By Mr. FARBSTEIN:
H. Con. Res. 408. Concurrent resolution expressing the sense of the Congress with respect to religious persecution by the Soviet Union; to the Committee on Foreign Affairs.
By Mr. HELSTOSKI:
H. Res. 369. Resolution to stop the transfer of the Naval Training Devices Center at Sands Point, N.Y., pending an investigation; to the Committee on Armed Services.
By Mr. MURPHY of New York:
H. Res. 370. Resolution to stop the transfer of the Naval Training Devices Center at Sands Point, N.Y., pending an investigation; to the Committee on Armed Services.
By Mr. SAYLOR:
H. Res. 371. Resolution expressing the continued opposition of the House of Representatives to the admission of the Communist China regime to the United Nations; to the Committee on Foreign Affairs.
By Mr. SHRIVER:
H. Res. 372. Resolution condemning persecution of national and religious minorities in the Soviet Union; to the Committee on Foreign Affairs.
By Mr. PHILBIN:
H. Res. 373. Resolution extending greetings and felicitations of the House of Representatives to the trustees, faculty, students and friends of Cushing Academy of Ashburnham, Mass., on the occasion of the 100th anniversary of the granting of its charter; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ANNUNZIO:
H.R. 7987. A bill for the relief of Mohamed Ramez Salem; to the Committee on the Judiciary.
By Mr. ASHLEY:
H.R. 7988. A bill to confer jurisdiction on the U.S. Court of Claims District Court for the Northern District of Ohio to hear, determine, and render judgment of the claim of Jean Davison against the United States; to the Committee on the Judiciary.
By Mr. FRIEDEL:
H.R. 7989. A bill for the relief of Isidore and Margaret Zellermayer; to the Committee on the Judiciary.
By Mr. KEITH:
H.R. 7990. A bill for the relief of the estate of Bradford Smith; to the Committee on the Judiciary.
By Mr. MORRISON:
H.R. 7991. A bill for the relief of Benjamin Soued and Elie Soued; to the Committee on the Judiciary.
By Mr. POWELL:
H.R. 7992. A bill for the relief of Salvatore Gambino; to the Committee on the Judiciary.
H.R. 7993. A bill for the relief of Vincenzo Prestigiacomo; to the Committee on the Judiciary.
By Mr. RONAN:
H.R. 7994. A bill for the relief of Georgios Kapsopoulos; to the Committee on the Judiciary.
By Mr. ROSENTHAL:
H.R. 7995. A bill for the relief of Jirayer Gharapetian Vartanian; to the Committee on the Judiciary.
By Mr. THOMPSON of New Jersey:
H.R. 7996. A bill for the relief of Clarita D. Garcia; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

197. By Mr. SHRIVER: Resolution adopted by Rice County Farmers Union, Rice County, Kans., urging that certain amendments be included in H.R. 7097 and that full parity for farm families is the goal we must reach; to the Committee on Agriculture.
198. By the SPEAKER: Petition of Henry Stoner, Columbus, Ohio, with reference to the removal of the U.S. Marine Corps from the Dominican Republic; to the Committee on Foreign Affairs.

SENATE

THURSDAY, MAY 6, 1965

(Legislative day of Wednesday, May 5, 1965)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by the Vice President.

Dr. Joachim Prinz, rabbi, Temple B'Nai Abraham, Newark, N.J., offered the following prayer:

In the gray days of human history, Abraham, the father of all religions, enunciated for the first time the concept of one God, Creator of the world, and the Sustainer of life. Thus the history of the people of Israel remains forever bound up with the divine plan for His world and the people who inhabit it. Yet, Israel's history is one of bondage and persecution. For 2,000 years, after the Holy Land had passed into foreign hands, the Jewish people suffered in countries all over the globe. Herded into ghettos, they were subjected to discrimination and degradation, to injury and death. In our own days, 6 million of them lie buried in the mass graves of the concentration camps of Europe. Yet in all these centuries of hatred and bloodshed, they did not abandon their faith in God, nor did they forsake their belief in man's innate goodness and the principles of justice and peace. They prayed and hoped that the day would come when many of them would be able to return to their homeland, the land of Israel, and to build a nation and to reestablish themselves in freedom and human dignity. The bloodletting of so many millions in the land of persecution and the perseverance of the Jewish people made the dream and prayers of Israel come true.

Seventeen years ago, with the concurrence and approval of the United Nations, the land of Israel was established. Today, more than 2 million people from many lands, men and women of many races and faiths, inhabit the land.

On this day of the anniversary of the founding of the State of Israel, we pray: May there be peace between Israel and her neighbors. May all of them realize that in their hands and hearts rests the key to the preservation of peace in the whole world. May there be wisdom in the minds of all leaders in that part of the world, the cradle of religion and civilization, so that they will pursue the cause of cooperation and mutual respect, which alone will guarantee stability and peace for all. May the water from the ancient and sacred river benefit the fields of all nations, yielding bread and sustenance for all, and not be a source of conflict and armed threat. May all the peoples acknowledge Israel's right to be, to work, and to create, knowing that there is room enough for Arabs and Jews to live together in harmony. May the great nations of the world—may, indeed, our own country and its leaders, recognize their responsibility to protect the integrity of all borders, and the rightful and just claims of all peoples, to the end that the ancient prophecy may be realized:

"And it shall come to pass in the end of the days,
That the mountain of the Lord's house shall be established,
And all nations shall flow unto it.
For out of Zion shall go forth the law,
And the word of the Lord from Jerusalem.
And they shall beat their swords into plowshares,
And their spears into pruning hooks;
Nation shall not lift up sword against nation,
Neither shall they learn war any more."

SUPPLEMENTAL APPROPRIATION, FISCAL YEAR 1965, FOR MILITARY FUNCTIONS OF DEPARTMENT OF DEFENSE

The VICE PRESIDENT. Pursuant to the unanimous-consent agreement, the Chair lays before the Senate the pending business, which will be stated.

The LEGISLATIVE CLERK. A resolution (H.J. Res. 447), making a supplemental appropriation for the fiscal year ending June 30, 1965, for military functions of the Department of Defense, and for other purposes.

The Senate resumed the consideration of the joint resolution (H.J. Res. 447) making a supplemental appropriation for the fiscal year ending June 30, 1965, for military functions of the Department of Defense, and for other purposes.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, will the Senator yield to me one-half minute?

Mr. STENNIS. I yield 1 minute to the majority leader.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Permanent Investigations of the Committee on Government Operations, the Committee on Commerce, and the Committee on the District of Columbia be authorized to meet during the session of the Senate today.

The VICE PRESIDENT. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 800) to authorize appropriations during fiscal year 1966 for procurement of aircraft, missiles, and naval vessels, and research, development, test, and evaluation, for the Armed Forces, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H.R. 7597) to establish the veterans reopened insurance fund in the Treasury and to authorize initial capital to operate insurance programs under title 38, United States Code, section 725, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (S. 60) to authorize the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes, and it was signed by the Vice President.

HOUSE BILL REFERRED

The bill (H.R. 7597) to establish the veterans reopened insurance fund in the Treasury and to authorize initial capital to operate insurance programs under title 38, United States Code, section 725, was read twice by its title and referred to the Committee on Finance.

SUPPLEMENTAL APPROPRIATION FOR MILITARY FUNCTIONS OF THE DEPARTMENT OF DEFENSE

The Senate resumed the consideration of the joint resolution (H.J. Res. 447) making a supplemental appropriation for the fiscal year ending June 30, 1965, for military functions of the Department of Defense, and for other purposes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a quorum call not to exceed 3 minutes, the time to be considered outside of the time allotted under the unanimous-consent agreement.

The VICE PRESIDENT. Without objection, it is so ordered. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. McNAMARA in the chair). The Senator from Montana will state it.

Mr. MANSFIELD. Have the 3 minutes expired?

The PRESIDING OFFICER. They have.

Mr. MANSFIELD. How long ago did the 3 minutes expire?

The PRESIDING OFFICER. They have just expired.

Without objection, the order for the quorum call is rescinded.

Mr. MORSE. Mr. President, I yield 40 minutes to the distinguished Senator from Alaska.

AN APPROPRIATION REQUEST CANNOT BE USED TO AUTHORIZE AN UNDECLARED WAR

Mr. GRUENING. Mr. President, in his message to the Congress on May 4, 1965, requesting this supplemental appropriation of $700 million to conduct the undeclared war in Vietnam, President Johnson frankly stated that this request was being used not because moneys were needed to supply our Armed Forces in Vietnam, but rather as a vehicle to secure congressional approval of his carrying on the undeclared war to North Vietnam and anywhere else in southeast Asia that he sees fit.

This the President made clear at the outset of his message when he stated:

> This is not a routine appropriation. For each Member of Congress who supports this request is also voting to persist in our effort to halt Communist aggression in South Vietnam. Each is saying that the Congress and the President stand united before the world in joint determination that the independence of South Vietnam shall be preserved and Communist attack will not succeed.

It should be made clear also that this request for funds for the remainder of the current fiscal year—2 months—would be spending at the rate of over $4 billion a year. It is obvious that the sum has been set this high not because this sum can be obligated in the less than 60 days remaining in this fiscal year, but because there is here an attempt to obviate the fact that this is unnecessary. The President has stated that funds requested are not needed during this fiscal year. He has told Members of Congress that sufficient funds have been appropriated to the Department of Defense and sufficient transfer authority has been lodged in him to permit the undeclared war in Vietnam to be carried on without let or hindrance until the end of this present fiscal year.

By this message the President has sought to give the clear impression that a vote against this appropriation is a vote in aid to communism.

This implication is totally unwarranted. It should be resented by every Member of Congress. It attempts to blackjack the Senators and Representatives and to hold them up to scorn and to brand them as less than patriotic if they choose to differ and disobey the Presidential command.

I yield to no one in the intensity of my opposition to the international Communist conspiracy and in my determination to do what I can to defeat that conspiracy.

Thus, for reasons which I shall enlarge upon later in my remarks, I do support the actions which President Johnson felt forced to take to prevent a Communist takeover of the Dominican Republic.

This is not a rubberstamp Congress—or at least it should not be. The separation and independence of the three branches of government—executive, legislative, and judicial—is among the basic and inviolate tenets of our Constitution and of the American idea. We should resent being dragged around like a dog on a leash and given 48 hours to pass bills which the administration seeks to gird up its shaky policies and which admittedly are not needed at this time. The Congress should not be asked to enact legislation such as the bill before us today, with hidden meanings. Let us consider this bill on its merits without a background Presidential message which seeks to give devious and sinister meanings to our votes.

Some have attempted to compare the situation in the Dominican Republic with the situation in Vietnam.

The comparison is not valid.

In Vietnam we start with the historical fact that there had been a unified Vietnam for 800 years, which followed over a thousand years of Chinese rule and which preceded the colonial status after the French conquest of Indochina.

The concept of two Vietnams came into being only as a result of the Geneva Conventions of 1954 after the French had been decisively beaten by the Vietminh at Dienbienphu.

It was never intended to be a permanent division of Vietnam into two parts.

According to the Geneva Convention, free internationally supervised elections were to be held within 2 years for the purpose of reunifying the country into one, single Vietnam—as it had been before its conquest by France.

Those guaranteed elections were not held because the United States—through its puppet Ngo Dinh Diem—did not want them to be held. This despite our unilateral pronouncement at the time of the Geneva Convention in 1954 that we would abide by the results of free elections, supervised by the United Nations, designated to unify the country.

That was our first violation of our commitment to abide by the provisions of the Geneva Convention.

In addition, despite the clear injunction contained in the Geneva Convention prohibiting the escalation of armaments either in North Vietnam or in South Vietnam, almost immediately after the Geneva Convention was signed in 1954, the United States began to supply arms to South Vietnam and to send military trainers into South Vietnam to train the Vietnamese Army culminating, in 1961, with our sending ever-increasing numbers of so-called advisers to fight alongside the South Vietnamese on the frontlines.

Our military escalation has continued since then, culminating in our decision in February to carry the war into North Vietnam.

Over a year ago—on March 10, 1964—I took the floor of the Senate to warn of the dangers inherent in a continuation of our policies in Vietnam.

First of all I pointed out that President Johnson had inherited the mess in Vietnam. I noted that it was not of his making and that as he approached the problems of making the hard decisions on Vietnam—problems created long before he became President—he should feel no compunction to act in such a way as to justify past actions, past decisions, and past mistakes. I stated then and I state now that President Johnson should feel entirely free to act in such a manner and to make such decisions as are calculated best to serve the interests of the United States and the free world—a world changed greatly from the time of President Eisenhower and Secretary of State Dulles, who initiated our southeast Asia policies.

It is still not too late, in my opinion, for President Johnson to reexamine his policies in that area of the world and to admit frankly and fully that his predecessors may well have been wrong in the course of action they set in that part of the world.

Mr. President, I ask unanimous consent that my remarks on March 10, 1964, together with various exhibits included in those remarks, be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GRUENING. Mr. President, since March 10, 1964, I have time and time and time again on the floor of the Senate and elsewhere pointed out that basically the undeclared war in Vietnam is a civil war in which South Vietnamese are killing other South Vietnamese.

There is no denial of the fact that some of the South Vietnamese—the Vietcong—are being aided by arms and men from North Vietnam.

On the other hand, there is no denial of the fact that some of the South Vietnamese—the people of the government of Saigon—are being aided by U.S. arms and fighting men, and in steadily increasing volume.

But these facts cannot controvert the established premise that Vietnam was once a single, unified country, that the United States agreed to its reunification determined at the Geneva Conference, and that the guerrilla warfare—the civil war—started in South Vietnam when we decided not to honor our commitments for the reunification of Vietnam.

No one controverts the fact that atrocities have been committed on both sides.

And at the same time, no one controverts the fact that while our puppet, Diem, ruled the country he became increasingly ruthless, tyrannical, and sadistic in oppressing his fellow countrymen, while we stood by without effective protest and permitted his oppression in violation of the conditions specified by President Eisenhower in his letter of October 23, 1954, when he offered South Vietnam military and economic aid.

That the Communist government in Hanoi represses human rights and dignities no one can deny.

But that the government in Saigon of Premier Diem did the same thing, with our concurrence, should not have been countenanced.

For at that time it was the avowed purpose of the United States to show to the people of all Vietnam—or we should have been seeking to do so—that economic and social progress could be achieved with respect to the dignity of man and observance of his rights and freedoms, and that a free society was superior to a police state.

This, regrettably, we failed to do.

Another thing I have repeatedly pointed out during the past year is that we are fighting in Vietnam alone. Shortly after the Geneva Conventions in 1954, the United States took the lead in establishing the Southeast Asia Treaty Organization on September 8, 1954. Joining in this organization were the Governments of Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the United Kingdom, and the United States. These countries at that time agreed to protect the territories of Laos, Cambodia, and Vietnam from "armed attack and counter subversive activities directed from without against their territorial integrity and political stability."

But what is the situation today?

Except for some minor, token forces from one or two of these countries, belatedly contributed after our most urgent pleas, the United States is going it alone in Vietnam.

As I have pointed out repeatedly, Where are our allies of the Southeast Asia Treaty Organization?

They just are not on the front lines in quantity comparable to the number of U.S. fighting men who are daily being killed and wounded in Vietnam.

In the months since March 10, 1964, when I first spoke out on the mess in Vietnam, I have repeatedly pointed out that our action in Vietnam constituted violations of our commitments under the Charter of the United Nations.

Article 33 of the United Nations Charter provides:

> The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

The United States has not sought a solution to the conflict in Vietnam by inquiry.

The United States has sought no solution to the conflict in Vietnam by mediation.

The United States has sought no solution to the conflict in Vietnam by conciliation.

The United States has sought no solution to the conflict in Vietnam by arbitration.

The United States has sought no solution to the conflict in Vietnam by judicial settlement.

The United States has sought no solution to the conflict in Vietnam by resorting to regional agencies or arrangements.

The United States has sought no solution to the conflict in Vietnam by any other peaceful means.

More recently—on April 29, 1965—I pointed out in my remarks on the floor of the Senate my conviction that our policies in southeast Asia in bombing North Vietnam are aiding and not thwarting imperialist communism.

I have stated U.S. present policies may be driving Hanoi into the waiting arms of Peiping. If our war efforts are escalated and North Vietnam is laid bare, then Hanoi may be forced to call for aid from both Red China and Communist Russia. Once Red Chinese troops occupy North Vietnam, how many thousands of years will it take before they leave? It will be difficult to drive them out.

Our policies are also driving Peiping and Moscow closer whereas their deep split was a cause for rejoicing in the free world. Our policies are likewise estranging us from our allies and strengthening imperialist communism.

How are our policies in southeast Asia strengthening imperialist communism?

Because if we had adhered to the Geneva agreement and would adhere to it now, if we announced our purpose to hold the elections promised in the Geneva agreement and would adhere to it now, and if we announced our purpose to hold the elections which we supported, a united Vietnam would inevitably firmly resist a takeover by the Chinese. This would be a complete accord with its past history.

The Vietnamese want to be independent. They objected to the presence of the French. They object to the presence of the United States. They would oppose the presence of the Chinese.

What would emerge in all probability judged by past history, both long time and recent, would be a Titoist form of government independent of Peiping.

To secure that type of independence from Moscow, the United States has invested $2 billion in foreign aid in Tito's Yugoslavia.

We could have pursued the same policy in southeast Asia, although in consequence of our aggressiveness there and now the bombings of North Vietnam and our repeated declarations for an independent South Vietnam, this policy would now be more difficult to achieve than it would have been a year ago. But it is still possible.

In this policy we would have Russian support.

But if we escalate the war still further, go still farther north, and continue to bait the Government of China, the Chinese may move in with ground troops into both North and South Vietnam. And once they occupy Vietnam it would be infinitely more difficult to get them out. It has been extremely difficult and, as yet, impossible to get Joseph Stalin's troops and tanks and their successors out of Estonia, Latvia, Lithuania, and Poland and Czechoslovakia. But we managed to assist Tito in proclaiming and maintaining a considerable degree of independence from Moscow. We are pleased with the result and consider the $2 billion that it cost the American taxpayers as a sound investment.

His government is Communist, but it is a communism independent of the imperial control which Joseph Stalin sought to impose. It is not a communism which is exported for the purpose of dominating other nations.

Similarly, if we had pursued or could now pursue a corresponding policy in southeast Asia, a reunited Vietnam choosing its own government would in all likelihood maintain its independence from the Peiping rule of Mao Tse-tung and Chou En-lai.

Unfortunately our present policy is likely to nullify that desirable solution.

Actually, our policy is leading to the very Chinese imperialist expansion which we declare it is our purpose to obviate.

I have also, on many occasions, spoken out against the attempt to controvert established facts.

For example, the President in his message on May 4, 1965, sought to equate the situation in Vietnam to the situation in Korea.

This is far from accurate.

In Korea there was manifest aggression—an armed invasion from the North at the start.

In Korea the United States was fighting side by side with the South Koreans determined to keep their country free from aggression from the North.

In Korea we were fighting under the banner of the United Nations with allies from 15 countries fighting side by side with our troops.

In Vietnam, on the other hand, we are engaged in fighting on one side of a civil war against an indigenous uprising of South Vietnamese aided by North Vietnamese.

In Vietnam we are fighting virtually alone, without allies and on the basis of might makes right.

History cannot be rewritten, although the administration has attempted to rewrite it.

Facts cannot be ignored, although pertinent facts have been ignored by and in the administration's presentation of its case.

The United States cannot by wishful thinking rewrite the facts to suit new theories.

I see no need for this reassertion by the Congress of approval of his policies in Vietnam.

The President on August 7, 1964, requested the Congress to pass the following resolution:

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all the necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

I voted against that resolution and stated in part at the time:

I have asked, and ask again now, that instead of multiplying our Armed Forces and the resulting casualities, we request a ceasefire and seek, instead of hostile military action, a peacekeeping United Nations police force. I should be happy to see Americans as a part of that peacekeeping police force * * * I cannot in good conscience support the pending resolution, which opens the door to unlimited unilateral war by our country in an area and for a cause which pose no threat to our national security, and in which no more American lives should be sacrificed.

I still feel as I did then.

This requested appropriation, coupled with the President's message, is in fact tantamount to giving the President a second blank check.

The Congress last August gave him one blank check to wage war with only two dissents—those of the distinguished senior Senator from Oregon [Mr. MORSE] and that of the junior Senator from Alaska. To repeat, I feel strongly that this cannot be done under the Constitution.

As a Senator of the United States I have taken a solemn oath to preserve and defend the Constitution of the United States. I cannot in all good conscience vote to take any action contrary to the provisions of that Constitution.

The people of both North and South Vietnam are Vietnamese. They have behind them 800 years of united history. The United States cannot pervert history and mold facts to suit its own convenience or its own theories of what it seeks to accomplish.

Mr. President, in my judgment, the situation in the Dominican Republic is totally different. I support what the President has done to date. I commend him for it. I feel, from my longstanding familiarity with Caribbean affairs, that he had no alternative.

A Communist takeover engineered by Peiping or Moscow would be in violation of the Monroe Doctrine. It was so in the case of Cuba. I do not consider the Monroe Doctrine obsolete. I support it unqualifiedly, especially with the interpretation which President Roosevelt sought to put into it—and our subsequent Presidents have likewise supported—that it be made a joint concern of all the American republics. But whether a joint concern or not, it should stand.

My interest in the Caribbean, and particulary in the island of Hispanola, which houses the two nations of Haiti and Santo Domingo, is probably of longer duration than that of any Member of the Congress. Forty-five years ago, when I was managing editor of The Nation, the weekly magazine in New York—which this year, incidentally, will celebrate its 100th anniversary—I crusaded against what has since become known as "our gunboat diplomacy."

It was when I was in Camp Zachary Taylor, as a candidate for a commission in the Field Artillery during World War I that one time while I was in the Y, I read in a newspaper an item that U.S. marines were bombing Haitian villages. This was shocking to me because I believed deeply in our participation on the side of the Allies in World War I. I felt that our sending American marines into these two island republics was in complete contravention to Woodrow Wilson's notable pronouncements about the right of small nations to determine their destiny. And in those days our interventions, regrettably, were pare of "dollar diplomacy." They went into other countries to protect American financial investments.

I felt that our basic liberties and fundamental principles were at stake, and I had, as I have said, embraced the Wilsonian philosophy. I felt then and I feel now that our entry into both World War I and World War II were imperative. I made up my mind then that if possible, when the war was over, I would look into the matter of our military invasion of these Caribbean nations and see what could be done about it. My opportunity came when I assumed managing editorship of The Nation.

I commissioned several writers to do articles, and they did so, which The Nation published. I wrote editorials on the subject. I organized a committee of 24 lawyers, who wrote an impressive brief pointing to the illegality and unconstitutionality of our invasion of those two island republics. They were distinguished members of the bar. They were: Frederick Bausman, Seattle; Alfred Bettman, Cincinnati; William H. Brynes, New Orleans; Charles C. Burlingham, New York; Zechariah Chafee, Jr., Cambridge; Michael Francis Doyle, Philadelphia; Walter L. Flory, Cleveland; Raymond B. Fosdick, New York; Felix Frankfurter, Cambridge; Herbert J. Friedman, Chicago; John P. Grace, Charleston, S.C.; Richard W. Hale, Boston; Frederick A. Henry, Cleveland; Jerome S. Hess, New York; William H. Holly, Chicago; Charles P. Howland, New York; Francis Fisher Kane, Philadelphia; George W. Kirchwey, New York; Louis Marshall, New York; Adelbert Moot, Buffalo; Jackson H. Ralston, Washington, D.C.; Nelson S. Spencer, New York; Moorfield Storey, Boston; Tyrrell Williams, St. Louis.

Those names may not mean much to the present generation, but most lawyers of middle age or older will recognize that these were outstanding members of their profession.

Senator William E. Borah, at my request, addressed a mass meeting of protest in Carnegie Hall, New York, at which Louis Marshall, a great lawyer, presided. And finally, I managed to secure a congressional investigation.

In response to my efforts, the Senate appointed a select committee with the following membership: Medill McCormick, of Illinois, Republican, chairman; Tasker Oddie, of Nevada, Republican; Atlee Pomerene, of Ohio, Democrat; and Andreius A. Jones, of New Mexico, Democrat.

The committee made its plans to hold hearings in both Haiti and the Dominican Republic. Senator McCormick then asked me to precede the committee by 1 week and try to organize the hearings and select the witnesses, as the amount of time the committee could spend in the island was limited. It held hearings for 3 days in Haiti and an equal number in the Dominican Republic.

The findings of the committee were not wholly to my liking. We were still in the era of "gunboat diplomacy" and "manifest destiny." They recommended the continuation of the military occupation in Haiti but an early termination of the Dominican occupation. However, the Nation persisted, and during the Hoover administration the Marines were withdrawn from Haiti, and in the meanwhile, self-government had been restored in the Dominican Republic.

Unfortunately, a man trained in our Marine Corps—Rafael Leonidas Trujillo y Molina, who had worked himself into a high place in the Dominican constabulary—promoted a coup d'etat, seized power, and established himself as the ruler of the Dominican Republic. His 31-year reign probably exceeds that of any of the various Latin American dictators in brutality, ruthlessness, and corruption. He murdered thousands of his fellow Dominicans. And regrettably, U.S. administrations, both Republican and Democratic, supported him, even giving him military aid which he used to oppress his own people.

In the fall of 1922, my interest in a good neighbor policy led me to go to Mexico as a journalist, representing both Collier's week and The Nation. Very little was known in the United States about the Mexican Revolution begun in 1911 which had passed its violent stage and was settling down to reap its fruits. I went to find out among other things why the Harding administration, with Charles Evans Hughes as Secretary of State, was refusing to recognize the government of President Alvaro Obregon, a great statesman who had both defeated the forces of feudalism and reaction in the field and had been elected President in the first postrevolutionary period. The Harding administration had refused to recognize his government because he, quite properly, refused to approve a treaty requested by the United States which would in effect nullify the purposes and promises of the Mexican revolution by agreeing not to break up the large landholdings if they were American owned. We were still carrying out dollar diplomacy.

My interest in Latin America led me to discuss with President Roosevelt the desirability of a "good neighbor policy." I also discussed this at length with Secretary of State Cordell Hull, whom I found deeply sympathetic, although somewhat timid on the subject of agreeing to cease armed intervention in the neighboring countries in times of disorder and violence.

In the fall of 1933, I found that I had been appointed the adviser—and there was only one—to the U.S. delegation to the Seventh Inter-American Conference which was to convene in Montevideo, Uruguay, late that year. This was President Roosevelt's first venture into the Latin American field. The American commission was headed by Secretary Cordell Hull. The Republican member was J. Reuben Clark, of Utah, who had been a former Under Secretary of State, and the others were: Spruille Braden, whose family had had copper interests in Chile; Alexander Weddell, U.S. Ambassador to Argentina; J. Butler Wright, U.S. Minister to Uruguay; and Dr. Sophonisba Breckenridge, professor of social work at the University of Chicago.

In this Montevideo Conference we laid the groundwork for certain fundamental changes in U.S. policy. The most important of these was to adjure intervention for any reason whatever into the territory of our neighboring states unless requested by their government. Second, to make the Monroe Doctrine multilateral; to make it, in President Roosevelt's words, a "joint concern" of all the American republics. These became U.S. policy, and it was a gratifying and fundamental change from the imperialistic course we had followed for the previous third of a century and a little earlier. I considered it a very gratifying achievement, and American public sentiment generally supported it.

Subsequently, what had been called the Pan American Union became the Organization of American States, and its charter very specifically forbids intervention for any reason whatsoever. However, unfortunately and regrettably, that organization has not functioned well and is not now prepared to function quickly. So when President Johnson found that American lives were in danger, that there was no government in the Dominican Republic; that no protection could be given either Americans or foreign nationals, he took the only course possible and sent our marines there to protect human lives—the lives not only of our own citizens but of other foreign nationals. However regrettable it may be that this could not have been done multilaterally and by the OAS, as a practical matter that was impossible There was no time to lose if lives were to be saved. And so, as I have stated, I commend President Johnson for this action.

Before the marines had landed, the revolution seemed to be and apparently was a revolt by the followers of Juan Bosch against the dictatorial and reactionary regime of the military which had staged the coup d'etat against him, had deposed him from office and driven him into exile. He had been the constitutional and legally elected President—perhaps the first ever to be so elected in the Dominican Republic, whose history, unfortunately, has been an alternation between chaos and dictatorship. It was tragic that Bosch was not permitted to fulfill his term and have it followed by another constitutional election.

However, after the marines had landed, or about that time, the President was informed that the rebels against the usurping Government of the Dominican Republic were largely infiltrated by Commmunists, some of them trained in Cuba and elsewhere, and that there was a real danger that these Communist elements would take over the revolution.

Assuming that this information was correct, and obviously the President so felt, he had no other course but to announce that we would prevent the Communist takeover and not allow the Dominican Republic to become another Communist satellite.

The presence of one Communist-dominated country in the Caribbean such as Cuba unfortunately may not in itself be a direct menace to our own national security, but it is a constant menace to our sister nations in the Caribbean and in South America and to the peace of this hemisphere. Directed by Moscow, and maybe by Peiping, Castro's Cuba has sent infiltrators and saboteurs into Venezuela and Colombia, and seeks to export its Communist revolution to those countries which are striving for democratic forms and the freedoms predicated thereunder. So they have experienced the traditional Communist methods of violence—sabotage, bombing, and assassination. It is unthinkable that we should not do everything possible to prevent the spread of this form of totalitarianism, which is so contrary not only to our own ideals and purposes, but to that of our neighbor republics. This would become a menace to our security if it succeeded in subverting other nations in this hemisphere.

I regret to say that I think we have blundered gravely in our previous policies under both Democratic and Republican administrations. We have supported ruthless dictators of the right, such as Trujillo and Batista, who prepared the way for such a reaction against their tyranny and such a revulsion against their corruption that the field was ripe for a Communist takeover. When Castro finally revealed his true colors and showed himself to be a puppet of the Kremlin, we again blundered greatly in the Bay of Pigs episode. We should either have kept out entirely or given the Cuban refugees the support which they believed had been promised them and which they had every right to expect. We did neither, and Castro was strengthened by our fumbling. Castro has since proved a menace to the peace of the Western World and another such Communist Castroite republic nearby allied with Moscow or Peiping would be intolerable. So I feel the President has been dead right to scotch this menace.

President Johnson has also acted wisely and correctly in summoning the Organization of American States into action. It remains to be seen whether the Latin American members will rise to the occasion and move to provide the kind of multilateral security and consensus which their interests, as well as ours, would dictate. We should have an inter-American police force similar to a United Nations police force, but organized wholly in the Western Hemisphere. It should be manned by contingents from every country willing to participate, and the U.S. participation should be that of a member and not of a dominator. Once organized it should be ready to move into situations such as exploded in the Dominican Republic. If this could be achieved, the United States would get away both from the necessity as well as the onus of unilateral intervention. We would thereby dispel the idea, now unfortunately reborn, that we are resuming gunboat diplomacy and wielding the big stick.

So I want to make it clear that I feel that there is a fundamental difference between our military involvement in southeast Asia and our involvement, as it has been to date, in the Caribbean. As I repeatedly stated, I do not consider what happens in Vietnam, or indeed in southeast Asia, a menace to our Nation's security. I do not share the view that if we go to the peace table and work out a settlement in line with the Geneva agreement, which we are pledged to support, that there will be a Communist takeover of all southeast Asia. I share even less the alarmist fears that the takeover of the Philippines, Australia, New Zealand, and so forth, will follow, and that we shall have to repel communism on our U.S. shores. That is a lot of nonsense because the United States, through its fleet and air power, completely controls the Pacific Ocean. Moreover, as I pointed out again and again, the white man cannot settle internal Asian problems. They have to be settled by the Asians. I have discussed this at great length at various times, and passing events fully justify my apprehension that we are getting deeper and deeper into a quagmire from which we will have

great difficulty in extricating ourselves with honor, with profit, or with success, and without the loss of still more American lives.

The said fact is that judging from the President's $700 million request to carry on the war for 2 months, we can assume that the total appropriation requested for next year will run over $4 billion—and it will probably be larger. The Korean war cost us $18 billion and, of course, this war will be at least, if not more, costly. So we can anticipate that all the fine domestic programs which the President has presented and which have already met with wide and enthusiastic acclaim from the American people, sorely needed and desirable programs—the war against poverty, antipollution, the war against crime, landscape and urban beautification, resource development, wildlife and wilderness conservation, and much else—will go down the drain. The funds needed to carry out the President's purpose and his overall proposal to build the Great Society will be consumed by the moloch of war.

Mr. President, I support President Johnson in his actions in the Dominican Republic since I appreciate the fact that the perilous situation in the Dominican Republic and the failure of the Organization of American States to offer an effective, readily available alternative compelled him to act in order to avoid a takeover of that Republic by international communism.

However, I cannot support President Johnson on the course he has chosen to follow in Vietnam. Therefore, I cannot support him in his request for this appropriation, which admittedly is not needed now to carry on our war there and which I regard as a subterfuge to gain congressional support for his policies in Vietnam.

Therefore Mr. President, I shall vote against the approval of this appropriation.

EXHIBIT 1

THE UNITED STATES SHOULD GET OUT OF VIETNAM

Mr. GRUENING. Mr. President, the mess in Vietnam was inherited by President Johnson.

Over 10 years ago, after a careful study of the situation in Indochina, a report was made to the Senate outlining the following conditions for success in that troubled area of the world:

"The basic problem which confronts all three governments and particularly that of Vietnam is to put down firm roots in their respective populations. They will be able to do so only if they evolve in accord with popular sentiment and they deal competently with such basic problems as illiteracy, public health, excessive population in the deltas, inequities in labor, and land tenure, and village and agricultural improvements. Finally, it is essential that there be a constant rising of the ethical standards of government and a determination to use the armies, now in the process of formation, strictly for national rather than private purposes. Failure in these fundamental responsibilities of self-government will result in the achievement of the shadow rather than the substance of independence. It could also mean the rapid reduction of the three nations to chaos and the subsequent intrusion of some new form of foreign domination from close at hand."

The date of that report was October 27, 1953, over 10 years ago.

The person making the report was our very able and distinguished majority leader, the Senator from Montana [Mr. MANSFIELD], whose knowledge of that area of the world is most extensive. With respect to South Vietnam, the recommendations of the Senator from Montana were prophetic, but they went unheeded.

History shows that the major causes of the deterioration, not only of the U.S. position, but also of the position of the South Vietnamese governments, have been actions by the South Vietnamese Government contrary to the advice offered by the distinguished majority leader 10 years ago.

