrounds and from nations all over the world. They bequeathed to us a Constitution which has nurtured our Republic and made it strong. America's progress and growth can be attributed in large measure to the vast reservoir of wisdom in the fundamental law.

Our people must never be complacent or self-satisfied. They must never forget their debt to the Old World. Americans are the beneficiaries of a proud inheritance; we are morally bound to pass this inheritance on to future generations ennobled and enriched. Our immigration laws must not unreasonably bar from our shores those who seek to live and work in freedom. We will not thrive in isolation. I welcome you as brothers. I am proud as an American that you have chosen our land in which to spend your sojourn on earth. I am grateful to you for joining our fellow Americans in a constant quest for a better life.

Your admission to citizenship on Law Day is altogether fitting. This is the day on which all Americans commemorate our love of liberty, justice, and freedom. Law is the safeguard of liberty, the arbiter of justice, and the protector of our freedom.

It assures the solution of disputes on the basis of principle, not whim or person. It protects every citizen from oppression. It gives sanctity to our agreements, and security to our lives. It is mightier than any mortal no matter how high his rank or position. Yet it is the servant, not the master, of the people. It is the tool which the people use to promote their welfare and the common good.

We have at times witnessed the deliberate violation of the law by powerful officers in our Nation. These men shame our country and subvert its most sacred heritage—respect for the law. They are weak men who have done us incalculable harm by succumbing to narrow pressures and prejudices. The people must be firm in confronting such detractors. Obedience to the law is an American commandment.

Law is a process, not a thing. It is constantly growing in depth and scope in the manner of a living organism, not an inanimate object.

It must be stable but it cannot stand still if it is to serve its eternal purpose. For the law must adapt to its environment and adjust to the needs it fulfills, just as a person must, to survive and thrive.

Justice Cardoza put it well when he said: "Law is not a cadaver, but a spirit, not a finality, but a process of becoming, not a clog upon the fullness of life, but an outlet and a means thereto, not a game, but a sacrament."

My friends, you know better than I the blessings of liberty and freedom. Some of you have been the personal victims of oppression and discrimination. You can appreciate without any prodding from me the importance of the heritage and challenge you have today embraced.

I welcome you all as citizens of America. As of today, you are equal citizens entitled to the same rights and privileges and subject to the same obligations as Americans whose fathers and grandfathers and great-grandfathers were born in this land. I thank you for choosing our country in which to work and live and serve humanity. May God bless you and guide you and let his countenance shine upon you for ever and ever.

LOSS OF CONTROL OVER FEDERAL EXPENDITURES

Mr. ALLOTT. Mr. President, my colleagues know I am becoming increasingly concerned over the loss of control over Federal expenditures by the Congress. We too often pass bills which require a later appropriation without considering them in the light of their impact upon our budget deficits. We too often open the door to the so-called back-door spending. We seem to authorize more and more raids upon the Treasury.

It has been my pleasure to be a cosponsor with the senior Senator from Utah [Mr. BENNETT] of the proposed Senate Concurrent Resolution 13, by the distinguished Senator from Virginia [Mr. BYRD]. This resolution has received a great deal of favorable attention, although I am compelled to state that this attention has been more outside the Halls of Congress than inside. As an example of the type of support which it has engendered let me report that the city of Arvada, Colo., through its city council, has endorsed the principle of Senate Concurrent Resolution 13.

Mr. President, I ask unanimous consent that at this point in the RECORD a letter from the mayor of Arvada, Dr. Gail H. Gilbert, be printed so that my colleagues may see the type of thinking which is becoming more and more prominent throughout our Nation.

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

CITY OF ARVADA,
Arvada, Colo., April 25, 1961.

Senator GORDON ALLOTT,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ALLOTT: I received your letter of February 27 in which you describe procedures under Senate Concurrent Resolution 13 which would give the people of this country an accounting of Federal expenditures. I must apologize for this late answer, but the content was so important that I thought it necessary to take it before the Arvada City Council for formal action.

On April 24, the Arvada Council in regular session formally adopted a resolution supporting in principle Senate Concurrent Resolution 13 which has been introduced by Senator BYRD of Virginia, Senator BENNETT of UTAH, and yourself. We realize that this may not have been the usual business before a municipal governing body, but we also feel that as the accepted political leaders of our community, we should give voice to what we are convinced is the general feeling of the 25,000 citizens of the city of Arvada. While we, of course, have no idea of the details involved in this resolution, the council felt unanimously that the very motives as described by your letter were sufficient for us to ask that you exert every effort to see that movements of this or any other similar type be encouraged by you in the U.S. Senate to provide not only a long overdue brake on Federal spending, but also for accounting of expenditures from the vast amount of money taken from the people in Federal taxes.

The growing magnitude of our Federal Government is awesome to say the least. Perhaps much of it is necessary, but in no event does immensity of this Government alone relieve it from a strict accounting for each and every expenditure. Where it was once millions we now speak in terms of billions of dollars. Where once we might have looked with some alarm on a budget not quite balanced, we now amuse ourselves with conjecture on the billions of dollars of deficit spending necessary each year. The council joins with me in sincerely asking that you and your colleagues in the Senate maintain your vigilance in these matters on behalf of the American people. Your efforts will be rewarded because I am convinced that there is a terrific swing toward sane, intelligent Government spending practices.

Sincerely yours,

GAIL H. GILBERT, *Mayor.*

FREEDOM'S LIGHT SHINES THROUGH DEFEAT

Mr. ALLOTT. Mr. President, all of us have been deeply shaken by the turn of events beginning with the abortive attempt by Cuban expatriots to return to their native land. I have already made clear my sentiments on the subject. Others have joined me in expressing theirs. One of the most sensitive stories was written by Jack Foster, editor of the

Act (26 U.S.C. ch. 53) are subject to forfeiture. However, these provisions are inadequate to cover many cases involving firearms used in offenses against the laws of the United States pertaining to assaults on, or threats against, law enforcement officers and public officials.

The procedures applicable to seizure, forfeiture, and disposition would be the same as for firearms seized for violation of the Federal Firearms Act (i.e., the provisions of the Internal Revenue Code of 1954, applicable in respect of National Firearms Act firearms, would apply).

The enactment of this provision is deemed to be clearly a matter in the national interest.

Section 6: Section 6 of the bill would renumber sections 6, 7, 8 and 9 of the Federal Firearms Act as sections 8, 9, 10 and 11, respectively, and insert after section 5 two new sections.

The new section 6 would provide for the relief of convicted persons under certain conditions. This section would not apply if the crime involved the use of a firearm or other weapon or a violation of the Federal Firearms Act or the National Firearms Act. Otherwise, the Secretary could grant relief from the disabilities incurred under the act by reason of a conviction if it was established to his satisfaction that the circumstances regarding the conviction and the applicant's record and reputation were such that the applicant will not be likely to conduct his operations in an unlawful manner and that the granting of the relief would not be contrary to the public interest.

The new section 7 of the act as contained in the bill relates to the applicability of other laws. This section is merely for the purpose of making it completely clear that nothing in the Federal Firearms Act shall be construed as modifying or affecting any provision of the National Firearms Act, section 414 of the Mutual Security Act of 1954, or section 1715 of title 18 of the United States Code. Also subsection (b) makes it clear that nothing in the Federal Firearms Act is intended to confer any right or privilege to conduct any business contrary to the law of any State, or to be construed as relieving any person from compliance with the law of any State.

Section 7: Section 7 provides that the amendments made by this act shall become effective on the date of the enactment of the act, except that the amendments made by section 3 to section 3(a) of the Federal Firearms Act would not apply to any importer, manufacturer, or dealer licensed under the Federal Firearms Act on the date of enactment of the act, until the expiration of a license held by such manufacturer, importer, or dealer on such date.

In effect, this would mean that a licensee would not have to obtain a new license until his existing license expired.

LEAVE OF ABSENCE

Mr. HOLLAND. Mr. President, I ask unanimous consent that I may be excused from attendance in the Senate for the remainder of the afternoon and tomorrow in order that I may attend the planned launching of the Gemini space trip tomorrow in Florida.

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

"CRIME CONTROL—WHOSE RESPONSIBILITY IS IT?"—ARTICLE BY HOWARD B. GILL

Mr. MORSE. Mr. President, recently, at William and Mary College, one of our country's outstanding, brilliant criminologists, Howard B. Gill, director of the Institute of Correctional Administration, School of Government and Public Administration, American University, Washington, D.C., had published in the William and Mary Law Review an article entitled "Crime Control—Whose Responsibility Is It?"

In view of the fact that the Senate will be considering before adjournment the question of crime and its solution, I ask unanimous consent that the article be printed at this point in the RECORD.

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

CRIME CONTROL—WHOSE RESPONSIBILITY IS IT?

(By Howard B. Gill,[1] director, Institute of Correctional Administration, School of Government and Public Administration, American University, Washington, D.C.)

"Only when the law—that is the judicial branch of the government—takes over the crime control program shall we ever have efficient law enforcement, a sound correctional program including probation and parole, and effective crime prevention."

When Cesare Beccaria wrote his famous essay "Of Crimes and Punishments," 200 years ago,[2] he enunciated what Gilbert and Sullivan made popular a century later in the phrase "make the punishment fit the crime." It was almost the end of a long era in which the judiciary had dominated the entire crime control process, often in a ferocious exercise of justice. It was an era which began with Hammurabi and which was characterized in more modern times by the infamous "Bloody" Lord Jeffries.

During this era of judicial domination, the judge convened the grand jury and returned the indictment. The sheriff as agent of the court apprehended the accused and confined him in the jail attached to the court. The judge and his petit jury tried, convicted, and sentenced the culprit after which the sheriff took him out and hanged him—or otherwise carried out the order of the court. Now when as a result of Beccaria's famous essay, punishment became regulated, all this was very neat and tidy—and, please note particularly, entirely under the judicial branch of the government.

A HISTORICAL NOTE

During the 100 years following Beccaria's proposals there occurred events which had a profound influence on the whole administration of the criminal law.

In 1777, John Howard published his "State of Prisons" which greatly influenced both British and American thinking with regard to the treatment of prisoners.[3]

In 1779, the English Parliament passed the Penitentiary Act enabling sheriffs to create out of the jails places where convicts could "do time."[4]

In 1785, Sir Thomas Beevor, under the Penitentiary Act, remodeled the jail in Norfolk County, England, as the first modern penitentiary.[5]

In 1790, Pennsylvania authorized the remodeling of the Walnut Street Jail as a penitentiary house.[6]

From 1790 to 1830, many States followed Pennsylvania's example and the famous Auburn and Pennsylvania systems were established.[7]

In 1830, Massachusetts courts developed the doctrine of judicial reprieve;[8] and in 1841, John Augustus began his work with prisoners released under this theory which finally resulted in the first probation law of 1878.[9]

From 1840 to 1844, Capt. Alexander Maconochie set up a parole system for prisoners on Norfolk Island, which became elaborated in the Irish system from 1850 to 1870 and which in turn inspired American prison authorities to establish parole in this country beginning in 1876.[10]

With these events during these hundred years, the major programs of dealing with criminals after conviction had been taken out of the hands of the judiciary and transferred to the executive branch of the government.

During this same period other significant events took from the courts their function of apprehending the offender. In 1829, Sir Robert Peel created the first police department in London, and in 1844, the city of New York established the first organized police force in America.[11] Both of these police forces were placed under the executive and the investigation of suspected offenders was gradually transferred from the sheriff to the detectives of the police departments. In fact in many jurisdictions, the sheriff who had by now become an elected official, abandoned most of his participation in criminal law activities in favor of the more lucrative civil processes. In some States the office of sheriff was abolished.

DISASTROUS RESULTS

What were some of the results of these events? In general, it can be said that police, prisons, and parole, and to some extent probation became the football of politics, unprofessional administration, and often corrupt and venal practices. In a single American city of approximately 750,000 inhabitants recently, there were 10,000 illegal arrests. Throughout the United States, the proliferation and fragmentation of the police function in thousands of ineffectual units due to political influence have produced a situation in which 50 percent of the people of the United States have little or no effective police protection. The underworld operates sometimes with police connivance in every large American city and professional "white collar" criminality almost completely eludes law enforcement officials.

The abuse of prisons for private profit until recently, and the corruption of the offices of sheriff and wardens and their personnel as political plums and as centers for political rings, hang like millstones around the hopes of professional administration. The granting of paroles by politically dominated boards ignorant of professional procedures at best and corrupted by the outright sale of pardons and paroles at worst, makes a farce of justice.

The public documentation of these charges is well known to every serious student of crime control.

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[1] Remarks made at the Annual Banquet of the George Wythe Chapter, Phi Alpha Delta Law Fraternity, College of William and Mary, Williamsburg, Va., Jan. 11, 1964.

[2] Barnes, Harry Elmer, and Teeters, Negley K., New Horizons in Criminology, 3d ed., Prentice-Hall, Inc., New York, 1959; pp. 322–323.

[3] Ibid., pp. 331–335.

[4] Ibid, p. 335.

[5] Ibid. (2d ed. 1951); pp. 397–398.

[6] Ibid. (3d ed., 1959); pp. 335–337.

[7] Ibid., pp. 337–347. See also, Attorney General's Survey of Release Procedures, vol. V., Prisons, Federal Prison Industries, Inc., Leavenworth, Kans., 1940; pp. 1–39.

[8] *Commonwealth* v. *Chase*, Thacker's Criminal Cases 267 (1831); recorded in vol. XIX of the Records of the Old Municipal Court of Boston, p. 199. See also, Attorney General's Survey of Release Procedures, vol. II., Probation, U.S. Government Printing Office, Washington, D.C., 1939; p. 19.

[9] Barnes and Teeters, op. cit., 3d ed. 1959; pp. 553–554.

[10] Ibid., pp. 417–426.

[11] Ibid., p. 213.

JUDICIAL EROSION

However, another and perhaps more subtle weakness in the crime control process has resulted from the gradual erosion of the power and the influence of the judiciary. The courts, themselves, and indeed almost the whole legal profession, have come to believe that the sole function of the judiciary in crime control is to hear the evidence, adjudicate the law, and sentence the offender. Before and beyond this, they have disclaimed all responsibility for the administration of the criminal law.

One has only to suggest that members of the bar should assume direction of police departments or that they should be concerned with the treatment of convicted offenders, and then watch the legal profession smugly wrap their robes of office around them and disappear into their paneled chambers. As for crime prevention, they are quite content to leave this to the home, the school, the church, and the police whose futile efforts to deal with the causes of juvenile delinquency and adult criminality are perhaps the most amateurish of all civic activities.

If one wishes to trace the origins of this apostacy, one might also correlate the development of law schools during the latter half of the 19th century with the rise of great corporations and their $100,000 retainers. Too often any law student who might have the temerity to specialize in the criminal law is looked upon as either a failure or a crook—a knave or a fool.

A NATIONAL DISGRACE

The significant result of all this was succinctly stated by the late Chief Justice William Howard Taft when he said, "The administration of the criminal law in the United States is a national disgrace." [12] The current efforts of the American Bar Association and of the American Law Institute further testify to the growing concern of the bar itself over this problem. The legal profession is all too familiar with judges assigned to the criminal bench who have never handled a single criminal case in their careers, who have never visited a prison or a jail, or young lawyers assigned as juvenile court judges who know little or nothing of the sociology or psychology of child development and who often have never even read the Juvenile Court Act. Imagine a physician who never served an internship or a residency in a hospital or who never had a single day of medical practice being appointed chief medical officer of a large city.

A LEADERLESS MESS

In general the crime control process today is an uncoordinated, ineffectual, leaderless mess often conducted on the one hand by the most ignorant, arrogant, untrained, political hacks, and one the other hand, by a conglomeration of futile or over-zealous social workers, religious conformists, workshop technicians, academic sociologists, and budding "head shrinkers." And where are the lawyers and the law schools—they whose responsibility it is to lead wherever the rights of citizens are involved? Except in the courts, they are notable for their absence.

Instead of a unified, coordinated crime control process including prevention, law enforcement, courts, prisons, probation, and parole under professional leadership trained in the rights of individuals and in precise methods of treatment, we see a collection of isolated constellations whirling in space, sometimes paralleling each other, often colliding head-on, overlapping or spinning off in opposite directions. The police fight the courts and the parole authorities. The prisons, probation and parole agencies seldom if ever cooperate. The courts nol-pros the efforts of the police and shun any responsibility for treatment. Prevention falls down between the home, the school, the church, and the police. There is no leadership.

WHOSE IS THE RESPONSIBILITY?

Whose is the responsibility then for this low esteem, this confusion, this lack of leadership, this sorry state of affairs in the practice and administration of the criminal law? The responsibility lies squarely on the shoulders of those trustees and faculties of law schools and those members of the bar of the United States whose failure in imagination, whose lack of concern for human values, and whose myopic leadership cause them to ignore the problem.

True here and there we find a John Wigmore, a Roscoe Pound, a Holmes, a Brandeis, a Darrow; but for each of these there is a galaxy of tax experts, corporation lawyers, and legal pundits. Now, we are not going to make humanitarians out of corporation lawyers. But we can propose a program for making lawyers out of young humanitarians.

To achieve this, three questions must be answered:

1. Why should the burden of this problem be laid on the shoulders of the law schools, the bar associations, and the judicial branch of the Government?

2. And if the responsibility does lie with the law, how can the law schools and the bar do anything about it?

3. Specifically, what part can a law student specializing in the criminal law play in such a program?

A NATURAL CONCERN OF LAW

There are five reasons why crime control in all its phases is the responsibility of the law and of lawyers.

1. Crime and criminals are historically a natural concern and responsibility of the law. Law arises out of the customs governing both property and persons. Certainly the present overemphasis on the law of property, corporations, and business is a temporary characteristic of an age of intense industrial and commercial development. Is it too much to expect as the 20th century turns more and more toward human values that the law will also reassert its ancient responsibility for human beings in their relations with one another?

A PRIMARY CONCERN OF LAW

2. The law is the only professional discipline in which the offender is of primary concern. In education, social work, medicine, psychology, religion, sociology, economics, the criminal is only incidentally involved. More often he is completely ignored. In the law, on the other hand, the criminal is the raison d'être for a whole segment of the field. In the last analysis, although all other disciplines ignore him, the criminal must be considered and disposed of by the law. He is your baby.

WHOM THE PUBLIC TRUSTS

3. The law (as represented by the police and the courts) is the only agent which the public will trust ultimately in dealing with so fearful a threat to peace and security as crime. While the psychologist, the physician, the educator, the sociologist, the social worker, or the minister may advise and assist, in the last analysis, society looks to those representing the law to control crime.

After many generations of experiment in which each of these disciplines has sought to dominate the process of crime control, society still fears the criminal, and wants him controlled by the law first, and understood afterward. Society has repeatedly indicated that it will only support the recommendations of the doctor, the teacher, the social worker, the minister, or the scientist in handling criminals, especially in new and untried methods essential to progress, if supported by those in whom society has ultimate and complete confidence in dealing with such criminals, namely, those who know and represent the law.

In all this, there is need for the help and wisdom of the physician, the psychiatrist, the psychologist, the educator, the social worker, the minister, the priest, the counselor, the keeper, and any other agent involved in the human relations of crime and criminals. However, for all of these there must be an understanding, intelligent arbiter who will interpret and decide in accord with the rights of the individual as well as the needs of society as expressed in the law. It is clear that this arbiter is the law—the judicial power.

RIGHT TO FREEDOM AND THE LAW

4. Both the freeman and the convict—the innocent and the guilty—must always rely on the law (and on little else) when so precious a right of the individual is involved as freedom. The law exists to protect the individual from both ill-advised and well-meant invasion—from both the overbearing police and the overbearing social worker, from the professional "head shrinker" and the political headman.

The law must always be at the controls of any process dealing with the rights and the freedom of the individual. In all procedures affecting offenders, whether it be arrest, arraignment, trial, sentence, imprisonment, probation, or parole, whenever the question of freedom is involved, only those endowed with an understanding of the law will ultimately govern.

Let me repeat. This is as true in procedures involving arrest and collection of evidence as it is in indictment, trial, and presentation of evidence. It is as true in determining extension or suspension of imprisonment under probation or parole as it is in the imposition of sentence itself. It permeates the whole treatment procedure because this treatment itself hangs entirely on the extension or suspension of legal restraints.

LAW AS CENTER OF CONTROL

5. Finally, the law is the only discipline which can and actually does dominate all the other disciplines in dealing with the criminal. This is strange doctrine in these times, but let us examine it.

There are three basic elements in any social process whether it be business, medicine, law, or whatnot. These elements are distinction of function, coordination of function, and center of control.

It is hardly necessary to define distinction of function; what lawyers call "the separation of powers doctrine." Reference has already been made to the erosion of the judicial function by the executive during the past 200 years in which the control of human rights and freedom—an obvious judicial function—has been usurped by the executive with disastrous results in law enforcement, penology, probation, and parole. The argument, often advanced, that the return of this control to the judiciary would be a violation of the separation-of-powers doctrine, is to ignore the very essence of the judicial function in Anglo-Saxon jurisprudence which recognizes the judiciary as the freeman's protection against the king.

As for coordination of function, as previously stated, this is so notable for its absence in the crime control process that we need not belabor it. The only point worth noting is that coordination is lacking because there is no leadership. And this brings us to the third essential in any social process; namely, the center of control.

It has been categorically stated above that the law is that center of control. What is the proof of this statement?

Sir Charles Sherrington, eminent British physiologist, has given the answer. Seeking the center of control in the human organism, Sherrington supplies the keys to the

[12] Seagle, William, "Quest for Law," Alfred A. Knopf, New York, 1941, p. 245.

center of control in any social process. They are two:

1. That which provides the common path; and

2. That which has the power to interfere with all other elements in the process.[13] Applied to the human organism, the central nervous system meets the requirements exactly. In business, it is obviously the financial powers who provide the common path and possess the power to interfere. In crime control it is the judiciary.

No other agent in crime control satisfies these two requirements except the law. It is the court alone through whose path every criminal must go. It is the court alone who can interfere with the police function and who can determine through the sentencing power how the functions of probation, prisons, or parole shall be exercised. It is the judiciary therefore which becomes the natural center of control in every phase of the administration of the criminal law from the moment a crime is committed until the convict himself has completed his sentence.

Time and again, during the past 175 years since "doing time" was substituted for summary execution of sentence, the public has rejected the leadership of religion, of education, of industry, of medicine and psychiatry, of social work in handling criminals in favor of the almost naked force of law. To be sure, outside the courts, this force of law has consisted chiefly of police-minded leadership tempered now and then by the contributions of these other disciplines. The results have not proved satisfactory because the confusion of disciplines without strong professional leadership has neutralized the very forces seeking to handle the problem. They have lacked that center of control which could insure distinction and coordination of function. But the one agent in the crime control process which can supply these essentials has so far evaded its responsibility. That agent is the law.

LAW SCHOOLS AND CRIME CONTROL

If then the responsibility lies with the law, how can the law schools and the bar do anything about it? It has been proposed that a program should be developed for making lawyers out of young humanitarians.

Such a program could begin with the prelaw course which now usually emphasizes economics, accounting, and business management, and might well add as an alternative such courses basic to the criminal law as psychology, sociology, anthropology, and the social sciences. Probably not too much change could be made in the basic law school program as yet unless it might be to add some clinical training in criminal court work or in corrections. The important innovation would be the recognition of specialization in the administration of the criminal law as a goal of law school instruction. Possibly the addition of advanced courses in clinical criminology (now being conducted in some law schools) and the addition of special, intensive training through institutes supplementing the usual 3-year law course, similar to the institute training in psychiatry now offered medical school graduates, would provide for such specialization in the administration of the criminal law. Such special training with internships, residencies, and fellowship in law enforcement, correctional, and other crime control agencies would soon provide the field with well-trained operators qualified for supervisory, administrative, and executive positions.

BAR ASSOCIATION AND CRIME CONTROL

The bar also could play a most important part by supporting such programs in law schools and by creating in their own associations committees or commissions for putting the law back into law enforcement and for promoting effective legislation or other action toward putting trained lawyers at the helm of other crime control agencies. Every professional discipline is jealous of its prerogatives and of the qualifications of its personnel for proper certification and assignment in its field. The law is jealous of such prerogatives and qualifications only for judges. Why should not the same concern be shown for every position of importance in the whole crime control process? Such committees of the bar might well make themselves responsible also for the proper coordination and functioning of all crime control agencies. Taken seriously, such action by the bar could not be left only to volunteer committees unless such committees were given professional help in carrying on their work.

OPPORTUNITIES FOR LAWYERS IN CRIME CONTROL

The one question remaining then is, What opportunities exist for legally trained men and women with specialization in the administration of the criminal law?

The opportunities for such professionally trained persons is practically unlimited. Not only are existing openings available, but such a joint program by law schools and bar associations itself would create the personnel for an attack on crime and delinquency unparalleled in this country.

Fortunately the day when nonprofessional politicians can qualify for the top positions in police, prison, probation, and parole work and in crime prevention is fast disappearing. The demand today is for professionally trained leaders. The top pay will not equal that of the $100,000 corporation lawyer, but the returns in professional satisfaction are great. A recent college graduate who specialized in correctional administration and became a probation-parole officer is today writing the presentence reports for three criminal court judges. If he had a law degree, he himself would be in line for a judgeship in the near future. Such openings are not rare, and they will become commonplace when more judges realize the importance of the presentence or post-trial report. This is particularly true in the juvenile and youth courts, under the Youth Authority Acts, and in the nationwide drive on juvenile delinquency.

Such positions will include not only those of prosecuting attorneys, public defenders, and judges in juvenile, domestic relations, municipal and criminal courts, but also such allied positions as those of police commissioners, directors of departments of correction and correction authorities, prison wardens, sheriffs, jailors, members of boards of parole, chief probation officers, clerks of courts, executive and other officers of State and Federal bureaus of investigation and crime prevention agencies as well as criminologists in teaching and research. If proper training and qualifications for such positions are established by the legal profession, the field is open to literally thousands of young, specially trained lawyers in positions of tremendous responsibility.

The problem, as previously stated, is not one of trying to make humanitarians out of corporation lawyers. It is rather one of restoring to the law its ancient interest in human rights and in attracting to the law those persons interested in human welfare who should have the status and security of the professional lawyer.

MODERN LEGAL CONCEPTS

In an article entitled "Behavioral Science and Criminal Law," published in the November issue of Scientific American, a Boston psychiatrist tags the criminal law with those old shibboleths of "free will" and "punitive justice"—one supposedly the basis of legal responsibility; the other the result of the doctrine of "deterrence."[14] It is true that there are still some prehistoric courts and maybe some law schools who are still preaching these doctrines, but one has only to observe what is going on today to note how the law is broadening its concepts and moving over into every phase of crime control.

Reference can be made to four examples as illustrations.

1. The restrictions being placed on police investigation by such decisions as the Mallory case have brought all law enforcement agencies within the jurisdiction of the courts.[15]

2. The extension of the doctrine of diminished responsibility, as in the Durham decision, has destroyed the doctrine of "free will" and "punitive justice" and brought treatment within the purview of the court.[16] This doctrine of diminished responsibility is now recognized in the British Commonwealth, Belgium, Denmark, France, Italy, the Netherlands, Norway, Sweden, and Switzerland[17] and in at least seven of the United States including Indiana, New York, New Mexico, Ohio, Utah, Virginia, and Wisconsin.[18]

3. New sentencing procedures such as those under the model Youth Corrections Act of the American Law Institute,[19] now adopted in many States, have extended the considerations of the judge far beyond the rules of evidence and questions of law on into the realm of diagnosis and treatment. One may note here with what vigor the judiciary withstood the attempts of other disciplines to take this sentencing procedure out of their hands.

4. Finally, of tremendous significance in this evolution of the criminal law has been the development of the Uniform Code of Military Justice.[20] It is not too much to predict that the enlightened concepts and the reformed procedures of this code will ultimately change the whole nature of criminal law administration in this country. The recent retirement of Charles Decker, Judge Advocate General of the Army, to accept the leadership in the public defender movement is a case in point. The legal philosophy of Albert Kuhfeld, Judge Advocate General of the Air Force, in administering the code marks a new era in criminal law procedures in the United States.

The implication underlying these four examples support the thesis that the law already is reaching out into every function and every agency in the crime control process. It remains only for the law schools and the legal profession to recognize what is happening.

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[13] Sherrington, Charles S., "The Integrative Action of the Nervous System," Archibald Constable & Co., Ltd. London, 1906; pp. 308–313.

[14] Sachar, Edward J., M.D., "Behavioral Science and Criminal Law," Scientific American, November 1963, vol. 209, No. 5, New York; pp. 39–45.

[15] *Mallory* v. *United States,* 354 U.S. 449 (1957).

[16] *Durham* v. *United States,* 214 Fed. 2d 262 (D.C. Cir. 1954). But see also, *Stewart* v. *United States,* 214 Fed. 2d 879 (D.C. Cir. 1954).

[17] Report of the Royal Commission on Capital Punishment. Cmd. 8932, at 14.

[18] *Hopkins* v. *State,* 180 Ind. 293, 102 N.E. 851 (1913); *People* v. *Moran,* 249 N.Y. 179, 163 N.E. 553 (1928); *Pigman* v. *State,* 14 Ohio 555 (1846); *State* v. *Green,* 78 Utah 580, 6 p. 2d 177 (1931); *Oborn* v. *State,* 143 Wis. 249, 126 N.W. 737 (1910); *Dejarnette* v. *Commonwealth,* 75 Va. 867 (1881); and *State* v. *Padilla,* 66 N.M. 289, 347 P. 2d 312 (1959).

[19] Ellington, John R., "The Youth Authority Program," in Contemporary Correction, Paul W. Tappan, ed. McGraw-Hill Book Co., New York, 1951; pp. 124–135. See also Tappan, Paul W., "The Youth Authority Controversy," ibid.; pp. 135–140.

[20] Uniform Code of Military Justice, title 10, United States Code, secs. 801–935.

CONCLUSIONS

In conclusion it may be simply stated that only when the law—that is the judicial branch of the Government—takes over the crime control program shall we ever have efficient law enforcement, a sound correctional program including probation and parole, and effective crime prevention. To this end, two immediate steps are proposed:

1. That bar associations throughout the United States assume the leadership in the crime control program by setting up local and State crime control commissions with paid directors and staffs whose duties it shall be to promote by every means possible a better coordination of all agencies engaged in crime control including police, courts, prisons, probation, parole, and prevention, and to promote the employment of men and women trained in the law and the humanities in all these agencies.

2. That the law schools (beginning, shall we say with the school of law at the College of William and Mary) establish a program in the administration of the criminal law which shall be open to 3d year law students, lawyers, and other professionally trained specialists who propose to engage, or are actually so engaged, in any phase of crime control activity. Such a program might begin with regular semester courses in crime control or in highly intensive instruction through short term institutes combined with field training under supervision for certification in the administration of the criminal law.

Within the past 50 years, there has developed in the field of medicine a whole new art of healing which bids fair to equal the practice of medicine and surgery without in any way denying the importance of these ancient skills or diminishing their place. The development of psychiatry and psychoanalysis based on the new and established concepts of psychology has added greatly to the practice of medicine. At first ignored by the medical schools, psychoanalysis has created institutes and disciplines of its own supplementing the basic training offered in the traditional schools of medicine. Is it too much to propose that the same sort of thing will happen in the field of law?

OMNIBUS CRIME LEGISLATION

Mr. MORSE. Mr. President, the House of Representatives is presently considering a so-called omnibus crime bill. In my judgment, that bill contains many features which violate many precious constitutional rights and guarantees. Therefore, I ask unanimous consent to have printed at this point in the RECORD an editorial entitled "No Freedom in the Third Degree" published in my hometown newspaper, the Eugene Register-Guard.

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

NO "FREEDOM" IN THE THIRD DEGREE

Senator Goldwater has been having quite a bit to say about "crime in the streets." And he's been getting mileage out of the issue, too, inasmuch as nobody admits liking crime in the streets. His problem, though, has come when he has tried to make a Federal issue out of it, after all he's said about keeping the Federal Government out of the affairs of local communities.

In a speech in Florida, where street violence has been quite an issue this year, the Senator got around to clarifying what he meant. He's really angry at the U.S. Supreme Court. He said the Court 3 years ago held that "No evidence could be used if police investigators made some mistake—any mistake—in gathering the evidence." That's not what the Court said in the milestone Mapp case. It held only that evidence obtained in violation of the Federal Constitution, which evidence was already inadmissible in a Federal court, could not be used in a State court either.

He also charged that the Court "held that a voluntary confession made by a State prisoner was inadmissible because his lawyer was not present when it was made. This was held despite the fact that the prisoner admittedly knew of his right to remain silent."

One presumes that there he had reference to the Gideon, Escobedo, or Jackson cases. These, incidentally, are the three cases that have caused so much work for Oregon's new public defender. Some prisoners in Oregon may be entitled to new trials because of these decisions. They have to do, generally, with the right to a lawyer and the voluntary or involuntary nature of a confession.

If elected, the Senator promised, he would appoint Federal judges who would "redress constitutional interpretation in favor of the public." If that didn't work, he said, he'd press for constitutional amendments, the exact nature of which he did not spell out.

To roll back these decisions, either by appointing hanging judges or by repeal of parts of the Bill of Rights, would not be in the cause of greater freedom. It would be, instead, to invite the unreasonable searches and seizures against which the Founding Fathers warned. And it would be to invite the bright lights and the rubber hoses of the third degree.

Constitutional guarantees are there for people who need them. Most of us go through our whole lives and never, ourselves, need the right to trial by jury, the right to a lawyer in a criminal proceeding, the right to be faced by our accusers, or the right to bail. These precious rights are there for those who need them. Those are the accused, who, it often happens, are not guilty under the law. Note the words "under the law." Innocence and guilt are not readily determined by mortal man. Laws are passed to see to it that each of us, in time of trouble, is treated fairly and evenly. The burden of proof must rest with authority.

One of the functions of law is to protect the citizen from overzealous authority. This is something the Senator, with all his talk of freedom, ought to know. A citizen can be just as badly mauled by a town marshal and a district attorney in a remote hamlet as he can by Federal officers and a U.S. attorney in Washington, D.C.

Mr. MORSE. Mr. President, the omnibus crime bill that has been reported by a majority, but not a large majority, of the House Committee on the District of Columbia, not only is an invitation for the return of third-degree methods, but involves police tyranny. There is no place for that in the District of Columbia.

I am satisfied that under the administration of Chief of Police Layton, there is no desire on the part of the District of Columbia Police Department to have granted to the Police Department all the shocking proposals contained in the omnibus crime bill which a majority of the House Committee on the District of Columbia has recommended.

One such proposal is that Congress enact a proposal of arrest for investigation. Imagine, Mr. President, in the year 1965 legislators in a Congress who really believe that a police department should have authority, when they have no evidence of proximate probable cause for arrest, to put a hand on the shoulder of a free American and drag him into a police station, with none of the checks available, that must be made available to free men and women, against protection from the exercise of third-degree methods by the police.

The Washington Post has today published an editorial entitled "File and Forget." The editorial opposes the omnibus crime bill that has been reported by a majority of the House Committee on the District of Columbia. I ask unanimous consent that the editorial be printed at this point in the RECORD.

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

FILE AND FORGET

Mr. WHITENER'S omnibus crime bill for the District of Columbia is to come before the House today. It embodies all the contempt and distaste which he and his Confederate colleagues feel for the residents of the National Capital.

This bill ignores the District of Columbia's real needs. It ignores the carefully considered proposals for dealing with crime submitted to the Congress by President Johnson. It ignores the procedural protections provided for free citizens by the Constitution of the United States. It ignores the realities of life.

This legislation would be bad not alone for the people of Washington but for the American people as a whole. It is unbecoming to a free society as well as hurtful to its Capital. It is legislation for a conquered province, not for an American community. We ask the members of the House when they consider this measure today to ask themselves if they would be willing to subject their own constituents to such tyranny—whether they would be willing to impose on their home districts arrests for investigation, arbitrary detention by police authorities and a police censorship unfit for Yahoos.

So long as Congress insists on acting as municipal council for the city of Washington, it has an obligation to act considerately and conscientiously. That obligation imposes on the House of Representatives a plain duty today to throw this mish-mash of repression onto the refuse heap where it belongs.

Mr. MORSE. Mr. President, as a member of the Senate Committee on the District of Columbia, I wish to put a persistent rumor to rest. The senior Senator from Oregon has no intention of using any delaying tactic or dilatory tactic to prevent the Senate from receiving at an early date whatever crime bill the majority of the Senate Committee on the District of Columbia wishes to report. I shall vote against the bill that is pending. I shall do my best to offer amendments that will bring that bill within the framework of constitutional guarantees, as I believe those guarantees to exist. But if the Senate wishes to march back into the past half dozen centuries by passing Star Chamber procedure legislation, that will be a decision for the Senate to make. We shall let the people of the country pass judgment upon the Senate.

I introduce this material in the RECORD today so that the Senate will have available to it what I consider to be material that is a devastating answer to the unfortunate action taken by a majority of the House committee when it voted and approved this omnibus crime bill.

and more recently the First American Legislative Award by the Association of Federal Investigators.

I read the writeup of thanks from Fort Smith for helping save for them a large plant. These are all fine, but, they don't impress me as other things because I know something of the cause and source—the man and the lady.

I like the way you started out as a boy. This past Sunday I read my father's diary while he was pastor at Greenwood, Ark. From that place in 1904, you received a letter from Congressman John S. Little. The salutation was "My Dear Little Friend." As an 8-year-old boy you had told him you picked 75 pounds of cotton in 1 day. You sent him a copy of a speech which you recited before the Democratic Central Committee—I presume at Sheridan. Enclosed in the letter were these words: "And I have no doubt that in the future you will reach honor and distinction as a citizen and public man, but to do this requires industry and hard work, and an honorable, upright life."

You started early. You have had great qualities; ambition, tenacity, persistence—but you've had more. You've had help—good friends, good family. We honor you, Mrs. McClellan—Mrs. Norma. You came into a home with children, took them in your heart. You reared them, taught them, gave them love and care. You have given loyalty to your husband. There was humble lostness at times at home to keep a place of retreat, rest, and renewed strength for one who would return home with battle fatigue. You fought some battles with him and for him, and in graciousness you have truly been a First Lady.

Yes, Senator. we have seen your strength and sorrow, your love, and your commitment to carry on. While pastor at Fayetteville, I had the pleasure of being with John and Mary Alice when they were students at the university. I have shared with other pastors in keeping them in concern and in my heart as much as possible under my wing as their pastor and friend. These children reflected character, because they had character. I have seen your manhood in the room as we sat and talked of home and children, loneliness and sorrow. Dreams have had to be changed, but never lost.

You see, I know your sources of power and something of your aims and drives of purpose. I know something of the heart and home, and I am glad we have been able to join in prayer together. The altar furnishings and pieces at the Winfield Methodist Church were given by the Senator and myself in loving memory of John. There we have met, not only to pray for God's strength but for others, the Nation, and the world.

I have been in Washington with this good man and know something of his desires for this Nation and its citizens, its place not only in the world but unto God. Your excellency, we want to be a part of you and your home, and we want your sense of commitment and your wisdom to be a part of us to give strength and quality. We keep you in our heart and prayers. We offer you to our State and Nation as we hold you before our God for power, righteousness, and love. Amen.

SHORTCOMINGS IN THE ADMINISTRATION OF CRIMINAL LAW

Mr. ERVIN. Mr. President, the October 1965 issue of the Hastings Law Journal contained an article entitled "Shortcomings in the Administration of Criminal Law."

Since this article was written by one of America's most experienced and learned trial judges, the Honorable Alexander Holtzoff, U.S. district judge for the District of Columbia, it merits the consideration of all Americans who are concerned by the rising crime rate in the Nation, and who believe that the primary purpose of the criminal law is the protection of the society.

For this reason, I ask unanimous consent that this article by Judge Holtzoff be printed in the RECORD.

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

[From the Hastings Law Journal, October 1965]

SHORTCOMINGS IN THE ADMINISTRATION OF CRIMINAL LAW

(By Alexander Holtzoff, U.S. district judge for the District of Columbia)

PURPOSE OF THE CRIMINAL LAW

Protection of the physical safety of the lives and property of the public and its individual members is the basic and primary purpose for which society was originally organized. The defense of the Nation against external aggression is the task of the Armed Forces and the diplomats. The safeguarding of the public from internal depredations by persons who disregard the rights of others is the function of the criminal law. In turn, the enforcement of the criminal law has a number of aspects. First, there are the police and other law enforcement agencies in the executive branch of Government, whose duty is to preserve the peace, prevent and suppress crime and detect and apprehend perpetrators of offenses that have been committed. The next and crucial step in the administration of criminal justice lies with the courts—the judicial branch of the Government. Providing this protection remains the fundamental purpose of government, even though, in the course of centuries, gradual complex social and economic developments have led governments to assume additional burdens in social, economic, and financial fields.

Manifestly, the criminal law is more than a branch of jurisprudence. It is the instrumentality by which the public is protected from inroads against the safety of the lives and property of its members. In dealing with malefactors, the law inflicts punishments for their misdeeds. The term "punishment" is, however, perhaps misleading in this connection. Modern criminology no longer views punishment as the imposition of a penalty, or the exaction of retribution. A sentence in a criminal case looks to the future. Its objectives are to prevent repetition of crimes by the culprit and to dissuade others from perpetrating similar offenses. These ends are sought to be attained, in part, by immobilizing the criminal for some time, thereby making it impossible for him to continue his nefarious activities during that period. Also, the example of a sentence imposed on one person is intended as a deterrent to others. The law endeavors to reform and rehabilitate the offender, either by suitable discipline and appropriate training while in prison, or by placing him on probation and giving him guidance by a probation officer. When the last-mentioned course is pursued, its purpose is not primarily to aid and assist the criminal, but to protect society by transforming him into a constructive member of the community.

The great Italian criminologist and penologist, Beccaria, observed: "The aim, then, of punishment can only be to prevent the criminal committing new crimes against his countrymen, and to keep others from doing likewise." [1]

Need for efficient administration

"The more prompt the punishment and the sooner it follows the crime, the more just it will be and the more effective." [2] Swiftness and certainty of punishment are indispensable to a successful administration of the criminal law. Undue delay between arrest and trial, or a long interval between trial and final disposition of appellate proceedings, especially if the defendant is enlarged on bail in the interim, weakens the criminal law in its effort to protect the public, detracts from its effects as a deterrent, and tends to create disrespect or contempt for law in the eyes of the underworld, as well as disdain on the part of the thinking public.

These introductory remarks may seem simple and elementary, as indeed they are. In exploring and analyzing any important topic, however, it is essential to penetrate to its underlying philosophy, even if it is so well known that to do so seems, at first blush, needless repetition. Unfortunately, all too often matters of this kind are overlooked or forgotten in the consideration of a mass of disorganized details. Fundamentals must always be borne in mind if a consideration of details is to be fruitful. One must not let the proximity of the trees obscure the view of the forest.

The administration of justice is a practical rather than a scientific matter. It must be approached in a realistic, rather than a theoretical spirit. While the law itself may be regarded as a science, its application and administration is an art. The law is not an end in itself. It is merely the tool or the instrument by which justice is attained in a practical manner. Beccaria sardonically observed in his famous essay, "Happy the nation, whose laws are not a science." [3] This is peculiarly applicable to the field of criminal law, which deals primarily with the protection of the community.

Crime is always present in human society. All that can be hoped for is to reduce it to a minimum. Unfortunately, in recent years in the United States, the number of violent crimes has increased tremendously,[4] especially in some of the larger cities.[5] Suppression of crime has become one of the most important and vital internal problems of our country.[6] The rate of crime has grown enormously and rapidly, far in excess of and out of proportion to the expansion of the population.[7] What is particularly ominous is that the ratio between young criminals and the total number of criminals has greatly increased.[8]

In this study no effort will be made to explore and analyze the ultimate causes of crime. If this can be done at all, it is the task of the sociologist and the psychologist. We shall confine our discussion to the impact of the criminal law and its administration on the crime problem.[9]

[1] Beccaria, of Crimes and Punishments 42 (1964).

[2] Id. at 55.

[3] Id. at 23.

[4] Hoover, Crime in the United States 2 (1965).

[5] Ibid.

[6] In recent speeches before the Maryland and New York State Bar Associations the president of the American Bar Association called attention to some shocking facts. He indicated that there has been an increase of 10 percent in serious crimes reported in 1963 over the parallel figure for 1962, and that for the first 9 months of 1964 there was a further increase of 13 percent; that more than 40 percent of all arrests involved persons 18 years of age or under; that crimes of violence continued to increase; and, finally, that since 1958, crime has been increasing five times faster than the growth of the population.

[7] Hoover, op. cit., supra note 4, at 3.

[8] Id. at 24.

[9] It is sometimes said that an ultimate cause of crime is poverty. This is a superficial and shallow view, because two or more generations ago there was much more poverty and much less crime. Moreover, many persons charged with serious crimes are found

The primary tool of the criminal law is the trial

In the last analysis, the purpose of a trial of a criminal case is to ascertain in a fair, impartial, and orderly manner whether the accused has committed the crime with which he is charged; to convict the guilty, provided guilt is proven beyond a reasonable doubt; and to acquit those whose guilt is not so proven. The closer the administration of criminal law approaches this end, the more successful it is. The more it deviates from this target, the more it fails to fulfill its function. Rule 2 of the Federal Rules of Criminal Procedure summarized this aim in the following trenchant terms: "These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." Mr. Justice Cardozo enunciated this ideal in his usual inimitable phraseology: [J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." [10]

An eminent English judge, Sir Patrick Devlin, recently stated: "When a criminal goes free, it is as much a failure of abstract justice as when an innocent man is convicted." [11]

Rights of the accused

The common law countries, such as the United States and England, take a just pride in the fact that they place stronger emphasis on the protection of rights of individual defendants than do Roman law countries, where the law directs its attention to a greater extent to the interests of the general public. Under the Anglo-American system of law the accused is clothed and surrounded with a number of potent safeguards. Their purpose is to erect a screen to prevent the erroneous conviction of an innocent person.

The first basic requirement is a public trial.[12] The purpose of a public trial is not solely to shield the defendant, but also to protect the interests of society, by allowing the public to view the administration of justice. In fact occasionally there are defendants who would prefer a secret trial in order to avoid publicity or embarrassment.

Another vital privilege accorded to the accussed both in Federal [13] and State courts [14] is the right of counsel. While originally it was construed as confined to a right to be represented by counsel retained by defendant,[15] it has been properly extended to require the appointment of counsel for defendants who are financially unable to hire a lawyer, unless the defendant knowingly and intelligently waives that right.[16] This recent advance is enlightened and wholesome. It is an important step in the right direction in the defense of personal liberty.

A further safeguard is the defendant's right to be confronted with witnesses at his trial.[17] It is of the essence of a criminal trial under Anglo-American jurisprudence that witnesses be produced in person, face the accused, and give their testimony orally. The defendant and his counsel must be in a position to hear the testimony and to cross-examine the witness. There may be no convictions on ex parte affidavits or depositions.[18]

The prosecution is required to prove the defendant's guilt beyond a reasonable doubt, and unless such proof is forthcoming, the defendant must be acquitted. Coupled with this requirement is a presumption that the defendant is innocent until his guilt is established beyond a reasonable doubt. This is not really a presumption in the technical sense. It is an emphatic restatement, in converse form, of the doctrine requiring proof of guilt beyond a reasonable doubt.

Under the Anglo-American system of law, a defendant is usually entitled to a trial by a jury.[19] This mode of trial perhaps does not rise to the dignity of being an essential feature of ordered liberty, because there are other enlightened and progressive systems of law that do not always provide a trial by jury. There is a mounting admiration, which this writer shares, for trial by jury and for the caliber of justice meted out by the average jury. Historically the jury represents a cross section of the population, selected at random, and interposed between the State and the accused. The system accords to the defendant a trial by a tribunal that is not a part of or dependant on the Government. It is a fact, however, that defendants frequently waive trial by jury and elect to be tried by the court alone.[20] For instance, this practice prevails locally in the Maryland courts and is frequently followed in the Federal courts. One may wonder why a defendant would waive the apparent protection extended to him by a jury trial. Observation and experience show that this is done at times in cases involving a particularly unpopular or disgusting crime in which the evidence of the prosecution is not very strong. In such a situation, judges are likely to demand more proof than juries. Again, jury trials are occasionally waived when the facts are not seriously contested or controverted, and the matter hinges on a question of law.

Every defendant is granted the privilege against self-incrimination guaranteed by the fifth amendment, as well as by most State constitutions.[21] In respect to defendants in criminal cases, it comprises not only the privilege not to be questioned at the trial, unless the defendant voluntarily chooses to take the witness stand, but even precludes an inquiry, in the presence and hearing of the jury, whether the defendant will elect to testify and desires to submit to an interrogation.[22]

This privilege has been much discussed of late years. It is a part of the warp and woof of Anglo-American jurisprudence. It is not, however, an integral part of ordered liberty, nor is it an indispensable feature of abstract justice or natural law. Mr. Justice Cardozo made the following interesting and illuminating comments on this subject:

"The right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' * * * Few would be so narrow or provincial as to maintain that a fair and enlightened system of justice would be impossible without them. What is true of jury trials and indictments is true also, as the cases show, of the immunity from compulsory self-incrimination * * *. This, too, might be lost, and justice still be done. Indeed, today as in the past there are students of our penal system who look upon the immunity as a mischief rather than a benefit, and who would limit its scope, or destroy it altogether. No doubt there would remain the need to give protection against torture, physical or mental.* * * Justice, however, would not perish if the accused were subject to a duty to respond to orderly inquiry." [23]

Fundamentally, it seems entirely logical and proper to interrogate the defendant, provided that this is done fairly and not oppressively, as he naturally knows best whether he committed the act with which he is charged. An American or English visitor to a French court is amazed when he observes that, after the trial commences by the reading of the indictment, there follows an inquiry by the presiding judge to the defendant: "What have you to say?" The defendant, not his counsel, answers. Under that system, innocent persons are not railroaded to prison, but it is much harder for a guilty man to escape justice. However, we must ungrudgingly accept the privilege against self-incrimination as being imbedded in our law. It is the product of centuries of history. But it need not be glorified, or extended beyond its traditional limits. It is not a lofty or exalted principle, but is merely an artificial advantage extended to the accused.[24] Perhaps it is unconsciously derived from the Anglo-Saxon idea of sportsmanship. The privilege gives to the defendant the right to remain silent and see whether the government can establish his

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to be employed and they use this fact as a reason for applying for release on low bail, or even on personal recognizance. Cities in Western Europe have a much smaller volume of violent street crimes than many of the big cities of the United States. For example, one feels safer in walking at night the streets, including even the back streets and alleys, of Rome, Florence, and Venice, than those of some of our cities; and yet until recently Italy had much more poverty than the United States. One wonders whether the ultimate cause is not the modern attitude of parents toward the discipline and training of children, the failure of parents to require obedience, and their omission to inculcate in their offspring proper ideas of right and wrong and regard for the rights of others during the formative years of the children.

