

(6) five Governors appointed by the President from a panel of at least ten submitted by the Governors' Conference;

(7) five Mayors appointed by the President from a panel of at least ten submitted by the United States Conference of Mayors;

(8) five county officers appointed by the President from a panel of at least ten submitted by the National Association of Counties; and

(9) five nongovernmental leaders appointed by the President from such fields as labor, business, education, etc.

(b) The term of office of each member of the Commission shall be two years; members shall be eligible for reappointment; and, except as provided in section 6(d) of this title, members shall serve until their successors are appointed.

#### ORGANIZATION OF THE COMMISSION—INITIAL MEETING

SEC. 6. (a) The President shall convene the Commission within 90 days following the enactment of this Act at such time and place as he may designate for the Commission's initial meeting.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

(c) Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made; except that where the number of vacancies is fewer than the number of members specified in paragraphs (6), (7), (8), and (9) of section 5(a) of this title, each panel of names submitted in accordance with the aforementioned paragraphs shall contain at least two names for each vacancy.

(d) Where any member ceases to serve in the official position from which originally appointed under section 5(a) of this title, his place on the Commission shall be deemed to be vacant.

(e) Thirteen members of the Commission shall constitute a quorum, but two or more members shall constitute a quorum for the purpose of conducting hearings.

#### DUTIES OF THE COMMISSION

SEC. 7. It shall be the duty of the Commission—

(1) to engage in such activities and to make such studies and investigations as are necessary or desirable in the accomplishment of its functions as set forth in section 3 of this title; and

(2) to submit an annual report to the President and the Congress on or before January 31 of each year. The Commission may also submit such additional reports to the President, to the Congress, or any Committee of Congress, and to any unit of government or organization as the Commission may deem appropriate.

#### POWERS AND ADMINISTRATIVE PROVISIONS

SEC. 8. (a) The Commission or, on the authorization of the Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this chapter, hold such hearings, take such testimony, and sit and act at such times and places as the Commission deems advisable. Any member authorized by the Commission may administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or members thereof.

(b) Each department, agency, and instrumentality of the Executive Branch of the Federal Government is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this chapter.

(c) The Commission shall have the power to—

(1) appoint an Executive Director, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, who shall be compen-

sated at the rate provided for a GS-18 of the General Schedule of such title;

(2) appoint and fix compensation of such additional personnel as may be necessary to carry out the provisions of this Act;

(3) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of title 5, United States Code; and

(4) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code.

(d) Except as otherwise provided in this chapter, persons in the employ of the Commission under subsection (c) (1) and (2) of this section shall be considered to be Federal employees for all purposes, including—

(1) the Civil Service Retirement Act, as amended;

(2) the Federal Employees' Group Life Insurance Act of 1954, as amended;

(3) annual and sick leave; and

(4) the Travel Expense Act of 1949, as amended.

#### COMPENSATION OF MEMBERS

SEC. 9. (a) Members of the Commission who are officers of the Executive Branch of the Federal Government, Governors, or full-time salaried officers of city and county governments shall serve without compensation in addition to that received in the regular public employment, but shall be allowed necessary travel expenses and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Members of the Commission who are not regular, full-time employees of the Federal, state or local government shall, while serving on business of the Commission, be entitled to receive compensation at rates fixed by the President, but not exceeding the rate specified at the time of such service for grade GS-18 in section 5332 of title 5, United States Code, including travel time; and while so serving away from their homes or regular place of business, they may be allowed travel expenses including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. PHILIP A. HART (for himself, Mr. HRUSKA, and Mr. MCCLELLAN):

S. 1549. A bill to amend the Federal Rules of Evidence and for other purposes. Referred to the Committee on the Judiciary.

Mr. PHILIP A. HART. Mr. President, joined by the Senator from Arkansas (Mr. MCCLELLAN) and the Senator from Nebraska (Mr. HRUSKA), I am introducing legislation to amend the Federal Rules of Evidence to make clear that nonsuggestive lineup, photographic and other identifications, made in compliance with the Constitution, are admissible in evidence.

The Federal Rules of Evidence, as submitted by the Supreme Court, and passed by the House of Representatives, included the following provision in rule 801 (d) (1) (C):

A statement is not hearsay if . . . the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement

is . . . one of identification of a person made after perceiving him.

A similar provision was contained in the preliminary draft of the proposed rules—March, 1969, the revised draft—March, 1971, the Judicial Conference proposed draft, and the Supreme Court draft—November, 1972.