The war in South Vietnam is not and never has been a U.S. war. It is and must remain a fight to be fought and won by the people of South Vietnam themselves. The will to fight and win must come from the spirit of the South Vietnamese. The United States cannot instill that will in them.

For 14 years now the United States has helped the South Vietnamese with men, money and material in generous amounts. I ask unanimous consent that there be printed at this point in my remarks a table showing the amounts of aid loaned or granted for this area over the years.

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

U.S. military and economic aid to Laos, Cambodia, and South Vietnam, fiscal years 1954 to 1963, inclusive

[In millions of dollars]

Year	Laos	Cambodia	South Vietnam
1954			0.1
1955	40.9	38.2	325.8
1956	76.5	70.8	383.6
1957	48.7	55.3	391.6
1958	36.9	36.1	242.0
1959	32.6	29.6	249.0
1960	55.5	26.0	251.4
1961	64.2	28.1	209.6
1962	64.1	39.9	287.2
1963	36.8	29.2	208.1

Mr. GRUENING. Why have these been unavailing in bringing security to South Vietnam from the Communist-led attacks of the Vietcong? As Sam Castan, Look senior editor, wrote on January 28, 1964:

"But in spite of our noble intent, our massive aid and all the small acts of selfless heroism our men have performed in its behalf, South Vietnam's path to peace is cluttered by the debris of mistakes that America either made or endorsed."

I ask unanimous consent that the entire article by Mr. Caston entitled "Vietnam's Two Wars" be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GRUENING. It is to the past then, rather than to the events of recent days and months, that we must look for the answer to the "why" of the present dilemma of the United States in South Vietnam.

When President Eisenhower took office in January 1953, the war in Indochina was not going well. It was a French war, fought with French troops as well as the troops of Laos, Cambodia, and Vietnam. U.S. military and economic aid had been going to the French in ever-increasing amounts as the drain of maintaining a fighting force of a quarter of a million men and of supporting three Indochinese national armies numbering 120,000 men increased.

In reviewing the situation on January 27, 1953—6 days after taking office—Secretary of State John Foster Dulles stated:

"Now the Soviet Russians are making a drive to get Japan, not only through what they are doing in northern areas of the islands and in Korea, but also through what they are doing in Indochina. If they could get this peninsula of Indochina, Siam, Burma, Malaya, they would have what is called the rice bowl of Asia. That's the area from which the great peoples of Asia, great countries of Asia, such as Japan and India, get in large measure, their food. And you can see that if the Soviet Union had control of the rice bowl of Asia, that would be another weapon which would tend to expand their control into Japan and into India. That is a growing danger and it is not only a bad situation because of the threat in the Asian countries that I refer to but also because the French, who are doing much of the fighting there, are making great effort and that effort subtracts just that much from the capacity of their building a European army and making the contribution which otherwise they could be expected to make.

In terms of fighting men, France was there as the only major power on the scene because the three countries had been and were French colonies. While they had been given independence in 1949, the independence was with respect to internal affairs only. They were still within the French Union and France had an obligation to them to help fight the Communist-supported internal fighting they faced.

But the long supply lines and the fierce fighting continued to sap French strength.

Then came the tragic events at Dienbienphu in March 1954. The Communists under Ho Chi Minh attacked that fortress in force.

Those were the days of brinkmanship, of massive retaliation, and of the domino theory—policies proclaimed by Secretary of State John Foster Dulles.

While the fighting was taking place, Gen. Paul Ely, French chief of staff, flew to Washington to inform the Eisenhower administration that the French could not hold out much longer and needed direct U.S. intervention.

This request precipitated a behind-the-scene struggle at the highest levels of Government circles both here in Washington and in London.

While General Ely was still in town, Secretary of State Dulles held a news conference in which he stated that what military aid was given to France was a military matter and that "if there are further requests of that kind that are made, I have no doubt that our military or defense people will attempt to meet them."

I ask unanimous consent that the text of Secretary Dulles' news conference on March 23, 1954, be printed in full in the RECORD, at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. GRUENING. Mr. Fletcher Knebel, well-known Washington correspondent, in an article in Look on February 8, 1955, gave a forceful account of maneuverings in high places in Washington and London in those fateful, early days of 1954 when the United States stood on the brink of an all-out invasion of Vietnam.

According to Mr. Knebel, Adm. Arthur W. Radford, then Chairman of the Joint Chiefs of Staff, advocated an immediate airstrike from carriers; Gen. Matthew B. Ridgway, Army Chief of Staff, was opposed since he believed that such a strike could lead to all-out intervention; Admiral Carney, Chief of Naval Operations, and Gen. Nathan F. Twining, Air Force Chief of Staff, felt that, while an airstrike might help the French at Dienbienphu, more force would be needed to win the fight in Vietnam.

President Eisenhower, according to Knebel, agreed with Admiral Radford on two conditions: That the United States be joined in the action by other allies; namely, Great Britain; and that congressional approval be

obtained for the action. Since neither condition could be met, the United States moved back safely from the brink.

I ask unanimous consent that that portion of Mr. Knebel's article dealing with Indochina be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. GRUENING. Dienbienphu fell on May 7, 1954.

At Geneva on July 21, 1954, delegates from Great Britain and the U.S.S.R., France, the United States, Communist China, Cambodia, Laos, Vietnam and the Vietminh came to a settlement to resolve the fighting in Vietnam. The main provisions of the agreement concerning Vietnam were as follows:

First. Vietnam was to be partitioned along the 17th parallel into North and South Vietnam.

Second. Regulations were imposed on foreign military personnel and on increased armaments.

Third. Countrywide elections, leading to the reunification of North and South Vietnam, were to be held by July 20, 1956.

Fourth. An International Control Commission—ICC—was to be established to supervise the implementation of the agreements.

The United States was not a signatory of the agreement, but issued a statement, unilaterally, stating that—"It (1) will refrain from the threat or the use of force to disturb the Geneva Agreements; (2) would view any renewal of the aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security and (3) shall continue to seek to achieve unity through free elections, supervised by the U.N. to insure that they are conducted fairly."

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

Mr. GRUENING. I yield with pleasure.

Mr. MORSE. I may say to the Senator from Alaska that I had planned to sit through every word of his speech. I had expected it would come earlier this afternoon. Unfortunately, I must go to an official conference. I assure the Senator from Alaska that I have read every word of his speech. I would have the RECORD today show that the senior Senator from Oregon thinks this is one of the great speeches in this session of the Congress on foreign policy. I associate myself with every word of the speech.

I am awaiting my Government's answer to it. In my judgment, there is no answer to the Senator's speech. There is no justification for killing a single American boy in South Vietnam. It is about time the American people awakened to what is going on in South Vietnam and recognized that South Vietnam is beyond the perimeter of American defense. There is no justification for murdering a single American boy in South Vietnam, for the issue has now become one of murder.

Everyone knows that if we got into a war with Russia or Red China it would be a nuclear war, not a conventional war. I do not know what we are doing over there with a conventional program.

Furthermore, as the Senator pointed out, where are our alleged allies in South Vietnam? In contrast with South Korea, where are our friends there? So long as we are willing to pay 99 percent of the bill and spill American blood, they will be satisfied.

If my Government wants to make this an issue across the land, I am willing to have it become an issue; but I do not intend to vote for a single dollar for operations in South Vietnam or to give support to the American Secretary of Defense who is bespeaking American foreign policy with no right to do so.

South Vietnam is not worth the life of a single American boy. I say to my administration that I have no intention of giving any support whatsoever to continuing the cost in blood and money for operations in South Vietnam that cannot be justified on the ground of American defense or on any other ground.

The Senator from Alaska has set forth the issue in his speech in terms so unanswerable that the American people have a right to say to the administration, "What is your answer?" I wait for the answer.

Mr. GRUENING. I thank the Senator for his helpful comment.

Within 2 months, on September 8, 1954, the governments of Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the United Kingdom and the United States signed a collective security pact at Manila, known as the southeast Asia Collective Defense Treaty. Laos, Cambodia and Vietnam were not parties to this treaty, but by a simultaneous protocol to the treaty all the parties to the original treaty agreed to include the territories of those three nations in the territory protected by the treaty from "armed attack and counter subversive activities directed from without against their territorial integrity and political stability."

The United States made it clear to all the signatories that the type of aggression it considered itself bound to prevent was Communist aggression. As Secretary of State Dulles explained it: "We stipulated on behalf of the United States, however, that the only armed attack in that area which we would regard as necessarily dangerous to our peace and security would be a Communist armed attack."

In his address to the Nation on September 15, 1954, explaining the action taken at Manila, Secretary Dulles first reiterated his concept of the domino theory of possible events in southeast Asia in the following words: "Any significant expansion of the Communist world, would, indeed, be a danger to the United States, because international communism thinks in terms of ultimately using its power position against the United States. Therefore, we could honestly say, using the words that President Monroe used in proclaiming his doctrine, that Communist armed aggression in southeast Asia would, in fact, endanger our peace and security and call for counteraction on our part."

Secretary of State Dulles had explained the domino theory at an earlier news conference on May 11, 1954, in the following words: Asked if the plan for collective security could succeed if one or more of its segments were lost to the Communists, Secretary Dulles replied:

"The situation in that area, as we found it, was that it was subject to the so-called domino theory. You mean that if one went, another would go? We are trying to change it so that would not be the case. That is the whole theory of collective security. You generally have a whole series of countries which can be picked up one by one. That is the whole theory of the North Atlantic Treaty. As the nations come together, then the domino theory, so-called, ceases to apply. And what we are trying to do is create a situation in southeast Asia where the domino situation will not apply. And while I see it has been said that I felt that southeast Asia could be secured even without perhaps Vietnam, Laos, and Cambodia, I do not want for a minute to underestimate the importance of those countries nor do I want for a minute to give the impression that we believe that they are going to be lost or that we have given up trying to prevent their being lost. On the contrary, we recognize that they are extremely important and that the problem of saving southeast Asia is far more difficult if they are lost. But I do not want to give the impression, either, that if events that we could not control and which we do not anticipate should lead to their being lost, that we would consider the whole situation hopeless, and we would give up in despair. We do not give up in despair. Also, we do not give up Vietnam, Laos, or Cambodia."

In his nationwide address on September 15, 1954, on the Southeast Asia Treaty, Secretary of State Dulles also expounded his massive retaliation theories of how to contain communism anywhere in the world, any time, at the least cost:

"We considered at Manila how to implement the treaty. One possibility was to create a joint military force. However, I explained that the U.S. responsibilities were so vast and so far flung that we believed that we would serve best, not by earmarking forces for particular areas of the Far East, but by developing the deterrent of mobile striking power, plus strategically placed reserves.

"This viewpoint was accepted. Thus, the treaty will not require us to make material changes in our military plans. These plans already call for our maintaining at all times powerful naval and air forces in the Western Pacific capable of striking at any aggressor by means and at places of our choosing. The deterrent power we thus create can protect many, as effectively as it protects one."

I ask unanimous consent that a summary of events in Vietnam from the time of the Geneva agreements as prepared by the Library of Congress be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 4.)

Mr. GRUENING. Mr. President, by January 1, 1955, U.S. aid began to flow directly to South Vietnam and on February 12, 1955, a U.S. military assistance advisory group took over the training of the South Vietnamese Army. Previously, U.S. aid had been given through France.

In October 1955, the Eisenhower administration picked Ngo Dinh Diem to rule South Vietnam.

There may be some room for disagreement as to whether Diem was a poor choice for the job to begin with or whether, after having come to power, the thirst for more and more power on his part and on the part of his many relatives, whom he placed in high governmental posts, became insatiable.

Seven months before the former emperor, Boa Dai, was deposed on October 23, 1955, in a national referendum in which Diem received 98 percent of the votes, Diem met and greatly impressed Secretary of State Dulles. In a nationwide broadcast on March 8, 1955, Secretary Dulles said: "I was much impressed by Prime Minister Diem. He is a true patriot, dedicated to independence and to the enjoyment by his people of political and religious freedoms. He now has a program for agricultural reform. If it is effectively executed, it will both assist in the resettlement of the refugees and provide his country with a sounder agricultural system. I am convinced that his Government deserves the support which the United States is giving to help to create an efficient, loyal military force and sounder economic conditions."

Ngo Dinh Diem ruled South Vietnam from October 23, 1955, until the coup of November 2, 1963, deposed him. As the guerrilla fighting intensified through the years, so did the mismanagement and corruption of the Diem government. It became increasingly oppressive, trampling the rights of individuals and ignoring the necessity for economic reforms to benefit the people.

There is no room for disagreement concerning the fact that the United States condoned or ignored actions by Diem and his ruling relatives calculated to antagonize the people on whose support any stable South Vietnamese Government must rest—or fall.

As Jerry A. Rose stated in the New Republic on October 12, 1963: "For some reason, diplomats, soldiers in the field, and politicians in Washington are unable to grasp the importance of the people. While forever raising wet fingers to the wind of public opinion in the United States, the policymakers appear to operate on the belief that Asian people have no opinions, and even if they did have an opinion, it would carry no weight. A good Gallup poll would easily disprove the former proposition, and history has proved time and again the fallacy of the latter."

I ask unanimous consent to have Mr. Rose's article entitled "Dead End in Vietnam" be printed in full in the RECORD at the conclusion of my remarks.

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

(See exhibit 5.)

Mr. GRUENING. The recent state of optimistic announcements from the Pentagon on how well the war in South Vietnam is going—despite contrary reports from trained observers on the scene—only carries on a tradition begun in the earliest days of U.S. participation in the fighting in Vietnam.

Thus, in July 1956, in the face of continued Vietcong sabotage and virulent propaganda, Vice President Nixon addressing the first Constituent Assembly of South Vietnam, stated that "the militant march of communism has been halted." But by the middle of the next year, Vietcong guerrilla bands stepped up their attacks, bombing U.S., MAAG, and USIS installations and attacking settlements near Saigon.

Mr. Nixon's overoptimistic statement in July 1956 is on a par with his statement in October 1960, when he stated: "As far as Indochina was concerned, I stated over and over again that it was essential during that period that the United States make it clear that we would not tolerate Indochina falling under Communist domination. Now, as a result of our taking the strong stand that we did, the civil war there was ended, and today we do have a strong free bastion there."

Vietcong guerrilla activities, reinforced by arms and men from North Vietnam, increased greatly during Diem's regime.

So did corruption and the oppression of the people.

As Castan states in his article already referred to:

"To his [Diem's] personal credit, he allegedly managed, again with American aid, to amass a personal fortune of some $50 million during the same period. Diem changed—too slowly for our then Ambassador Frederick J. Nolting, an intimate friend of both Diem and his charming sister-in-law, Mme. Ngo Dinh Nhu, to notice. Too slowly for Gen. Paul D. Harkins, boss of our military-assistance command, to notice. No one, in fact, noticed until we found that we had been duped into complicity, and were compounding by assent the mistakes of Diem and his family."

In the face of increasingly serious guerrilla activity, the so-called strategic hamlet plan was instituted in 1961. It was copied from Malaya, but served only to make it easier for the guerrillas to capture arms and supplies. It was a failure also as a means of isolating Diem's opponents.

Two accounts illustrate the hows and the whys of the failure of the strategic hamlet plan:

The first is related in the article before referred to by Castan: "Plei Ia Miah, one of the hamlets, is an example. 'The soldiers forced us out of our huts,' said the village chief, shortly before the November coup d'etat, 'and told us that a fortified village was ready for us in the valley. "Can we take out land?" we asked. Two men refused to leave our ancestral home and were shot. It took us 60 days to march here. We have no land to farm, and if the Government doesn't give us food soon, we'll have to sell the pigs and buffalo we brought with us. The Vietcong come at night for our weapons. We give them the weapons. Why should we die for weapons?' "

The second is from a Reporter article by Bernard Fall in the October 24, 1963, issue. I ask unanimous consent to have the article printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 6.)

Mr. GRUENING. Reading from the Fall article:

"There is not one plantation that has not been attacked or partly pillaged several times by the Vietcong during the past 5 years, and which has not seen several of its French personnel kidnaped and held for ransom or killed. During the Indochina war, the plantations had been allowed to arm themselves and maintained militia forces at their own expense. When Ngo Dinh Diem came to power he ordered all plantations disarmed and they thus became military liabilities.

"The plantation managers now keep in business by closing their eyes to the Vietcong emissaries who come to the workers' villages and exact tribute; they silently pay millions of piasters of ransom to the Vietcong—and as much again to bribe South Vietnamese authorities to allow them to operate. Here and there, the Saigon-controlled press announces that a French plantation was fined tens of millions of piasters (a million dollars or more) for 'economic violations.' Everybody knows what that means, and business goes on as usual."

The oppression of the people by Diem's secret police was intensified.

In the summer of 1963, Diem turned on the Buddhists and the students, with wholesale arrests and imprisonments.

And yet all through these years from 1955 to the November 1963 coup, Diem was shored up and kept in office with billions of American dollars and, as at present, as many as 17,000 American troops. The people of South Vietnam knew this. The United States won no friends and influenced no Vietnamese people when Buddhist priests were driven off to concentration camps in AID vehicles by Diem's secret police, who were paid by U.S. funds.

In the light of Diem's long years of corrupt and repressive rule, the two coups in Vietnam last year should have come as no surprise to anyone. The surprise lies in the fact that they did not occur sooner.

As I have said, the roots of the present dilemma of the United States reach back to 1955 and to the years of condoning corruption, misrule, and repression. Diem lost whatever support he had from the people through the use of U.S. money and U.S. arms.

Where do we turn now for our solution in South Vietnam?

The United States must start with one basic truth which should be constantly reiterated: the fight in South Vietnam can be won only by the South Vietnamese. Even if the United States would or could, the fight in South Vietnam cannot be won by making of that country a colony of the United States. The French tried and failed, even though they used a quarter of a million troops.

The question is this: After 20 bloody years of conflict, have the people of South Vietnam and the Government of South Vietnam the will and the capacity to fight to win? Putting it in other terms, Mr. President, has the present Government of South Vietnam the ability and the stability to wage the fight or is it obliged to look over the shoulder constantly in fear of another coup?

If there is no heart to fight in the people of South Vietnam, the sooner we face that fact the better off we shall be. Since a victory in South Vietnam can come only through a victory by the South Vietnamese themselves, if the people and the Government do not want to continue the fight in a manner conducive to victory, it is contrary to the best interests of the United States to remain there.

Some urge stepped-up military activity on the part of the United States, including carrying the war to North Vietnam. Even disregarding—which we should not—the grave possibility of drawing Red China into the fray in a Korean-type engagement, there are serious drawbacks to such a course of action. The first is the unwillingness of the South Vietnamese to follow such a course of action. The second, of course, is the fact that this is not solely an engagement between South and North Vietnamese. South Vietnamese are fighting South Vietnamese in a country divided within itself.

A comparison with Korea is not appropriate. There we had South Koreans who had the will to fight and win. And secondly, South Korea was not a country divided within itself.

And finally, there is one important difference between the situation as it exists in Vietnam and the situation as it existed in Korea. This is a difference which many people who are urging an escalation of U.S. armed effort in South Vietnam conveniently do not mention. In Vietnam we are alone—in Korea we were in there as part of a United Nations effort.

Fighting side by side with American troops in Korea were troops from Australia, Belgium, Britain, Canada, Colombia, Ethiopia, France, Greece, Luxembourg, the Netherlands, New Zealand, the Philippines, South Africa, Thailand, and Turkey.

Where are our allies in South Vietnam?

The 1954 Southeast Asia Collective Defense Treaty was signed by eight nations—Australia, France, New Zealand, Pakistan, the Republic of the Philippines, Thailand, the United Kingdom, and the United States.

We do not read in the headlines about the officers and men of the other signatory countries being killed in the jungles of South Vietnam. We do not read about them because they are not there. Over 200 Americans have been killed in South Vietnam, 115 of them in direct combat. The United States is all alone in the fight there and the prospects are that it will continue to fight alone there.

To give my colleagues some idea of the confusion prevailing in South Vietnam in the military command there and of the conditions under which U.S. troops are fighting, I ask unanimous consent that an article in the Washington Daily News by Jim Lucas on March 6, 1964, be printed in full at the conclusion of my remarks.

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

(See exhibit 7.)

Mr. GRUENING. Mr. President, describing the "Spoils for Generals" after the most recent coup by Maj. Gen. Nguyen Khanh, Time magazine for February 14, 1964, stated: "It is far from certain that all the military are behind him. But he has rewarded his chief collaborators handsomely. Maj. Gen. Tran Thien Khiem, whose III Corps troops arrested former junta boss, Gen. Duong Van (Big) Minh, got the No. 2 military job as Defense Minister and Commander in Chief. But among the ranks of Khanh's new, expanded, 53-man junta (8 major generals, 9 brigadier generals, 25 colonels, 10 lieutenant colonels, 1 major), there was endless wrangling over the lesser spoils. Many a junior officer was disgusted."

The theory has been advanced that the United States has no alternative but to remain in South Vietnam regardless of the course of action followed by the people and the Government of South Vietnam. This theory follows the line that if we pulled our support out of South Vietnam now, it would quickly be taken over by the Vietcong who in

turn would be controlled by North Vietnam which in turn would be controlled by Red China. The theory then continues that if this happens then Cambodia and Laos would also fall "like a row of dominoes" to Red China. This is a continuance 10 years later of Secretary Dulles' domino theory.

Recent actions on the part of Cambodia in seeking its own neutralization cast considerable doubt on this theory. Cambodia, the middle domino, fell out of its own accord. The $300 million we have spent there was totally wasted. Moreover Cambodia action took the United States by surprise. We were ill informed. How well informed are we in this whole area? The repeated optimistic statements of our officials in the past have been promptly refuted by events.

The distinguished majority leader [Mr. MANSFIELD], on Monday, March 2, stated: "I think the best thing our country can do is reassess its foreign policy insofar as it is possible to do so, face up to the realities of today, and not depend so much on the wishes of yesterday."

In no area of our foreign policy is such a reassessment of our foreign policy needed than with respect to the policy we are pursuing in Vietnam.

The United States should no longer permit the dead hand of past mistakes to guide the course of our future actions in South Vietnam.

President Johnson, by virtue of the fact that his control of U.S. foreign policy is so recent, is in the best possible position to make the reassessment of our foreign policy suggested by Senator MANSFIELD and not permit himself to be bound by a past made by his predecessors. The domino theory is not President Johnson's—it is a theory advanced by Secretary of State Dulles during the Eisenhower administration and, as in the case of Cambodia, already proven fallacious.

A few days ago, the senior Senator from Montana [Mr. MANSFIELD] took an enlightened stand with respect to the attempt by the President of France to put forth a solution for the deteriorating situation in South Vietnam. He stated: "It seems to me most glib to make light of the admittedly unsatisfactory situation in Laos or the unhappy state of our relations with Cambodia as a basis for any offhand rejection of De Gaulle's essay at a new approach to Indochina and southeast Asia."

I commend the majority leader for his statesmanlike approach to an admittedly difficult situation and join him in his statements on this subject. His statement of February 19, 1964, should be carefully studied in any reevaluation of our foreign policy in Indochina.

I also wish to commend my able colleague, Senator BARTLETT, for his excellent analysis of the Vietnam situation a few weeks ago and for his plea for less rigidity in our policy in Indochina; he stated: "It is important, however, in our Asian policies, that we strive to achieve flexibility, flexibility which our policies in recent years have failed to have. We cannot allow ourselves to be frozen forever with a rigid policy hoary with age. In Asia as elsewhere we must be willing to discuss anything with anybody who is willing to discuss in a rational and responsible manner. We are the greatest power on earth and we have no need to fear Red China and no need to fear negotiations."

I also wish to commend the able senior Senator from Oregon [Mr. MORSE] for his splendid speech last week on this same topic. Senator MORSE pointed out cogently that—"American unilateral participation in the war in South Vietnam cannot be justified and will not be justified in American history * * * we have always considered southeast Asia to be beyond the perimeter of U.S. defense. Southeast Asia is not essential to U.S. defense. Southeast Asia may very well be essential to the defense of some of our allies, but where are they? They ran out on us."

And more pointedly, in response to a question from Senator ELLENDER what Senator MORSE would advise we should do in South Vietnam, Senator MORSE answered with his usual forthrightness: "We should never have gone in. We should never have stayed in. We should get out."

And Senator ELLENDER seconded that clear—and in my judgment thoroughly correct and realistic counsel—by saying: "I have been advocating such a course of action. After my last visit there, I again stated that we should never have gone in there and that we should get out. My advice was never heeded. That is my advice today."

Had this advice of Senator ELLENDER given some time ago, now repeated by him and reaffirmed by Senator MORSE been heeded 200 precious American lives would not have been lost. These are far more important than the billions of dollars we have now wasted in seeking vainly in this remote jungle to shore up self-serving corrupt dynasts or their self-imposed successors and a people that has conclusively demonstrated that it has no will to save itself.

I consider the life of one American worth more than this putrid mess. I consider that every additional life that is sacrificed in this forlorn venture a tragedy. Someday—not distant—if this sacrificing continues, it will be denounced as a crime.

I would ask my colleagues and indeed American fathers and mothers this question: "If your drafted son is sent to Vietnam and is killed there would you feel that he had died for our country?"

I can answer that question for myself. I would feel very definitely that he had not died for our country, but had been mistakenly sacrificed in behalf of an inherited folly.

Let us do a little hard rethinking. Must the United States be expected to jump into every fracas all over the world, to go it all alone, at the cost of our youngsters' lives, and stay in blindly and stubbornly when a decade of bitter experience has shown us that the expenditure of blood and treasure has resulted in failure?

Shall we not, if taught anything by this tragic experience, consider that of the three alternatives: First, to continue this bloody and wanton stalemate; second, to go in "all out" for a full-scale invasion and the certain sacrifice of far more lives and a scarcely less doubtful outcome; or, third, to pull out with the knowledge that the game was not worth the candle.

This last is the best of these choices.

In the event of determining on that last and least unhappy alternative, we shall no doubt be told by some that the United States will lose face in Asia.

I doubt whether we should lose face, whatever that may mean. But if it be so interpreted by some whose opinion should give us small concern, I say better to lose face than to lose the life of another American boy, or a score, or another 200 of them, doomed in varying numbers as long as we stay on.

President Johnson, let me repeat, inherited this mess. It was not of his making. As he approaches the difficult task of making the necessarily hard decisions with respect to the problems in South Vietnam, problems created long before he was President, he should feel no compunction to act in such a way as to justify past actions, past decisions and past mistakes. He should feel entirely free to act in such a manner and to make such decisions as are calculated best to serve the interests of the United States and the free world—a world changed greatly from the time President Eisenhower and Secretary Dulles initiated our southeast Asia policies.

Would South Vietnam go Communist if we got out? Probably, but it will doubtless do so in any event. What would the loss of a million men, or 2 million, or 5 million matter to the jampacked nation of 700 million that is mainland China, that can and will unconcernedly pour its cannon fodder into an adjacent, long-coveted area, and peopled with its fellow Asiatics. Their lives mean nothing to their own bloody rulers who have liquidated vast numbers of their own. But our American boys' lives would mean everything to our own Government and people if sacrificed in a cause in which we should never have engaged.

Of course, it is a source of regret whenever a new political entity appears to be falling behind the Iron or Bamboo Curtain. But why should we persist in seeking to prevent what is ultimately inevitable, in impossible terrain for a people who care not, in the most distant spot on the globe. It makes no sense.

Moreover there is considerable question whether South Vietnam, even if overrun by the indigenous Vietcong, or by the North Vietnamese, will not constitute another problem for Peiping as it was for the French, as it has been for the United States. It might well prove an aggravation of Red China's considerable internal troubles.

But surely we have no business there any longer, if indeed we ever had.

The time has come to reverse our policy of undertaking to defend areas such as South Vietnam, whose people are so reluctant to fend for themselves. Let us keep on, by all means, supplying them with arms. Let us continue to give them the means if they wish to use them. But not our men.

The time has come to cease the useless and senseless losses of American lives in an area not essential to the security of the United States.

Only yesterday the report came in of two more American fighting men killed in Vietnam.

Last Wednesday the report was made that three American officers had been killed there. Part of the UPI story reads as follows:

"Two U.S. officers were killed yesterday in separate battles with the Vietcong, military sources reported. A U.S. Navy officer was killed yesterday in a helicopter crash.

"One of the Army officers died as he attempted to rally Government paratroopers for an assault on a Communist position near the Cambodian border.

"There were few details on the death of the other Army officer. Reports reaching Saigon said he was killed in a battle at Trung Lap village 27 miles northwest of Saigon."

It is obvious from this story, as it has been for some time now, that the United States so-called training mission is actually engaged in fighting the Vietcong in a war which the South Vietnamese are themselves reluctant to fight.

I urge the President to take steps to disengage the United States immediately from this engagement.

All our military should immediately be relieved of combat assignments. All military dependents should be returned home at once. A return of the troops to our own shores should begin.

I also urge the President to go to the American people and explain in detail how the United States got involved in Vietnam; when we got involved in Vietnam, and why we are getting out of there.

I sincerely hope that President Johnson will heed the advice of our distinguished majority leader, Mr. MANSFIELD, and others in this body, as knowledgeable as Senators MORSE, ELLENDER, and others reassess the Dulles doctrine of seeking to engage communism on its own grounds—12,000 miles away—and bring our boys home.

This is a fight which is not our fight into which we should not have gotten in the first place. The time to get out is now before the further loss of American lives.

Let us get out of Vietnam on as good terms as possible—but let us get out.

President Johnson is in an excellent position to reverse the previous unsuccessful policies in Vietnam which he did not make.

"EXHIBIT 1

"[From Look magazine, Jan. 28, 1964]

"VIETNAM'S TWO WARS

"(By Sam Castan)

"To a larger extent than we have admitted, the United States is responsible for South Vietnam's agony. We were behind the scenes at its birth in 1954. We handpicked its leaders, trained its troops, and paid for its economic and military survival. We didn't push it into war; the Communists did that. But in spite of our noble intent, our massive aid, and all the small acts of selfless heroism our men have performed in its behalf, South Vietnam's path to peace is cluttered by the debris of mistakes that America either made or indorsed.

"Ngo Dinh Diem was one.

"In 1954, after an 8-year losing war to preserve its colonial holdings in Indochina, France took the knockout punch at Dienbienphu. The United States had a heavy interest in southeast Asian developments. We had underwritten fully 60 percent of France's military costs—about $2 billion—and were considering direct military intervention when the end came. France sued the victorious Vietminh—a largely Communist guerrilla force led by a wily old Asian Marxist, Ho Chi Minh—for peace, and the Geneva Conference of 1954 divided the former French Colony into four independent states: North Vietnam, led by Ho Chi Minh; neutralist Cambodia, Laos, and pro-Western South Vietnam. The West knew that Ho Chi Minh had for years been preparing his share of the spoils for self-sufficiency. A civil service was ready, factory sites were laid out, teachers and industrial workers were trained, and a communications system was already buzzing messages to Peiping. The West also knew that South Vietnam had been left unprepared by France, and that with all the help we might give the new nation, its first, shaky steps toward democratic independence would be menaced by Vietminh cells left behind for purposes of disruption. We badly needed a man in Vietnam, and Diem was in.

"Descended from a family of central Vietnamese mandarins, Ngo Dinh Diem was an ascetic Catholic bachelor who had once lived in a Lakewood, N.J., monastery. As a civil administrator under the French, he had enjoyed a certain measure of popular support. Most important, he was an avowed anti-Communist. That was it. Secretary of State John Foster Dulles picked him. Senator MIKE MANSFIELD endorsed him, Francis Cardinal Spellman praised him, Vice President Richard M. Nixon liked him, and President Dwight D. Eisenhower OK'd him.

"Although 80 percent of South Vietnam was, and is, Buddhist, Diem's Catholicism was good politics in the United States. The Catholic Bishops' Relief Fund and the Catholic Relief Service assumed major roles in the resettlement of refugees streaming out of predominantly Catholic provinces of North Vietnam. Cardinal Spellman kept showering praise on Diem and his brother, Archbishop Ngo Dinh Thue. At this point, some American Catholics were beginning to vote Republican anyway, and the Eisenhower administration, with a wary eye toward John F. Kennedy in 1960, stressed its own role in creating an Asian haven for Catholics.

"Out in the Vietnamese boondocks, however, Diem's Catholicism didn't mean a thing. Both America and Saigon were remote from the peasant huts along the muddy canals of South Vietnam, where 80 percent of the population lives, and the nation's real strength lies. It was not religion that turned the people against Diem, and, aside from the extra aid it may have brought in, it was certainly not religion that helped him sustain the nation through those early, critical years. Diem managed, with half a billion dollars per year in American aid and his own skill, to keep South Vietnam afloat in the flood of propaganda and subversion let loose by the old Vietminh cells—now called Vietcong.

"That much was to Diem's administrative credit. To his personal credit, he allegedly managed, again with American aid, to amass a personal fortune of some $50 million during the same period. Diem changed—too slowly for our then Ambassador, Frederick J. Nolting, Jr., an intimate friend of both Diem and his charming sister-in-law, Mme Ngo Dinh Nhu, to notice. Too slowly for Gen. Paul D. Harkins, boss of our military assistance command, to notice. No one, in fact, noticed until we found that we had been duped into complicity, and were compounding by assent the mistakes of Diem and his family.

"In 1958, the Vietcong turned from subversion and propaganda to violent guerrilla insurgency. 'And Diem,' says a Vietnamese Army lieutenant, who was later called away from his post in the field to police Saigon during a martial-law period, 'made things so easy for them that every time the sun rose on South Vietnam, the Vietcong was stronger than they had been the night before.'

"Diem installed virtually all of his relatives in key positions, and insured their tenure by rigged elections. Family friends became district and province chiefs; their sons received commissions and cushy Army spots. Whatever dissidence this caused among the population was left to Diem's brother Nhu, to handle, through 18 separate secret police agencies and the Vietnamese Special Forces, which were not a branch of the regular militia, but in effect, a private police force.

"Under cover of the 1961 rainy season, Vietcong forces were bolstered by heavy reinforcements, along the famous 'Ho Chi Minh trail.' Vietcong raids became more frequent and more ferocious. By this time, corruption in Saigon was well known throughout the Provinces. The Ngo's, influenced by Malaya's experience, devised a plan to contend with increased guerrilla activity and at the same time contain pockets of internal dissidence. It was called the strategic hamlet program, and it had still another benefit. For public relations, the fortified villages could be passed off as a reminder of the pioneer stockades of early America. This device would bring in still more aid money.