[10] *Snyder* v. *Massachusetts,* 291 U.S. 97, 122 (1934).

[11] Devlin, "The Criminal Prosecution in England 135" (1958).

[12] U.S. Constitution amendments VI and XIV, sec. 1; *In re Oliver,* 333 U.S. 257 (1948).

[13] U.S. Constitution amendment VI.

[14] *Gideon* v. *Wainwright,* 372 U.S. 335 (1963).

[15] *Betts* v. *Brady,* 316 U.S. 445 (1942).

[16] *Johnson* v. *Zerbst,* 304 U.S. 458 (1938); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963).

[17] U.S. Constitution amendments VI and XIV; *Pointer* v. *Texas,* 380 U.S. 400 (1965).

[18] The right is limited to criminal trials. It does not extend to preliminary proceedings, such as grand jury hearings. See *Harper* v. *State,* 131 Ga. 771, 63 S.E. 339 (1909). *Crump* v. *Anderson* (D.C. Cir. June 15, 1965). As to the limited purpose of preliminary proceedings, see *Giordenello* v. *United States,* 357 U.S. 480, 484 (1958).

[19] U.S. Constitution amendment VI; Cal. Const. art. 1, sec. 7.

[20] In Federal courts, this may be done only with the consent of the Government counsel and the court. *Singer* v. *United States,* 380 U.S. 24 (1965). In California, a waiver of a jury must be consented to by the district attorney. Cal. Const. art. 1, sec. 7.

[21] Applied to the States by the 14th amendment. *Malloy* v. *Hogan,* 378 U.S. 1 (1964).

[22] McCormick, Evidence 277 (1954).

[23] *Palko* v. *Connecticut,* 302 U.S. 319, 325–326 (1937).

[24] No comment is permissible before the jury on the defendant's failure to testify. *Griffin* v. *California,* 380 U.S. 609 (1965). The defendant is entitled to an instruction that no adverse inference may be drawn from his failure to do so. *Bruno* v. *United States,* 308 U.S. 287 (1939). Many experienced trial lawyers often request the court not to give this instruction because actually it is likely to prove a boomerang and do the defendant more harm than good. It calls the attention of the jury to a matter that they might possibly otherwise overlook and calls upon them to perform a feat of intellectual gymnastics that is psychologically difficult, if not impossible. In England the judge may comment on the defendant's failure to take the witness stand, but counsel for the prosecution may not refer to the matter.

guilt beyond a reasonable doubt without his assistance.

The defendant is further protected by the exclusionary rules of evidence, under which certain types of evidence are deemed inadmissible. Perhaps the most important of these is the doctrine that bars the introduction of hearsay testimony. This principle constitutes an important protection to an innocent person, since hearsay testimony is easily distorted or taken out of context, and, at times, may even be fabricated. It is a salutary doctrine in the interests of justice. Facets of this rule of evidence have been frequently criticized and even condemned as being purely arbitrary and as excluding valuable information from the jury.[25] It is interesting to observe, however, that many of the critics have been neither trial judges nor trial lawyers. Those who are in constant contact with the realities of the trial courtroom realize that the hearsay rule at times shields an innocent person from an unjust conviction, and, in civil cases, may preclude the perpetration of a fraud. In this respect the common law differs from systems prevailing in Roman law countries. The latter have no law of evidence, but admit evidence of every type, provided it is relevant or germane to the issues. There, the court or jury is presumed to appraise the weight of any item of evidence in accordance with its probative value.

Thus the accused in a criminal trial under Anglo-American law is surrounded with numerous safeguards and is accorded many advantages. The fact that he may not be convicted except on proof beyond a reasonable doubt, established by competent evidence, is a mighty bulwark for the innocent against the possibility of an unjust conviction. It is necessarily inherent in this system that, in the light of these rigorous requirements, some guilty persons will escape through the meshes. This result is inevitable, even under an efficient administration of our criminal law, and must be accepted with equanimity. But it is thoughtless to say, as some do, that the unlimited resources of the prosecution enable it to wield a heavy hand against a "helpless" defendant. This idea was well expressed by Judge Learned Hand some years ago:

"Under our criminal procedure the accused has every advantage. While the prosecution is held rigidly to the charge, he need not disclose the barest outline of his defense. He is immune from question or comment on his silence; he cannot be convicted when there is the least fair doubt in the minds of any 1 of the 12. Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime." [26]

Rights of the victim

While stressing the rights of defendants, our system of law, in recent practice, seems to neglect the interests of the public and the victims of crimes. It tends to overlook Cardozo's admonition that "justice, though due to the accused, is due to the accuser also." [27] The rights of the victims, for example, the man who was attacked and robbed at the point of a gun, the woman whose purse was snatched and who was knocked down and injured, the family of a storekeeper who was killed during the perpetration of a robbery, or the unfortunate victim of a rape, seem to be treated but cavalierly and their interests not emphasized as much as those of the perpetrators of the offenses. Yet the victims' rights not to be molested have been violated by the criminal. These are worthy at least of as much protection and consideration as those of the accused. The pendulum has swung too far to the side of the accused. It must be brought back to an even position. A plumbline must be redrawn between the criminal and his victim.

In some quarters the accused is often depicted as a poor, oppressed, cowering, frightened individual, bewildered and ignorant of his rights, who deserves sympathy, consideration and kindness. Such a picture of the average prisoner charged with a serious crime of violence is far from accurate. It is an unjustified embellishment and a fantastic idealization. Many defendants arrested on such charges have had prior conflicts with the law, and previous contacts with the police and the courts. Although not well educated, they are likely to be ruthless, entirely oblivious of the rights of others, sophisticated in an evil way, cunning, and crafty. They are often quite familiar with their legal rights and the restrictions that hamper the police and the prosecution. The latest rulings of appellate courts in the field of criminal procedure seem to travel through the grapevine of the underworld, and are sometimes even mentioned by a prisoner to the arresting officer. The defendant is often skilled, in a petty way, and ready to fence intellectually with the police, or to try to bargain with them or the prosecuting attorney.

Some sociologists and psychologists picture a criminal as being entirely the product of his environment. Naturally, every human being is influenced by his heredity and environment. But to envisage him as a helpless puppet or robot, entirely controlled by external influences, is not only fallacious, but is a complete denial of the existence of human dignity. If these assumptions were true, criminal law should be abolished, because no one should be punished for doing something from which he is unable to refrain. Free will and the ability to choose are part of the psychological makeup of every human being, except perhaps the insane or the mental defective. Only an atheist or an agnostic is in a position to deny freedom of the will, because the existence of such volition is one of the fundamental principles of all religions. If there were no freedom of the will, there would be no such concept as sin, or punishment for sin. Sin is punished only because the sinner is in a position to choose between sinning and refraining from sinning. Some fine individuals have risen from poor environments and, on the other hand, some evildoers have been surrounded by excellent living conditions.

Every human being should have compassion. But it is error to direct compassion solely toward the criminal, as is done too often nowadays, and to ignore the helpless victim of the crime. Actually, those who adhere to that attitude compose a minority, though a vociferous one. The majority of the population, inarticulate as it may be, undoubtedly condemns the criminal, extends its sympathy to the victim, and wishes and hopes for greater protection for its own safety.

Reversals on technicalities

The trial of a criminal proceeding or a civil action is a quest for justice, not a game of skill. While justice must be administered in accordance with law, one must never lose sight of this objective and become immersed in the morass of legal minutiae that sometimes degenerate into trivia. The farsighted leaders of the legal profession brought about a great reform in the field of adjective law by the introduction of the Federal Rules of Civil Procedure, which revolutionized and simplified civil procedure in the Federal courts. This example has been followed by a large number of the States. One of the main purposes of this far-reaching advance was to eliminate, or at least reduce to a minimum, what was labeled by Wigmore many years ago as the sporting theory of justice.

The broad success and the wide acceptance of the Federal Rules of Civil Procedure emboldened those interested in law reform to attempt a similar result for criminal litigation in the Federal courts. The outcome was the adoption of the Federal Rules of Criminal Procedure in 1946. The purpose of this measure was also to simplify legal procedure and to clear away the technicalities that had accumulated through the centuries, like barnacles that encrust the hull of an old ship. Many of them originated in a bygone era in England, when practically every serious crime was punishable by hanging, and judges who were humanely inclined, tried to devise pretexts for avoiding capital punishment in instances in which they did not think it was morally merited. These cobwebs were brushed away in the Federal courts. The window was opened to a strong breath of fresh air.

The rules were welcomed with acclaim, and for a number of years were administered in the spirit in which they were intended. It was realized that the purpose of the safeguards that surround the defendant is to protect the innocent from unjust conviction, and not to interpose obstructions to the conviction of the guilty or to create an obstacle course for the Government. It was not the objective of the Bill of Rights and cognate provisions to frustrate convictions and to turn criminals loose, unwhipped of justice merely because the Government may fail strictly to observe all procedural niceties.

The rules did away with technical forms of indictments, and with the succession of pleas in abatement and pleas in bar that were often interposed seriatim. In many other ways they streamlined and simplified procedure. The keystone of the arch is the "harmless error" rule. It reads as follows: "Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." [28] This principle should be emblazoned in red letters. It is of primary importance. If the evidence against the accused is overwhelming and there is no doubt of his guilt, an error in procedure that has no bearing on the issue of his guilt or innocence should manifestly be ignored. Such was the obvious intention of the framers of the rules. Legal procedure does not prescribe a ceremonial or ritual that must be followed rigidly and inflexibly in every detail, and that requires an acquittal for a slight deviation from a prescribed meticulous formula.

In this connection it is interesting to note the attitude of the English Court of Criminal Appeal. That tribunal hears appeals in criminal cases from various courts in England. Appeals are argued within 4 to 6 weeks after the trial. In the vast majority of cases, decisions are delivered orally at the close of the argument after a brief whispered consultation on the part of the three judges on the bench in full view of the public. The extemporaneous opinion, generally couched in felicitous phraseology, becomes the opinion of the court, which may eventually appear in the reports. An examination of reported cases of that court, as well as personal observation of the court's proceedings on different occasions, lead one to the conclusion that this tribunal does not reverse convictions for error in procedure unless the error has led to an unjust result. That appellate courts in the United States should adopt this enlightened and progressive attitude is a consummation devoutly to be wished.

Unfortunately, after the Federal Rules of Criminal Procedure had been in effect for but a few years and their novelty had worn off, the pendulum began its swing to the side of the defendants and the harmless

[25] See McCormick, Evidence 628–629 (1954).

[26] *United States* v. *Garsson*, 291 Fed. 646, 649 (S.D.N.Y. 1923).

[27] *Snyder* v. *Massachusetts*, 291 U.S. 97, 122 (1934).

[28] Fed. R. Crim. P. 52(a).

error rule came to be honored more in the breach than in the observance. In fact, it seems to have reached a state of innocuous desuetude. Many judges do not even refer to it and seem not to bear it in mind. Ignoring the harmless error rule leads to many reversals and new trials in cases in which guilt is undoubted and may even be undisputed. The result is delay in the administration of justice and sometimes its complete frustration.

The granting of a new trial is not to be treated lightly. A new trial is not to be likened to an additional performance of a drama. Lapse of time may make a new trial impossible or impracticable, due to disappearance or death of witnesses, or the fading memory of those who are still available. Moreover, new trials frequently are unfair and onerous to witnesses. The ordinary witness, who may be just an innocent bystander, is unnecessarily burdened with repeated apearances in court, at times to the detriment of his own affairs. Much worse is the plight of witnesses who are victims of crimes and members of their families who are subjected to the ordeal of being compelled to testify at repeated intervals and thus relive a horrible nightmare that they have been endeavoring to forget. The victim of a rape, for example, is at times required, a year or two after the original trial, again to go through the harrowing experience of reviving the scene and relating before a curious public the pain and embarrassment to which she had been subjected. Similarly, members of the family of the victim of a murder may be asked to recall afresh the vividness of an atrocious scene which they have witnessed. Such burdens are a gross injustice to victims and other witnesses to crimes. No thought or consideration appears to be accorded to them. The ultimate consequence of reversals and new trials is that many obviously guilty persons eventually escape punishment, to the detriment of the public, leading to a lack of confidence in the administration of justice. In cases in which punishment is finally inflicted, after a protracted course of repeated proceedings, the long delay in its imposition results in a loss of its full significance and effect.

While these defects in the administration of the Federal Rules of Criminal Procedure naturally relate to the Federal courts, it must be noted that their influence to some extent permeates the administration of justice in the States. This tendency has become particularly marked in recent years because, under modern postconviction procedures, cases tried in the State courts are subject to review in the Federal courts. While theoretically the scope of this review is restricted to vital constitutional questions, this term has been so liberally and broadly construed that the Federal courts have conducted what amounts to practically a reexamination of the original trial.[29]

It is not the intention of this author to criticize in this essay any specific rulings on questions of law. It is urged, however, that an outstanding defect in the administration of justice today is found in treating as grounds for reversal of a conviction errors that have no bearing on the question of guilt or innocence of the defendant and thereby ignoring the "harmless error rule" which, as has been stated, should be deemed fundamental. Many times several new trials are had in succession in the same case.

Superimposed on this weakness are the delays that are prevalent in both Federal and State appellate courts. In the numerous cases in which new trials are ordered, a long time elapses between the original and the new trial. A survey made by the committee on appellate delays appointed by the Criminal Law Section of the American Bar Association in 1963, showed that in most States the period between the imposition of sentence and the final disposition of an appeal in a criminal case varies from 10 to 18 months. In very few States was the gap less than 10 months, but in no instance less than 5 months. In the Federal courts the timelag between filing a notice of appeal and its final disposition in the U.S. Court of Appeals varied from 11.8 months in the eighth circuit, to 6.3 months in the first circuit.[30] A comparison with the English courts, where the interval between trial and disposition of an appeal is only 4 to 6 weeks, appears startling.

A few specific instances will illustrate the deplorable trend that we have been discussing. The notorious Chessman case in California is so well known that to discuss it in detail would be superfluous. Suffice it to say that the commission of an atrocious crime by him was eventually not actually in dispute, and yet the case went back and forth between the State courts and the Supreme Court of the United States for a dozen years before the sentence was carried out. Mr. Justice Douglas made the following pointed remarks in dissenting from a decision by the Supreme Court in favor of Chessman in a habeas corpus proceeding:

"But the fragile grounds upon which the present decision rests jeopardize the ancient writ for use by Federal courts in State prosecutions. The present decision states in theory the ideal of due process. But the facts of this case cry out against its application here. Chessman has received due process over and again. He has had repeated reviews of every point in his case * * * Nearly 7 years later we return to precisely the same issue and not only grant certiorari but order relief by way of habeas corpus."[31]

On the evening of March 12, 1953, in Washington, D.C., one Willie Lee Stewart entered a grocery store, brandished a loaded pistol or revolver, "held up" the proprietor, and fatally shot him. The grocer's wife and adult daughter were present and witnessed the harrowing tragedy. The fact that Stewart had committed the crime was not contested. He pleaded insanity. The psychiatrists at St. Elizabeths Hospital, an outstanding Government hospital for the mentally ill to which Stewart was committed for observation and examination, reported that he was free of mental disease or defect and indicated that he was shamming insanity. Nevertheless, the case was tried five times over a period of 10 years. Each of the first three trials ended with a verdict of guilty of murder in the first degree, which carried a death sentence. There was a reversal and a grant of a new trial in each instance on points that had no bearing on the guilt or innocence of the accused.[32] When the case reached the Supreme Court, Mr. Justice Clark, dissenting in his vivid, vigorous style, made the following graphic observations:

"It may be that Willie Lee Stewart 'had an intelligence level in the moronic class,' but he can laugh up his sleeve today for he has again made a laughingstock of the law. This makes the third jury verdict of guilt—each with a mandatory death penalty—that has been set aside since 1953. It was in that year that Willie walked into Henry Honikman's little grocery store here in Washington, bought a bag of potato chips and a soft drink, consumed them in the store, ordered another bottle of soda, and then pulled out a pistol and killed Honikman right before the eyes of his wife and young daughter. The verdict is now set aside because of some hypotheticals as to what the jury might have inferred from a single question asked Willie as to whether he had testified at his other trials. In my view, none of these conjectures is sufficiently persuasive to be said to cast doubt on the validity of the jury's determination."[33]

At the fourth trial the jury disagreed. At the fifth trial the jury again found the defendant guilty of murder in the first degree, without recommending life imprisonment, as it had a right to do under a recent local statute. In the absence of such a recommendation, a mandatory death sentence was again imposed. At this trial the Government had demonstrated that the defendant had been shamming insanity, by producing some requisition slips written by him in his own handwriting and signed by him from time to time, directed to the jail library and requesting permission to borrow certain volumes of the District of Columbia Code and the United States Code, invariably naming the particular volumes containing the Criminal Code. The victim's widow died several years after the first trial, but his daughter was compelled to testify at each of the five trials, and thus to revive and relive the horrible scene every couple of years for a decade.

The long and tortuous history of this case apparently led the U.S. attorney to a feeling of complete frustration and hopelessness, which is easily understood. After the fifth trial, Stewart offered to plead guilty to murder in the second degree. The U.S. attorney took the unprecedented step of moving the court to vacate the judgment and recommending that the plea be accepted. It carried a maximum sentence of imprisonment for a term of 15 years to life. The court had no alternative but to acquiesce. The plea was accepted, and sentence was imposed on June 17, 1963, more than a decade after the commission of the original crime.

On October 3, 1960, also in Washington, D.C., James W. Killough strangled his wife, put her body in the trunk of his automobile, and threw the corpse into the city dump. He was arrested shortly thereafter and admitted his guilt. The fact that he had killed his wife was not controverted. He made both oral and written confessions. Although he was indicted for murder, the jury found him guilty of manslaughter. The judgment was reversed on the ground of inadmissibility of a confession, although it was voluntary and its voluntary character was not contested.[34] He was tried and convicted again. Another reversal followed.[35] The second reversal was also based on a ground having no bearing on the question of guilt or innocence. On both occasions there were emphatic dissents. At the third trial, which took place on October 7, 1964, almost 4 years to the day after the murder, the Government found itself bereft of sufficient evidence deemed admissible in the light of the previous rulings of the court of appeals which resulted in exclusion of all the confession. The trial judge found himself constrained reluctantly to direct a judgment of acquittal for lack of sufficient evidence. He did so with a very emphatic expression of disgust and distaste, bemoaning the miscarriage of justice.

There are numerous cases arising out of the State courts in which Federal postcon-

[29] *Cf. Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Johnson* v. *Zerbst*, 304 U.S. 458, 468 (1938) (dictum).

[30] The report of the Committee on Appellate Delay in Criminal Cases is published in 2 American Criminal L.Q. 150–58 (1964).

[31] *Chessman* v. *Teets*, 354 U.S. 156, 172 (1957).

[32] *Stewart* v. *United States*, 214 F. 2d 879 (D.C. Cir. 1954); 247 F. 2d 42 (D.C. Cir. 1957); 366 U.S. 1 (1960).

[33] *Stewart* v. *United States*, 366 U.S. 1, 22 (1960).

[34] *Killough* v. *United States*, 315 F. 2d 241 (D.C. Cir. 1962). (Confession held to be the fruit of earlier inadmissible confessions.)

[35] *Killough* v. *United States*, 336 F. 2d 929 (D.C. Cir. 1964). (Standard interview form at jail would not have been used against him if he had been informed of this right at time of interview and had so demanded.)

viction remedies have been pursued for years by the device of raising a different constitutional point on successive motions to vacate the sentence. Much could be accomplished in the direction of achieving a more expeditious administration of justice by requiring a defendant to exhaust all of his grounds in a single motion. A defendant is entitled to one trial and one appeal. Ordinarily his rights end at that point. The original purpose of postconviction remedies was a beneficent one: to provide a cure for an exceptional miscarriage of justice, not an additional routine review. But in some districts, the Federal court is flooded with applications from prisoners in State penal institutions to vacate sentences imposed on them. While the great bulk of these proceedings terminate unfavorably to defendants, each has to be examined and many have to be heard, thereby unnecessarily consuming a great deal of time of the court, to the detriment of the rights of other litigants whose cases are being delayed in the interim. Moreover, the criminal proceeding itself is prolonged, all to the demoralization of the enforcement of the criminal law.

To multiply examples would unduly prolong this essay. Those just given clearly illustrate some of the difficulties confronting the administration of justice and the suppression of crime in the United States today.

Many members of the bench have emphatically protested against the trends that we have been discussing. Thus, Judge Wilbur K. Miller of the U.S. Court of Appeals for the District of Columbia Circuit, in a dissenting opinion in *Killough* v. *United States*,[36] deplored "this court's tendency unduly to emphasize technicalities which protect criminals and hamper law enforcement, against which I have repeatedly protested." He added, "in our concern for criminals, we should not forget that nice people have some rights, too."

The U.S. Court of Appeals for the Second Circuit, a tribunal that has not succumbed to the current tendency of reversing convictions on technicalities that have no bearing on the guilt or innocence of the defendant, made the following eloquent comments in a unanimous opinion in *United States* v. *Guerra*:[37]

"The day has certainly not come when courts will set a convicted criminal free for no reason other than some practice of police or prosecution—wholly unrelated to the conviction itself—did not meet with their approval. If that unhappy day should ever arrive, the often-heard criticism that law and lawyers are interested only in technicalities will have a ring of truth, and courts may rightfully be accused of exalting form above substance." [38]

Mr. Justice Clark, in a dissenting opinion in *Milanovich* v. *United States*,[39] registered emphatic protest against the tendencies to which we have referred. He said:

"My duty here is to help fashion rules which will assure that every person charged with an offense receives a fair and impartial trial. But that obligation does not require my ferreting out of the record technical grounds for reversing a particular conviction, grounds which could not possibly have affected the jury's verdict of guilt as a factual determination."

Search and seizure

We shall now pass to another aspect of the subject that likewise tends to frustrate the conviction of the guilty. We refer to recent developments and trends in the construction and application of the fourth amendment. The fourth amendment to the Constitution of the United States reads as follows:

"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 warrant 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."

These provisions of the Bill of Rights, together with the writ of habeas corpus, constitute a palladium of liberty. They erect a strong bulwark against even a remote possibility of a police state. They render impossible such things as the oubliette in the Bastille during the ancien regime in France an institution that was still in existence when the Founding Fathers framed the Constitution. They ban the dreaded knock on the door in the dead of night and the arrest or removal of one or more of the occupants of a home to an unknown destination, as has occurred in our own times under Communist and Fascist dictatorships. They preclude imprisonment without a trial. They prevent a series of arbitrary arrests for the purpose of discovering the identity of a perpetrator of a crime, such as a dragnet apprehension of numerous persons within a certain area in order to interrogate them and ascertain which one may have committed a particular crime. They ban visitatorial and exploratory searches of homes and places of business, solely for the purpose of determining whether any contraband is to be found on the premises—such searches as were condemned by Lord Camden in the celebrated case of *Entick* v. *Carrington*.[40] They banish the notorious writs of assistance used by the English authorities to conduct exploratory searches in the Colonies.

In recent years the classic splendors of this imposing edifice began to crumble away by a process of erosion. The philosophy underlying the fourth amendment and the farsighted purpose of its framers seem to have been distorted and deflected. These constitutional provisions have all too frequently been applied, not to guard the precious rights which are formulated by them, but in a manner that, time after time, results only in liberating criminals. The Supreme Court, in a majority opinion by Mr. Justice Jackson, sounded this warning: "We are not willing to discredit constitutional doctrines for protection of the innocent by making of them mere technical loopholes for the escape of the guilty." [41]

It was not until 1914, when the Supreme Court decided the case of *Weeks* v. *United States*,[42] that the rule was established banning, in Federal courts, evidence obtained by an unconstitutional search and seizure. Prior to that time, the admissibility of evidence was not affected by the manner in which it had been obtained.[43] Four years ago, the proscription was extended by the Supreme Court to State courts [44] on the theory that the provisions of the fourth amendment were a part of due process of law as guaranteed by the 14th amendment to the States. Whether the Founding Fathers intended to impose such a drastic sanction for a violation of the fourth amendment is immaterial because the rule of exclusion has become definitively crystallized and must be accepted. It is the law of the land.

It must be emphasized that the fourth amendment does not ban all searches and seizures. It forbids only those that are "unreasonable." A search of the place [45] where a legal arrest is made, as well as a search of the person [46] arrested incidental to the arrest, are regarded as reasonable and are permitted. There are searches and seizures of other types that may be deemed reasonable, depending on the facts of the individual case.

The fourth amendment also authorizes arrests on the basis of warrants properly issued, as well as arrests without warrants, but made on probable cause.[47] A problem arises frequently whether a seizure of the fruits of a crime or of the means by which the crime was committed, or of some other incriminating article, was legal and therefore, whether the evidence should be admitted at the trial. At times the evidence is crucial and whether a conviction can be had, or once had whether it can stand, depends on the admissibility of the article. This in turn often hinges on the question of whether the arrest of the defendant was legally made on probable cause, which directly affects the legality of the search and seizure. Unfortunately, in recent years, there have been numerous decisions of appellate courts drawing fine-spun distinctions and hairsplitting refinements between what does and what does not constitute a probable cause for an arrest, and between what constitutes a reasonable or unreasonable search and seizure. When the point is reached at which the distinction between validity and invalidity in these matters depends on minor details and minute differences, the lofty and exalted aim of the fourth amendment becomes at least partially obliterated. In fact, many a thinking layman is gradually led to an attitude of disparagement toward the law. The majesty and the grandeur of the fourth amendment become tarnished. There is a plethora of cases in which trial courts have been constrained to direct verdicts of acquittal or in which appellate courts have reversed convictions, where the guilt of the defendant was undoubted and perhaps not even contested, but the arrest or the search and seizure were found to be technically invalid.

The reports are replete with such decisions. To endeavor to discuss many of them would prolong this article beyond reasonable limits. Perhaps an extreme case might be cited, in which police officers, who had arrived at the defendant's home in order to arrest her on a charge of violating the law relating to narcotics, saw her walk out of the house and drop a small package into a garbage can that was located outdoors in the areaway. The keen-sighted officers retrieved the parcel which was found to contain narcotics. On the basis of this evidence the defendant was convicted. There was no real contest over the issue of her guilt or innocence. The conviction was reversed, however, on the ground that the action of the officers in recovering the narcotics from the garbage can, constituted an unconstitutional search and seizure.[48]

Whether a police officer has probable cause to make an arrest cannot be determined by study and reflection in an ivory tower, library, or conference room. A police officer may be confronted with a practical dilemma requiring him to make a decision on the spur of the moment. Unless a court called upon to determine such a question endeavors to visualize the momentary scene encountered by the police officer, it is not in

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[36] 315 F. 2d 241, 265 (D.C. Cir. 1962).

[37] 334 F. 2d 138, 146 (2d Cir. 1964). (Emphasis added.)

[38] Perhaps Judge Kaufman, the writer of the opinion, might well have said "should" instead of "will."

[39] 365 U.S. 551, 562 (1961).

[40] 2 Wilson K. B. 275; 19 How. St. Trials 1030 (1765).

[41] *Stein* v. *New York*, 346 U.S. 156, 196–97 (1953).

[42] 232 U.S. 383 (1914).

[43] 8 Wigmore, Evidence 2183 (McNaughton rev. 1961).

[44] *Mapp* v. *Ohio*, 367 U.S. 643 (1961).

[45] *United States* v. *Rabinowitz*, 339 U.S. 56 (1950).

[46] *Ker* v. *California*, 374 U.S. 23 (1963).

[47] *Draper* v. *United States*, 358 U.S. 307 (1959); *Brinegar* v. *United States*, 338 U.S. 160 (1949); *Carroll* v. *United States*, 267 U.S. 132, 160 (1925).

[48] *Work* v. *United States*, 243 F. 2d 660 (D.C. Cir. 1957).

a position to reach a realistic result. The court hears arguments of counsel, receives and examines briefs, and then, after reflection, arrives at a decision perhaps weeks or months later. In many instances the decision is reached by a divided vote on the basis of a discussion of close legal distinctions. The application of hindsight in this leisurely, careful manner, without picturing the actualities that faced the police officer and the necessity of his making an immediate decision, is not conducive to a practical resolution of the question. A police officer is not a constitutional lawyer. He sees a situation before him momentarily, often outdoors in the dead of night, and sometimes in inclement weather. He must determine instantly whether to make an arrest or run the risk of allowing a miscreant to escape. He has no opportunity to seek immediate legal advice, and even if he did, by the time it was received it might be too late to make a seizure or apprehend a criminal, who in the meantime may have fled or destroyed the evidence.

So, too, allowance must be made for the police officer's intuition, such as is developed by practical experience in every profession. For example, an old family physician is often aided by his intuition in making a diagnosis. To a trained police officer some minor circumstance, which may seem insignificant or even may not be noticed by any one else, may appear exceedingly suspicious and may reasonably justify an arrest, even though on a prosaic recital of the facts subsequently embodied in a typewritten or printed record, a judge, no matter how learned, may be unable theoretically to find probable cause.

At times some authorities refer to arrests or searches and seizures later adjudged invalid as "misconduct" by the police. This choice of words is hardly felicitous. The police officer is not engaged in a private enterprise for his own profit. He is not bent on a frolic of his own. He is trying to do his duty, generally arduous and frequently hazardous. He has the same frailties and shortcomings as other human beings. He may make a mistake in trying to guess what a court may hold in the future. He is no prophet. Perhaps he may be charged with error, but hardly accused of misconduct, except in flagrant situations.

There is another aspect of this subject that is of considerable importance. It is invariably assumed that the validity of an arrest or of a search and seizure must be determined on the basis of the facts before the officer at the time when he apprehended the prisoner, or conducted the search and seizure. The fact that the defendant was later shown to have been guilty of the offense for which he was taken into custody, or that the search resulted in successfully locating contraband articles, may not be considered. The logic of this reasoning is invulnerable. Yet we must not overlook the well-known precept of Mr. Justice Holmes that "The life of the law has not been logic; it has been experience."[49] As a matter of commonsense and substantial justice, it does not seem reasonable to ignore the outcome of the arrest or the result of the search and seizure. It is like saying to the officer that it is true that he arrested a guilty person, or seized an article that was properly subject to seizure, but he had no business to think that his prisoner was guilty or that he was about to find contraband. The manner in which these questions are handled seems to relegate us to the artificial world of "Alice in Wonderland" or "Gulliver's Travels." It surely would seem sensible to take into consideration subsequent events and their outcome in determining the validity of an arrest, or the legality of a search and seizure, even though stern, deductive logic would preclude this course.

In many criminal trials the proof adduced by the Government of the defendant's guilt is not controverted. At times guilt is even tacitly admitted. Often the only question litigated is whether the vital evidence against the accused was procured in violation of the fourth amendment, as construed in recent decisions. The trial is transformed from a proceeding for the ascertainment of guilt or innocence of the accused into a determination of the legality of obtaining the evidence of guilt. The trial judge finds himself in effect trying the policeman on a charge of making the arrest, or of seizing contraband articles, instead of trying the defendant. For the time being, the world seems to be turned upside down. We must find a way to return to reality.

Juvenile courts

As was pointed out earlier in this article, one of the grave aspects of the crime problem in this country today is the rapid growth in the number of vicious crimes of violence committed by young people and the vast increase in the ratio between young criminals and older offenders as compared with the ratio of a generation or two ago. It is proper and fitting, therefore, that consideration should be given to a reappraisal of our method of dealing with juvenile offenders and to a need of an overhaul of the juvenile court system. Juvenile courts were inaugurated about the turn of the century.[50] Their creation was a benevolent, progressive step in the direction of humane and understanding treatment of children who came in conflict with the law. The essential purpose of these tribunals was to deal informally and sympathetically with a child who committed a minor peccadillo, such a pilfering from a fruit stand, or a child who managed to get drawn into an undesirable and unsavory gang of youngsters older than himself. It was intended that such boys and girls should be handled in a kindly manner, without giving them a criminal record that would stain their entire life.[51] As is so often true of innovations, in the course of time the original and basic admirable purpose of the reform was lost sight of, or at least became buried underneath an underbrush of weak sentimentality. In many areas the maximum age under which juveniles were within the jurisdiction of such courts was placed at 18 years.[52] Much is to be said in favor of the proposition that this limit is too high and that the age should be set at 16, as is the case in some other places.[53] If we permit a young man of 16 to drive an automobile, thereby considering him mature enough to be vested with the responsibility for a high powered piece of machinery, he should be deemed sufficiently developed to be answerable for his acts. So, too, the jurisdiction of juvenile courts is almost everywhere made dependent solely on age, giving them authority to deal with offenses of any type, other than capital, committed by anyone within a specified age group. The result is that many gunmen and robbers whose chronological age is 15, 16, or 17, but who may be steeped in crime and may have committed a vicious offense, are brought into a court intended primarily for children. To refer to such a defendant as a "child," as is sometimes done, is farcical, unless the word "child" is used in the sense that every human being is the child of his parents.

All too frequently, when a young robber or automobile thief is brought before a juvenile court, the personnel of the court, instead of trying to impress him with the gravity of his offense, lament the fact that some sort of deprivation or compulsion led him to commit his crime, and express sympathy for him. The result is that often the young man either becomes defiant, delves in self-pity, or feels that society is indebted to him. Yet the first step toward rehabilitation of a criminal, if he is to be reformed and reclaimed, must be a realization and a recognition on his part of the immorality of his offense and some feeling of remorse and contrition. It is not unusual for a criminal over 6 feet tall, and weighing over 200 pounds, but only 16 or 17 years of age, to say to a police officer when arrested that the latter can do nothing to him because he is a juvenile.

To be sure, juvenile courts are generally vested with authority to waive jurisdiction in specific cases and transfer the defendant to a criminal court.[54] Whether jurisdiction is to be relinquished in any particular case depends entirely on the discretion of the individual judge, who has no rule of law to guide him. The Federal Juvenile Delinquency Act[55] has solved this problem in a logical and desirable manner. It vests the power of final decision of the question whether a juvenile should be prosecuted under juvenile or adult procedure in the prosecuting authority, namely, the Attorney General.[56]

Paradoxically, juvenile courts often fail to accord to young offenders the constitutional rights guaranteed to every person by the Bill of Rights. For example, many juvenile court judges discourage representation of the accused by counsel, in spite of the fact that the right of counsel is basic and fundamental under the sixth amendment. Yet the Bill of Rights is not restricted to persons over a specified age; one would search in vain in the Bill of Rights for any age limit. These constitutional provisions accompany every citizen from the cradle to the grave. Another opportunity that is frequently denied to a juvenile, though not a constitutional right, is a preliminary hearing before a judge without unnecessary delay. Frequently, a juvenile is detained in custody for days or weeks before he faces a judge.

An overhaul of the machinery for dealing with juvenile offenders seems overdue. Questions may well be considered: whether the age limit for minors within the jurisdiction of juvenile courts should not be reduced to 16, wherever it is higher than that; whether the jurisdiction of a juvenile court should not depend both on age and the nature of the charge, instead of on age alone; and whether the prosecuting authorities, rather than a juvenile judge, should decide in what court a juvenile should be prosecuted. Most important, there is a crying need for a change of attitude toward the youthful offender. In serious cases he must be impressed with the enormity of his misconduct and with the fact that he alone has the power of choosing whether to become a useful citizen or to pursue a criminal career. To minimize and palliate his crime does him a disservice.

CONCLUSION

The crime problem as a whole manifestly cannot be solved by a change in legal procedure. To hope so to solve it would be an irridescent dream. There are involved many deep-seated traits of human nature. Parental control, moral training of children, perception of ethical standards, all blend to-

[49] Holmes, "The Common Law 5" (Howe ed. 1963).

[50] Perkins, "Criminal Law 733" (1957).

[51] *State* v. *Guerrero*, 58 Ariz. 421, 430, 120 P. 2d, 798, 802 (1942).

[52] E.g., 18 U.S.C. 5031 (1964).

[53] E.g., Alabama Code, title 13, sec. 350 (1940).

[54] E.g., California Welfare and Institutions Code, sec. 606.

[55] 18 U.S.C. 5031–5037 (1964).

[56] 18 U.S.C. 5032 (1964). Under this section, the juvenile may not be proceeded against as a juvenile delinquent without his consent, as well as that of the Attorney General.

gether like strands that form a single piece of tapestry. They can be elevated only in the course of time, perhaps a generation or two. This is a task for clergymen, educators, and other moral leaders. The criminal law, however, plays an important part in the control of crime, and its successful operation can be improved without a long-range program. We may hope for a return to the ideals set forth in the Federal Rules of Criminal Procedure, and their administration and enforcement in the spirit originally intended; for a strong application of the "harmless error" rule; and for an abandonment of reversals on technicalities. Following the philosophy of Cardozo, justice must be accorded to the accuser as well as the accused. As the present cycle passes, the pendulum will eventually swing back to a true balance. The basic need is not for any change in the law, but for a modification and shifting of attitudes. It is to be hoped that in the course of time, in the not too distant future, this end will be attained. Let us not take one jot or tittle from the law that protects the innocent, but let us wipe the slate clean of subtleties that serve only as a refuge for the guilty.

HERBERT C. BONNER, LATE A REPRESENTATIVE FROM NORTH CAROLINA

Mr. ERVIN. Mr. President, when my longtime friend, Representative Herbert C. Bonner of the First North Carolina District, died on November 7, 1965, his district, his State, and his country suffered an irreparable loss. Immediately after his passing a number of articles and editorials depicting his magnificent public services appeared in the press.

I ask unanimous consent that these articles and editorials be printed in the RECORD.

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

[From the Asheville (N.C.) Citizen and Times, Nov. 8, 1965]

NORTH CAROLINA'S FIRST DISTRICT CONGRESSMAN BONNER DIES OF CANCER AT 74

WASHINGTON.—Representative Herbert C. Bonner of North Carolina, sometimes called the father of the nuclear ship *Savannah*, died Sunday at Walter Reed Army Hospital. He was 74.

Democrat Bonner came to the Capitol 50 years ago as a congressional secretary and went on to a 25-year career as a House Member. For the past 10 years, as chairman of the Merchant Marine and Fisheries Committee, he exerted strong influence in maritime affairs.

And he enjoyed a reputation also as a poker player's poker player.

Bonner's first Congressional District, which included 15 sparsely populated counties in North Carolina's northeast corner, is laced by sounds, streams, and coastline. A bridge joining two of the outer banks in his district was named for him last year.

Among North Carolina's 11 Congressmen, Bonner was the most consistent supporter of the policies of Democratic administrations.

He underwent surgery in North Carolina several months ago for removal of a cancerous kidney. Then he returned to Washington to vote for various Johnson administration programs. He entered Walter Reed Hospital last month soon after Congress adjourned.

Funeral services will be held at 11 a.m. Tuesday in St. Peter's Episcopal Church in Washington, N.C. Burial will be in Oak Dale Cemetery.

Bonner's death leaves the House lineup at 292 Democrats and 140 Republicans, with 3 vacancies. Representative EDWARD A. GARMATZ of Maryland is the second-ranking Democrat on the Maritime Committee and thus is in line for the chairmanship.

When he was 24, Bonner came to Washington as secretary to Representative Lindsay C. Warren of North Carolina. He won Warren's seat in 1940 after the Congressman resigned to become U.S. Comptroller General. Bonner was reelected to every succeeding Congress.

In 1955, the year he became chairman of the Merchant Marine Committee, Bonner introduced legislation to install nuclear reactors in existing merchant ships as a means of producing a floating exhibit of peaceful uses of atomic energy.

This plan did not work out, but he subsequently led in obtaining legislation which brought the building of the *Savannah*, the world's first nuclear-powered freighter. He pioneered also with the idea of a nuclear-powered icebreaker for the Coast Guard.

Years ago, a 10-cent-limit poker game started in the Capital. It grew to a 20-cent game and a regular recreational event for some Congressmen and congressional aids. From this came Bonner's repute as "a mighty good poker player."

He is survived by his widow; three brothers, John and George Bonner of Washington, N.C., and James Bonner of Atlanta, Ga., and a sister, Mrs. W. H. Williams of Washington, D.C.

[From the Asheville (N.C.) Citizen, Nov. 10, 1965]

HERBERT C. BONNER BURIED ON NORTH CAROLINA COAST

WASHINGTON, N.C.—Herbert C. Bonner, who represented coastal North Carolina in Congress for a quarter of a century, was buried Tuesday near the banks of the Pamlico River.

The 74-year-old Bonner, who introduced legislation that led to the Nation's first nuclear powered merchant ship, died Sunday in Walter Reed Army Hospital. He had been ill since the removal of a cancerous kidney in July.

Final rites for the veteran Democratic Representative were held in the century-old Saint Peter's Episcopal Church.

All the seats in the small, red brick church were filled with visiting dignitaries and the family.

Inside were Gov. Dan Moore and two former North Carolina chief executives—Terry Sanford and Luther Hodges. There was a large delegation from Congress, including two of Bonner's longtime friends, Representative MICHAEL J. KIRWAN, Democrat, of Ohio, and WILLIAM M. COLMER, Democrat, of Mississippi.

Most of North Carolina's congressional delegation was there. Scores of State officials from the executive, judiciary, and legislative branches also attended, such men as State Treasurer Edwin Gill and Joe Hunt, chairman of the State highway commission.

Military representatives from the various armed services were in attendance, including the merchant marine which Bonner had championed during his 25 years in the House of Representatives.

Outside the church more than 300 other mourners stood silently along a narrow road named Bonner.

The Congressman's bronzed metal casket was covered with a single wreath of yellow roses and was carried by the men who had served as his personal aids.

Shortly before the funeral procession arrived, a U.S. Coast Guard plane flew over the church.

[From the Charleston (S.C.) News and Courier, Nov. 10, 1965]

FUNERAL HELD IN NORTH CAROLINA FOR REPRESENTATIVE H. C. BONNER

WASHINGTON, N.C.—Herbert C. Bonner, who represented coastal North Carolina in Congress for a quarter of a century, was buried Tuesday near the banks of the Pamlico River.

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During the funeral hour all government, county, and city offices were closed.

Many businesses in the downtown area of Washington also were closed in memory of their native son.

Conducting the services were the Reverend John Bonner, rector of St. Paul's Episcopal Church in Chattanooga, Tenn., and a nephew of the Congressman; the Reverend Irwin Hulbert, Jr., rector of St. Peter's, and the Right Reverend Thomas H. Wright, bishop of the Episcopal Diocese of Eastern North Carolina.

Burial was in Oakdale Cemetery.

Bonner was born in this Washington near the great shipping lanes of the Atlantic and spent most of his life between here and the Nation's Capital City of Washington.

A former traveling salesman, then a congressional aid, Bonner was elected to the House on November 5, 1940.

He never forgot his closeness to the sea and in 1955 became chairman of the House Merchant Marine and Fisheries Committee.

He sponsored the legislation that led to construction of the *Savannah*, the Nation's first nuclear merchant ship. Bonner also worked to keep both channels open on the North Carolina outer banks and pushed for the establishment of the Cape Hatteras National Seashore Park.

He helped modernize passenger shipping laws that allowed American ships to compete for the rich Carribbean and Mediterranean winter cruise trade.

On June 1, 1966, my colleagues and I stated, among other things, that the system seems illogical and unfair where the main determinant is the efficiency or inefficiency of the local boards.

> States with efficient draft boards will have examined and made available more men than States with inefficient boards. And the result is that more men will be drafted from States with efficient boards than from States with inefficient boards." (CONGRESSIONAL RECORD, June 2, 1966, p. 12183.)

My information with particular regard to overdrafting or underdrafting in my State is as follows: New York State has 9.3 percent of the Nation's population. At the same time, New York's share of male population under the age of 35 is only 8.5 percent.

Inasmuch as the total New York draft call during the period of July 1, 1964 to June 30, 1965 was 10.25 percent of the national draft call, it can be seen that New York appears to be contributing slightly more than its fair share of the draft, when compared to the national male population under 35 years of age.

It seems to me that this is just one more instance of the inequity involved in the present administration of the draft. This question is of extreme concern to every American family. It deserves the attention of the Congress—now.

ABOLISH CAPITAL PUNISHMENT

Mr. BOGGS. Mr. Speaker, I ask unanimous consent that the gentleman from Wisconsin [Mr. KASTENMEIER] may extend his remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. KASTENMEIER. Mr. Speaker, I am introducing a bill today to abolish the death penalty under all laws of the United States.

The death penalty, one of the oldest of all punishments, has long been under attack. Returning to the days of ancient Greece, we find that Thucydides' "Peloponnesian War" records a debate on the utility of the death penalty. Enlightenment philosophers, such as Montesquieu and Voltaire, were critical of such a punishment. Cesare Beccaria, the Milan criminologist and economist, published, in 1765, his influential essay, "On Crimes and Punishments." Beccaria, the first modern writer to subject the death penalty to fundamental criticism, envisioned present day criminological advances in the treatment of crime. He condemned the savage criminal procedures and penalties of his day, and asserted that prevention of crime is of greater importance than its punishment. Beccaria advocated the abolition of capital punishment, replacing it with life imprisonment.

The world trend today is toward abolition of capital punishment, either by law or custom, and application in capital punishment countries is declining. Execution as a punishment for crimes is becoming increasingly rare in the United States. Nine States, Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia, and Wisconsin have abolished capital punishment by law. Four other States, New York, North Dakota, Rhode Island, and Vermont, retain capital punishment for either a second-time murder, or the slaying of a police officer or murder by a lifer. During the past two decades, disuse of the death penalty has virtually abolished capital punishment in many States in which the law still allows it. From the peak year of 1935, when 199 persons were executed, the number of executions has dramatically been reduced.

1962	47
1963	21
1964	15
1965	7

The death penalty is seldom used in Federal cases. Only one Federal prisoner has been executed since 1957. Federal penal institutions maintain no means of carrying out the death sentence and State facilities are used whenever necessary. In our Armed Forces, the last execution in the Army took place on April 13, 1961. The last such execution in the Navy was held on December 1, 1842. The offender was the son of the Secretary of the Navy.

Yet, the debate between opponents and defenders of punishment by death continues unabated and, at times, highly emotional. J. Edgar Hoover voiced his belief that:

> A great many of the most vociferous cries for abolition of capital punishment emanate from those areas of our society which have been insulated against the horrors man can and does perpetrate against his fellow beings. The savagely mutilated bodies and mentally ravaged victims of murders, rapists, and other criminal beasts beg consideration when the evidence is weighed on both sides of the scales of justice.

It is recognized that the desire to "get even" is a natural human tendency and that it exists in almost everyone, but we must inquire about the extent to which this feeling should influence our actions against the offender. Should we, however, be content with a mere execution? Why not torture the criminal first by reviving some of the more popular forms of torture as practiced by the Spanish Inquisition? If it is pain that is wanted, why should we not make sure that we get as much as possible? As a matter of fact, however, the tendency in capital punishment has been to make the method of execution as swift and as painless as possible. The trend away from hanging, for example, and to electrocution is due largely to evidence that hanging may cause a slow and painful death.

Deputy Attorney General Ramsey Clark, in July 1965, gave the Department of Justice's views on capital punishment when he said:

> We favor the abolition of the death penalty. Modern penology with its correctional and rehabilitation skills affords greater protection to society than the death penalty which is inconsistent with its goals. This Nation is too great in its resources and too good in its purposes to engage in the light of present understanding in the deliberate taking of human life as either a punishment or a deterrent to domestic crimes.

Supporters of the death penalty cling to the claim that it has a specific deterrent effect. That is to say, if there were no capital punishment, more people would commit violent crimes. Belittling this hypothesis, former Premier John Diefenbaker, in a debate in the Canadian House of Commons once declared that if society really believed the death sentence was a deterrent, "then we should have public executions." The claim that the penalty prevents murder is a belief, however, not a fact. The inference drawn from statistical data that the death penalty is inconsequential as a deterrent is born out by case studies and expert opinion. Karl F. Schuessler, professor of sociology at Indiana University has stated that the death penalty has little if anything to do with the relative occurrence of murder. The alleged deterrent influence of the death penalty, Professor Schuessler maintains, is contradicted by the following recurrent case study data:

> The fear of death is relative to the situation, consequently, the death penalty may appear on reflection to be a necessary though unfortunate sequel to murder.
>
> Certain cultural circumstances (underworld, marital) often make murder imperative thereby nullifying the supposed deterrent effect of the death penalty.
>
> The relation between murder and victim is usually primary, hence, one that is likely to be suffused with emotionality.