The purpose of the provision was to make clear, in line with the recent law in the area, that nonsuggestive lineup, photographic and other identifications was not hearsay and therefore admissible. In the lineup case of *Gilbert v. California*, 388 U.S. 263, 272 n. 3, the Supreme Court, noting the split of authority in admitting prior out-of-court identification, stated:

The recent trend, however, is to admit the prior identification under the exception that admits as substantive evidence a prior communication by a witness who is available for cross-examination at the trial.

And the Federal Circuit Courts of Appeals have generally admitted these identifications. See, for example *Clemons v. United States*, 408 F. 2d 1230 (D.C. Cir. 1968) (en banc), cert. denied, 394 U.S. 964 (1969); *United States v. Miller*, 381 F. 2d 529, 538 (2d Cir. 1967) (Friendly, J.); *Edison v. United States*, 272 F. 2d 684, 686 (10th Cir. 1959). See also 5 Wigmore, Evidence, Sec. 1130 (Chadborn rev. 1972) which strongly supports admissibility of prior identifications. Notwithstanding this substantial authority, the Senate deleted this provision during the final weeks of the 93d Congress. Although the House conferees initially insisted it be reinstated, they finally relented on this issue as a part of a series of compromises to gain agreement on a bill before Congress adjourned.

There was no suggestion in the Judiciary Committee report that prior identifications are not probative and should not be admitted to corroborate in-court identifications. Some members of the committee had reservations on the deletion of this provision at that time.

Upon reflection, it appears the rule is desirable. The experience of courts suggests that identifications consisting of nonsuggestive lineups or photographic spreads made reasonably soon after the offense are more reliable than in-court identifications and therefore provide greater fairness to both the prosecution and the defendant in a criminal case. See McCormick, Evidence, 602 (2d Ed. 1972). Exclusion of these identifications would be detrimental to the fair administration of criminal justice.

Moreover, the trier of fact, whether it be judge or jury, cannot perform its function, if highly probative and constitutional identification evidence is kept from it. As the Court of Appeals for the District of Columbia Circuit stated *en banc* in *Clemons v. United States*, 408 F. 2d at 1243:

The rationale behind the exclusion of hearsay evidence has little force in the case of witnesses . . . who are available for cross-examination. We also think that juries in criminal cases, before being called upon to decide the awesome question of guilt or innocence, are entitled to know more of the circumstances which culminate in a courtroom identification—an event which, standing alone, often means very little to a conscientious and intelligent juror, who rou-

tinely expects the witnesses to identify the defendant in court and who may not attach great weight to such an identification in the absence of corroboration.

For the above reasons, I urge the Senate to give prompt consideration to the proposed legislation.

By Mr. McCLURE:

S. 1550. A bill to prohibit the sale, alienation, or commitment of gold by the Secretary of the Treasury without prior approval by act of Congress. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. McCLURE. Mr. President, today I am introducing a bill to prohibit the sale, alienation, or commitment of gold by the Secretary of the Treasury without prior approval by act of Congress.

In the years prior to passage of the law which permits the American citizen to own gold the U.S. Treasury came up with a series of specious arguments against gold ownership. One of them was that gold is and should be treated exactly like every other commodity. During debates on this subject I often pointed out that that was precisely what Treasury was not doing, in advising against private ownership of gold. Showing the inconsistency of the Treasury's position did not, however, mean that I had brought their premise. Gold is not and never has been exactly like anything else. For century after century it has served as a numeraire that is the basis upon which the price of everything else was calculated and the ultimate reserve of value.

So called gold nuts are often criticized for a mystical reverence for the metal. But there is nothing mystical in a preference for a substance which is unique in combining the qualities of durability, malleability, and quantity and beauty.

There is more cause for surprise when a gold-based currency fails, at least until examination shows that the coinage has been deflated by government. And there is only a distinction of sophistication between the coin clipping of Emperors and the inflationary practices of democracies. Gold itself remains valuable in both its roles as a measure of value and store of reserve. For example, a barrel of oil has been worth the same 2 grains of gold for years. It is the currencies which fluctuate.

Given the overall stability of this metal it would be the height of folly to sell remaining reserves. The United States cannot unilaterally strip gold of its value. And despite all the talk of demonetization by the various committees of the International Monetary Fund gold is internationally as desirable today as it was when the United States belatedly closed the gold window in 1971 to protect its diminishing reserve. The IMF permitted members to offer gold as collateral for loans and the German-Italian loan followed. The IMF allowed members to revalue gold at free market prices and the result was the French figure of 170. Demonetization is the popular phrase and the SDR is the fad of the moment, but the real action is in gold.

It is impossible to see why the United States or any financially responsible

body would want to substitute the rapidly inflating paper currencies of the world for a metal with a proven intrinsic value. I urge therefore, that the sale of gold by the Treasury without approval by Congress be prevented by law.