"It worked for everyone—everyone being Diem and the Vietcong. Diem got his money, the Vietcong got clearly marked and easily taken resupply points for food, weapons, and ammunition. But it didn't work for the people. Plei Ia Miah, one of the hamlets, is an example. 'The soldiers forced us out of our huts,' said the village chief, shortly before the November coup d'etat, 'and told us that a fortified village was ready for us in the valley. "Can we take our land?" we asked. Two men refused to leave our ancestral home and were shot. It took us 60 days to march here. We have no land to farm, and if the government doesn't give us food soon, we'll have to sell the pigs and buffalo we brought with us. The Vietcong come at night for our weapons. We give them the weapons. Why should we die for weapons?"

"Buddhists, who comprise the great bulk of South Vietnam's population, became special targets of Nhu's secret police last summer. Like the university students who followed them into the torture cells and concentration camps ringing Saigon and Hue, they were too cohesive, too vocal to be allowed freedom. South Vietnam owes them a profound debt, for their protests, along with Madam Nhu's arrogant tirade about 'Buddhist barbecues' and 'American adventurers,' focused world attention on the police-state measures Diem had adopted. The United Nations sent a special commission to investigate religious persecution in South Vietnam, but it arrived too late. On November 2, 9 days after the commission reached Saigon, Diem fell, and a wildly jubilant Saigon crowd carried newly released Buddhist monks on their shoulders through a free city.

"The coup d'etat of last November was entirely predictable, despite the contentions of certain American journalists, notably Joseph Alsop and Marguerite Higgins, and the official word from the Public Information Office of our Military Assistance Command Vietnam (MAC–V) that Diem was winning the war and enjoying popular support. 'You Americans wouldn't understand,' said one coup leader. 'Diem betrayed us in the critical hour of our fight against communism. We had to kill him.' Added another, 'Diem started a second war—himself, his family, and his American allies against the people. That was the important war as far as he was concerned. In another month, the Vietcong would have controlled every Province in the country.'

"What sort of war have Diem's mistakes, and ours for allowing them, left us to face in the bloody showdown ahead?

"South Vietnam's new military government estimates that hard-core Vietcong guerrillas total upward of 35,000 men, with around 100,000 part-time irregulars joining them each night. Nearly all are armed with the best weapons America has been able to manufacture. The homemade rifles they began with in 1958 are used as drill weapons for recruits. The number of Vietcong rose sharply last year, when Diem's political interference in the military campaign was at its height, and popular resentment against the regime was sharpest. 'Diem hated large casualty reports,' relates one ARVN (Army of the Republic of Vietnam) colonel. 'Our orders were to surround the enemy on three sides, and let the main body out to avoid pitched battles. We had to head back for the barracks at dusk, even if it meant letting a boxed-in group we could easily handle get away.'

"These factors, combined with outright neglect in some provinces, and the existence of isolated and vulnerable 'paper hamlets,' to which Diem could point as proof that he was 'showing the flag,' have so strengthened the Vietcong that they no longer operate in marauding cutthroat gangs. 'They've got regular battalions,' says one American adviser, 'with heavy-weapons sections, radio communication—the works.' Says a chopper pilot, 'I half expect to see a Vietcong jet fighter waiting for me every time I go up.'

"The most critical factor in any guerrilla war is still popular support. The Vietcong, for all their newly gained strength, do not have the staying power in any one area to set up hospitals, rest areas, training camps, etc. In many areas, they don't need them, for every hut is a place to eat and rest and have wounds treated. 'Five miles down the canal, there's a Vietcong village,' says a U.S. Army Special Forces sergeant at Tan Phu. 'There are never any men around when we come through, but every hut's got a Vietcong flag on the wall, and there's a school with paper Vietcong pennants on every desk. I knew this was a strong Vietcong area, but the first time I hear about a Vietcong PTA, I'm getting the hell out.'

"We are faced, then, with a dedicated enemy grown strong on an endless string of mistakes we endorsed, fighting on his own ground and calling the tune. None of this has changed substantially since the coup. The new Government will need months to replace commanders, district, province, and village chiefs, and institute the civil reforms that will give South Vietnam its first real chance for democracy. Meanwhile, as soldiers and peasants wait to see how the new

Government will go, some of the old habits remain. And the Vietcong have taken every opportunity during this transitional period to strike and strike again. In the 4 weeks following the coup, Vietcong activity rose 50 percent.

"South Vietnam's uppermost need is to regain the military initiative. No one in the new Government deludes himself with the notion that we are winning the war, or that we even have the balance to jab back when we are hit. The common people of South Vietnam are tired after 20 years of fighting (against Japanese invaders, French colonialists, and now Communist guerrillas). The new Government must show its will to prosecute the war until a workable peace is in sight.

"How well the regime does depends upon the unity of the junta. Behind a facade of strength, strains are appearing among the 14 generals who wrested power from Diem. Most are loyal to Gen. Duong Van Minh, chairman of the revolutionary council, but some observers see the youngest general 38-year-old Tom That Dinh, as a comer. He is an ambitious man who assumed nearly all the credit for the coup's success, and his high personal ambitions remain unsatisfied. It was Dinh's weight that swung crucial troops against Diem. Immediately after the Presidential palace surrendered, he promoted himself from two- to three-star general. "I was the coup," says Dinh. "It was my planning, my courage, my leadership that brought Diem down. I did it for the people—not for money, not for another star. I have no personal ambitions." To prove that it believed him, the revolutionary council named Dinh Minister of Security, a considerably lesser post than he may have planned for himself.

"If dissension is actually developing within the provisional military government, the war effort may be adversely affected. So may the peace effort, if the generals decide, and if the United States, which pays their salaries, agrees, that the war cannot be won, and some sort of neutralism, such as that envisaged by France's President Charles de Gaulle, is the best way out of a bad thing.

"As long as there is shooting, the American involvement will, of course, continue. The removal of over 1,000 Americans last month was characterized by one personnel officer as 'trimming some of the fat off our Saigon surplus. Those boys had nothing to do but create a problem for the MP's, and stuff more money into Saigon's black market.'

"Our field forces stand at their highest level of 2,700 officers and men. There will be more American fatalities, more wounded and more captured. And more, too, of the weirdly funny tales that are part of any war. There was the young Army pilot who, shook up by the presence of Gen. Paul Harkins as a passenger, forgot to drop his wheels for a landing. Harkins climbed out of the wreckage, saying, 'That's one way to stop the damned thing.' And those two sergeants in Pleiku who measured their remaining time in Vietnam by the number of weekly malaria pills, they still had to take. 'I'm down to 22 pills,' boasted one to the other. 'How many pills do you have left?'

"Thanks in part to our blunders, to our old policy of seeing, hearing and thinking no Communist,' and to our love of bucking evil of anyone who labels himself 'anti-reality, a tired, bloodied nation is approaching its critical hour.

"How many pills does South Vietnam have left?"

"[From Look magazine, Jan. 28, 1964]

"AN INTERVIEW WITH TON THAT DINH

"Question. General Dinh (full name pronounced Tone Tuck Dinn), what made you turn against Diem? You are the general who led his August pagoda raids against the Buddhists and ruled Saigon as military governor when he declared martial law.

"Answer. Diem did not order the raids. It was his brother Nhu who ordered me against the Buddhists, and as a soldier, I had to follow. They must have thought me a fool, those two. The very morning of the coup, I visited them in the Presidential Palace. I asked Diem how his head cold was coming. I was very pleasant. Then I mustered troops against them.

"Question. What made you decide to join in a coup d'etat?

"Answer. As a soldier, my resentment was building up for a long time. I was in the French colonial army as a private, and later became a cadet at St. Cyr, the French equivalent of your West Point. I have attended your General Staff College at Fort Leavenworth, Kans. I did not like being told how to fight the Vietcong. I did not like seeing them win because of Diem's and Nhu's interference. The last straw came when the national elections of last October were fixed. I knew then that Diem intended to stay in power, to keep interfering and never to institute reforms.

"Question. Which reforms, specifically?

"Answer. He had promised to institute religious freedoms, to end press censorship, to insure justice in the courts, to restore the legitimate authority of ministers and army commanders. I knew that none of these would ever come about, and that he had no intention of removing Nhu and his wife, or of lessening the air of discord and suspicion that was everywhere. We all became masters of subterfuge and intrigue under Diem. That much he taught us, and we used it against him.

"Question. How do you think the war against the Vietcong will go now?

"Answer. In some areas, the situation is very bad. We will have to start from scratch. But now we will push much harder. We will try to control the Cambodian border, where many of their supplies come through. We'll step up night operations—until now, the Vietcong has been fighting at night. And we have been fighting in the daytime, and we'll take risks. I was not frightened of risks when I fought Diem. I led the attack. I was at the palace, hurrying the troops through breaches in the wall. I did it. And now I can do it against the Vietcong.

"Question. Would you consider taking a higher government post than the one you now hold as Minister of Security?

"Answer. I have no personal ambitions. I am a soldier. But if the people ask me to serve, I will obey—not for myself, for them. I only want to serve, as I served Diem. I was sorry that we had to kill him. I cried."

"EXHIBIT 2

"[Department of State press release, Mar. 23, 1954]

"INDOCHINA

"Asked at his news conference today about the situation in Indochina, Secretary of State John Foster Dulles made the following statement:

" 'I do not expect that there is going to be a Communist victory in Indochina. By that I don't mean that there may not be local affairs where one side or another will win victories, but in terms of a Communist domination of Indochina, I do not accept that as a probability.

" 'There is a very gallant and brave struggle being carried on at Dienbienphu by the French and Associated States Forces. It is an outpost. It has already inflicted very heavy damage upon the enemy. The French and Associated States Forces at Dienbienphu are writing, in my opinion, a notable chapter in military history. Dienbienphu is, as I say, an outpost position where only a very small percentage of the French Union Forces are engaged, and where a very considerable percentage of the forces of the Vietminh is engaged.

" 'Broadly speaking, the United States has, under its previously known policy, been extending aid in the form of money and materiel to the French Union Forces in Indochina. As their requests for material become known, and their need for that becomes evident, we respond to it as rapidly as we can. Those requests have assumed various forms at various times. But I think that we have responded in a very prompt and effective manner to those requests.

" 'If there are further requests of that kind that are made, I have no doubt that our military or defense people will attempt to meet them.

" 'As soon as this press conference is over, I am meeting with Admiral Radford. But so far I have not met General Ely, and I do not know what requests he has made, if any, in that respect because that would be primarily a matter for the defense people in any case. The policy has already been established so far as the political aspects of it are concerned.

" 'We have seen no reason to abandon the so-called Navarre plan which was, broadly speaking, a 2-year plan which anticipated, if not complete victory, at least decisive military results during the fighting season which would follow the present fighting season, which is roughly a year from now.

" 'As you recall, that plan contemplated a very substantial buildup of the local forces and their training and equipment. It was believed that under that program, assuming there were no serious military reversals during the present fighting season, the upper hand could definitely be achieved in the area by the end of the next fighting season. There have been no such military reverses, and, as far as we can see, none are in prospect which would be of a character which would upset the broad timetable and strategy of the Navarre plan.'

"Asked whether that ruled out any possibility of a negotiated peace at Geneva, Mr. Dulles replied:

" 'At any time if the Chinese Communists are willing to cut off military assistance, and thereby demonstrate that they are not still aggressors in spirit, that would, of course, advance greatly the possibility of achieving peace and tranquillity in the area. That is a result which we would like to see.

" 'To date, however, I have no evidence that they have changed their mood. One is always hopeful in those respects, but, so far, the evidence seems to indicate that the Chinese Communists are still in an aggressive, militaristic and expansionist mood.' "

"EXHIBIT 3

"[From Look magazine, Feb. 8, 1955]

"WE NEARLY WENT TO WAR THREE TIMES LAST YEAR, BUT IKE SAID 'NO'

"(By Fletcher Knebel)

"Three times within the past 10 months, the United States stood on the brink of war with the Communists in the Far East. Three times the proposal of war in the Orient was advanced in the highest councils of the Eisenhower administration. Twice it was rejected. Once it was abandoned—but only after a veto by Great Britain.

"Last April, America came to the threshold of war to save Indochina from the Communist forces of Ho Chi Minh, a venture that might or might not have involved us in hot war with Red China.

"In September, the United States was but inches away from a decision to go to war to prevent the little island of Quemoy, off the Chinese mainland, from falling into Communist hands.

"In November, America was stayed from a naval and air blockade of Red China—an act of war—by President Dwight D. Eisen-

hower and Secretary of State John Foster Dulles.

"The story of how America narrowly missed armed conflict in Asia is a fascinating interplay of the convictions of powerful men, all of them high principled, all of them sharing the Nation's top secret intelligence reports and all of them determined to guide America's destiny to the eventual goal of world peace.

"WERE IKE'S DECISIONS RIGHT?

"History may credit a number of men with helping to keep America out of war in the last 10 months. They were Eisenhower, Dulles, Gen. Matthew B. Ridgway, Anthony Eden, and even, curiously, Jawaharial Nehru of India.

"The strongest voice for peace was that of President Eisenhower. Whether his decisions for peace were right or wrong is a matter of violent dispute in the Nation's Capital. 'Thank God for Eisenhower,' says one Democratic Senator who was consulted during the Indochina crisis. 'Ike has but postponed the day of reckoning,' says another well-briefed legislator who believes that the United States has taken the downhill path of appeasement.

"Right or wrong, Ike weighted the balances for peace in the secret councils of his administration, far from the headlines and the public eye. Without President Eisenhower, hundreds of thousands of American boys today might be plowing across the Pacific in Army transports—destination Red China.

"The men who urged war were sincere and dedicated leaders who believed that bold American action would check the Communists without plunging the Nation into allout land war with Red China. Ike believed otherwise.

"The struggle for war or peace in Washington was contested on an oddly shaped triangle, its points resting on the White House, the State Department, and the Pentagon across the Potomac River in Virginia.

"Here is the inside story, as gathered from many of the participants, of how the United States looked into the pit of war—and turned away.

"INDOCHINA

"Last March, the Communist warriers of Ho Chi Minh beseiged the French fortress of Dienbienphu in tremendous strength, seeking a knockout blow to win the dreary, 8-year-old conflict.

"Six days later, Gen. Paul Ely, French chief of staff, arrived in Washington and secretly informed U.S. leaders that American intervention was needed to save Indochina. This set in motion a monthlong chain of private Washington huddles and frenzied diplomacy.

"The Joint Chiefs of Staff, America's top military body, met in the Pentagon.

"Adm. Arthur W. Radford, a carrier and airpower naval officer and chairman of the Joint Chiefs of Staff, advocated U.S. intervention through a carrier strike from the U.S.S. *Essex* and *Boxer*, both then in the Gulf of Tonkin, and by Air Force bombers from the Philippines. Radford had long favored a display of force in the Far East, and was already an advocate of blockading Red China.

"Gen. Matthew B. Ridgway, Army chief of staff and former Korean commander, declared himself flatly against American intervention. He declared that an airstrike would lead inevitably to action by American troops as soon as the first planes were shot down. He contended that his limited army, with commitments around the globe, could not fight in the jungles of Indochina short of allout mobilization at home.

"Adm. Robert B. Carney, Chief of Naval Operations, and Gen. Nathan F. Twining, Air Force Chief of Staff, took a middle ground between Radford and Ridgway. They expressed belief that an airstrike would be effective in aiding the defenders of Dienbienphu, but doubted the aerial blow alone could win the war for the French.

"Radford took his recommendation for U.S. intervention to the National Security Council. President Eisenhower accepted Radford's opinion that an airstrike would be effective, but quickly laid down the rule that the United States would intervene only if joined by other allies. In the circumstances, "other allies" meant Britain, which had a carrier in the area.

"President Eisenhower also stipulated that any move of intervention in Indochina required approval of Congress. But the President and Dulles were convinced that Congress was in no mood to give a blank check for war measures at that time, before Britain had signed on the dotted line. To give Radford an idea of congressional opinion and to give congressional leaders Radford's viewpoint, Dulles summoned three top Republicans and five Democrats to a Saturday-morning meeting, April 3, at the State Department.

"This secret briefing left the legislators bugeyed, for it was the first time they realized that the administration was actually considering war in Indochina.

"The legislators said 'No' in various ways to the suggestion of congressional authorization for U.S. solo intervention. And Dulles indicated that the President had no thought of asking this anyway, since the principle of united action had been determined.

"The Secretary of State flew to London and Paris in mid-April, got British and French agreement to proceed with united action talks. A communique was issued, after Sir Winston Churchill himself made penciled changes.

"BRITISH MOVE ANGERS DULLES

"Back in Washington, Dulles arranged an eight-power conference on methods of stopping the Reds in Indochina. On Easter Sunday, however, Sir Roger Makins, the British Ambassador, called Dulles at home to say he had been instructed not to attend the talks. Angry at the apparent British retreat, Dulles changed the meeting into a 16-power Korean peace conference as a face-saving device.

"The transatlantic maneuvering generated terrific tensions behind the scenes. At one congressional briefing, a Republican legislator blurted out to Dulles, "You are either a liar or Eden is a doublecrosser." Dulles vowed he had told the exact truth of the negotiations with the British, that London suddenly had switched signals on him.

"On April 25, the British Cabinet met in emergency session and decided finally against military action in Indochina. The decision was relayed to Dulles in Paris by Anthony Eden. U.S. officials learned that Nehru in India had influenced the British Cabinet's decision by voicing violent objection to British-American military action in Indochina.

"Radford flew from Paris to London the next day, conferred with British leaders in an effort to arrange some other joint action in Indochina. But this mission failed. This ended all thought by U.S. leaders of intervening to save Dienbienphu, and on May 7 the fortress fell to Ho Chi Minh's troops.

"QUEMOY

"Two months after the Indochina armistice was signed in Geneva, July 21, the United States again moved to the edge of war in the Orient. This time, however, there was no question of 'united action.' This time, the Joint Chiefs proposed that America go it alone.

"In early September, Red Chinese artillery began shelling the Nationalist Chinese island of Quemoy, a few miles off the Asiatic mainland and about 125 miles from Chiang Kai-shek's stronghold on Formosa.

"The American Joint Chiefs of Staff, fearing preparations for the long-promised Red invasion of Formosa had begun, met at the Pentagon. They decided to urge President Eisenhower to use the 7th Fleet to thwart an invasion of Quemoy, should it develop.

"The Joint Chiefs split 3 to 1 on the recommendation. Radford, Carney, and Twining favored American strafing and bombing alongside Chiang's planes if a Red invasion of Quemoy actually got underway. Ridgway opposed it, again because he feared it meant eventual use of ground troops, leading to an all-out land war with Red China. The other three believed such 'clean' air and sea action could do the job without involving troops.

"Ike summoned the National Security Council to extraordinary session at Denver to discuss war in Quemoy. The meeting was held in the Officer's Club at Lowry Air Force Base.

"Dulles was in Manila, signing the southeast Asian collective-defense treaty. He cabled that he had two questions: One. Was Quemoy essential to the defense of Formosa (which the United States is committed to defend)? Two. Was Quemoy itself defendable?

"Dulles got the answers to his questions from Radford. Quemoy could be defended, but Quemoy was not absolutely essential to the defense of Formosa. Dulles then took a stand against any ironclad assurance to Chiang that we would help defend Quemoy. Vice President Nixon also opposed American aid for Quemoy.

"President Eisenhower in the end decided that we would make no definite commitment to Chiang to defend Quemoy. On the other hand, if the Reds attacked Quemoy in force as an obvious prelude to an invasion of Formosa, we would be free to strike if we wished. President Eisenhower cast his deciding vote against war.

"THE BLOCKADE

"Barely 2 months later, strong men in the administration and the Republican Party again propelled the United States toward war with Red China.

"In late November, the Chinese Communists announced they had imprisoned as spies 11 U.S. airmen and 2 civilians, captured in the Korean war.

"Secretary Dulles was vacationing at his home on Duck Island in Lake Ontario, where the chief blessing is the absence of a telephone. When Dulles stepped ashore Sunday, November 28, in Jefferson County, N.Y., he learned of the gathering thunderclouds.

"Senate Republican Leader William F. Knowland, of California, had called for a naval blockade so tight that 'no vessel can get in or out of China until these Americans are released.' He was then backed by other Republicans. Also, Dulles knew that Admirals Radford and Carney of the joint chiefs favored a blockade, not specifically because of the spy conviction of the American airmen, but as a tool to yank the fangs of militant Red China.

"Dulles decided to call the President, who was in Augusta, Ga., for Thanksgiving, but the President got him first at the home of friends in the hamlet of Chaumont on the shores of Chaumont Bay, Lake Ontario. They talked for 15 minutes and agreed that a blockade would be an act of war, that America should not commit its armed might in response to what they believed was a carefully timed provocative act by the Communists.

"Dulles sketched a proposed revision of his scheduled speech in Chicago Monday night and Ike approved it. The next morning, Dulles called to dictate the text of his revision, and an aid took it to Ike, who was out playing golf. As he sat on a bench beside a tee, the President made a few changes and approved the rest. The speech flatly rejected a blockade.

"The decision again was against war.

"Twice in 1954, the President turned down proposals that America fight Red China. Once he approved war action, but only on

condition that our allies join us—they never did.

"In the search for peace, an American President must finger many tools. Once Ike used the hammer. To understand the peace quest of recent months, it is necessary to go back 2 years—to the time when Ike got tough.

"On December 8, 1952, the heavy cruiser *Helena* rolled in the seas off Wake Island, carrying President-elect Eisenhower from Guam to Hawaii after his promised post-election trip to Korea. A helicopter brought aboard Secretary of State-designate Dulles and other future Cabinet members. For the better part of 3 days, Ike and Dulles discussed the Korean conflict as the *Helena* cut eastward.

"Ike took the firm position that 'this war must end.' Dulles agreed. American casualties then had mounted to 128,000, including 22,000 killed. Both men agreed that Red China wanted the conflict prolonged, that the Reds must be made to quit. "We've got to make them want peace' is the way Ike put it.

"Ike and Dulles reached a basic decision. If the Reds did not come to terms, the United States would bomb the new industrial complex of Manchuria above the then-sacred Yalu River and smash Red China's will to fight.

"IKE PUTS IT UP TO THE REDS

"By May 1953, the truce talks still drifted in the Communist doldrums, despite an April agreement for exchange of sick and wounded prisoners. The Reds were playing the same old game of delay, frustration, and obstruction.

"Ike decided the time had come to let Red China know we meant business. Dulles, accompanied by FOA Director Harold E. Stassen, set off on a global flying tour. For 3 days, May 20 to 22, Dulles held confidential talks with Nehru in New Delhi, impressing on him that U.S. patience had come to an end in Korea. The Reds must either come to terms or face that allout bombing of Manchurian factories, he told Prime Minister Nehru.

"There is no concrete evidence outside the secret files of India that Nehru relayed this 'ultimatum' to Red China, but circumstantial evidence indicates that he did. Within 48 hours, our military negotiators reported to Washington that the Communist attitude had softened.

"The fits and starts of haggling at Panmunjom continued, but the Reds had decided to quit. On July 27, the long-sought truce in Korea was signed. Three years and 32 days of killing ended. That was just 114 days short of the duration of our fight against Germany in World War II.

"America had been at peace for 18 months. No man is certain how peace should be maintained. Ike seeks many ways. Men of deep conviction differ with some of his methods. The debate continues in Washington."

"EXHIBIT 4

"SOUTH VIETNAM: A SUMMARY OF EVENTS[1]

"YEAR 1954

"May 8–July 21: Geneva Conference on Indochina: The delegates are from Great Britain and the U.S.S.R. (joint chairmen), France, the United States, Communist China, Cambodia, Laos, and Vietnam, and the Vietminh regime. Agreements are signed on July 21 and the main provisions concerning Vietnam are that (1) Vietnam is to be partitioned along the 17th parallel into North and South Vietnam, (2) regulations are imposed on foreign military bases and personnel and on increased armaments, (3) countrywide elections, leading to the reunification of North and South Vietnam, are to be held by July 20, 1956, and (4) an International Control Commission (ICC) is to be established to supervise the implementation of the agreements. The United States and Vietnam are not signatories to the agreements. The United States issues a unilateral declaration stating that it (1) 'will refrain from the threat or the use of force to disturb' the Geneva Agreement, (2) 'would view any renewal of the aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security,' and (3) 'shall continue to seek to achieve unity through free elections, supervised by the U.N. to insure that they are conducted fairly.'

"July 7: Head of state and former Emperor Bao Dai appoints Ngo Dinh Diem Premier.

"August: Flow of almost 1 million refugees from North to South Vietnam begins.

"August 31: Gen. Paul Ely, French High Commissioner for Indochina, states that France is unequivocally committed to support the South Vietnamese Government as the legal government in Vietnam and to grant it total independence.

"September 16: South Vietnam's independence established as France turns over to the Diem government control of the police, justice and security departments, public utilities, and civil aviation.

"October: National Revolutionary Movement, mass political party in South Vietnam, is founded.

"October 11: The Communist Vietminh regime formally takes over control of Hanoi and North Vietnam.

"October 24: President Eisenhower sends a letter to Premier Diem of South Vietnam stating that American assistance will be given hereafter not through the French authorities, but directly to the Government of South Vietnam. The letter also states that the U.S. Government 'expects this aid will be met by * * * undertaking needed reforms.'

"YEAR 1955

"January 1: United States begins to render direct assistance to South Vietnam, on the basis of the existing pentalateral agreement of December 1950, for the support of the Vietnamese armed forces.

"January 24: Premier Diem states, in an interview with a New York Post correspondent, that Vietnam would do everything possible to help the ICC and would wait to see whether conditions of freedom existed in Communist North Vietnam at the time stipulated in the Geneva Agreement for holding Vietnam-wide elections.

"February 5: Premier Diem decrees the first of a series of laws initiating important and extensive land reform program.

"February 12: The U.S. Military Assistance Advisory Group (MAAG) takes over the training of the South Vietnamese army, following the relinquishing of command authority by the French.

"February 19: Southeast Asia Collective Defense Treaty (SEATO)—with its protocol covering Vietnam, Cambodia, and Laos—comes into force.

"March 7: United States and South Vietnam sign agreement which supplements existing economic cooperation agreement of September 1951.

"March 29: Armed revolt is precipitated in Saigon by the Binh Xuyen political-bandit group, spreading ultimately into large-scale dissidence in the southern provinces with the participation of elements of the Cao Dai and Hoa Hao religious sects.

"March 31: French-North Vietnamese agreement provides for a North Vietnamese liaison mission to the ICC to operate in South Vietnam.

"April 17: South Vietnamese Government appeals to the U.N. against the North Vietnamese Communists, who, in violation of the Geneva agreements, prevent northerners from migrating to South Vietnam.

"May 10: Premier Diem forms a new Cabinet composed largely of his own followers.

"May 16: Time limit given by Geneva agreement for exodus of refugees from North to South Vietnam (and vice versa) is extended to July 20.

July: Communists initiate the first overt propaganda moves in South Vietnam by distributing literature signed by North Vietnam's National United Front.

"July 1: French formally relinquish command authority over the Vietnamese Navy.

July 7: French formally transfer Nha Trang Air Base to Vietnamese control.

"July 20: Mass demonstrations by anti-Communists in Saigon, Capital of South Vietnam. The demonstrators accuse the ICC of not preventing Communist violations of the Geneva agreements. On the same day, talks were scheduled to begin (according to Geneva agreement) for the preparation of all-Vietnam elections to be held on July 20, 1956, to reunite the country. The Government of South Vietnam rejects the North Vietnamese Government's invitation to discuss the elections, on the grounds that in North Vietnam the people would not be able to express their will freely and that falsified votes in North Vietnam could overrule the votes in South Vietnam.

"August 16: Last French High Commissioner in Vietnam departs.

"October: Binh Xuyen is defeated as an organized armed insurgent force.

"October 23: A national referendum deposes Bao Dai, former emperior and since March 7, 1949, Head of State of Vietnam. Ninety-eight percent of the votes expressed preference for Premier Diem.

"October 26: A republic is proclaimed by Ngo Dinh Diem who becomes the first President of South Vietnam.

"December 5: President Diem decrees a new Vietnamese nationality law.

"December 30: Government plan is published for resettlement of 100,000 refugees from North Vietnam. The Government will induce landlords to sign contracts with refugee tenants, and if the landlords refuse to sign, the Government will take over the contracts on behalf of the refugees.

"YEAR 1956

"January: South Vietnamese army units occupy Tay Ninh, principal Cao Dai political center, leading to breakup of the organized Cao Dai armed insurgency. Agreement with Cao Dai leaders on February 28 legalizes Cao Dai religious practices and forbids its political activities as a religious sect.

"February 12: Tran Van Soai, leader of an important Hoa Hao faction, surrenders. Ba Cut, another principal Hoa Hao leader, is captured on April 13, leading to breakup of organized Hoa Hao armed insurgency.

"February 23: Communist North Vietnam calls for a new meeting of the participants of the Geneva Conference. North Vietnam accuses South Vietnam of violating the agreement by refusing to participate in all Vietnam elections and by preparing separate elections in South Vietnam.

"March 4: General elections for South Vietnam's first National Constituent Assembly, which is to have 123 members, result in the victory of the National Revolutionary Movement and other political parties supporting President Diem.

"March 22: French-Vietnamese agreement is signed for withdrawal of the remaining French expeditionary forces by June 30, 1956.

"April 6: The Vietnamese Government announces it will continue to cooperate with the ICC and reiterates its position of support on Vietnam-wide elections at such time as conditions in Communist North Vietnam permit genuinely free voting.

---

[1] This chronology has been compiled primarily on the basis of: Deadline Data on World Affairs, Deadline Data, Inc., New York, and memorandum RFE–14, Department of State, Bureau of Intelligence and Research, Jan. 10, 1962.

"April 28: French Military High Command in Vietnam is dissolved.

"July 4: Constituent Assembly approves unanimously a draft constitution providing for a strong executive with safeguards for individual citizens. The President, whose term of office is to be 5 years, has veto power over all legislation of the unicameral parliament and may rule by decree when the National Assembly (elected for 4 years) is not in session.

"July 6: U.S. Vice President Richard Nixon visits Vietnam, hands to President Diem, of South Vietnam, a letter in which President Eisenhower declares he is looking forward to many years of partnership between the two countries. As guest speaker before the Constituent Assembly, Nixon declares that 'the militant march of communism has been halted."

"July 30: Vietnamese liaison mission to ICC is established preparatory to the transfer of functions from the French liaison mission.

"August 21: President Diem issues decree regulating the status of Chinese born in Vietnam. The decree declares them to be Vietnamese citizens; those who refuse to accept their new status must leave the country.

"September 14: President Diem reshuffles his Cabinet.

"September 19: French Air Force officially transfers the Tourane Air Base to Vietnamese control.

"October 26: South Vietnam's first constitution is promulgated and the National Constituent Assembly is officially transferred into a national assembly.

"November 16: Radio Hanoi broadcasts admit peasant resistance and armed clashes in North Vietnam's Nghe An Province.

"November 29: President Diem denounces the North Vietnamese Communist regime's military actions in Nghe An Province as a violation of human rights and a forceful suppression of persons wishing to move to the southern zone and urged the U.N. to take the matter under consideration; Vietnam also protests to the ICC, charging the North Vietnamese Communist regime with violation of article 14c of the Geneva agreements.

"December 26: Nguyen Ngoc Tho confirmed by the National Assembly as Vietnam's first Vice President, following his appointment by President Diem.

"YEAR 1957

"January 3: International Control Commission reports that between December 1955 and August 1956 neither North Vietnam nor South Vietnam have been fulfilling their obligations under the 1954 armistice agreement.

"February 22: Attempted assassination of President Diem at a rural fair in Ban Me Thuot by a Cao Dai adherent.

"March 5: President Diem enunciates a new national investment policy.

"March 27: Asian People's Anti-Communist League begins its third conference in Saigon. Vietnam established as the site of the permanent secretariat.

"April 11: Lucien Cannon, chief of the Canadian delegation to the ICC, is murdered.

"May 2: In South Vietnam a national military conscription program is decreed.

"May 5–19: President Diem visits the United States. He addresses on May 9 a joint session of Congress. In a joint communique (issued May 11), President Eisenhower and President Diem declare that both countries will work toward a peaceful unification of Vietnam. The United States will continue helping South Vietnam to stand firm against communism.

"June: French naval and air force training mission withdrawn.

"June 10: U.S. Export-Import Bank grants South Vietnam a $25 million loan for economic development.

"October 22: Bombing of the U.S. MAAG and USIS installations in Saigon; U.S. personnel injured in the incident.

"November 15: United Nations Secretary General announces plan for the development of the Mekong River basin, which is to be carried out in cooperation with Thailand, Laos, Cambodia, and South Vietnam, assisted by the U.N. Economic Commission for Asia and the Far East (ECAFE).

"YEAR 1958

"January 4: Large Communist guerrilla band attacks plantation north of Saigon, reflecting steady increase in Communist armed activity since mid-1957.

"February 20: Fire sweeps Gia Kiem refugees settlement center leaving 20,000 persons homeless.

"February 26: President Diem announces Cabinet changes.

"March 7: Premier Pham Van-dong of North Vietnam (in a letter to President Diem, of South Vietnam) proposes a conference of the two Governments to discuss reduction of their respective armed forces.

"April 26: Declaration by the Government of South Vietnam on measures to be taken by North Vietnam in order to create conditions for the holding of free elections as stipulated in the Geneva agreements.

"May 9: President Diem distributes land ownership certificates to 1,819 landless farmers.

"May 17: North Vietnamese liaison mission to the ICC withdrawn from Saigon.

"June 25: Cambodian royal proclamation, alleging that South Vietnamese troops have 'invaded' and occupied several Cambodian border villages, accuses South Vietnam of 19 cases of violation of Cambodian territory since January 1957. Allegation is repudiated by the Foreign Minister of South Vietnam.

"August 5: Ngo Dinh Nhu, brother of President Diem, travels to Cambodia to try to settle the drawn-out border dispute.

"August 10: Large Communist guerrilla force attacks in Tay Ninh.

"September 10: France and South Vietnam sign agreement under which France provides aid for the Vietnam Government's agrarian reform program—1,490 million francs.

"December 26: Premier Pham Van-dong, of North Vietnam proposes a conference to discuss limitation of military commitments and establishment of commercial and other exchanges between the north and the south.

"YEAR 1959

"April 22: United States and South Vietnam sign an agreement for cooperation for research in the peaceful uses of atomic energy.

"May 13: Japan signs a World War II reparations and loan agreement with South Vietnam.

"June 11: Laos and South Vietnam sign series of agreements, on judiciary cooperation, commercial exchanges and payments, and border control.