Other studies have shown that when comparisons are made between contiguous States with similar populations and similar social, economic, and political conditions—some of the States lacking and others retaining capital punishment—homicide rates are the same and follow the same trend over a long period of time, regardless of the use or nonuse of capital punishment. Further research concluded that the abolition, introduction, or reintroduction of this penalty is not accompanied by the effect on homicide rates that is postulated by the advocates of capital punishment. Even in communities where the deterrent effect should be greatest because the offender and his victim lived there and trial and execution were well publicized, homicide rates are not affected by the execution. Also, the rate of policemen killed by criminals is no higher in abolition States than in comparable death penalty States.

A British Royal Commission on Capital Punishment made an exhaustive examination of capital punishment and concluded that:

> Whether the death penalty is used or not, both death penalty and abolition states show homicide rates which suggest that these rates are conditioned by other factors than the death penalty.

The Commission's findings went on to say that:

> The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate or that its re-introduction has led to a fall.

In November 1965, the British Parliament abolished capital punishment on an experimental basis for a period of 5 years, despite the fact that 79 percent of the

British polled either opposed abolition or were uncertain.

We don't—

However, remarked Sidney Silverman, the leading M.P. in the movement to abolish capital punishment—

in matters of life and death, think it is right to decide what is just or unjust by a spot, unconsidered reaction taken on the street corner or in a club or pub.

The question as to whether the individual who commits a capital crime considers the death penalty before he acts and whether the fear of death is sufficient to prevent murder is answered by Professor Schuessler:

In the events preceding murder, the murderer is usually preoccupied to the point that reflection over future consequences is virtually impossible.

In any event, we know this much, that the threat of death has failed to stop the number of murders committed each year. "While crime is punished," observed the Roman philosopher Seneca, "it yet increases." Echoing similar sentiments some 2,000 years later, the late Albert Camus, Nobel Prize winning author and journalist, wrote, "it [capital punishment] forbids, but it prevents nothing." The FBI estimates that there were 9,250 murder victims in 1964. The fact that there were so many deaths through violent means obviously shows that the man who kills has not been deterred by the threat of the death penalty.

Aside from the obvious lack of evidence that fails to prove that the fear of death is a powerful deterrent to the act of committing murder, let me introduce another reason for opposing captial punishment—that being the probability of human error. This fallibility in man prompted Voltaire to write:

It is better to risk saving a guilty person than to condemn an innocent one.

The death penalty is so horribly final. Once it has been carried out, mistakes cannot be corrected. Mistakes, however, have occurred and many persons have been put to death, only to have their innocence later proven. Of all crimes, murder is mostly likely to produce a violent emotional public reaction, a demand for vengeance, a feeling that the accused deserves to be put to death. The emotional drive to punish someone for an atrocious murder frequently plays an important part in conditioning a jury for believing the evidence which proves the guilt of the accused. Thomas Jefferson recognized such human limitations and maintained that:

Until I shall have been convinced of the infallibility of human judgment, I shall always oppose the penalty of death.

The tragic impossibility of correcting such errors in human judgment is a powerful reason to oppose capital punishment.

The moral objections to capital punishment are obvious. Human life is sacred and deliberately destroying it is as much a crime for the State as for the individual. A large number of the wardens and prison chaplains who witness executions are against capital punishment because of their revulsion against such exhibitions of the cold and calculated snuffing out of human life.

Capital punishment laws, are, in effect, a subtle form of class legislation.

What kind of people do we execute?

Asked Gov. Pat Brown.

For the most part they are the poor, the friendless, the products of social, economic and educational disadvantage, and, in disproportionate numbers, minority group members.

The late Lewis B. Lawes, onetime warden at Sing Sing, remarked that:

The defendant of wealth and position never goes to the electric chair or to the gallows. Juries do not intentionally favor the rich, the law is theoretically impartial, but the defendant with ample means is able to have his case presented with every favorable aspect, while the poor defendant often has a lawyer assigned by the court * * * Thus, it (seldom happens) that a person who is able to have eminent defense attorneys is convicted of murder in the first degree, and very rare indeed that such a person is executed.

Statistics and records clearly establish that it is mostly the poor, the uneducated, the unskilled and the nonwhite who pay the extreme penalty under capital punishment.

While studies indicate no pronounced difference in the rate of murders or other violent crimes between States which have capital punishment and States which do not have it, statistics do show, however, that the 13 abolitionist or semiabolitionist States have a lower murder rate per 100,000 inhabitants than the average U.S. rate.

Capital punishment—Number of murders and maximum penalties in the United States, 1964

Jurisdiction	Maximum penalty for murder [1]	Murders Per 100,000 inhabitants, 1965 [2]
Alabama	Electrocution	9.3
Alaska	Life imprisonment	10.4
Arizona	Lethal gas	5.2
Arkansas	Electrocution	7.6
California	Lethal gas	4.1
Colorado	do	4.2
Connecticut	Electrocution	1.8
Delaware	Hanging	4.3
Florida	Electrocution	8.6
Georgia	do	11.7
Hawaii	Life imprisonment	2.1
Idaho	Hanging	4.0
Illinois	Electrocution	5.5
Indiana	do	3.0
Iowa	Life imprisonment	1.3
Kansas	Hanging	3.4
Kentucky	Electrocution	5.2
Louisiana	do	8.3
Maine	Life imprisonment	1.5
Maryland	Lethal gas	6.7
Massachusetts	Electrocution	2.0
Michigan	Life imprisonment	3.3
Minnesota	do	1.4
Mississippi	Lethal gas	10.1
Missouri	do	5.4
Montana	Hanging	2.7
Nebraska	Electrocution	2.3
Nevada	Lethal gas	7.8
New Hampshire	Hanging	.9
New Jersey	Electrocution	3.1
New Mexico	Lethal gas	5.4
New York	Life imprisonment [3]	4.6
North Carolina	Lethal gas	7.6
North Dakota	Life imprisonment [3]	.9
Ohio	Electrocution	3.5
Oklahoma	do	4.5
Oregon	Life imprisonment	1.8
Pennsylvania	Electrocution	3.3
Rhode Island	Life imprisonment [3]	1.2
South Carolina	Electrocution	8.1
South Dakota	do	1.3
Tennessee	do	5.9
Texas	do	7.5
Utah	Shooting or hanging	1.5
Vermont	Life imprisonment [3]	0.5
Virginia	Electrocution	6.8
Washington	Hanging	2.4
West Virginia	Life imprisonment	3.7
Wisconsin	do	1.5
Wyoming	Lethal gas	5.5
U.S. Government	Death [4]	
Average U.S. rate		4.8

[1] Except for special cases such as those listed below, all jurisdictions have abolished the mandatory death penalty for murder, leaving the decision between death or life imprisonment to the discretion of the jury or the court:

Alabama: Murder by a life term prisoner.

Massachusetts: Murder during the commission of rape.

Ohio: Killing a Federal or State chief of state.

Rhode Island: Murder by a life term prisoner.

[2] Source: Federal Bureau of Investigation, Uniform Crime Reports for the United States, 1964. Murder statistics as reported by the FBI include nonnegligent manslaughter. The FBI notes that the rates are based on the Bureau of the Census provisional estimate as of July 1, 1964, and are subject to change.

[3] The death penalty is retained for murder by the following States only for the special cases indicated:

New York: Killing a peace officer acting in the line of duty, and murder committed by a prisoner under sentence of life imprisonment.

North Dakota: Murder in the 1st degree committed by a prisoner already serving a sentence for murder in the 1st degree.

Rhode Island: Murder committed by a prisoner under sentence of life imprisonment.

Vermont: Second conviction of murder, provided the 2 cases are not related, and 1st degree murder of a police officer or prison guard who is on duty.

[4] See the State in which the execution occurs; the U.S. Government does not maintain its own facilities for execution.

Former Ohio Gov. Michael Di Salle, who staffed the Ohio executive mansion with convicted murderers during his term of office, eloquently summed up the reasons for abolishing capital punishment:

The death penalty solves nothing. It treats symptoms, ignoring the disease, the primary causes of crime. It eliminates the possibility of rehabilitation. Capital punishment becomes merely a communal expression of vengeance—a debasing passion in any society that calls itself civilized.

To execute a man in the name of the law is not the solution to the problem of crime. Not only is it ineffective, it also cheapens the human life. It brings a false sense of security to the community by leading people to think that the death chamber guarantees their protection. The problem is much deeper. The protection of society lies partially in the rehabilitation of the criminal as well as in the prevention of crime. The death penalty accomplishes neither of these objectives.

BILL TO GRANT A NATIONAL CHARTER TO RECOVERY, INC.

Mr. BOGGS. Mr. Speaker, I ask unanimous consent that the gentleman from Rhode Island [Mr. ST GERMAIN] may extend his remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Appendix

Current Concepts in Corrections

EXTENSION OF REMARKS
OF

HON. EMANUEL CELLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 24, 1966

Mr. CELLER. Mr. Speaker, I wish to include a very fine address delivered by Myrl E. Alexander, Director of U.S. Bureau of Prisons, before the Council of Judges, National Council on Crime and Delinquency, New York City, N.Y., on May 12, 1966, for the reading and information of the Members:

CURRENT CONCEPTS IN CORRECTIONS

(Address of Myrl E. Alexander, Director, U.S. Bureau of Prisons)

When the penitentiary was created in Philadelphia in the latter part of the 18th century, its founders had little realization of the speed with which their new idea of punishment would sweep the world. Indeed, the world had been struggling for a century to find a more humane and more effective means of punishing law violators. Multilation, transportation and exile of criminals to far off new lands, widespread executions, physical torture—none of these had stopped or even curbed criminality.

The Philadelphians had acted under direct Quaker influence and the widely studied essay of the Italian de Beccaria who reasoned that crime could be curbed most effectively if the severe traditional punishments were replaced by punishment which imposed only that amount of pain necessary to exceed the pleasure of committing crime. The Quakers sought a humanitarian method of rectifying criminal behavior. The Beccarian theory was consistent with their concepts. And so the Quakers reasoned that the jail . . . previously used only for detaining criminals awaiting trial and sentence . . . might be used for detention as punishment for a specified number of years during which the offender in isolation might reflect on his wayward ways, read the Bible, pray and reach a state of penitence. And they called the place a penitentiary.

The idea was revolutionary. News of the American experiment spread throughout the world. Charles Dickens came to Philadelphia to study the new penitentiary at first hand. De Toqueville in his visits and study of the new American government devoted much time to the new nation's method of punishment. And as the penitentiary spread rapidly throughout our new country, it was also adopted by most of the world.

The creation of the penitentiary was a gigantic step forward in man's search for better methods of punishment and control of law breakers. It contributed to a more orderly method of sentencing. The concept of deprivation of liberty for specified periods of time became accepted as a standard of punishment. But despite the Quakers' reasoning, the new institution became all too often an institution of man's isolation, rigorous control and massive regimentation which more often confirmed and induced criminality than it achieved the original noble goals.

Inevitably, then, a re-examination of the penitentiary and its underlying philosophy was attempted from time to time. Notably, following the Civil War, a great prison reform movement swept the country. Even a President, Rutherford B. Hayes, became so dedicated to the prison reform movement that he helped found a national reform organization and served as its President for some years after he left the White House. In those days, for the first time, particular attention was given to the youthful offender. A modified form of the penitentiary was developed at Elmira, New York, and soon became known as a reformatory. Soon other states adopted the reformatory idea. Education, military training, vocational training, and an earned release under community supervision, called parole, were innovations in the new reformatory.

In the meantime, the beginnings of control and supervision in the community were emerging and became known as probation.

As the years have gone by, the philosophy and concepts of management of the offender in the institution and in the community have changed, evolved and shifted. In the past few decades, increasing use has been made of the evolving behavioral sciences: psychiatry, psychology, social work, education, vocational training, and others.

But the problem of crime and delinquency remains with us. Indeed, it becomes more acute as we become more mechanized, industrialized, and affluent. There is evidence, in Glaser's Study of the Effectiveness of a Prison System, for example, that we are more successfully intervening in criminal causes than in years gone by. But the progress is slow and lacking in the tools and precision of the physical sciences.

As we deal with offenders in the courts and in the total correctional process . . . whether on probation, in correctional institutions or on parole . . . we are all acutely aware that the effectiveness of our systems of controlling and treating the offender must be vastly improved. We must use all the insights and knowledge of the behavioral sciences. Through research and bold experimental programs, we must indeed contribute to the advance of behavioral knowledge. We must speed up the day when our tools and methods will have precision in diagnosis and high predictability in the treatment of offenders comparable to that of the physical sciences.

And it is precisely at this point that the courts and the correctional process must seek the kind of unity of goals and methodology which will speed the day of a truly effective administration of justice: highly successful and predictive intervention in delinquent and criminal careers. Drastic reduction of recidivism is an essential ingredient in the War on Crime.

I submit, then, that even as the creation of the penitentiary was a revolutionary step in the administration of justice and control of the offender, we today stand on the threshold of another new great stride forward in our search for the answer to the causes of crime and delinquency in our society. The prison per se hasn't produced the effectiveness required. The dichotomy of institutional or community treatment and control must be broken down and bridged by a continuity of process. The gap between courts and corrections is narrowing and must be fully bridged if we are to achieve the effective control we seek.

From here on, I will address myself to the subject of recent Federal legislation which has a direct impact on the courts and Federal correctional practice.

The first recent significant Federal legislation was in 1958 when Congress passed Public Law 85–752. Sponsored by Congressman EMANUEL CELLER, of New York, the act was designed to improve the administration of justice in the Federal courts by authorizing the Judicial Conference of the United States to establish institutes and joint councils on sentencing and by providing additional methods of sentencing.

Another provision created a procedure whereby a Federal judge is authorized to commit a defendant to the custody of the Attorney General for a period up to 90 days for study and observation leading to recommendations which the Director of the Bureau of Prisons believes would be helpful in determining disposition of the case.

A third feature of the law gave judges the additional choice of imposing sentences in which either the date of parole eligibility could be fixed as part of the sentence at a time less than one-third of the sentence, or the question of parole eligibility is left entirely to the discretion of the parole board.

Finally, a provision was included to enable judges to apply the flexible Federal Youth Corrections Act to young adult offenders up to the age of 26 whenever there are reasonable ground to believe that the defendant will benefit from such treatment.

This law deals with several important issues. Although the provision for sentencing institutes acknowledges the problem of disparity in sentencing, it also recognizes the issues which revolve around sentencing objectives, principles and guides, and an awareness of the capacities and limitations of correctional agencies.

If a judge is to perform his duty well in choosing among alternatives of disposition, he must have information about the offender upon which to base this decision. For a number of years, the National Council on Crime and Delinquency has insisted upon the requirement that no disposition be made of any serious case, whether classified as felony or misdemeanor, until the sentencing judge has been furnished a complete presentence investigation report, supported by clinical findings where necessary. Only in this way can a disposition be made to fit the offender rather than the offense. While the Federal Judiciary and several other jurisdictions have generally met the NCCD standard for presentence reports, it was not until the 1958 law was passed that a uniform procedure was authorized to insure that these reports could be augmented by clinical and observation studies.

Probation, institutionalization and parole should be terminated ideally when these services and controls are no longer needed. But there is no way of determining this in advance. Most judges with whom I have talked in recent years readily agree that release from an institution should be an administrative rather than a judicial decision, based upon performance, achievement and expectations of the offender's future adjustment in the community. It was with widespread judicial consensus that the provision granting broader authority to the Parole Board was incorporated in the 1958 law.

The provision authorizing judicial discretion in applying the flexibility of the Federal Youth Correction Act to offenders up to the age of twenty-six has important implications. However inexact corretional methods may be, an underlying and growing belief exists that concerted effort to intervene in continuing criminal careers must concentrate on the

younger offenders. The idea of trying to provide help, rather than punishment, for a twenty-four or twenty-five year old offender, as we should for a teenage delinquent, is not easy for some people to accept. Yet, there is agreement that any promising attempt to insure that the first offense is the last can be fully justified. The sooner this can happen in an offender's lifetime, the better.

Does Public Law 85–752 work? Since 1958, when the law was enacted, the Judicial Conference of the United States has conducted eight regional sentencing institutes for Federal judges, and two more are scheduled this year. These institutes, four of which have been held at Federal correctional institutions, have brought together over 250 judges, correctional officials, law professors, psychiatrists and others with interest and knowledge in the various aspects of the administration of criminal justice. These are workshop sessions in which philosophies and principles of sentencing are discussed, actual inmate classification committee meetings and Parole Board hearings are often conducted, and laboratory exercises are held in sentencing problems on a variety of difficult cases.

Many of the values of these institutes are intangible and cannot be documented, such as increased cooperation and communication between judges and correctional agencies. That the institutes have increased judges' awareness and use of the many sentencing options available to them is evident. Probation, as an alternative to imprisonment, is being used more frequently and a steady increase has occurred both in commitments for observation and study and under indeterminate sentences. The printed proceedings of the sentencing institutes constitute a handbook for courts on the treatment of offenders. These are constantly being revised as new techniques are developed, new studies become available, agreed-upon sentencing principles are modified in the light of experience, and new legislation is passed. A few of the Federal judicial districts are beginning to take advantage of the sentencing council provisions of Public Law 85–752. This is how one such council works:

The meetings are held weekly in the chambers of the chief judge, and he presides over them. Attendance is generally limited to the participating judges and to the Chief Probation Officer, although Government agents are requested to attend when more detailed information relative to certain cases is desired. Five days in advance of each meeting, presentence investigation reports on the offenders to be sentenced are furnished each judge. Before coming to the meeting, each judge indicates on a "disposition study sheet" what he believes to be the essential factors in reaching a decision, and his specific recommendation as to penalty. Each case is presented by the judge before whom the defendant was arraigned and by whom he will be sentenced. The other judges comment on this and disclose their recommendations which, of course, are not binding on the judge having jurisdiction. These exchanges of viewpoints serve to create a better understanding of sentencing goals, facilities and practices of correctional agencies and policies of the Parole Board.

The number of offenders committed for observation and study prior to final court disposition has increased steadily each year, from 157 in 1959 to 741 in 1965. The courts accept our recommendations as to type sentence, length of sentence and use of probation in over seventy-five per cent of the cases. Similarly, the percentage of commitments under indeterminate sentences has increased from 6.4% in 1959 to 21.5% in 1965. We find significant numbers of "young adult offenders" . . . those between 22 and 26 . . . being sentenced under the provisions of the Federal Youth Corrections Act. Last year, for example, we received 261 such commitments—about ten per cent of all commitments in this age group.

Another gigantic step forward was taken last September 10th when President Johnson signed into law the Prisoner Rehabilitation Act of 1965. Public Law 89–176. The essential provisions of this law atuhorize the Attorney General (to whose custody all sentenced Federal prisoners are committed) to establish residential treatment centers, extend the limits of confinement and permit work furloughs.

In the language of the Act, the Attorney General may:

(1) "Designate as a place of confinement any available, suitable and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another."

(2) "He may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to—

(a) "Visit a specifically designated place or places for a period not to exceed thirty days and return to the same or another institution or facility. An extension of limits may be granted only to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers or for any other compelling reason consistent with the public interest; or

(b) "Work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution or facility to which he is committed."

This new statute provides several additional techniques that are critical to effective correctional practice—constructive uses of punishment. Correctional administrators have become increasingly aware of the need of some offenders for a transitional or halfway step between total incarceration to complete release to the community, even under parole supervision. Half-way houses are being established in the United States at a rapid rate.

In the Federal System, experimentation in the use of Pre-Release Guidance Centers for selected juvenile and youth offenders began in 1961. Six of these Centers are now being operated in Los Angeles, Chicago, Kansas City, Detroit, New York, and Washington, D.C. With a full-time staff of five people, each Center draws heavily upon local resources to provide counseling, guidance, employment opportunities, recreation, religious and clinical services to young offenders who live at the Center in groups of about twenty-five for three or four months as they become increasingly involved in the day-to-day life of the community. As they progress, they move on to regular parole supervision.

Over the past five years, 1402 youngsters have gone through this kind of transitional experience. Some of them failed and were returned to institutions for further treatment and training, but the statistics collected thus far indicate that the success rate of former offenders who had the advantages of a Pre-Release Guidance Center is twice that of offenders who have not.

The encouraging results of our Pre-Release Guidance Centers led to extension of this concept to adult offenders in the new law. As we plan the establishment of the first of these, we are considering operating models that will be designed specifically to meet the various needs of adult offender groups. An example may well be emphasis on providing the temporary "live-in" accommodations for inmates on work release, thus enabling them to accept employment in their home communities that will be relatively permanent.

From a correctional standpoint, one of the most "compelling reasons for granting furloughs is to re-enforce family ties, where these exist with parents, spouses and children. Correctional workers have long been accustomed to witnessing the steady, and often inevitable erosion of family ties even while preparing offenders for normal community life, including the resumption of family ties and responsibilities. While substantial investments in offenders are being made in institutions, little or no work is being done with offenders' families. The timely and judicious use of home furloughs can do much to alleviate the imbalance.

By now we have granted over 150 furloughs. Most of these have been for such family emergencies as terminal illness or death. More recently, we have begun to permit selected inmates nearing their release dates to leave the institution for interviews with prospective employers and two men were granted week-long furloughs to attend a special manufacturers' course in the maintenance of heavy equipment. Plans are being formulated to permit 48-hour furloughs on a highly selective basis for the purpose of maintaining and strengthening family ties.

By the end of 1965, at least nineteen states had adopted the principle of a 1913 Wisconsin law which enables sentenced offenders to be employed on regular jobs in nearby communities while returning to the institution during non-working hours. Only the laws of North Carolina, Maryland, Michigan and the Federal Government make work release available to felony offenders. Public Law 89–176 differs from other similar legislation in several respects, the most important being specific safeguards to protect both the community and work release inmates from any kind of exploitation.

Work Release can be a highly effective correctional tool. As its full potentials for inmates are realized, it can mean that former offenders who have achieved success in institutional correctional programs will be assured full employment and acceptance when transferred to community parole supervision. The effects of work release on institutional management is revolutionary. The focus of institutional programs is moving toward the community rather than to inside the walls. For Parole Boards, work release can eliminate much of the guesswork involved in parole decision making. The public is afforded better protection by close institutional controls over the more gradual transition back to freedom.

Although only a few months have elapsed since the passage of Public Law 89–176, we now have over 500 inmates on work release and, by the end of the year, the total should approach one thousand. With remarkable cooperation of labor unions, social service agencies and State and local government, work release inmates have been accepted for employment in dental laboratories, commercial art establishments, the building trades, many service occupations and industrial production jobs. Exceptional accomplishments have achieved in placing men and women in work release jobs for which they were prepared by vocational training within the institutions. Three nationally known industries have brought training programs to the institutions, at no cost to the government, so that future work release candidates can have the advantage of special skills and manufacturing techniques.

Although Public Law 89–176 most directly affects operations of the Federal Prison Service, two other laws enacted at about the same time have broad and significant implications. Public Law 89–178, the Correctional Rehabilitation Study Act, focuses on another area of problems and needs—the numbers and kinds of people needed to perform the multiple tasks of corrections. Under this

new law, studies and evaluations will be made of all correctional programs and services to determine present and future manpower needs. It is expected that these studies will lead to eventual recommended standards for the training and recruitment of persons entering the correctional field, determinations of staff organization and functions and personnel development.

The Law Enforcement Assistant Act, Public Law 89–197, was enacted in response to the President's 1965 message on crime. In collaboration with the President's Crime Commission, this law is being administered by the Department of Justice and, for the first time, enables the Department to award financial grants for study, training and demonstration in the broad field of administration of criminal justice at all levels of government.

The pace is quickening and a number of additional unresolved issues are being challenged. In his 1966 crime message, President Johnson stated that "the plainest fact we can see is that piecemeal improvements will not be enough." He proposed, and the Congress is considering, this three-stage national strategy:

First, for immediate action: improve the quality of local law enforcement throughout the country, control the weapons with which so many crimes are committed; intensify the campaign against organized crime; modernize the criminal laws; reform the bail system; establish a coordinated Federal correctional system; and deal realistically with drug addiction.

Second, press forward for greater knowledge, better tools and deeper insights. To expand these tasks which the National Crime Commission has already embarked upon, the President has asked the Attorney General to work with the Governors of the 50 states to establish a statewide committees on law enforcement and criminal justice.

Third, attack crime at its roots. In the President's words, "An effective strategy against crime must also rest on a base of prevention. And that base can come only from action against the wellsprings of crime in our society. Whatever open opportunity and hope will help to prevent crime and foster responsibility. Effective law enforcement and social justice must be pursued together, as the foundation of our efforts against crime."

In my view, the single and most important ingredient, the catalyst which is bring about these long-overdue changes, is the sharing of responsibility for crime and delinquency in our society. This is more than a matter of better communications and cooperation between law enforcement, the courts and correctional agencies. It includes the development of effective working relationships between correctional agencies and other segments of our communities. And it includes a willingness to commit total resources to the solution of total social problems.

To those of you who have spent long years on the bench, just as to some of us who have trod grim prison corridors, these are new and revolutionary phenomena. But they are not peculiar to our Nation alone.

They are part of a world-wide awakening to the meaning and importance of life in a free society. As a member of a university faculty and again as a delegate to the United Nations Congress in Stockholm last summer, I have seen this trend taking shape in other countries in Europe, in Southeast Asia, in Latin America and in the emerging African nations whose leaders are striving to learn how they can avoid the burdens and costs of mounting social problems as they progress to a democratic, industrialized society.

In summary: It is abundantly clear that a new national and world ferment has produced a determination to pursue the ancient goal of controlling adverse and unlawful human behavior. New insights and knowledge have developed which hold exciting promise of innovative approaches in the administration of criminal justice, of which corrections is an integral part.

This is an era of change and growth in human affairs. It is a day of re-examination of the old, the stabilized, the crystallized approaches to the management of human behavior. In the management and control of delinquent and criminal behavior, all elements involved in the administration of justice must be in constant dialogue—indeed, must be locked in together as we move forward in forging methods vastly improved over those of the past.

This is precisely why I have so warmly welcomed this evening's opportunity to share with you these views on the new developing concepts in corrections.

Revenue Sharing With States

EXTENSION OF REMARKS

OF

HON. W. E. (BILL) BROCK

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 24, 1966

Mr. BROCK. Mr. Speaker, Idaho's Gov. Robert E. Smylie, who is the most senior Governor currently serving in the United States, delivered a very important speech before the Western Governors' Conference in Las Vegas, Nev., on April 25, 1966. Governor Smylie, who is also chairman of the Republican Governors' Association, pointed out that the demands on State government are growing every day and that the financial resources of the States to meet these demands in a responsible way are being strained to the limit.

Last year I introduced a bill, H.R. 10696, which would direct the Federal Government to share up to 5 percent of its tax revenues with the States with the provision that the funds be earmarked for education. This type fiscal federalism is very much needed if our States are to have the financial resources to meet the increasing demands for quality education.

I join with Governor Smylie and leaders of government, tax specialists, and educators in asking for prompt consideration by the Ways and Means Committee of this measure. With most Governors backing the tax-sharing concept and with the solid bipartisan support it has received, I feel it is incumbent upon us as Representatives of the people to at least hold hearings on this important legislation which would help erase the growing disparity of tax resources between the Federal and State-local governments.

I have unanimous consent that Governor Smylie's enlightening speech be inserted in the Appendix of the RECORD.

NEWS FROM THE OFFICE OF THE GOVERNOR

I am indeed grateful for this opportunity to address a group that shares not only my concern for the strengthening of our state government, but also understands from their own daily experiences both the difficulties and opportunities that lie before us in the accomplishment of this task.

We live in an era when events constantly challenge our ability to respond to them at every level of government.

While the accelerated pulse of life requires that we develop dramatic new solutions to the problems of today and those of the 1970's and 1980's, too much of present day politics is caught up in the rhetoric of the 1930's.

It is to acknowledge a simple fact of which you are all aware when I say that the United States is entering upon a period of domestic turbulence—a period in which a new and younger population will confront issues different in kind and in scope from those of the past generation.

I discount as a result of my own experience the suggestion that state governments are artifacts from a simpler past and will contribute little to the solution of these problems.

Rather, the sort of problems we are now facing in education, social welfare, water and air pollution, and mental health are problems that we have developed some skill in solving at the state level.

This universality should convince us that the exciting areas of political action, with great new opportunities for boldness and creativity and innovation, will be found more and more at the state level.

The question before us today is whether or not those of us operating at a state level of government can keep abreast of the changing times and take the lead in solving these problems, or will we give way to the host of federal administrators who rush into every service and political vacuum we leave unattended.

I am not here to find fault with the federal government, nor to glorify the state governments.

Each of you know that much of the responsibility for the shift in political power to the central government lies with the failure of state governments to answer the demands of their citizenry for improved services.

The American people are not prepared to accept this kind of frustration apathetically. When they are denied assistance in the solution of their problems at the state level, they have shown a remarkable ingenuity in gaining this assistance at the federal level.

And, federal officials have often shown an inordinate desire not only to welcome such pleas for aid, but to openly solicit them.

Now it may seem that I am presenting two divergent views of the ability of state governments to solve the pressing problems of the day.

On the one hand, I have argued that the state and local governments have both a tremendous capacity and an almost unlimited potential to solve social problems.

On the other hand, I have noted that the states have often fallen short in fulfilling their obligations of public service to their citizenry.

I think the great tragedy of our political system would be to accept the latter fact as a measure of our concern or ability.

In the past we have not failed because of a lack of concern for public needs or because we are inherently inferior in administrative abilities to our federal counterparts.

The major causes of our failures may be traced to an absence of legislative support for our programs from the metropolitan areas that are in most desperate need of aid in solving their problems and from simple lack of funds.

The first of these hurdles to the development of more responsible state governments is now being removed by the reapportionments that have taken place or are taking place or will take place in the near future in each of our states.

State legislatures next year will see city populations more equitably represented than at any time in recent history.

We can expect as members of the executive branch to find greater support for those parts of our legislative programs dealing with the problems of these areas.

answered the phone in the dead of night. He finally got tired of that four years ago, when he was eighty-two, and hired an answering service. A machine now signs checks for the academy, but until 1960 the headmaster personally signed about six thousand checks a year.

At his wedding reception, he fussed because there were no rugs in the school building, and he has been fussing similarly ever since. "If you keep floors and walls nice, it's like having your shoes shined and a clean shirt on," he says. He has been seen mopping floors. He has the gym floor kept like polished brass and classroom floors polished every day. There are no dirty windowpanes. "Bob," he once said to a coach, "I was in your locker room after practice today and there was some tape on the floor." He is essentially conservative with money, but he will spend any sum to get what he wants. Cut flowers appear regularly in vases all over the campus, and there is a single rosebud on each table in the school store; athletic uniforms are the best available; the dining hall is open all summer, and anyone can eat there; the food served throughout the year is unlimited and excellent; all the school's appointments, from furniture to masonry, are solid, tasteful, and expensive.

Most independent schools have business managers. Deerfield, naturally, does not, for such a man would devastate many of the customs established by the headmaster. When people talk to him about economy and hand him charts showing how much more Deerfield spends than other schools, he says that the other schools are not telling the truth. "We can't cut down," he will say. "It would save nothing. By cutting down, we would sacrifice something. The sacrifice would be too great. Deerfield costs money." The details have long since added up to a place that is incomparably impressive to the eye.

Even the grass is a little greener there, growing in fourteen inches of topsoil, and for many years the headmaster went around with a jackknife digging plantain out of his lawns. Last summer, he was riding around in his golf cart one afternoon with his wife and daughter when he saw a mess of papers on the ground. He stopped the cart and sent the two women to pick up the litter. Last fall, an hour or so after the end of a rain-soaked football game, he returned to the field and, until it became too dark to see, moved about alone in the continuing rain, replacing the chunks of turf that had been torn up by the cleats of the players.

The pattern of the school day was different for the headmaster when he was doing a good part of the teaching, but it has not varied much in the past fifty years. "You can't stay with him," a member of his faculty remarks. "If you tried to follow him around, he would have you out cold by four o'clock in the afternoon." He gets up at six, or a little earlier, and while he is dressing and shaving he frequently prays. It is noteworthy that he doesn't stop to pray. In the words of one member of his family, "He goes into nothing without praying. He prays all the time. He has consummate faith that the Lord will take care of him." Once, believing himself to be alone, he said to his mirror, "I'm such a God-damned fool." When he saw that one of his children had heard him, he said, "I'm not swearing, I'm praying." Only in rare moments does the headmaster get into a contemplative mood about his work. In one such moment, recently, he said, "I'm not sure, quite seriously, that the Lord didn't put Mrs. Boyden and me here to do this."

At seven, his secretary arrives, and the headmaster is waiting, standing in his study with a Boston newspaper held open at arm's length, so that he is almost completely hidden behind it. He lights a fire. One explanation of his good health may be his use of fire. He is never far from a set of crackling logs. There are fireplaces within five feet of both of his working desks—in his home and in the school building. While he dictates, he sits on the top of the fire screen and bakes himself.

There is nothing he likes quite as much as mail. He can't wait to get at it, and it takes precedence over everything else in his routine. He writes thirty-five letters a day, on the average—sometimes as many as seventy—and, as he dictates, he strews the floor with sheets of paper and keeps pitching envelopes into the fireplace. He is not interested in letters that require study, for his batting average has to be maintained. He has developed a kind of X-ray vision. He can stare at a large mound of incoming mail and unfailingly pluck forth the envelopes that contain checks. He writes mainly to alumni and parents, answering not only their letters but every birth announcement and Christmas card. He answers everything he receives. He acknowledges acknowledgements.

If an oil-heater salesman sends him a brochure, he sends off a note saying that he isn't interested. In the past sixty-four years, he has written about five hundred thousand letters, carbons of all of which have been kept in the school-building attic. "He acknowledges trivia sweetly," his present secretary says. And thus he has, in a sense, written his autobiography.

JANUARY 25, 1943.

DEAR PHIL: Foxboro has always meant a great deal to me, and my only regret is that I can't get home more frequently. As I look back, it seems to me that the young people of our time had a very sane, wholesome, active life, and that is just the sort of thing which I have tried to give to the boys at Deerfield.

OCTOBER 28, 1952.

DEAR LAURA: Deerfield is a beautiful spot, and since I could not stay in Foxboro I am very thankful to have spent my life here. . . . I remember so well the days in Foxboro and the Sundays when we all went to church, sometimes twice and three times. I also thought of your father as one of the great farmers I have known and your farm as the best in Foxboro.

JANUARY 21, 1922.

MY DEAR MR. WHITE: As you may know, Harvard has been very kind to us, and two or three times it has been insinuated that if we were to throw our influence towards sending boys to Harvard, money might be available. I much prefer, however, to be a free lance, and also to feel that the dominant influence is towards Amherst.

FEBRUARY 28, 1922.

DEAR BOB: This letter reminds me of an old lady who used to live with us, and whose tongue ran on forever, and of whom my brother said her only trouble was that she thought out loud. Perhaps you can manage to unravel the two or three points worthwhile.

FEBRUARY 15, 1927.

DEAR MR. REYNOLDS: I should like to order two suits of the same type and material as my last one.

APRIL 23, 1930.

MY DEAR MR. STEVENSON: Your letter of April 22nd has just been received. Please renew the Full Coverage Insurance on my raccoon overcoat for one whole year.

JUNE 16, 1949.

MY DEAR MRS. HAMMOND: My middle name is an unusual one and quite often people have asked about it. My father and mother taught school many years ago in Danvers and lived in the family of Deacon Learoyd. Although they later returned to Foxboro and my father was in the foundry business, no place seemed as important in their lives as Danvers. They talked about it constantly and apparently the happiest years of their lives were spent there.

He dictates rapidly. At seven-thirty or so, his wife calls to him from the dining room and tells him that breakfast is ready. He says, "Just a minute, Helen," and goes on writing letters. To a guest, he says, "You sit down and have your breakfast. I'm very sketchy."

What he means by this is soon apparent. A full breakfast has been prepared—grapefruit, eggs in eggcups, bacon, toast, and marmalade. The table is handsomely set. He finally walks in and says hello to his wife in his endlessly imitated voice, which is a sort of light, amiable whine; then he stands at one corner of the table, picks up a cup, and drinks hot water. He eats a slice of plain toast. He reaches into one of his trouser pockets, where he keeps loose pills like nickels and dimes. He takes out three or four and swallows them. In twenty seconds, he has had his breakfast. No root beer and animal crackers this morning. He goes back to work.

Capital Punishment Should Be Abolished

EXTENSION OF REMARKS

OF

HON. GEORGE E. SHIPLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 29, 1966

Mr. SHIPLEY. Mr. Speaker, in the long history of justice there has never been more devoted concern than now. While we may disagree with some of the conclusions, we must recognize the herculean efforts in speaking "sense" on the important issue of capital punishment. This is coming from all parts of our great Nation. One example is the article by Dr. and Mrs. George S. Reuter, Jr. of Alton, Ill., entitled "Capital Punishment Should Be Abolished." I believe that my colleagues should also have an opportunity to read it, hence I include it herewith in the RECORD:

CAPITAL PUNISHMENT SHOULD BE ABOLISHED

(By Dr. and Mrs. George S. Reuter, Jr.)

INTRODUCTION

The death penalty, one of the oldest of all punishments, has long been under attack. Returning to the days of ancient Greece, we find that Thucydides' "Peloponnesian War" records a debate on the utility of the death penalty. Enlightment philosophers, such as Montesquieu and Voltaire, were critical of such a punishment. Cesare Beccaria, the Milan criminologist and economist, published, in 1765, his influential essay, "On Crimes and Punishments." Beccaria, the first modern writer to subject the death penalty to fundamental criticism, envisioned present day criminological advances in the treatment of crime. He condemned the savage criminal procedures and penalties of his day, and asserted that prevention of crime is of greater importance than its punishment. Beccaria advocated the abolition of capital punishment, replacing it with life imprisonment.

OUR CULTURAL HERITAGE

It is recognized without debate that our American constitutional system of govern-

ment has proved to be basic for the development of our great country. Today, we face problems common to all of the great civilizations that have existed down through the centuries. No civilization has ever solved some of the problems which currently confront us. The role of the United States in this world continues to grow. Each of us is called upon to play his part. The luxury of our individual American civilization carries with it heavy duties, which must not be shirked, if our free Republic is to remain and is to improve.

The recurrent crises of these years, occurring in all areas of social and political life, have led many persons to suspect the existence of an underlying "state of crisis," which may be not merely chronic at this period but permanent. Some contemporary theologians hold that it is a purposeful action of God that has plundered man deeply into historical consciousness in order to move society beyond any status quo "establishment" and thus to set man at liberty in history. This would mean that God had taken away the possibility of overcoming crises by reestablishing some known order.

Though the democratic ideology has penetrated its very core, our Nation is still not perfect. But the desideratum of the United States is only a reflection of the imperfections of mankind. As we move forward, our Nation continues to evolve new institutions to meet the requirements of this era. This capacity to grow and to adapt to a changing society has been the genius of our American system. We are casting new forms. We are still experimenting in and out of government, with the problem of how to make mankind better, not simply how to make his richer. Yes, our Government is displaying a tremendous capacity to adapt and adjust itself to the changing needs of the world community.

We believe the path of progress consists inevitably of substituting one set of problems for another. We desire no shoddy imitation. We are not doctrinaire. Our chief advantage is our flexibilty. We are citizens who refuse to be victimized by fancy or myth. Despite our awareness of frustrations, we celebrate each victory.

Intellectuals are not a single homogeneous group, but are characterized by great diversity. Diversity often brings criticism. However, Christianity and Judaism are faiths heartily rooted in tradition. Both have a common concern for social service and social justice. This social concern is part of the heritage of Judaism, and has been since the time of Isaiah. It is a growing part of the Christian church's understanding of itself. Aware of the pitfalls in historical analogy, we nonetheless submit that continued progress in this critical area is possible.

Jesus was criticised for healing the man with the withered hand on a sabbath day (Matthew 12: 9–13), but He pointed out that the Mosaic code permitted people to rescue an animal on the sabbath; how much more a man.

Wisdom, not the sword, must be our weapon. We must believe, like the Indian Emperor Asoka, in the great principle that "concord alone is meritorious." This idea has always acted as a beacon to the Indian people, and it is worthy of our consideration.

CURRENT PRACTICE

The world trend today is toward abolition of capital punishment, either by law or custom, and application in capital punishment countries is declining. Execution as a punishment for crimes is becoming increasingly rare in the United States. Nine States, Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia, and Wisconsin have abolished capital punishment by law. Four other States, New York, North Dakota, Rhode Island, and Vermont, retain capital punishment for either a second-time murder, or the slaying of a police officer or murder by a lifer. During the past two decades, disuse of the death penalty has virtually abolished capital punishment in many States in which the law still allows it. From the peak year of 1935, when 199 persons were executed, the number of executions has dramatically been reduced.

1962	47
1963	21
1964	15
1965	7

THE NEED FOR CHANGE

The United States is, by the Declaration of Independence, the Constitution and the Bill of Rights, solemnly committed to be a Nation where the dignity and the rights of all persons are equal before the courts and all authorities. Yes, our day is different from the time of the Founding Fathers, and before that, from the time of the Old and New Testaments, hence we must restudy the principle of capital punishment. In fact, we have been slow in making a study in depth, as many other major nations have pioneered ahead of us in this. Our policy would thus seem to center around these principles:

1. We must realize that God favored capital punishment.

The law of capital punishment was first a part of the Jewish law, and this antedated the Law of Moses by 1,000 years. God also provided in Genesis 9: 6 "Who so sheddeth man's blood, by man shall his blood be shed; for in the image of God made He man."

2. We must realize that God ceased to enforce capital punishment.

In seeking to prove the faithfulness and obedience of Abraham, God tested him most severely. Isaac, the miraculously-born child of that venerable old patriarch and his wife, Sarah (Gen. 18: 1–15), must be made a human sacrifice. But God didn't enforce the death penalty.

Perhaps, the earliest example of God's permitting the guilty murderers to live without dissent were David and Bathsheba in the Old Testament. God could have enforced capital punishment by destroying them, but he didn't. With the coming of Jesus, the change in concept is noted even further. God permitted the murder of His son without destroying the guilty parties, and Jesus forgave the murderers, too. This represents the transition from severe judgment to love. God is truth and, even more essentially, God is love. This is the heart of the Christian idea, the central message of the cross, and a major reason for the Christian church.

3. We must understand Jesus.

Jesus broke all the taboos of ritual cleanliness, all the well-established laws of His people. He drank from the hand of a Samaritan, He talked to an unknown woman. Jesus gives us here a magnificent lesson of spiritual freedom. He stands far above all racial or religious prejudice.

4. We must realize that love provides the only permanent path.

Most of us who have committed ourselves to the cause of Christ have attempted to show love and concern for our fellow man. There are cases when this love is exploited and misunderstood, but we must follow Jesus' concept and "turn the other cheek."

5. We must realize that capital punishment does not deter crime.

Reliable statistics prove this. Governor Edmund G. "Pat" Brown of California, one of the greatest governors in American history, has noted that "the naked, simple fact is that the death penalty has been a gross failure. Beyond its horror and incivility, it has neither protected the innocent nor deterred the wicked."

6. We must realize the penal authorities oppose capital punishment.

Ex-Warden Lewis E. Lawes of Sing Sing has stated: "the death penalty is a relic of savagery, perpetrated by custom and in ignorance, maintained by false assumptions and consummated in a killing that is legal in name only; it is illogical and inconsistent with religion and morality; it condones an act of an agent that would be a murder for an individual; it carries out in secrecy what would be revolting in public; it is man-made and fallible and, therefore, subject to gross miscarriage of justice; is ineffective and sets an example for murder."

Oregon State Penitentiary Warden Clarence T. Gladden and ex-Warden Clinton T. Duffy of California's San Quentin Penitentiary, both veterans in their field, have campaigned against capital punishment.

7. We must realize that innocent people have been executed.

President Johnson, in 1965, granted a full pardon on grounds of innocence to Carl H. Buck, Seattle cafe owner and former Marine Corps master sergeant, who was convicted of stealing uniform chevrons in 1952. How many times are there leaders in American life, like Senator Paul H. Douglas, who will take the necessary steps to help the innocent? The crime could have been murder.

Henry VIII of England executed two of his wives, Ann Boleyn and Catherine Howard, on false charges, because it was easier than securing divorces. Queen Jane Grey of England lost her head for no just reason, because Queen Mary had a greater army. Queen Mary Stuart was also innocent, but was executed by Queen Elizabeth of England to remove a possible threat to her throne. The leaders of the French Revolution shed innocent blood when they executed King Louis XVI and Queen Marie Antoinette. The leaders of the Russian Revolution were also guilty of shedding innocent blood when they executed Czar Nicholas II and the Royal Family, and recently this tragedy occurred in Iraq to the greatest ruler in the history of that country.

Judge Jerome Frank said: "No one knows how many innocent men, erroneously convicted of murder, have been put to death by American governments, for once a convicted man is dead, all interest in vindicating him generally evaporates."

8. We must realize that capital punishment is a manifestation of society's reluctant admission that it has utterly and completely failed to cope with the problem.

The Founding Fathers intended that maximum emphasis be placed upon reformation and rehabilitation than upon an "eye for an eye and a tooth for a tooth" approach to the administration of criminal justice.

We must pray and strive toward the God-given task of reconciliation. We come nearer to one another by coming nearer to Christ, by living day after day the miracle of His forgiveness, by sharing the same hope, by taking seriously our common calling as Christ's ambassadors to His world.

STATESMEN AND HUMANITARIANS FAVOR ABOLITION

Many authorities could be cited, but we cite only a few. Thomas Jefferson once said, "Until I shall have been convinced of the infallibility of human judgment, I shall always oppose the penalty of death." Voltaire was in agreement by saying, "It is better to risk saving a guilty person than to condemn an innocent one."

Former Ohio Governor Michael Di Salle, who staffed the Ohio executive mansion with convicted murders during his term of office, eloquently summed up the reasons for abolishing capital punishment:

"The death penalty solves nothing. It treats symptoms, ignoring the disease, the primary causes of crime. It eliminates the possibility of rehabitation. Capital punishment becomes merely a communal expression of vengeance—a debasing passion in any society that calls itself civilized."

Deputy Attorney General Ramsey Clark, in July 1965, gave the Department of Justice's views on capital punishment when he said:

"We favor the abolition of the death penalty. Modern penology with it correctional and rehabilitation skills affords greater protection to society than the death penalty which is inconsistent with its goals. This Nation is too great in its resources and too good in its purposes to engage in the light of present understanding in the deliberate taking of human life as either a punishment or a deterrent to domestic crimes."

CONCLUSIONS

Many of the great men in the Scriptures failed God at one time or another. David, in a moment of weakness broke the seventh Commandment. Moses, in a temper-tantrum, committed murder. Peter, when His Lord hanged on a cross, broke two commandments—profanity and lying. These, and many others, came back in repentance and were mightily use of God.

Beautiful new truths sometimes have ugly applications, so we must support Attorney General Nicholas deB. Katzenbach and his campaign to abolish capital punishment and, at the same time, realize some problems will arise from time to time. Below are two examples of mankind living under unfair conditions at times. First, Christmas time, 1938, was an exciting time for physicists because they had just learned that two Germans, Hahn and Strassemann, had proved an atom of uranium could be split. Then, the excitement of 1938 became the holocausts of August, 1945. Second, the dictatorial method of a minority in the U.S. Senate in February of 1966 prevented the majority of that body from voting for repeal of Section 14(b). The repeal of Section 14(b) would not have made the closed shop legal, or even the traditional union shop. Such repeal would have made legal only the Taft-Hartley union shop. The repeal would have helped all mankind by further promoting democracy.

The Christian should oppose capital punishment because of the high value the Bible places upon the individual (made in the "image of God") and because of his firm belief in rehabilitation. The Bible comes with a veritable onrush of truth and instruction, and this Holy Book may be used wisely to convert and rehabilitate the murderer, and thus allow ample time to the sinner.

The price of warfare has been climbing steadily over the centuries, and the concentrations of military power which now exist make it inevitable that even greater costs lie ahead. We thus can't afford to shed additional blood. No, not even the blood of the criminal.

Finally, the good citizen should feel somewhat like Socrates. He believed a just man follows his conscience and does what he ought to do simply because it is just and because justice is essential to the very life and health of his soul. Jean-Jacques Rousseau believed our conscience is an inner voice that distinguishes right from wrong. Christian thinkers view conscience as both an inner voice and as a response to God's commands. Thomas Aquinas thought that the natural law is instilled in man by God. With this high type of conscience, we can do no less than urge abolition of capital punishment.

Questionnaire

EXTENSION OF REMARKS
OF
HON. DELBERT L. LATTA
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 29, 1966

Mr. LATTA. Mr. Speaker, every year I send a questionnaire to my constituents wherein I solicit their views on current national issues. I have found that most of the people in the district like this method of expressing themselves and not only do they complete the questionnaire but they use the back side to comment on other matters not specifically listed. I have just finished tabulating this year's returns and I would like to call them to the Members of the House. They are as follows:

[Results in percent]

1. Do you approve of the Administration's handling of the Viet Nam war?

Yes	32
No	68

2. Should the U.S. withdraw her troops from South Viet Nam if this means another Communist takeover?

Yes	22
No	78

3. Since the Defense Department now has over 225,000 combat troops in Viet Nam (as opposed to 16,300 U.S. "advisors" on January 1, 1964) should the President seek a Declaration of War from the Congress?

Yes	37
No	63

4. Should the Administration insist that our allies stop shipping supplies to North Viet Nam?

Yes	89
No	11

5. Charges have been made that our nation's Selective Service regulations are outmoded and in need of revision. Do you agree?

Yes	71
No	29

6. In view of the added cost of the Viet Nam war, do you believe some of our President's "Great Society" programs should be postponed or curtailed?