By Mr. MOSS:

S. 1552. A bill to amend title XVIII of the Social Security Act to authorize the provision of intermediate care services under medicare, and for other purposes. Referred to the Committee on Finance.

NURSING HOME REFORM—PART II

Mr. MOSS. Mr. President, my Subcommittee on Long-Term Care has been investigating nursing home problems since 1963. Early hearings by the subcommittee resulted in a substantial number of amendments to medicare and medicaid in 1967. In fact, the existing body of uniform Federal minimum requirements from nursing homes stems from these so-called Moss amendments of 1967. Since 1969, the subcommittee has conducted 25 hearings and taken more than 5,000 pages of testimony. We are currently in the process of releasing a 12-volume report on nursing home problems entitled "Nursing Home Care in the United States: Failure in Public Policy." Five volumes of this report have been released with the remainder to follow at monthly intervals.

During a news conference last November, I detailed the subcommittee's plans to release our reports over a 12-month time frame for purposes of keeping the issue before the American public. Unfortunately, this has led some observers to the conclusion that we would wait until the end of this year before introducing any legislation. As I said on the floor to the Senate on March 12, this is far from true. In fact, I introduced the first 12 bills of my nursing home reform package. Today I am introducing the remaining 36 bills.

I would like to emphasize a couple of points about this 48-bill package. First, I shall introduce still other bills. The present series of bills is, more than anything else, a response to the problems and conditions developed by the New York Times and hearings in that city conducted by my Subcommittee on Long-Term Care. Second, the Senate Special Committee on Aging is not a legislative committee. This means that we must rely on other committee's to enact the proposals we develop.

We have done this in the past and look forward to working with other committees of the House and Senate as they refine and hopefully enact the bills I am introducing today. This year I feel we are particularly blessed because of the creation of the House Permanent Committee on Aging chaired by my friend WILLIAM J. RANDALL of Missouri. I am grateful also for the fact that CLAUDE PEPPER of Florida has been named chairman of the House Aging Committee's Subcommittee on Health, and Long-Term Care. I look forward to working with Congressman PEPPER who has agreed to act as House sponsor for the legislation I am introducing. Congressman ED KOCH who has developed much nursing home and home health legislation on his own and who introduced my previous 12 bills in the

House has graciously consented to be the prime cosponsor of the 36 bills that we are introducing today.

I should also like to emphasize that I shall be vigilant not only in my efforts to move this legislative package but also in seeing that HEW takes action to implement and enforce existing law in line with congressional directives. I have some specific points in mind:

First, HEW must begin to enforce Federal law and regulations which prohibit nursing home operators from dominating State boards which license nursing home administrators.

Second, HEW must announce regulations implementing section 242 of Public Law 92-603, which makes offering or accepting a kickback a crime punishable by a \$10,000 fine and a year in jail.

Third, HEW must announce and enforce regulations implementing my measure to require the disclosure of nursing home ownership. This law was enacted in 1967 to cover indirect as well as direct interests, but HEW has made no change in regulations. There is no uniformity in the way States keep these lists or in the information they contain. They are seldom available to the public as required by law.

BILLS DESIGNED TO MAKE LONG-TERM CARE MORE READILY AVAILABLE TO ALL OLDER AMERICANS

First is a bill to provide nursing home coverage under medicare without requiring prior hospital and establishing a second level of care, intermediate care, and requiring standards for intermediate care facilities providing such services under medicare. Intermediate care services are presently authorized under medicaid but not under medicare.

Mr. President, I introduce for appropriate reference a bill to expand the scope of medicare to provide nursing homes without the prerequisite of prior hospitalization and to create a second level of care authorized in the program called intermediate care. This proposal should be viewed in tandem with several bills that I introduced last month such as:

S. 1161 to authorized an experimental program to subsidize families to care for their elderly in their own homes;

S. 1162, to authorized payment for day care services under medicare;

S. 1163, originally proposed by my colleague Congressman ED KOCH for purposes of broadening the scope of medicare and medicaid home health services; and

S. 1165 to authorize funding for "campuses for the elderly" that is, the construction and operation of a nursing home, home for the aged, congregate living facility, hospital, and senior citizens' center located on site.

These bills taken together and with those I refer to below will provide this Nation when they are enacted for the first time with a comprehensive program of treatment for our infirm elderly.

These proposals, of course, stem from our 25 hearings since 1969 and from our 12-volume series of reports. As our introductory report makes clear, we have made much progress in this field with the enactment of medicare and medicaid but we still have far to go.