"July: Vietnam Government publishes official publication, 'Violations of the Geneva Agreements by the Viet Minh Communists.' Annual installments published in July 1960 and May 1961.

"July 8: Communist guerrillas attack Vietnamese military base at Bien Hoa, killing and wounding several U.S. MAAG personnel.

"July 10: In Belgian Communist publication Red Flag, Ho Chi Minh, head of the North Vietnamese Communist regime, states 'we are building socialism in Vietnam, but we are building it in only one part of the country, while in the other part we still have to direct and bring to a close the middle-class democratic and anti-imperialist revolution.'

"August 3: Premier Prince Norodom Sihanouk of Cambodia in South Vietnam on official visit.

"August 30: Second national elections give the National Revolutionary Movement and other pro-Government political parties overwhelming majority in the National Assembly.

"October 30: Spokesman of the Vietnamese Army discloses that a campaign against Communist guerrillas in the country's southernmost region, the Camau Peninsula, resulted in heavy guerrilla losses.

"November 14: French Minister of Finance and Vietnamese Vice President initial (in Saigon) agreements for the settlement of financial claims between the two countries and for a French loan of 7 billion (old) francs (about $14 million) and a credit of 11 billion (old) francs (about $22 million) for the purchase by South Vietnam of capital equipment.

"YEAR 1960

"January: In an article in Hoc Tap, journal of the Communist Party (Lao Dong) in North Vietnam, Gen. Vo Nguyen Giap, head of the North Vietnamese armed forces, states 'the North has become a large rear echelon of our army' and 'the North is the revolutionary base for the whole country.' A Communist guerrilla band attacks Vietnamese Army installation in Tay Ninh.

"March: Communist guerrilla force attacks leprosarium in Bien Hoa Province. President Diem inaugurates first agroville in Phong Dinh Province.

"March 24: France and South Vietnam sign agreement on outstanding financial and properties issues and on trade relations.

"April 17: North Vietnam protests to the chairmen of the 1964 Geneva Conference (Britain and the U.S.S.R.) against a formidable increase of personnel in the American military assistance and advisory group in South Vietnam; and accuses the United States of turning South Vietnam into 'a U.S. military base for the preparation of a new war.'

"April 30: An opposition group of 18, calling themselves the Committee for Progress and Liberty, send letter to President Diem demanding drastic economic administrative and military reforms.

"May 5: United States announces that at the request of the Government of South Vietnam, the U.S. military assistance and advisory group will be increased by the end of the year from 327 to 685 members.

"June 3: U.S. Development Loan Fund approves $9,700,000 loan to South Vietnam for purchase in the United States of diesel locomotives and railway cars.

"June 18: Government announces that the Governor of Vinh Kong Province and his driver were assassinated and a bodyguard wounded by Communist terrorists.

"June 26: Government announces that South Vietnamese troops kill 34 Communist rebels in a battle along the Cambodian border on June 22.

"June 28: Defense Ministry announces that Government troops killed 41 Communist guerrillas and lost 2 soldiers in a clash west of Saigon.

"June 29: Communist guerrillas ambush and kill the inspector of South Vietnam's youth and sports organizations. 'Each month, from 250 to 300 Government officials are murdered by Red guerrillas * * * South Vietnam is clearly the target of a new Communist offensive.' (Time, July 11, 1960.)

"July 16: Government discloses that in clashes with Communist guerrillas on July 9, Government troops killed 76, wounded at least 100, and captured 28.

"July 20: Vietnam National Assembly delegation leaves Saigon for 6-week visit to the United States.

"September 5: In addressing the opening of the Third National Congress of the Lao Dong (Communist) Party in Hanoi, Ho Chi Minh states 'the North is becoming more and more consolidated and transformed into a firm base for the struggle for national reunification.'

"September 10: The resolution adopted by the Third National Congress of the Lao Dong

Party declares clearly that an 'immediate task' of the 'revolutionary struggle of our compatriots in the South' is to overthrow President Diem's government.

"October: Series of attacks by large Communist guerrilla force in the Kontum-Pleiku area.

"October 18: President Diem reshuffles his cabinet and replaces the Secretaries of State for Justice, Interior, and National Defense.

"October 26: President Eisenhower assures President Ngo Dinh Diem, in a letter of good wishes on South Vietnam's fifth anniversary, that 'for so long as our strength can be useful, the United States will continue to assist Vietnam in the difficult yet hopeful struggle ahead.'

"November 2: Development Loan Fund announces signing of an agreement for a $17,500,000 loan to South Vietnam. The loan is for the improvement and expansion of the water supply of the Saigon metropolitan area.

"November 5: In a daylight ambush a U.S. public safety adviser, Dolph B. Owens, and his driver are killed by guerrilla machinegun fire near seaside resort, Long Mai. On the same day the National Assembly passes bill empowering the Government to mobilize 'popular fronts' and to strengthen existing military measures to 'better insure the security of the nation.'

"November 10: South Vietnam Government sends letter to the ICC charging that Communist attacks in the Kontum-Pleiku area in October (1) involved regular army forces from Communist North Vietnam through Laos, (2) constitute open aggression which was well prepared, commanded by high-ranking officers, and conducted by regular forces trained in North Vietnam, and (3) employed weapons made in North Vietnam and other Communist countries.

"November 11: Military coup attempt against President Diem's regime. Paratroop battalions led by Col. Nguyen Van Thy and Lt. Col. Vuong Van Dong besiege the Presidential palace. An order of the day issued by Colonel Thy declares that struggle against the Communists will be intensified, that President Diem is guilty of autocratic rule and neoptism and has shown himself incapable of saving the country from communism and protecting national unity.'

"November 12: Loyalists troops enter the capital and subdue the rebels. According to press reports from Saigon, an estimated 200 soldiers and civilians were killed during the fighting.

"November 13: U.S. State Department expresses satisfaction at the failure of the coup against President Diem and also hope that this power will be established on a wider basis with rapid implementation of radical reforms and energetic action against corruption-suspected elements.'

"November 16: Ngo Dinh Nhu, President Diem's brother and political adviser, announces that President Diem plans to appoint a new Government and introduce a far-reaching reform program based on reports of the Ford Foundation and of a French study group.

"YEAR 1961

"January 29: Radio Hanoi praises establishment of the National Front for Liberation of South Vietnam (NFLSV), alledgedly founded in December 1960. On January 30, Radio Hanoi, quoting the press organ of the Lao Dong Party in North Vietnam, states that the 'sacred historical task' of the NFSLV is to overthrow the United States-Diem clique and to liberate the south.

"February 6: President Diem announces (at the first press conference held by him in 5 years) his administrative reform program..

"February 7: President Diem announces he will be a candidate for reelection in the presidential elections to be held on April 9.

"March 10: The Communist-led newly formed National Front for the Liberation of South Vietnam announces that a guerrila offensive against the Government will be started to prevent the holding of the April 9 elections. The National Front also declares that it will fight with every means the dictatorial regime set up by the Americans, that it stands for the peaceful reunification of the country.

"March 27: Cambodian and South Vietnamese representatives reach agreement in Pnom Penh, Cambodia, on settling the Cambodian refugee problem which has recently strained relations between the two countries. Large numbers of Cambodians settled in Vietnam crossed into Cambodia during the past weeks complaining that both Communist guerrillas and Government forces have committed atrocities against them.

"April 3: United States and South Vietnam sign a Treaty of Amity and Economic Relations in Saigon.

"April 4: President Diem appeals to the ICC to make an immediate and energetic investigation of growing Communist terrorism and subversion throughout South Vietnam.

"April 6: U.S. President John F. Kennedy and British Prime Minister Harold Macmillan discuss (according to press reports from Washington) the steps to be taken to prevent a deterioration of the situation in South Vietnam. On the same day, Government of South Vietnam announces details of nine engagements between Government forces and Vietcong guerrillas in widely separated areas.

"April 9: President Diem and Vice President Tho are elected by an overwhelming majority in Vietnam's presidential elections.

"May 2: North Vietnam calls for a ceasefire in Laos.

"May 4: Chairman of U.S. Senate Foreign Relations Committee, Senator J. W. FULBRIGHT, declares to the press (after a conference with President Kennedy) that he would not oppose direct military intervention in South Vietnam and Thailand to counteract the threat of a Communist takeover in those countries. He also emphasizes that he is opposed to the United States becoming the primary defensive factor in southeast Asia over a long time, and says that role should be up to India and Japan.

"May 5: President Kennedy declares at a press conference that consideration is being given to the use of U.S. forces, if necessary, to help South Vietnam resist Communist pressures. He declares that this will be one of the subjects discussed during the forthcoming visit of Vice President Johnson in South Vietnam.

"May 11–13: U.S. Vice President Johnson in South Vietnam. Joint communique on May 13 declares that additional U.S. military and economic aid will be given to help South Vietnam in its fight against Communist guerrilla forces.

"May 29: President Diem reorganizes his Cabinet.

"June 12: Communist Chinese Premier Chou En-lai and North Vietnamese Premier Phan Van-dong (in Peiping on a visit) accuse the United States of aggression and intervention in South Vietnam.

"June 19–July 15: U.S. group of financial, economic and military experts, headed by Eugene A. Stanley, in South Vietnam to study methods of countering guerrilla activities and to establish long-term plans to assist the South Vietnamese economy.

"June 29: ICC decides it is competent to investigate North and South Vietnamese complaints of violation of the agreement on Vietnamese partition.

"July 8: Attempted assassination of U.S. Ambassador Frederick E. Nolting.

"July 16: Government forces win an important battle 60 miles southwest of Saigon in the swampy region of the Plaine des Joncs, a guerrilla-infested territory.

"July 17: U.S. Agriculture Department announces an agreement to sell South Vietnam $11 million worth of U.S. surplus wheat, cotton, and tobacco, to be paid for in Vietnamese currency.

"July 24: Two National Assembly deputies assassinated by Communist guerrillas.

"August 2: President Kennedy declares that the United States will do all it can to save South Vietnam from communism. On the same day, the Government of South Vietnam orders all men between the ages of 25 and 35 to report for military duty.

"August 17: Government forces win another victory over Communist guerrillas on the Plaine des Joncs.

"September 1–4: Series of attacks by 1,000 Communist guerrillas in Kontoum Province. Army command communique states that during the month of August there were 41 engagements between Government forces and Communist rebels.

"September 17: British advisory mission on administrative and police matters, headed by R. G. K. Thompson (former Permanent defense secretary in Malaya), leaves for South Vietnam.

"September 18: Communist forces estimated at 1,500 men attack and seize the capital of Phuoc Thanh Province, only 60 miles from Saigon.

"September 25: President Kennedy, addressing the U.N. General Assembly in New York, declares that a threat to peace is 'the smoldering coals of war in southeast Asia.'

"October 1: Military experts of SEATO meet in Bangkok, Thailand, to consider the increasing Communist menace to South Vietnam. Adm. Harry D. Felt, U.S. Navy commander in chief in the Pacific, declares that there is no immediate prospect of using U.S. troops to stop the Communist advance in southeast Asia, but he indicates that among the plans evolved for 'every eventuality' some do call for the use of American troops.

"October 2: President Diem declares at the opening of the National Assembly's budgetary session: 'It is no longer a guerrilla war we have to face but a real war waged by an enemy who attacks us with regular units fully and heavily equipped and who seeks a strategic decision in southeast Asia in conformity with the orders of the Communist international.' The President also says that the U.S committee headed by Dr. Eugene Staley recommended an increase in aid both for military measures and for economic and social development.

"October 11: President Kennedy announces (at his news conference) that he is sending Gen. Maxwell D. Taylor, his military adviser, to South Vietnam to investigate there the military situation and to report on it to him personally.

"October 18: State of emergency is proclaimed in South Vietnam by President Diem. On the same day the President also begins a series of consultations with Gen. Maxwell D. Taylor.

"October 24: Government of South Vietnam sends letter to the ICC charging the North Vietnamese Communist regime with organizing and carrying out 'elaborate and intensive' program of subversion, terror, and direct aggression against South Vietnam.

"October 26: On the sixth anniversary of South Vietnam as a republic, President Diem issues a message stressing the theme of national emergency and the need for greater effort and dynamic solidarity against 'Communist imperialism.' He demands the 'complete destruction of Communist aggression,' for which purpose the state of emergency has been declared. On the same day, President Kennedy, in a letter to President Diem, assures the South Vietnamese President that the United States 'is determined

to help Vietnam preserve its independence, protect its people against Communist assassins and build a better life through economic growth.'

"October 28: Government announces that Cambodian and South Vietnamese troops clashed in An Giang Province in the border region where Cambodian troops crossed into Vietnamese territory.

"November 16: Following closely the recommendations in General Taylor's report, President Kennedy (with the approval of the National Security Council), decides to bolster South Vietnam's military strength, but not to commit U.S. combat forces at this time.

"November 20: Discussions between U.S. Ambassador Frederick Nolting and President Diem on measures to be taken by both Governments to implement General Taylor's report on South Vietnam and on possible reforms in the Diem administration.

"December 8: U.S. State Department publishes white paper that South Vietnam is threatened by clear and present danger of Communist conquest.

"December 15: U.S. President Kennedy pledges increased aid to South Vietnam.

"YEAR 1962

"January 4: A joint United States-South Vietnamese communique announces 'broad economic and social program [to raise living standards] * * * measures to strengthen South Vietnam's defense in the military field are being taken simultaneously.'

"February 7: Two U.S. Army air support companies totaling 300 men arrive in Saigon, increasing (according to the New York Times) the total of U.S. military personnel in South Vietnam to 4,000.

"February 8: United States reorganizes its South Vietnam military command, establishes new U.S. Military Assistance Command, Vietnam under four-star Gen. Paul D. Harkins.

"February 24: In a Peiping radio broadcast, Communist China declares her security seriously threatened by an 'undeclared war' being waged by the United States in South Vietnam. The broadcast demands the withdrawal of U.S. personnel and equipment.

"February 27: Two fighter planes, piloted by members of the South Vietnam Air Force, bomb and strafe Presidential Palace in Saigon for 25 minutes. President Diem and his staff not injured.

"March 7: U.S. Operations Mission Director Arthur Z. Gardiner discloses that the United States will spend $200 million to support South Vietnam's economy this year and help raise living standards.

"March 17: Tass Soviet news agency publishes Soviet Ministry note to the signatories of the 1954 Geneva Agreements. The note charges the United States with creating 'a serious danger to peace' by its 'interference' in South Vietnam, in contravention of the Geneva Agreements, and demands immediate withdrawal of U.S. troops.

"March 22: Operation Sunrise, a comprehensive plan to eliminate the Vietcong guerrillas in South Vietnam, begins with a mopping-up operation of rebels in Binh Duong Province.

"April 16: In answer to the Soviet note of March 17, the British Foreign Office rejects the Soviet charges and recalls that U.S. measures in South Vietnam were adopted long after the North Vietnamese Government had begun its campaign to overthrow the Government of South Vietnam, and that these North Vietnamese activities 'are at the root of the present trouble in South Vietnam.'

"April 20: National Assembly pledges full support to President Diem's plan to establish thousands of strategic hamlets in the Communist infested Mekong Delta during the current year.

"April 26: Foreign Minister Vu Van Mau accuses the Polish team on the ICC of 'acting more like a Communist delegation than a neutral body,' and says the Government is considering boycotting the delegation.

"May 9: At meeting of ANZUS (Australia-New Zealand-United States Defense Pact) Council in Canberra, Australia, U.S. Secretary of State Dean Rusk appeals for 'a helping hand' in South Vietnam.

"May 12: Communist forces in Laos gain control of large territories; about 2,000 Laotian Royal Army troops with their commander flee into Thailand crossing the Mekong River.

"May 15: U.S. troops land in Thailand to help deter a possible Communist attack.

"May 22: President Diem promulgates the protection of morality law, which prohibits all dancing and beauty contests, and makes prostitution and unnatural methods of birth control illegal.

"May 25: Canadian and Indian members of the ICC find North Vietnam guilty of subversion and covert aggression against South Vietnam. The Polish delegation to the commission rejects the charge.

"May 28: President Diem refuses a U.S. proposal that $1.5 million be set aside for direct aid by Americans for emergency counter-insurgency projects.

"June 23: North Vietnam's Central Committee of the National Liberation Front for South Vietnam orders intensified attacks against the strategic hamlets in South Vietnam.

"June 26: South Vietnam's National Assembly votes to extend its term of office by 1 year, to August 1963. The explanation given is that it is impossible to hold elections now, because it would tie down troops needed against the Communist guerrillas.

"July 2: Fourteen-nation Geneva Conference on Laos reconvenes and on July 23 the Foreign Ministers of the 14 nations sign a declaration on the neutrality of Laos.

"July 6: U.S. Secretary of Defense Robert McNamara declares that, while a final victory over the Communists in South Vietnam is years away, he is encouraged by the increased effectiveness of U.S. aid to the South Vietnamese forces.

"July 17: Leader of the Communist-run South Vietnam National Liberation Front Nguyen Van Hieu (in Moscow for a World Peace Congress) calls for the neutralization of South Vietnam similar to the 14-nation agreement on the neutrality of Laos.

"July 24: U.S. Secretary of Defense McNamara in Honolulu, Hawaii, confers with the commander of U.S. military forces in southeast Asia Gen. Paul Harkins and U.S. Ambassador to South Vietnam Frederick Nolting.

"August 19: U.S. aid mission in Saigon discloses that the South Vietnamese Government has agreed to embark on a program of deficit financing to help pay for the struggle against the guerrillas.

"August 25: U.S. Embassy in Saigon announces that it will provide $10 million to be distributed by South Vietnamese authorities for emergency projects to help refugees of the guerrilla war.

"August 26: Dr. Pham Huy Co, president of the banned Free Democratic Party, announces in Tokyo, where he lives in exile, that he has been clandestinely in South Vietnam and that a meeting of the opposition to the Diem government has been held on a junk off the coast of South Vietnam. The meeting appointed a 30-member National Council of the Revolution to head the anti-Communist, anti-Diem movement.

"September 11: Prince Norodom Sihanouk, of Cambodia, warns that if South Vietnam undertakes two more incursions into Cambodian territory, he will break off diplomatic relations with South Vietnam and establish diplomatic relations with Communist North Vietnam.

"September 12: General Taylor, Chairman of the U.S. Joint Chiefs of Staff, visits the central highland of South Vietnam where mountain peasants (montagnards) are being trained by the U.S. Special Forces for war against the Vietcong Communist guerrillas.

"October 8: United States publishes American war casualties in South Vietnam. Between December 31, 1961, and October 1, 1962, 46 Americans dead, 56 Americans sick or injured.

"October 26: National Assembly extends by 1 year President Diem's emergency powers to rule by decree.

"November 8: South Vietnam breaks off diplomatic relations with Laos as a result of Laos establishment of diplomatic relations with North Vietnam.

"December 6: South Vietnamese Government protests to the ICC against the introduction of Chinese-made weapons and ammunition. A large cache was discovered by a patrol in the central highlands.

"December 8: President Diem signs a Reorganization of the Army Act creating a fourth Army corps area and making several changes in military command posts.

"December 12: Government announces plans to transfer provincial and district administration from military to civilian personnel.

"December 29: Government in Saigon announces that 4,077 strategic hamlets have been completed (of a total of 11,182 to be built) and that 39 percent of South Vietnam's population is now living in these communities.

"YEAR 1963

"January 2: Vietcong guerrilla force estimated at 200 and armed with automatic weapons engages in an all-day battle against 1,200 Government troops and inflicts heavy casualties at Ap Bac, in the Mekong River Delta 35 miles southwest of Saigon.

"January 9–11: Adm. Harry D. Felt, commander in chief of U.S. forces in the Pacific confers with Gen. Paul D. Harkins and declares, before his departure, that the Vietcong guerrillas face inevitable defeat, and he says: 'I am confident the Vietnamese are going to win the war.'

"January 20: Press reports state that a captured Vietcong document (dated September 1962 and written by a senior Vietcong official) outlines the future of the war in Vietnam as a long and difficult struggle. Reviewing the expansion of U.S. military assistance to South Vietnam within the last year, the document says that the United States is the Vietcong's main enemy and that U.S. presence will drive many uncommitted Vietnamese to the Communist side. The document foresees a negotiated settlement of the war patterned on the Laotian agreement and it stresses the importance of understanding so-called transitional steps to the achievement of victory.

"February 1: U.S. Secretary of Defense Dean Rusk says (at a press conference) that there are 'both pluses and minuses' in the U.S. aid program to South Vietnam and he adds that 'there is no more difficult, disagreeable, and frustrating type of operation than those that are required to deal with guerrilla action supported from outside of a country, such as we find in that country.'

"February 2: Pham Huy Co, president of the National Council of the Vietnamese Revolution, claims (in Paris where he is a political exile) that his organization is the source of terrorist bombings which have occurred in Saigon and its suburbs since mid-January. He says the aim of these activities is to hasten the overthrow of the Diem government.

"February 11: U.S. Ambassador Frederick Nolting asks (in a Saigon speech) for greater frankness between United States and Vietnamese officials in the fight against the Communist guerrillas.

"February 16: Times of Vietnam (in an editorial) attacks U.S. press and demands

United States consider censorship of American dispatches from South Vietnam, accusing U.S. correspondents of helping Communist guerrillas and of responsibility for the deaths of United States and Vietnamese personnel engaged in the war.

"February 24: U.S. Senate study group, headed by Senate Majority Leader MIKE MANSFIELD, submits a report on southeast Asia made at the request of President Kennedy, to the Senate Foreign Relations Committee. The report warns that the fight against Communist guerrillas in Vietnam is becoming an 'American war' which is not justified by U.S. security interests and calls for a 'thorough reassessment of our overall security requirements on the southeast Asian mainland.' While expressing doubts concerning the results of $5 billion in U.S. aid to southeast Asia since 1950, the report recommends 'extreme caution' in reducing military and economic assistance in this area.

"February 28: Nguyen Ton Hoan, Secretary General of the Dai-Viet Nationalist Party and a political exile living in Paris, declares (in a letter to President Kennedy) that 'President Ngo [Dinh Diem] is incapable of leadership and unamenable to reform. His government may suddenly collapse in the near future and leave a vacuum into which the Communists will gladly step—unless both the American authorities and Vietnamese nationalist leaders are prepared to cope with such an emergency together instead of working at cross purposes.'

"March 6: U.S. military sources report that the Vietnamese Navy has taken over patrol of South Vietnam's coast from the U.S. 7th Fleet.

"March 9: Soviet newspaper Red Star, official publication of the Soviet Defense Ministry, charges that 'American interventionists have again used poison substances in South Vietnam' resulting in the killing of hundreds of people. On the same day, U.S. Defense Department denies the Soviet charges. Of the chemical now in use, the Department says, 'It is nontoxic to humans when used in the prescribed manner, that is sprayed on trees and under bushes in the open air.'

"April 8–10: SEATO Ministerial Council meeting in Paris (to discuss the Communist threat to southeast Asia) issues communique on April 10 expressing 'concern over the continuing and widening threats to the security' of the treaty area; takes note of the 'considerable progress' made in South Vietnam in the fight against Communist subversion and rebellion; emphasizes that effective measures to 'prevent and counter subversion continues to be a major task facing the member countries'; and notes the improvements in the 'plans for defensive action, in the light of changing and anticipated situations.'

"April 14: U.S. Under Secretary of State Averell Harriman (in a television interview) says that President Kennedy has decided that the United States must not become involved in the continuing conflict in Laos. He says that there are no plans to commit U.S. troops, and military supplies will only be sent if requested by the Laotian Government.

"April 17: President Diem proclaims an 'open arms' campaign to induce Vietcong guerrillas to give up their weapons and return to the side of South Vietnam.

"April 22: U.S. Secretary of State Dean Rusk calls the situation in South Vietnam 'difficult and dangerous,' and says that the United States 'cannot promise or expect a quick victory' and that its role is 'limited and supporting.'

"May 8: Riot erupts in northern city of Hue, former imperial capital, 400 miles north of Saigon. Involves Buddhist celebration of the anniversary of Buddha's birth and the flying of flags on the special day. Twelve persons are killed, including some children. Buddhist leaders charge that Government troops fired into the crowd, while Government officials say that Communists were responsible for the explosion.

"May 9: South Vietnam concludes agreement with the United States in which South Vietnam will finance the local cost ($17 million) of operating its strategic hamlet program and transporting U.S. economic and military equipment, food and other supplies to these settlements.

"June 3: Buddhist demonstrations break out in Hue. Martial law is swiftly imposed.

"June 7: President Diem (in a broadcast) appeals for calm and makes a partial concession to Buddhist demands that the Government accept responsibility for the incidents in Hue.

"June 11: Buddhist monk (Thich Quang Duc) commits suicide by burning himself to death with gasoline in front of the Cambodian legation. Further aggravates religious crisis involving South Vietnamese Buddhists.

"June 14: Press reports state that the United States has warned President Diem that unless he takes immediate steps to alleviate Buddhist grievances the United States will publicly condemn the treatment they have received.

"June 15: Tentative agreement is reached between Buddhist leaders and representatives of President Diem to end alleged religious discrimination and meet Buddhist demands.

"June 16: Government troops use tanks, tear gas, clubs, firearms, and barbed wire to suppress riots in Saigon which follow an agreement between Buddhist leaders and the Government.

"June 27: President Kennedy announces (in Ireland while on a European tour) the appointment of Henry Cabot Lodge as the next American Ambassador to South Vietnam, effective September 1963, to succeed Frederick Nolting.

"July 5: Trial of 19 Vietnamese paratroopers, admitted leaders of a revolt against the Diem government in November 1960 opens in Saigon. Prosecutor accuses former U.S. Embassy personnel of aiding the conspiracy to overthrow regime. Denied by the United States.

"July 7: Nine correspondents for U.S. news services in South Vietnam, including seven Americans, are physically assaulted by secret policemen armed with rocks at the scene of a memorial service for a Buddhist monk who committed suicide on June 11.

"July 9: Trial of 34 civilians, including Dr. Phan Quang Dan, leader of the Free Democratic Party, allegedly involved in a plot to overthrow President Diem in 1960, opens before a military tribunal in Saigon. Nguyen Tuong Tam, a Buddhist and a prominent author, scheduled to be tried, commits suicide by poison.

"July 11: U.S. Ambassador Nolting returns to South Vietnam after consultations in Washington and issues a statement assuring continued U.S. support to President Diem and warning that 'unity of purpose and purpose in action' must not be weakened by 'internal dissention.'

"July 15: Buddhist supreme leader, Thich Thinh Khiet, in a letter to President Diem, charges the Government with bad faith concerning the agreement of June 15 and says that there have been 'acts of a terrorist nature' against Buddhists throughout the country.

"July 17: Armed policemen use clubs against 1,000 Buddhists protesting religious discrimination in front of a pagoda in Saigon. On the same day, President Kennedy says (at his news conference) that the religious crisis in South Vietnam is interfering with the war effort against the Vietcong guerrillas and expresses hope that President Diem and Buddhist leaders will 'reach an agreement on the civil disturbances and also in respect for the rights of others.'

"July 18: President Diem asks Buddhist leaders to meet with Government officials and say that he has instructed a special committee to cooperate with Buddhists in implementing an earlier agreement and that all Government officials have been instructed to cooperate actively in this effort. However, Buddhist leaders indicate an unwillingness to negotiate with Government officials until certain conditions are fulfilled: secret policemen who have attacked Buddhist demonstrators must be publicly identified; prisoners being detained for their part in earlier riots must be released; permission to print missing persons notices in newspapers to locate Buddhists who have disappeared must be granted.

"July 23: Militiamen, war veterans, and widows parade through the streets of Saigon to demonstrate support for Government policies in the Buddhist dispute.

"July 30: Memorial services for Thich Quang Duc who committed suicide to protest alleged persecution by the Government are attended by thousands of Buddhists in Saigon, Hue and other cities. Peaceful demonstrations are staged without Government interference.

"August 1: Mme. Ngo Dinh Nhu, sister-in-law of President Diem, declares in an interview for television: 'The only thing that they (the Buddhists) have done * * * (is that they) have barbecued one of their monks whom they have intoxicated. And even that barbecuing was not even with self-sufficient means, because they used imported gasoline.' "

"August 3: Ngo Dinh Nhu, brother of President Diem, says (in an interview) that if the dispute with the Buddhists is not settled 'it will lead toward a coup d'etat' which would be anti-American, anti-Buddhist, and against 'weakness by the Government.'

"August 5: Young Buddhist monk suddenly immolates himself during a hunger strike at Phan Tiet.

"August 13: U.S. Assistant Secretary of State for Far Eastern Affairs Roger Hilsman declares (at a Washington press conference) that there are signs that the Buddhist crisis in South Vietnam 'is beginning to affect the war effort and to benefit the Communists, which none of the Vietnamese want, either the Government or the Buddhists.'

"August 17: Forty-seven faculty members at the University of Hue resign to protest Government indifference in the Buddhist crisis and the dismissal of the University's rector.

"August 20: Vietcong guerrillas overrun and burn 137 homes in the Ben Tuong strategic hamlet, 30 miles north of Saigon It was the showplace of the strategic hamlet program.

"August 21: Martial law is proclaimed throughout South Vietnam by President Diem after hundreds of armed police and Government troops raided the main Buddhist Xa Loi pagoda in Saigon.

"August 22: Foreign Minister Vu Van Mau (a Buddhist) submits his resignation to President Diem. Also on the same day, South Vietnam's Ambassador to the United States Tran Van Chuong (father of Mme. Ngo Dinh Nhu) resigns. Both resign in disapproval of Government policies toward Buddhists.

"August 23: Student demonstrations at Saigon University in opposition to Government disperse before police arrive on the scene. But the following day there are direct clashes, and many students are confined to jail.

"August 26: U.S. Ambassador Henry Cabot Lodge presents his credentials to President Diem and confers with him at a second meeting on the same day. On the same day, U.S. State Department declares: 'Present information is that the top leadership of the

Vietnamese Army was not aware of the plans to attack the pagodas, much less the brutal manner in which it was carried out.'

"August 28: Joint General Staff of the Vietnamese Army issues a reply to the U.S. statement insisting that 'These allegations are entirely and absolutely erroneous.'

"August 29: French President de Gaulle issues controversial policy statement on South Vietnam. He declares that France is able 'to appreciate the role this people would be capable of playing in the current situation of Asia for its own progress and for the benefit of international understanding once it was able to exercise its activity in independence from foreign influence, in internal peace and unity, and in concord with its neighbors. Today, more than ever, this is what France wishes to all of Vietnam.'

"August 30: French Ambassador to the United States Herve Alphand declares, after meeting with U.S. Secretary of State Dean Rusk, that General de Gaulle's statement is part of a long-range French political solution which would reunify North and South Vietnam in 'independence and neutrality' and that his declaration is not meant as a slap at the United States.

"September 1: Three Buddhist monks, including Thich Tri Quang, take refuge in U.S. Agency for International Development mission headquarters in Saigon.

"September 2: Times of Vietnam charges that U.S. Central Intelligence Agency agents had planned a coup d'etat for August 28 to overthrow President Diem. On the same day, U.S. President Kennedy declares (in a television interview with CBS Correspondent Walter Cronkite) that the United States is prepared to continue to assist South Vietnam 'but I don't think that the war can be won unless the people support the effort and, in my opinion, in the last 2 months, the Government has gotten out of touch with the people.'

"September 3: Group of 56 African and Asian UN members decides to ask the U.N. General Assembly to consider 'the question of the violation of human rights in South Vietnam' at its next session which begins September 17.

"September 5: President Diem declares (in a press interview) that 'the Government considers this [Buddhist] affair closed.' He denies reports that his brother Ngo Dinh Nhu has taken control of the Government. On the same day, Ngo Dinh Nhu says (in a press interview): 'I have never controlled the Government.'

"September 7: About 800 high school students are arrested by armed police and Special Forces (secret police) while engaged in anti-Government demonstrations in Saigon. 'For the first time in student demonstrations here, the slogans they shouted included criticism of the United States' (New York Times, September 8, 1963).

"September 8: David Bell, Administrator of the U.S. Agency for International Development, warns (in a television interview) that the U.S. Congress may cut back aid to South Vietnam unless the Diem Government changes its policies. On the same day press reports emanating from 'highly reliable sources' in Washington state that the U.S. Central Intelligence Agency has decided to continue making regular monthly payments of $250,000 to support the special forces of Col. Le Quang Tung in South Vietnam.

"September 9: President Kennedy (in a televised interview) says that 'it would not be helpful at this time' to reduce U.S. aid to South Vietnam because that might bring about a collapse similar to that of the Chiang Kai-shek government in China after World War II. On the same day, U.S. Ambassador Henry Cabot Lodge confers with President Diem. 'The United States has directly advised President Ngo Dien Diem * * * that it regards the removal of his brother Ngo Dinh Nhu as vital' (New York Times, Sept. 12, 1963).

"September 12: U.S. Senator FRANK CHURCH, Democrat, of Idaho, introduces a resolution (sponsored by 18 Democrats and 4 Republicans) in the Senate which calls for ending all U.S. military and economic aid to South Vietnam and withdrawal of U.S. troops unless the Diem government abandons its policy of 'cruel repressions.'

"September 14: Presidential decree announces end of martial law on September 16.

"September 16: Fourteen Afro-Asian nations demand a debate in the U.N. General Assembly (opening its fall session on September 17) on the ruthless suppression of Buddhist rights in South Vietnam.

"September 20: U.S. Senate Majority Leader MIKE MANSFIELD, Democrat, of Montana, speaking in the Senate, calls on all U.S. agencies in South Vietnam to give full support to U.S. Ambassador Henry Cabot Lodge. Observers interpreted the speech as being directed against the CIA and some elements in the American military mission to Vietnam.

"September 21: President Kennedy orders Secretary of Defense Robert S. McNamara and Gen. Maxwell D. Taylor, Chairman of the Joint Chiefs of Staff, to go to South Vietnam to review the military efforts against the Communist Vietcong. McNamara and Taylor in South Vietnam during September 24 to October 1.

"September 22: Mme. Ngo Dinh Nhu, sister-in-law of President Diem, declares (in a press interview in Rome) that junior U.S. Army officers in South Vietnam are irresponsible 'little soldiers of fortune.'

"September 27: Elections are held for the 123-member National Assembly. All candidates were approved in advance by the Government; many were unopposed, including President Diem's brother, Ngo Dinh Nhu, and his wife, Mme. Nhu.

"October 2: Secretary of Defense Robert S. McNamara and Gen. Maxwell D. Taylor, Chairman of the Joint Chiefs of Staff, report to President Kennedy and the National Security Council on their mission to South Vietnam. The statement says that the United States will continue its 'policy of working with the people and Government of South Vietnam to deny this country to communism and to suppress the externally stimulated and supported insurgency of the Vietcong as promptly as possible. Effective performance in this undertaking is the central object of our policy in South Vietnam.'