Yes	85
No	15

7. Do you believe the high cost of living is receiving the attention that it deserves?

Yes	15
No	85

8. It is reported that an increase in income taxes to finance the war in Vietnam and to help fight inflation is being considered. Do you favor an income tax increase for such purposes?

Yes	19
No	81

9. A Commission appointed by the President has recommended a guaranteed annual income of $3,000 per year. Do you favor such a recommendation?

Yes	21
No	79

10. Do you favor the Administration's rent supplement plan as a means of "speeding up" integration in housing?

Yes	12
No	88

11. Administration and labor leaders have agreed to push for the passage of a $1.60 an hour minimum wage at this Session. Do you favor this increase?

Yes	41
No	59

12. The Congress is presently considering an Administration recommendation that a guaranteed bank loan program be substituted for the present National Defense Student Loan Program. Do you favor the substitute?

Yes	41
No	59

13. Do you favor the President's recommendation to reduce the school milk and school lunch program?

Yes	18
No	82

14. For farmers only. Do you think the time has come for Congress to remove the controls on the production of Soft Red Winter Wheat?

Yes	91
No	9

Federal Controls at a Snail's Pace

EXTENSION OF REMARKS
OF
HON. WILLIAM J. GREEN
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 29, 1966

Mr. GREEN of Pennsylvania. Mr. Speaker, under leave to extend my remarks in the RECORD, I wish to include the following article which appeared in the Philadelphia Inquirer on Saturday morning, June 18, 1966:

FEDERAL CONTROLS AT A SNAIL'S PACE

(By John C. O'Brien)

WASHINGTON, June 17.—As the Federal Government constantly extends regulatory controls over an ever-widening spectrum of business, one of the chief frustrations of those conducting business enterprises is the snail-like pace of Government bureauracies in coming to decisions.

While Government agencies are making up their minds, industries to be affected by agency regulations are compelled to operate for months sometimes for years, in a fog of uncertainty.

A case in point is that of the Delaware Valley milk farmers who supply the Greater Philadelphia, Wilmington and South Jersey population centers. For a full year they have been waiting for the Department of Agriculture to amend the milk marketing order under which they operate.

The uncertainty has driven the milk producers to the point of distraction and unless the uncertainty is lifted soon, spokesmen for the producers are warning there may be shortly a curtailment of milk supplies for the area they traditionally serve.

In its notice of a year ago, the Agriculture Department stressed the urgency for the proposed change in the milk marketing order. "Because of the difficulties encountered in administering the order in its present form," the notice said, "it is imperative that there be no delay in holding a hearing on the matter."

The hearing was held between October 4 and November 24, last year. A majority of the dairy farmers and handlers operating under the order indicated at the hearing their desire to retain the order substantially in its present form, but suggested amendments to facilitate administration and enforcement of its minimum price provisions which were being undercut by a few chiselers.

Because of the Department's stress on the urgency, the dairy farmers and their cooperatives were given less than two months to study the hearing record of almost 5000 pages and write briefs.

But after the completion of the hearings the urgency, so insistently proclaimed by the Department at the outset, seemed to disappear.

on American security, General Wheeler, Chairman of the Joint Chiefs of Staff, explained during last fall's hearings:

At the initiation of treaty discussions, the Joint Chiefs of Staff formulated certain principles relating to national security that should not be violated by such a treaty. First, we believe that any international agreement on the control of nuclear weapons must not operate to the disadvantage of the United States and our allies. Secondly, it must not disrupt any existing defense alliances in which the United States is pledged to assist in protecting the political independence and territorial integrity of other nations. These principles have been observed.

It is estimated that 20 or more countries will have the capacity to produce nuclear weapons within the next decade. One need only contemplate a world in which many of these countries possess nuclear bombs or warheads and the means to deliver them to recognize the enormous dangers that will confront us if we fail to halt the spread of nuclear weapons now.

Each nation to join the circle of those possessing nuclear weapons will increase international instability and add to the possibilities of nuclear exchange. Volatile regional rivalries will acquire the terrible new dimension of being able to move the world toward nuclear holocaust. There will be no stability anywhere when nuclear weapons might be used between Egyptians and Israelis over Suez, between Greeks and Turks over Cyprus, between Indians and Pakistanis over Kashmir.

Some opponents of the treaty have argued that the spread of nuclear weapons would not significantly increase international instability. They contend that the relative stability of the current United States-Soviet "balance of terror" could be preserved through a multination system of mutual deterrence.

What they fail to understand is that the stability present in the United States-Soviet nuclear confrontation is conditional upon the fact neither country has a first-strike capability—that is, neither country can launch a nuclear attack without the certainty that it will be devastated by the second strike capability of the other.

The nations likely to acquire nuclear weapons in the coming decade in the absence of an effective nonproliferation agreement will not invest the enormous sums of money in the hardened missile sites and missile-launching submarines required for a credible second-strike capability. In situations in which one of these nations feels threatened, the temptation will be strong to employ its nuclear weapons preemptively and destroy a potential enemy before it can strike. For against each other, these second-generation nuclear nations will possess a first-strike capability.

Thus, the end result of failure to stem the spread of nuclear weapons will be a vastly increased probability of nuclear exchange and the outbreak of world war III.

In addition, nuclear proliferation will make the task of arms control and nuclear disarmament incomparably more difficult and complex—perhaps impossible.

Mr. President, when we ratified the Nuclear Test-Ban Treaty in 1963, we hailed it not only for its specific benefits but as "the first step in a journey of a thousand miles." Six years have passed and it is time for a second step, the ratification of the Nonproliferation Treaty.

This treaty represents a major milestone in our efforts to bring the atom under control—efforts which the United States initiated at the birth of the atomic age. Ratification will permit the nations of the world to intensify their efforts to tap the enormous power of the peaceful atom without fear that this power will be diverted to destructive purposes.

In his last book, "To Seek a Newer World," Robert Kennedy wrote:

This generation has unlocked the mystery of nature, henceforth all men must live with the power of complete self-destruction. This is the power of choice, the tragedy and the glory of man.

It falls to us to make sure mankind chooses survival. Ratification of the Nuclear Nonproliferation Treaty is a meaningful step in that direction.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORGANIZED CRIME IN THE UNITED STATES

Mr. McCLELLAN. Mr. President, on January 15, 1969, I introduced S. 30, the "Organized Crime Control Act of 1969," which was cosponsored by the Senator from Nebraska (Mr. HRUSKA) and the Senator from North Carolina (Mr. ERVIN). At that time, I indicated that I would at a later date discuss the subject of the growth of organized crime in the United States and explain in greater detail the provisions of S. 30.

At this point, Mr. President, I ask unanimous consent that, at the next printing of the bill, the name of the distinguished Senator from Alabama (Mr. ALLEN) be added as a cosponsor.

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

I. DEVELOPMENT OF ORGANIZED CRIME

Mr. McCLELLAN. Mr. President, Americans have had to contend with some form of organized crime since the founding of our Republic. We tend to forget, or perhaps romanticize, the early pirates, the revolutionary smugglers, the 19th-century frontier marauders, and the mobs of our fledgling cities, but we must not forget that these groups were the frontrunners of today's sprawling criminal cartels.

The late 19th and early 20th centuries, moreover, saw the rise of the great city-wide gang combinations and the intense rivalry of these groups which led to open gang wars in the era of prohibition. As important as these early beginnings were, nevertheless, it remained for Charles "Lucky" Luciano, the great consolidator, to bring the various factions together, and, through the unique strength of La Cosa Nostra's familylike structure, forge the confederation that today is dominant in organized crime everywhere. And it is this confederation, which today epitomizes, if it does not exhaust, the concept of organized crime, that must be understood if organized crime in the United States is to be understood.

II. INTERNAL STRUCTURE OF ORGANIZED CRIME

The most influential core groups of organized crime, the "families" of La Cosa Nostra, operate in New York, New Jersey, Illinois, Louisiana, Michigan, Pennsylvania, and Rhode Island. Director of the Federal Bureau of Investigation, J. Edgar Hoover, has estimated overall strength of these groups at 5,000, of which 2,000 are in the New York area alone. These groups, coupled with their allies and employees, constitute the heart of organized crime in the United States at this time.

Mr. President, I ask unanimous consent that a chart, listing the principal "families" by the name of the leader and area of activity, be printed as exhibit 1 in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. McCLELLAN. Each of these 22 core groups is known as a "family." Membership varies from 700 down to 20. Most cities have only one family; New York City has five. Family organization is rationally designed with an integrated set of positions geared to maximize profits and to protect its members—particularly its leadership—from law enforcement activity. Unlike the criminal gangs of the past, the organization functions regardless of individual personnel changes; no one individual is indispensable. The killing of Jesse, for example, virtually ended the James gang; the deportation of Luciano merely resulted in the leadership of his New York family passing to Vito Genovese, who only recently died in a Federal prison.

The hierarchical structure of the families closely parallels that of Mafia groups that operated for almost a century on the island of Sicily. Each family is headed by a "boss," whose primary functions are the maintenance of order and the maximization of profit. Beneath each boss is an "underboss." He collects information for the boss; he relays messages to him and passes his instructions to underlings. On the same level with the underboss is the "consigliere," who is often an elder member of the family, partially retired, whose judgment is valued. Below him are the "caporegime," who serve either as buffers between top men and lower level personnel or as chiefs of operating units. As buffers, they are used to maintain insulation from the investigative procedures of the police. To maintain their insulation, the leaders avoid direct communication with the workers. All commands, information, complaints, and money flow back and forth through buffers.

The need to be able to intercept or

overhear these otherwise inaccessible communications, as it is now permitted under title III of the Omnibus Crime Control Act of 1968, is abundantly clear, for the leaders perform no criminal overt acts that can be witnessed by the police or citizens, who are not involved themselves. Live testimony from insiders is rare and incriminating documents are seldom kept or rarely accessible. Therefore, some substitute, such as the product of electronic surveillance, is crucial. I am thus heartened that the new Attorney General has promised to reverse the policy of his predecessor and to use this anticrime weapon that Congress enacted last year.

I am concerned, however, that the decision of the Supreme Court yesterday, in Alderisio against the United States, may have the tendency—if not the effect—to destroy the efficacy of this method of detection and of gathering evidence. I hope that is not the purpose and the intent of the Court. I hope, too, that title III of the omnibus crime bill of last year will be held valid and that this instrumentality will be made available to our law enforcement officials, particularly for use in combating organized and syndicated crime. I shall on a later occasion discuss what, if any, legislative action is open to use to mitigate the possible harmful effects of the case.

Below the caporegime are the "soldati" or the "button" men. They actually operate the particular illicit enterprise, using as their employees the street-level personnel of organized crime. These employees, however, have little insulation from the traditional police operations of patrol and detection. They are those who are most often arrested, for, as the President's Crime Commission noted, they "take bets, drive trucks, answer telephones, sell narcotics, tend the stills, work in the stills, or operate legitimate businesses."

There is a tendency to view organized crime as embracing only those groups engaged in gambling, narcotics, loan sharking, or other illegal businesses. This is useful since it distinguishes ad hoc youth gangs, groups of pickpockets, and professional criminals generally. Nevertheless, there are at least two aspects of high level organized crime that characterize it as a unique form of criminal activity. To this degree, the nature of organized crime is independent of any particular criminal activity.

Two positions in the organized crime group make it substantially different from other criminal operations: the "enforcer" and the "corruptor." Other criminal groups that operate together over a period of time may allocate functions among particular members. But these two positions are not routinely found in other criminal groupings. It is on this basis, therefore, that organized crime groups differ from professional criminal groups generally; it is on this basis, too, that the unique challenge presented by organized crime must be evaluated.

The "enforcer's" duty is to maintain organizational integrity by arranging for the maiming and killing of recalcitrant members or potential witnesses against the group. J. Edgar Hoover, for example, testified about a "particular case where they kidnaped a man they thought was not to be trusted." He said:

> They hung him on a butcher's hook for three days and tortured him until he died.

Today, however, most of the destructive energies of organized crime are no longer dissipated on internal strife; they are concentrated on its outside enemies. The scope of the violence for which organized crime has been responsible is aptly illustrated by the number of known gangland killings in Chicago. Since 1919, there have been over 1,000 such murders, and while the police clearance rate for homicides generally approaches 90 percent, here only a handful have been solved. This is an intolerable degree of immunity from legal accountability. Judge J. Edward Lumbard was right when he observed that this state of affairs denies to the law abiding "due process of law."

The "corruptor," on the other hand, seeks to establish relations with those public officials and other influential persons whose assistance is necessary to achieve the organization's overall goals. Through these positions, each group seeks to guarantee its continuing existence. Each represents a defense mechanism against the various attempts of society to control the group. Viewed negatively, these functions protect the group; viewed positively, these functions threaten society.

The highest ruling body of the 22 families is the commission. This body serves as a combination legislature, supreme court, board of directors, and arbitration panel. The commission is the ultimate authority on organizational and jurisdictional disputes. Only the Nation's most powerful families compose it, but it has authority over all. Its composition has varied from nine to 12 men. Currently, seven families are represented: three from New York City, one each from Philadelphia, Buffalo, Detroit, and Chicago. The commission is not a representative or elected body. Members are not equals. Those with longer tenure, larger families, or greater wealth, all exercise more authority and command greater respect.

III. GAMBLING

Organized crime, which has, of course, never limited itself to one particular activity, finds its greatest source of revenue today in syndicated gambling. Its estimated annual net take is placed at $7 billion.

Professional gambling ranges from simple lotteries to bookmaking on horse or sports events. Most large slum areas, for example, have within them some form of a lottery known as numbers. Bets are placed on any three-digit numbers from one to 1,000. The mathematical odds of winning are 1,000 to one. Yet seldom, however, is the payoff over 500 to one, and then, on cut numbers, which are played more frequently than others, usually for superstitious reasons, it is even less. The gambler thus seldom gambles. In addition, he hedges his bet by a complicated layoff system. Assuming an honest payoff—often not the case—the ultimate effect of the racket is to drain the work income of slum residents away from food, clothing, shelter, health, and education.

The professional bookmaker, on the other hand, has at least the virtue of exploiting primarily those who can afford it. Yet he seldom gambles either. He gives track odds or less without track expenses, pays no taxes, is invariably better capitalized or "lays off" a certain percentage of his bets with other gamblers, takes credit bets to stimulate the play, and finally may even fix the event by corrupting private and professional sports.

Police enforcement of existing laws against the gambling operator is widely hampered by the use of such innovations as "flash paper." Records of gambling operations are often kept on this highly combustile paper which is immediately ignited with the touch of a cigarette. I note, too, that the U.S. Navy is only now placing some of its classified documents on paper of this type, which instead of igniting, dissolves when placed in water. Called "rice paper," its use has been common in organized crime gambling activity for years. It is surely an ironic commentary on our National Government that the forces of organized crime could be considered either technologically more advanced or more innovative.

IV. NARCOTICS

Next to professional gambling, most law-enforcement officials agree that the importation and distribution of narcotics, chiefly heroin, is organized crime's major illegal activity. Its estimated take is $350 million a year. More than one-half of the known heroin users are in New York City. Others are located primarily in our other large metropolitian areas, including Chicago, Los Angeles, Detroit, Philadelphia, Baltimore, Newark, and, as we all know only too well, Washington, D.C. Within the cities, addiction is generally concentrated in areas with low average income, poor housing, and high delinquency rates. The addict himself is likely to be male, 21 to 30, poorly educated, unskilled, and a member of a disadvantaged minority group. Addiction today, unlike yesterday, is largely a disease of the decaying inner city. The death toll from narcotics in New York City alone runs over 100 per year.

Nevertheless, Mr. President, more than the addict himself is involved. The cost of narcotics varies, but it is seldom low enough to permit the typical addict to obtain the money for drugs by lawful means. Estimates of the percentage of the street theft in our large cities caused by addiction run to 50 percent; although the figure cannot be accurately assessed, it is clear that it is high. Thus, addiction in the ghetto seriously affects the quality of life in the whole city.

Recent surveys of attitudes of people living in the Harlem and Watts areas of New York City and Los Angeles, for example, ranked crime and drug addiction with housing and economic conditions as the most serious problems faced in the ghetto.

There is, of course, a need for social action in the direction of the medical and psychological treatment of the addict himself and the general improvement of the social environment that

helps to produce him. In recognition of this need, I introduced 3 years ago S. 2191, which became the Narcotic Addict Rehabilitation Act of 1966. Although two-thirds of the men and 90 percent of the women now serving time here in the District are addicts, for the most part hooked on heroin, little has been done to implement this act. Myrl Alexander, of the Federal prison system, puts at 600 cases per year the estimated annual commitment ability under this act, yet the program took in only 305 individuals from October 1967 through June 1968. It certainly has not received the kind of priority treatment we might have expected. As with title III's grant of wiretapping authority, the Department of Justice has indeed picked and chosen what it would implement.

The narcotic traffic on the east coast is run by organized crime, and the product is European in origin. Grown in Turkey, diverted from legitimate markets, refined in the Near East and France, the heroin is finally smuggled into the United States. The importers, generally top men in organized crime, do not handle and seldom see a shipment of heroin; their role is strictly supervisory and financial. Note, again, the absence of overt criminal acts subject to observation using traditional patrol or detective techniques of investigation. Fear of retribution, which can be swift and final, and a code of silence protect them from exposure. Through persons working under their direction, the heroin is distributed to high-level wholesalers; low-level wholesalers are at the next echelon; finally, pushers, often addicts, and the addicts themselves make up the last rung. Law enforcement is at all levels difficult, most difficult at the highest. The classic police functions of patrol and detection, traditionally understood, have had little impact on the traffic. Dangerous undercover operations and the use of informants, who work from the inside, are essential. The top men are hard to identify; they always have a shield of people in front of them, and by not handling the drugs, they incur no direct liability for possession, sale, or other prohibited acts. Generally, they are vulnerable only through the conspiracy laws, and this requires live testimoy of an insider or a substitute. There are no overt acts for the police or citizens, otherwise not involved, normally to observe.

V. LOAN SHARKING

Most law-enforcement officials agree that loan sharking is organized crime's next major illegal activity. Its estimated take is $350 million a year. Like narcotics, loan sharking is organized in a hierarchial structure. At the top is the boss who lends to trusted lieutenants large sums of cash usually at the rate of 1 percent per week. Under the lieutenants are street-level loan sharks, who deal directly with the debtors. The rate varies, but is normally 5 percent per week. Occasionally, the lieutenant will make large loans himself—in the neighborhood of $1 million. The setup also involves "steerers," who will direct possible borrowers to the loan sharks. These individuals can be anyone who comes into contact with large numbers of people.

Finally, there is the "enforcer," who sees to it that the debts are paid. The victims of loan sharks come from all segments of society: The professional man, the industrialist—particularly in the areas of high competition like the garment industry—contractors, stock brokers, bar and restaurant owners, dockworkers, laborers, narcotic addicts, bettors, and bookmakers themselves. There is an indication, too, that the loan shark, through his financing services, makes possible many of the activities of professional criminals not directly associated with organized crime. The professional, moreover, accounts for a substantial proportion of certain categories of so-called "street crime," particularly theft. Again, we see the close relation between street and organized crime.

Only two prerequisites are required to make anyone a potential victim of a loan shark: a pressing need for ready cash and no access to regular channels of credit—thus demonstrating the exploitive character of organized crime. Repayment is compelled by force. Often debtors in over their heads are pressed into criminal acts to pay off, including embezzlement, acting as a numbers writer, or a fingerman for a burglary ring.

VI. INFILTRATION OF LEGITIMATE BUSINESS

Legitimate business is another area into which organized crime has begun most recently and widely to extend its influence. In most cities, it now dominates the fields of jukebox and vending machine distribution. Laundry services, liquor and beer distribution, nightclubs, food wholesaling, record manufacturing, the garment industry and a host of other legitimate lines of endeavor have been invaded and taken over. The Special Senate Committee To Investigate Organized Crime in Interstate Commerce, under the leadership of Senator Estes Kefauver, noted in 1952 that the following industries had been invaded: advertising, amusement, appliances, automobile, baking, ballrooms, bowling alleys, banking, basketball, boxing, cigarette distribution, coal, communications, construction, drugstores, electrical equipment, florists, food, football, garment, gas, hotels, import-export, insurance, jukebox, laundry, liquor, loan, news services, newspapers, oil, paper products, radio, real estate, restaurants, scrap shipping, steel surplus, television, theaters, and transportation.

Often it is the small or marginal businessman who is most easily subject to invasion by organized crime. Organized crime seems to act like a vulture that preys on those otherwise made vulnerable by many of the economic developments of the last half century. It is most disturbing, however, to hear, as we have recently from New York Stock Exchange President Robert W. Haack, that there is a question whether or not organized crime may have begun to penetrate securities firms and the stock exchange itself. Apparently, no area of business activity is immune from its grasping claws.

Control of business concerns has been acquired by the sub-rosa investment of profits acquired from illegal ventures, accepting business interests in payment of gambling or loan shark debts, but, most often, by using various forms of extortion. Usually, after takeover, such defaulted loans are liquidated by professional arsonists burning the business and then collecting the insurance or by various bankruptcy fraud techniques, which are called "scam." An estimated 250 such scam operations are pulled off each year, netting around $200,000 per job. Often, however, the organization, using force and fear, will attempt to secure a monopoly in the service or product of the business. When the campaign is successful, the organization begins to extract a premium price from customers. Purchases by infiltrated businesses are always made from specified allied firms. With its extensive infiltration of legitimate business, organized crime thus poses a new threat to the American economic system. The proper functioning of a free economy requires that economic decisions be made by persons free to exercise their own judgment. Force or fear limits choice, ultimately reduces quality, and increases prices. When organized crime moves into a business, it usually brings to that venture all the techniques of violence and intimidation which it used in its illegal businesses. Competitors can be effectively eliminated and customers can be effectively confined to sponsored suppliers. The result is more unwholesome than other monopolies because the newly dominated concern's position does not rest on economic superiority.

VII. TAKEOVER OF LEGITIMATE UNIONS

Closely paralleling its takeover of legitimate businesses, organized crime has moved into legitimate unions. Control of labor supply through control of unions can prevent the unionization of some industries or can guarantee sweetheart contracts in others. It provides the opportunity for theft from union funds, extortion through the threat of economic pressure, and the profit to be gained from the manipulation of welfare and pension funds and insurance contracts. Trucking, construction, and waterfront entrepreneurs have been persuaded for labor peace to countenance gambling, loan sharking and pilferage. All of this, of course, makes a mockery of much of the promise of the social legislation of the last half century.

VIII. SUBVERSION OF DEMOCRATIC PROCESSES

To exist and to increase its profits, Mr. President, organized crime has found it necessary to corrupt the institutions of our democratic processes, something no society can long tolerate. Today's corruption is less visible, more subtle and therefore more difficult to detect and assess than the corruption of the prohibition and earlier eras. Organized crime operates even in the face of honest law enforcement, but it flourishes best in a climate of corruption. As the scope of organized crime's activities has expanded, its efforts to corrupt public officials at every level of government have grown. For with the necessary expansion of governmental regulation of private and business activity, its power to corrupt has given organized crime greater control over matters affecting the everyday life of each citizen. The potential for harm

today is thus greater if only because the scope of governmental activity is greater.

At various times, organized crime has been the dominant political force in such metropolitan centers as New York, Chicago, Miami, and New Orleans. Only fortuitous circumstances prevented its takeover of Portland, Oreg., and Kansas City, Mo. Smaller communities such as Cicero, Ill., and Reading, Pa., have been virtual baronies of organized crime. This list of examples could be extended almost indefinitely.

A political leader, legislator, police officer, prosecutor, or judge who owes allegiance to organized crime cannot render proper service to the public. Such an individual is no longer a public servant, selected by and accountable to the people, as democracy demands; he is the servant of a small class of professional criminals. Accustomed to accepting bribes from a criminal organization, such public servants will soon begin to expect side payments for acts done in the usual course of business. Such an official will soon lose any sense of allegiance to the public or to the moral standards which good government demands.

IX. UNDERMINING THE SOCIAL STRUCTURE

Organized crime seriously affects the quality of American life in yet another way. Mr. Justice Brandeis in his classic dissent in *Olmstead* v. *United States* (277 U.S. 438, 485 (1928), rightly suggested:

> Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.

Justice Brandeis spoke in the context of lawless law enforcement. There is, however, another way in which government teaches by example. Its failures, too, do not go unnoticed, especially among the young, who see what we do and seldom listen to what we say. Unlike other successful criminals who operate outside of an organization and who require anonymity for success, the top men in organized crime are well known both to law enforcement agencies and to the public. In earlier stages of their careers, they may have been touched by law enforcement, but once they attain top positions in the rackets, they acquire a high degree of immunity from legal accountability. The National Advisory Commission on Civil Disorders described the impact of this process on the child of the ghetto in these terms:

> With the father absent and the mother working, many ghetto children spend the bulk of their time on the streets—the streets of a crime-ridden, violence prone and poverty-stricken world. The image of success in this world is not that of the "solid citizen," the responsible husband and father, but rather that of the "hustler" who takes care of himself by exploiting others. The dope seller and the numbers runner are the "successful" men because their earnings far outstrip those men who try to climb the economic ladder in honest ways.
>
> Young people in the ghetto are acutely conscious of a system which appears to offer rewards to those who illegally exploit others, and failure to those who struggle under traditional responsibilities. Under these circumstances, many adopt exploitation and the "hustle" as a way of life, disclaiming both work and marriage in favor of casual and temporary liaisons. This pattern reinforces itself from one generation to the next, creating a "culture of poverty" and an ingrained cynicism about society and its institutions.

As part of organized crime, an ambitious young man thus knows that he can rise from bodyguard and hood to pillar of the community, giving to charities dispensing political favors, sending his boys to West Point and his girls to debutante balls. The result of all of this was summed up by the President's Crime Commission in these terms:

> In many ways organized crime is the most sinister kind of crime in America. The men who control it have become rich and powerful by encouraging the needy to gamble, by luring the troubled to destroy themselves with drugs, by extorting the profits of honest and hardworking businessmen, by collecting usury from those in financial plight, by maiming or murdering those who oppose them, by bribing those who are sworn to destroy them. Organized crime is not merely a few preying upon a few. In a very real sense it is dedicated by subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of Cosa Nostra and their racketeering allies pursue their conspiracy unmolested, in open and continuous defiance of the law, they preach a sermon that all too many Americans heed: The government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers.

Mr. President, if we do not reverse the trend of growth of the menace to our society, it, an enemy within, will surely destroy us.

X. LAW ENFORCEMENT

Mr. President, up until this point, I have discussed the development and impact of organized crime in the United States. I should now like to turn my attention to the attempts of law enforcement, chiefly the Federal effort, to arrest and reverse its growth.

To understand the administration of criminal justice in our Nation today, we must first understand the problems of the administration of justice in a stable, homogeneous, pioneer, primarily agricultural community of the first half of the 19th century and the difficulties involved in meeting those problems with the legal doctrines and institutions inherited from 17th- and 18th-century England. We must then understand the problems of the administration of justice in our mobile, modern, heterogeneous, urban, industrial community of today and the difficulties involved in meeting those problems with legal doctrines and legal institutions first inherited from England and then adapted to an American society of the last century.

We inherited from England a medieval system of sheriffs, coroners, and constables, devised originally for a rural society, but easily adapted to pioneer rural conditions. We had no professional police force then. Its emergence, moreover, was slow. The Colonies at first adopted the British constabulary-night watch system, which consisted of isolated constables in the daytime and night watchmen in the evening. Not until 1844 was a unified day and night police force established, first in New York City. The primary function of these police force officers was patrol, the maintenance of peace and order on the street.

In a simpler society, offenses normally occurred between neighbors. No specialized law enforcement force system was necessary to bring them into the administration of justice. The President's Crime Commission put it this way:

> In the preindustrial age, village societies were closely integrated. Everyone knew everyone else's affairs and character; the laws and rules of society were generally familiar and were identical with the moral and ethical precepts taught by parents, school masters, and the church. If not by the clergy and the village elders, the peace was kept, more or less informally, by law magistrates (usually local squires) and constables. These in the beginning were merely the magistrates' agents, literally "citizens on duty"—the able-bodied men of the community serving in turn. Not until the 19th century did policing even have a distinct name. Until then it would have been largely impossible to distinguish between informal peacekeeping and the formal system of law enforcement and criminal justice. The real outlaws—murderers, highwaymen and their ilk—were handled mostly by the military when normal procedures for crime control were unsuccessful.

This is, of course, not true today. When the patrol force fails to prevent a crime, or apprehend the offender during its commission, the police must rely instead upon investigation: The detective function, whose development, too, has been slow. It was not, for example, until 1842, 13 years after the formation of the Metropolitan Police in England, that a small body was detached for detective work, and not until 1878 that the Criminal Investigation Department was formally created. The use of the tools of science, moreover, has only become common within the last half century. Even so, scientific crime detection, as the President's Crime Commission noted, "popular fiction to the contrary notwithstanding, at present is a limited tool." Every sizable department today thus has a corps of investigative specialists whose job it is to solve crimes by questioning victims, suspects, and witnesses and by accumulating physical evidence at the scene of the crime. Yet note that the model around which the patrol and detective functions have developed has been essentially the traditional common law crimes such as murder, rape, robbery, larceny, and the rest, which usually occur as a single incident, not in any way part of an overall course of criminal activity. It is around these offenses, too, that our criminal law and procedure has evolved. These developments, in addition, have been colored by yet another important factor.

When we began to build an American criminal law with received English materials, as Dean Roscoe Pound has rightly observed:

> The memory of the contests between courts and crown in 17th century England, of the abuse of prosecutions by Stuart Kings, and of the extent to which criminal law might be used as an agency of religious persecution and political subjection was still fresh.

The chief problem thus seemed to be how to hold down punitive justice and protect the individual from oppression rather than how to make the criminal law an effective agency for securing dem-

ocratically determined social interests already limited substantially by a bill of rights. Ignored entirely was the possibility of the growth of a phenomenon such as organized crime. Indeed, a specialized law enforcement response to the challenge of organized crime—putting aside Federal action in specialized areas—is best dated from the 1935 special rackets investigation conducted in New York County by Thomas E. Dewey at the direction of Gov. Herbert H. Lehman. It ultimately resulted in the development of the "rackets bureau concept" which underlies such State and Federal activity today.

XI. FEDERAL EFFORT

Mr. President, the President's Crime Commission aptly summed up the history of law enforcement's efforts to deal with organized crime in these tragic words:

> Investigation and prosecution of organized criminal groups in the 20th century has seldom proceeded on a continuous, institutionalized basis. Public interest and demands for action have reached high levels sporadically; but, until recently, spurts of concentrated law enforcement activity have been followed by decreasing interest and application of resources.

And what has been true generally is only a little less true on the Federal level.

Federal attention was, of course, focused on organized crime during the prohibition era. The 18th amendment went into effect on January 16, 1920. And the Volstead Act that implemented the amendment passed over Wilson's surprise veto. But the Congress never appropriated more than token enforcement resources. In 1920, prohibition agents numbered only 1,520, and as late as 1930 they numbered only 2,836.

Assuming the job could have been done under any circumstances, it is clear that prohibition was doomed to failure on this score alone.

The matter may be put graphically: If the whole army of agents in 1929 had been mustered along the coast and borders to prevent rum running, there would have been one man to patrol every 12 miles of beach, harbor, headland, forest and river front. Federal enforcement, in short, consisted chiefly of uttering resounding platitudes on the virtues of law observance. Indeed, its chief prosecutive success, the conviction of Al Capone, was for tax evasion, instead of rum running, and with repeal, the Federal Government turned away from organized crime almost altogether.

At the close of World War II, however, the Federal Bureau of Investigation turned its attention to organized crime with the inauguration of a formal crime survey program in March 1944, which led to an all-out investigation of the remnants of the old Capone gang. It was during this investigation, too, that the then Attorney General, Tom C. Clark, sought and obtained the authority of President Harry S. Truman to use wiretapping in domestic cases, saying that he felt their use was "imperative." The result was a series of major cases embracing a million-dollar extortion plot in the moving picture industry, one of which included Paul DeLucia, Capone's successor and then a member of the Commission.

Neverthless, the beginning of national attention and action is best dated from the 1950 Attorney General's Conference on Organized Crime, which was called by Attorney General J. Howard McGrath at the urging of the U.S. Conference of Mayors, the American Municipal Association, National Institute of Municipal Law Officers, and the National Association of Attorneys General.

Law enforcement officials from all over the Nation met in Washington on February 15, 1950, to consider the growing scope of organized crime, particularly interstate gambling. The consensus then seemed to be that things were getting out of hand. It was all "too big." The "assistance" of the Federal Government was needed. Some people, of course, as now, dissented. A prosecutor from a large midwestern city said that he had "never received any evidence" of the "syndicate." There was no "organized gambling" in his city. It was really not such "a bad place." But Chicago's Otto Kerner did not represent the majority view, and the conference made a series of important recommendations, perhaps the most important of which was that pending legislation, authorizing an investigation into organized crime by a Senate Select Committee under the chairmanship of Senator Estes Kefauver, of Tennessee, be supported.

It was thus only a short time later that the Senate special committee began its hearings. Over 800 witnesses, from nearly every State and all major metropolitan areas, were heard and the concern of many such communities was aroused. Chicago, incidentally, was found to be the center of a national race-wire service. Chicago, too, was not found to be free of gambling. On the South Side, it was found that policy wheels grossed in excess of $150 million over the 5-year period just before the hearings.

The work of the committee covered all aspects of organized crime—gambling, narcotics, infiltration into business, political and law-enforcement corruption. For the first time, too, it focused nationwide attention on the Mafia, which it found to be the "cement" that held together the national structure of organized crime. But if the facts were dramatically brought out by the Senate hearings, little permanent value, in terms of legislation or executive action, was accomplished. Few of the committee's important legislative or executive reorganizations were adopted. The Department of Justice did establish in 1954, the Organized Crime and Racketeering Section, but it was then woefully understaffed. Indeed, by 1957, when the infamous Apalachin conference occurred it had but 10 attorneys.

Mr. President, at this point I pause to note that any evaluation of the Federal effort to date must, of course, employ those statistics that are available, although I fully recognize that it is not always possible to quantify law enforcement efforts. I ask, therefore, for unanimous consent that the basic data in the form of tables on the Federal effort, which exists only since about 1960 in meaningful form, appear in the RECORD following my remarks, as exhibit 2.

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

(See exhibit 2.)

Mr. McCLELLAN. Mr. President, on November 14, 1957, State and Federal investigators—quite by accident—discovered at the home of Joseph Barbara in upstate New York a gathering of at least 75 leaders of organized crime from every section of the Nation. They, too, were there, they said, "quite by accident" to visit a "sick friend."

As a result of this discovery, a number of Federal and State investigations were launched, and Attorney General William Rodgers appointed a Special Group on Organized Crime in the Department of Justice in April of 1958. Regional offices were established, intelligence on all of the attendees was collected, and extensive grand jury investigations were conducted. Twenty of the participants were indicted for obstruction of justice and convicted at trial, but their convictions were reversed on appeal for lack of evidence. The work of the Special Group was then transferred into the existing Organized Crime and Racketeering Section.

It was during this time, too, that the Senate Select Committee on Improper Activities in the Labor and Management Field under my chairmanship conducted its investigations. Over 1,525 witnesses were heard in 270 days of hearings, comprising a staggering 46,150 pages of testimony. Our chief focus, consistent with our mandate, was on corruption in the field of labor-management officers, but we found ourselves ineluctably drawn into the area of organized crime. Of the 75 or so racket leaders who met at Apalachin, N.Y., in 1957, we found, for example, that at least nine were in the coin-operated machine industry, 16 were in the garment industry, 10 owned grocery stores, 17 owned bars or restaurants, 11 were in the olive oil and cheese business, and nine were in the construction business. Others were involved in automobile agencies, coal companies, entertainment, funeral homes, ownership of horses and race tracks, linen and laundry enterprises, trucking, waterfront activities, and bakeries. As I noted in more detail earlier, organized crime had indeed moved into legitimate business and labor activity.

The Federal effort against organized crime, however, received its greatest emphasis when the late Robert F. Kennedy, who had been our chief counsel, became Attorney General in 1961. A comprehensive legislative program, combining the best of earlier recommendations, was submitted to the Congress and enacted. The work of the Organized Crime and Racketeering Section was expanded and its personnel increased. In addition, the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, of which I am again the chairman, in close cooperation with the Department of Justice and police departments throughout the United States, conducted a detailed study of the inner working of organized crime, exposing for the first time the "family" structure of

La Cosa Nostra, which I discussed in greater detail earlier. Our study also confirmed that gambling remained the main source of racketeer income—supplemented chiefly by illicit profits from narcotics, labor racketeering, extortion, loan sharking and the infiltration of business and labor.

Nevertheless, like the others before it, this new drive by the Department of Justice on organized crime was fated to have a short life. When Bob Kennedy left the Department of Justice, the organized crime program seemed to leave with him; it just seemed to fall apart. The number of man-days in the field decreased from 1964 to 1967 by 84 percent. The number of man-days before grand juries decreased from 1963 to 1968 by 70 percent. The number of man-days in courts decreased from 1964 to 1967 by 56 percent. Internal Revenue Service, Intelligence Division, participation in the organized crime drive—a key participation which at its height yielded a majority of the program's prosecutions—fell from 1963 to 1968 by 56 percent. No one actually dismantled it after Attorney General Kennedy left, but then no one took the trouble at that time to rebuild it either.

The most disturbing aspect of this decline is that, although it has been partially reversed—man-days in the field and in court are up from their low in 1966—with the creation and implementation of the "strike force" concept, an imaginative staff innovation now in operation in a number of major cities, it will be years before it can be repaired and still more years before its cumulative effects are dissipated. For an effective organized crime investigation and prosecution takes years to build. This means, of course, that the decline after 1963 will just begin to be felt in the immediate years ahead.

Recent action of the Supreme Court, moreover, promises to further contribute to the decline in the Federal organized crime drive. In *Marchetti* v. *United States,* 350 U.S. 39 (1968) and *Grosso* v. *United States,* 390 U.S. 62, the court overruled two of its own decisions, *United States* v. *Kahriger,* 345 U.S. 22 (1952) and *Lewis* v. *United States,* 348 U.S. 419 (1952), which had previously sustained the constitutionality of the wagering tax laws. These two new decisions will result in the loss of 1,616 pending prosecutions, and unless Congress takes action to amend the laws, a question which must be considered in our coming hearings, it will result in the destruction of a law enforcement program that paid for itself, for since 1952 the wagering tax laws have yielded $117,406,000, but cost only $27,021,000 to administer.

On July 23, 1965, President Johnson called together his National Crime Commission and asked it to tell him, among other things, why organized crime continued to grow despite the Nation's best efforts to arrest and reverse its development. The Commission identified a number of factors—lack of resources, lack of coordination, lack of public and political commitment, failure to use available criminal sanctions. But the major legal problem related to matters of proof.

From a legal standpoint, organized crime—

The Commission concluded:

continues to grow because of defects in the evidence gathering process.

The Commission reviewed the difficulties experienced in developing evidence in this area in these terms:

Usually, when a crime is committed, the public calls the police, but the police have to ferret out even the existence of organized crime. The many Americans who are complaint "victims" have no incentive to report the illicit operations. The millions of people who gamble illegally are the true victims of organized crime, such as those succumbing to extortion, are too afraid to inform law enforcement officials. Some misguided citizens think there is a social stigma in the role of "informer," and this tends to prevent reporting and cooperating with police.

Law enforcement may be able to develop informants, but organized crime uses torture and murder to destroy the particular prosecution at hand and to deter others from cooperating with police agencies. Informants who do furnish intelligence to the police often wish to remain anonymous and are unwilling to testify publicly. Other informants are valuable on a long-range basis and cannot be used in public trials. Even when a prosecution witness testifies against family members, the criminal organization often tries, sometimes successfully, to bribe or threaten jury members or judges.

Documentary evidence is equally difficult to obtain. Bookmakers at the street level keep no detailed records. Main offices of gambling enterprises can be moved often enough to keep anyone from getting sufficient evidence for a search warrant for a particular location. Mechanical devices are used that prevent even the telephone company from knowing about telephone calls. And even if an enforcement agent has a search warrant, there are easy ways to destroy written material while the agent fulfills the legal requirements of knocking on the door, announcing his identity and purpose, and waiting a reasonable time for a response before breaking into the room.

The Commission then concluded that under present procedures too few witnesses have been produced to prove the link between criminal group members and the illicit activities that they sponsor. The Commission observed:

Law enforcement's way of fighting organized crime has been primitive compared to organized crime's way of operating. Law enforcement must use methods at least as efficient as organized crime's. The public and law enforcement must make a full-scale commitment to destroy the power of organized crime groups.

XII. THE ORGANIZED CRIME CONTROL ACT OF 1969

Mr. President, it was in light of the President's Crime Commission and our own staff studies in this area that I introduced on January 15, 1969, S. 30, the Organized Crime Control Act of 1969, which was cosponsored by Senators ERVIN and HRUSKA. I should now like to discuss its provisions and their legal background.

At the outset, let me repeat what I said when S. 30 was introduced. I am not irrevocably committed to the present language or its specific provisions, but I am hopeful that its overall objectives can meet with general support. The Subcommittee on Criminal Laws and Procedures of the Judiciary Committee will begin hearings on S. 30 and related legislation on March 18, 19, 25 and 26, 1969. We have asked the Attorney General and a number of other knowledgeable and interested parties to testify. Hopefully, the bill can be strengthened and improved by the hearing and committee process. That is the goal toward which we will be working.

THE GRAND JURY

The grand jury originated in Anglo-American law with the summoning of a group of townspeople before a public official to answer questions under oath, a system of inquiry, having its origins in late Roman procedure, used for such administrative purposes in Norman law as the compilation of the Domesday Book of William the Conqueror. In 1164, the Crown first established the criminal grand jury, a body of 12 knights, whose function was to accuse those who according to public knowledge had committed crimes. Witnesses as such were not heard before this body. Two years later at the Assize of Clarendon, Henry II established the grand jury largely in the form in which it is known today.

During the 13th and the early part of the 14th centuries, the grand jurors themselves served as petit jurors in the same matters in which they presented indictments. Not until the eventual separation of the grand jury and petit jury did the function of accusation become clearly defined and did crown witnesses come to be examined in secret before the grand jury.

The original function of the grand jury was to give to the central government the benefit of local knowledge in the apprehension of those who violated the King's peace. Its value as a buffer between citizen and state, the function which first comes into mind today, did not fully mature until well into the 17th century. In 1681 in *Colledge's* case (1681) 8 How. St. Tr. 550, and the *Earl of Shaftesburry's* case (1681) 8 How. St. Tr. 749, the grand juries which first heard the evidence of the Royal prosecutor refused to indict. These cases are usually marked as thus establishing the institution of the grand jury as a bulwark against despotism. Two years later the propriety of the grand jury report was also indirectly litigated. A Chester grand jury without returning a formal indictment charged certain Whigs with seditious conduct. An action for libel was brought and the court unanimously found for the defendants, apparently thus sustaining the actions of the jurors.

The modern grand jury is a "prototype" of its ancient British counterpart. Aptly termed a "grand inquest" by the Supreme Court in *Blair* v. *United States,* 250 U.S. 273, 282 (1919), its inquisitorial powers are virtually without rival today. Despite early attempts in this country to limit the scope of its investigatory powers to that which was brought to its attention by prosecutor or court, its common law powers have survived largely without artificial limitations. Such a limitation is not found in Federal law, where the grand jury is empowered under *Hale* v. *Henkel,* 201 U.S. 43 (1905), to inquire into and return indictments for all crimes committed within its jurisdiction. Indeed, the grand jury has usually been held open to citizen complaints. Secrecy, however,

rightly governs its hearings. Grand jury reports, often a catalyst for reform, may also be filed under the laws of some States, but not under Federal law, where this historic right has been restricted.

Ultimately, the power of the grand jury rests on the subpena. Only through it can witnesses be compelled to appear and the production of books and records be required. Under Federal law, subpenas issue only out of court, and today the grand jury is generally thought of as an "arm of the court." This means that the jury is subject to the supervisory power of the court. The court impanels it, charges it, chooses its foreman, protects against abuses of its authority, and ultimately discharges it. Usually the life of the grand jury parallels the term of the court, although present Federal law allows the court to impanel a grand jury whenever it is appropriate. The grand jury's term extends until discharge, but not longer than 18 months, and the number of juries is left up to the discretion of the court. A Federal court may also discharge a grand jury at any time "for any reason or for no reason," *In re Investigation of World Arraignments*, 102 F. Supp. 628, 629 (D.D.C. 1952), even though the jury has not finished the business before it.

The conclusion seems inescapable: As an instrument of discovery against organized crime, the grand jury has no counterpart. Despite its broad powers of inquiry, however, the grand jury needs to be strengthened. The President's Crime Commission reached this judgment:

> If a grand jury shows the court that its business is unfinished at the end of a normal term, the court should extend that term a reasonable time in order to allow the grand jury to complete pending investigations. Judicial dismissal of grand juries with unfinished business should be appealable by the prosecutor and provisions made for suspension of such dismissal orders during the appeal.
>
> The automatic convening of these grand juries would force less than diligent investigators and prosecutors to explain their inaction. The grand jury should also have recourse when not satisfied with such explanations.
>
> When a grand jury terminates, it should be permitted by law to file public reports regarding organized crime conditions in the community.

Modeled on present New York law, title I of S. 30 seeks each of these objectives. Briefly, this title would authorize a grand jury to be called into session in each jurisdiction once every 18 months with the right, at 6-month intervals, to extend its existence up to 36 months, on a showing to the court that it had unfinished business. These juries would be selected without discrimination from residents within their jurisdictions, and the foreman would be selected by these juries. The jury would not be limited by the charge of the court but would have the right to pursue any violation of the criminal law within its jurisdiction. Citizens would be accorded the right to contact the jury, through the foreman, regarding any alleged criminal act. In the event the workload of the jury became excessive, it could petition the court to impanel another jury, and the failure of the court to act would be appealable. The jury would also be accorded the statutory right to ask the attorney general to replace local prosecutors and investigators if dissatisfied with their performance. And, finally, the jury would be authorized to submit formal reports or presentments to the court, but safeguards are included to assure that the reports do not unfairly reflect on innocent persons.

THE DUTY TO TESTIFY AND SELF INCRIMINATION

A grand jury subpena can compel the attendance of a witness and the production of books and records, Ultimately, however, the grand jury has no power as such to compel the witness to testify or to turn over the books and records. Securing the witness' testimony and having the books and records turned over involve the interaction of the witness' duty to testify and his privilege against self incrimination.

Not until the 16th century did the modern witness become a common figure in civil or criminal trials. Up until that time jurors were supposed to find the facts based on their own self-acquired knowledge. Indeed, the pure witness—the individual who merely happens to have relevant information and who is unrelated to either party—at this time ran the substantial risk of a suit for maintenance if he volunteered to testify. This situation became, of course, wholly intolerable as litigation became more complex and juries became less and less able to resolve factual disputes on their own. Finally in *Stat. of Elizabeth* in 1563, St., 1563, 5 Eliz 1, c. 912, provision was made for compulsory process for witnesses in civil cases. With the enactment of this statute, the risk of a suit for maintenance diminished, for what a man does by compulsion of law cannot be called maintenance.

The Statutes of Elizabeth only made it possible to testify freely; it imposed no duty to testify. Nevertheless, the step from right to duty was short, and it was soon taken. By 1612, Sir Francis Bacon in the Countess of Shrewsbury's Trial, (1612) 2 How. St. Tr. 769, 778, was able to assert confidently:

> You must know that all subjects, without distinction of degrees, owe to the King tribute and service, not only of their deed and land, but of their knowledge and discovery. If there be anything that imports the King's service they ought themselves undemanded to impart it; much more, if they be called and examined, whether it be of their own fact or of another's, they ought to make direct answer.

For more than three centuries it thus has been a maximum of indubitable certainty, as the Supreme Court noted in *Piedmonte* v. *United States*, 367 U.S. 556, 558 n. 2 (1961), that the "public has a right to everyman's evidence."

> When the cause of justice requires the investigation of the truth—
>
> As Dean Wigmore put it—
>
> no man has knowledge that is rightly private.

Nonetheless, the duty to testify, which history and society of necessity have imposed on each of us, is not absolute; it is qualified by the privilege against self-incrimination.

The history of the privilege against self-incrimination is the complicated story of the hated practice of the oath ex officio mero, an abuse first of heresy trials in the ecclesiastical courts, and then of the infamous Star Chamber, which took its rules of procedure from ecclesiastical law, and of the emotional reaction which accompanied its abolition, and ultimately stopped incriminating interrogation in the common law courts. Until the early 17th century, when the long battle between King and Parliament began, no serious and successful objection had been made to the oath ex officio. Under proper circumstances, the canon law upheld it. Through the influence of Lord Coke, however, a change occurred. By 1615, the power of the ecclesiastical court to use the oath ex officio in any penal inquiry had been ended by decisions of the common law courts. The Star Chamber and its similar practice were the next to go. As a direct result of public indignation at the Lilburn Trial (1637), 3 How. St. Tr. 1315, where the defendant was ordered pilloried and whipped for a failure to respond to the oath, Parliament abolished both the oath and the Chamber itself.

Before the Star Chamber, Lilburn himself had not claimed a privilege against self-incrimination, but merely that the proper presentment had not been made, a presentment necessary before the oath could be lawfully administered. After his cause had triumphed, however, the distinction was soon lost or ignored. The oath itself had come to be associated with the Stuart tyranny. Details were forgotten. Repeatedly claimed, then assumed for argument, finally by the end of the reign of Charles II, there was no longer any doubt of its general application. No one at any time in any English court could be compelled to accuse himself. It was out of this history and the experience of the colonists with the Royal Governors that the privilege ultimately found its way into our Bill of Rights in the fifth amendment.

The modern privilege against self-incrimination applies to any question the answer to which would furnish a link in a chain of evidence, which would incriminate the witness; it need not be answered unless, as the Supreme Court put it in *Malloy* v. *Hogan*, 378 U.S. 1, 8 (1964), "he chooses to speak in the unfettered exercise of his own will." Only testimonial utterances fall within its scope. The privilege is personal; it may not be claimed to protect another. In addition, it protects only natural persons; corporations or unions may not claim its protection. The privilege may be waived by the recitation of incriminating facts; the law requires its waiver when an accused testifies in his own behalf at a criminal trial. Generally, it must be asserted to be claimed, or otherwise it is waived. For the privilege is, as Dean Wigmore put it, "merely an option of refusal not a prohibition of inquiry."

Nevertheless, like the duty to testify, the privilege against self-incrimination is not an absolute. Should a witness refuse to testify before a grand jury asserting his privilege, the inquiry need not be ended. Under proper conditions, it is

possible to displace the privilege with a grant of immunity, thus removing the witness' privilege not to answer. It becomes necessary, therefore, to turn to a consideration of the immunity grant and the process whereby it may be enforced.

THE IMMUNITY GRANT

In England, it was only a comparatively short time after the privilege against self-incrimination had matured before various techniques to mitigate its impact on the administration of justice developed. The first reliable example occurred in 1725, in the Trial of Lord Chancellor Macclesfield (1725) 16 How. St. Tr. 767, 921, 1147. The Chancellor had been guilty of traffic in public offices. An act was passed to immunize the present Masters in Chancery so that their testimony could be compelled. Once the present "criminality" legally attaching to their actions was effectively "taken away" by the statute, their privilege against self-incrimination "ceased" to exist. What Parliament found it could thus do with its amnesty powers, the King's prosecutors soon learned they could accomplish by the tendering of Royal pardons. The tradition in English law of permitting the privilege to be thus set aside stands even today unquestioned.

The American colonists not only brought with them the privilege against self-incrimination, but they also adopted these various techniques. As early as 1807 in the treason trial of Aaron Burr, President Jefferson attempted to give an executive pardon to one of the witnesses against Burr. The witness refused the pardon, but testified anyway. The right of a witness to refuse a pardon, and thus defeat the technique, was not clearly established until 1915, when the Supreme Court upheld the right of a grand jury witness to turn down an executive pardon from President Wilson. In the intervening years, the cloud which existed over the pardon technique because of the Burr trial directed the chief attention of the law toward the legislatively authorized immunity grant.

Congress first adopted a compulsory immunity statute in 1857. Legally, no attack was successfully mounted upon it. Nevertheless, its operation was hardly successful, since it automatically protected against prosecution any matter about which any witness testified before Congress. One individual, who had stolen $2 million in bonds from the Interior Department, had himself called before Congress, where he testified to a matter relating to the bonds and was immunized. This was an obviously intolerable situation and the statute was soon repealed. In its place the immunity statute of 1862 was enacted. The new statute did not grant immunity from prosecution; it merely purported to protect the witness from having his testimony subsequently used against him. Six years later the statute was broadened to cover judicial proceedings. After being upheld by lower Federal courts, relying on an early New York decision, the statutory scheme finally reached the Supreme Court in 1892 in *Counselmen* v. *Hitchcock*, 142 U.S. 547 (1892). The Court refused to uphold the immunity statute, noting that the statute to be upheld would have to afford a protection coextensive with the privilege. The Court found the protection inadequate because it did not eliminate criminality, but merely protected the witness from the use of the compelled testimony. The Court observed:

> It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him.

Congress responded to the Counselmen decision with the Immunity Act of 1893. This time the statute granted immunity from prosecution, not merely from use of the testimony. Once again the validity of the immunity device was presented to the Supreme Court. In *Brown* v. *Walker*, 161 U.S. 591 (1896), the Court, by a closely divided vote, sustained its basic constitutionality. The Court held that once the criminality attaching by law to the actions of the witness was removed by another law, the privilege ceased to operate. The dissenters suggested that the privilege was intended to accord to the witness an absolute right of silence designed to protect not only from criminality but also disgrace or infamy, something no legislative immunity could eliminate. The majority, relying on English history, rejected this proposition. Since Brown against Walker, the basic principle of the immunity grant has not been successfully challenged, and congressional enactments extending the principle, for example, to internal security and narcotics investigations has been sustained.

Today, however, Federal statutes grant immunity in only a limited number of classes of cases. Usually the witness must claim his privilege, be directed to testify, and then testify before he receives immunity. Normally, the immunity will extend to all matters substantially related to any matter revealed in a responsive answer. Nevertheless, some Federal statutes grant immunity automatically on testimony without a claim of privilege. The danger here of accidentally granting an individual an "immunity bath" is substantial. Other Federal statutes require specific approval of the Attorney General and a court order before the immunity attaches.

Requiring approval of the court serves to make visible the decision of the Attorney General. The danger of hidden immunization of friends is lessened. No Attorney General would dare run the political risk of openly flaunting his responsibility. Where it might be attempted, it could be expected that the court would have inherent power to refuse to be a party to it. It seems readily evident that these three safeguards—claim, authorization, approval—ought to be part of every immunity statute.

Under Federal law, the case-by-case limitation on the power to grant immunity has, however, constituted a major impediment to the effective investigation of organized crime. This led the President's Crime Commission to recommend the enactment of a general immunity statute in these terms:

> A general witness immunity statute should be enacted at (the) Federal level, providing immunity sufficiently broad to assure compulsion of testimony. Immunity should be granted only with the prior approval of the jurisdiction's chief prosecuting officer. Efforts to coordinate Federal, State, and local immunity grants should be made to prevent interference with existing investigations.

Up until the recent decisions of the Supreme Court in *Malloy* v. *Hogan*, 378 U.S. 52 (1964) the proper scope of a constitutionally valid immunity statute seemed to be immunity from not only use of testimony, but also prosecution for the crimes disclosed. This approach is apparently no longer required.

Prior to Malloy against Hogan, the privilege was thought to protect only against incrimination under the laws of the questioning sovereign. Now, however, the Federal privilege protects against both State and Federal incrimination. The Malloy decision could have spelled the end of valid State immunity statutes. Under the necessary and proper and supremacy clauses of the Constitution, the power of Congress to immunize against State incrimination has been upheld. No such power, however, is possible for State authorities. Nevertheless, the Supreme Court indicated in Murphy that State immunity statutes were still valid. The Court found that the constitutional privilege was adequately displaced if the witness was protected against direct or derivative use of his compelled testimony. Contrary to the Counselmen decision, the Court seemed to feel that this was possible through the use of the fruit of the poisonous tree process of derivative suppression, an analogy borrowed from fourth amendment illegally obtained evidence cases. If the underlying premise of Counselmen—that there is no way to protect the witness from the derivative use of his compelled testimony—has indeed been rejected, it seems clear that granting immunity from prosecution rather than use of testimony is no longer constitutionally compelled on any level, State or Federal. Giving immunity where it is not necessary is giving an unnecessary gratuity to a crime, a step no sane society ought ever to take. It thus now seems clear that it is not necessary to immunize against State prosecution to give a valid grant of Federal immunity. It might well have been thought at least potentially necessary prior to Malloy against Hogan, when it seemed only a matter of time until the privilege would be extended to cover State and Federal law. Now that we know, under Murphy, that it is not, comity between State and Federal authorities would seem to indicate that any new statute granting immunity be so circumscribed.

Following this approach, title II of S. 30 is a general immunity statute conditioned on approval by the Attorney General and specific court order. Immunity, however, is only provided against use of testimony, not prosecution, and there is no interference with the power of the States to prosecute.

RECALCITRANT WITNESSES

Ultimately, of course, none of these techniques is a panacea. When a witness' privilege against self-incrimination cannot be claimed, it does not necessarily follow that he will cooperate fully in the investigation. The stage, however, is set for moving the investigation forward through the use of the contempt power.

The contempt power has roots which run deep in Anglo-American legal his-

tory. The early English courts acted for the King. Contempt of court was contempt of King. By the 14th century, the principles upon which punishment was inflicted to secure obedience to the commands of King and court were firmly established. Indeed, as the principles developed, justice was both swift and severe. In 1631, for example, a convicted felon threw a brickbat at a Chief Justice; his right hand was cut off, and he was hanged immediately in the presence of the court. No one took lightly then the respect due to a court.

Under modern law, there is no question that courts have power to enforce compliance with their lawful orders. Federal laws expressly confirm this ancient power. When subpenaed before a grand jury, the witness must attend. The grand jury, however, has no power as such to hold a witness in contempt if he refuses to testify without just cause. To constitute contempt the refusal must come after the court has ordered the witness to answer specific questions. Two courses are open when a witness thus refuses to testify after a proper court order: Civil or criminal contempt.

Under civil contempt, the refusal is brought to the attention of the court, and the witness may be confined until he testifies; he is said to carry, as the Court noted in *In Re Nevill*, 117 Fed. 449, 461 (8th Cir. 1902), "the keys of the prison in his own pocket." Usually, where the contempt is clear, no bail is allowed when an appeal is taken. The confinement cannot extend beyond the life of the grand jury, although the sentence can be continued or reimposed if the witness adheres to his refusal to testify before a successor grand jury.

Under criminal contempt, after a hearing, the witness may be imprisoned, not to compel compliance with, but to vindicate the court's order. Federal law requires a jury trial if the sentence to be imposed will exceed 6 months. No other limit is set.

Title III of S. 30 seeks to codify the civil contempt aspect of present law as it applies to grand jury and court proceedings in the area of the refusal to give required testimony. Upon such a refusal, the court is explicitly authorized to order the summary confinement of the witness, and it is provided that no bail shall be given to the witness pending the appeal, since this would undermine the coercive effect of the court's order and result in undue delay.

FALSE STATEMENTS

A subpena can compel the attendance of a witness before a grand jury or at trial. An immunity grant can displace his privilege against self-incrimination. The threat of imprisonment for civil contempt can legitimately coerce him into testifying. But only the possibility of a perjury prosecution, or some related sanction, can provide any guarantee that his testimony will be truthful.

Today, however, the possibility of perjury prosecution is not likely, and if it materializes, the likelihood of a conviction is not high. Using the available Federal figures, we see that only 52.7 percent of the defendants in perjury cases were found guilty in the 10-year period from 1956 through 1965. In all other criminal cases, however, 78.7 percent of the defendants were found guilty. The difference is striking. Indeed, out of 307,227 defendants only 713 were even charged with perjury during this period. The threat of a perjury conviction today thus offers little hope as a guarantee of truthfulness in the evidence gathering process in organized crime investigations. Indeed, it seems apparent that virtually every organized crime investigation and prosecution is characterized by false testimony. Whatever the situation elsewhere in the administration of justice, here false testimony begins in the field with interviews, extends into the grand jury, and ultimately infects the trial itself. Convictions for perjury based on this false testimony, nevertheless, are the exception instead of the rule. It is, moreover, a failure directly attributable to the law itself. Consequently, it can be relatively easily remedied.

For centuries perjury was not the false testimony of a witness, but the false verdict of a jury. It was the incidental result of the process of attaint, whose main object was to set aside such verdicts. The process was so objectionable that it was little used. During the 14th century, however, witnesses began to be used in trials, and the function of the jury shifted from returning verdicts based on their own information to finding facts based on testimony presented to them. This change gave rise to the need for a sanction when false evidence was presented to the jury. A large gap was left in the law.

The first statutory reference to the crime of perjury appeared in 1540. The Star Chamber read this act as authorizing punishment for perjury. Although the crime was theoretically cognizable in the ordinary criminal courts, it was dealt with almost exclusive in the Star Chamber, where the proceedings were presided over by the Lord Chancellor and conducted according to the ecclesiastical law under which a quantitative notion obtained of the credit to be accorded to the testimony of a witness under oath. From this notion, the so-called two witness rule developed; that is, two witnesses to the same fact are necessary to establish it. Lord Chief Justice Hardwicke in *Rex v. Nunez*, Cas. T. Hard 265, 95 Eng. Rep. 171 (K.B. 1736), summed up the rule:

One man's oath is as good as another's.

When the Star Chamber was abolished in 1641, the principles it had established in perjury prosecutions were carried over into the common law.

Federal courts today still follow the two witness rule and its corollary, the direct evidence rule. Actually, the two witness rule is misnamed. Under modern law, it no longer requires the testimony of two witnesses; it merely provides that the uncorroborated oath of one witness is not enough to establish the falsity of the—testimony of the—accused, *Hammer v. United States*, 271 U.S. 620, 626 (1926). The corroborating evidence, moreover, need not independently establish the falsity of the testimony; it is enough if it furnishes a basis to overcome the oath of the accused and his presumption of innocence. The rule has no application to elements of perjury other than falsity.

Closely related to the direct evidence rule are the cases holding that contradictory statements under oath may not be the subject matter of a perjury prosecution without the additional proof of the falsity of one of the statements. Dissatisfaction with this result led to the adoption of remedial statutes in some States. At the Federal level, however, the rule today remains viable.

It seems clear that the two witness and direct evidence rules ought to be abolished, at least in some areas. This was the conclusion of the President's Crime Commission. Suggestions that the existing rules are necessary "to protect honest witnesses from hasty and spiteful retaliation in the form of unfounded perjury prosections," *Weiler v. United States*, 323 U.S. 606, 609 (1945), are unconvincing. Note first that the adopted remedy is broader than the alleged abuse. The existing rules apply across the board. They are not limited to situations where it might be reasonably supposed retaliation was involved. Further, it is obvious that the remedy is hardly adequate even as adopted. It can easily be circumvented merely by acquiring a spiteful accomplice. Thus, it is a bad rule even if you grant the possibility of the evil. The law, moreover, ought to encourage not testimony, but truthful testimony. The existing rules run counter to this goal; perjury, not truth, is protected. More importantly, the rules constitute an unwarranted slander on the power of discernment of prosecutors, grand juries, trial judges and the petit jury. The rules seem to assume that somehow the spiteful prosecution can be brought and a conviction obtained without the support of anyone other than the complainant.

The existing rules are, in short, an unwarranted obstacle to securing legitimate perjury convictions. There is ample protection against spiteful retaliation in the traditional safeguards applicable to every criminal case. There is no good reason why perjury—at least before grand juries and courts—should not be treated like any other crime. Sound prosecutive discretion and proof beyond a reasonable doubt of a judge and jury constitute ample protection against the unwarranted charge and conviction of perjury.

On the Federal level, a statute dealing with contradictory oaths should also be adopted. There is much merit in the observation that consistency alone should not be a legislative goal. There is, however, a legitimate goal in allowing the prosecution to plead and prove its case in the alternative, showing the falsity by inherent logical inconsistency. Those who give false testimony ought not to be able to escape by placing the prosecution in a logic dilemma. It should be sufficient for conviction if the evidence shows either statement is false without specifying the false statement. There is no good reason why such proof should not be sufficient.

Title IV of S. 30 thus creates a new Federal crime dealing with false statements before grand juries or in trial proceedings, and since it is a new offense. the common law rules of evidence applicable in perjury prosecutions generally will not be applicable to it. It also eliminates the applicability to the new offense of the contradictory oath rule by estab-

lishing a special presumption of falsity where two materially inconsistent statements are made.

WITNESS FACILITIES

Each step in the evidence gathering process I have so far described moves toward the production of live testimony, for to bring criminal sanctions into play, it is necessary to develop legally admissible evidence. Criminal sanctions do not enforce themselves. Yet it must now be obvious to all concerned that witnesses in organized crime cases simply do not volunteer to testify or to turn over relevant books and records. Attorney General Nicholas deB. Katzenbach testified in 1965 that, even after the cases had been developed, it was necessary to forego prosecution hundreds of times because key witnesses would not testify for fear of being murdered. Indeed, the Attorney General indicated that such fear was not unjustified; he testified that the Department lost more than 25 informants in the period of time between 1961 and 1965.

In this connection the President's Crime Commission, tragically concluded:

No jurisdiction has made adequate provision for protecting witnesses in organized crime cases from reprisal. In a few instances where guards are provided, resources require their withdrawal shortly after the particular trial terminates. On a case-to-case basis, governments have helped witnesses find jobs in other sections of the country or have even helped them to emigrate. The difficulty of obtaining witnesses because of the fear of reprisal could be countered somewhat if governments had established systems for protecting cooperative witnesses.

The Federal Government should establish residential facilities for the protection of witnesses desiring such assistance during the pendency of organized crime litigation.

After trial, the witness should be permitted to remain at the facility so long as he needs to be protected.

It was to meet this responsibility that titles V and VI of S. 30 were drafted.

Title VI authorizes the Attorney General to rent, purchase or construct such facilities as are necessary to provide secure housing for Government witnesses in organized crime investigations and prosecutions on the State or Federal level. This provision should not only help meet our responsibilities to citizens, but also aid States in meeting their responsibilities, since providing protection is such an expensive proposition.

Title V, on the other hand, authorizes the taking of pretrial depositions. I thus now turn to a consideration of the legal background of depositions in criminal cases.

DEPOSITIONS

With the development of the witness in the common law trial in the 1600's, there developed a series of rules, each seeking to establish the truth of his testimony. The witness must, as Chief Justice Vaughn put it in *Bushel's Trial* (1670) 6 How. St. Tr. 999, 1003, speak to "what hath fallen under his senses." The law then rightly wanted no part of second-hand information. Closely allied to this principle was the rule that demanded confrontation—cross examination. Too many knew of the injustice done in *Raleigh's Trial* (1603), 2 How. St. Tr. 16, when Chief Justice Popham refused to produce Lord Cobham, the accuser. No precise date or ruling stands out as decisive, but the rule seems to have become fixed between 1675 and 1690.

This rule against hearsay, however, was not without exceptions. Sworn depositions could be used, as Raleigh himself conceded, "where the accuser is not to be had conveniently" (1603) 2 How. St. Tr. 16, 18. Nevertheless, with firm establishment of the exclusion of extra judicial unsworn statement, the anomaly of the sworn statement stood out, and in *Fenwick's Trial* (1696), 13 How. St. Tr. 537, 618, the principle if not the rule carried the day, for it soon became "a fundamental rule (of) law that no evidence shall be given against a man, but in the presence of the prisoner, because he may cross-examine him who gives such evidence."

Today, of course, this rule is embodied in our sixth amendment, which guarantees "the accused the right to be confronted with the witnesses against him." Unfortunately, however, an early Virginia case confused the historic right of confrontation with a demand that all testimony in criminal cases be face to face, viva voce. This led to a constitutional doubt that showed itself in the general omission in State deposition statutes of permission to the prosecution to take depositions, subject to confrontation cross-examination, in criminal cases, even though the courts themselves, including the Supreme Court in *Mattox* v. *United States*, 156 U.S. 237 (1895), made it clear that on principle such provisions were unobjectionable.

Title V of S. 30 is thus but a natural complement of title VI. Title VI authorizes the physical protection of witnesses before, during, and after trial. Title V authorizes the prosecution to take depositions in criminal cases whenever it is in the interest of justice. Accordingly, once the witness' testimony has been secured, in most cases, the motive to harm the witness is at an end. The evidentiary damage has been done. Under these circumstances, it may be, therefore, possible to release the witness from protective custody and allow him to return to a normal life, even though the trial has not yet begun. Given the delay associated with criminal prosecutions today, this will be no small benefit to the witness and his family.

Title V scrupulously provides for the defendant's rights. The deposition can only be taken after the issues between the Government and the accused are joined by the return of an indictment or the filing of an information. Reasonable notice must be given to the accused, and he must be accorded the opportunity, with counsel, to confront and cross-examine the witness. Finally, provision is made in the present form of the statute for use of the deposition at trial subject to the present rules of evidence.

COCONSPIRATOR DECLARATION

In the area of the investigation and prosecution of organized crime, the existence and scope of covert conspiratorial activity is usually shown either by circumstantial evidence, the testimony of a coconspirator who has turned state's evidence, or the evidence of the out of court declarations or acts of a coconspirator or of the defendant himself. Termed "firmly established" by the Supreme Court in *Krulewitch* v. *United States*, 336 U.S. 440, 443 (1949), the coconspirator declaration rule, an exception to the usual exclusion of extrajudicial statements, is thus central in any attack on the menace of organized crime.

While the hearsay rule developed in the last half of the 1060's, it was but a short period of time following that this exception developed in the law. The first reliable instance occurred in the *Trial of Lord Gordon*, (1781) 21 How. St. Tr. 485, where the cries of the mob in the infamous Gordon Riots of 1780 were admitted against the defendants. Building on this decision as a precedent, English courts in the treason trials of the fellow travelers of the French Revolution soon matured the rule if not its rationale in England, while it was accepted in 1827 into American jurisprudence and rested on agency principles by no less of an authority than Mr. Justice Story in *United States* v. *Gooding*, 25 U.S. (12 Wheat) 460 (1827).

Today the rule is usually framed in these terms: Any declaration by one coconspirator, voiced in furtherance of the conspiracy and during its pendency, is admissible against each coconspirator, subject to the laying of an independent foundation of the existence of the conspiracy and the accused's participation in it.

Title VII of S. 30 is a codification in all but one respect of the existing law. The rule presently requires the court to find, not only participation and pendency, but also "furtherance," a requirement of somewhat ill-defined meaning, apparently an outgrowth of the early agency rationale. Sometimes, too, "furtherance" has been stated in res gestae language. Other courts, however, while ostensibly retaining the requirement have applied it so broadly that anything relating to the conspiracy is found to be in furtherance of its objectives.

Building on the recommendations of the Model Code of Evidence, Title VII shifts the foundation on which the coconspirator declaration exception to the hearsay rule rests from agency to trustworthiness. All aspects of the present rule are thus retained save that of "furtherance." With Judge Learned Hand in *Von Riper* v. *United States*, 13 F. 2d 961, 967 (2d Cir 1926), the proposed statute would recognize frankly that such "declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime." Vicarious responsibility is but one of the risks an individual must run when he associates for the commission of a crime. Nevertheless, the risk must be defined in terms of the underlying purpose of the trial itself rather than in terms of the principles of agency. Only those vicarious admissions where there are in existence facts and circumstances from which trustworthiness may be inferred may be vicariously admitted. It may well be expected that this rule will enlarge the category of admissible evidence, but surely this cannot be objected to where the new foundation of the rule guarantees that all such evidence admitted will

lead to the establishment of the truth, however hard that truth may be in the individual case. It is not too great a risk to impose on those who associate to subvert our society.

SPECIAL OFFENDER SENTENCING

Mr. President, the last aspect of S. 30 deals with the special offender sentencing.

There is no doubt that whatever view one holds about the criminal law, its importance in our society cannot be questioned. Here each places his ultimate reliance for security. Nevertheless, we must recognize, too, that the penal law contains the strongest force known to our society, a force which in the past has too often tended toward brutality. Exercised well, it accords to each security. Exercised ill, it accords to none security. How that power should be exercised is thus a question of capital importance.

Traditionally, two tendencies have manifested themselves in the penal law in reaction from the brutality of another day, perhaps best illustrated by the philosophy of Draco, who, it should be recalled, once lamented that he knew of no penalty harsher than death, for he felt the smallest crime merited it.

The first tendency, going back in modern times to Beccaria's historic 1764 essay, "On Crimes and Punishments," seeks to fit the punishment to the crime. This tendency was, of course, rooted in a desire to limit the fearful application of the death penalty, at one time the punishment for numerous, some very petty, offenses. Its overall effect has been to narrow not only the application of the death penalty, but also to eliminate long prison terms.

The second, stemming from contemporary theories of criminology, seeks to fit the punishment to the offender. This tendency, of course, is rooted in a desire to rehabilitate. Those who generally espouse this view, however, have tended to the conclusion that crime can best be dealt with only by broad changes in our society and through intensive work with juveniles. Unfortunately, this view has shown, as an American Bar Association study concluded, "little realistic concern about the organized and well-habituated criminals who incessantly exploit the community."

The penal codes of most jurisdictions, however, reflect little of either approach. Indeed, save for attempts to abolish the death penalty, little attention at all has been given to the penalty structure of most penal codes since the turn of the century. Penalties vary from one offense to the next without seeming rhyme or reason. Inconsistencies abound throughout. Other than the "sexual psychopath" laws, the only general movement discernible has been the growth of recidivist or habitual offender statutes, a growth which occurred primarily in response to the emergence of mob activities following the First World War and the prohibition era, and which was premised on the hope that severer sentences on criminals that repeat would keep them out of circulation and protect the public.

It is less than clear, however, that these laws, in their present form, have been successful in achieving their objective. Often they have been too strictly construed by the courts. Both judges and prosecutor considering them too rigid and harsh, have refused to employ them, despite their seeming mandatory character. Courts especially have resisted attempts to restrict their sentencing discretion. Often, finally, the prosecutors have merely used the laws as tools to obtain guilty pleas in return for promises to reduce the charges. Ironically, of course, this has meant in practice that laws designed to get tough with the recidivist have served only to secure him lenient treatment.

This experience has led reform-minded groups to seek other means to achieve the same goals. Apart from the recommendations of a special committee of the American Bar Association and the President's Crime Commission, the two most important proposals have come from the American Law Institute in its Model Penal Code and the Advisory Council of Judges of the National Council on Crime and Delinquency in its Model Sentencing Act. Each seeks to respond to the special offender with a special term, yet each sets out differing conditions for its position.

The Model Penal Code states three prerequisites for its extended term. First the offender must be over 21. Second, the court must conclude that the protection of the public calls for an extended term. Finally, the code, in the alternative, calls for a finding that the circumstances of the offense show that the offender has knowingly devoted himself to criminal activity as a major source of livelihood or has substantial income or resources not explained to be from a legal activity.

The Model Sentencing Act begins with the second requirement on dangerousness of the code. It then requires that a felony be committed as a part of a continuing criminal activity in concert with at least one other person.

Both proposals provide elaborate procedures for imposing these special terms.

Both the Special Committee on the American Bar Association and the President's Crime Commission reached similar conclusions in the area of the special term for dangerous offenders, although neither attempted to offer specific statutory language.

The President's Crime Commission expressed its conclusion in these words:

> Federal and State legislation should be enacted to provide for extended prison terms where the evidence, presentence report, or sentence hearing shows that a felony was committed as part of a continuing illegal business in which the convicted offender occupied a supervisory or other management position.

It also followed this recommendation with this suggestion:

> There must be some kind of supervision over those trial judges who, because of corruption, political considerations, or lack of knowledge, tend to mete out light sentences in cases involving organized crime management personnel. Consideration should therefore be given to allowing the prosecution the right of appeal regarding sentences of persons in management positions in an organized crime activity or group. Constitutional requirements for such an appellate procedure must first be carefully explored.

Mr. President, S. 30 was drafted with the history of the habitual offender legislation and the proposals of these distinguished bodies in mind. It is our hope now to explore the constitutionality, wisdom, and feasibility of these various suggestions in our forthcoming hearings, for our opinion on the merits of these proposals is at this time reserved.

A number of serious questions need to be considered in greater detail than they have as yet. We are concerned, for example, that these proposals meet the constitutional test of definiteness found in such cases as *Minnesota* v. *Probate Court,* 309 U.S. 270 (1940). We are concerned that the concept of the special term will withstand attack as a reasonable classification in light of such cases as *Oyler* v. *Boles,* 368 U.S. 448 (1962), and that it will not be considered an unpermissible attempt to punish status under *Robinson* v. *California,* 379 U.S. 660 (1962). We are concerned, too, that the procedure employed in the imposition of the term meets the test of due process under *Williams* v. *New York,* 337 U.S. 241 (1949) and *Specht* v. *Patterson,* 386 U.S. 605 (1967). And, finally, we are concerned that affording the prosecution the right to appeal, as the President's Crime Commission suggested, might not run afoul of the concept of double jeopardy in *Kepner* v. *United States,* 195 U.S. 100 (1904).

These are, of course, as yet unresolved questions. But I am hopeful that through a full and fair hearing process that we will be able to work out a fair and effective sentencing structure that will meet the special challenge of organized crime.

CONCLUSION

Mr. President, I do not suggest that S. 30 is the only proposal dealing with organized crime that merits consideration. Others will surely be forthcoming from my colleagues and the new administration. But S. 30 is a beginning—a good beginning.

The President's Crime Commission concluded its chapter on organized crime with these words:

> The extraordinary thing about organized crime is that America has tolerated it for so long.

I suggest, Mr. President, that the extraordinary is fast becoming tragic. It is time to move forward now.

Mr. President, I hope I am justified in the encouragement I find from various articles in the press with respect to the attitude of the present administration in relation to crime, and particularly organized crime and methods to combat it.

I read in yesterday's Evening Star an article, written by Miriam Ottenberg, entitled "Top Officials Gear Up Machinery."

Evidently, after talking with the top officials in the administration, and particularly those in the Department of Justice, Mrs. Ottenberg wrote this article.

If I understand correctly, the administration is deeply concerned with the problem, as much, no doubt, as I am. It appears from her article that the administration is anxious that appropriate legislation in the field be enacted into law.

I am encouraged, therefore, to believe that the major provisions of S. 30 will have the support of the Justice Department, although it has made no commitment to me to that effect. I believe, too, that the administration will submit with-

in the next few weeks some additional proposed legislation that it would like to see enacted.

It shall be my purpose as chairman of the Judiciary Subcommittee on Criminal Law and Procedures to hold extensive hearings on S. 30 and such other important measures dealing with crime and criminal procedure that are introduced during this session of Congress.

I assure the administration that any measures it sponsors or any recommendations that it may make in this field will receive the committee's earnest attention and consideration. For I sincerely hope that a new day is dawning in the field of law enforcement and that there will be cooperative and concerted effort on the part of the administration and Congress to enact legislation and to take appropriate and effective action wherever necessary to combat organized crime, this great and most destructive menace from within.

It is my hope, too, that our course, and particularly the Supreme Court of the United States, will begin to think more in terms of the right of a society to be free and to be protected from the assassin, the robber, the murderer, and the rapist than the Court has accorded to society in the past by some of its recent decisions.

If all rights are possessed by the criminal and society has none and, if every time a case comes before the Supreme Court there is a searching effort made to find some technicality with which to turn an accused loose, I am then persuaded that whatever Congress may do and whatever the law-enforcement agencies or the executive branch of the Government may do, our efforts will be thwarted and the rate of crime in our country will continue to soar, just as it has during the past calendar year, when it was 17 percent higher than it was the year before.

Mr. President, our Nation, as a free society and as a civilized society, cannot long withstand such a devastating assault upon its structure. The time is here to act.

EXHIBIT 1

PRINCIPAL FAMILIES OF THE COSA NOSTRA

THE COMMISSION

Bruno, Angelo, Philadelphia, Pa.
Colombo, Joseph, New York, N.Y.
Gambino, Carlo, New York, N.Y.
Genovese, Vito (vacant), New York, N.Y.
Giancana, Samuel, Chicago, Ill.
Luchese, Thomas (vacant), New York, N.Y.
Maggaddino, Stefano, Buffalo, N.Y.
Sciacca, Paul, New York, N.Y.
Zerilli, Joseph, Detroit, Mich.

PRINCIPAL FAMILIES

Balistriari, Frank, Milwaukee, Wis.
Cerrito, Joseph, San Jose, Calif.
Civello, Joseph, Dallas, Tex.
Civella, Nicholas, Kansas City, Mo.
Colletti, James, Pueblo, Colo.
DeCavalcante, Samuel, Newark, N.J.
Lanza, James, San Francisco, Calif.
LaRocca, Sebastian John, Pittsburgh, Pa.
Licata, Nicolo, Los Angeles, Calif.
Marcello, Carlos, New Orleans, La.
Patriarca, Raymond, Providence, R.I.
Scalish, John, Cleveland, Ohio.
Trafficante, Santo, Tampa, Fla.

EXHIBIT 2

BASIC STATISTICS, FEDERAL EFFORT, ORGANIZED CRIME AND RACKETEERING, 1960-68

CHART I.—ORGANIZED CRIME SECTION

	1960	1961	1962	1963	1964	1965	1966	1967	1968
Number of attorneys	17	37	52	60	63	54	48	54	65
Days in court	61	116	329	1,081	1,364	813	606	612	1,123
Days in field	660	2,434	5,076	6,177	6,699	4,432	3,480	4,494	6,886
Days in grand jury	100	518	894	1,353	677	605	373	419	403
Hours in legislation	NA	NA	NA	NA	1,507	1,292	1,086	1,310	1,894
Appeal briefs prepared	3	9	19	24	29	28	25	26	35
District briefs prepared	20	14	90	179	29	44	40	34	45
Appeal briefs reviewed	89	31	100	169	115	161	157	157	262
District briefs reviewed	3	17	52	160	13	14	19	26	21
Appeal participation	NA	NA	NA	NA	23	22	12	14	15

CHART II.—ORGANIZED CRIME SECTION

	1960	1961	1962	1963	1964	1965	1966	1967	1968
Cases:									
Pending start	33	31	41	103	189	263	179	219	253
Received	493	403	526	755	968	1,023	911	985	1,206
Terminated	495	393	464	669	894	1,107	871	951	1,214
Pending end	31	41	103	189	263	179	219	253	245
Matters:									
Pending start	NA	NA	NA	NA	NA	669	545	381	534
Received	NA	NA	NA	NA	1,324	1,089	943	1,057	1,006
Terminated	NA	NA	NA	NA	655	1,213	1,107	904	1,073
Pending end	NA	NA	NA	NA	669	545	381	534	467

CHART III.—ORGANIZED CRIME SECTION INDICTMENTS

	1960	1961	1962	1963	1964	1965	1966	1967	1968
Number of indictments	NA	121	350	615	666	872	1,198	1,107	1,166
Number of defendants convicted	NA	73	138	288	593	410	477	400	520

CHART IV.—RACKETEERING STATUTE INDICTMENTS[1] ORGANIZED CRIME SECTION

	1960	1961	1962	1963	1964	1965	1966	1967	1968
Indictments			7	40	59	92	70	89	125
Defendants			25	156	138	170	179	256	331
Convictions			5	22	26	48	44	53	82
Defendants convicted			18	62	61	82	100	96	152

[1] Statutes enacted September 1961 and afterward.

CHART V.—MAN-DAYS INTERNAL REVENUE SERVICE PARTICIPATION, ORGANIZED CRIME DRIVE

	Fiscal year								
	1960	1961	1962	1963	1964	1965	1966	1967	1968
Intelligence[1]	8,836	11,528	82,852	96,182	87,621	86,115	74,938	61,637	42,120
Alcohol, tobacco and firearms	NA	NA	13,075	8,609	6,533	8,360	7,480	11,220	15,584
Audit	NA	NA	37,232	38,952	36,642	34,850	24,517	19,445	16,625
Collection	NA	NA	1,894	1,305	2,732	2,058	381	257	745
Appellate	NA	NA	180	6	NA	NA	NA	NA	NA
Total	8,836	11,528	135,183.	145,054	133,528	120,206	107,336	92,559	75,074.

[1] Does not include supervisory time.

CHART VI.—TAX DIVISION INDICTMENTS

	1960	1961	1962	1963	1964	1965	1966	1967	1968
Nonracketeer		462	552	597	607	625	632	653	664
Racketeer convictions	NA	23	23	23	23	27	25	21	21
Cases pending end	NA	NA	NA	129	122	101	119	183	180
Ratio (percent)	NA	NA	NA	NA	NA	11	11	17	15

CHART VII.—COSA NOSTRA INDICTMENTS JANUARY 1961 TO DECEMBER 1969 (ESTIMATED MEMBERSHIP, 5,000)

Indictments	290
Convictions	147
Acquittals	13
Dismissals	6
Reversals	0

CHART VIII.—FEDERAL RESOURCES 1967

[Approximation]

	Man-years	Amount
Treasury:		
T.R.S.	451	6,600
Bureau of Narcotics	205	3,900
Total	656	10,500
Justice:		
FBI	NA	8,609
Department	NA	1,679
U.S. attorneys	NA	1,300
	700	11,579
Post Office	12	179
SEC	10	97
Total	1,378	22,355

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the Ottenberg article be printed in the RECORD.

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

TOP OFFICIALS GEAR UP MACHINERY: NIXON AIDES AIM THREE BIG WEAPONS AT ORGANIZED CRIME

(By Miriam Ottenberg)

The Nixon administration will use three new weapons to carry out its promised war on organized crime.

President Nixon's own crime fighting program will be announced shortly, but, in the meantime, top officials in his administration are on the move:

1. Secretary of the Treasury David Kennedy said the "full resources of the Treasury Department—including each of its investigative and enforcement arms—will be used as needed in pressing the war on organized crime."

In effect, aides indicated, Kennedy plans to go further than some of his predecessors in using the Treasury's taxing authority as a crime fighting tool.

2. Atty. Gen. John N. Mitchell has started approving use of the electronic surveillance authorized by Congress which his predecessor Ramsey Clark, refused to use.

3. Asst. Atty. Gen. Will R. Wilson, in charge of the Justice Department's criminal division, intends to expand the "strike forces"—the multiagency investigative approach to organized crime—and predicts that the FBI will be "very active in the program."

Since the strike forces made up of Justice Department lawyers and senior federal investigators started moving into target cities on an experimental basis in 1967, the FBI has supplied most of the intelligence data and has investigated matters referred to it by the strike forces, but FBI agents have not joined the strike forces themselves. The new FBI role—reportedly one of close liaison with the strike forces—could be an important plus.

Beyond these moves, Nixon's crime message is expected to propose major legislation to fight crime and to disclose some innovative measures not requiring congressional action.

In drawing up its plans against organized crime, the administration has to face a criminal intelligence gap that may take years to fill.

Investigators say that when all electronic surveillance equipment was pulled out by President Johnson in June 1965, the information blackout became so complete that investigative agencies aren't sure today whether organized crime is increasing or decreasing, what types of operations are being stressed, or who's minding the organized crime store.

Investigators know federal assaults have shaken the Cosa Nostra high command, but they're not sure who has succeeded the dead, departed or imprisoned bosses.

Wiretapping and electronic eavesdropping is again possible, under congressional authority, but the authority is circumscribed, and some agencies don't see how they can use it. Nevertheless, Justice Department lawyers are determined to make the wiretap authority effective.

Another problem is a Supreme Court ruling that gambling tax laws are not enforceable because they violated the privilege against self-incrimination. Gamblers are still supposed to purchase gambling tax stamps, but they can't be prosecuted if they don't.

While officials don't like to lose the millions that came from the excise laws, the organized crime fighters regret the loss of 200 Internal Revenue Service agents who were assigned to enforce them.

The IRS agents made raids on the basis of evidence that a bookie establishment was operating without the required gambling tax stamp. Books and records seized enabled agents to compute how much excise tax the bookie should have been paying.

The seized books also provided leads to launch income tax investigations of major racketeers and heavy bettors. Some of the biggest racketeers went to jail as a result of those investigations—and so did some corrupt police and sheriffs whose protection payoffs were noted on the bookie records.

Legislation to ensure the constitutional rights of gambler-taxpayers while reinstating the gambling tax laws has been introduced and Asst. Atty. Gen. Wilson says the administration wants it.

Justice Department sources say both Nixon and Mitchell are concerned about other problem—organized crime's increasing infiltration of legitimate business.

The president, either in his first crime message or soon after it, is expected to include recommendations to cope with organized crime's efforts to "launder" its money by such infiltration.

A YOUNGER CROWD

U.S. Atty. Robert Morgenthau of the Southern District of New York, who has convicted more big-time members of organized crime than the other U.S. attorneys put together, says crime figures are going into business in two ways. Some of the old-timers are still operating in the old standbys: meat wholesaling, juke box, vending machine, garbage, linen supply and similar lines.

But the younger, sharper crowd, according to Morgenthau, is pouring millions into real estate, hotels, motels, gambling casinos and the stock market.

The White House is showing its concern about the possible attempt of a Bahamas gambling conglomerate to buy up 9.7 percent of the stock of Pan American World Airways, a $90 million venture on today's market.

Rep. Harley O. Staggers, D-W. Va., said the White House asked him to introduce a bill to prevent or delay such a sale and Sen. Norris Cotton, R-N.H., introduced legislation to give the Civil Aeronautics Board authority to rule out the purchase of an airline by another firm if it determined the sale was not in the public interest.

The conglomerate is Resorts International, formed from the old Mary Carter Paint Co. It owns or operates three plush Bahamas gambling casinos as well as hotels, land and other properties in the Caribbean.

HARTFORD THWARTED

Investigators noted two interesting sidelights of this business. First, Huntington Hartford, the wealthy developer of Nassau's Paradise Island, failed to get government permission to operate a gambling casino there. Yet the newcomer, Resorts International, made it.

Eddie Cellini, the Paradise Island casino manager, is the brother of Dino Cellini, who has been mobster Meyer Lansky's lieutenant in many of his gambling enterprises. Dino operates the Freeport casino elsewhere in the Bahamas.

The New York Stock Exchange itself is beginning to suspect that organized crime is moving heavily into the "hot stocks" business. Robert W. Haack, exchange president, says securities with a total value of about $37 million have been reported stolen or lost in each of the last two years compared with a recorded $9.1 million in 1966. Haack said the sharp increase over the past two years "could be viewed as evidence of organized crime" although it is not conclusive.

The Securities and Exchange Commission is giving "urgent" attention to any indication that a racket figure is getting into stock manipulation. When there's increased market activity, as there is today, organized crime figures move in with their large sums of money. They operate clandestinely and their names never appear on any public document.

SOURCES OF INCOME

The money for organized crime's infiltration into legitimate business comes out of a billion-dollar treasury. Here's a capsule view of how that money is being made today:

Gambling.—Estimates of the annual intake by organized crime from gambling range from $7 billion to $50 billion annually. The profit is as high as one-third of the gross revenue. Syndicate gambling is the greatest source of organized crime's fortune, and a principal target of the government's crime fighters because it makes the poor poorer while the mobsters get richer.

Narcotics.—The gross heroin trade is conservatively estimated at $350 million annually with organized crime controlling the international movement of the drug from Turkish opium fields to Corsican-run laboratories in southern France to American docks.

There is considerable indication that the Cosa Nostra high command wants organized crime to get out of the narcotics business because of the heavy mandatory penalties, but enough mavericks are still risking the trade because of the enormous profits.

Organized crime is also involved in the distribution end of the cocaine traffic but that's mostly controlled by Spanish elements.

Not mob-controlled but flourishing is the marijuana traffic, mostly from Mexico.

Increasing drug use by young people would be enough to spark law enforcement into an

extra effort to reach the traffickers, but the administration is also concerned over the vast amount of street crime that can be laid at the door of narcotics. Addicts rob to get the money to buy drugs and they sometimes murder when they're hopped up.

The fight against the drug traffic is being carried on by a brand-new bureau, combining the Treasury Department's Federal Bureau of Narcotics with former Food and Drug agents of HEW's Bureau of Drug Abuse Control.

The Justice Department's Bureau of Narcotics and Dangerous Drugs, which came out of the merger, has to meld agents with different procedures, different thinking and different talents but its organized crime unit is now deeply involved in the current "strike forces."

Loan sharking.—No one is certain just how big this business is. Agents just know it is growing. Estimates range upwards from an annual take of $350 million to the billion-dollar range. Profit margins are even higher than in gambling and personal disasters are often greater.

Terrorized victims who can't meet the 5 percent per week interest rate either turn to street crime before the "enforcer" comes to collect or become fingermen for the mob. Like gambling, loan sharking is a mob method of taking over legitimate business from debtor-owners.

Labor union take-over.—Mobsters have used threats to infiltrate legitimate unions or to prevent unionizing. With going unions, their goal is to manipulate welfare and pension funds and insurance contracts.

They have moved into trucking, waterfront and construction trades. Once in, the mob plies its usual trade—loan sharking, gambling and pilferage of anything that's not nailed down. Because of the increasing infiltration of unions, Labor Department investigators are now joining the "strike forces."

White collar crime.—In addition to the theft of securities plaguing the stock exchanges, organized crime is giving increased attention to various forms of "paper" that can be forged or counterfeited.

The Secret Service reports that government bonds which used to be thrown away or left untouched in burglaries now are being passed with forged signatures.

The Postal Inspection Service is also working closely with the strike forces because of organized crime's invasion of the credit card business, the post offices and the world of merchandising.

Post Office burglaries are at a record high and postage stamps, which used to be ignored, have become a favorite target for thieves. Generally, they keep a third of the take, the fence keeps a third and organized crime's "businessmen" get stamps at reduced rates.

Cosa Nostra fences play the key role in marketing thousands of stolen and counterfeited credit cards.

What worries federal crime fighters most is organized crime's use of underworld methods in legitimate business—the unfair competition of not having to pay union wages, underselling until the legitimate businessman is driven out and then monopolistic overpricing.

This is one area of organized crime—unlike gambling or narcotics—where the public is no willing victim.

Organized crime's tentacles are believed to be reaching further all the time, but the bosses doing the reaching are changing.

Here's how the ruling "commission" reportedly looks today:

Thomas Luchese, commission member and boss of a New York "family" died in July 1967.

Naming a successor has been complicated by the fact that the four logical contenders have been too involved in FBI cases.

BEGINS PRISON TERM

In December 1967, John Dioguardi was sentenced to five years in a planned bankruptcy scheme. The same month, Vincent Rao received a preliminary sentence of five years for perjury, which was made final last Tuesday. James Plumeri has been indicted by a federal grand jury in connection with kickbacks made in attempting to secure a building loan. And the fourth heir apparent, Antonio (Tony Ducks) Corallo, was among those convicted in the bribery of New York's water commissioner, James L. Marcus.

Raymond Patriarca of Providence, R.I., the New England boss, went to prison Wednesday, sentenced to five years and a $10,000 fine in a racketeering case involving conspiracy to murder. No successor has taken over yet.

Carlos Marcello, the New Orleans boss, is still free on appeal bond following his August 1968, conviction on charges of assaulting a federal officer.

Sam Giancana, until recently the undisputed boss of Chicago's Cosa Nostra, spent a year in federal custody for contempt and then left the country to avoid further investigation.

Giancana's successor, Sam Battaglia, was sentenced to 15 years in prison and a $10,000 fine on a Hobbs Act extortion case uncovered by the Internal Revenue Service during an income tax investigation.

Another leader, Felix (Milwaukee Phil) Alderisio, was also convicted of extortion.

Things have gotten so out-of-kilter in Chicago that two elderly former "bosses"—Paul (The Waiter) Ricca and Anthony Accardo—reportedly have had to come out of semi-retirement to act as caretaker of the Chicago "family."

FBI SEIZES LEADER

Steve Magaddino of Buffalo, a commission member, was arrested by the FBI along with eight of his associates last November in connection with gambling operations. At the time, over $500,000 in hoodlum funds were seized. Magaddino is currently awaiting trial.

Joe Bonanno reportedly has been deposed as head of a New York "family" and there's considerable speculation that Paul Sciacca has become the boss.

According to the same speculation, Gaspare Di Gregorio, Steve Magaddino's brother-in-law, who originally succeeded Bonanno, couldn't stand the pressure, became ill and had to be replaced by Sciacca.

Joseph Colombo reportedly has survived as boss of the Cosa Nostra family long headed by the late Joseph Profaci. Colombo was said to have taken over after the insurrection led by the Gallo crowd.

And what of a successor for the man at the top?

TWO MENTIONED

Speculation leans toward either Gerardo Catena of Newark, N.J., or Thomas Eboli (Tommy Ryan) to succeed Vito Genovese, who died in prison Feb. 14. Eboli appears to be favored principally because he's several years younger than the 67-year-old Catena. Besides, informants hint that Catena doesn't want the job.

Still in business as commission members, according to some sources, are Angelo Bruno in Philadelphia, Carlo Gambino in New York and Joseph Zerilli.

Although organized crime shows no sign of declining despite the blows struck against the top leadership, there seems to be some optimism about making substantial inroads.

This optimism is found at the top, with Asst. Atty. Gen. Wilson, and all the way down to the federal agents themselves.

Said Wilson: "You can put these people on the ropes, even when a town has been corrupted. All you need is one honest job. And time, manpower, luck, the breaks and lots of work."

REALLY MEANS BUSINESS

An agent commented: "These people (the new officials) really mean business. It's in the atmosphere."

Several former prosecutors agreed on this summary: "Organized crime has always been a definable problem. Using all the techniques now at their disposal, the prosecutors can wipe it out. It's not like crime on the streets. You don't have to worry about sociological causes. You just go out and catch them and you don't have to concern yourself with rehabilitation—not with these people."

One of the men now responsible for fighting organized crime agrees, with reservations "The cases are there to be made if we have the investigators to make them, the prosecutors to prosecute and the judges to try them."

There's a certain implied agreement in this concluding sentence of the 1967 President's Commission Task Force Report on Organized Crime:

"The extraordinary thing about organized crime is that America has tolerated it for so long."

Mr. HRUSKA. Mr. President, I earlier joined with the distinguished senior Senator from Arkansas (Mr. MCCLELLAN) in sponsoring the omnibus organized crime control bill and I am delighted once again to associate myself with his remarks concerning the bill and the very serious problem with which it deals. The Senator's description of the nature and scope of the organized crime menace in America today is detailed and informed. His explanation of the several provisions of the omnibus bill—and, more important, of the need for each of them—is scholarly and precise. I wish to add my commendation and wholehearted support of the Senator's objectives.

In addition, the chairman of the Criminal Laws Subcommittee and I are in agreement that the omnibus bill is just a beginning if the 91st Congress is to enact a really effective legislative program in the area of organized crime. Hopefully, other measures will be introduced here that will contribute significantly to that program. As the ranking minority member of the Criminal Laws Subcommittee, I look forward to participating in the pending hearings on the omnibus bill and on all other worthwhile organized crime measures that come before us.