"October 5: Buddhist monk burns himself to death in Saigon—the sixth such suicide since June 11. Three U.S. journalists who see the suicide are beaten by police. On the same day, the head of U.S. Central Intelligence Agency operations in Saigon (John H. Richardson) is recalled to Washington.

"October 7: Mme. Ngo Dinh Nhu, sister-in-law of President Diem, arrives in New York to begin a 3-week unofficial visit to the United States.

"October 8: U.N. General Assembly agrees to send a factfinding mission to South Vietnam to investigate charges of Government oppression of Buddhists. The Diem government on October 4 had invited the U.N. to send such a mission.

"October 17: Ngo Dinh Nhu, chief adviser of President Diem, declares (in a press interview in Saigon) that he cannot understand why the United States has 'initiated a process of disintegration in Vietnam.' He adds that 'the confidence between the Vietnamese people and the American Government has been lost.'

"October 21: It is disclosed in Washington and Saigon that the United States will withhold financial aid to the special forces of Col. Le Quang Tung as long as they are not used to fight Communist guerrillas.

"October 24: U.N. factfinding mission on the Buddhist situation in South Vietnam arrives in Saigon, and on the next day confers with President Diem and his brother, Ngo Dinh Nhu.

"October 27: Buddhist monk burns himself to death in Saigon—the seventh such suicide since June 11.

"October 31: Vietcong guerrillas attack an armored train north of Saigon, inflict heavy casualties on Government troops, and seize a large number of weapons.

"November 1: Military coup (organized by the key generals of the armed forces) against the Diem regime. Rebels lay siege to the Presidential Palace in Saigon which is captured by the following morning. President Diem and his brother, Ngo Dinh Nhu, escape from the palace, but a few hours later are taken by the rebels, and while being transported in an armored carrier to rebel headquarters they are assassinated. A proclamation broadcast by the leaders of the coup (a council of generals, headed by Maj. Gen. Duong Van Minh) declares that they have 'no political ambitions' and that the fight against the Communists must be carried on to a successful conclusion.

"November 2: Military leaders set up a provisional government headed by former Vice President Nguyen Ngoc Tho (a Buddhist) as Premier. The Constitution is suspended and the National Assembly dissolved. Buddhists, students, and other political prisoners arrested by the former regime are released.

"November 4: Premier Nguyen Ngoc Tho announces formation of a mixed military-civilian Cabinet which has been approved by the military leaders.

"November 7: United States recognizes the new provisional government of South Vietnam."

"EXHIBIT 5

"DEAD END IN VIETNAM

"WE CAN'T WIN, BUT WE NEED NOT LOSE—I

"(By Jerry A. Rose [1])

"SAIGON.—The war in South Vietnam cannot be won. That is now the on-the-spot opinion of numerous Vietnamese, American and other foreign experts. After 4 years of closely observing the situation, I concur. But it is unlikely that the Secretary of Defense, Robert McNamara and the Chairman of the Joint Chiefs of Staff, Gen. Maxwell Taylor, have reached a similar conclusion, though they have heard passionately contradictory viewpoints. There are powerful voices of optimism.

"Gen. Paul D. Harkins, commander of the Military Assistance Command, is one such voice. To many of us long in the area, his voice is like a frightening echo of past American commanders. Gen. 'Hanging Sam' Williams considered President Ngo Dinh Diem a near brother and felt that the Vietcong guerrillas could be eliminated with tanks and howitzers—and while he was molding the Vietnamese troops into standard warfare units, guerrilla terrorism increased. But Williams chose to ignore that lethal increase. Then came Gen. Lionel 'Stonehead' McGarr, who once told me that 'President Diem is a genius, a genius.' McGarr, to the day he left Vietnam because of 'heart trouble,' stoutly contended that the guerrillas were being contained. The opposite was true to any rational observer. Strangely, the tradition of rosy optimism dates back to French commanders during the Indochina war who saw a final victory forever around the corner until one day they turned the corner and ran smack into Dienbienphu.

" 'Vietnam has been the burial ground for more generals and diplomats than any other place on earth,' said a laconic reporter the day Ambassador Frederick Nolting departed.

"[1] Jerry A. Rose, former Far Eastern correspondent for Time magazine, now resides in Hong Kong where he does freelance writing on the Far East.

And indeed it has, though more realism and less wishful thinking may have saved their own necks and the nation's. Lesser officials and the much-maligned correspondents have called the hard, unpleasant but realistic shots. To do so is not difficult; it takes but a recognition of the basic factors involved in Vietnam and in guerrilla warfare. And the most basic of these factors is the attitude of the people toward their government and national leader. But for some reason, diplomats, soldiers in the field, and politicians in Washington are unable to grasp the importance of the people. While forever raising wet fingers to the wind of public opinion in the United States, the policymakers appear to operate on the belief that Asian people have no opinions, and even if they did have an opinion, it would carry no weight. A good Gallup poll would easily disprove the former proposition, and history has proved time and again the fallacy of the latter.

"During their week's stay in Vietnam, McNamara and Taylor got little if any inkling of Vietnamese public opinion and of its significance in the war effort. Rather, they have been evaluating the war largely through military statistics. Such statistics—when accurate—indicate trends but not solutions. The trend is: greater Vietcong activity, increased casualties on both sides (with the Government suffering generally fewer), and the crucial ratio of weapons lost and gained favoring the enemy by at least 2 to 1. A recent tabulation within 1 week showed the guerrillas to have captured 360 weapons from the Government while losing only 150 to the national forces. These figures tell a clear story: the Vietcong are winning the ground battles, though they incur heavy casualties from Government airstrikes. Thus, with a steady flow of weapons from within South Vietnam—and an increasing stream of Communist-bloc weapons being smuggled to the guerrillas from the outside—it is not surprising that the hard-core Vietcong force has jumped by an estimated 8,000 men in the last several months. There are now some 31,000 Communist guerrillas, well above last year's figure of 20,000 to 25,000.

"Nevertheless, $1.5 million a day and about 17,000 active U.S. military men has had some positive effect. The keynote strategic hamlet plan to urbanize and control the population goes well north of Saigon. As of September 8,227 strategic hamlets have been built, encompassing 76 percent of the population or 9.6 million people. In coastal provinces such as Quang Ngai, once a Vietcong stronghold, the 'hamletization' coupled with sound agricultural projects (small dams for irrigation, tons of fertilizer and pesticides) has gone far to winning back the support of the people. And here, notable military victories have been won—for it only takes one government-oriented peasant to inform on the movements of the Vietcong, one peasant actively supporting the Government. With solid information, the military can prepare itself. Just recently the Government caught the guerrillas by surprise and gained a decisive battle because one old lady came in to report the Vietcong's position.

"'We're lucky to hold our own'

"Incredible though it is, that one active individual is lacking in most areas of the Mekong Delta, the economic heart of South Vietnam. Americans working with the strategic hamlet plan in the delta readily admit that the program is floundering, has made little progress. Militarily, the situation is equally unsatisfactory. Commented an American general: 'Below the Bassac River, we're lucky to hold our own.' Many feel that we are not even doing that.

"This economic heart of South Vietnam, the Mekong Delta, has suffered severe strokes over the last several years. In 1961, rice exports from the area—Vietnam's major export product—were totally suspended. The exports began to diminish in 1962. Now, they have again been halted. Despite the vast American aid, the Government is finding itself short of cash. For example, this year the strategic hamlet program was calculated to cost about $30 million. The United States was to pay the first 6 months (to the end of June), the Vietnamese the latter half of the year. As of September, the Diem government had not yet started to fulfill its part of the agreements. From July of 1962 to July of this year, Vietnam's foreign and gold reserves fell from $200 to $130 million. The national bank is reported to have a piaster reserve of only $14 million. And Vietnam's debts to foreign banks amounts to some $140 million (which is one reason why hardheaded Hong Kong businessmen decided to cease trading with the country).

" 'Right now, our greatest danger,' said a Vietnamese economist, 'is national bankruptcy and wild inflation.'

"Part of this economic condition is due directly to President Diem. He will not listen to the counsel of his own trained economists,

"Similarly, President Diem refused to listen to reasoning voices of moderation when the Buddhist trouble erupted. He took brother Nhu's advice and cracked down harshly. He has echoed his sister-in-law, the now infamous Madame Nhu, in calling the self-immolation of a Buddhist monk a murder. Then the Vietnamese students began to riot, and over 8,000 teenagers, both girls and boys, were imprisoned. Ministers of the state, civil officials, army officers went to the prisons with packages of clothing and food for their sons and daughters. Throughout the country, the word of these events—both with the Buddhists and the students—slowly seeps down. (Slowly seeps down, for news does not travel quickly.) Slowly seeps down and takes seed in the minds of the Vietnamese people, who are perhaps the most politically sophisticated people in Asia, for they have suffered the wars of politics for more than 20 years. They have listened to many political ideologies. They have also learned to choose cautiously, but they have also learned that to survive they must, sooner or later, choose a side. The repression against the students and the Buddhists will inevitably affect their choice, for they are no different from any other peoples in the world. They do not like to see their religious leaders or their young people persecuted.

"Yet, almost unbelievably, some U.S. officials maintain that the Buddhist and student demonstrations have not affected and will not affect the people and the 'way the war is going.' It has been said many times now, by U.S. Army officers, by disinterested observers, by journalists, by Communist guerrilla leaders themselves that 'a guerrilla war cannot be won by military means alone,' that 'the people are the key to victory.' It has been said so many times that the statement has become cliche. It is true, nevertheless, except I believe that the roots of rancor now run so deep in South Vietnam that the people can no longer be won over, at least not enough of them to result in clear-cut stability.

" 'Outside of a miracle, a genius like Magsaysay, coming to the fore,' said one American in Saigon who has dedicated all his energies over the last 3 years to South Vietnam, 'this country is lost.' Then, rather wearily, he murmured, 'leadership, leadership.' Even as late as last year, popular leadership may have spelled the difference. Today the grassroot strength of the Vietcong appears so strong, particularly in the delta, that it seems unlikely any leader could shake it.

"On top of this a few hardheaded observers contend that the war could never have been won. Said one Australian diplomat, 'We must clearly define what we mean by winning the war. An outright victory is impossible. Stability as existed in 1957 might still be achieved, but as then, there will always be terrorism.' While acknowledging the need of sound and popular leadership to gain that 1957 stability, this gentleman points to South Vietnam's long, gaping borders: a border with Cambodia, another with Laos, a third with North Vietnam. 'Porous borders,' he calls them; they could never be sealed off; they would always permit a shower of infiltrators, terrorists. Thus, 'In that sense the war cannot be won. Peace cannot be established.'

"According to good estimates, last year infiltration into South Vietnam ran in the neighborhood of 1,000 men per month. This year it fell off for a while to almost nothing; now it is back to around 500 per month. But the shocking factor is not the actual number of infiltrators but the capacity for infiltration. An intelligence expert told me bluntly, 'If North Vietnam wanted to, they could send down 20,000 infiltrators in one swoop, and it would be 2 weeks before we knew it.'

"Now let us review briefly the current situation in South Vietnam: (1) a national leader who is unpopular and whose family is detested; (2) a nation of discontented people, two segments of which (Buddhists and students) have overtly demonstrated their unhappiness, another segment which covertly demonstrates its unhappiness (by siding with the Vietcong), a final segment which remains for the time being passive (popular passivity helps the Vietcong, for the government needs active informers); (3) a shaky, inflationary economy; (4) a war that grows fiercer each week despite American aid in both money, materiel, and personnel; and (5) porous borders with three countries that permit a steady influx of guerrillas.

"Take these five elements, place them against the stated American policy in South Vietnam: 'To win and get out,' and it should be starkly clear that the United States is at a dead end. We cannot win.

"But we do not necessarily have to lose. That is, though an outright victory over the guerrillas now seems impossible (and I believe that despite the borders it was once possible), an outright defeat can still be prevented. But U.S. thinking must undergo some radical changes. Washington must begin to consider the proposition that peace to South Vietnam will come not on the battlefield but only at the conference table. And I do not mean General de Gaulle's conference table. Within the foreseeable future, reunification of the north and south could only result in a final Communist victory. But there are other possibilities. To understand them, one must be aware of the difficult position of the Democratic Republic of (North) Vietnam.

"An Asian Yugoslavia?

"In the slow-seething years before Red China and the Soviet Union split totally asunder, North Vietnam's President Ho Chi Minh tried to play the neutral moderator. He preferred the Russians, but the proximity of China did not permit him to take sides. He knew that to become an oriental Albania was to risk eventual destruction. Now, since the split, Ho has, by necessity, leaned more toward China. But the Chinese ruled Vietnam for almost 2,000 years, and China has never ceased to look hungrily at Vietnam's rice bowl, the Mekong Delta. In fact, it is the Mekong Delta which the north itself wants, and needs, to achieve a solid economy (the north has always been industrial, the south agricultural). All Vietnamese have a natural dislike, suspicion, and fear of the Chinese, and it is highly probable that Ho Chi Minh and the other Communist leaders of the north would do much to disengage themselves from China's sphere of influence. They could do this if they were able to trade

for food with South Vietnam and for material with the West. And they likely would be willing to enter into trade relations, cease hostilities—become a sort of Asian Yugoslavia—providing they were convinced an outright victory could not be gained in the south within a reasonable length of time. The United States must convince the north it cannot win soon or easily.

"This could be done if President Diem were removed, a better leader emerged, popular support gained to some degree, the morale and efficiency of the Vietnamese Army improved. As Diem obviously is not easily removed, alternatives must be examined. One alternative is to put a division or more of American combat troops into action. Coupled with this direct involvement would be the establishment of a dual chain of United States-Vietnamese Army commands that ignored and bypassed the President. We could continue to finance the Vietnamese Army, but through nongovernmental channels. We could also cut back on our budgetary support.

"North Vietnam's response to this challenge could only be to heavily step up infiltration with large units of soldiers. The moment it does, three important changes occur in the nature of the war: (1) North Vietnam will begin to suffer the financial burden of war, a burden which it can ill afford; (2) sooner or later one of these infiltrating units will be captured and North Vietnam will be inextricably caught in the act of aggression; and (3) with definite proof of aggression, North Vietnam will leave itself open to direct retaliation, as through bombing attacks. At such a point, would the war escalate?

"The North Vietnamese do not want to be devastated, nor are they prepared to finance a war the size of the Korean conflict. Neither is Red China in any financial position to engage on a lengthy battlefield. The Soviet Union not only has been detaching itself from this part of the world, but also seems to wish peace as much as the United States. The conference table stands ready. The contract for peace is comparatively simple: trade relations in exchange for nonaggression.

"To sum up: One solution now for the United States appears to be a show of power in South Vietnam which would pave the way toward a compromising settlement. But is the risk of a power play warranted? Southeast Asia has been likened to a 'set of dominoes.' If South Vietnam falls, the rest of the blocks go too. It would seem, therefore, that it is in the high interest of the United States, as a leader and a system of government, to risk much in stabilizing that tottering block.

"CIA's thirst for power

"In a scathing dispatch from Saigon dated October 2, Richard Starnes of Scripps-Howard reported that on two occasions the CIA in Vietnam 'flatly refused to carry out instructions from Ambassador Henry Cabot Lodge.' In one instance, 'the CIA frustrated a plan of action Mr. Lodge brought with him from Washington, because the Agency disagreed with it.' Mr. Starnes also said that:

" 'CIA "spooks" (a universal term for secret agents here) have penetrated every branch of the American community in Saigon. * * * Few people other than John Richardson [chief of the CIA apparatus in Vietnam] and his close aides know the actual CIA strength here, but a widely used figure is 600.'

" 'For every State Department aid here who will tell you "Dammit, the CIA is supposed to gather information, not make policy, but policymaking is what they're doing here," there are military officers who scream over the way the spooks dabble in military operations.

" 'One very high American official here, a man who has spent much of his life in the service of democracy, likened the CIA's growth to a malignancy, and added he was not sure even the White House could control it any longer.'

"The story of the CIA in South Vietnam, said Mr. Starnes, 'is a dismal chronicle of bureaucratic arrogance, obstinate disregard of orders, and unrestrained thirst for power.'

"NEGOTIATING WITH THE NORTH—II

"(By Ho Thong Minh [2])

"When he returned to Vietnam in June 1954, Ngo Dinh Diem asked me to work with him. I resigned as Minister of National Defense on April 29, 1955, end of a brief 9-month period during which, as a result of the Geneva agreements, peace was temporarily restored. After 16 years of war, it did not seem to me that South Vietnam could continue moving toward its own reconstruction in a spirit of unity and harmony. All hope of positive advance had been made impossible by the nefarious activities of the Ngo clan.

"At present South Vietnam has a population of 14 million (as many as the former Belgian Congo). Inside the nation a facade of republicanism conceals the sordid realities: corruption, informer tactics, stagnation, the denial of all democracy. It is a dismal and telling contrast to recall that under Syngman Rhee in South Korea there were some 90-odd opposition deputies in office at Seoul, whereas Diem refuses to tolerate a single one at Saigon. The Diem regime claims to be anti-Communist, but its thinking and its actions are patterned after the psychological warfare of the French colonels. It has successively gotten rid of Bao-Dai, of the various religious sects, of the French, of all domestic opposition, of the Buddhists, of the Vietnamese people themselves, and now, finally, it is in difficulty with the Americans.

"The amount of U.S. aid to South Vietnam (and hence to the Ngo clan) is comparable to the contribution which France was making not so long ago to Algeria. Between direct military and economic aid and its own expenses for maintaining U.S. troops in Vietnam, the United States pours annually into the yawning South Vietnamese pit the sum of $700 million. This expenditure enables the United States to equip an army of over half a million Vietnamese (510,000, to be precise) on territory only half the size of the area where, in 1954, the French and Vietnamese together mustered only 450,000 men. All that money and military manpower—only to be held at bay by 50 Vietcong battalions all told.

"The whole world has become aware of the drama which is being enacted in South Vietnam, and the Diem regime is as sharply criticized abroad as at home. How is the impasse to be got around? Although the people of South Vietnam are resolutely committed to a program of defiance and insurrection, they aspire beyond this to surviving as a free and independent nation. They are certain that the Ngo regime must end and are already looking forward to the prospect of peace. But by what road is this peace to be achieved?

"The current situation renders imperative (first of all) the overthrow of the Diem regime; for this the Vietnamese Army will be the ineluctable instrument, and in this connection, the Americans are increasing their efforts to dissociate the army from the present government at Saigon. Next should come the cessation of foreign intervention—in other words, both the Americans and the infiltrators from the north should depart. This, of course, can only be done by a truce, a suspension of hostilities, with the Vietcong. Thirdly, after the foreign bases have been eliminated, it will be necessary to have solid international guarantees so as to make the present SEATO troops unnecessary.

"If these three steps could be taken, it would then at last be possible for the two Vietnams to sit down together and settle their problems. Of course national reunification continues to be the ultimate goal of the Vietnamese. But for the time being political realities require compromise solutions. Everyone knows that North Vietnam is directed by a Communist regime which seeks to maintain an attitude of neutrality as between Peiping and Moscow. Under these circumstances and for the immediate present, the next South Vietnamese Government can hardly be anything but non-Communist. In fact, if it were anti-Communist, practically nothing would be changed and there would be a danger of the country being swallowed up in Diemism without Diem. If, on the other hand, the new regime were to welcome Communists in the government, it could no longer speak as equal to equal in independent conversations with the north. Furthermore, one need look only as far as Laos to find an example of the very great difficulties which could rapidly become insurmountable if the Vietnamese Government were to be a three-headed coalition—and the example is still more compelling when one considers that Laos is all one country, not cut in two pieces like Vietnam. A future non-Communist regime in Saigon could, however, where domestic problems are concerned, invite the participation of all Vietnamese patriots, from the Buddhist clergy to the National Liberation Front, provided they are not Communists.

"In the international sphere, such a regime could contribute to peace in southeast Asia by adopting the same neutralist attitudes as those of its neighbor, Cambodia. It would certainly not oppose the diplomatic recognition of North Vietnam by France. In this way, France would fulfill a privileged role—providing a connecting link for economic unity and, most particularly, for cultural unity, the lines of which would be laid down between the two Vietnams in their efforts to establish the united and independent Vietnam which General de Gaulle has recently and rightly envisaged.

"There remains the crucial problem of the confrontation between China and the West in southeast Asia. Here it is possible to believe that the present conflict between Peiping and Moscow has been brought about less by ideological differences than by differences in the level of economic development. When China attains the level of economic development that now prevails in the U.S.S.R., it too will surely feel that it must protect the progress it has made by practicing peaceful coexistence.

"In any event, things being as they are, the foregoing program and prospects are those which seem to me within the realm of the possible.

"A TALK WITH HO CHI MINH—III

"(By Bernard B. Fall)

"As the second Indochina war now grinds on into its fourth year, a large-scale reappraisal is underway both among Americans in Saigon and in Washington as to the ultimate objectives and outcome of that war. For the time being, no solution envisaged considers seriously the possibility of talks with the real enemy by proxy, North Vietnam. In fact, it is not without significance that the only open reference made to such negotiations came from no one else but South Vietnam's secret police chief, Ngo Dinh Nhu, in his recent interview with an American columnist. Nhu, beyond a doubt seeks to use at least the threat—if not the reality—of such south-north contacts as a counterblackmail against the United States which has thus far (and with conspicuous unsuccess) sought his and his wife's removal from Vietnamese politics.

---

[2] Ho Thong Minh, a 43-year-old civil engineer, now lives in Paris where he is the moving spirit behind the group Pour Le Vietnam. His comments were first published in Le Monde of Sept. 19.

"Thus, negotiating with North Vietnam—or, for that matter, any kind of contact with that country—has become another bogey that in the months to come, may supplant Cuba and even Red China in the public eye. Of course, as even a brief stay in North Vietnam shows, that attitude cuts both ways: in Hanoi, the only kind of demonstration that is allowed is directed against the United States, the Ngo family, or, on occasion, against the Indian and Canadian (not the Polish, of course) members of the lame-duck International Control Commission which still supervises the implementation of the civil liberties and disarmament provisions of the 1954 Indochina cease-fire. The Commission's lack of effectiveness makes it a permanent monument to the impossibility of settling a dispute when it directly involves the prestige or interests of both of the major power blocs.

"French non-Communist writers have been able, over the years, to visit North Vietnam, just as Canadian, Australian, and British writers have been able to visit Red China. In my own case, the fact that I had written a solidly documented (and, hence, unflattering) book in French about North Vietnam, perhaps incited the North Vietnamese leaders to be franker than usual. What follows is based on notes taken in the course of a conversation which took place in July 1962 supplemented by a tape recording made during that conversation and by notes made immediately afterward, while my memory was fresh. It is a verbatim translation from the original French, and leaves out only some of the usual banter.

"A brief note on the North Vietnamese leaders involved: Prime Minister Pham Van Dong, born in 1906 in central Vietnam, is of senior mandarin origin; in fact, say some, he outranks President Ngo Dinh Diem. While Diem's father was chief of cabinet to Emperor Thanh-Thi, Dong's father held the same post under Emperor Duy-Tan. A graduate of Chiang Kai-shek's own Whampoa Military Academy (class of 1925), Dong has been Ho's Prime Minister and probably closest associate since 1955.

"Ho Chi Minh, born in 1890 in central Vietnam, was a revolutionary since the age of 14, went to Europe in 1911, became a cofounder of the French Communist Party in 1920 and a French delegate to the Komintern in 1923. He founded the Indochinese Communist Party in 1930 and became President of the Democratic Republic of Vietnam (DRVN) on September 2, 1945. He unquestionably is the most important Asian Communist leader after Mao Tse-tung, and the last of the old Bolsheviks in power anywhere in the Communist world.

"All remarks made by Dong are preceded by 'P'; those made by Ho by 'H,' and those made by myself by 'F.' My own explanations are placed in brackets.

"[Pham Van Dong meets me in the corridor of the presidential residence; wears a khaki Mao Tse-tung suit; invites me to a sitting room overlooking the formal gardens.]

"P. Please make yourself at home, Monsieur le Professeur, take off your jacket [takes off his own jacket]. I know how it is here during the rainy season. I hope you are enjoying your trip throughout North Vietnam, and that you find us cooperative.

"F. Thank you, Monsieur le Prime Minister, your subordinates indeed have generally been cooperative.

"P. I remember, however, that you said in your book Le Viet-Minh that we are not a democratic country. Do you still feel the same way about this?

"F. Well, Monsieur le Prime Minister, all my color films were impounded upon my arrival at Hanoi Airport. I don't think you would call this in accordance with democratic procedures.

"P. [Laughing.] Oh, those are general rules which apply to everybody. [While theoretically true, the rule obviously applies to Westerners only. In addition, all black-and-white film has to be exposed prior to departure and the developed film submitted to the Foreign Ministry for censorship. Even so, the airport police again inspected my films prior to departure.]

"F. Monsieur le Prime Minister, North Vietnam has had some serious economic difficulties. Do you believe that they have been mastered?

"P. As you know, the recent seventh plenary session of the [Vietnamese] Communist Party's Central Committee has decided to give priority to basic heavy industries, although attention will be paid to a proper balance with agriculture and consumer goods production.

"We base ourselves upon the Marxist economic viewpoint; heavy industrial development is essential to Socialist construction, but we also understand the importance of the 'full belly.' In any case, we do not seek to bluff and will not put emphasis on 'showpiece' industries but on sound and useful economic development.

"Yes, we have made economic mistakes, due mainly to our backwardness and ignorance in the field of economic planning. Not all of those errors have yet been corrected and some of their effects are still felt, but we try to overcome them rapidly thanks to help from friendly countries.

"F. Monsieur le Prime Minister, President Ho Chi Minh made a declaration to the daily Express [London] in March 1962, referring to the conditions under which North Vietnam would negotiate a settlement with the South. Has anything happened in the meantime which would change those conditions?

"P. Our position has remained largely unchanged since President Ho Chi Minh's declaration. What has changed, however, is the extent of American intervention in South Vietnam, which has continued to increase and to take over increased responsibilities and control over the [Ngo Dinh] Diem regime.

"The real enemy is American intervention. It is of little importance as to who the American agent in Vietnam might be.

"F. Monsieur le Prime Minister, the International Control Commission [composed of Indian, Polish, and Canadian members] has recently accused the North Vietnamese Republic of aiding and abetting the South Vietnamese rebellion. What do you think of that accusation?

"P. [Deprecating gesture.] We understand, Monsieur le Professeur, under which outside pressures the [Indian and Canadian] members of the ICC labor. After all, India does depend for development upon large-scale American aid.

"F. But would it not at least be conceivable that some of the almost 100,000 South Vietnamese who went north [of the 17th parallel] in 1954 and whose relatives are now fighting against South Vietnamese forces, would attempt to slip across your border back into South Vietnam in order to help their relatives—even without the permission of the North Vietnamese Government? Wouldn't that be at least conceivable?

"P. Monsieur, in our country one does not cross borders without permission.

"F. Would not a spreading of the guerrilla war entail a real risk of American reaction against North Vietnamese territory. You have been to North Korea last year, Monsieur le Prime Minister; you saw what American bombers can do.

"P. [very seriously]. We fully realize that the American imperialists wish to provoke a situation in the course of which they could use the heroic struggle of the South Vietnamese people as a pretext for the destruction of our economic and cultural achievements.

"We shall offer them no pretext which could give rise to an American military intervention against North Vietnam.

"[Ho Chi Minh suddenly enters, unannounced. Mao Tse-tung suit in suntan cotton. Spry and tanned looking, springy step, arms swinging, firm handshake.]

"F. I thought you were in Moscow on vacation.

"H. You see, people say a lot of things that aren't true. [Looks at my jacket, tape recorder, book, next to me on sofa.] My, you have got a lot of things with you.

"F. I am sorry, Monsieur le President [Push things together. Ho sits down next to me, humorous gleam on face, slaps me on thigh.]

"H. So, you are the young man who is so much interested in all the small details about my life. [In my book "Le Viet-Minh" and the forthcoming "Two Viet-Nams," I have attempted to include as complete a biographical sketch of Ho Chi Minh as possible. During my stay in Hanoi, I also interviewed many of Ho's old friends on Ho's life, and he apparently had been informed of this.]

"F. Monsieur le Président, you are after all a public figure, and it certainly would not be a violation of a military secret to know whether you had a family, or were in Russia at a given date.

"H. Ah, but you know, I'm an old man, a very old man [he's 73]. An old man likes to have a little air of mystery about himself. I like to hold on to my little mysteries. I'm sure you will understand that.

"F. But——

"H. Wait until I'm dead. [In spite of this, I received just before I left Hanoi a letter containing six manuscript pages of details about Ho's life, filling in most of the gaps—no doubt on his own orders.]

"P. Monsieur Fall brought you a book on the Indochina war which contains a drawing of you by his wife.

"H. [With an old man's impatience]. Where? Where? Let me see it. Providing she's got my goatee right. Providing the goatee looks all right. [Unwraps and looks.] Mmm—yes, that is very good. That looks very much like me. [Looks around, grabs a small flower bouquet from the table, hands it to me.] Tell her for me that the drawing is very good and give her the bouquet and kiss her on both cheeks for me.

"P. Monsieur Fall is interested in the present situation in South Vietnam.

"F. Yes, Monsieur le Président, how do you evaluate the situation in South Vietnam?

"H. Monsieur Ngo Dinh Diem is in a very very difficult position right now and it is not likely to improve in the future. He has no popular support.

"F. But would you negotiate with South Vietnam?

"P. The situation is not yet ripe for a real negotiation. They [South Vietnamese] don't really want to negotiate.

"H. That is absolutely true. They are showing no intention to negotiate.

"F. But are you not afraid that the situation might degenerate into a protracted war?

"H. [Earnestly, turning full face.] Monsieur le Professeur, you have studied us for 10 years, you have written about the Indochina war. It took us 8 years of bitter fighting to defeat you French in Indochina. Now the Diem regime is well armed and helped by many Americans. The Americans are stronger than the French. It might perhaps take 10 years, but our heroic compatriots in the south will defeat them in the end. We shall marshal world public opinion about this unjust war against the South Vietnamese people.

"P. Yes, the heroic South Vietnamese people will have to continue the struggle by its own means but we watch its efforts with the greatest sympathy.

"H. I think the Americans greatly underestimate the determination of the Viet-

namese people. The Vietnamese people has always shown great determination when it was faced with an invader.

"F. But are you still willing to come to a negotiated settlement if the occasion presented itself?

"H. Yes, but only with people who are willing to sit down with us at one and the same table and 'talk.' [French word: 'causer' which means: 'negotiate in good faith.']

"F. You mean you would negotiate with any South Vietnamese Government?

"H. Yes, with any.

"F. But what kind of relations would you envisage?

"H. Of whatever type they [South Vietnamese] wish. After all, the East and West Germans have flourishing trade relations in spite of the Berlin wall, haven't they? [After some further amenities, Ho leaves.]

"F. Monsieur le Prime Minister, what do you think of Mr. Ngo Dinh Diem's personal position as of right now?

"P. It is quite difficult. He is unpopular, and the more unpopular he is, the more American aid he will need to remain in power. And the more American aid he gets, the more as an American puppet he'll look and the less likely is he to regain popularity.

"F. That sounds pretty much like a vicious circle, doesn't it?

"P [humorous gleam]. No, Monsieur le Professeur. It is a descending spiral.

"F. But you must understand, Monsieur le Prime Minister, that South Vietnam is in a different situation than the non-Communist parts of Germany and Korea. In the latter two cases, the non-Communist part is by far the more populated, whereas in the case of Vietnam, the non-Communist part has 13.8 million people against your 17 million. You can clearly see that they have good reasons to fear North Vietnam which also has the larger army, and one with a fearsome reputation, as we French well know.

"P. Certainly, we realize that we are in the stronger position. Thus, we are also willing to give all the guarantees necessary for the South to be able to come out fairly [pour que le Sud trouve son compte] in such a negotiation.

"You will recall President Ho's declaration with regard to maintaining the South's separate government and economic system. The Fatherland Front embodies those points in its program, and the South Vietnamese Liberation Front likewise.

"We do not envisage an immediate reunification and are willing to accept the verdict of the South Vietnamese people with regard to the institutions and policies of its part of the country.

"F. What, then, would be the minimal conditions under which the Democratic Republic of Vietnam [North Vietnam] would accept a settlement of the conflict which at present exists in South Vietnam?

"P. [makes a statement as below].

"F. Would you object to my making a tape recording of that answer? It is a reply that I would like to have verbatim, if possible.

"P. [thinks it over, makes notes, agrees].

"P. This is a very timely question: The DRVN [North Vietnam] government has made sufficiently explicit declarations on the subject [but] let me underline what follows: The underlying origin and immediate cause of the extremely dangerous situation in the south of our country is the armed intervention of the USA and the Fascist dictatorship of Monsieur Ngo Dinh Diem, the creation and instrument of that [American] intervention.

"It is obvious, then, that in order to normalize the situation in our whole country, those factors of dissension must disappear. We support with determination the patriotic struggle of our southern compatriots and the objectives of their struggle—I mean, the program of the Southern Liberation Front.

"We are certain that the massive help of all classes of South [Vietnam's] society and the active support of the peoples of the world, shall determine the happy outcome of the situation full of dangers which exist in the south of our country.

"The people of Vietnam and the DRVN government remain faithful to the Geneva accords (of July 1954) which establish our basic national rights. We shall continue to cooperate with the International Control Commission on the basis of those accords, and hope that this cooperation shall be fruitful—providing that all members of the Commission respect the accords.

"F. Thank you, M. le Prime Minister, for that statement.

"P. I would like to say something about a remark you made in your book on our Republic about our alleged 'isolationism' from neutral and pro-Western countries, and from international organizations. No, no and no, we are not isolationists. On the contrary, we seek 'open windows' toward any country or organization that will deal with us on a matter-of-fact basis. We are willing to trade with them and make purchases from them.

"F. What would be the position of the foreign community in South Vietnam, if the war worsens? There are still 15,000 French citizens living there.

"P. As you know, the Southern Liberation Front has repeatedly shown that it does not wish to hurt the legitimate interests of the Europeans who live in South Vietnam. We make a distinction between France's position and that of American imperialists.

"F. What is the attitude of the DRVN toward Laos and Cambodia?

"P. We shall respect the Laos accords (this was stated briefly after the signature of the 1962 Geneva accords on Laos. It has become obvious since then that North Vietnamese troops still operate in Laos to some extent, or travel through South Vietnam), and shall at all costs maintain good relations with Cambodia."

"EXHIBIT 6

"[From the Reporter, Oct. 24, 1963]

"WHAT DE GAULLE ACTUALLY SAID ABOUT VIETNAM

"(Bernard Fall)

"President de Gaulle is used to being misunderstood by those to whom he directs his more Delphic remarks, and he is particularly used to being misunderstood by Washington. Indeed, there are times when one almost suspects he likes being misunderstood by Washington. The evidence is increasing that this is more or less what happened in the wake of De Gaulle's recent affirmation of France's abiding interest in the ultimate independence—'independence vis-a-vis the outside,' as he put it—of all of Vietnam, North and South. These remarks prompted considerable wringing of hands in Washington (even though Walter Lippmann thought that De Gaulle was right if he meant what Lippmann thought he meant), and many seemed to feel that his remarks were meant as merely a nettlesome intrusion into U.S. policy in southeast Asia. As usual, almost everybody was wrong.

"The original version of the statement in question was drawn up in August, just after the Buddhist riots had begun in Hue and Saigon and while the French Foreign Ministry was working with a skeleton vacationtime staff. At De Gaulle's request, the Ministry of Foreign Affairs had drawn up a short note on the subject of Vietnam. Most Foreign Ministry aids seemed to feel that what was going on in Vietnam was far, far away, and that anyway for once it was something happening not to the French but to somebody else. Thus the original note hardly went beyond voicing pious hopes about religious tolerance, phrased in terms that were considerably weaker than the Pope's statement on the same subject.

"At the Elysee, one of De Gaulle's civilian aids redrafted the note for his chief, but still without going much beyond the Quai d'Orsay draft. The new version was submitted to De Gaulle after his return from his mid-August vacation and disappeared from view until the President himself brought it up at the Council of Ministers on August 29, after Foreign Minister Maurice Couve de Murville had made his oral report on recent developments in Vietnam. The text which De Gaulle then read was a radical departure from the Quai d'Orsay draft, with perhaps the sole exception of its initial phrases referring to the 'attention and emotions' with which 'Paris views the grave events in Vietnam.'

"The operative paragraphs, which President Kennedy considered sufficiently disturbing to repeat 4 weeks later on the occasion of the departure of Gen. Maxwell D. Taylor and Secretary of Defense Robert S. McNamara for Vietnam, were entirely in De Gaulle's own hand:

" 'France's knowledge of the value of the (Vietnamese) people permits her to discern the role they could play in Asia's present situation, for their own progress and to the benefit of international understanding: as soon as they could deploy their activity in independence vis-a-vis the outside, in peace and unity at home, and in concord with their neighbors.

" 'That is what France wishes, more than ever today, to all of Vietnam. It naturally is up to the (Vietnamese) people themselves, and to themselves alone, to choose the means of arriving (at that result) but any national effort undertaken by Vietnam with that aim will find France ready, within the means at its disposal, to enter into cordial cooperation with that country.'

"The statement, read to the assembled journalists at the end of the council meeting by Information Minister Alain Peyrefitte, had the effect of a brick in a birdbath. Yet it needs to be examined coolly to understand De Gaulle's meaning.

"He wants Vietnam to be reunified in independence. That is a wish that every Western statesman trots out whenever he visits a divided country like Germany, Korea, and Vietnam, or a city like Berlin. It is, in fact, an explicit long-range aim of Western policy, and the price of reunificaiton will in all likelihood be nonadherence to any bloc, as in Austria, for example, or nominally in Laos. In the case of Vietnam (as well as of Germany) such reunification would actually be dangerous to world peace if the reunified country, far stronger regionally than its neighbors, were to embark upon a policy of nationalistic revanchism. For Vietnam that would mean starting where it left off when the French arrived in 1858; gobbling up and destroying Cambodia and Laos, presumably in collusion with Thailand.

"According to De Gaulle's statement, Vietnamese independence should be arrived at by means chosen by the Vietnamese people themselves, and by 'themselves alone.' Any 'national' effort, i.e., by the Vietnamese nation as a whole, would find France willing to give such support as it can afford. This kind of vague promise is hardly designed to commit France to immediate action in the Far East. It simply says that if by some unspecified miracle the Vietnamese arrive at reunification—a reunification in which both America and the Sino-Soviets would lose their most obvious reasons for continuing to pay the lavish bills of their respective Vietnamese client governments—France would be willing to take up, as far as possible, the slack of the transitional crisis. In quite a few cases where Russia or the United States or France, for one reason or another, cut a particular country off its payroll, another country (or the United Nations) paid

the most urgent bills until an equilibrium of sorts was established. That was about all there was to the De Gaulle statement.

"POOR HOMEWORK

"It was downright amusing to see the bewilderment on the faces of French officialdom in Paris as the storm broke. Washington went into a flap and spoke unofficially but loudly of yet another 'De Gaulle betrayal' of the West in general and the United States in particular. French Ambassador Hervé Alphand was hastily summoned to the State Department and met with Secretary Rusk for more than an hour. His subsequent statement, which stuck pretty closely to the text (always a sound policy when one tries to interpret Gaullist prose), obviously convinced no one, least of all the White House, which seems to have written off De Gaulle as Public Enemy No. 1. The American press, on cue, took up the cudgels to transform that 20-word statement into an explicit bid for a French takeover in Indochina, preferably in collusion with Hanoi, to make the treachery even blacker.

"Interviewed by Walter Cronkite on a CBS television program on Labor Day, President Kennedy voiced this reaction to the De Gaulle statement on Vietnam: 'It was an impression of his general view, but he doesn't have any forces there or any program of economic assistance so while these expressions are welcome, the burden is carried, as it usually is by the United States and the people there. * * * What, of course, makes Americans somewhat impatient is that after carrying this load for 18 years, we are glad to get counsel, but we would like a little more assistance, real assistance.'

"The words clearly showed how poorly the President's entourage had done his homework for him. The flat assertion that the French do not have any program of economic assistance in Vietnam is simply incorrect. Furthermore, it clearly shows that, on a public level at least, the White House still does not know who exactly has a stake in Vietnam, and for what reason.

"In Paris, Mr. Kennedy's statement was received with a shrug. 'Obviously, the Americans haven't understood, or they don't choose to understand,' was the reaction of a seasoned newspaperman from Le Monde. That paper and Agence France Presse had spelled out the French stake in South Vietnam; about 17,500 French citizens still live there, 6,000 of whom are French-born, the others being of Asia, Eurasian, Indian, or African origin; French investments in the country, including important rubber plantations, total close to $500 million; and there is a fairly sizable French economic and cultural-aid program.

"In terms of the actual dollar expenditures, French aid is not large, but it affects some politically important sectors. There are more than 340 French teachers in Vietnam. They are to be found from grade school to the university level, but are concentrated above all in the lycées, where tomorrow's elite is being trained. Close to 30,000 Vietnamese children go to schools staffed and paid for by the French cultural mission, and more Vietnamese are now passing the difficult French baccalaureate examinations than at any time during the colonial period. But French economic aid is also felt in another key sector: agrarian reform. By a convention signed on September 10, 1958, France agreed to advance funds to Vietnam for the repurchase of more than half a million acres of French-owned riceland. This permitted the Diem regime to redistribute land free to the farmers without having to resort to the expropriation of land belonging to the Vietnamese landlords, many of whom were high officials in the regime. The French also financed the only working coal mine in South Vietnam, the only indigenous source of fuel; and they donated diesel locomotives for Vietnam's battered railroads.

"But there is an even more important field in which France plays a key role, and that is Vietnam's trade. It is perhaps one of the unique tragedies of that poor country that it is more dependent now on France's taking its export products than at any time during the colonial era. The following table shows the whole grim problem at a glance:

	Percent of total		
	1939	1956	1962
Exports to—			
France	32.2	67.5	42.0
United States	12.0	18.1	4.3
Imports from—			
France	55.7	24.5	11.8
United States	4.2	28.0	37.0

"France has been displaced in the import field, since imports now are financed by American aid; but in the export field few others but the French, who are used to them, seem to be willing to take Vietnamese goods. This French magnanimity is easily explained: Rubber, which in 1939 represented a healthy 21.4 percent of all Vietnamese exports, now represents an unhealthy one-crop 89.6 percent—and the rubber is produced largely by the huge French plantations. Like their counterparts in Malaya in the 1950's, French rubber planters are paying a heavy toll in lives and treasure to the insurgents. There is not one plantation that has not been attacked or partly pillaged several times by the Vietcong during the past 5 years, and which has not seen several of its French personnel kidnaped and held for ransom or killed. During the Indochina war, the plantations had been allowed to arm themselves and maintained militia forces at their own expense. When Ngo Dinh Diem came to power he ordered all plantations disarmed and they thus became military liabilities.

"The plantation managers now keep in business by closing their eyes to the Vietcong emissaries who come to the workers' villages and exact tribute; they silently pay millions of piasters of ransom to the Vietcong—and as much again to bribe South Vietnamese authorities to allow them to operate. Here and there, the Saigon-controlled press announces that a French plantation was fined tens of millions of piasters (a million dollars or more) for 'economic violations.' Everybody knows what that means, and business goes on as usual.

"Those Frenchmen and their property are hostages to both sides in South Vietnam's messy war. A brief visit to the Syndicat des Planteurs de Caoutchouc in Paris gives an eloquent picture of what this means: 'It means,' says one of the officials, 'that we are being told by the Vietcong that if we don't cooperate, our trees will be slashed and personnel killed. And when we do pay our "blood money," the Government's district chief comes and fines us exactly the same amount. There will come the day when the whole damned thing simply becomes too expensive to carry on, and we'll all go home, and Vietnam's last economic mainstay will collapse. After all, should the Americans pull out tomorrow, they'll simply create a beachhead around Saigon and fly out their military personnel and few local residents. But our 17,000 Frenchmen are spread out all over the country and there'll be a blood bath like back in 1945 when the Vietminh took over, or in 1960 in the Congo.'

"It is obvious, then, that renewed French preoccupations with Vietnam stem from reasons that are more realistic than the desire to nettle the young men in Washington while their policies are in disarray.

"BY NHU OUT OF ALSOP

"But that first row had barely simmered down when its second round broke out from a not entirely unexpected quarter. Joseph Alsop, who for the past 5 years had been a self-appointed spokesman for the Ngo Dinh Diem view of the outside world, arrived in time in Saigon to discover evidence of ugly stuff, to which he gave maximum play in his syndicated column of September 18. Further embroidering on the theme of De Gaulle's alleged desire to inherit the Vietnamese mess, Alsop interviewed Ngo Dinh Nhu and came away with the following intelligence, all directly gathered from the lips of Diem's official political adviser, head of the secret police, and chief anti-American:

"The French representative in North Vietnam, Jacques de Buzon, had seen Nhu together with French Ambassador Lalouette and had brought him an offer from Ho Chi Minh to negotiate—presumably via the French and behind the back of the United States.

"The Polish member of the Indian-Canadian-Polish International Control Commission (ICC) in Vietnam had come to see Nhu at Lalouette's behest with a message from North Vietnamese Premier Pham Van Dong.

"Nhu had not even told his brother Diem of all this for fear of causing a stir.

"The reaction in France was immediate. To the French, who know of Alsop's close relations with President Diem, this seemed one more deliberate attempt to blame the French colonialists for everything that was going wrong in Vietnam. Officially, the Quai d'Orsay simply said the article 'does not even merit a denial.' Unofficially, however, the following facts soon came to light:

"De Buzon, who had taken over his job in Hanoi only very recently, had never been to Saigon at all, as the flight records of the ICC aircraft testify, and there is no other way of getting from Hanoi to Saigon except by rowboat across the 17th parallel along the coast of the South China Sea.

"The Polish ICC member, after years of being snubbed, had suddenly been invited to Diem's receptions—a fact which American newsmen had reported. Lalouette had never presented the Pole to Nhu.

"As noted in the semiofficial La Nation, the newspaper of De Gaulle's UNR party, if Nhu wanted to keep the whole thing a secret from his brother, why did he give the story to Alsop to plaster all over the world?

"What had happened is that Nhu cleverly used Alsop to strengthen his own bargaining position in his life-and-death struggle with the United States. This was obvious from August 31, when Saigon almost immediately hailed the De Gaulle statement as 'not being critical of our position' and chose to interpret Diem's resistance to American demands for reform as an aspect of its own policy of struggle for 'external independence.' Nhu sought (and still seeks) to bolster the myth that he has two fallback positions: if the Americans let him down, he can always turn to the French; and if they let him down, he can always make a deal with Hanoi where, he says, he and his brother are greatly admired.

"Alsop realized that he was out on a limb; in his next column he backtracked by giving the world a description of the Gia-Long Palace in Saigon (where the Ngo Dinhs hide from their people) which resembled H. R. Tervor-Roper's description of Hitler's bunker in its last days, and which makes both Diem and Nhu look like paranoiacs. But having said that Nhu's egotism goes 'beyond normal vanity' and that Diem has 'lost his ability to see events or problems in their true proportions,' Alsop nevertheless returns to his idee fixe that Paris has nothing else in mind or in store for Saigon but a 'Communist takeover * * * by courtesy of the French.'

"It is certain that De Gaulle, and for that matter any Frenchman seriously concerned with southeast Asia, is less than happy with the way things have been going in South Vietnam of late—but this is a view that many

Americans share with them, including some leading personages in Washington. The real problem (beyond the extremely serious one of emotional overreaction in Washington whenever the name 'De Gaulle' comes up) is that nothing better than 'swimming with Diem'—and Nhu, of course—has been proposed anywhere. As a consequence, French Ambassador Lalouette was placed in the strange position of apparently lecturing newly arrived U.S. Ambassador Henry Cabot Lodge on the merits of the present Saigon rulers. In 1955, the French tried to get rid of Diem; they got thrown out of Vietnam for their pains and have not forgotten the lesson.

"Alsop's suggestion of French negotiations on behalf of Hanoi might be an interesting, even a clever, idea. But, as I was able to judge there for myself, De Buzon's predecessors in Hanoi were, in the words of Georges Chaffard in Le Monde of September 3, 'filled with a visceral hatred of all that was Communist.' They were not even received by Hanoi's top leaders, let alone used as messengers for negotiations. The French have no illusions about what their role would be in a reunified Vietnam dominated by Hanoi; almost all their properties in North Vietnam, worth close to $1 billion, have been confiscated, all their missionaries were expelled, and for the privilege of being able to maintain two teachers of French and one school administrator at one lycée, they must pay for the upkeep of the whole establishment. French trade with North Vietnam is $2 million a year; with South Vietnam it is far greater.

"On the whole, it seems difficult thus far to ascribe much more to De Gaulle's statement than an understandable desire to be heard on an issue in which the French feel, rightly or wrongly, that they may once more become the scapegoats; or worse, the victims."

"EXHIBIT 7

"[From the Washington Daily News, Mar. 6, 1964]

"MACV, MACT, MAAG: PAPERWORK IS A TIGER TO UNITED STATES

"(By Jim Lucas)

"CAN THO, SOUTH VIETNAM, March 6.—To understand anything at all about this strange little war, it helps to examine some of the organization problems.

"For one thing, the command structure—ours and the Vietnamese—is grotesque. Like Topsy, it just growed.

"On our part, we have MACV (Military Assistance Command, Vietnam) headed by Gen. Paul Harkins. General Harkins also is MACT (Military Assistance Command, Thailand).

"ADVISORY TEAMS

"Then, we have MAAG (Military Advisory Assistance Group) headed by Maj. Gen. Charles Timmes. MAAG has been here since the early 1950's. It controls the advisory teams.

"Then there is a support command, headed by Brig. Gen. Joe Stilwell, Jr. It controls the operating troops, such as the helicopter crews. Theoretically, they are here to support the Vietnamese. In practice, they are fighting a war

"On top of all this, we have a 'country team' headed by Ambassador Henry Cabot Lodge, who is a major general in the Army Reserve.

"HORRENDOUS

"Men in the field often work for all three commands. They must submit reports to all three. The paperwork is horrendous.

"There are rumors that Lt. Gen. William C. Westmoreland will abolish MACV or MAAG when he succeeds General Harkins. The troops devoutly hope this is true. General Westmoreland is now General Harkins' deputy.

"The Vietnamese have four categories of troops in the field, some working for the Ministry of Defense, others for the Ministry of Interior.

"At the lowest level, there is the hamlet militia. They work in squads. They have, at most, one automatic weapon. If they are paid at all, it is by the people they protect. Usually it is in rice.

"Next, there is the Self-Defense Corps. It is organized in platoons, and slightly better armed. Its men are paid $9 a month.

"THIRD ECHELON

"Third echelon is the civil guard. Roughly it compares with our National Guard. It is organized into companies. Its men draw $12 a month.

"Finally, there is the ARVIN (Army of the Republic of Vietnam). It is organized into regiments, divisions and corps. Its men are much better paid. They have fairly modern weapons.

"On top of this, there is the Vietnamese JGS (Joint General Staff), comparable to our Joint Chiefs of Staff. And to add to the confusion, the Province Chiefs (Governors) are majors, and the district chiefs under them captains and first lieutenants. Each has his own troops. Each Province Chief has a U.S. Army major as his adviser.

"BETTER PAID

"Though the ARVIN is better paid and better armed, it is the civil guard that bears the brunt of the war. The average ARVIN battalion goes 2 weeks without making contact with the Vietcong. An average civil guard company is fighting 2 days out of 3.

"There are reasons for this contrast. The civil guard is smaller (company-size units). It has less fire power; no artillery. Its men are sketchily trained. It does not have enough good officers, consequently it is not so well led.

"But the big reason the guard sees more action is psychological, and the Vietcong are canny enough to exploit that. A civil guard company is a local unit. These boys grew up in the province where they're stationed. Everybody knows them.

"KILLED

"If the Vietcong can chew up a civil guard company, they effectively assert their rule over that area. A man joins the civil guard one week, and they bring his body home the next. That night, the Vietcong slip in and tell his widow, 'we killed your man because he opposed us'."

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

Mr. GRUENING. I yield.

Mr. MCGOVERN. I regret that I did not hear the entire address by the Senator from Alaska. I do not know whether I am prepared to agree with all the conclusions he has drawn without having had an opportunity to study the text of his proposal. But as one Member of the Senate who is much interested in the security of our country and the peace of the world, I commend the Senator from Alaska for the thoughtful questions that he has raised today.

I wonder if the Senator is aware of the fact that 10 years ago, almost to the day, the then Senator John Kennedy, of Massachusetts, made a similar speech with reference to French involvement in French Indochina. On that day the Senator from Massachusetts ticked off a list of overly optimistic estimates that had been made by French military leaders about the success of the war in French Indochina, some of those estimates being shared by our own military strategists. Senator Kennedy warned against some of the sterile possibilities that faced the French if they continued what appeared to the Senator from Massachusetts to be a futile effort in southeast Asia.

It is quite ironical that that speech should have been made in April 1954. Thirty days later, the French cause was abandoned in French Indochina, and for the past decade we have been seeking, with questionable success, to carry on the same policy.

Mr. GRUENING. I thank the Senator from South Dakota for his valuable contribution to the discussion. The fact is that Senator Kennedy as Senator did not make foreign policy. It was made by the Eisenhower administration—by the President and by Secretary of State John Foster Dulles. When John Kennedy became President 6 years later, he inherited the situation and tried for 3 years to do something about it. Considering the experience of failure to rectify what had been done during those 3 years, there has now been a total failure for a whole decade, with a steady loss of American lives.

It is high time to reassess our policy and ascertain why we are in Vietnam, why we should continue to be there, and why we should continue to sacrifice the lives of American boys for people who will not fight for themselves. We should not remain there. We should make the best deal possible before withdrawing, but in any event we should withdraw our men from the fighting front immediately. We should supply the South Vietnamese with all kinds of arms. But this is their war. We should try, by reassessing our policy, to bring an end to the tragedy that has taken place in the last 10 years.

Mr. MCGOVERN. I appreciate the point the Senator has made. Speaking for myself, I would view both our involvement in Vietnam and any possible reevaluation of our position there as a bipartisan or nonpartisan matter. I would hope we could take the Vietnamese issue out of partisan politics and consider it from the standpoint of what is best for our country and what will make the most likely contribution to the cause of peace.

I thank the Senator from Alaska for yielding.

Mr. GRUENING. I agree that the policy should be nonpartisan and should remain nonpartisan. This issue is far too serious to be permitted to deteriorate into a matter of partisan politics.

The reason this question is pertinent is that President Johnson, only recently arrived in office, is the heir of all these policies, and now he has an opportunity to reassess them. I believe he should do so.

Mr. MCGOVERN. I think the Senator from Alaska will agree that it is important to determine the best course for us to follow now, rather than to attempt to assess the blame for what has happened.

Mr. GRUENING. I agree that we should not assess the blame. But we should learn from experience.

Mr. MCGOVERN. Mr. President, I thank the Senator from Alaska for yielding to me.

Mr. GRUENING. I thank the Senator from South Dakota.

Mr. SALTONSTALL. Mr. President, will the Senator from Alaska yield briefly to me?

Mr. GRUENING. I yield.

Mr. SALTONSTALL. The Senator from Alaska has made a very thoughtful speech, although I would not agree with some of the conclusions he has reached.

I certainly feel, as does the Senator from South Dakota, that this is not a partisan matter in any way, and that what President Eisenhower and Secretary Dulles did 10 and 12 years ago was done under different conditions in the Far East and also under different world conditions. How well that policy finally works out, we cannot say at the moment.

But I wish to point out that the present administration has sent one of its leading and most responsible officials to Vietnam, to determine what we should do now; I refer to Secretary McNamara. In my opinion, our policy in regard to Vietnam also involves our policies in regard to other areas, including Malaysia, New Zealand, Australia, and

also our concern in Korea, and even our relationships with the Philippines. All those questions and others are involved, as I see the matter, in our policy in regard to South Vietnam at the moment. Also involved is our prestige in Panama, in Cuba, and in the countries of South America, if we quit South Vietnam.

So, as the Senator from Alaska has said, the President has a very difficult decision to make; and certainly it cannot be made very quickly or with relation to only one situation.

All of us very much deplore the loss of the lives of Americans in South Vietnam, and we hope no more Americans will lose their lives there. However, I believe we must give the present administration an opportunity to view this matter—particularly after sending the Secretary of Defense there—in light of all the conditions in the areas I have named, as well as those existing in South Vietnam alone.

I agree with the Senator from Alaska that the people of South Vietnam must fight for themselves; if they do not, we cannot fight for them.

Mr. GRUENING. I confess that I was shocked to read in the newspapers of the extravagant promises which Secretary McNamara has been making—promises of all-out U.S. aid. In my judgment, he has no business to make such commitments. He went there at the direction of the President to study and report to the President, and what authority he has to make such promises, I do not know.

If we are to have an all-out war there, it is for Congress to declare such a war. So I believe it unfortunate that Secretary McNamara has spoken so freely. I believe it would have been much better if he had kept quiet, returned to this country and had reported to his Chief and let him make the commitments.

I address this question to all Senators—not on a personal basis, because the question is already answered insofar as I am concerned: If a Senator's son were to be drafted in the current draft, under the conscription act, and were sent to Vietnam, and was killed there, would that Senator feel that his son had died in the defense of our country? Personally, I would not.

In South Vietnam we have been supporting corrupt and evil regimes and we have done it all alone. We are losing men there every day; while the South Vietnamese people will not fight for themselves.

Mr. President, I yield the floor.

Mr. CLARK. Mr. President——

The PRESIDING OFFICER (Mr. RUSSELL of South Carolina in the chair). The Senator from Pennsylvania.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

Mr. MORSE. Mr. President, after the Senator has used that 10 minutes, I yield him 10 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 20 minutes.

Mr. CLARK. I thank the Senator from Mississippi and the Senator from Oregon.

I

Mr. President, the sudden and dramatic request of the President of the United States for an appropriation of $700 million additional for the current fiscal year, to be used to support the war in Vietnam, raises a difficult question of judgment for every Member of the U.S. Senate.

The speed with which this request was approved by both Appropriations Committees on Wednesday, May 5, passed by the House and brought to the floor of the Senate under a time limitation which limits debate to 5 hours, makes the determination of this serious judgment question much more difficult. We have not been given the time necessary to properly consider the President's request. I regret that the bipartisan leadership has undertaken to press us to a decision in such undue and quite unnecessary haste.

Nevertheless, we must do the best we can in the time available; and I should like to share with my colleagues, my constituents in Pennsylvania, and whatever other members of the general public may be interested in one Senator's views, the considerations which have guided me in determining how to vote.

II

The purpose of our foreign policy is to secure and maintain a just and lasting peace with freedom and security for ourselves and for all other countries which, over the course of history, have developed a tradition and desire for freedom.

Without such a just and lasting peace, we cannot develop at home that Great Society and the social, economic, and political justice so eloquently advocated by President Johnson which, in peace, our affluent society car well afford. Our present military costs, public and private, including the substantial additional appropriation of $700 million now requested, are too high to make this possible.

Without such a peace, it will be difficult, indeed, to induce other reasonably prosperous countries to join us in bringing to the underdeveloped countries of the world the assistance they need to participate in the benefits of an international great society.

Nor do I agree with those who believe that we can do this job alone. We need friends, lots of friends, among the nation-states of the world to secure and maintain that just and lasting peace with freedom, of which I have just spoken.

III

What, then, are the prospects for achieving peace? They are not good; and passage of this appropriation is not likely, in the short run, to improve them. Let us take a quick look at political conditions in the world today.

In Europe, thanks in part, but in part only, to General de Gaulle, the NATO Alliance is in disarray. An escalated war in Vietnam is not likely to improve that situation.

The cold war with the Soviet Union which, after the Cuban crisis in 1962, showed signs of abating, is again heating up. An escalated war in Vietnam will add additional fuel to this fire and may well result in throwing a reluctant Russia into the smiling arms of a triumphant Communist China.

In the Middle East, thanks to President Nasser, a shooting war may erupt against Israel at any time, with arms supplied by us and Russia. An escalated war in Vietnam will make it more difficult for us to play the part in preserving peace and defending our gallant little ally, which we are honorbound to take.

Recent developments in the Dominican Republic and our unilateral intervention in violation of our treaty commitments are causing grave difficulties with long established friendships in Latin America recently promoted by the Alliance for Progress and implemented through the Organization of American States.

There may well soon be other revolutionary eruptions in Latin America which will call for further commitments of American marines—under conditions where we will have to "go it alone." Escalation of the war in South Vietnam will make the commitment of additional ground forces an ever greater strain on our economy.

The United Nations is, temporarily at least, immobilized by a dispute over responsibility for the costs of peacekeeping operations between Russia and France on the one hand and ourselves and some of our allies on the other. Efforts to resolve this dispute in a friendly manner will surely be made more difficult by an escalation of the war in South Vietnam, an escalation which is strongly opposed by both the Soviet Union and General de Gaulle.

Surely the dominoes with which America must hope to play the game of diplomacy, a diplomacy whose objectives is the achievement of a just and lasting peace, are falling and being exposed to our enemies all over the world. And a case can be made for the view that it is not weakness in opposing Communist aggression which is causing the dominoes to fall, but rather a foreign policy which is coming more and more to depend on unilateral military action and less and less on the development of feasible solutions to political problems through international institutions and cooperation.

Clearly, not all of the disarray in which our foreign policy finds itself can be blamed on us. Others, particularly Russia, Communist China, and General de Gaulle, are far more at fault than we. But American diplomacy has been something less than astute since 1953 in using our power to secure the peace, to end the cold war, and to start down the long, hard road to a world of peace and justice without war.

IV

The reason for our share of the blame, I suggest, is that our foreign policy is obsolete; and the additional appropriations for use in Vietnam which the Senate is about to approve are not likely to remedy that underlying weakness.

In the words of Senator J. WILLIAM FULBRIGHT, our foreign policy is based on old myths rather than on new realities.

In the interests of considering objectively our present and proposed activities in South Vietnam, let me attempt to stand back a bit from the close examination of the Vietnamese tree in order to take a comprehensive look at the larger forest of our foreign policy. Here are three myths which I believe should be dispelled and three realities which should be recognized:

Myth No. 1 is that we have a mission to conduct a holy war against godless communism, whether Russian or Chinese, Yugoslav, Rumanian, or Cuban. The myth suggests that all these various and quite different Communist nation-

states are locked with the free world in a death struggle in which we or they must perish.

Reality No. 1 is that holy wars, be they the crusades in the Middle Ages, religious wars between Catholics and Protestants in the 16th and 17th centuries, or the present effort to oversimplify the complex struggles of the world today into a holy war against communism, have never succeeded in the past, are not likely to succeed in the present, and will not succeed, in my opinion, in the future. These holy wars result only in the loss of many lives, the destruction of endless wealth, and the continued confrontation of exhausted opponents, neither of which has been able to achieve that total victory which the zealous chauvinists on both sides yearn for.

The second myth is that to have a pro-Western South Vietnam is essential to our national security. It is true that China would like to expand. She would be pleased to see Communist governments in Vietnam, Cambodia, Indonesia, Malaysia, Laos, and Thailand. But China has been greatly disliked in these areas for over a thousand years. She is a weak country economically—particularly since Russia withdrew her support—with no navy or air force worth speaking of and an army incapable of supporting a sustained war far from her borders.

Chinese military expansion would almost certainly provoke anti-Chinese resistance in every one of the southeast Asia countries. The Chinese Communists know this. There is not presently a single Chinese soldier on foreign soil nor, if we play our cards right, is there likely to be one.

The second reality is that the United States has no business getting sucked into a ground war on the land mass of Asia. If Korea did not teach us that lesson then Dienbienphu should have. The thousands of American casualties and the heavy strain on our economy which would result would have no adequate justification.

We can far better prevent, if we have to, the military expansion of China southward by skillful diplomacy, the judicious use of foreign military aid and the exercise of air and naval power from the island barrier running from Japan through Okinawa, Formosa, the Philippines, Borneo, Australia, and New Zealand.

Nor do I believe that our commitment can be properly described as an obligation to defend "the freedom and independence of the gallant people of South Vietnam." A short look at recent history should convince us of this. Under the Geneva agreement it was agreed that free elections were to be held. Through these elections the Vietnamese people were to determine freely whether there were to be two Vietnams or one, and what kind of governments they were to have.

It is true that the Communists did not fulfill their obligation to hold free elections. But it is equally true that the Diem government with our connivance likewise defaulted on the obligation to hold free elections, and acting in defiance of the agreement, set up South Vietnam as an independent state.

All this was in line with the policy of John Foster Dulles, who induced us with President Eisenhower's support, to "fill the vacuum" in Indochina left by the withdrawal of the French. That was a mistake at the time; and it was made worse by the decision of President Kennedy to vastly strengthen our forces in that country in violation of the 1954 agreement with its prohibition against the introduction of foreign military support.

We have been told a half-truth about the results of the civil war in South Vietnam. The half of the truth which we tend to neglect is that in a very large part of South Vietnam resistance to the Vietcong has collapsed.

To escalate the war there by the commitment of several hundred thousand American ground troops would, in my judgment, be folly. The theory which was adopted by the Kennedy administration, at the urging of Gen. Maxwell Taylor, was that with enough arms, more money, and some additional American military advisers, the South Vietnamese would be able to create an army able to subdue the Vietcong rebels. General Taylor's optimism was based on faulty intelligence. One must wonder whether, even today, the intelligence coming from Vietnam is worthy of belief. Certainly it has been unreliable in the past. We have been told we were winning the war when in fact we were losing it.

And, moreover, the Taylor theory has not worked. The South Vietnamese Army has not surrendered but it has little stomach for war. It has an extraordinarily high rate of desertion and it is incapable of preventing the Vietcong from overrunning most of the country at will.

What used to be a civil war by the South Vietnamese Government against the Vietcong who were supported by North Vietnam, has now become an American war quite ineffectively supported by the Quat government. It is highly unlikely that pouring $700 million more into this bottomless south Asian pit can change the existing military situation significantly.

The third myth is that military solutions to political problems are likely to succeed in the world of today. The danger is that those who believe in this myth will end up dragging us into a world war III which could destroy modern civilization.

Nuclear, chemical, biological, and radiological weapons of offense against which there is no adequate defense have rendered war obsolete if we hope that civilization will survive. Even with brushfire wars, the danger of escalation into nuclear war is so great that every conceivable avenue to a peaceful settlement on honorable grounds must be explored before resort is had to force. It is unfortunate that many military leaders and Members of Congress still operate as though military force was a cure-all for such situations.

The third reality is that the best hope for achieving a just and lasting peace lies in an earnest effort, painstakingly pursued by the diplomats of all countries, to settle the differences between the nation-states they represent without recourse to war.

It is because we are doing far less to shatter these three myths and be guided by these three realities than, as intelligent men and women, we could and should be doing, that I say our foreign policy is obsolete. And, again, I suggest that the passage of this appropriation for use of our military forces in Vietnam will do nothing to upgrade, streamline, and modernize our foreign policy. It is all too likely to do just the opposite.

V

What, then, should be our objective in South Vietnam?

President Eisenhower said, on February 10, 1954, that he "could conceive of no greater tragedy than for the United States to become involved in an all-out war in Indochina." General MacArthur, at the congressional hearings resulting from his dismissal, emphatically warned against sending American soldiers to the Asian mainland to fight China. The problem is not with the intentions of President Johnson and his advisers. Rather, it is with the inevitable consequences of accelerating the war in Vietnam.

And if we are looking for historical analogies, I would prefer the analogy of the start of World War I to the so-frequently cited one of Munich, Hitler, and Neville Chamberlain. None of the statesmen who made the fateful decisions in July and August of 1914 would have been willing to say, in November of 1918, that "they planned it that way." Yet what happened in Europe in World War I was the almost inevitable result of the decisions of the statesmen made in those 2 critical months without ever thinking through the consequences. In Vietnam today if we do not look out, we will find ourselves taking a fateful and irreversible first step after which we will become the slaves of circumstances beyond our control.

In the words of Secretary of State Rusk of about a month ago:

We still have some wiggle room.

We must keep it at all costs. Today, on somewhat filmsy evidence, we are holding Hanoi totally responsible for the Vietcong. Tomorrow we may be holding Peiping responsible for Hanoi. And thus belligerence escalates even as more military forces are devoted to a war we are losing.

I am satisfied that to call attention to these implications of our present policies cannot justly be referred to as appeasement, isolation, or softness on communism. It is merely an effort to distinguish between prudence and recklessness. It is based on a hope that we can eliminate that doctrinaire emotionalism which drowns all reason in the fervor of an anti-Communist crusade.