In that regard, Mr. President, I announce my intention of introducing another package of organized crime bills in advance of the hearings which will contain measures similar to S. 2048 and S. 2049 of the 90th Congress. Just as I am not unalterably committed to the precise wording of any one or all of the provisions of the omnibus bill, neither am I committed to all aspects of the bills I am preparing. I have great confidence in the committee process. With all these proposals before the subcommittee, a sound program directed against organized crime will evolve.

There is one other point I would like to make. The omnibus organized crime bill contains a provision authorizing appellate review of sentences imposed under that act. I heartily approve of appellate review in this area. As the sponsor of S. 1540, which passed the Senate in the 90th Congress, I am anxious to con-

tinue to advance this procedure until it is enacted into law. S. 1540 was, of course, much broader than section 3577 of title VIII of the omnibus bill. It applied to all defendants convicted of a felony and sentenced to 1 year or more in prison. It is my hope that section 3577 will be similarly expanded to cover all convicted felons.

Quite frankly, Mr. President, I see no reason to restrict the fundamental fairness embodied in appellate review to only those individuals convicted of participating in organized crime. For the information of the distinguished chairman of the Criminal Laws Subcommittee, I have drafted and will introduce shortly, a bill similar to S. 1540 of the 90th Congress. It is my hope that serious consideration will be given to adopting it in whole as an amendment to S. 30.

Mr. President, I want to take this occasion to express my appreciation of the firm and able leadership President Nixon and Attorney General Mitchell have demonstrated in their first weeks in office in the battle against crime in America.

The Attorney General's decision to employ electronic surveillance under court supervision is a major step forward in cracking down on the Mafia and other underworld organizations. There is no reason law enforcement officials should not use every legal means at their command to combat this evil menace.

The campaign of last fall clearly demonstrated that crime in the streets is a national problem. The tendency of the Johnson administration and its Attorney General to excuse the rising crime rate by placing the blame on poverty has been overwhelmingly rejected by the American public.

We all want to do all we can to work toward the elimination of poverty, but poverty is only one factor contributing to the alarming crime statistics. If we could somehow eliminate poverty overnight, there would still be the violent and the criminal and the depraved, preying on innocent citizens.

The best way to reduce crime is to enforce the laws, to make it less profitable and a lot more risky to break the law. In this connection, we must restore the Nation's respect, not alone for law and order, but for those public servants whom we employ for that purpose, the policeman, the sheriff, and other law enforcement agents.

The Federal Government has an important role to play in supporting the States and cities in their attack on the crime problem.

This role, Mr. President, covers a wide range from direct grants to State and local law-enforcement agencies to upgrade and improve them, to application of the tremendous technical assistance available from Federal agencies.

Along with better police protection, there must be a concomitant improvement throughout the whole area of criminal justice, improved court procedures to eliminate long delays in trials, better detention facilities, reform of bail procedures and special attention to the problems of the juvenile offender and the narcotics addict.

Again, I commend the distinguished Senator from Arkansas for his dedication and contributions to the war against organized crime.

SENATE JOINT RESOLUTION 75—INTRODUCTION OF JOINT RESOLUTION TO PROVIDE FOR A STUDY OF WEAPONS TECHNOLOGY AND FOREIGN POLICY STRATEGY BY AN INDEPENDENT COMMISSION

Mr. GORE. Mr. President, there appeared before the Subcommittee on Disarmament today three of the Nation's renowned scientists and citizens—Dr. Herbert F. York, Dr. G. B. Kistiakowsky, and Dr. J. R. Killian, Jr.

I ask unanimous consent that their statements before the committee be printed in the RECORD at this point.

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

STATEMENT BY HERBERT F. YORK, BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS AND DISARMAMENT AFFAIRS OF THE SENATE FOREIGN RELATIONS COMMITTEE, MARCH 11, 1969

Mr. Chairman and Members of the Committee: I appreciate very much the opportunity to appear before your committee. I have already had a chance to read some of the testimony presented before this committee last week, and I will confine my prepared statements to a brief description of my own role in ABM matters and to certain other factors which either may have been overlooked in prior testimony or which might well be reemphasized.

I came to Washington to work in the government immediately after Sputnik in 1957, and remained here until 1961. I was first a member of President Eisenhower's Science Advisory Committee under the chairmanship of Dr. James Killian, then Chief Scientist of ARPA, and then Director of Defense Research and Engineering under Secretaries McElroy, Gates, and McNamara. During that period I endorsed and supported the R&D part of the Army's Nike Zeus program, and I helped to create and promote ARPA's more advanced BMD (Ballistic Missile Defense) program. It was also my responsibility to advise the Secretary of Defense on a number of occasions over a period of several years about proposals to deploy the Nike Zeus ABM. I strongly recommended against such deployment each time. It was the era of the supposed "Missile Gap" and accordingly that was not a popular recommendation. I am, of course, pleased to note that nowadays virtually everyone agrees that Nike Zeus should not have been deployed. My decisions and recommendations in those days were based almost exclusively on technical considerations. In brief, the recommendation not to deploy the Nike Zeus was based on my technical judgment that it would become obsolete before it could be deployed. The detailed reasons behind this conclusion were similar to those contained in the testimony given last Thursday by Hans Bethe, Daniel Fink, and Jack Ruina.

Soon after I left full-time government service, I became a member of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency. In that capacity, I have not only had the opportunity to keep abreast of the technical status of the ABM, but I have also had the opportunity to be exposed to and involved in considerations of the political ramifications of the ABM, especially as they relate to arms control issues.

Last week's testimony before this committee described the Nike Zeus and Nike X systems and the problems their designers faced in attempting to find a way of coping with the Soviet offensive capability. The complex technical details of the situation were outlined then and supported the generally accepted conclusion that it is hopeless to attempt to defend against a sophisticated and determined offense. Last week's testimony went on to indicate how, after this fact was generally accepted, the promoters of the ABM proposed the Sentinel system for the purpose of countering an attack by Chinese missiles. Such an attack is supposed to consist of fewer and less sophisticated missiles and thus presents a simpler problem to solve. The problems created by decoys and other penetration aids are solved by defining them out of existence, and a cheaper area defense system becomes possible in theory. Serious consideration is also being given to a hard-point defense system in which the defense would intercept only those objects actually aiming at certain specific very small target areas such as those centered on hardened missile sites and command centers. The problems of penetration aid devices and tactics are again absent by definition, and the resulting problem, in truth I believe, becomes even easier to solve theoretically than in the case of the hypothetical Chinese missile attack. It is important to note, though, that in this hard-point defense case, entirely different defense methods, which cannot be used to defend cities or large areas, also become feasible. Such approaches include mobility (as in Polaris and Poseiden), deployment of greater numbers of offensive missiles, and various deception devices and tactics such as providing more missile silo targets than there are missiles, and then playing a sort of shell game with the missiles themselves. Thus it is precisely in the case where an ABM-type defense becomes easiest that numbers of alternative technical defense schemes also become possible. Furthermore and again because the problem as given is easier, it is quite safe to postpone any decision to deploy an ABM at least until after present attempts to get new arms control negotiations moving.

I should like now to turn to a technical problem that pertains to all the forms of ABM so far proposed, but which unfortunately is not so simple to discuss nor so easy to quantify as those brought to your attention last week.

Any active defense system such as the ABM, must sit in readiness for two or four or eight years and then fire at the precisely correct second following a warning time of only a few minutes. This warning time is so short that systems designers usually attempt to eliminate human decision-makers, even at low command levels, from the decision making system. Further, the precision needed for the firing time is so fine that machines must be used to choose the precise instant of firing no matter how the decision to fire is made. In the case of offensive missiles the situation is different in an essential way: although maintaining readiness throughout a long, indefinite period is necessary, the moment of firing is not so precisely controlled in general and hence human decision makers, including even those at high levels, can be permitted to play a part in the decision-making process. Thus the trigger of any ABM, unlike the trigger of the ICBMs and Polarises, must be continuously sensitive and ready, in short a "hair" trigger for indefinitely long periods of time. On the other hand, it is obvious that we cannot afford to have an ABM fire by mistake or in response to a false alarm, and indeed the Army has recently gone to some pains to assure residents of areas near proposed Sentinel sites that it has imposed design requirements which will insure against the accidental launching of the missile and the subsequent detonation of the nuclear warhead it carries. These two requirements, a "hair" trigger so that it can cope with a surprise attack and a "stiff"

THE CHALLENGE OF A MODERN FEDERAL CRIMINAL CODE

INTRODUCTION

Mr. McCLELLAN. Mr. President, Dean Roscoe Pound, writing in 1935, identified as the four chief factors that influence the quality of American justice: personnel, administration, procedure and substantive law. (Pound, "Toward a Better Criminal Law," A.B.A. Rep. 322 (1935)). It is evident, too, as Pound concluded, that these factors must be ranked in this same order of relative importance. (Ibid.) On the whole, better judges, prosecutors and enforcement officers, better organization of courts, better administrative methods and more adequate administrative personnel must come first in any effective program for the improvement of our Nation's system of criminal justice. Nevertheless, the men who staff that system will have to be guided by the authoritatively prescribed criminal procedure. They will also be giving effect to the authoritatively prescribed criminal law. An archaic procedure or a patchwork criminal law, as all experience shows, will give better results, if well administered, than the most modern procedure or a well-reasoned, up-to-date substantive criminal law, if ill-administered. Even so, the conclusion seems unavoidable: the satisfactory administration of criminal justice must ultimately rest, as Pound noted, upon a satisfactory criminal code. (Ibid.) This means, in short, that our concern with criminal justice problems must embrace reform not only of personnel, administration and procedure; it must also reach out to the substantive law itself.

Mr. President, it was with these conclusions in mind that I supported, in 1966, Public Law 89-801 (80 Stat. 1516), which established the National Commission on Reform of Federal Criminal Laws, and personally welcomed the opportunity to serve on the Commission, along with my colleagues, the distinguished Senators from Nebraska (Mr. HRUSKA) and North Carolina (Mr. ERVIN). Under Public Law 89-801, the Commission was charged with the important duty of making a complete review of the statutory and case law of the United States. Section 3 of the act, in pertinent part, provided:

> The Commission shall make complete study of the statutory and case law of the United States which constitutes the Federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

As the Members of this body are aware, the Commission duly completed its work and forwarded its recommendations to the President and the Congress on January 7 of this year. The Subcommittee on Criminal Laws and Procedures, which I am privileged to chair, has now begun, moreover, an extensive series of hearings on these most important recommendations. The first hearing took place on February 10. Testimony was received from, among others, the Attorney General, former Gov. Pat Brown, the Commission's Chairman, and Congressman POFF of Virginia, the Commission's Vice Chairman. The final report of the Commission, the result of nearly 3 years of deliberation by the Commission, its advisory committee consultants and staff, is, as the testimony before the subcommittee indicated, the most comprehensive call for a reconsideration of Federal penal policy ever issued.

Nevertheless, the recommendations of the Commission were submitted to the President and the Congress, I should like to emphasize, solely as a "work basis" upon which "the Congress" itself could undertake the necessary reform of the substantive criminal law. As the Commission's transmittal letter noted, it was the task of the Commission to "fairly expose the relevant policy issues and facilitate the necessary choices by the Congress." Consequently, the legislative task that now faces the Congress can only be fairly described as formidable and monumental. As the Congress begins to undertake this task, I suggest, therefore, that it is only appropriate as a preface to that task that we examine the history of other attempts at reform and codification and, in particular, the growth of Federal criminal law. As Maitland aptly observed:

> Today we study the day before yesterday in order that yesterday may not paralyze today and today may not paralyze tomorrow. (3 *Maitland, Collected Papers* 439 (1911))

Modern attempts at reform and codification—the Model Penal Code, the Codes of Louisiana, Wisconsin, Minnesota, Illinois and New York—will remain relevant areas for possible later empirical study by the Subcommittee.

THE HISTORY OF CODIFICATION

Mr. President, the subject of codification is intimately connected with the idea of a written law. (See generally III *Pound, Jurisprudence* 675-38 (1959)) It is a form of the demand for a complete, intelligible and authoritative statement of the precepts governing relations between individuals and the state and personal conduct. It is a phase of the universal demand that, in a civilized community, every man be assured of knowing what he may do and what he may not do. Few did not call Caligula tyrant, when he published his decrees on the columns of Rome too high to be read, in order that he might have more subjects to punish. The idea of a written law accessible to all is related to the idea behind our bill of rights. It is a part of the quest of a government of laws and not of men. And its history reaches into antiquity.

I. THE ROMAN LAW BACKGROUND

Roman law itself had a tradition of written law. Down to the codification of Justinian, the Twelve Tables—450 B.C.—constituted the theoretical foundation of the *ius civile*. Indeed, Justinian was not the first to envision a code. We are told that Julius Caesar had among other plans that of making a digest of the law, reducing the *ius civile* to method, and bringing together the finest and best of the essential works on the law. But it was not until 429, that Theodosius II appointed a Commission to compile the imperial legislation after Constantine. This project failed and a new commission was appointed in 435. Its work, known as the Theodosian Code, was completed and promulgated in 438 to take effect in 439. It was not, however, what we know as a modern code. No systematic treatment was given either to the general aspects of criminal law theory or punishments. Instead, it was little more than a compilation of the law then in effect in reference to specific offenses.

The real work of codification in the Roman law did not begin until 528. Substantially 100 years after Theodosius' first start, the Emperor Justinian, at the instance of his minister Tribonian, set out to codify the whole of the body of Roman law. A commission of 10, composed of judges, lawyers, and one law professor, was appointed to prepare a complete revision of imperial legislation. Its product is known as the "Code," and it was completed in a year. Next Justinian appointed another commission of sixteen, this time composed of judges, lawyers, and four law professors, to compile and systematize the text book learning of the Roman law—contained in the treatises of the great jurisconsuls and their commentaries. This was completed, rather hastily, in 3 years. Its product was known as the "Digest," and it was given legal authority in 533. Finally, an instructional text was prepared for students by a commission of three, Tribonian and two law professors. Known as the "Institutes," it, too, was given legal authority. Together with the subsequent legislation of Justinian, compiled into what we call the "Novels," these various parts are what we now speak of as Justinian's codification—the great Corpus Juris Civilis. Like the Theodosian Code, it was not what we would call a code today, but it was an enormous achievement. It put in systematic form the results of a thousand years of development of Roman law, and it has inspired other legal systems to this day. Gibbon aptly observed:

> The vain titles of the victories of Justinian are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument. (II Gibbon, "The Decline and Fall of the Roman Empire" 322 (Modern Lib. ed. 1932)).

II. THE FIRST BEGINNING: THE CAROLINA

In the modern world, the Penal Code of the Emperor Charles V, which was promulgated in 1552, is the first important legislation that might be properly called a code. It was known as the "Carolina," even though the Emperor himself had little to do in drawing it up or enacting it. A product of the revived interest in Roman Law of the Italian jurists of the 16th century, the Carolina was primarily procedural in character. Yet it is chiefly renowned for its introduction into continental legislation of aspects of the general doctrines of the criminal law. The Carolina will long be remembered in connection with its treatment of defenses to crimes and its

seminal examination of sentencing policy. At the time of its consideration by the German diets of Augsberg and Regensburg, however, it was widely opposed. The City of Ulm, at the Town Assembly at Esslingren in 1523, for example, declared:

> The . . . [Code] tends solely to the disadvantage of the States of the realm. . . . (Quote in Von Bar, *History of Continental Criminal Law* 216 (1916).)

Its acceptance was only made possible by the famous "Savings Clause," which provided:

> In gracious consideration of the electors and the princes and the States [the Emperor does not] desire . . . to detract from their ancient and well-established legal and customary usages. (*Ibid.*)

On the whole, the effect of the Carolina may be said to have been beneficial particularly in the south of Germany, where it moved toward a more humanitarian system of punishments, placing checks on the otherwise virtually unlimited discretion of judicial officers. But its accompanying movement toward national uniformity came at a high price in the North, for the Carolina provided that a conviction could not be obtained upon mere circumstantial evidence. This led to the general introduction of torture to obtain sure proof by confession, a practice not widely followed in the North at the time of the Carolina's promulgation.

III. CODIFICATION IN FRANCE

Despite the early start of the Carolina in Germany, it was in France after the revolution that codification played its most important role on the European continent. Reform, of course, antedated the revolution in France. Catherine II of Russia encouraged a number of individual philosophers and actually gave instructions for drafting a criminal code. Frederick the Great, influenced by the ideas of the Encyclopedists, began his reign by the abolition of torture. In France itself, Colbert, the minister of Louis XIV (1667–1670) projected a code, and a beginning was made in a series of royal ordinances. Two other attempts were made under Louis XV, but it was not until after the Revolution that these beginnings bore fruit. It was in the platform of the Party of the Revolution, moreover, that the ideas of reform were best expressed: equality, individuality, and mitigation of the severity of the penal system, the suppression of discretionary powers of judicial officers to define crimes and assess punishments, the abolition of crimes against religion and private morality, publicity for criminal procedure, assistance of counsel, the end of the compulsory oath of the accused, and the institution of the jury. Montesquieu, Beccaria, and Voltaire, all called for a reform of the prevailing system of arbitrary criminal justice, and their call was heeded in France.

In 1793, after the revolution was underway and at the direction of the Convention, the process of reform began, and Cambaceres brought forth a draft civil code. But out of suspicion of its Roman law influence, it was rejected as not revolutionary enough. It was felt that an attempt should be made to realize the philosophical idea of simple democratic laws accessible to all citizens, and a vote was taken to appoint a committee of philosophers to draw up such a new draft. As might be expected, nothing came of this suggestion. While Cambaceres brought forth two new drafts after the fall of Robespierre, success had to await a new Justinian.

In 1800, Napoleon, as First Consul, took up the matter with characteristic vigor, appointing a new commission of four. Within 4 months, a new draft, but one which followed much of Cambaceres' proposals, was put together. This Code, too, met with political opposition, since there were those in the legislative bodies of the French nation who systematically opposed all projects of the First Consul. Politics, seemingly, has always played its part. Napoleon responded by reforming the legislative body, and in March 1804, he obtained the successful approval of the Code, that today bears his name and that has served as a model for other codes throughout the world. The Civil Code was soon followed by Codes of Civil Procedure, Commercial Law, and, of course, Penal Law and Criminal Procedure.

A Commission, composed of Vieillard, Target, Oudard, Treillhard and Blondel, had been appointed under the Consulate to consider the codification of the criminal law. Its report was first considered by the criminal courts, and key issues, formulated by Napoleon himself, were debated in the Council of State. Nevertheless, principally because of Napoleon's opposition to the jury, action was suspended for 3 years. Consequently, the Code of Criminal Procedure was not enacted until 1808, while the Penal Code was not enacted until 1810. Neither went into effect, however, until 1811. The Government waited until then to put them into effect, so that a newly reorganized magistracy would be ready to receive them.

Montesquieu, Beccaria, and Voltaire had called for reform, but it was the ideas of Jeremy Bentham, the English utilitarian, that were used in implementing it. Bentham's works had been translated and published in France in 1802, and it was his doctrines that undoubtedly formed the basis of the new Code. The Penal Code was at once reactionary and forward looking. Justice was not its aim, save perhaps in the requirement that penalties be proportionate. Instead, it rested solely on the need to punish that flowed from the concept of deterrence. Reform of the individual was not even considered. Its definition of crimes, while an improvement over the system of unlimited discretion of the old regime, still gave too wide a scope to criminality. Barbarous mutilations, too, were authorized, and its system of imprisonment was a fraud, for there were no penitentiaries appropriate for the various punishments. On the other hand, as a work of codification, the Code was drawn with simplicity, clearness and order, while under its sentencing provisions, punishments were no longer absolutely fixed, and the important advance of a maximum and a minimum term of imprisonment was also introduced.

In the meantime, a reaction against legislative codification set in along with the disenchantment that followed the abandonment of the simplistic 18th-century notion that human reason was adequate and beneficial for every task. The Revolution of Reason had, after all, given way to the Reign of Terror and the Rise of Napoleon himself. Indeed, after these events, few men of reason remained optimistic about the nature of man. In the place of the earlier optimism of the school of reason, the more realistic approach of the historical school arose, skeptical as to the efficacy of lawmaking and thoroughly disbelieving in the necessarily good results of codification or reform. General interest in codification did not revive in Europe until the last quarter of the 19th century, when the legislative activity of the German Empire led to a succession of new codes.

IV. ITS HIGHEST ACHIEVEMENT: THE GERMAN CIVIL CODE

In the preparation of the German Civil Code, the most important of the Codes, the first commission was appointed in 1874. It consisted of six judges, three lawyers, and two professors. The code was drafted and redrafted from 1880 to 1887. The draft was then published and general criticism was invited. The proposed code was subjected to criticisms by all segments of German life. At the end of 3 years, a new commission, composed of eight judges, two lawyers, and one professor, was appointed to draw up a new code drawing on the first draft and its criticisms for a guide. It took 6 years to finish the final draft. Published in 1896, it did not finally take effect until 1900. A product of 23 years of extraordinarily thorough work, it offers itself as the model way in which an enduring and satisfactory codification product may be produced.

V. CODIFICATION AT COMMON LAW

In contrast to activity on the continent, codification of the common law was first proposed in 1614 by Francis Bacon, then Attorney General. He suggested:

> The penal laws should be reviewed by a commission to the end that such as are obsolete and snaring may be repealed and such are fit to continue and concern one matter may be reduced respectively to one clear form of law. (6 Spedding, *Letters and Life of Bacon* 41 (1869).)

A series of political controversies, however, intervened, and Parliament was dissolved before it could act on Bacon's plan. Bacon then persuaded the King to take the matter up by royal commission. Seven lawyers, including Sir Edward Coke, were appointed. The commission found almost 600 statutes fit to be repealed, but owing again to political controversy, nothing came of the project. Consequently, the English common law, by the time of the American Revolution, had never experienced comprehensive codification. Unlike its Roman law rival after the time of Justinian, there was no single source from which its contours could be determined; it was, in Coke's famous phrase, a work of "artificial reason", the meaning of which had

to be gathered by long study of statute and text.

VI. CODIFICATION IN THE UNITED STATES: LIVINGSTON'S CODE

In the United States, during our formative years, agitation for codification was relatively widespread. It grew out of local hostility toward English institutions and English law in the period after the revolution and the favorable attitude that existed toward things French that followed the advent of Jeffersonian democracy. It was also the product of the excellent reception given in the United States to the writings of Bentham, particularly by men like Edward Livingston of Louisiana.

In 1803 at the age of 39, Livingston, the son of a prominent New York family, was both U.S. attorney for New York and the mayor of the city of New York itself. Following a yellow fever epidemic that year, Livingston suffered serious financial reverses. Consequently, he sold his possessions, resigned his positions, and left New York to seek a new life in Louisiana, where he quickly rose to become a leading member of the bar and the father of the American codification movement.

On February 10, 1820, the General Assembly of Louisiana, in the tradition of French law, passed the historic act providing that there be prepared for the State a comprehensive code of criminal law to be "founded on one principle, viz., the prevention of crime; that all offenses should be clearly and explicitly defined, in language generally understood; that punishments should be proportioned to offenses; and the duty of magistrates, executive officers and individuals assisting them, should be pointed out by law." (I "The Complete Works of Edward Livingston on Criminal Jurisprudence" 1 (1873).)

Livingston, at the age of 57, at the peak of his intellectual vigor, a linguist versed in Latin, French, and Spanish, a scholar familiar with Roman and comparative law, and the common law alike, received the appointment to prepare the new code. Two years of intensive and unremitting labor led to the completion of the project, but at the very end, fire tragically and totally destroyed the manuscript. Indefatigable, Livingston started afresh and produced the work we know today in 1824. Nevertheless, the code was never adopted by the State legislature, largely because of the provincial opposition of the Louisiana bar. It was too far ahead of its time. It gathered the unremitted praise, nonetheless, of men like Bentham, Kent, Story, and Marshall. It formed the basis, too, of a proposed Federal Penal Code later offered by Livingston as a representative in Congress from the State of Louisiana. But like the Louisiana legislature, Congress never acted on Livingston's proposed code.

VII. CODIFICATION IN THE UNITED STATES: THE FIELD CODE

If Livingston's work in Louisiana and the Congress did not immediately bear fruit, David Dudley Field's work in New York did. In the New York Constitutional Convention in 1846, Field, another disciple of Bentham, urged a general code, and largely as a result of his advocacy, the constitution of 1847 provided for commissioners to reform procedure and codify the law. (Const. N.Y. 1846 6 § 24) The commission was appointed in 1847, and by 1850, complete codes of civil and criminal procedure were submitted to the legislature. Only the code of civil procedure was adopted in New York at that time. Nevertheless, in 1857, the legislature again called for codification, and Field, William Curtis Noyes, and Alexander W. Bradford were appointed commissioners. By 1865, the full text of five codes had been produced: civil procedure, criminal procedure, penal code, civil code, and the political code. Nevertheless, Field's work again met with less than full acceptance, and only the code of criminal procedure was adopted in New York, but the penal code and the code of criminal procedure were widely adopted elsewhere. Indeed, sixteen other jurisdictions accepted both the penal code and the code of criminal procedure, while four jurisdictions, including California, adopted all five of the Field Codes. Seldom has one man achieved so much, yet it must be acknowledged that the codes were by no means always well drawn. Often, they presupposed too great a knowledge of pre-existing law. The task of codification was plainly more than one man could undertake, even with help and eighteen years of tireless work.

THE DEVELOPMENT OF FEDERAL CRIMINAL LAW

VIII. THE CONSTITUTIONAL BASIS

Chronologically, the history of the Federal criminal laws might well begin with the Crime Act of 1790, which defined for the Federal Government such offenses as treason, piracy, counterfeiting, perjury and bribery in Federal court, murder and other crimes on the high seas, and infractions of the law of nations as well as other offenses in areas subject to Federal jurisdiction. (See generally Conboy, "Federal Criminal Law," in "Law: A Century of Progress 1835–1935," 294–346 (1937).) Actually, any examination of the history of Federal criminal law must begin with those provisions of the Constitution itself that are the basis of Federal criminal law. "The people of the United States," who brought the new government into existence, assigned to the Federal Government certain powers and imposed upon it certain limitations. For present purposes, the most important of those powers was that which authorized the Congress "to make all laws necessary and proper" (Const., Art. I, § 8 (18)) to the exercise of other powers granted by the Constitution, for it is, in a special sense, upon this provision that the Federal criminal jurisprudence rests. As Mr. Justice Field observed in *United States* v. *Fox*, 95 U.S. (5 Otto) 670, 672 (1877):

> There is no doubt of the competency of Congress to provide, by suitable penalties, for the enforcement of all legislation necessary or proper to the execution of powers with which it is entrusted. . . . Any act committed with a view of evading the legislation of Congress passed in the execution of any of its powers, . . . may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. An act not having any such relation is one in respect to which the State can alone legislate.

Indeed, the implication of the Necessary and Proper Clause for Federal criminal jurisprudence did not escape the attention of those who feared the ratification of the Constitution. Mason of Virginia, a delegate to the convention, but one who refused to sign the Constitution, argued that this clause would permit the Congress, among other things, to "constitute new crimes." (Quoted in Conboy, *supra* at 296.) To this, a reply was made by Iredell of North Carolina, afterwards associate justice of the Supreme Court. After noting that the Constitution made reference only to a few select offenses, he commented:

> These are offenses immediately affecting the security, the honor or the interests of the United States at large, and of course must come within the sphere of the legislative authority which is entrusted with their protection. Beyond these authorities, Congress can exercise no other power of this kind, except in the enactment of penalties to enforce their acts of legislation in the cases where express authority is delegated to them, and if they could not enforce such acts by the enacting of penalties those powers would be altogether useless, since a legislative regulation without some sanction would be an absurd thing indeed. (Ford, *Pamphlets on the Constitution* 359 (1888).)

IX. THE CRIMES ACT OF 1790

In 1789, under the power to "constitute Tribunals inferior to the Supreme Court," (Const., Art. I, § 8(9)) Congress passed the first Judicial Act. One provision gave the newly created District Courts "exclusively of the courts of the several States, cognizance of all crimes and offenses that shall be cognizable under the authority of the United States." (Act of Sept. 24, 1789, c. 20, 1 Stat. 73, 76). In the following year, the Congress passed the first crime act. (Act of April 30, 1790, c. 9, 1 Stat. 112.) In addition to listing certain offenses against the operations of government, those committed on the high seas or against the law of nations, areas specifically noted by the Constitution, the act contained provisions implementing the power, conferred by the Constitution, of exclusive authority over "all places purchased by the consent of the Legislature" (Const., Art. I, § 8(17)) of the several States, the so-called Federal enclaves. Nevertheless, the Act of 1790 specified only the more serious offense. Other crimes ran the actual risk of going unwhipped of justice. The gravity of this situation was indicated by Justice Story in 1816 in these terms:

> Few, very few of the practical crimes, (if I may so say,) are now punishable by statutes, and if the courts have no general common law jurisdiction (which is a vexed question,) they are wholly dispunishable. The State Courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes, may in these places be now committed with im-

punity. (I *Life and Letters of Joseph Story* 297 (1851)).

X. THE COMMON LAW CRIMES CONTROVERSY

Story's "vexed question" of 1816 was authoritatively settled in that year by the Supreme Court in *United States* v. *Coolidge*, 14 U.S. (1 Wheat) 415 (1816). Was it necessary for Congress to specify all the offenses that might be committed against the authority of the United States? A number of the activist members of the early Federalist judiciary did not think specific legislation was necessary. In 1799, Chief Justice Ellsworth in his famous charge to the Federal Grand Jury of the Circuit Court of South Carolina, had, after all, told the jury to indict on the basis of the common law. (See I *Warren, The Supreme Court in United States History* 162 (1922).)

But this opinion, as Story indicated, was not universally shared. Jefferson himself commented on the theory in a letter to Pinckney in these terms:

> I consider all the encroachments made on . . . [the Constitution] heretofore as nothing, as mere retail stuff compared with the wholesale doctrine, that is a common law in force in the United States of which and of all the cases within its provisions, . . . [the Federal] Courts have cognizance. It is complete consolidation. (*Id.* at 163–64)

Although *Coolidge* settled the issue, it is more accurate to credit *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812), with deciding it. *Hudson* originated in the Connecticut District Court and was referred by that court, after long delay, to the Supreme Court. The indictment was based on alleged libel, one of many aimed at Jefferson when he was President. All the others Jefferson had succeeded in having dismissed, and Madison, President when the case came on in 1812, was heir to Jefferson's opinions. This no doubt explains why Pinckney, then the Attorney General, declined to argue the case.

So did the opposing counsel. Thereupon, Justice Johnson, for the Court, declining to examine how far "an implied power (of any political body) to preserve its own existence is applicable to the peculiar character of our Constitution," disavowed that "the courts of that government are vested with jurisdiction over any particular act done by an individual, in supposed violation of the peace and dignity of the sovereign power (of the Federal Government.) The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense." 11 U.S. (7 Cranch) at 22–34.

Four years later, in *United States* v. *Coolidge*, the proceedings were merely perfunctory. Justice Story, in the Circuit Court of the District of Massachusetts, from which the case was referred when the judges were divided, had expressed the opinion that all criminal offenses within the admiralty jurisdiction were cognizable in the circuit court, and, in the absence of positive law, were punishable by fine and imprisonment. The Attorney General again declined to argue, in deference to the decision in the *Hudson* case. Justice Story observed that he "did not take the question to be settled by that case." 14 U.S. (Wheaton) at 191 Justice Johnson "considered it to be settled by the authority of that case." (*Ibid.*) Justice Bushrod Washington would divest himself "of all prejudice arising from the case, whenever counsel can be found ready to argue it." (*Ibid.*) Justice Livingston was "disposed to hear an argument on the point. This case was brought up for that purpose." *Id.* at 416. Until it was argued, the former decision must stand—and that was all.

A few days before, in his opinion supporting Justice Story in the matter of appeals from the Court of Appeals of Virginia, Justice Johnson, after emphasizing the desire "to prevent dissension and collision," had mentioned that "at present, the uncontrollable exercise of criminal jurisdiction is most securely confided to the state tribunals." (See *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 372, 376 (1816).) "Securely confided" it might be, but in this there was no consolation for federal judges. District Judge Peters commented, in a letter written the next month, that under the *Coolidge* decision:

> I cannot carry on the business of my district. Treason is defined by the Constitution; but most other crimes are barely named . . . [O]ur jurisdiction of crimes punishable at common law is excluded. . . . Every crime, not defined in our statutes—murder, rape, all the lesser offenses may be committed with impunity in places under the exclusive jurisdiction of the United States. * * * I had little difficulty before; . . . but now my hands are tied, and my mind padlocked. (Warren, Id. at 441)

The difficulty, moreover, continued to recur. In 1818, in *United States* v. *Bevans*, 16 U.S. (3 Wheat.) 336, 385 (1818), the Supreme Court held, by Chief Justice Marshall, that while, under the Constitution, "the judicial power shall extend to all cases of admiralty and maritime jurisdiction," Congress had not, in the statute of 1790, "so exercised this power as to confer on the courts of the United States jurisdiction over murder, committed in the waters of a State where the tide ebbs and flows." Again, in 1820, in *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76 (1820)), it was decided that manslaughter committed on an American ship in the river Tigris, in China, which being tidal water was not "on the high seas," could not be punished under the act of 1790.

XI. THE CRIMES ACT OF 1825

What Story was not able to do as a Justice, he remedied through his friendship with Webster, then chairman of the House Judiciary Committee. Webster and Story carefully drafted and revised the Crimes Act of 1825, and Webster successfully guided it through the Congress. (Act of March 3, 1825, and Webster successfully guided it through the Congress. (Act of March 3, 1825, c. 65, 4 Stat. 115.) In section 4, "the high seas" was amplified to include "any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the United States," and under section 5, offenses committed on an American ship "while lying in a port or place" in a foreign country were to be punishable in the same way as offenses committed on the high seas, unless the offender was brought to trial in the foreign country. Another important contribution was made by section 3, which provided that, in any of the places ceded by a State to the United States:

> [where] . . . the punishment of which offense is not specially provided for by any law of the United States, such offense shall, upon a conviction in any court of the United States having cognizance thereof, be liable to, and receive the same punishment as the laws of the state . . . provide for the like offense when committed within the body of any county of such state.

And the concluding section of the Act of 1825 provided: "Nothing in this act contained shall be construed to deprive the courts of the individual states, of jurisdiction, under the laws of the several states, over offenses made punishable by this act."

XII. THE REVISED STATUTES OF 1877

From 1825 up to the close of the Civil War, additions to the list of statutory crimes were not numerous and broke little new ground. When the Revised Statutes of 1873 was put together, in the title devoted to crimes, some offenses were included that had been enacted in and before 1820 in connection with Negro slavery, some that had been enacted incidental to the war itself, and some that had been the sequel to the 15 amendment. These were reminders of the conflict over slavery and secession that had dominated the attention of Congress in the period from 1825 to 1865.

The work of the revision of 1873–77 derives from a statute of 1866 (Act of January 27, 1866 c. 7 (14 Stat. 8), whereby Congress authorized the appointment of three persons, learned in the law, to bring together, in convenient order, all the statutes or parts of statutes then effective, and to "arrange the same under titles, chapters, and sections, or other were classified under such chapters as suitable divisions."

Of the 5,601 sections numbered in this revision, title LXX, Crimes, accounts for 227, from section 5325 to section 5550. The plan adopted in grouping offenses is indicated by the chapter headings: one, General Provisions; two, Crimes against the Existence of Government; three, Crimes Arising within the Maritime and Territorial Jurisdiction of the United States; four, Crimes against Justice; five, Crimes against the Operations of the Government; six, Official Misconduct, etc.; seven, Crimes against the Elective Franchise and Civil Rights of Citizens; eight, the Punishment of Accessories; and nine, Prisoners and Their Treatment.

A further and, in the main, correcting edition, with the addition of all amendments made up to the close of the 1877 session of Congress, was issued in 1878. This revision served the Nation reasonably well for almost thirty years.

XIII. THE PENAL CODE OF 1909

When, in 1909, Congress passed an "Act to codify, revise, and amend the penal laws of the United States," (Act of March 4, 1909, c. 321, 35 Stat. 1143) there was a difference in the naming of chapters, which at once suggests a considerable extension of scope. Offenses

against the existence of government; against the elective franchise and civil rights; against the operations of the government, relating to official duties; against public justice; against the currency and coinage; within the admiralty, maritime, and territorial jurisdiction; piracy, neutrality, and the slave trade all were included, as before—some of them considerably enlarged. The new sections were: Chapter eight, Offenses against the Postal Service, and Chapter nine, Offenses against Foreign and Interstate Commerce.

This revision of 1909 was a much more comprehensive effort than any that had preceded it. In the main, the earlier revision had merely compiled existing statutes, while in this one, Congress labored also to perfect the form. Everything redundant or obsolete was omitted, and such changes or additions as were needed to clarify the intention were freely made.

The history of the revision substantiates this appraisal. Its necessity was made plain by a passage in the report by which the Congressional Joint Committee on the Revision of the Laws accompanied the presentation of its bill. Referring to enactments since the revision of 1878, the report commented that since then:

> More laws of a permanent nature have been passed than had been from the time of the adoption of the Constitution down to the time of that revision. These are scattered through nearly twenty bulky volumes of the Statutes at Large. They are commingled with a voluminous mass of temporary enactments, and are frequently embodied in appropriation bills, the title and context of which would give no indication of their purport, and the very existence of which is discovered only by the trained lawyer and the painstaking student. (S. Rep. No. 10, 60th Cong., 1st Sess. 1909)

There was, it was felt, an imperative demand for clear and systematic compilation. Search for Federal statute law, even if all the Statutes at Large, temporary enactments, and appropriations bills mentioned by the committee were not examined, had to be made through the 1878 edition of the Revised Statutes, through a first and second supplement, and through volumes 32, 33, and 34 of the Statutes at Large. It was, therefore, contemplated to supersede all these by a statute which, when completed and enacted, would become the original and authoritative law of the land.

Preparation for the work of the joint committee had been made by a statutory revision commission, appointed under authority of an act of June 4, 1897 (30 Stat. 58) whose work at first was limited to revising and codifying the criminal and penal laws of the United States. On June 1, 1898, the commission was instructed, by concurrent resolution, to prepare a code for Alaska, in the emergency occasioned by the gold rush, and it made a report on November 28, 1898. A codification of the postal laws was reported February 10, 1899. On March 3, 1899, the commission was further instructed "to revise and codify the laws concerning the jurisdiction and practice of the courts of the United States, including the Judiciary Act, the acts in amendment thereof and supplementary thereto, and all the acts providing for the removal, appeal and transfer of causes." (Act of March 3, 1899, 30 Stat. 1116.) On November 10, 1899, a progress report was made to Attorney General John W. Griggs, and it was transmitted by him to Congress December 18, 1899. Another was made November 15, 1900, and the work of the commission was again enlarged, March 3, 1901, to include "all the laws of the United States of a permanent and general nature in force when the same shall be reported." (Act of March 3, 1901, 31 Stat. 1181.)

A codification of the criminal law was reported May 15, 1901, and copies were sent to various bar associations for consideration. The scope of the work may be inferred from the comment of a committee of the Association of the Bar of the City of New York that it considered "the proposed great extension of Federal criminal jurisdiction over the whole field of common law and statutory crime within the territorial and maritime jurisdiction of the United States to be unnecessary and very unwise." (Quoted in Conboy *id.* at 313.) The report did, in fact, include, in six subchapters, a great number of proposals new to the Federal law and explained in the margin by reference to laws of the several States.

Nevertheless, the work of the commission continued and, on March 3, 1905, it was directed to add to its reports any laws enacted since they were made. (March 3, 1903, 33 Stat. 1285.) On June 30, 1906, the commission was required to make its final report by December 15. A report was filed, and the result of the labors of the commission passed into the hands of a Special Joint Committee of Congress on the Revision of the Laws, appointed by concurrent resolution, approved March 2, 1907.

The proposed work of codification submitted by the commission incorporated 174 new sections, 21 embodying and 10 creating new offenses. The joint committee's reception of this product, however, was not altogether sympathetic with the assumption of powers by the commission to go beyond mere codification. The committee observed:

> The Commission interpreted its powers, under the various acts creating it, to authorize it to alter and amend what it deemed the imperfections of existing statutes, and to embody in its work such new legislation as in its judgment was required to supply the inequalities of the existing law. Its recommendations to Congress, based upon this theory report many of the sections altered in form and expressed in different language; many others so changed as to include different subject matters; and many new sections embracing subjects upon which Congress has never attempted before to legislate, but does not exhibit anywhere a simple codification of the existing laws. (S. Rep. No. 10, 60th Cong., 1st sess. 2 (1909))

On January 7, 1908, the joint committee reported on the Commission's draft, and submitted a bill, which became a statute March 4, 1909, to take effect January 1, 1910, known as the Criminal Code of 1909. (Act of March 4, 1909, c. 321, 35 Stat. 1143).

Although some of the commission's proposals were not adopted, largely out of a fear that it might "retard" or "prevent" the work of codification (S. Rep. No. 10, 60th Cong., 1st Sess. 6 (1909)), the chapter divisions into which it had grouped the laws were retained. Indeed, despite some apparent displeasure with the work of the Commission, great respect was manifested throughout for the legal attainments and the industry of the members of the Commission. It was on their suggestion that the chapters on postal laws and on foreign and interstate commerce were included in the code. As to this last, the committee said in its report:

> The foreign and interstate commerce has assumed proportions so vast, is growing so rapidly, and legislative enactments pertaining thereto are already so numerous, that it also seemed proper to collect the penal legislation relative thereto under a distinctive head. (*Id.* at 9.)

XIV. THE "ONE PEOPLE" CONCEPT

Between the Code of 1909 and the codification of 1948, a number of significant new Federal criminal offenses were enacted. Their significance can be best understood, however, by prefacing their consideration by a reference to Madison's conception of the scope of the powers of the Federal Government. In the *Federalist* No. 44, he observed:

> The powers delegated by the proposed Constitution to the Federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state.

This limited conception of the role of the Federal Government stands in sharp contrast, of course, with what as a matter of history has come to pass. For example, in June 1910, less than 6 months after the Code of 1909 went into effect, Congress passed the Mann Act, a provision against the "moral misuse" of the facilities of interstate commerce. (Act of June 25, 1910, c. 395, 36 Stat. 825.) In *Hoke* v. *United States*, 227 U.S. 308, 322 (1913), upholding the act, Mr. Justice McKenna employed expressions which, when considered, serve as a reminder that, since 1872, Congress had been acting, intermittently, upon a principle foreign to Madison's that did not come into application until after the Civil War. He said:

> Our dual form of government has its perplexities . . . but it must be kept in mind that we are one people . . . and the powers [granted to the Federal government] . . . are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral.

The inference is plain. Lotteries, frauds, circulation of obscene literature, prostitution, narcotic addiction, all were, at first, well within what Madison had in mind when he commented that the powers reserved to the States extended to "all the objects which, in the ordinary course of affairs, concern . . . the internal order, improvement and prosperity of the state." The trouble was that it proved,

as we became not only one people, but one nation, impossible for the States, under their own powers, effectually to preserve "internal order" in these matters when the facilities of the mails were seen to operate, in one fashion, and the privileges of interstate commerce, in another, to negate the efforts of any state to suppress what the people of the nation saw as national evils. In the judgment of many, these evils were pervasive throughout the whole nation. There were, moreover, Federal constitutional powers under which they could be attacked by the enactment of federal criminal legislation. From time to time, therefore, Congress made use of the powers assigned to the general government, singly or in combination, "to promote the general welfare, material and moral."

The validity of the Mann Act was upheld in *Hoke* v. *United States,* as I just noted, and again in *Caminetti* v. *United States,* 242 U.S. 471 (1917). In *Hoke,* Mr. Justice McKenna held that the interstate commerce power had been rightly used to "promote the general welfare, material and moral," by the suppression of prostitution. In *Caminetti,* however, he felt obliged to dissent on the ground that the statute's history showed the white-slave law was meant to suppress prostitution, and that its provisions should be construed in the sense that this was the evil the Mann Act dealt with. The majority held, however, that the words "for any other immoral purpose" must be given their natural significance. Consequently, the court upheld the conviction which was for an interstate transportation of a woman for an "immoral" purpose; "to wit, to become the defendant's mistress."

The Harrison Act (Act of Jan. 17, 1914, c. 9, 38 Stat. 275) for the control of narcotics is another example of powers employed in combination to deal with a matter of perceived general welfare. Opium and its derivatives were of foreign origin and therefore articles of foreign commerce. They could be dealt with under the commerce power, it was thought, in the same fashion that the problem to which their importation gave rise. When this proved ineffective, the taxing power was brought in, and it is under the taxing power that the regulation was accomplished in the years immediately after 1914. The history of this development is instructive.

Opium had been imported since 1832. By 1870, its use had spread from the Chinese on the Pacific coast to vicious white elements. In 1875, California and Nevada realized that control was necessary, and ordinances were enacted in San Francisco and Virginia City. Congress increased the duty on opium to $6, then $10, then $12 a pound, but this only led to profitable smuggling, with wider and clandestine distribution of the drug. It was as easily introduced into States that had antinarcotic laws as into any that had not. In 1909, therefore, Congress decided to prohibit importation of opium, except in such amounts as were required for legitimate use—import, manufacture, and distribution of this supply to be controlled under regulations issued by the Treasury. (Act of Feb. 8, 1909, c. 100, 35 Stat. 614.) Penalties for violations of the act were specified, and illicit drugs were to be seized and forfeited without the necessity of instituting forfeiture proceedings. What developed was that while importer, jobber, and manufacturer might observe the regulations applying to them, conservation of the supply for legitimate use, and ultimate disposal for that purpose only, were not realized in practice. In 1914, an international convention was arranged and ratified by the Senate. Next in the same years the Harrison act was passed, setting up an elaborate structure of control under a series of internal revenue items levied under the taxing power.

When the Act of 1909, dealing with importations was under review in *Brolan* v. *United States,* 236 U.S. 216, 220 (1915), Chief Justice White, for the Supreme Court, had no difficulty in affirming the power of Congress to legislate and the extension of that power to "the control of those things which are essential to make the power existing and operative." Consequently, the Court quickly disposed of the argument that had been advanced that the police power in respect to the public health, morals and welfare of the citizens of each state could be exercised only by that particular state. Nevertheless, when the Harrison Act was upheld four years later in *United States* v. *Doremus,* 249 U.S. 86 (1919), the Chief Justice dissented. He was one of four who refused to admit that production of revenue was the real purpose of Congress under the Act, or that attaching to the taxing power something not itself within Federal jurisdiction was sufficient to keep it there for constitutional purposes.

Crimes connected with robbery from cars and trucks moving in interstate commerce, were other logical subjects for Federal enactments. But the reason was not so obvious when the interstate commerce power was invoked by the Dyer Act, in 1919, (Act of Oct. 29, 1919, c. 89, 41 Stat. 324) for the recovery of stolen automobiles that had been driven across State boundaries. (See 18 U.S.C. 2311–13.) Fifteen years later, Congress, while earlier reluctant to add to the burden of the Federal agencies by exerting the interstate commerce power against receivers of stolen property, eventually added that offense, too, to the lengthening list of federal offenses. (18 U.S.C. 2315.)

I have here, of course, touched only on the high points in the history of the development of Federal criminal law. Other offenses, traditionally a local problem, not now considered federal, include kidnapping (18 U.S.C. 1201), threatening to extort money for ransom (18 U.S.C. 876–77), moving to another State to avoid prosecution or to avoid giving testimony (18 U.S.C. 1073)—all under the interstate commerce power. These enactments did not deprive the states of jurisdiction over such crimes, but, at least in theory, were designed merely to supplement the effectiveness of the States in dealing with them, and national attention has been rightly and widely attracted to the activities of the Federal investigating agencies in pursuit of those who fell within these enactments.

XV. THE REVISION OF 1948

Thirty-nine years passed between the Code of 1909 and the revision of 1948, a period longer than the elapsed time between the revision of 1878 and 1909. Consequently, the need for an up to date code was again widely and rightly recognized, and work began on the new Federal criminal code by the House Committee on Revision in 1943. (See generally, H.R. No. 304, 80th Cong. 1st Sess. (1947)). In connection with that effort some 1,500 letters were mailed to the Federal judges, U.S. attorneys, deans of law schools, and presidents of bar associations, explaining the revision and asking for advice and assistance. Many of the letters in response to this appeal contained concrete recommendations for the improvement of the criminal code. These were cataloged, studied, and made available to the revision staff. As will be seen by the reviser's notes, which appear in the appendix to the act, more than one of these suggestions helped shape the revision, and all of them made the task easier. In addition, the criminal section of the American Bar Association, meeting in Chicago September 1944, received a report on the preliminary draft, and the section passed a resolution approving this draft.

Following the introduction of the bill as H.R. 2200 in the 79th Congress, on February 15, 1945, copies of the proposed new title 18 were sent to every Member of Congress. A more mature bill was introduced in the 80th Congress as H.R. 1600; it was later superseded by H.R. 3190. Both H.R. 2200 and H.R. 1600 were widely distributed in an effort to obtain the wise counsel and suggestions of all interested in the administration of our Federal criminal laws.

As the work of revision progressed, the advice of Government officials was sought in problems affecting particular departments or agencies. It was also found advisable to ask questions and to submit the text of proposed section to these departments and agencies. Occasionally, the revisers conferred with the heads of agencies. The officials in charge of a department or agency that might be affected by the revision were kept fully informed. Copies of the preliminary draft were sent to all Government officials who might have the slightest interest in the work.

Naturally, the Department of Justice was more concerned with a revision of the Federal criminal laws than any other governmental body. Consequently, members of that Department were informed of every step of the revision from the first preliminary analysis to the final draft. Although revision, rather than reform, was the goal of the new 1948 Code, the revision staff did not shrink from a preceived need to change, at least in the structure of the Code. The old system of classification, for example, was discarded, and an alphabetical arrangement used in many State codes was adopted.

In part I of the new title 18, crimes were classified under such chapters as arson, bribery, and fraud and false state-

ments. In parts 2–4, covering procedure, prisons, and juvenile delinquents, the chapters were arranged in the logical sequence of events.

Future growth by acts of Congress were provided for by adopting a flexible numbering system. Chapters were given odd numbers, leaving the even numbers to accommodate related chapters in the future. Room for approximately 40 section numbers was left at the end of each chapter.

By assigning to chapter I all general provisions and definitions, it was possible to omit repetitive phrases common to many sections. For example, by inserting the word "causes" in the definition of "principals" (18 USC 2(b)), it was possible to omit that word altogether with such expressions as "aids or abets" and "causes or procures" from many other sections. By defining "United States" and other terms in chapter I, it was also possible to avoid the use of the same definitions in other chapters. (18 U.S.C. 5 ("United States") 6 ("department" "agency").)

Many inconsistencies in punishments were discovered. Some appeared too lenient, but others too harsh when compared with crimes of similar gravity. The problem was twofold. First, it was found that in spite of an exact definition of felonies and misdemeanors, 29 punishments were inaccurately labeled, resulting in conflicting court opinions. This problem was solved by omitting from each of the 29 punishments any description of the offense as a felony or misdemeanor, leaving the test as to the kind of crime, to the definition section. Second, serious disparities in punishments were discovered when the character of various crimes was considered. Before attempting to eliminate these differences, a master table showing the character of each offense and its punishment was prepared. In this way, many inequalities were eliminated, and uniformity brought out of the conflicts which time had developed.

A clear and uniform style was an important aim of the revision. Verbose phrases were pruned, ambiguous terms rewritten, and archaic expressions eliminated. For example, the definition of a petty offense was reduced from 53 to 30 words without change in substance (18 USC 1(3)). Such phrases as "of any kind whatever" were omitted from many sections as redundant. Another example is section 656, to which U.S. District Judge Emerich B. Freed referred in his review of the revision before the Judicial Conference of the Sixth Circuit. Judge Freed said:

> The verbose, involved, and extremely ambiguous sections dealing with embezzlement or misapplication by an officer or employee of a bank are reduced to simple, clear, and unambiguous language. It might be added that no other criminal statute, with the single exception of that covering conspiracy, has been the subject of more numerous judicial interpretations, due largely to the present involved language (Quoted in H.R. No. 304, 80th Cong. 1st Sess. 8 (1947)).

In the description of offenses, the word "whoever" was used as the first work in each section defining a crime. This style was followed by the revisers of the 1909 Code with good results. Frequently, a number of "whoever" clauses were found, each spelling out a different crime, run together in one paragraph. These were set out in separate paragraphs.

Punishment provisions were written in the alternative and minimum terms and fines were omitted. The qualifications "upon conviction" and "hard labor" were deleted as surplusage.

In many instances similar sections were consolidated without making fundamental changes in the offenses involved. This was true especially in the case of sections brought into revision from titles 7, Agriculture; 12, Banks and Banking; and 15, Commerce and Trade.

Good examples of such consolidations will be found in the chapter Embezzlement and Theft. There, in one instance, 11 sections were consolidated into one, resulting in a tremendous saving of space and notable improvement in style and substance. (See generally, Chapter 13, 18 U.S.C. 641–64.)

Federal criminal law has not, of course, ceased to develop after the successful processing of the 1948 revision. New legislation strengthening the hand of Federal Government against the forces of organized crime, for example, was enacted in 1961 and 1970. See, e.g., 18 U.S.C. 1952 (travel in aid of racketeering); 18 U.S.C. 1955 (gambling business). On the whole, these developments have done little more than to carry forward tendencies already manifest in Federal criminal jurisprudence. I note, however, the emergence of controversy over the power of the Congress to make a legislative finding of the jurisdictional aspect of an offense sufficient for conviction without a particular showing in each prosecution. Circuit courts of appeal have split on the necessity of such a showing and its possible constitutional impropriety, for example, under the gun control provisions of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 197). *Compare United States* v. *Bass*, 8 Crim. Law Reptr. 2246 (11–30–70) (required to avoid constitutional doubt) *with Synnes* v. *United States*, 8 Crim Law Reptr. 2387 (8th Cir. 2–1–71) (not required and constitutional). Nevertheless, the Supreme Court has granted certiorari on this issue in the context of the extortionate credit provision of the 1968 act, 18 U.S.C. 981–96, and we may safely expect enlightment on this question soon. *Perez* v. *United States* 7 Crim. L. Reptr. 2176 (2d Cir. 1970), *cert. granted*, 8 Crim. Law Reptr. 4053 (11–18–70).

THE RECOMMENDATIONS OF THE COMMISSION

Mr. President, since 1948, title 18 has served the Nation well. It is now time, however, to consider the need for a new attempt at codification, reform and revision on the national level. There are, of course, those who will be reluctant to undertake this task. The arguments against codification have changed little over the years. They were summarized in 1950 by Prof. J. Denson Smith, the director of the Louisiana Law Institute, shortly after Louisiana became the first State to undergo codification in this century. Professor Smith observed:

> It was claimed that Louisiana had a system of criminal law that was working very well; under it Louisiana had succeeded in establishing a very good record in bringing to the bar of justice offenders against its order; the shortcomings and deficiencies of its system were known and understood and could be reckoned with; the jurisprudence was established; any new system would only multiply many fold whatever confusion existed; a long and laborious, costly and distressing period of uncertainty would be the fruit of adopting a new criminal code. Present also was the belief that experienced practitioners would lose the advantage of the special knowledge of the intricacies of the common law system and would be no better off than the beginner and that district attorneys and judges would have to revamp their files of charges, instructions and other forms. [Smith, "How Louisiana Prepared and Adopted a New Criminal Code" 41 J. of Crim. L., Crim. P.S. 125–26 (1950)]

Professor Smith also summarized the experience of his State with codification. He observed:

> Under the Criminal Code of 1942 criminal law administration in Louisiana has been greatly improved. Instead of being productive of confusion as was claimed it has done much to simplify; instead of creating uncertainty it has brought assurance; and the envisioned difficulties of adjusting to the new system have not materialized. It is perhaps not too much to believe that the outspoken opponents and the enervating skeptics as well would not now return to the old order. [Id. at 135]

For me, at least, arguments of this character are now of only academic value. I see the need for Federal codification, reform and revision as now beyond further discussion or argument. Indeed, in my judgment, the Congress settled this overall question when it created the National Commission in 1966 by Public Law 89–801. Instead, what faces the Congress today is a much different series of far more fundamental issues. The Congress must review the work product of the Commission and decide not whether, but how codification, reform and revision should be undertaken. In contrast to the issue of codification or not, here no issues are settled. All questions are open for debate. It is to the recommendations of the Commission, therefore, that I now turn.

Mr. President, there are four essential features in the proposed Code that dictated its architecture, organization and scope. Rejection of these basic premises would compel wholesale rewriting or possibly rejection of the proposed Code itself as a basis for a comprehensive codification, reform and revision of title 18. It is important, therefore, to obtain a clear idea of these features in order that a discriminating judgment on their wisdom may be made.

XVI. THE TECHNIQUE OF DRAFTING

Mr. President, the first of the four essential features of the proposed Code is its overall drafting technique. Offenses are succinctly stated—the verbosity of present statutory language, especially in defining matters by enumerated examples, is avoided. For example, present 18 USC § 2312 proscribes theft of motor vehicles, defined in 18 USC 2311 to mean "automobile, automobile truck, automobile wagon, motorcycle or self-propelled vehicle designed for running on land but not on rails." The comparable section of the Code, a general theft provision, simply describes the term "property of another" (section 1732). The kind of sim-

plified drafting of the proposed Code avoids the absurdities of the rule of strict construction, which prompted the Supreme Court in *Boyle* v. *United States,* 283 U.S. 25 (1931), to hold that "motor vehicles" did not cover airplanes, and which required the Department of Justice to seek amendment of the statute.

The contrary approach of present law may also be illustrated by 18 U.S.C. 659. It makes criminal unlawful takings from interstate shipments by proscribing thefts from 19 different kinds of facilities, serially enumerating each and concluding with an inclusive phrase outlawing thefts from interstate shipments. The comparable Code provision, section 1732 (see also, 1740(1), 201(i)), simply uses the final inclusive phrase of 18 U.S.C. 659 ("property which is the subject of the offense is moving in interstate or foreign commerce or constitutes or is part of an interstate or a foreign shipment"). The drafting of the new Code, therefore, avoids the web of litigation and the hypertechnicalities of pleading and proving the precise interstate character of the shipment. *Compare United States* v. *Wora,* 246 F. 2d 203 (2d Cir. 1957), *Tingley* v. *United States,* 34 F. 2d (10th Cir. 1929), *cert. denied* 280 U.S. 598 (1930); *United States* v. *D'Antonio,* 342 F. 2d 667, 671 (7th Cir. 1965).

In short, the manner in which offenses are drafted is designed to avoid the need for extensive cataloguing of terms for definitional purposes. This is made possible principally by a fundamental innovation in the proposed Code: The rule of strict construction is restated to mean construction in light of purpose. The Code is explicit in directing that its provisions be construed to achieve its codified ends, for example, "vindication of public norms by the imposition of merited punishment" and "fair warning of what is criminal" (section 102). The Code also provides that the term "includes," used in the various Code offenses, is to be read as if the phrase "but is not limited to" is also set forth (section 109(s)). Consequently, by the simple technique of drafting simply, a more rational penal policy can be implemented with confidence that it will not be frustrated in the courts by the inherent ambiguity of human language. Mr. Justice Johnson in *Martin* v. *Hunter's Lessee,* 14 U.S. (1 Wheaton) 141, 172 (1816) aptly stated the difficulty with words: "Language is essentially defective in precision; more so, than those are aware of, who are not in the habit of subjecting it to philological analysis."

XVII. THE TREATMENT OF FEDERAL JURISDICTION

Mr. President, the second of the essential features of the proposed Code is its treatment of Federal jurisdiction. Indeed, it is the keystone of its suggested reform. Alone among the four basic premises, rejection of it would require forsaking the present form of the Code as even a work basis for a new Code.

The framework underlying the Code's treatment of Federal jurisdiction is the following: Federal penal laws are defined with a focus on punishing misconduct within the Federal jurisdiction, rather than, as is often now the case, some interference with a jurisdictional factor itself.

To illustrate: under the present mail fraud statute (18 U.S.C. § 1341), the offense is written, and its "gist" has been accurately perceived on the level of legal analysis, not as fraud punishable by the Federal Government because its mails are used, but as a sullying of the Federal sovereign by depositing fraud-related materials in its mails. See, e.g., *Bozell* v. *United States,* 139 F. 2d 183 (6th Cir. 1943), *cert. denied,* 321 U.S. 800 (1943). Consequently, each mailing is a separate offense, even though it was done in execution of the same fraud. See, e.g., *Wood* v. *United States,* 299 F. 2d 359 (8th Cir. 1960); *Becker* v. *United States,* 91 F 2d 550 (9th Cir. 1937). Yet the mailing of one letter in one scheme to defraud and its defrauding of 10 victims remains only one offense; the offense is punishable by a maximum of only 5 years no matter what the enormity of the fraud perpetrated may actually be. Finally, under present law, the Government must prove that the defendant at least contemplated that his fraud would be committed by use of the mails. See, e.g., *United States* v. *Kellerman,* 431 F. 2d 319 (2d Cir. 1970). Under the proposed Code, the offense is conceived and formulated as fraud. Use of the mails becomes the jurisdictional base under which the offense may be federally prosecuted, with the consequence that each of the aspects of the present law just mentioned is reversed.

In shifting the focus of Federal penal statutes from jurisdiction to the underlying misconduct as the gist of the criminal offense, the proposed Code effects a major reform of most of the older Title 18 provisions by generalizing the policy underlying many of the statutes enacted during the last decade. Thus, title 18's long standing section 1503, proscribing intimidation of witness-informants, makes that offense punishable by a maximum of only 5 years in jail, even though the intimidation may have ultimately taken the form of murder. In contrast, the 1968 amendment to 18 U.S.C. § 242, proscribing intimidation of citizens in the exercise of civil rights, changed the maximum penalty from 1 year to life imprisonment for intimidation by murder. In short, the proposed Code standardizes a treatment of Federal offenses sometimes but not always found in present law towards which the Congress has been gradually moving.

Other illustrations follows: in title 18's bank robbery statute (18 USC 2113) punishment is keyed to the underlying misconduct (20 years basic offense; 25 years if committed by assault; death if by murder or kidnapping), not to an interference with the Federal sovereign's jurisdictational base, the Federal Deposit Insurance Corporation. In contrast, 18 USC § 1952, enacted in 1961, followed a different route in attacking organized crime. Each crossing of State lines was made an offense, punishable by no more than 5 years, even though the racketeer ultimately perpetrated only one or more massive arsons, heinous extortions, or murder itself. *Compare* Sections 1732(b), 1735(1), 201(b), 1601, 1701, 205, 3201(1) 1(b): 15 years.

This reform in treatment of jurisdiction and criminal conduct is implemented in the following fashion. The element of Federal jurisdiction, called a jurisdictional "base" in the Code, is stated separately from the definition of the offense, which solely defines the misconduct involved. This is done by defining the offense (see, e.g., § 1721: robbery) and then itemizing in a separate subsection to the section the jurisdictional circumstances under which Federal prosecution can be undertaken. The most convenient way to visualize this is to imagine that in chapter 103 of title 18 (robbery and burglary) the jurisdictional factors in each of the robbery offenses there are taken out, leaving five formulations of the offense of robbery. These "pure" offenses, separated from their jurisdictional factors, are then consolidated and the elements standardized. What emerges then is one offense: Robbery. The various jurisdictional factors are then picked up, cataloged and included in a subsection itemizing the jurisdictional circumstances or "basis" under which the offense of "robbery" may be federally prosecuted.

They would be: special maritime and territorial jurisdiction (section 2111); property of the United States (section 2112); Federal Deposit Insurance Corporation banks (section 2113); and the mails (section 2114). However, instead of setting forth the jurisdictional bases *in haec verba* in each jurisdictional subsection, they are cataloged in a general jurisdictional section (section 201) and selective cross reference is made to this provision in the jurisdictional subsections to the various offenses as a simplified drafting technique. This is little more than an economy measure to avoid prolixity by the constant recitation of jurisdictional basis common to scores of offenses, that is, the mails, interstate travel, et cetera. Of course, some offenses in the proposed Code, as in present law, are inherently Federal and so there is not always a need for a separate jurisdictional subsection. See, e.g., espionage (chapters 11 and 12), tax (sections 1401–1409), civil rights (sections 1501–1516), smuggling (sections 1406–1409), bankruptcy fraud (section 1756). In addition, there are selected instances where offenses have unique jurisdictional basis which must be set out in specially applicable sections (see, e.g., section 1740(4): pertaining to theft so as to cover depredations of employee benefit plans, small business investment corporations, Economic Opportunity funds, pension plans and the funds of common carriers).

Several key results naturally flow from the proposed Code's treatment of Federal jurisdiction:

Definitions of offenses can be consolidated and standardized. Thus, in the illustration already given, the Code's section on robbery (section 1721) telescopes the robbery of banks (18 USC 2113), the mails and other Federal property (18 USC 2114), as well as robbery "affecting commerce" (18 USC 1951). The end result is that the various anomalies in the present proliferation of robbery statutes

are obviated. See, e.g., 18 USC 2111 ("by force and violence, or by intimidation, takes"); 18 USC 2112 ("robs"); 18 USC 2114 ("assaults . . . with intent to . . . purloin"); 18 USC 1951 ("unlawful . . . detaining of personal property from . . . another . . . against his will . . .").

Maximum sentence limits can be appropriately raised or lowered. Since the focus of the statutes is on the criminal misconduct, not the breach of Federal jurisdictional factor, punishment can be proportionate to the conduct rather than scaled to the jurisdictional aspect. Thus, as noted above, 18 USC 1952 proscribing, *inter alia*, interstate travel with intent to commit arson, is presently punishable by a maximum of five years' imprisonment, even though the arson resulted in the destruction of an entire building. Under the proposed Code, sections 1701 and 3201, this conduct would be punishable by up to 15 years.

Under the proposed Code, moreover, the prosecution need no longer prove knowledge on the part of the defendant that he was trespassing upon area subject to the control of the Federal sovereign, that is, at the time an individual crossed the State lines, he intended to incite a riot (see 18 USC 210) or he had a purpose to engage in prostitution (see 18 USC 2421). Instead, the offense becomes inciting to riot (section 1801(1)) or promoting prostitution (section 1841 (1)), subject to prosecution by the Federal Government if the defendant travelled interstate in its commission or consummation. Present Federal law, handles this question of knowledge of the Federal aspect in an inconsistent fashion. Indeed, it is possible to say that the requirement from provision to provision, apparently follows no discernable course. More often than not, knowledge is not even required, but when it is, the requirement does not seem to be rooted in any defensible rationale. Often it is little more than an accident of statutory draftsmanship. Thus, sometimes it is required, *United States* v. *Miller*, 379 F. 2d 483, 487 (7th Cir. 1967), *cert. denied*, 389 U.S. 930 (1968) (§ 1952: travel in aid of racketeering), other times not, *United States* v. *Kierschke*, 315 F. 2d 315 (6th Cir. 1963) (§ 2314: transportation of stolen property), while sometimes the cases under a specific provision are actually in conflict. *Compare Burke* v. *United States*, 400 F. 2d 866 (5th Cir. 1968), *cert. denied*, 395 U.S. 919 (1969) (§ 111 assault federal officer: need not know officer was Federal) with *United States* v. *Bell*, 219 F. Supp. 260 (E.D.N.Y. 1963) (*contra*). The requirement of knowledge, in short, often merely serves as a "technicality" that permits a "guilty" offender to "get off." See, e.g., *United States* v. *Barrow*, 363 F. 2d 62 (3d), *cert. denied*, 385 U.S. 1001 (1966).

Under the proposed Code, the existence of multiple jurisdictional bases also do not result in a multiplication of offenses. (Section 205) Thus, theft on a military reservation of Government property from the mail would no longer be three offenses, but, instead, one, with three jurisdictional bases (Federal enclave, U.S. mails, property of the Federal Government), proof of any one of which would suffice for the conviction of the offense of "theft." (See sections 1732(a), 1740(1), 201(a), (d), (f) and 205.)

Next, the definitions of offenses are framed in a fashion consistent with the terms of international treaties for extradition. Presently, serious problems are encountered when the United States desires to extradite a defendant from a foreign country for a Federal crime, since the factor of Federal jurisdiction is formulated as an element of the crime itself. See, e.g., *In Re Lamar*, 2 Western Weekly Rept. 471, 477 (Sup. Ct. of Alberta 1946) (mail fraud not extradictable as fraud). International extradition treaties uniformly do not afford extradition for jurisdictional trespasses, but only for specified criminal misconduct. Thus, where extradition is desired for mail fraud under 18 USC 1341, because our courts, quite rightly, have stated that the "gist of the offense" is the use of the mails, not the fraud, even though the treaty may permit extradition for "felonious fraud," since they do not provide for extradition for mailing a letter pursuant to a fraud, extradition is not possible, a result that may be justified among lawyers for reasons of legal analysis intelligible only to lawyers. As a matter of social policy, it is absurd.

Finally, a congressional mandate is given for restraint in the exercise of Federal jurisdiction where it overlaps with local authority, a key item in the Code's attempt to reach a reasonable balance between Federal and local power in the criminal justice area. The proposed Code, having consolidated offenses and itemized in one place the principal reaches of modern Federal criminal jurisdiction for each offense, makes visible for the first time the scope of present Federal jurisdiction. Accordingly, the proposed Code contains an introductory section, which expresses, for the first time, the will of Congress that Federal prosecution not be undertaken just because Federal jurisdiction to prosecute exists; the offense should be deferred to local authorities unless there is a "substantial Federal interest" in prosecuting it. The classic instances of a "substantial Federal interest" are then set forth, including where "the offense is serious and local law enforcement is impeded by interstate aspects of the case; an offense is believed to be associated with organized criminal activities extending beyond State lines;" and "local law enforcement has been so corrupted as to substantially undermine its effectiveness." (Section 207) This section is intended, therefore, to afford a vehicle for the Congress to express itself on the proper role of the Federal sovereign in the executive and judicial enforcement of the laws enacted by it, rather than to continue to permit *ad hoc* resolution of these fundamental legislative policy matters by the varying sensibilities of judges, prosecutors and investigators.

XVIII. THE SENTENCING SCHEME

Mr. President, the third of the essential features of the Code is its new scheme of sentencing. Its key features are its streamlined character, its assumption of some system of appellate review of sentences, and its establishment of standards for the imposition of long prison terms.

The proposed Code takes the 18 different maximum prison terms and 14 different fine levels found in title 18 alone and standardizes them into essentially six. (See sections 3002, 3201, 3301.) This is done by classifying each offense as either one of three classes of felonies, one of two classes of misdemeanor, or an infraction. Standard penalty levels are then established, one for each class of offense. By the adoption of this systematization, a consistent proportionality among offenses and penalties may be achieved.

In addition, the proposed Code's sentencing scheme is predicated on the concept of appellate review, although its scope and manner of implementation were not resolved by the Commission. (See section 1291 and Commentary at p. 317 of report.) Thus, guidelines are formulated for imposing: sentences in the upper ranges of authorized maxima (See section 3202; the same criteria in Title X of the Organized Crime Control Act of 1970 (P.L. 91-452), plus dangerous weapon used and mentally abnormal aggressive defendant, are employed; this achieves for the Code legislatively what Title X provided for judicially: proportionality between the various terms), judicially imposed minima (see section 3201(3)) and the grant or denial of probation (see section 3101). A variation of the scheme to bring standards into a previously standardless area is the requirement of the Code that the judge simply set forth his reasons for granting, for example, a defendant an unconditional discharge (section 3105) imposing a consecutive sentence (section 3204) or meting out a higher sentence on resentencing (section 3005).

Other similar provisions should be noted. In the area of parole, after the first year of imprisonment, release by the parole board is to be determined according to enumerated criteria, including whether the defendant, if released, would violate his conditions of parole (see section 3404). Nevertheless, after service of 5 years or two-thirds of the prison component of any sentence, the defendant must be released, except where in the judgment of the parole board he poses a high risk of serious criminality while on parole. (See section 3402.) Most importantly, each sentence to imprisonment must contain a mandatory parole component (see section 3201 (2)). The purpose of this provision is to maintain control of hardened offenders after their initial release from prison. Under present law, the hardened offender serves the maximum of his sentence, then is released without any restraint, while the less dangerous offender is released earlier, but subject to supervision, an anomalous result.

Other pertinent provisions of the sentencing scheme are the following: a recidivist provision for misdemeanants (section 3003), retention of split sentences with a provision for intermittent service of jail terms (section 3106); organizations (labor unions and corporations) can be required, as part of a sentence, to give notice of their misconduct to pos-

sible victims of their crimes (section 3007); irrespective of the ordinary fine available for a class of offense, the defendant may be sentenced to a fine up to twice his gain or the loss occasioned to the victim by his misconduct (section 3001(2)). On the issue of minimum mandatory sentences, the Code's statutory text abandons them, but the report of the Commission notes that a substantial number of Commissioners favored a scheme of presumptive minimum mandatory sentences for certain offenses (wholesaling in narcotics, using a gun to commit a felony). The judge would be statutorily directed to sentence a defendant to at least a modest prison term in the usual case, and required to state his reasons for not imposing such a sentence where he felt the case was not usual. Here again the essential assumption of the sentencing scheme of appellate review is evident.

XIX. THE TECHNIQUE OF GRADING

Mr. President, the last of the four essential features of the proposed Code is its use of a "piggyback" means for achieving appropriate sentence grading. "Piggyback" grading means the following: Crimes against persons (such as assault) and property (such as arson) occurring in the course of a Federal offense become federally prosecutable as related offenses. To illustrate: Intimidation of a Federal judge is punishable by 5 years imprisonment under present 18 USC 1503 as well as proposed section 1366. If the intimidation takes the form of murder of the judge, prosecution may be had under the proposed Code for the "murder" as well as the "intimidation."

This technique of grading is not new to Federal criminal jurisprudence. It is simply a generalization of a scheme idiosyncratically found in many present Federal offenses. For example, in the present bank robbery statute (18 USC 2113) the basic offense of bank robbery is punishable with a maximum of 20 years, but the maximum may be increased up to 25 years if assault occurs in the course of the bank robbery, or up to death if there is a murder or kidnapping in the course of the bank robbery. See also 18 USC 34 (aircraft and motor vehicles); 242 (civil rights); 844(d) (explosives); 1201 (kidnapping); 1751 (crimes against the President). I note, too, that the courts have uniformly upheld the constitutionality of this "piggyback" technique. See, e.g., *Gilmore* v. *U.S.* 124 F. 2d 537 (10th Cir. 1942), *cert. denied,* 316 U.S. 661 (1943); *Clark* v. *U.S.,* 184 F. 2d 952 (10th Cir. 1950), *cert. denied,* 340 U.S. 955 (1951).

Mr. President, the "piggyback" technique of grading under the proposed Code provides for a rational and uniform means of grading Federal offenses, for a scaling the relative seriousness of misconduct integral to the commission of a "basic" offense, and for an achieving of a clear proportionality where compound qualities are present in criminal misconduct. The variety of the present means of achieving the same result, therefore, can be eliminated. I note, too, that the means now employed sometimes create more problems than they solve. Present title 18 sections, for example, denote the factors aggravating an offense but, more often than not, fail to define them. See, e.g., "assault," which is undefined in 18 USC 21(d). *Compare,* 13 USC 2113 ("assault") *with* 18 USC 844(d) ("personal injury"); 18 USC 2113 *and* 1751 ("kill"), *with* 18 USC 242 *and* 844(d) ("death results"). Only rarely are the aggravating factors formulated by defining them in terms of another offsense as was done, for example, in 49 USC 1472 (airplane obstruction: assault as defined in 18 USC 113 occurring in course thereof.) In addition, the present means of grading are legally vulnerable, since they are often ambiguous, if not unconstitutionally vague. In 18 USC 844(d), for example, the threshold crime is stated as the transportation and receipt of explosives, but the offense is then graded according to whether or not "personal injury" or "death" results. "Results" from what? "The transportation or receipt" or how the explosive was deployed thereafter? And how "result"? From fortuity? Negligence? Recklessness?

Under "piggyback" grading, the "kill" and "death" of present law become the crimes, fully defined, of "murder" and "homicide" while the "personal injury" and "life in jeopardy" of present law become the crime of "assault." Problems with "result" are avoided by requiring only that the assault or homicide occur in the course of the commission of the underlying offense. Consequently, unnecessary problems with the troublesome issue of causation are obviated.

Other special techniques of grading are also employed. Only two warrant comment here. In some instances, whether given misconduct is a felony or a misdemeanor is to be determined by the judge at sentencing, if the defendant can establish certain factors by preponderance of the evidence. (See, e.g., section 1822(3) regarding drugs (misdemeanor if the defendant can show he did not act for profit, to further commercial distribution or transfer to a juvenile) and section 1001(3) regarding attempt (graded same as completed offense unless defendant shows attempt efforts did not achieve proximity to the completed offense). The decision to bring into title 18 all Federal felonies results in another grading implication of the proposed Code. Under the proposed Code, crimes in the other titles of the United States Code cannot be punishable by more than misdemeanor penalties. To illustrate, the Code's offense of draft evasion in section 1108 proscribes avoiding the draft by failure to register, failure to report or refusal to submit for induction or civilian work, while the purely prophylactic provisions in present 50 USC App. 462, which under the proposed Code would remain in title 50 (such as failure to notify the board of a last known address) are, by operation of sections 1006 and 3007 made misdemeanors.

XX. THE IMPACT OF THE CODE

Mr. President, at this stage of our consideration of the proposed Code, it is not possible, of course, to assess what the overall impact of the proposed Code might have on the Federal system of criminal justice if implemented in its present form and embodying its various policy judgments. Some tentative conclusions, however, may be made. More detailed analysis will have to await further hearings. From such statistics as are readily available (see generally, *Report of the Director of Administrative Office of the United States Courts 1968–70.* Tables D–2 and G) the ten most frequently prosecuted Federal offenses, in approximate order of frequency, are:

1. the Dyer Act (18 USC 2312)
2. illegal entry by aliens (8 USC 1326)
3. narcotics (Comprehensive Drug Abuse Prevention and Control Act of 1970, section 401 *et seq.*)
4. selective service (50 USC App. 462)
5. moonshining (26 USC 5601)
6. postal depredations (18 USC 1708–1709)
7. interstate transportation of forged money orders (18 USC 2314)
8. bank robbery (18 USC 2113)
9. theft from interstate shipment (18 USC 659)
10. bank embezzlement (18 USC 656)

Prosecution under these statutes comprise over 50 percent of the criminal business of the Federal courts, and correspondingly consume, in all likelihood, a similar devotion of investigative and correctional resources. Accordingly, the potential statistical impact of the Code on the Federal criminal justice system may be a relatively measurable quality.

The character of some of the major differences between several of the more significant present title 18 sections and those suggested by the proposed Code may be tentatively assessed now. In half of these statutes there is little change. For example, between the Dyer Act (18 USC 2311 *et seq*) and corresponding Code provisions, there are only two significant differences: The proposed Code codifies judicially fashioned meanings of "stolen" in present law by constituting them in three provisions: Section 1732 covering vehicles taken with intent to deprive the owner; Section 1733 covering car rentals (unauthorized excessive use) and Section 1736 covering just unauthorized use ("joyriding"). Unlawful takings of motor vehicles are graded as a felony or a misdemeanor depending upon the value of the car, its unauthorized use or the loss measured by the restoration required (over $500 is a felony).

Again, with respect to immigration violations under present law, comparison with its companion Code provision (section 1221(1)(d)), discloses that the offenses are identical, except for the following: the requisite culpability in present law is codified, and the current separate offense of being found in the United States after prior deportation is formulated as a presumption (see section 103(3)) that if an individual is found in the United States after having been previously deported he is presumptively guilty of the offense of entering the United States illegally. Current prosecutive and sentencing policy, moreover, is codified by grading the offense as a felony if there was a prior deportation and it was for a felony of moral turpitude (see section 1221(2)(a)) or it was a third violation (see section 3303). Otherwise, it is graded a misdemeanor.

As in the firearms area, noted below, the proposed drug provisions constitute the implementing of criminal penalties

for an assumed regulatory scheme that would appear elsewhere in the Federal Code. ((see sections 1821–29) The Commission, however, expressed no preference for the proposed provision over those found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91–513), which was enacted by the Congress while the Commission was working on its provision. Nevertheless, the Commission did recommend, over the objections of a substantial body of opinion, that the penalty for possession of marihuana be reduced to that of an infraction, which would embrace only a fine and no possibility of imprisonment.

The scope of the offense of tax evasion under the proposed Code, which includes excise taxes on illicit liquor, is discussed in more detail below. The principal problem in the excise tax area, of course, is "moonshining." Title 26 of present law contains a number of felony provisions in this area. (See 26 USC 5601–08) section 1403, together with the definitions of section 1409 and the presumptions of section 1405, carries forward these offenses in a simplified form. The principal change in the law is to remove the possibility of felony treatment for the consumer. (See 26 USC 5601(a)(11), 5604(a)). An attempt, too, has also been made to square the presumptions of present law with the recent teaching of the Supreme Court in *United States* v. *Gaines*, 380 U.S. 63 (1965) and *Turner* v. *United States*, 396 U.S. 398 (1970).

While postal and interstate shipment theft, postal and bank embezzlement are substantially changed, once the offenses of larceny and embezzlement are mastered, facility is achieved with respect to all theft and embezzlement provisions, as well as robbery of Government property or car theft, since the Code standardizes the definitions of these crimes: only the applicable jurisdictional bases vary.

In addition to these statutes, which comprise the majority of Federal prosecutions, it will be helpful, I think, to highlight several other noteworthy areas of the Code, so that the Senate might have some idea of the range and the substantive scope of the reforms proposed by the Commission.

General Purposes (see section 102): For the first time in Federal criminal jurisprudence; the Code would explicitly recognize the inclusive and multipurpose character of a modern penal code. See generally, Hart, "The Aim of the Criminal Law" 22 *Law and Contemporary Prob.* (1951); Hall, *The Criminal Law* 296–324 (1960). Fundamentally, the Code rests on the notion of individual responsibility, and it recognizes the just need in any civilized society for the vindication of its more significant social norms by the imposition of merited punishment. At the same time, base revenge is eschewed as a purpose of the Code. In addition to this overall intrinsic purpose, the Coder gives explicit recognition to the social need to seek the extrinsic purposes of measured deterrence, forwardlooking rehabilitation, and carefully circumscribed incapacitation.

Requirements of Culpability (section 302): For the first time in Federal jurisprudence, the various aspects of culpability will be defined, what Mr. Justice Jackson called "the variety, disparity and confusion" of judicial definitions of "the requisite but elusive mental element" in crime. *Morissette* v. *United States*, 342 U.S. 246, 252 (1952). Definitions of "intentionally", "knowingly", "recklessly", "negligently", and "willfully" are provided. They have their chief function in distinquishing the various grades of offenses. Comparable schemes of culpability are found in the Model Penal Code § 2.02 (1962) of the American Law Institute and the N.Y. Penal Code §15.05 (1965). They have been criticized in these terms:

> If the draftsmen wish to force trial judges to stop and puzzle over abstruse wording, that discipline can do no harm. But the trouble is that the draftsmen are here engaged in linguistic embroidery to which lay jurors would inevitably be exposed. This worries me—and I do not derogate from the individual abilities of lay jurymen. But awkward phrases and shrouded concepts bother me; for instructions in the law—jury charges—are delivered to jurors orally, and may go on for hours. Furthermore, they may contain a variety of precepts with which the jurors have never before had to deal, and concerning which, if a verdict is to be reached, the jurors must all end up as of one mind, convinced beyond a reasonable doubt. Nor can the Code's protagonists—if they are, at this time, to be realists—respond, "these definitions are not for the jury; the judge may simplify them, using his own words, when he charges." Trial judges do not like to be reversed, and the safe course for them is to charge the law precisely as the legislature has handed it down. Being human, they follow the course of safety. And should a judge not do this in the first instance, any able defense attorney, fearing the likelihood that his client's guilt has been sufficiently proven and therefore banking on confusion as the only way to avoid conviction, would be likely to insist that these statutory definitions be read to the jurors, and that they be instructed to acquit unless satisfied, on the proof, that "purposely" or "knowingly," as thus defined, has been established.

(Kuk, "A Prosecutor Considers the Model Penal Code [1963] Columbia L. Rev., 608, 622–23.) For a general discussion of the question, see Remington and Helstad, "The Mental Element in Crime—A Legislative Problem" [1952] Wis. L. Rev. 644.

Mental Disease or Defect (section 503): Here the Code adopts for the first time in Federal criminal jurisprudence a nation-wide standard for exculpation based on mental disease or defect. Neither the "right-wrong" test of *McNaughton*, 10 Cl. & F. 200, 8 [1843] Eng. Rept. (House of Lords), nor the "mental disease-product" test of *Durham* v. *United States*, 214 F. 2d 862 (1954) was followed. Instead, the Commission recommended the "substantial capacity to appreciate and conform" test of the Model Penal Code § 4.01 (1961) of the American Law Institute, which has been followed in a number of Circuit Courts of Appeal. See, e.g., *United States* v. *Freeman*, 357 F. 2d 606 (2nd 1966).

Limits on the Use of Force: Excessive Force, Deadly Force (section 607): This provision of the Code formulates provisions, which negatively define assault and homicide. Instead of casting them as standards, the application of which depend on all the facts and circumstances, they are written as precise rules of conduct. On the whole, they would confine the use of deadly force against a person to a last resort defense of himself or any other person. For example, contrary to present law, they would require, where safe, retreat from a home or place of work under certain circumstances.

Mistake of Law (section 609): Under Federal law, ignorance of the law is never an excuse. In general, too, Federal law does not now recognize a defense based on a mistake of law. *Horning* v. *District of Columbia*, 254 U.S. 135, 137 (1920). Nevertheless, where the definition of the offense itself requires knowledge of a legal duty, a mistake as to the character of the duty may be a defense. *United States* v. *Murdock*, 290 U.S. 389 (1933). Section 609, however, provides that a good faith mistake of law made in reliance on a statute, opinion or other official pronouncement would be an affirmative defense. Such a defense is recognized in the Model Penal Code § 2.04 (1962) of the American Law Institute and in *N.Y. Penal Law* § 15.20 (1965) and *Ill.* Rev. Code § 4–8 (1961). A substantial body of opinion on the Commission preferred not to go beyond the scope of present law. Fuller, *The Morality of Law*, 72–74 (1964) has observed of such defenses in the area of economic regulation, where it seems that Section 609 would have its greatest impact, that:

> The required intent is so little susceptible of definite proof or disproof that the trier of fact is almost inevitably drawn to asking: "Does he look like the kind who would stick by the rules or one who would cheat on them when he saw a chance?" This question, unfortunately, leads easily into another, "Does he look like my kind?"

Subsequent Prosecution by a Local Government: When Barred (section 708). Present Federal law sometimes bars a subsequent Federal prosecution after a state prosecution. See, e.g., 18 USC 2117 (burglary of interstate vehicle). In contrast, this provision extends that policy and formulates, under specified circumstances, an absolute statutory bar to subsequent state prosecution, where there has been a prior Federal prosecution, a result not now compelled under the relevant decisions of the Supreme Court. See, e.g., *Bartkus* v. *Illinois*, 359 U.S. 121 (1959) (subsequent state not barred by Federal); *Abbate* v. *United States*, 359 U.S. 187 (1959) (subsequent Federal not barred by state). This provision was included in the Code over the objections of a substantial body of opinion.

Criminal Facilitation (section 1002): For the first time in Federal jurisprudence, this provision would introduce a new degree of criminal complicity. The cases are not without conflict, but the general Federal rule now seems to require not only knowledge, but also a "stake in the venture" before a finding of criminal complicity could be made. *Compare United States* v. *Peoni*, 100 F. 2d 401, 402 (2d Cir. 1938) (Hand, J: stake), *with Backun* v. *United States*, 112

F. 2d 635, 637 (4th Cir. 1940) (Parker, J.: knowledge). Under section 1002, "facilitation" could be found where knowledge plus the substantial facilitation of an actual offense were present. This position was rejected for the Model Penal Code by the American Law Institute, but has been adopted in New York. *Compare* Model Penal Code § 2.06(3)(a) (1962) *with* N.Y. Penal Code § 115.00 (1965). Seen generally Williams, *Criminal Law: The General Part* 369–370 (2nd ed. 1961).

Tax Evasion (section 1401): The respective formulations of tax evasion are practically the same. (*Compare* 26 USC 7201 *with* 1401.) The proposed Code carries forward current statutory formulations in the words of present law. Section 1401 of the Code specifies the kinds of conduct now held to constitute evasion. After cataloguing the classic kinds of conduct that constitute tax evasion under present law, the section concludes with the general language of present law: "attempt in any manner to evade." Evasion by filing a false return is made an evasion offense to evade even though there is no tax deficiency. In contrast, false material statements, felonious under present 26 USC 7206, remains so under the proposed Code only if accompanied by an intent to evade. Finally, tax evasion is graded like a theft provision depending on the amount of the deficiency.

Para-Military Activities (section 1004): For the first time in Federal law, private armies would be outlawed. The acquisition, caching, use or, of training in, weapons for political purposes by associations of ten or more persons, other than those authorized by law, would be made a Federal offense. Today, such organizations are merely required to register under 18 USC 2386.

Civil Rights and Elections (chapter 15): Proposals were placed before the Commission which would have substantially modified present law. The culpability element articulated in *Screws* v. *United States*, 325 U.S. 91 (1945), for example, would have been modified, and the requirement of "color of law" would have been omitted. The Commission recommended, however, the mere recodification of the present law without substantial modification, either to enlarge or restrict its scope.

Sodomy (sections 1643–44): Federal law today deals with sodomy primarily through the operation of the Assimilated Crimes Act, 18 USC 13. See, e.g., *United States* v. *Gill*, 204 F. 2d 740, 7th Cir., *cert. denied*, 346 U.S. 825 (1953). Under proposed section 1643, a new offense of aggravated involuntary sodomy, treated like forcible rape, would be recognized. Involuntary sodomy would also be subject to punishment under section 1644. But consentual sodomy would not be covered. Note here that by virtue of section 209(2) the effect of this omission would be to make licit conduct now generally illicit under State law adopted and applicable in Federal enclaves.

Riots (sections 1801–04): The proposed Code eliminates the requirement of present law that the prosecution prove intent to incite to riot at the time that state lines are crossed. (*Compare* 18 USC 1801 *with* section 1832). In addition, penalties are substantially raised (up to 30 years) for serious harm to persons or property committed by both leaders of and participants in riots. The "affecting commerce" jurisdictional reach of present law is eliminated. Instead, federal jurisdiction is confined to cases where the Attorney General certifies that the riot involved or apparently would involve over a hundred persons and was substantially furthered from sources outside the State. The propriety of such certifications, however, are explicitly made not litigable. (See section 104) Finally, in any riot within the federal jurisdiction, it is an infraction to disobey orders to clear the street, whether as a participant, bystander or news media personnel. (See section 1804)

Firearms (sections 1811–13): Over the objections of a substantial body of opinion, the Commission recommended a federal ban on handguns and the requirement of registration on a national scale of all firearms. Otherwise, the proposed provisions contain only the implementing criminal provisions of assumed regulatory law that would, of course, appear in other titles of the federal code. Consequently, the Code sections, as presently drafted, are perfectly amenable to assimilating present law with or without substantial change. (*Compare* 18 U.S.C. 921–928. (The Gun Control Act of 1968), 18 U.S.C. App. 1201–1203 (The Omnibus Crime Control *and* Safe Streets Act of 1968), and 26 U.S.C. 5901–5872.)

Obscenity (section 1851): Over the objections of a substantial body of opinion, the Commission recommended an obscenity provision that constitutes a repudiation of the Commission on Obscenity and Pornography: the full constitutional definition of obscenity is retained, felony penalties are continued for offensive dissemination, and the Department of Justice's prosecutive policy with respect to private dissemination is codified. (Compare 18 U.S.C. 1461–64)

Sentence of Death and Life Imprisonment (chapter 36): The Commission recommended the abolition of capital punishment, and the abolitionists' position is fully integrated into the Code. The Commission, however, proposed an alternative provision with respect to capital punishment and the procedural aspects of its implementation. The retentionist provisions, supported by a substantial body of opinion on the Commission, entail preservation of capital punishment for selected crimes, including murder and treason with jury and judicial guidelines codified for the imposition of the death penalty by enumerating aggravating and mitigating circumstances. The structure of the Code will accommodate either resolution of this issue. (Compare 18 U.S.C. 2113(e))

CONCLUSION

Mr. President, what emerges from even this summary review of various features of the proposed Code is its integral, yet flexible character. To recapitulate, the keystone of the Code is, of course, its treatment of Federal jurisdiction as a matter of legislative policy, limited by constitutional authority and vindicated by a discriminating exercise of executive discretion. Thus, offenses are defined in terms of the nature of the criminal misconduct involved rather than a factor of Federal jurisdiction, and it would be no longer a definitional element of the offense, but instead a "basis" under" which the misconduct becomes prosecutable by the Federal sovereign, not unlike the showing of the place where the offense occurred now required to establish state jurisdiction to prosecute. See, e.g., the classic decision, *State* v. *Hall*, 114 N.C. 909, 19 S.E. 602 (1894), which held that where a North Carolina citizen fired into Tennessee, killing a man, the murder prosecution had to be brought in Tennessee.

From this treatment of Federal jurisdiction the other basic features of the Code naturally flow: Its mode of defining offenses, its manner of grading them, the penalty levels provided, the sentencing scheme, and its comprehensive character. Once the jurisdictional aspect is taken out of the definition of the offense, there is no longer any occasion to retain the present variety of statutes distinguishable only by their respective jurisdictional factors. Codification, reform, and revision becomes possible. Offenses may be consolidated and standardized, while the jurisdictional factors upon which Federal prosecution may be undertaken can be cataloged and made selectively applicable to each offense. It becomes also possible to grade offenses in terms of their compound criminal misconduct aspects. And since offenses are no longer distinguishable by jurisdictional factors, it becomes unnecessary to rely upon undefined and concepts like "kill" or "personal injury" to vary the penalty structure. The Code's treatment of Federal jurisdiction, resulting in standardized definitions of offenses, also recommends a streamlined sentencing scheme. Each offense may be classified and keyed to a finite number of penalty levels. Finally, the Code's implementation of Federal jurisdiction recommends its comprehensive quality: Once offenses are no longer formulated in terms of their jurisdictional aspect, it becomes possible to have a codification of a comprehensive set of defenses and to bring into title 18 many offenses now lodged in other titles. Beyond this core treatment of Federal jurisdiction and the comprehensive implementation of it in these grading and drafting techniques, it should be emphasized, I suggest, that the various specific provisions of the Code are wholly adjustable to reflect legal and policy judgment entirely different from those tentatively posed by the Commission. The Code structure could be, without undue effort, adopted to fit a variety of substantive positions. Consequently, each of the individual provisions of the Code may be and should be treated as separate policy issues.

Mr. President, there are lessons, too, that we should draw from the history of codification, and apply to our consideration of these issues. Initially, I suggest, history teaches us that no one man or even a few men working together can sum up or reform the law of their time and place. Mr. Justice Cardozo

made this point in his *The growth of the Law* 140–41 (1924) when he wrote:

> For the task in truth is one to baffle the wisdom of the wisest. Law is the expression of a principle of order to which men must conform in their conduct and relations as members of society, if friction and waste are to be avoided among the units of the aggregate, the atoms of the mass. The expression may be false if those who formulate it, lawyer and judge and legislator, are blind to any phase of the life whose inner harmony they are commissioned to interpret and maintain. No one of us has a vision at once so keen and so broad as to penetrate these unsounded depths and gather in its sweep this enveloping horizon. We can only cling for the most part to the accumulated experience of the past, and to the maxims and principles and rules and standards in which that experience is embodied. Little is the positive contribution that any one of us can hope to make, the impetus that any one of us can give, to the movement forward through the ages. That little will call for the straining of every faculty, the bending of every energy, the appeal to every available resource, within us or without.

Embodying Tribonian's work, Justinian's Code, termed by history a magnificent achievement, even so, shows the limits of the imagination and scholarship of Tribonian and his associates. Similarly, the codes of Field and Livingston, great though they were, carry with them the inevitable defects of limited authorship. The whole of the law is a field too vast for one man or even a few men to till alone or together. What this should teach us, of course, is that it is necessary to bring to bear on the issues raised by the recommendations of the National Commission the critical judgment of as many individuals as possible, not just those from the academy, but investigators, trial lawyers, judges and members of the community at large. Had Livingston, for example, taken the trouble to involve the practicing bar of Louisiana in his project, his code might have been found acceptable. In contrast, we must follow the example of Germany in the development of its monumental Civil Code. Able and experienced though the Commission, its staff, consultants and advisory committee may have been, its greatest wisdom, I suggest, lay in seeing its work product as a basis upon which the Nation could work its will. Consequently, the careful course Congress followed in the revision of 1948 recommends itself even more so when codification and reform are added to the basic task of revision. Only by involving all segments and viewpoints of the community in the process will it be possible to say at the successful end of our task that our work product expresses the judgment of the Nation on what a citizen may do and may not do without incurring its formal condemnation. We must turn now to involve those other individuals in our task.

History, too, teaches the unwisdom of haste. The Codes of Justinian and Napoleon carried with them the imperfections of too little attention to detail. Each stands in sharp and unfavorable contrast with the remarkable effort of the German nation in the production of its Civil Code. It is not, of course, necessary that an ideal or perfect product be produced. History should enjoin upon us a measure of humility. The code that we write today will serve others tomorrow, but we must recognize that what we do today will be tomorrow reexamined. If nothing else, history teaches us that each new generation rightly desires to write its own fundamental code of conduct. Again, a reference to Mr. Justice Cardozo is in point. In his *The Nature of the Judicial Process* 177, 179 (1921) he observed:

> The flaws . . . there [are] . . . in every human institution. Because they are not only there but visible, we have faith that they will be corrected. There is no assurance that the rule of the majority will be the expression of perfect reason when embodied in constitution or in statute. . . . The tide rises and falls, but the sands of error crumble.
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> * * * * *
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> I sometimes think that we worry ourselves overmuch about the enduring consequences of our errors. They may work a little confusion for a time. In the end, they will be modified or corrected or their teachings ignored. The future takes care of such things. In the endless process of testing and retesting, there is a constant rejection of the dross, and a constant retention of whatever is pure and sound and fine.

But we ought not fail to give to the task before us whatever time is necessary to get the job done. The Commission has now labored for three years. Its product deserves in our processing the same careful attention it received in its formulation.

We must remember, moreover, that history tells us that we must write a code for our time and place. We are indeed one people, in Mr. Justice McKenna's phrase, but much of our strength as a people stems from our diversity of our people and the differences in our land and ways of life.

Charles V showed much wisdom in recognizing the need for such diversity and that deference to such diversity was a price worth paying to achieve the genuine humanitarian advances of the Carolina. Those who were responsible for the Carolina did not insist on their view obtaining in every provision. In contrast, Livingston's Code, too far ahead of its time, influenced the future, but never governed a present. Holmes expressed well the teaching of history that we should learn when he observed in the *Common Law* 36 (Howe ed. 1963) that:

> The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong.