VI

No one can fail to extend his sympathy to President Johnson when thinking of the terribly difficult decisions which confront him in South Vietnam and, indeed, all over the world 24 hours of

every day. He has endeavored, with great skill, to convince both Hanoi and Peiping that he is sincerely interested in negotiating, without conditions, a just and lasting peace while, at the same time, brandishing the stick of further military escalation of the war. I am in substantial agreement with much of what the President said at Johns Hopkins University on April 7. His address was entitled "Peace Without Conquest." He expressed his hope that peace would come swiftly. He stated his willingness to remain ready for unconditional discussions. He noted that no one need ever fear that we desire their land or to impose our will, or to dictate their institutions.

Yet perhaps the most impressive part of that speech was the first paragraph of its conclusion:

> We often say how impressive power is. But I do not find it impressive at all. The guns and the bombs, the rockets and the warships are all symbols of human failure. They are necessary symbols. They protect what we cherish. But they are witness to human folly.

I would hope that, in the days ahead, the President and his principal advisers would dispel the myths and recognize the realities of the modern world. I would hope that the President would continue to stress the carrot and pay less attention to the stick in his day-to-day conduct of our foreign policy. I find myself in complete accord with the following statement in his message in support of the appropriations called for by the pending bill:

> However, in the long run, there can be no military solution to the problems of Vietnam. We must find the path to peaceful settlement. Time and again we have worked to open that path. We are still ready to talk without conditions to any government. We will go anywhere, discuss any subject, listen to any point of view in the interests of a peaceful solution.

To assist him in finding that path to a peaceful settlement, I would suggest an extension of his offer of unconditional discussions made in the Johns Hopkins speech. I urge the President and the Secretary of State to announce publicly:

First. That we are willing to negotiate with Hanoi directly, or with any representatives Hanoi may suggest. This inevitably means representatives of the Vietcong, without whose acquiescence no peaceful settlement, in my opinion, is possible.

Second. We should indicate our willingness to support free elections in Vietnam to determine (a) whether the South Vietnamese really desire to remain independent of North Vietnam: and (b) if they do not, what kind of an all-Vietnamese Government should be set up.

Thereupon, we should be prepared to join with the other major powers, including China and the Soviet Union, in guaranteeing the independence and neutrality of the government which emerges from these elections, whether it be a government for all of Vietnam or two governments for separate parts of it.

And this guarantee should hold, no matter what the ideological complexion of such government or governments might be.

Third. The bombing attacks on North Vietnam should be gradually decreased and, for a time at least, terminated. The predictable effect of the raids has been to harden the resolve of the North Vietnamese without impairing their fighting ability. It is forcing the Soviet Union into a more hostile role in southeast Asia. It is alienating our friends and aiding our enemies in Asia, Europe, Africa, and Latin America. It is probably a major force in preventing a solution of the Vietnamese problem around the conference table.

There is no doubt that the Congress will overwhelmingly pass the pending request for $700 million additional for military operations in South Vietnam. I suggest that the President would be well advised to accompany this belligerent gesture with a renewed effort to go to the bargaining table in order to achieve a just and fair and feasible and pragmatic termination to the present war—for it is war, whether declared or not—in South Vietnam.

VII

In view of what I have said and with great reluctance and a heavy heart I have concluded to vote for the pending appropriation. I do so for three reasons:

First. I agree with the President that a vote for the resolution will, in the short-run, assist his efforts to halt Communist aggression in South Vietnam and thus prevent the present unhappy military situation from further deteriorating.

Second. A vote for the resolution will show that the American commitment, which the President insists is one of honor, is not worthless. In my judgment, that commitment should never have been made by John Foster Dulles and Dwight D. Eisenhower. It should never have been reinforced by John F. Kennedy. It should not have been reactivated after the assassination of Ngo Din Diem by the present occupant of the White House. But these are past facts and we must support our President until an honorable course of withdrawal presents itself. As he has said, the stakes are too high to back out now.

Third. The President, I am convinced, wants and will work for a peaceful settlement in Vietnam. He must be permitted to negotiate from as much strength as we can give him. Passage of this appropriation will strengthen his hand and help him in that search for a peaceful world to which I am satisfied he is deeply committed.

Mr. MORSE. Mr. President, I yield 20 minutes to the Senator from Wisconsin [Mr. NELSON].

THE UNDERLYING CONSENSUS ON VIETNAM

Mr. NELSON. Mr. President, I thank the Senator from Oregon for allotting me 20 minutes of the time that is under his control.

We are entering a delicate but dangerous period in Vietnam. Both sides profess a desire to negotiate, but neither side has yet found a precise way to do so. And on all sides there is a chorus of suggestions, criticisms, and demands which complicate and seriously threaten the faint hope of peace.

In this situation there is one danger which I believe to be profound. It is the danger that men of impatience, fear, and blindness will try to urge, demand, and threaten until there is no escape from a major land war in Asia or a thermonuclear war on a global scale.

I believe most Americans wish to avoid this. In fact, I am convinced there is an underlying consensus that we do not want another Korea, that the problems of Vietnam should be settled by negotiations, and that ultimately, unless the people of that country can settle their own problems, we will not be able to do the job for them.

There are some, however, who disagree. In recent weeks, the distinguished columnist, Walter Lippmann, has reported that powerful forces within the administration are urging that we send 350,000 American troops to fight in Vietnam.

I think it is necessary to delineate the implications of such policies in order to make it clear that they would be profoundly unwise, and ultimately detrimental to America's interests.

Perhaps the best way to grasp the meaning of such proposals is to examine one of them as presented by an eminent and distinguished spokesman who is not a member of the administration. Hanson W. Baldwin, the respected military analyst of the New York Times, undoubtedly reflects the opinion of many others. Mr. Baldwin recently wrote:

> Compromise and consensus—perhaps applicable to some of the Nation's great domestic problems—cannot be guideposts to foreign policy. There must be a clear-cut and courageous decision. And though in Vietnam we face the hard problem of risking much to gain little, the risk must be taken: we must fight a war to prevent an irreparable defeat. We must use what it takes to win.

Mr. Baldwin has honestly faced the implications of this argument. To his credit he has not shirked the fact that the policy he suggests may mean that the United States will "become involved in a new kind of Korean war."

Mr. Baldwin is prepared to take this chance. The essentials of his suggestions follow from this basic view. They are:

> The history of airpower dictates the need for unrelenting, massive attacks * * *.
>
> A naval blockade and naval gunfire may well supplement the air bombardment.
>
> Much larger, and better led, South Vietnamese forces would be necessary.

Most important, Mr. Baldwin believes:

> They would have to be supplemented by U.S. ground troops—perhaps in small numbers at first, but more later, particularly if North Vietnamese regular forces and Chinese soldiers joined the Vietcong.

He understands what this means:

> How many U.S. soldiers would be needed is uncertain—probably a minimum of 3 to 6 divisions—possibly as many as 10 or 12 divisions. Including Air Force, Navy, and supporting units perhaps 200,000 to 1 million Americans would be fighting.

All of this may be needed, Mr. Baldwin feels, because:

> If the might and will of the United States cannot evolve a victorious answer to (Vietcong) tactics, we are undone; the map of the world will gradually become red. And if we

will not fight in Vietnam, where will we fight? Where will we draw the line?

Let me make it clear that I have sketched Mr. Baldwin's view not only because he is a respected reporter and writer on military affairs, but because I believe his thoughts are representative of many—and because I believe they demand an answer.

No one is suggesting that Vietnam should be given over to the Communists. What many have suggested is that the President is right to attempt a policy of power and moderation, of strength and negotiation, and in this way to try to reach a settlement of the conflict.

As even Mr. Baldwin realizes, a substantial expansion of our commitment of troops on the ground might well lead either to a major land war or to a thermonuclear war. The first would destroy what remains of the Vietnamese economic and political structure; the latter would achieve no sensible object. Death would be the only victor.

A major investment of troops would certainly lead to a long war. But what would be the final outcome? Does anyone seriously believe that even a million American troops can produce ultimate stability in Vietnam? Surely at the end of a bloody war we will again have to search for a negotiated settlement. White men cannot impose peace in Asia—even by overwhelming force. The time to recognize this is before—not after—a tremendous investment of treasure and blood.

Again, as Mr. Baldwin understands, a more aggressive, direct ground involvement would probably lead to Communist Chinese intervention. The Chinese are not there now, but to send a million men to fight in the very border areas of China is certainly the best way to bring the Chinese in. Does anyone believe the freedom of that area will be increased once hordes of Chinese soldiers swarm in?

Finally, would a more aggressive policy help us achieve our objectives in Asia? Mr. Baldwin argues that if we do not follow his advice, this would undermine our diplomatic position in Asia. But, in fact, just the opposite seems to be true. It is tough and narrow policies that have alienated most of Asia.

Walter Lippmann has recently written:

> On the continent of Asia there are besides Red China four major Asia powers, the Soviet Union and Japan in the north, Pakistan and India in the south. With the possible, though only apparent, exception of Japan, we are embroiled with all the powers of Asia. The bitter truth of the matter is that we can search the globe and look in vain for true and active supporters of our policy.
>
> That is how successfully the State Department has planned our diplomatic policy and has argued the American case.

These are sound arguments against the intransigent line suggested by Mr. Baldwin and others. They must be considered by anyone seriously interested in the future course of American policy. But in one sense, both Mr. Baldwin's advise, and the objections to it are beside the main point.

This is a democratic country. Decisions involving war and peace cannot be resolved by expert opinions. They must follow the wishes of the people and their duly elected representatives. We must consider the views of the American people. And I believe that most Americans oppose sending a large number of our troops in Vietnam.

I believe they feel such a diversion of resources to Asia would not be in our national interests and that a massive jungle war in Vietnam would be a fundamental error.

Last fall, during the Gulf of Tonkin debates, the Senator from Arkansas [Mr. FULBRIGHT], chairman of the Foreign Relations Committee, expressed this vital point:

> I personally feel it would be very unwise under any circumstances to put a large land army on the Asian Continent. It has been a sort of article of faith ever since I have been in the Senate that we should never be bogged down. We particularly stated that after Korea.

The Senator from Arkansas [Mr. FULBRIGHT] has underscored the most important point of what I would term an underlying consensus on Vietnam. His view is representative.

A leading Republican, the Senator from South Dakota [Mr. MUNDT], recently stated:

> To do whatever is needed to win that war would involve an open-ended commitment which could result in another situation like we had in Korea and I certainly am not prepared to say I want to go that far.

Or, as the Senator from Florida [Mr. SMATHERS] put it:

> To the idea of committing the United States to whatever effort is needed to win the war, I say: "No." I don't believe we should get ourselves in a major land conflict over there.

And, as the Senator from Alabama [Mr. SPARKMAN] has said:

> Of course, I favor winning the war. But what needs to be done is another question. I would not want to see us cause a general war in the area.

In my opinion, not even in its approval of the Gulf of Tonkin resolution did the Congress wish to endorse such a commitment. Illuminating statements by three Senators at that time are worth recalling.

> Mr. BREWSTER. I would look with great dismay on a situation involving the landing of large land armies on the continent of Asia. So my question is whether there is anything in the resolution which would authorize or recommend or approve the landing of large American armies in Vietnam or in China.
>
> Mr. FULBRIGHT. Speaking for my own committee, everyone I have heard has said that the last thing we want to do is to become involved in a land war in Asia; that our power is sea and air, that this is what we hope will deter the Chinese Communists and the North Vietnamese from spreading the war. That is what is contemplated.
>
> Mr. MORTON. If we make that clear, we will avoid war, and not have to land vast land armies on the shores of Asia. In that connection I share the apprehension of my friend the Senator from Maryland.

These statements reflect a desire, I believe, to draw a line—to make a clear and open decision. They reflect a belief, which I share, we should not allow the Vietnamese war to draw us into another Korea. At some stage, we must make this an unequivocal element of our policy, for I believe this is a matter of fundamental interest—and a matter about which most Americans feel strongly.

If the desire to avoid another Korea is one part of the underlying American consensus, what are its other aspects?

First, let me point out that, so far as I know, few responsible U.S. leaders—and here I speak particularly of the U.S. Senate and as to the Senate, the word is "none," rather than "few"—have proposed that we pull out of Vietnam, leaving that country in the lurch, with no guarantees for the future.

The distinguished and vigorously independent Senator from Oregon [Mr. MORSE] is often regarded as representative of one wing of Senate opinion. It is true that he has stated:

> We should never have gone in. We should never have stayed in. We should get out.

But if I understand him correctly, Senator MORSE maintains not that we should give South Vietnam to the Communists, but quite a different point: that Vietnam is a matter of international concern, that it cannot be handled by the United States alone, and that a peaceful solution of the problem ultimately will require international action, preferably through the United Nations.

On the other hand, Senators MCGEE and DODD are often regarded as diametrically opposed to those who seek peaceful negotiations or an international solution. Nothing could be further from the truth.

It is true that, using the words of Winston Churchill, Senator DODD has stated:

> Never give in. Never, never, never, never. Never yield to force and the apparently overwhelming might of the enemy.

But Senator DODD has carefully refused to close the door on a negotiated solution. In a lengthy speech supporting the present source of our present policy he recently emphasized:

> All this does not mean to say that we must not under any circumstances enter into negotiations with the Communists. It simply means that when we do so, we must do so with our eyes open and with a clear understanding of the ingredients required to enforce compliance with the agreements.

And speaking in a similar vein, the Senator from Wyoming [Mr. MCGEE] opposed negotiations at the present juncture but went on to stress:

> Do not mistake me. I believe that some time there must be negotiations.

Senators CHURCH and MCGOVERN represent another view, or more accurately perhaps, a variation from the above two viewpoints. Unfortunately, they have sometimes been described as opposed to the President and in favor of an immediate pull-out. This description is plainly incorrect on both counts. Both are strong internationalists. Both recognize the vital necessity of America playing its role as leader of the free world with intelligence, vigor, and determination. Yet, in the climate of our times when conformity and me-tooism is the fashion in southeast Asian affairs these two distinguished Senators have been

described as prophets of something called the "new isolationism." This, certainly, is semantics run wild.

In fairness to them, it should be made clear that both Senators have stressed their support of the President and both have stated on numerous occasions that they approve our air strikes in North Vietnam.

If I understand them correctly, these Senators say neither "talk now," nor "fight now, talk later." They suggest that we should combine a policy of fighting with a policy of talking, that the only viable reason for a policy of military action is to bolster a position of negotiations.

Senator CHURCH is representative:

The judicious use of both the arrows and the olive branch represents our best hope for avoiding a widening war in Asia.

In the growing tensions surrounding the Vietnam debate, often one newspaper, or one partisan group, attempts to caricature the other—to stress and overstress the differences between men and ideas. There are real differences over our course of action in Vietnam. But I believe they are not so great as some have suggested. Almost no one urges an immediate pullout without some international understanding to preserve the independence and security of the area. Almost no one argues that we should never negotiate.

And, indeed, over the last year, given the proper setting, an international approach to the settlement of the South Vietnam problem received favorable support from, among others, Senators BARTLETT, BREWSTER, CLARK, COOPER, ELLENDER, FULBRIGHT, GORE, GRUENING, JAVITS, Johnston, MCINTYRE, PELL, ROBERTSON, WILLIAMS, YOUNG of Ohio, and others in both the Senate and the House.

If I were to try to summarize the second part of the underlying consensus on Vietnam, I could think of no better statement in behalf of it than that of our late President, John F. Kennedy:

We should never negotiate out of fear, but we should never fear to negotiate.

There is, I think, a third aspect to the consensus in the country: it is the understanding that, ultimately, the Vietnamese will have to solve their problems themselves.

In recent weeks, especially after the release of the State Department white paper on Vietnam, it has become fashionable to think that the problems of South Vietnam are all created by the Communist government of the north, that only the men and guns of Hanoi keep alive the guerrillas of the Mekong Delta, and that if only the north would issue a "halt" order, all would be well in the south.

Again, nothing could be further from the truth—and I believe most thoughtful Americans realize this. It is, of course, true that the North Vietnamese Communists are helping the guerrillas who want to overthrow the government of the south. But, it is also true that the governments of the south, for almost the entire period since World War II, have been dictatorial, harsh, totalitarian, and unpopular. Indeed, the governments of the south have created many of their own problems. This has been recognized in almost every important American policy involving the area since we began our role there in 1954. Thus the point was first underscored by President Eisenhower, when 10 years ago he committed this Nation to aid South Vietnam with material support and expert advice.

On October 23, 1954, President Eisenhower first offered aid to Vietnam. He stated:

The purpose of this offer is to assist the Government of Vietnam in developing and maintaining a strong viable state, capable of resisting attempted subversion or aggression through military means. The Government of the United States expects that this aid will be met by performance on the part of the Government of Vietnam in undertaking needed reforms.

Note the phrasing: The aid was given on the understanding that "This aid will be met by performance on the part of the Government of Vietnam in undertaking needed reforms."

Unfortunately, though some actions have been taken to increase the popularity of the governments, not enough has been done. It seems to be the fate of that country that dictatorial governments always try to put stability before reform. They end up with harsh repression which further increases the unpopularity of the government and increases the need for reform.

Guerrillas do not spring only from the north, nor from thin air; they need to be carefully nourished by the foolish and repressive policies of dictators. Only when unpopular governments help them can guerrillas hope to gain public support.

Almost 9 years after President Eisenhower stressed the need for reform in Vietnam, President Kennedy felt the need to reemphasize it and to restate our mission there. Nine years had passed, and, speaking on September 2, 1963, the President said:

I don't think that unless a greater effort is made by the Government to win popular support that the war can be won out there. In the final analysis, it is their war. They are the ones who have to win it or lose it. We can help them, we can give them equipment, we can send our men out there as advisers, but they have to win it—the people of Vietnam—against the Communists. We are prepared to continue to assist them, but I don't think that the war can be won unless the people support the effort.

And on August 12, 1964, President Johnson described the primary pattern of our effort over the last 10 years:

First, that the South Vietnamese have the basic responsibility for the defense of their own freedom.

On this point, too, I believe there is an underlying consensus among the thoughtful political leadership of the country that extends from the President through a wide range of leaders of diverse political philosophy.

I think it might be a fruitful contribution to the dialog on this issue if we quoted a few of these distinguished leaders so that the drop-the-bomb-first crowd will not confuse or frighten everyone into believing that their all-out war position is also the position of the President and everyone else to boot.

The Senator from Montana [Mr. MANSFIELD], the majority leader, recently said:

President Johnson can be counted on to continue to work with complete dedication on this problem; but the quicksands of Saigon's power politics and military conspiracy make this task infinitely more difficult. They underline the instability of the Vietnamese leaders, who seem to be more interested in personal power and prestige than in winning their own war. The leaders should realize that in the present situation, their country, not ours, their future, not ours, lie in the balance. The people of South Vietnam, not their personal prestige, are what matters. Without their dedication to the needs of the people, without regard for self, their prestige is likely to be swept away, and soon. The United States is committed to aid the people of Vietnam. It is not committed to continue subsidy of intramilitary struggles for power and prestige, with American lives and resources. The jealous generals of Saigon should realize that the hour is very late in Vietnam.

Others Senators have made the same point time and time again. Just over 4 months ago, on December 31, 1964, Senator RUSSELL of Georgia, chairman of the Senate Armed Services Committee, told the press:

We cannot support the present regime in Saigon unless they are able to attract popular support out in the rice paddies and the villages.

Senators ELLENDER and DODD discussed the matter more recently on the Senate floor. Senator ELLENDER stressed that "unless we can persuade our allies to assist us in South Vietnam, and unless a stable government can be established there, a condition may develop which will be worse than the situation that confronted us in South Korea. This is what has worried me."

Senator DODD replied:

I know the Senator from Louisiana is worried; and so am I. It is a proper problem to worry about. There is no question that a stable government must be established in South Vietnam.

Senator SMATHERS recently commented:

The first change needed is to bring about some political stability.

And Senator HICKENLOOPER stated:

Unless we get a stable, vigorous, and reliable government in South Vietnam, I think it is a hopeless thing, fighting the war in the manner we are at present.

This is no partisan matter. Other leading Republicans on both the Armed Services and Foreign Relations Committees have reiterated this point. Senator SALTONSTALL, for instance, recently stated:

We must make it clear that we intend to stay and assist the South Vietnamese if they are willing to help themselves. I hope it will be possible to work it out that way. But if they refuse to help, then certainly we cannot expect to be of assistance in continuing the struggle.

And Senator AIKEN put it this way:

The outlook for ending the war in Vietnam is hopeless as long as there is no stable government there.

Senators BARTLETT, INOUYE, MUNDT, and SMITH have made substantially the same point.

Increasingly, in recent months, we have heard the voices of many who seem to have decided that the war there is our war whether or not the Vietnamese are willing to fight or able to govern themselves. Since they believe, in fact, it is our war the necessary consequences follow: We will fight with all of the resources of the United States both on the land and in the air. If that means a massive land war with our troops fighting all the way to the China border, so be it. This is the line of reasoning of those who hold views similar to Mr. Baldwin's. If that means China sends her troops and we have to lick them too, so be it. And, since they believe it is our war and vital to our interests I suppose they insist that we must drop the nuclear bomb if it can be won in no other way.

If that is now our mission there, as some seem to believe, the rules of the game have been rather dramatically changed. I do not think our mission has been changed and I do not think it should be. Certainly, the President has not announced a change in our role in Vietnam. It may properly be argued that he has changed our tactic but nothing has been said or done by the President that has changed our often-stated fundamental role there.

As he said on March 20:

> Our policy in Vietnam is the same as it was 1 year ago. And to those of you who have inquiries on the subject, it is the same as it was 10 years ago. * * *
>
> Under this policy, changes in the situation may require from time to time changes in tactics, in strategy, in equipment, in personnel. I said last month, the continuing actions we take will be those that are justified and made necessary by the continuing aggression of others.

From the very beginning of our involvement it has been clear that our mission is a very limited one. Three Presidents have clearly stated the proposition that our role is simply to give material, aid, and assistance with the objective of helping establish an independent, viable regime that is capable of managing its own affairs. They have all made it clear that they must be able to defend themselves and run their own Government.

Ultimately, I believe most Americans understand this. Beneath the publicized debate over various courses of action, I think most men realize that, in the end, success or failure in Vietnam will be measured by the ability of the Government in that country to run its own affairs with the freely given support of its own people.

Of course, since the Gulf of Tonkin our response has been measurably increased. The President has directed substantial but carefully delineated strikes against supply lines and depots in the north. He has emphasized that it is necessary for the north to cease supplying, directing, and supporting the Communists in the south. He has made it clear that America does not wish to dominate any foreign country or engage in a war on foreign soil. I think it is clear from his policies and statements that this country is prepared to withdraw its presence when it is assured by firm enforceable agreement that the integrity of the south would be protected from outside attack and subversion. His moves and statements have been aimed at punishing the invader and containing the conflict.

This serious problem was inherited by the President. He is faced with a hard reality, not a living room exercise in war game theory. He needs and is entitled to flexibility and freedom in directing the overall strategy and day-to-day tactics of our forces. There is no doubt he has the support of the Nation in his management of our difficult circumstance.

Of course there are honest and thoughtful dissents; there are doubts and worries. But whatever our individual divergencies may be we are unified in the end we seek.

It is at this point that I call your attention to a rather strange phenomenon. After 10 years of involvement in South Vietnam, the President, with careful consideration, decided to increase the pressure on the north by air strikes against supply lines and depots. The President did not announce a change in our mission. Quite the contrary, he was careful to announce that there was no change; that we did not seek to widen the war; that we were only concerned with protecting the integrity of the south as we have been for the past 10 years.

War hawk demands for a massive land war involve two quite important attempts to alter this position. One is the sudden demand that we now change the role, the mission we have had in Vietnam for 10 years from one of assistance to the brandnew role of fighting their war for them with our troops; the second is a kind of patriotic demand that those who don't agree, keep quite—and those who won't be silent are subtly tarred as somehow against the President—though his position is not theirs—or as soft on communism, or as not very tough Americans or some other foolish nonsense.

The simple fact of the matter is that both foreign and domestic policies must be discussed to be understood; and they must be understood to gain public support; and they must have public support to succeed. Failure of public understanding of our foreign policy is the quickest way I can think of to return this country to the isolationism of another era. So, let us have more discussion of this issue.

I think we should continue our role in Vietnam as long as there is some possibility of accomplishing our original mission—that very well may be quite some time yet. Furthermore, there may be reasons of policy for staying there for a time even if at some stage we conclude they are unable to either govern or defend themselves. This is a judgment that must be evaluated continuously as circumstances demand.

In any event, it would be a tragic mistake to conclude at some stage that if they cannot defend their own freedom it then becomes our proper role to throw in the full force of our land army and take on the task of fighting their war for them as well as running their government.

The South Vietnamese—

As President Johnson said last August—

> have the basic responsibility for the defense of their own freedom.

The United States can play a useful role in Vietnam—but in the long run it can be useful and successful only if the Vietnamese people can establish a viable government with broad public support and the capacity to defend its own freedom.

This, it seems to me, is the sum and substance of it all. This seems to me to be the meaning of the underlying American consensus.

To make a massive commitment of American troops would be to overlook the fundamentals of this consensus. It would attempt to use white men to force a solution on an Asian people. It would forget all that we have learned about the need for fundamental political reform. It would invite Chinese Communist intervention—an intervention which has not yet occurred. It would tie our hands in all diplomatic ventures. It would lose the support of our allies and of most of Asia.

The President is trying to find a moderate way to resolve the problems of Vietnam. He needs no warlike demands from the militants. What he needs is support for the course of moderation and negotiation he has initiated.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD, as an appendix to my remarks, recent comments by various Senators on Vietnam.

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

RECENT COMMENTS BY VARIOUS SENATORS ON VIETNAM

Senator Thomas J. DODD (member, Foreign Relations Committee): "All this does not mean to say that we must not under any circumstances enter into negotiations with the Communists. It simply means that when we do so we must do so with our eyes open and with a clear understanding of the ingredients required to enforce compliance with the agreement about to be entered into." (CONGRESSIONAL RECORD, Feb. 23, p. 3349.)

Senator GALE MCGEE: "Do not mistake me. I believe that some time there must be negotiations." (CONGRESSIONAL RECORD, Feb. 17, p. 2887.)

Senator FRANK CHURCH (member, Foreign Relations Committee): "The judicious use of both the arrows and the olive branch represents our best hope for avoiding a widening war in Asia." (CONGRESSIONAL RECORD, Feb. 17, p. 2872.)

Senator E. L. BARTLETT: "* * * in the long run the only satisfactory one of concluding what is a desperate situation * * * could be arrived at around the conference table. But it has been apparent from the start * * * that we should not go to the negotiating table from a stance of weakness." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18422.)

Senator DANIEL BREWSTER (member, Armed Services Committee): "As for negotiations; we should never be afraid to either talk or fight, but any negotiations should be from a position of strength. Ultimately we would hope to negotiate a peace along the lines of the 1954 settlement." (U.S. News & World Report, Feb. 15, p. 72.)

Senator JOSEPH CLARK (member, Foreign Relations Committee): "I believe that neutralization of the entire area is not an unworthy goal, and I would support such a

policy provided that the action was not just a sham to cover up further Communist takeovers in nations which are now independent." (U.S. News & World Report, Feb. 15, 1965, p. 72.)

Senator JOHN SHERMAN COOPER (former Ambassador to India): "I hope the President will use this power wisely with respect to our commitments in South Vietnam, and that he will use all other honorable means which may be available, such as consultations in the United Nations, and even with the Geneva powers." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18410.)

Senator ALLEN J. ELLENDER (chairman, Agriculture and Forestry Committee): "Is it not incumbent upon us to have a meeting of SEATO before we go too far?" (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18412.)

Senator J. WILLIAM FULBRIGHT (chairman, Foreign Relations Committee): "If we could establish a firm position in which things were going better for the South Vietnamese and they had greater confidence in their capacity to survive, a consideration of some substitute, by way of the United Nations, not only would be tolerable, but I would be favorable toward it, for the reason that I would want no illusions to grow up about what our ultimate intentions are in South Vietnam." (CONGRESSIONAL RECORD, vol. 110, pt. 11, p. 14792.)

Senator ALBERT GORE (member, Foreign Relations Committee): "I think we should seek plausible reasons or circumstances to disengage with the maximum possible stability." (The Washington Post, Associated Press, Jan. 2, 1965.)

Senator ERNEST GRUENING: "Let us get out of Vietnam on as good terms as possible—but let us get out." (CONGRESSIONAL RECORD, vol. 110, pt. 4, p. 4835.)

Senator JACOB JAVITS: "May a Senator voting for the resolution assume that the United States * * * will continue to utilize all the organs of international peace which are mentioned here, including the United Nations, in order to secure freedom in that area." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18405.)

Senator Olin D. Johnston: "I suggest the United Nations handle it, set up a buffer zone between North and South Vietnam and police it." (Washington Post, Associated Press, Jan. 7, 1965.)

Senator TOM MCINTYRE (member, Armed Services Committee): "Not now, but with some military successes as bargaining tools, negotiation could well be the way out with honor at a later date." (U.S. News & World Report, Feb. 15, 1965, p. 71.)

Senator CLAIBORNE PELL (member, Foreign Relations Committee): "I believe we must continue to hold on, seeking to arrive at a point where we can honorably negotiate a reasonable solid and forceful agreement that meets the interests of the Geneva powers, of ourselves, and most important, of the Vietnamese people." (CONGRESSIONAL RECORD, Feb. 11, 1965, p. 2619.)

Senator WILLIS ROBERTSON: "I'd favor a settlement based on neutralization or to pull out." (Washington Post, Jan. 7, 1965.)

Senator JOHN J. WILLIAMS (member, Foreign Relations Committee): "I think we should always be receptive to negotiations to find a way out. To do otherwise would be to propose a war aiming at unconditional surrender. But it is not very advantageous, from our viewpoint, to seek negotiations for a settlement at this time." (U.S. News & World Report, Feb. 15, 1965, p. 70.)

Senator STEPHEN M. YOUNG (member, Armed Services Committee): "It seems to me that now is the time to proclaim to the world that the United States is ready to meet at Geneva over the conference table with representatives of China and North Vietnam and our allies of the free world to see if we cannot negotiate a settlement which would leave South Vietnam a free nation clear of aggressors from the north." (CONGRESSIONAL RECORD, Feb. 17, 1965, p. 2823.)

Senator J. WILLIAM FULBRIGHT: "I personally feel it would be very unwise under any circumstances to put a large land army on the Asian continent." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18406.)

Senator MIKE MANSFIELD (majority leader, member, Foreign Relations Committee): "It (the United States) is not committed to continued subsidy of intramilitary struggles for power and prestige, with American lives and resources. The jealous generals of Saigon should realize that the hour is very late in Vietnam." (CONGRESSIONAL RECORD, Feb. 22, 1965, p. 3306.)

Senator RICHARD RUSSELL (chairman, Armed Services Committee): "I don't know just how we can get out now, but the time is about at hand when we must reevaluate our position. We cannot support the present regime in Saigon unless they are able to attract popular support out in the rice paddies and the villages." (The Washington Post, Associated Press, Dec. 31, 1964, p. A6.)

Senator ALLEN J. ELLENDER: "* * * unless we can persuade our allies to assist us in South Vietnam, and unless a stable government can be established there, a condition may develop which will be worse than the situation that confronts us in South Korea. That is what has worried me." (CONGRESSIONAL RECORD, Feb. 23, 1965, p. 3375.)

Senator THOMAS J. DODD: "I know the Senator from Louisiana is worried; and so am I. It is a proper problem to worry about. There is no question that a stable government must be established in South Vietnam." (CONGRESSIONAL RECORD, Feb. 23, 1965, p. 3375.)

Senator GEORGE SMATHERS (member, Foreign Relations Committee): "The first change needed is to bring about some political stability." (U.S. News & World Report, Feb. 15, 1965, p. 70.)

Senator BOURKE B. HICKENLOOPER (ranking Republican, Foreign Relations Committee): "Unless we get a stable, vigorous, and reliable government in South Vietnam, I think it is a hopeless thing, fighting the war in the manner we are at present." (U.S. News & World Report, Feb. 15, 1965, p. 68.)

Senator LEVERETT SALTONSTALL (ranking Republican, Armed Services Committee): "* * * we must make it clear that we intend to stay and assist the South Vietnamese if they are willing to help themselves. I hope it will be possible to work it out that way. But if they refuse to help, then certainly we cannot expect to be of assistance in continuing the struggle." (U.S. News & World Report, Feb. 15, 1965, p. 69.)

Senator GEORGE D. AIKEN (member, Foreign Relations Committee): "The outlook for ending the war in Vietnam is hopeless as long as there is no stable government there." (U.S. News & World Report, Feb. 15, p. 17.)

Senator E. L. BARTLETT: "The war in South Vietnam is a South Vietnamese war. It will be won only by the South Vietnamese themselves. It will be won only when they have something worth winning it for." (CONGRESSIONAL RECORD, vol. 110, pt. 4, p. 4978.)

Senator DANIEL INOUYE (member, Armed Services Committee): "I would think in order to carry forward to a victorious conclusion, you have to set up a stable government which would be supported by the South Vietnamese." (U.S. News & World Report, Feb. 15, 1965, p. 72.)

Senator KARL E. MUNDT (member, Foreign Relations Committee): "The important thing is to make the South Vietnamese understand that this is their conflict—that they must provide the major thrust for victory." (U.S. News & World Report, Feb. 15, 1965, p. 71.)

Senator MARGARET CHASE SMITH (member, Armed Services Committee): "I think that unless South Vietnam shows some indication of moving toward a stable government, there isn't any hope." (U.S. News & World Report, Feb. 15, 1965, p. 72.)

Senator FULBRIGHT: "* * * Speaking for my own committee, everyone I have heard has said that the last thing we want to do is to become involved in a land war in Asia; that our power is sea and air, that this is what we hope will deter the Chinese Communists and the North Vietnamese from spreading the war. That is what is now contemplated." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18403.)

Senator BREWSTER: "I would look with great dismay on a situation involving the landing of large land armies on the continent of Asia. So my question is whether there is anything in the resolution which would authorize or recommend or approve the landing of large American armies in Vietnam or in China." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p. 18403.)

Senator MORTON: "If we make that clear, we will avoid war and not have to land vast land armies on the shores of Asia. In that connection I share the apprehension of my friend, the Senator from Maryland." (CONGRESSIONAL RECORD, vol. 110, pt. 14, p.18404.)

Senator SPARKMAN: "Of course, I favor winning the war. But what needs to be done is another question. I would not want to see us cause a general war in the area." (U.S. News & World Report, Feb. 15, 1965, p. 68.)