No one will count our product worthwhile if its success requires the people of any place or region unnecessarily to conform to national standards not their own. Recall, too, that the Carolina teaches us that the consequences of a humanitarian rule in one region may be baneful in another. To be sure we cannot remain a single Nation unless we give due recognition in all places and all regions to the fundamental human rights possessed by all our citizens. But standards of personal conduct do vary from region to region. We ought to give due attention to the legitimate demands of that diversity. Mr. Justice Black, in *Younger* v. *Harris*, 8 Crim. Law Reptr. 3103, 3105 (Feb. 23, 1971) put it this way:

> [O]ne familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.

Mr. President, I know of no surer lesson of history than that politics should not be mixed in the process of codification, reform and revision, but that it inevitably will, in some measure, taint our work. Bacon's plan for reform aborted because of politics. Napoleon's Code became possible only through extraordinary legislative means. The work of Livingston and Field had to run the gauntlet of political criticism. If we are to develop a new Federal Code, codifying, reforming and revising our laws, we ought, however, to put aside politics or at least minimize its impact on our work product to whatever degree possible. Crime and criminal justice are too important for our people to be made the subject of narrow political advantage. Too much is at stake and too great is the need for reform to run the risk of losing it all for the momentary gains of politics.

On the other hand, debate is not only to be expected, but to be welcomed, for it is only through the examination of diverse views stated by able advocates that we can reach sound decisions. No one has a monopoly on truth. Any one who has an open mind can learn from those who disagree with him. I would hope, however, that as we undertake this reform that all could pledge themselves to the same goal: a comprehensive new Code. Differences should be confined to particular issues and not generalized to the Code itself. Otherwise, I fear our task will be in vain.

Finally, I would be less than frank if I did not express my concern that recent history of legislation in the criminal justice area in Congress did not raise the serious question that the benefit achieved by it for society as a whole may not have been purchased at too high a price in accompanying social division. In processing this Code, I would hope that all men of good faith would recognize on the part of others a similar dedication to the welfare of society and the freedom of the individual. Prof. Herbert Wechsler aptly expressed the character of the task before us:

> Whatever views one holds about the penal law, no one will question its importance in society. This is the law on which men place

their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. If penal law is weak or ineffective, basic human interests are in jeopardy. If it is harsh or arbitrary in its impact, it works a gross injustice on those caught within its toils. The law that carries such responsibilities should surely be as rational and just as law can be. Nowhere in the entire legal field is more at stake for the community, for the individual.

(Wechsler, "The Challenge of a Model Penal Code," 65 Harv. L. Rev. 1098–99 (1952). I call, therefore, for the exercise of quiet reason, not emotional rhetoric in the important task that faces us.

PROPOSED CODE SUBMITTED BY NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

Mr. McCLELLAN. Mr. President the Subcommittee on Criminal Laws and Procedures recently began its inquiry into the recommendations of the National Commission on Reform of Federal Criminal Laws, which were submitted to the President and the Congress on January 7, 1971. The final report of the Commission contains a proposed new Federal criminal code—title 18, United States Code—formulated as a "work basis" in terms of which the Congress might proceed to consider the necessary reform of the Federal criminal justice system. The text of the proposed code is supplemented by commentary on the various provisions. I note, too, that the text, as well as the commentary, often contains, usually in brackets, both policy and logical alternative formulations to those found in the text itself. Some of these alternatives were supported by a substantial body of opinion on the Commission, while others were not. Consequently, it is misleading to speak of the proposed code of the Commission without including within the code the noted alternatives. Nevertheless, in order that my colleagues may have the opportunity to examine the proposed code in its suggested statutory form, I request unanimous consent that excerpts from the report be included in the RECORD at this point.

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

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS,
Washington, D.C., January 7, 1971.

To the President and Congress:

I hereby transmit to you the Fnal Report of the National Commission on Reform of Federal Criminal Laws pursuant to Section 8 of Public Law 89–801, as amended by Public Law 91–39.

The Commission submits this proposed revision of Title 18, United States Code as a work basis upon which the Congress may undertake the necessary reform of the substantive federal criminal laws. The scope and organization of the proposed Code, its general approach to the problem of federal jurisdiction, and the basic outlines of its sentencing system, hold promise as a logical framework for a twentieth century penal code. Individually we have reservations, sometimes strong on the resolution of particular issues. Nevertheless, we are, as a Commission, satisfied that the provisions embodied in the text, together with their noted alternatives, fairly expose the relevant policy issues and should facilitate the necessary legislative choices by the Congress.

It is to be hoped that this work of reform, so necessary to the fair and effective administration of justice, may merit the due consideration of the Congress and that it will contribute to the resolution, on a constructive basis, of these difficult issues.

By Direction of the Commission,
EDMUND G. BROWN,
Chairman.

FINAL REPORT OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

FORWARD

The Final Report of the National Commission on Reform of the Federal Criminal Laws comprises a proposed Federal Criminal Code to replace most of Title 18 of the United States Code. Comments accompanying the sections of the proposed Code provide brief explanations of the statutory texts and possible alternatives. More elaborate explanations will be found in published Working Papers. Earlier drafts of many provisions are set forth in the Study Draft of a new Federal Criminal Code, published in June, 1970. Interim Reports of the Commission were filed on November 4, 1968 and March 17, 1969. The Interim Report of March 17, 1969 recommended a standard immunity provision to replace the scores of divergent immunity provisions in existing laws; a standard provision along the lines recommended by the Commission was enacted in Title II of the Organized Crime Control Act of 1970 (18 U.S.C. §§ 6001–6005).

The Commission's statutory mandate was very broad, including a review not only of substantive criminal law and the sentencing system but also of procedure and all other aspects of "the federal system of criminal justice". However, the Commission determined at the very beginning of its work that it would be inadvisable to spread the available resources so widely. Taking into account that Congress, the Judicial Conference, other Commissions, and privately financed projects were engaged in the studies of many issues of criminal law other than a substantive penal code, the Commission selected that field as its central concern.

The Final Report is the result of nearly three years of deliberation by the Commission, its Advisory Committee, consultants and staff. The Advisory Committee, headed by retired Justice and former Attorney General, Tom C. Clark, consisted of fifteen persons with a broad range of experience, including three United States Attorneys, a former state attorney general who has since become a member of the President's cabinet as Secretary of Health, Education and Welfare, a judge of a state supreme court, a former Judge Advocate General of the Army, and well-known professors of criminology and constitutional and criminal law.[1] The drafting process was as follows: The Commission's staff and consultants, working with law enforcement agencies, prepared preliminary drafts and supporting memoranda. These drew upon the reports of other bodies such as the President's Commission on Law Enforcement and Administration of Justice, the National Commission on Causes and Prevention of Violence, the National Advisory Commission on Civil Disorders, the American Bar Association Project on Standards for Criminal Justice, the American Law Institute, the National Council on Crime and Delinquency and numerous state penal law revision commissions. Preliminary drafts were reviewed by the Advisory Committee and the Commission in periodic discussion meetings.

At the conclusion of this first phase of intensive study, the Commission published the Study Draft of June 1970 in order to secure the benefit of public criticism before the Commission made its decisions.[2] This procedure, affording a pre-Report view of proposals under consideration, was unique in Commission practice; and suggestions and criticisms addressed to the Study Draft aided greatly in the preparation of the Final Report. Many departments and agencies of the government counseled with the Commission staff and submitted memoranda. The Commission has had the benefit of informal exchanges with committees of the U.S. Judicial Conference. A number of prosecutors and private practitioners have written to the Commission and their comments have been taken into account in revising the Study Draft provisions.

The Commission considered asking Congress for an extension of its life beyond the scheduled termination date of January 7, 1971, so as to permit a longer interval between circulation of the Study Draft in June 1970 and the issuance of this Report six months later. The decision not to seek an extension was based on the recognition that Congress bore the ultimate responsibility with respect to both fundamentals and matters of detail argued in many of the comments being received. Further debate within the Commission would not have contributed measurably to solutions, but would have postponed the legislative process without significant gain. Comments on the Study Draft which continue to be addressed to the Commission, as well as comments on the Final Report, can be forwarded to the Judiciary Committees of Congress and the Department of Justice.

Among the basic features of the proposed Code are the following:

(1) Unlike existing Title 18, the Code is comprehensive. It brings together all federal felonies, many of which are presently found outside Title 18; it codifies common defenses, which presently are left to conflicting common law decisions by the courts; it establishes standard principles of criminal liability and standard meanings for terms employed in the definitions of offenses and defenses.

(2) The sentencing system is overhauled. The chaotic variety of existing offenses and penalties is replaced by a limited number of classes of crime: three classes of felony and two of misdemeanors, with a standard range of penalties for each class. Statutory guidelines are formulated for the exercise of discretion within the range of sentencing authority.

(3) For the first time, the question of what is criminal is clearly differentiated from the question of what criminal behavior falls within federal jurisdiction. Thus, robbery, fraud and other offenses are defined in familiar ways, with a separate statement for each offense of the circumstances in which the federal government's law enforcement apparatus can be brought into play, *e.g.*, if the mails or means of interstate commerce are involved. For the first time, there is explicit Congressional guidance for the exercise of restraint in bringing local transactions into federal courts merely because technical federal jurisdiction exists. See § 207.

(4) The proposed Code is an integrated system, *i.e.*, the parts are closely interrelated. This means that the definition of each offense in Part B must be considered in relation to defenses and definitions of terms that appear in Part A—General Provisions, and in relation to the sentencing system in Part C. The length of authorized prison terms, *e.g.*, § 3201, must be considered in relation to restraints on imposing sentences within the "upper range" of the sentencing authority

Footnotes at end of article.

entific projects to be carried out aboard the Discoverer between Miami and Veracruz in early October of 1972, should submit their plans to Dr. Agustin Ayala Castanares, Instituto de Biologia, U.N.A.M. Apartado Postal 70–233, Mexico 20 DF, Mexico.

In Jamaica, plans for proposed projects should be submitted to Dr. Edward Robinson, University of the West Indies, Department of Geology and Geography, Mona, Kingston 7, Jamaica.

In Puerto Rico, proposed projects should be submitted to Dr. Rolf Juhl, Department of Agriculture, Santurce, Puerto Rico 00936.

In Trinidad and Tobago, proposals for research work aboard the Discoverer should be submitted to Dr. J. Kenny, Department of Biological Sciences, University of West Indies, Trinidad and Tobago.

In Venezuela, Dr. Luis E. Herrera is the NOAA–CARIB coordinator, and proposals from Venezuela should be addressed to Dr. Herrera at Instituto Oceanografico, Cumana, Venezuela.

In Colombia, proposals for projects aboard the Discoverer for late November and early December should be submitted to Capt. Juan Pablo Rairan Hernandez, Comision Colombiana de Oceanografia, Bogota, Colombia, Apartado Aereo 28466.

NOAA–CARIB should make a good wind-up cruise for the Cooperative Investigation of the Caribbean and Adjacent Regions and should pave the way for future cooperation in marine science in the Caribbean.

CRIMINAL JUSTICE AND PENAL SYSTEMS

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 25, 1972

Mr. FUQUA. Mr. Speaker, my distinguished colleague and fellow Floridian, CLAUDE PEPPER, recently delivered the commencement address to the University of Florida College of Law and his address was a poignant appraisal of the criminal justice system in the United States.

Congressman PEPPER is uniquely suited to comment on the criminal justice and penal systems in this country in view of his services as chairman of the Select Committee on Crime and his legal training at the Harvard College of Law, as well as law school teaching experience at the University of Arkansas College of Law.

I insert in the RECORD the excellent speech given by Mr. PEPPER:

CONGRESSMAN CLAUDE PEPPER'S SPEECH

Dean Julian, Reverend Clergy, Members of the Faculty, Distinguished Guests upon the platform, Members of the Graduating Class, Ladies and Gentlemen.

I thank you very much, Dean Julian, for your very generous and kind words of introduction. I often say that one who has been in politics as long as I have is grateful if the introducer is just kind to him—he doesn't have to be generous as you were, Dean, in your introduction. I'm always happy to come to this campus and to be a part of this distinguished university. Now, all the more so, since, at the homecoming before the last one, I was honored by being made an honorary alumnus of this great university. I happily recall, also, that I had the privilege to be down here with a group from Washington when this great Holland center in which we meet was dedicated, in the company of the then and, although we didn't know it at the time, the future Chief Justice of the United States.

I greet this distinguished class and welcome you into one of the greatest of the professions, that of the law. You must, of course, know, however, that the lawyer has not always occupied the most distinguished position in the opinion of our fellow-citizens. I recall an incident attributed to Dr. Samuel Johnson; that he was on one occasion dining in his favorite restaurant with a friend when a certain gentleman passed near his table. The friend said: "Do you know who that man is?" Dr. Johnson replied: "I do not like to speak ill of any man, but I am informed that he is a lawyer." And, of course, you've heard the old one that the judge came into court one day and just as he arrived at his bench the two opposing lawyers were addressing each other in very violent language, each pointing his finger in the other's face. One said to the other: "You're an unmitigated liar!" The other one said: "You're an unprincipled scoundrel!" and the judge said: "Counsel now having identified each other, we'll call the witnesses."

You members of the profession have learned already and will, of course, learn more fully hereafter, that in spite of all our long efforts we have not been able entirely to eliminate self-help from the conduct of our fellow-citizens. I heard an example of that recently—of a truck driver who stopped early one morning at a roadside restaurant for his breakfast. He had just sat down to his breakfast of bacon and eggs, buttered toast and coffee when three of these black, leather-jacketed motorcycle toughs strolled into the dining room, walked up behind him, and observed his breakfast. One of them just reached over and picked up his coffee and drank it. The truck driver looked at him but didn't say anything. The other one reached over and picked up a handful of his bacon. He looked at him but didn't say anything. The other fellow reached down and picked up a piece of his toast. He looked at him but didn't say anything.

The motorcycle toughs walked on over to a nearby table and, in a loud and arrogant voice, called to the waitress to bring them coffee. They sat down. The truck driver got up quietly, walked over to the cashier, paid his check and left. In a little while, the motorcycle toughs finished their coffee and one got up, walked over to the cashier, and in a very arrogant manner said: "Did you see what happened there awhile ago?" She said: "Yes, sir." He said: "That fellow wasn't much of a man, was he?" She said: "No, sir, he wasn't much of a truck driver, either. He just ran over and flattened three motorcycles as he drove off out there awhile ago."

I should like to speak to you a bit today about the criminal justice system of our country and whether it is meeting the needs of our time. Up until what we call, on the continent at least, the age of enlightenment, the criminal law was a very barbaric and brutal institution. Defendants had few rights recognized in courts; judges were arbitrary, if not capricious, and sometimes inhuman almost in the sentences that they imposed. Parliaments were the most cruel and barbarous; disemboweling and mayhem of the most odious character was a common occurrence. Capital offenses reached at one time in England 220, including the death sentence for the stealing of a few shillings of value in property. So, there came a time, as I said, accredited to the 18th century, when enlightened minds began to revolt at the barbarities and brutalities and the inadequacies of the criminal law system of that time.

The first to speak out in a most eloquent and moving way was Montesquieu, the great social philosopher, who reviewed the inadequacies and brutalities of the system and called for revision in the attitude toward the criminal law and the person charged with a crime and pleaded for the recognition in the courts of certain human rights which should be enjoyed and protected by those who were charged with the commission of a crime. He had a very eloquent and able ally in Voltaire, who crusaded with all the vigor and vehemence of his eloquent voice, against many of the cruelties and the inadequacies of his day, particularly in France. But another man from Italy, named Beccaria, was the first to formulate what might be called the concept of the modern system for the administration of justice. He pleaded for the appropriateness of the sentence imposed upon the convicted criminals to the crime committed and that the system of law under which the defendant should be committed should attend upon him with such fairness that he had a reasonable opportunity to exculpate himself if not guilty; that tortured confessions should no longer be a part of the system of justice. Well, this Beccaria raised his voice in such a persuasive manner that he was heard in England by Bentham and Romilly and in the American colonies by John Adams and Thomas Jefferson. And then he was given support in England by a man named John Howard, who wrote about and criticized and examined the prison systems of the day, which were inhuman and certainly very cruel and barbaric institutions. And so there came into the consciousness of Europe, England, and the colonies of America, an awareness of the necessity of a reexamination of the criminal justice system of the day. Besides, as brutalities had increased, crime had not diminished. And they began to consider what could be done that would impose justice upon the offender who was found to be guilty and, at the same time, protect society by deterrence, if possible, against the repetition of such offenses.

It was largely in the United States the idea developed that instead of capital offenses being so numerous and prevalent that we should have a system of incarceration—a penal system where people should be confined—and it was thought that that confinement would be an adequate punishment of the individuals; that it would not only rehabilitate them but deter them when they were released and others, by their example, from the commission of comparable or similar crimes. And so, in the intervening years, we have been resorting primarily less and less to capital punishment and now it is in suspense throughout the country. We have in some of the prisons of today eliminated corporal punishment of the offenders, the convicted ones, and the courts only recently have taken great strides in the protection of the constitutional rights of persons in prisons. Some courts have held that due process must be observed in the punishment of persons in penal institutions.

There are many people who think that our United States Supreme Court has gone too far in the recognition of the rights of the individual, the right of the individual not to be the victim of unlawful searches and seizures, the right of the individual not to be forced to plead his case or respond to inquiry and interrogation by officers of the law without having the presence of counsel chosen or properly delegated to him, without having to be a witness against himself in one form or another; and in many other respects to be given the cloak of protection which he has previously not known. So that, if you were examining our present system, no doubt in the eyes of Montesquieu, Voltaire, or Beccaria, or some of those early reformers, and they found the rights of the individual so properly, so thoroughly, so extensively protected as they are today, they would think that we had reached the culmination of that state of the law to which they had for so long and so diligently looked forward.

And, yet, what do we find? What are the results of the system that we have today? Well, I'm Chairman of the Committee on Crime of the House of Representatives and we have looked into a good many of the penal institutions of this country, one of which was Attica where 43 people were killed in violent attacks between the authorities and the inmates including eight to nine hostages.

Here, at nearby Raiford in February of this year, the guards and the authorities of the institution felt it necessary to shoot from a distance of 30 yards, as was testified to before our Committee the other day, into a group of 1,300 inmates located on an athletic field, who refused, as the authorities said, to go back to their cells. Seventy-five were wounded; one was shot in the eye; another received a shot that pierced his elbow and X-rays showed that there was a 38-caliber bullet in the pelvis of another one of the inmates who was among the victims of that shooting. In all parts of the country, today, prisons are tinderboxes that may burst out into a new confrontation or conflagration at any time.

As I said, the courts are beginning more and more to look into the processes by which governance and discipline are imposed upon the inmates and judicial authority is becoming more and more inquisitive as to the whole correctional system of the country. Public bodies, national, state, and local, are evidencing increasing concern about what to do about the problem. And, yet, crime goes on apace. Crime is up 144% from 1960 to 1970. Violent crime is up 126% from 1960 to 1970; property crime up 147% from '60 to '70; murder and non-negligent manslaughter up 56% from '60 to '70. We find that forcible rape is up 9%, robbery up 86%, aggravated assault up 92%, burglary up 130%, auto theft 150%, and the like.

And so the question that concerns the public today and must concern the members of this graduating class as they assume the mantle of members of the Bar is: What can we do about this problem of crime and what, if anything, should be done to reform or to revise the system of criminal law upon which we rely today—not only for the fair treatment of the one accused of crime, but for the security and the protection of the citizenry of the land and let me address myself, in just a few minutes, to that problem.

The basic problem that we face in discussing this matter can pretty well be revealed in looking at who are the inmates of the penal institutions of our country today. I'll just give you two—Attica and Raiford. At Attica, 8% were there for murder, 17% for manslaughter, and the like, but 89% had prior adult criminal records. Almost nine out of ten had criminal records before they were there. Fifty-eight percent, almost 60%, had previously been in a Federal or State Prison. We had five witnesses the other day before a committee of which I was a member. One of them had been in prison five times before the one in which he was incarcerated at the time. He was in his sixth institution, the other three were in their fourth, and another one in his third penal institution. I repeat, at Attica almost 60% had previously been in a Federal or State Prison. Now this is a figure that I think might be significantly noted. At Attica, 80% of the inmates did not graduate from high school and I talked, going around among the inmates, to many who had been participants in the violence that occurred there who had only gotten through the fifth grade in our educational system.

Now, let's take Raiford, here, in our own Florida. The average age of the inmate at Raiford is 24 years, so, generally today, the crime problem is a problem of the youth of this country. Sixty-one percent—and these figures that I've given you were given to our Committee last week in Washington by Mr. Louie Wainwright, who is head of the Correctional Institutions of Florida—sixty-one percent of the people at Raiford, as he said, are culturally and/or economically disadvantaged. Sixty-one percent are first offenders. Mind you, now, nearly two-thirds of the people confined at Raiford are first offenders and are with the worst criminals in Florida. By the way, I saw at Attica a young man, 19 years of age, white, married, confined as a juvenile delinquent. I wondered whether or not that boy would be a better criminal in terms of technique or a better citizen when he came out of Attica. Perhaps it's conditions like that that alerted Attorney Mitchell to describe the prison systems of this country as a national shame and President Nixon to describe our penal institutions as colleges of crime.

In Raiford, 80% had less than high school educations. Forty percent had less than ninth grade educations. Seventy-two percent were habitually unemployed or underemployed. Forty percent almost had no marketable job skills. Fifty-one percent were black, incidentally—although the percentage has slightly increased—there were four of 598 guards who were black. Forty-nine percent of the population was white. One out of five of the inmates had a drug-related problem.

Over here, at Dade City in that area we have a very distinguished Circuit Judge named Richard Kelly, who testified before our Committee in Washington last week. Judge Kelly went into Raiford in the evening and spent a day there going through the various portions of that institution, as he had visited other institutions of the country. He felt it was helpful to him as a judge in the imposition of sentences upon persons convicted of crimes to know something about the institutions to which he committed these convicted fellows. He told a touching story of many instances that he observed there. One was of a boy, small in stature, standing in a cage in white coveralls, his hands and the front of his coveralls covered with blood, crying like a baby—just having mutilated his sex organ by his own hand. The Judge said he approached that boy and tried to speak to him and the boy didn't seem to understand what it was all about or what the Judge was talking about in the conversation that he endeavored to have with him.

He told of other cases of comparable pathetic character. So what do we do? What do we do as lawyers? What do we do as members of society? What do we do as courts about this question of crime? Well, in the first place, obviously, the prison system, however excellent it is, can hardly atone for all of the inadequacies and the deficiencies of our society, of the failures of our social or educational system. But they can be helpful if they have to take the refuse of our society. At least at this time we might make a determined effort to try to save those people, not only to save those people from themselves, but to save our fellow-citizens from those people when eventually about 99% of them are, at long last, returned to society. As a matter of fact, while the Chief Justice of the United States said three out of every four of the inmates of our penal institutions come back to prison after committing more crimes once they are released. A more moderate figure, given by the Department of Justice, is two out of three (66⅔%) are arrested within six years and brought back into the penal system after they are once released.

And so our society is failing in preventing the type of people who drift into the courts, commit the crimes in general. We are failing in the adequacy of our disposition of those people in the court system itself; and we are failing in the correctional institutions which take them in for incarceration for the lack of a better manner in which to deal with them.

Now, what do we do? As I say, obviously, if you could start in the lower grades of the public schools to try to straighten the significantly twisted life of a child, you might save a life that he would later take. You might save the taxpayers $5,000 a year for the care of that individual in a penal institution. They tell me you can detect in early childhood people who have an antisocial attitude, an ill capacity to adapt themselves to their environment in the proper manner. Well, now, if that child had an ear defect or a speech defect, or an eye defect, federal and state funds would help correct that deficiency. But if he has a personality deficiency, if he has an incapacity to adapt himself properly to his environment and live an honorable and proper life, we don't do anything about that. In the first place, we don't know much about it and in the second place we are hesistant to attempt to do very much about it.

But getting to the court system, most of those who have experience and knowledge in juvenile justice attest that probably the juvenile should never go to the adult penal institutions at all. They should never even go to a statewide or large juvenile correctional institution because there they learn more about crime. We had a case in New York in our hearing on heroin where a 17-year-old boy was confined in a Federal prison for a few months. While he was there, he became friendly with one of the racketeers in the heroin traffic from New York and, when the boy got out, the gangster in New York had him come to New York and in a little bit the boy was making $6,000 a week making a round trip between New York and Chicago carrying heroin without putting up any money whatsoever. He had made a very valuable contact in prison as a lad 17 years of age.

And so the juvenile justice system must devise smaller institutions, must devise a way in the community whereby the boy or the girl who falls afoul of the law can be treated, can be given another opportunity, can be put under proper supervision, proper probation. I wonder if we should not have more foster parents and if a lot of these young fellows might not be touched and properly led by a high school hero in the athletic world, college athletes whom they admire, or people who can somehow command their respect and get them to follow their leadership.

Well, anyway, if we could just stop the juvenile justice system from the failures that it has today, we could save 50% of the people who later wind up in the penal institutions of the country. And the second thing, when the judges today have the responsibility of imposing sentence, it's generally agreed (many of you will be judges in later years) that it's desirable to have national seminars so the judges may counsel with one another so there will not be quite the variations there are in the punishments meted out in the courts today. And, as a matter of fact, many wonder if it would not be desirable for a judge after a person has been convicted in his court to sentence that individual to a maximum term of years and allow proper parole authorities at the state or federal level working constantly in contact with that individual to determine when it's proper from the point of view of the individual and safe from the viewpoint of society for that individual to be turned out again to be a free individual in the social order.

They tell me now that where you have sentences of zero up to five years in the Florida parole system they almost invariably require the individual to stay the five years rather than, as the judge apparently intended, from zero up to five years. In the case of alcoholics, generally it is agreed now that they should not be sent to prison. They should be treated as medical cases. Obviously, of course, the same applies in the case of drug addicts. And, yet, one of of five of the people in Raiford, as Mr. Wainwright says, are there because of drug addiction. So, our Committee and many other authorities in the country today are trying to find the kind of a drug that would be effective to counteract heroin and any dangerous drug addiction and to provide for proper treatment facilities in every community which will, perhaps, save these individuals before they ever get into prison.

Another possible innovation is to put more people on probation before they are sentenced to a penal institution by the courts. Duly selected convicted persons could be assigned to employment in the community where they were convicted, allowed to work, allowed to support their family, under proper supervi-

sion and probation, living in a small care center, or in a small institution, not in one of the infamous county jails which generally dot the country today. Meanwhile, that individual will be saving the state from paying $5,000 a year for his care at Raiford. It would be saving the state from providing welfare to that individual's family, perhaps, and that money which is earned by that individual could be partially employed in repaying the man from whom he stole the TV set, or whose automobile he stole and wrecked, or the other property owner who suffered from his crime or criminal conduct.

So, today, it seems to me the foremost thought is that the courts of the country should give utmost thought to what to do with people before they put them in a penal institution. Then, briefly, what do you do with them when you get them into an institution? Well, in the first place, at Attica, it's one of these old-type fortress institutions like our Raiford over here nearby. Mr. Wainwright says at Raiford they are inordinately overcrowded. So are they at Attica. They have 2,200 convicts at Attica. They have over 3,000 confined here at Raiford. All of the modern penal authorities say that you cannot effectively discipline and properly handle that number of inmates at any one single institution. So, the type of institution in which they are to be confined must be radically changed from the type that we have today. They could be broken down into smaller institutions. Instead of being located in a relatively rural area like Attica and Raiford, more of them should be put in Jacksonville and Tampa and Miami and Pensacola and Orlando where there will be job opportunities for those that are worthy of work release permits and where guards better qualified will more often be available; where the families of the individuals can come more frequently to visit them; and where they'll be nearer to the homes from which they came.

Yes, of course, all of that costs a great deal of money and that requires the cooperation of the federal, the state, and the local government. In addition to that, there must, of course, be a raising of the standards of the correctional personnel. Now I'm not one to condemn the correctional personnel in the prison institutions of this country. They are the lowest paid almost of our public servants. They are having to see, day after day, acts of defiance and acts of breach of discipline and they are powerless to do anything about it. They see professors and teachers and other people come in very much better paid than they are to work with the inmates and, naturally, there is a measure of resentment on their part against others working shorter hours, having much better working conditions, less danger, less burdens to bear, receiving far more compensation than they receive. Too often we've accepted as the correctional man—the guard—any individual who came along. Most of them had no previous training whatsoever. All they know how to do is to try to hold the people together in the places where they are supposed to be confined; try to provide a measure of discipline that's determined by their superior officer.

So, they've got to be upgraded, better trained, and better paid and given more desirable working conditions if they are going to be able to do a better job. And, of course, we have got to experiment with various programs that will permit release of these individuals confined in penal institutions. The state of South Carolina has had a very encouraging experiment. They've allowed a number of people whom they found to be responsible to go out and get employment in the cities round about the small institutions where they stay at night, to which they return in the evening, and those people are paying the state of South Carolina for their keep, they are contributing to the support of their families, they are paying Federal Income Taxes, they are receiving decent wages in private employment and they will have a job when they eventually get out. And that, of course, seems to be the kind of approach that is more desirable in dealing with these people in the future. Unhappily, there are people in penal institutions who are mentally deficient, who are morally incorrigible, who are utterly incorrectable for deficiencies that we know not how to explain. They constitute a separate and unfortunate group. I doubt very seriously if many of these people should ever be allowed to return to a free society. They need not be brutalized, they need not be treated with barbarity, but it is not safe for society to enjoy their companionship in a free order of free men.

But, on the other hand, a great many of our prison inmates—perhaps the majority—are capable of rehabilitation and our problem is how to do that. Today, when an inmate goes into a prison, by the conviction of the court he loses his citizenship. He loses his voting rights. He is no longer an elector under the laws of Florida and, too, in most of the other states. When he comes out, it's been testified to by Mr. Wainright, there's 63 jobs under the state of Florida which he's ineligible to perform because he's an exfelon.

I heard a man on a panel discussion in Philadelphia a little bit ago, who had been a barber in a penal institution, say that when he got out he tried to become a barber but he couldn't become a barber because he wasn't a citizen and he couldn't get a license. In Florida, to become a beautician or a barber or any kind of a professional person, you, of course, have to be a citizen and you have to take an examination and get the proper certification and authority. So, it may well be that you, in the future law-making process of this country or of this state should consider whether you gain any advantage by depriving a man convicted of a crime of his citizenship or, if you do deprive him of it while he's incarcerated, would it not be desirable to restore him to full opportunity of citizenship once he is properly released from that institution? As it is today, under the Federal and the State system, a long lag may well intervene between the time of his release and the time that he gets the restoration of his citizenship by either the President or the Governor, as the case may be.

One other thing, would it not be wise for the communities of this country, for the public institutions, churches, the schools, the chambers of commerce, the business groups of the land to consider their concern about a job being available for that man or that woman properly released from the correctional institution who comes back into society? Generally speaking, the institution does nothing but give them $30 or $40 and a suit of clothes and bid them good-bye. The guard opens the gates and the released man goes out. Somebody may meet them or somebody may not meet them.

When I was walking through Attica a bit ago, talking to a good many of the inmates in the cells, I remember saying to two or three of them: "Look here, when you get in a place like this, behind these 30 feet walls, behind these huge bars, when you go through experiences that you undergo here, when once you get out, why in the name of goodness do you ever want to come back to a place like this?" Two or three of these fellows dropped their heads and said: "Well, I don't know. You know, it's not as easy as you might think when we get out. Most of us don't have any education much, most of us don't know how to do anything that will gain anything much in the market of the land. When we get out many of us have already been estranged from our families. We don't have any friends much on the outside because we haven't had any contact with them and, up until now, very few institutions have even allowed inmates to write letters." Some of the institutions are now making telephone calls possible. They said: "We are isolated. Therefore, when we get out nobody seems to care very much. When we look for a job, they ask us if we've ever been convicted of a felony and if we don't tell them 'yes', they'll find it out anyway and most people don't want to hire somebody that's been in the penitentiary. We don't have many good people that are welcoming us on the outside and the tendency is to get lonely and to look up some of the old pals with whom we were associated when we go into trouble and, if we don't watch out, in a little while we are right back where we were again."

Now there may be a measure of social responsibility for what that man does or doesn't do thereafter, as well as a responsibility of his own. I'm not excusing any man's poverty or his disease unless he's mentally incompetent for the commission of crime, but we do know that most of the inmates of these institutions come from the underprivileged class. Whether we like it or not, we are going to have to pay for those deficiencies. And, yet, I must tell you one illustration to reveal the public attitude that you too often will find when you speak about improving our penal institutions.

When I got back from Attica, I was talking to a man who is in my law office in Miami Beach who makes a good income. He said: "Tell me about Attica." I told him a little bit about it and I said the Federal Government is going to have to help the states to correct these institutions to make them more rehabilitative in character, more effective in their functioning. "Oh," he said, "you're going to put it on the taxpayer then again, are you?" Well, now, my fellow-citizens, we are going to have to pay it either as citizens who are the victims of crime or as taxpayers who try to prevent crime or deter the commission of it again. It's just a question of which method we prefer.

Crime is costing this country billions and billions of dollars a year. In the drug traffic alone, the average drug addict, and there are 300,000 in the United States, steals or illegally gets possession of an average of $50,000 worth of property a year. The people are paying whether they do it voluntarily or not.

And, so, I wanted to talk to you about these problems, although I'm sorry I've drawn them out, perhaps, too long. We are proud of the law and its growth. We are proud of its tender concern for the rights of the individual. We are proud of the social system and the political order which our forebears have handed down to us, which we have the responsibility to carry on to those of succeeding generations. But we have problems and you are coming into the leadership of a profession that is primarily concerned with these problems. You ladies and gentlemen will soon be in the State Legislature which has provided with such gross inadequacy for the meeting of so many of these problems. Some of you will soon be in the Congress which likewise, only lately, has begun to contribute this year a hundred million dollars, next year two hundred million dollars to the states and the local communities to try to better these conditions of which I've spoken. Some of you will soon be on the Bench.

I commend to you the example of Judge Kelly over in Dade City. When you become a judge it might be good experience for you before you begin to send people to prison to go look at the prison to which you are going to send them and to look at maybe what may be done to that individual before he goes or while he's there, or after he gets out. At any event, you're going to be Presidents of the Bar Associations, members of distinguished committee of the local and American Bar and, above all, you are going to be influential citizens in the communities in which you shall reside. And I would think,

therefore, that it might be well for you to concern yourselves primarily with a system which is the shield and the safeguard of you, your family, and your fellow-citizens to make it as effective, while humane, as it may possibly be as the instrument designed to accomplish that high purpose.

Now, just let me add this last personal word to you ladies and gentlemen. Beginning with this afternoon, you embark upon what we may call the voyage of life upon the sea of the future. I hope it's going to be a long and a very delightful voyage for each of you. If I may, I'd like to leave with you words that I've never forgotten which were delivered as a Phi Beta Kappa address, at the University of Alabama when I became a member in 1921, by a professor from the University of Richmond. I've long forgotten the name of the professor, but I'll never forget his words. He called them the fisherman's benediction, given by a Minister to the hardy voyagers of the Scandinavian countries as they were about to set out on their long and perilous voyages, and, if I may, I'll leave them with you.

"May the Lord bless thee and keep thee, grant thee favoring winds, a prosperous voyage, safe harbors, and stout hearts for the storms."

NOAA SCIENTISTS REVIEW CANNIKIN DATA

HON. CRAIG HOSMER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 25, 1972

Mr. HOSMER. Mr. Speaker, I noted with interest a short Associated Press article in the January 20, 1972, New York Times, titled "A-Test Said to Yield Useful Quake Data." Rather than bringing the world to an end, it now seems that the Cannikin nuclear test should provide much useful information to those scientists and engineers engaged in studying the reactions of manmade structures to earthquakes.

A press release titled "NOAA Scientists Review Cannikin Data" by the Commerce Department's National Oceanic and Atmospheric Administration, released on January 20, 1972, was the basis for the news article. The release points out that—

Cannikin, the nuclear explosion detonated beneath the Aleutian island of Amchitka November 6, produced some of the most precise seismic data ever recorded for a tremor, natural or manmade.

Further on in the press release—page 7—we find the following:

Earthquake engineering data. Instruments set up at various distances from Cannikin's ground zero measured the dynamic response of the earth's surface to the shocks. The resulting body of information is unique in that it provides insights into some important aspects of what structures can expect from earthquakes in this magnitude range. It is the kind of information usually acquired from the catastrophe of a large natural earthquake in a populated area.

As a resident of the highly seismic area near Los Angeles, I am certainly pleased that we will not have to wait for a catastrophe to occur before we find out how to predict and design against earthquakes. With time we might even learn how to release accumulated earth strain before it gets big enough to release naturally as an earthquake.

As I read the press release, which appears below, I remembered all the purple prose rhetoric and blasphemy directed at those who wanted to conduct the test for national security reasons. We should all realize that the seismic data are pure profit.

Where, oh where, are those prophets of doom who castigated everyone from the President on down, who had the intestinal fortitude to go ahead with the Cannikin test as planned? It is still true that the empty barrel makes the most noise.

The article follows:

NOAA SCIENTISTS REVIEW CANNIKIN DATA

Cannikin, the nuclear explosion detonated beneath the Aleutian island of Amchitka November 6, produced some of the most precise seismic data ever recorded for a tremor, natural or manmade, the Commerce Department's National Oceanic and Atmospheric Administration said today.

From seismic data obtained by instruments crowded around the Amchitka test site, and by instruments around the world, scientists portrait of the seismic nature of the Canhave begun assembling their comprehensive nikin event. Althougn the full picture awaits thorough analysis of present data and data being gathered through the coming year, this seismic sketch of Cannikin has emerged.

THE MAIN SHOCK

Preliminary values obtained from recordings at Palmer Seismological Observatory showed a body-wave magnitude of 7.0 for Cannikin, and a surface-wave magnitude of 5.8. The cavity collapse 38 hours after the detonation caused a tremor with a body-wave magnitude of 4.8.

A revised estimate of the body-wave magnitude based on the average of values reported by 43 observatories world-wide is 6.8 for Cannikin and 5.7 for the surface-wave magnitude from the average of seven observatories.

Maximum transient vertical ground motion at the control point on Amchitka 22½ miles from ground zero amounted to eight centimeters (four up, four down), four-tenths of a centimeter at Adak Island, 190 miles to the west, and four one-hundredths of a centimeter at Anchorage, about 1350 miles to the east. Maximum transient horizontal motion at the control point was 11.8 centimeters (5.9 push, 5.9 pull) along a radius from the explosion. (One centimeter=.3937 inch.)

The Richter magnitude scale expresses absolute earthquake size as determined from amplitudes of seismic signals recorded on a seismograph. In this logarithmic system, magnitude 7 represents ten times the signal amplitude of magnitude 6, magnitude 6 ten times the signal amplitude of magnitude 5, and so on.

Body-wave magnitudes are obtained by measuring maximum amplitudes caused by seismic waves that travel deep through the planet's interior. Surface-wave magnitudes are obtained by measuring maximum displacements caused by waves which travel through the earth's shallow surface layers and arrive after the body waves.

Because underground explosions are a point source—not a regional source like a fault—they release less energy in the form of surface waves and always have a lower surface-wave than body-wave magnitude.

Also, explosions release most of their energy in a burst lasting only fractions of a second, as against periods of minutes in very large natural earthquakes. The latter appear to be a succession of earth-shaking ruptures, rather than a single event.

THE AFTERSHOCKS

A series of numerous aftershocks was recorded following the Cannikin detonation, and aftershock activity continued until the explosion-created underground cavity collapsed 38 hours later. Most aftershocks appeared to be shallow, within a few miles of the surface, and close to ground zero. All aftershocks were less than body-wave magnitude 4—that is, all were less than one one-thousandth the amplitude of the main shock.

Cavity collapse appears to have terminated aftershock activity, just as it did in Milrow, the predecessor to Cannikin, which was about one megaton, detonated in 1969. This suggests that here, as in Milrow, the scale of the aftershock-generating mechanism at Amchitka is small enough to be completely relaxed by cavity collapse.

An interesting set of contrasts between natural and manmade earthquakes in the same area and magnitude range is provided by a magnitude 7¾ shock that occurred near Amchitka on February 4, 1965. This tremor generated more than 1,300 detectable aftershocks in a 450-mile-long zone which generally followed the trend of the Aleutian arc. Many of these were in the magnitude 6 class, one of which would release more energy than all of the Cannikin aftershocks combined.

EFFECTS ON NATURAL EARTHQUAKE ACTIVITY IN THE AMCHITKA REGION

It appears that global processes, and processes involving the entire Aleutian Island arc, are more important to earthquake activity here than such localized events as underground explosions.

Apparently, Cannikin, like Milrow, did not interact with the large-scale processes which control the region's major natural earthquake activity.

The emergent theory of plate tectonics holds that a spreading seafloor, constantly replenished by material rising from the earth's mantle through oceanic rift zones, drives large crustal plates.

Where these "floating" plates converge, as long as the western rim of the Americas, the oceanic plate thrusts under the continental plate. The high level of earthquake activity found in such zones is believed to be caused by stresses built up in the crustal material. When these stresses exceed the capacity of the supporting rocks, underground ruptures occur, releasing the energy of strain in the form of earthquake waves and dislocations along faults.

The Aleutian Island arc is a typical zone of convergence, and earthquake activity in the Amchitka Island region appears to be deeply rooted in the structural behavior of the entire arc and to global movements in general. Also, most of the natural earthquake activity occurs along a major thrust fault zone some tens of miles beneath the island; shallow earthquakes near Amchitka fall primarily where the oceanic plate begins its oblique downward thrust.

Measurements of stress (force) and strain (physical deformation) in Amchitka rocks also point to little or no serious interaction.

Cannikin strainmeter data taken at two sites, each six miles away from the shock, show the same general pattern—a sharp increase in stress levels during and immediately after the explosion, then relaxation. Permanent deformation six miles from the shock amounted to about one part in ten thousand—about six inches per mile. These were not symmetrical, but were larger toward the north and east than toward the northwest, suggesting that some faulting occurred near ground zero.

GEOMAGNETIC EFFECTS

To detect any quasi-static geomagnetic effects associated with the Cannikin event, four proton total-field magnetometers were placed in near-continuous operation for several months on Amchitka, one about 20 miles to the northwest, one about nine miles to the southeast, one at about two miles and one at about six miles from ground zero. Pre- and post-shot data were also taken at 200 locations across and along the White Alice fault, whose surface trace passes within six-tenths of a mile of ground zero.

Within 30 seconds after the detonation,

Highways are important to us, obviously. Highway travel builds sales for Mobil. But traffic jams, and a glut of cars using too much gasoline to haul too few passengers, waste many resources, including oil.

We want our products to help more people get where they want to go, with greater ease and less waste than is now possible.

In our view, that requires the establishment of a National Master Transportation Program as soon as possible.

BEST INVESTIGATIVE AWARD TO NEIL SHEEHAN

(Mr. PEPPER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PEPPER. Mr. Speaker, on December 13 upon the occasion when the Drew Pearson Foundation made the award to Neil Sheehan of the New York Times of the best investigative reporting of the year, Mrs. Drew Pearson was graciously present and received a warm ovation from the large audience in attendance. Mrs. Pearson made a touching speech, movingly appropriate for the occasion and remindful of the great investigative career of her devoted husband, Drew. I know my colleagues and those who will read this RECORD will be pleased to read Mrs. Pearson's very touching remarks. I include the remarks in the RECORD at this point:

MRS. DREW PEARSON'S SPEECH AT FIRST ANNUAL DREW PEARSON AWARD LUNCH

Mr. Louviere, honored guests, ladies and gentlemen.

First I want to thank you all for coming here today. I really appreciate your taking time from your busy schedules at this busiest of seasons to join us of The Drew Pearson Foundation in honoring the first winner of our annual award for investigative reporting.

In more than half a century as a working newspaperman, Drew broke countless stories of national and even international importance. As Arthur Krock once said to me: "I don't always agree with Drew, but he sure helps keep the government honest." I can imagine how much Drew would have liked to break the "Pentagon Papers" story so I am proud, as a representative of The Drew Pearson Foundation, to give its first award to Neil Sheehan, who at great personal risk has, in the judgment of the Trustees, best carried on the Drew Pearson tradition by bringing to public attention the existence of the Pentagon's secret history of the Viet Nam war.

Congratulations, Mr. Sheehan. You have set a high standard, which we hope will be equalled by other award winners in years to come.

PERSONAL EXPLANATION

(Mr. PEPPER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PEPPER. Mr. Speaker, after voting for the adoption of the rule providing for bringing to the floor the conference report on the foreign aid bill yesterday, I was called to a conference with White House officials on important drug legislation. Unfortunately, I was delayed in getting back until after the vote was taken. If I had been present I would have voted aye for the adoption of the conference report. Previously, I had voted in the Rules Committee to report this conference report to the House.

(Mr. PEPPER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PEPPER. Mr. Speaker, in early December a most meaningful National Conference on Corrections was held at Williamsburg, Va., under the auspices of the honorable John Mitchell, Attorney General of the United States. This conference brought together many distinguished leaders of America from the executive, judicial, and legislative branches of our Government and at the State as well as the Federal level to discuss the critical question of the correctional institutions of our country and the correctional procedures being employed in such institutions in the United States today. It is generally agreed that about 95 percent of the inmates of our correctional institutions in the United States at some time in their lives are released from confinement and go back into society as free individuals. Some estimate that as many as 75 percent of those released from such institutions subsequently—and often in a matter of a very few years—commit other crimes and are again adjudicated guilty and again incarcerated in a penal institution. I know of instances where inmates currently confined have as many as five times previously been adjudged guilty of crime and confined in penal institutions. Hence, one of the most critical aspects of the problem of crime in the United States today, as the House Select Committee on Crime has had dramatically confirmed, is the correctional system in the Nation today. The National Conference on Corrections at Williamsburg was concerned with this, one of the most vital aspects of the criminal problem in the Nation today.

So important did he consider this conference that the Chief Justice of the United States, the Honorable Warren E. Burger, attended the conference and addressed it at Williamsburg the evening of December 7, 1971. The Chief Justice delivered a magnificent address exhibiting his deep concern about this problem of corrections and presenting a penetrating and thorough analysis of the problem, enlightening those who were fortunate enough to hear him not only with his analysis of the correctional problem but with a comprehensive and most significant series of recommendations as to how the problem should be met in the country. This subject has given the Chief Justice the most grave concern and, therefore, he spoke in addressing the conference not only with great knowledge but with deep conviction about the challenge of the correctional system today to the country. The address of Chief Justice Burger will be of particular interest to Members of Congress who are so much concerned with the problem of crime and all aspects of it.

Therefore, Mr. Speaker, I am grateful for the permission of the Chief Justice to present his able address for inclusion in the body of the CONGRESSIONAL RECORD for the benefit of my colleagues in the Congress and all who read this RECORD. The address of the Chief Justice follows:

REMARKS OF CHIEF JUSTICE WARREN E. BURGER

I am sure that everyone concerned about problems of corrections and prisons was heartened by the action of the President in convening this Conference. It is time for a massive coordinated effort by the state and federal governments.

It is also highly appropriate that these sessions are held in this historic place for it was a distinguished Virginian, George Keith Taylor, brother-in-law of Chief Justice Marshall, who, as a member of Virginia's House of Delegates, spoke here almost exactly 175 years ago—on December 1, 1796, to be precise—on behalf of legislation to improve the penal system of the Commonwealth.

Taylor is remembered as one of the first leaders on this continent to advocate the enlightened views of the great Italian reformer and legal philosopher, Beccaria. Thus, Virginia is a familiar forum for the problems this Conference is considering.

For as long as I have been a judge, I have tried to see the administration of criminal justice in terms of three major entities, or parts, all constituting interrelated parts of a single problem.

The first, obviously, is the police and enforcement function; the second is the judicial function; and the third is the correctional and confinement aspect, and, closely related, the vital release programs of probation, parole, and work parole.

This Conference is concerned with that third and final, and very crucial, aspect of justice. On other occasions I have said, and I strongly believe, that this third phase is perhaps the most neglected of all three of the aspects of justice, although each of the other two has strong claims, unfortunately, for first place in that respect.

The problem of what should be done with criminal offenders after they have been found guilty has baffled societies for thousands of years. Therefore, none of us would be so brash as to assume that this Conference can even discuss, let alone solve, all the enormous problems that have been with us for several thousands of years. Because of this terrifying magnitude of the problem, I hope the Conference will find a way to identify just a few of the most urgent but soluble problems and address ourselves to them at once. If we try to solve all the problems, we will solve none. We must be content with modest progress and small victories.

Ideals, hopes and long-range planning must have a place, but much can be accomplished without further research or studies in the essentially "nuts and bolts" side of corrections.

I hesitate to suggest, even in a tentative way, my own views of those solutions to an audience that includes so many genuine experts and authorities in this field. Since the recent events at Attica, New York, and in California, the country has been recalling the warnings that many of you have uttered on the need to reexamine both the basic attitudes and the tools and techniques of correctional systems and prisons. (I need hardly add, to this audience, that there is a vast difference even though for shorthand we use the two terms interchangeably.)

Even to reach some solutions on the urgent, the acute, the immediate problems, will take large outlays of money, and this cannot be produced except with a high order of public leadership to develop a public commitment and, in turn, a legislative commitment at state and national levels.

As I see it, the urgent needs include these:

1. Institutions that provide decent living conditions, in terms of an environment in which hope can be kept alive.

2. Personnel at every level who are carefully selected, properly trained, with an attitude of understanding and motivation such