Senator MUNDT: "To do whatever is needed to win that war would involve an open-ended commitment which could result in another situation like we had in Korea, and I certainly am not prepared to say I want to go that far." (U.S. News & World Report, Feb. 15, 1965, p. 71.)

Senator SMATHERS: "To the idea of commiting the United States to whatever effort is needed to win the war, I say: No. I don't believe we should get ourselves in a major land conflict over there." (U.S. News & World Report, Feb. 15, 1965, p. 70.)

Senator CLARK: "I should hope very much that we would not be sending 100,000 ground troops to Vietnam within the next few weeks." (CONGRESSIONAL RECORD, Apr. 23, 1965, p. 8338.)

Mr. NELSON. Mr. President, my remarks at this point will be directly applicable to House Joint Resolution 447. Some time ago I prepared the remarks I have just made, to be delivered on the floor of the Senate either this week or next. But yesterday we received the President's request for the supplemental appropriation; therefore, I have made the remarks today, so that my position may not be misunderstood.

My fundamental position on Vietnam and our role there has remained the same over an extended period of time. More than 2 years ago and on numerous occasions since I have expressed the view that it should remain a cardinal principle of our policy not to engage American troops in a land war in South Vietnam. Within the perimiter of this guiding principle there is great room for tactical variation. As the Commander in Chief of our forces it is the President's burdensome responsibility to decide the day-to-day tactics. From time to time we may agree or disagree with the tactics exercised but that is in the nature of the case. I, along with the vast majority, recognize where that responsibility lies and support the President in his incredibly difficult endeavor.

The issue before us is not whether we are unified in our purpose. We certainly are. It is not whether we are opposed to communism, whether we are willing

to fight for freedom, whether we are at one with the President in the objective he seeks—in each of these matters we are unified. That unity has repeatedly been demonstrated by every public opinion poll as well as the conduct of the Congress and the statements of the Members.

Nevertheless, we are now asked to act within 24 hours on a $700 million appropriation for the conduct of our commitment in Vietnam. It is conceded by everyone that the money is not needed immediately to support our commitment there. It is agreed by everyone that the President has the authority to transfer the necessary funds to fully support our efforts. It is recognized by everyone in this body that on a moment's notice Congress will authorize every additional dollar needed to supply, equip, and support our forces without stint. So that there may be no doubt, if indeed there could be any, I know that $700 million will be needed in our 1966 budget. A substantial part of it might be needed in fiscal 1965. That may be so whether we make the unfortunate decision to change our mission there or whether we maintain our repeatedly stated role. I support that expenditure and more, too, if and when it is required. We will not hesitate to spend whatever is necessary to support our troops in whatever enterprise we direct them. That is not at issue among us.

What is at issue right now is the wisdom of acting within hours upon this requested appropriation—acting without printed hearings and with precious little discussion—acting posthaste, not because this money is required immediately, but rather because this precipitous action is supposed to demonstrate our support for the President's conduct of foreign affairs as well as our unity of purpose is opposing Communist aggression.

My willingness to support the President in these two enterprises is a matter of record—abundantly so. I do not feel the necessity of demonstrating my support by forthwith voting yea on a bill that came to the Senate at 2:30 yesterday afternoon—a bill that had only brief hearings in either House—a bill that was supported only by a half-page Senate committee report printed before the House bill arrived in the Senate. I object to legislating based upon what I read in the morning paper. No matter how sound the measure, I dissent from the proposition that the greatest deliberative body in the world should routinely give its stamp of approval to anything except under dire circumstances. No such circumstance has been alleged from any quarter.

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

Mr. MORSE. Mr. President, I yield 2 additional minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 2 additional minutes.

Mr. NELSON. Mr. President, in the cloakrooms and on the floor, numerous distinguished Senators from both sides of the aisle have expressed their concern over the precipitate manner in which we are disposing of this matter.

I have no notion what the President said to the majority and minority leadership at the White House. If he requested that this bill be passed this week within a 24-hour period, instead of next week after ample discussion, I have not been so advised. Though I have a very high regard and respect for the integrity, the patriotism, and the genuine statesmanship of the leadership on both sides of the aisle, I do not intend lightly to delegate my vote to anyone in support of any proposal.

My objection does not run to the merits of this appropriation. No matter what the variances of viewpoint, we all know this money will be needed in the future and will be spent. Yet, I think I speak accurately when I say that a very substantial number of this body is gravely troubled by the unseemly haste of our action here today. We all know that our military planning is not so faulty that we need this appropriation right now. If it were required today our very able Secretary of Defense would have urged action quite some time ago.

My dissent is based upon the conviction that when a matter of this import is before us we owe it to ourselves and the Nation to discuss it deliberately and fully. That we may all end up agreeing on this particular measure does not detract from the importance of conducting the dialog. There is a continuing public confusion about where we are going and why. Silence contributes to that confusion. Our branch of the government has its own obligation. We should not default in that obligation, nor should we even give the appearance of doing so. Because of what appears to be a necessity for exceptionally speedy action on a large appropriation, there are many who will conclude that we must be intending to support or endorse a substantial expansion of our role in Vietnam, if not a fundamental change in our mission there. I am sure that neither the Congress nor the President intends consciously that. Nevertheless, you will see that interpretation put on our action from any number of sources within the next few days. I decline to lend my name in any way to that kind of misinterpretation.

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

Mr. MORSE. Mr. President, I yield 1 additional minute to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 1 additional minute.

Mr. NELSON. Mr. President, thus, at a time in history when the Senate should be vindicating its historic reputation as the greatest deliberative body in the world we are stumbling over each other to see who can say "yea" the quickest and the loudest. I regret it, and I think some day we shall all regret it.

Now in the gentlest way I know how I mention to this body that as of this very moment I have yet to receive a call from the leadership or any other source in government advising me of the grave necessity for instant action. I should think if this matter were really so urgent a 15-minute party caucus would have sufficed at least to advise us so.

Thus, reluctantly, I express my opposition to our procedure here by voting "nay." The support in the Congress for this measure is clearly overwhelming. Obviously you need my vote less than I need my conscience.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, on behalf of the Senator from Mississippi, I yield 10 minutes to the Senator from Vermont [Mr. PROUTY].

Mr. PROUTY. Mr. President, the measure now before us will be passed by an overwhelming majority—there can be little doubt of that. I will be one of that majority. But before we approve the President's urgent request, I should like to make a few observations on the more general problem of America's response to relentless Communist efforts to engulf the non-Communist world.

In his message to the Congress requesting this appropriation, President Johnson said that he did not ask complete approval for every phrase and action of his administration. It is well that he did not; for if he sought such an endorsement, it seems to me he would have a very, very difficult time obtaining even a bare majority in this body.

No; this appropriation vote is not an endorsement of the Vietnam policies of the Truman, the Eisenhower, the Kennedy, or the Johnson administration.

This appropriation is not a blank check to the President to continue his course in foreign policy with immunity from congressional scrutiny and criticism.

This appropriation is not admissible evidence that the present administration has done the best possible job in protecting the interests of freedom in southeast Asia.

This appropriation should be construed to mean no more than it says—that an additional $700 million be made available for the conduct of the struggle in Vietnam.

On a number of occasions since I first came to the Congress in 1951, Presidents of the United States have sent urgent measures for prompt action in time of crisis. In most cases the passage of these measures was later cited by the President as evidencing the will of the Nation to support his administration's policy in crisis X or dispute Y. But, as the situation of the moment faded into history, the associated measures faded from the newspapers, from the view of the American people, and—most important—from the memories of those who would destroy human freedom throughout the world.

And here, Mr. President, is what I consider to be one of the most serious deficiencies of postwar American foreign policy. We have grappled with crises on a piecemeal basis. We have sometimes stood firm against Communist aggression, subversion, and penetration—other times we have not. We have never made it unmistakably, indisputably clear to our adversaries that the people, the resources, and the might of the United States of America will be used to make

their efforts to reduce peoples to subservient bondage fruitless, costly, and, in the long run, doomed to ignominious failure.

In the tense years of 1948 and 1949, the United States heroically saved the freedom of West Berlin with the Berlin airlift. But would the Soviets even have attempted the blockade had they known that the American response would be so superb and effective?

When North Korea attacked our ally South Korea in the summer of 1950, the United States moved at once to resist Communist aggression. But would there have been that aggression if the Communist leaders had known that the United States would fight? And would subsequent Communist aggression have been prevented if the Communist leaders had learned that the United States would not only fight to a stalemate, but fight to victory?

A commendable decision to oust communism from Cuba led to the Bay of Pigs attack in April 1961. But that invasion became a tragic farce when the United States refused to use the means necessary to victory. I remember at the time the great amazement of Khrushchev and the Russian leaders at the decision to accept a humiliating defeat. Did our performance at the Bay of Pigs do anything to discourage the Communists from further such ventures?

In September of that same year, the Communists erected the infamous Berlin wall. Did they do so in the belief that American power would not be brought to bear, as it had not been brought to bear on the beaches of Cuba?

But, Mr. President, look what happened when President Kennedy told Premier Khrushchev that the United States would not tolerate missiles in Castro's Cuba. Those missiles were removed. To many, the missile crisis was a terrifying confrontation. To me, tacit American acceptance of a Soviet missile base on Cuban soil would have been a far more terrifying prospect.

I do not mean to suggest that every foreign policy goal can be achieved by the automatic application of the magic cure called firmness. Firmness would have done the cause of freedom little good in far-off Tibet, where the Chinese Communists extinguished the independence of the Tibetan people.

The time and place for firmness must be carefully chosen. But when the cause is just, the threat clear, and the implications of irresolution ominous, our adversaries must be left with no shred of doubt that the American people stand behind their Government in a swift, effective defense of freedom.

The year 1964 saw a great election in our Nation. The overriding issue of that campaign was the issue of peace. The publicists of the Democratic Party cried that Senator Goldwater would lead the country to war. They expressed shock at his ideas on carrying the war in Vietnam to the north, and on defoliating jungle trails. Had Senator Goldwater even hinted at the use of gas warfare in Vietnam, I shudder to contemplate the wave of righteous revulsion that would have swept the liberal press and public. Through the campaign the Democratic candidate was presented as the man who would speak and act for peace, the man who would bring old enemies together under the sheltering sweep of his long Texas arm, where his honeyed words of persuasion would soften the flinty hearts of those poor, misguided Communists.

Happily for the cause of the Nation, President Johnson has shown that he can act decisively to confront and repulse Communist aggression. But could it not be suggested that the impassioned rhetoric of our presidential campaign might have, in some way, led the Communists to believe that a United States with a "peace President" would hesitate to act boldly in the face of each new challenge?

Let us make no mistake about it. The United States of America has the means and the will to frustrate Communist adventures, not on a hit or miss basis, but consistently and relentlessly. Is it not time this was made clear to the Communists, not just by today's actions in Vietnam or Santo Domingo, not just by an overwhelming vote on today's appropriation, but by a firm, explicit, and continuing policy commitment by the Congress of the United States?

Three years ago I introduced a joint resolution, Senate Joint Resolution 225, designed to make our national policy clear, not just with regard to the crisis at hand—whether it be Korea, Berlin, Lebanon, Cuba, or wherever—but to Communist aggression, subversion, and penetration wherever the interest of free peoples are threatened. Today I ask that the Congress think seriously and deeply about the adoption of a great statement of purpose and intent along these same lines.

In his message to Congress with this bill, President Johnson said, "Wherever we have stood firm aggression has been halted, peace restored, and liberty maintained." Let us act to show the Communists that America has the will to frustrate their scheme by standing firm not just in Vietnam or in Santo Domingo, but wherever firmness will dissuade the advance of tyranny.

I yield back my unused time.

Mr. STENNIS. Mr. President, I yield 8 minutes to the Senator from New York [Mr. KENNEDY].

Mr. MORSE. Mr. President, I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 13 minutes.

Mr. KENNEDY of New York. Mr. President, I vote for this resolution because our fighting forces in Vietnam and elsewhere deserve the unstinting support of the American Government and the American people. I do so in the understanding that, as Senator STENNIS said yesterday:

> It is not a blank check * * *. We are backing up our men and also backing up the present policy of the President. If he substantially enlarges or changes it, I would assume he would come back to us in one way or another.

We confront three possible courses in Vietnam.

The first is the course of withdrawal. Such a course would involve a repudiation of commitments undertaken and confirmed by three administrations. It would imply an acquiescence in Communist domination of south Asia—a domination unacceptable to the peoples of the area struggling to control and master their own destiny. It would be an explicit and gross betrayal of those in Vietnam who have been encouraged by our support to oppose the spread of communism. It would promote an inexorable tendency in every capital to rush to Peiping and make the best possible bargain for themselves. It would gravely—perhaps irreparably—weaken the democratic position in Asia.

The second is the course of purposely enlarging the war. Let us not deceive ourselves: this would be a deep and terrible decision. We cannot hope to win a victory over Hanoi by such remote and antiseptic means as sending bombers off aircraft carriers. I have understood the purpose of the raids that have been conducted so far have been to indicate to Peiping and Hanoi our resolve to meet our commitments. I do not believe we should be under the self-delusion that this military effort will bring Ho Chi Minh or the Vietcong to their knees.

The course of enlarging the war would mean the commitment to Vietnam of hundreds of thousands of American troops. It would tie our forces down in a terrain far more difficult than that of Korea, with lines of communication and supply far longer and more vulnerable. It would risk the entry of the Chinese Communists and their inexhaustible reserves of ground troops. It would force the Soviet Union, now engaged in a bitter contest with Peiping for the leadership of the world Communist movement, to give major assistance to Hanoi, and it might well temporarily revive the relations between Peiping and Moscow. It would lead to heavy pressure on our own Government by thoughtless people for the use of nuclear weapons, and it might easily lead to nuclear warfare and the third world war.

Both of these courses—withdrawal and enlargement—are contrary to the interests of the United States and to humanity's hope for peace.

There remains a third course—and this, I take it, is the policy of the administration, the policy we are endorsing today.

This is the course of honorable negotiation. This is the hope of ending the violation of the northern frontier of South Vietnam and of moving toward a settlement of conditions in this troubled land—a settlement which would in the end unite South Vietnam, Laos, Cambodia, and North Vietnam in a common determination to live at peace with their neighbors, to reduce the intervention and presence of foreign troops and ideologies and to join together in undertakings, like the development of the Mekong River Valley, of benefit to all the people of the whole area.

Along with a number of Senators, I have taken advantage of President Johnson's cordial invitation to discuss these matters with him. He has lis-

tened to my comments on the course of the war in Vietnam, and I have appreciated the courtesy and interest with which he has heard these thoughts.

President Johnson has expressed our American desire for honorable negotiations. So far there has been no satisfactory response. It seems that North Vietnam thinks it will win anyway and therefore sees no point in negotiation. To create the atmosphere for negotiation in these conditions, we must show Hanoi that it cannot win the war, and that we are determined to meet our commitments no matter how difficult. This is the reason and the necessity, as I understand it, for the military action of our Government.

But I believe we should continue to make clear to Hanoi, to the world, and to our own people that we are interested in discussions for settlement. I believe that our efforts for peace should continue with the same intensity as our efforts in the military field. I believe that we have erred for some time in regarding Vietnam as purely a military problem when in its essential aspects it is also a political and diplomatic problem. I would wish, for example, that the request for appropriations today had made provision for programs to better the lives of the people of South Vietnam. For success will depend not only on protecting the people from aggression but on giving them the hope of a better life which alone can fortify them for the labor and sacrifice ahead.

While the appropriations under this joint resolution will be used, as I understand, for Vietnam and not for the Dominican Republic, our foreign policy is, I trust, a seamless web; and I cannot let this occasion pass without comment on the tragic events of the last few days in our own hemisphere.

I am sure that every Member of this body agrees with President Johnson in his determination to prevent the establishment of a new Communist state in this hemisphere. The free republics of the Americas have solemnly declared communism to be incompatible with the inter-American system. Action against revolutions aiming to install Communist regimes is in the interest of the whole hemisphere.

But this cannot mean that we plan to act on our own without regard to our friends and allies in the Organization of American States. We are all involved in the struggle for free government in the hemisphere together. In recent years, we have established a relationship of mutual trust and confidence between the United States and the free republics of the hemisphere. There is nothing more important to our future in the hemisphere than the preservation and strengthening of these bonds of mutual affection and respect.

Moreover, since we believe in the rule of law, we must always take care to respect the sovereignty of other nations; to proceed on the basis of our obligations to each other, and to make sure that every action reinforces the structure of law in the hemisphere.

Of course, unilateral action is easier than collective action; but we are much stronger when we act in concert with the rest of the hemisphere than when we act alone; and consultation is the price we must pay for the extra strength our alliances give us.

I note some tendency to criticize the OAS. The OAS has its imperfections, of course, and we hope that it will become a stronger agency of inter-American action in the future. But one way to make it stronger is to use it. Nor do I believe that the contribution of the OAS to the resolution of the Dominican crisis has been insignificant. Though the OAS was not properly notified, it appealed without delay for a cease-fire; it sent its Secretary General to Santo Domingo within 48 hours after the landing of the Marines; it had a peace commission there within 90 hours; that peace commission has obtained a cease-fire and hopefully laid the basis for an eventual political settlement; and now the OAS has authorized the establishment of an inter-American peace force. This seems to me a record deserving commendation, not criticism. Without OAS intervention and the devoted labor of OAS officials and delegates, the situation in the Dominican Republic would be far more hopeless than it is today.

I would make one further point. Our determination to stop Communist revolution in the hemisphere must not be construed as opposition to popular uprisings against injustice and oppression just because the targets of such popular uprisings say they are Communist-inspired or Communist-led, or even because known Communists take part in them.

In the case of the Dominican Republic, we know that professional Communist operatives are backing the revolution; and we know, too, that a small number of disciplined and skilled Communists can have an influence out of all proportion to their numbers. But this matter must be kept in perspective, and we can deal with it best in association with our allies in Latin America. In any case, we know that the revolutionary forces include also many non-Communist democrats.

I ask unanimous consent to have printed in the RECORD a dispatch sent yesterday from the rebel section of Santo Domingo by James Nelson Goodsell, the Latin American correspondent of the Christian Science Monitor, entitled "Dominican Revolution as Seen From Rebel Side," and published in the Christian Science Monitor on May 5, 1965.

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

DOMINICAN REVOLUTION AS SEEN FROM REBEL SIDE

(By James Nelson Goodsell, Latin America correspondent of the Christian Science Monitor with the rebels in Santo Domingo)

A tour of the rebel section of this embattled city shows the extent to which anti-government forces have dug in.

I spent 5 hours wandering through the 10-square-mile section of the city which includes the National Palace, Fort Ozama, and the commercial and business heart of the city.

My conclusions are these:

Virtually to a man the rebel elements feel they have a cause which is important to preserve, that of fighting for constitutionalism and returning the deposed President Juan Domingo Bosch to office.

While there are Communists in their midst, the top rebel command is in the hands of non-Communist elements who fiercely proclaim their opposition to communism.

There remains a significant balance of good will toward the United States despite the marine and airborne occupation of other parts of the city—even the understanding that the marines had to come to rescue American lives.

But the rebels are questioning the continued presence of U.S. forces and seem determined to resist any further encroachments on rebel territory by U.S. forces.

It may be possible to dislodge the rebel force with superior arms, but the rebels would probably put up a real struggle, for they possess large stores of weapons and ammunition stores.

FRIENDLINESS SHOWN

Friendliness greeted me as I walked alone through the rebel territory. People seemed pleased to talk with a newsman, if nothing more than to get their points of view across.

"Tell the world we are not Communists," was a repeated refrain. Spoken in a variety of ways, this view was virtually unanimous.

Col. Francisco Caamaño Deno, military leader of the rebel forces and apparently the top man in the whole effort, said, "We just do not have a Communist problem."

But the colonel, who is looked to with respect by thousands of Dominicans in the rebel area, admitted there are Communists in the midst of the rebel movement.

Another rebel chieftain added, "After all, we will take any support we can get."

Still another said, "But do not forget that we have control of the situation, and this is not a Communist revolution. It is a constitutional movement to restore constitutionalism."

This seems the driving force of the rebel movement. A number of Mr. Bosch's long-time associates and members of his political party are in key command positions in the rebel hierarchy.

LOOKING FOR REDS

However, some American spokesmen here cite the names of 53 known Communists who occupy positions of authority in the rebel command. On the other hand, not all U.S. officials in Santo Domingo agree with this assessment.

I tried to locate several of those whose names are on the list. I was not successful.

In the rebel headquarters in downtown Santo Domingo, as I went from office to office, I could find no evidence that they were anywhere in these key command positions. (This is not to suggest they do not operate with rebel forces, but merely to indicate they are not visibly in evidence as the U.S. spokesmen had affirmed they would be.)

A large supply of weapons and ammunition—including some tanks and some large weapons—are in rebel hands. They are stored at a variety of spots throughout the rebel territory.

U.S. presence in the Dominican Republic, to the extent of 15,000 troops, is viewed with growing alarm by the rebels. There is clear good will and even an understanding of President Johnson's decision to safeguard American lives.

U.S. INVOLVEMENT

"But we understand you've removed these Americans," said a rebel major who added: "Isn't it time for you to get out and allow us the opportunity to win the struggle against the forces of those opposed to constitutionalism?"

The major was speaking of the military under the command of last week's hastily

formed military junta, headquartered at San Isidro Air Force Base east of Santo Domingo.

The U.S. forces began landing in the Dominican Republic at a time when the heart appeared to have been going out of the junta cause—and rebels were on the point of gaining the advantage—despite some reports inspired by the junta to the contrary.

There are many questions in the rebel territory about the next U.S. action in Santo Domingo.

"We will fight against Americans as we have fought against fellow Dominicans. We believe our cause is just, and we are willing to die for it," said one rebel.

His view is general, although of course expressed differently by others.

While I spent only 5 hours in the rebel area, my observations are in general corroborated by neutral observers who have been in the same territory in the past several days.

Mr. KENNEDY of New York. Mr. President, our objective must surely be not to drive the genuine democrats in the Dominican revolution into association with the Communists by blanket characterizations and condemnation of their revolution, but rather to isolate the Communists by assuring the genuine democrats that we wish to restore constitutional order and that all honest Dominican democrats, including those who took part in the revolution, will have a future role in the rebuilding of their country.

Our abiding purpose in Latin America must remain the establishment of democratic governments, sanctioned by free elections, devoted to the welfare and liberty of their peoples, in the spirit of the Alliance for Progress.

In closing, let me say that I am confident that the United States will surmount both of these crises. My only concern is that we emerge from these crises in an honorable position to continue our role of leadership in the world at large.

Mr. MORSE. Mr. President——.

The PRESIDING OFFICER (Mr. BASS in the chair). The Senator from Oregon is recognized.

Mr. MORSE. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 15 minutes.

Mr. MORSE. Mr. President, I add to my comments of last night, as follows:

Congress is being rushed into this course of action so that the American people will not have the time to react to the President's shocking proposal. If there were time to hold a political finger to the winds of opinion in this country and abroad, I believe that we would be appalled at the depth of concern and opposition to President Johnson's doctrine that military might is supposed to make right.

In the trouble spots of the world, this action relating to Vietnam and the posture which we have assumed by sending 20,000 troops into the Dominican Republic are linked. They are linked by the concept that the United States is big enough, strong enough, and tough enough, to impose our judgment—our unilateral judgment—upon the world.

Even our most precious friends abroad are doubting our wisdom and judgment.

Mr. President, I ask unanimous consent to have printed in the RECORD an article in today's Washington Post, entitled "Feeling Rises Against U.S. Action."

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

[From the Washington Post, May 6, 1965]

FEELING RISES AGAINST U.S. ACTION

As American troops remained in the Dominican Republic, reports from France and Britain indicated a growing lack of support and sympathy for the American intervention. Meanwhile anti-American riots flared in Latin American cities.

"Only one thing is clear to me, the Americans are creating unanimity against themselves," correspondent Max Clos of the Paris newspaper Figaro reported from Santo Domingo.

"This strange war resembles very little what Americans imagine," Clos said. "The certain fact in all this business is that the Americans are treating the Dominicans as enemies, and vice versa.

"This is a sort of spontaneous revolution, without officers and a precise program. That hardly resembles a Communist movement," Clos said.

The rebel-controlled quarter is not at all "an inferno delivered over to anarchy," Clos said "It seems the massive arrival of American troops has provoked a mass rising * * * against a common adversary."

From London, Robert H. Estabrook of the Washington Post Foreign Service reported that the American intervention has caused many doubts within the Labor Party and complicated the problem of the Government with Labor's left wing in continuing to support American policy in Vietnam.

Without explicitly condoning President Johnson's actions, some British officials express understanding of his dilemma, and the Government is doing its best to appear a loyal ally.

Most press comment on the Dominican situation has been relatively restrained in criticism of the American action, with the exception of the Manchester Guardian.

In an editorial, the independent daily said the revelation that the purpose of American intervention was to crush an incipient Communist revolt "invites comparison with the intervention by the Russians in Budapest in 1956."

In Caracas, terrorists sprayed the U.S. Embassy with machinegun fire, narrowly missing several staff members. No one was hurt in the brief attack, the latest in a series of anti-American incidents.

Swedish newspapers unanimously condemned the U.S. intervention, Wilfrid Fleisher reported from Stockholm. The semi-official Stockholmstidningen said, "Not in a long time has American prestige stood so low among the democracies * * * Americans with few exceptions may support the President or may not think at all, but the President obviously has no regard for world opinion."

The usually friendly Dagens Nyheter said, "American good will is being dissipated more by President Johnson's declarations of principle than by the actual military intervention in Santo Domingo. A great power can afford to make some mistakes but it must retain flexibility. That was John Kennedy's wisdom."

Mr. MORSE. Mr. President, one great organ of American public opinion has spoken out and I beseech my colleagues to pay it heed. The New York Times today, in an editorial entitled "The Illusion of Omnipotence," comments that the "Johnson doctrine" gives the United States "the appearance of heading toward the unenviable, self-righteous, and self-defeating position of world policeman."

The Times is talking about both Vietnam and the Dominican Republic.

Mr. President, I ask unanimous consent to have this editorial printed in the RECORD.

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

[From the New York Times, May 6, 1965]

THE ILLUSION OF OMNIPOTENCE

The United States is not omnipotent, but President Johnson talks as if it were. There is no one else who can do the job of insuring "the right of all people to shape their own destinies," he said in his message to Congress. If the Communists "are going to put Americans in danger," he told a labor conference in Washington, "where Americans go that flag goes with them to protect them."

This is the language of 1898, not 1965. In its development if not in its origin, the marine intervention in the Dominican Republic was reminiscent of 1916. At the beginning of the present crisis, no one questioned the need to protect American lives in Santo Domingo when law and order broke down. The practical reasons for intervening against a genuine threat of a Communist takeover would also have been understood. But the American troops were used almost immediately for political ends on the basis of reports that a handful of Communists were involved in the rebellion and on flimsy evidence that they threatened to gain control of it. And the Organization of American States was neither consulted nor informed of the intervention until after the invasion had been accomplished.

The result of an initially reasonable and acceptable maneuver was to engage American soldiers in an internal struggle, in which many thousands of non-Communist or even anti-Communist Dominicans were fighting, some of them no doubt because Americans—as they naturally saw it—were invading and occupying their country.

Another and more serious result has been to glorify the previously weak Dominican Communists and make them seem such a power and such a menace that nearly 20,000 American troops—more than half the number now in Vietnam—have thus far had to be sent in to assure order. Communism all over the world has been given new heroes and some damaging propaganda against the United States.

What Sir Denis Brogan as long ago as 1952 called "the illusion of American omnipotence" is now being turned into the "Johnson doctrine." U.S. policy since the end of World War II has been based on anti-communism, accompanied by efforts to achieve a détente with the Soviet bloc. The evolution of such a détente was one of the most encouraging developments in world affairs in recent years. But if it means anything, the Johnson doctrine means that the emphasis is now going to be on resisting the advance of communism anywhere in the world with military force rather than on differentiating between various kinds of communism or trying to coexist with any of them. The United States gives the appearance of heading toward the unenviable, self-righteous and self-defeating position of world policeman.

The Dominican Republic is a weak country, but its problems are not susceptible of military solution. It can be occupied by the United States; it will not be dictated to by the United States. A final truce accord was signed yesterday; but it will have no validity if by remaining there the United States tries to force the Dominican Republic to have only the kind of government of which the United States would approve.

Ours is the most powerful nation on earth, but there are things that even the United States cannot do in this period of history.

The sooner this country extricates itself from the Dominican Republic—if at all possible with the help of the OAS—the better.

Mr. MORSE. Mr. President, the American people have only one instrument that can prevent a misguided, misadvised, misinformed President from committing an incredible blunder—a blunder that will destroy all the confidence in America that has been built up since World War II. That instrument is the Senate of the United States.

But we are not able even to say "go slow," even though I would guess that half or more of the Members of this body know in their minds that the President is wrong.

In connection with the haste that the President is taking in the matter, the one painful fact about this joint resolution is that the President himself has stated its purpose: to obtain our endorsement of his policy in Asia.

Senators can talk all they like about supplying our soldiers. But the President plainly and clearly stated—as I pointed out last night—that the money is not needed. What is needed by the White House is another affirmation of our support.

Last August, many Senators performed a rather pathetic exercise of explaining that their votes for the resolution should not be construed to support an expansion of the war, or of bombing North Vietnam, or of U.S. troops fighting in Asia.

Within 8 months, all those things had come to pass, and the administration needed only to cite the Vietnam resolution as the source of its authority to expand the war in any way it saw fit.

This week we are hearing the "reservationists" saying now that their support for this appropriation should not be construed to be an endorsement of this, that, or the other thing—or of other expansion by the President.

Whom do they think they are kidding? Not the American people, let me warn them, but only themselves.

Yet the money they are appropriating is to be spent to finance all the things they were against last August, plus new U.S. bases, new U.S. weapons, and new U.S. troops in Vietnam. I think the White House must be laughing at their "reservations."

It is only votes that are binding upon the Pentagon or the White House, not the opinions of Senators of how the Executive should exercise the powers Senators are going to vote him today.

Let me say to Senators who claim that they intend to be consulted again before there is another escalation of the war: "You are being consulted right now. This is the President's consultation. When the President has this consultation under his belt, he is going to announce the landing of thousands more of American troops in Vietnam. When he starts sending those hundreds of thousands of troops into Asia, the moment that the Chinese start moving on the ground—that is exactly a part of the war plans—he will cite the pending joint resolution and the resolution of last August which give him that authority."

I say to the reservationists, who think the President is not going to do these things, that by passing the joint resolution they are giving the President another vote of confidence. That is what he told us in the message he sent to Congress asking for the passage of the pending joint resolution.

This is the second time in 10 months that Senators have, in the phrase of the poet, "Vowing she would ne'er consent, consented." Neither the President nor the country are interested in protestations; they are only interested in the actions taken here.

Last August this Congress was asked to adopt a resolution authorizing the President to use whatever force was necessary to prevent further aggression. Congress did not specify where, when, or by whom the aggression was to be prevented. But as we have done so habitually since the end of World War II, Congress once again responded to an Executive demand that it enact some kind of language that would present the appearance to the world of a united American front behind a Presidential policy.

As I said then, and say again, "You voted for an undeclared war. You voted outside the framework of the Constitution. Only Congress can declare war. The President has no constitutional right to make war in the absence of a declaration, except to meet an immediate emergency in self-defense and then only in self-defense, and only for the limited period of time that it takes him to get to Congress to present the facts by way of a recommendation of a declaration of war."

I say again sadly to my President today, "When are you going to get back within the Constitution and come to Congress to recommend war against North Vietnam?"

I have a hunch as to why he will not follow that policy. He knows that that would arouse such a negative reaction in this country that the American people would repudiate him. That is what would happen if the President of the United States asked for a declaration of war.

I say that the clear constitutional duty is for him either to stop making war or come to Congress and ask for a declaration of war. Then let the Members of Congress stand up and be counted as to their position under article I, section 8, of the Constitution.

We went through the same procedure in the case of Formosa, we did it in the case of the Middle East, we did it in the case of Vietnam. In the first instance, nothing has been proved or settled. Indeed, the ultimate disposition of the island of Taiwan is still as big a question as ever, and, as the end of the regime of Chiang Kai-shek draws near, the possibility that Taiwan and China will ever be reunited under one government is completely gone.

In the case of the Middle East, the Arab States have not rallied to the West, and are thoroughly divided in varying degrees of socialism, neutralism, reaction, and communism.

VIETNAM RESOLUTION HAS FAILED ITS PURPOSE

In Vietnam, the resolution of last summer, which was supposed to announce to the world our unity, and prevent misjudgment of our intentions, has had the opposite effect. Earlier in the week I placed in the CONGRESSIONAL RECORD portions of the debate of August 1964—and that was alluded to by the Senator from Wisconsin [Mr. NELSON] this morning—in which supporters of the resolutions outlined their intentions and their reservations. Many voices made clear that they did not intend the resolution to be used to put an American land army on the continent of Asia, nor to advance the war into North Vietnam. Yet since then many thousands of American troops have been landed in Asia.

These verbal reservations have, of course, been ignored and disregarded. The language of the resolution was unrestricted and unlimited and the blank check has been filled in by the person it was made out to, not by those who signed it by voting for it on rollcall.

The purpose of that resolution, too, has failed of achievement. The Vietcong rebellion did not wither and die in the face of this alleged American show of unity. The Government of North Vietnam was not warned so fully of our intentions that it ceased from doing whatever it is the Secretary of State assures us it is doing. The resolution has, in short, failed to prevent war in Asia. It only provided the foundation for a bigger war in Asia.

Now we are asked to repeat the same process all over again, only this time on a much higher level of involvement.

FUNDS UNNECESSARY

The President has made it clear that he does not need the money to prosecute the present level of the war. He has ample transfer authority in existing defense appropriations to finance what has been done to date, and yesterday's Washington Post tells us that the President himself has indicated in his talk to reporters that he did not have to come to Congress for the additional money. He told us that in the East Room of the White House the other day.

What the President is concerned about is not the money to prosecute the war, but the rising opposition to his policy. It is an old and time-honored device among chief executives in nearly every country to force a vote of confidence in them by raising a matter of a foreign policy challenge from abroad.

The text of his message, and his comments to the press, raise the question of whether the President is really afraid of more debate about Asian affairs, and whether he is taking this means of silencing it again, at least temporarily.

Mr. President, I am shocked that an ex-President of the United States and the present President should make a statement to the effect that those who disagree with the policy of the President should communicate their disagreement to him in writing but not engage in public criticism of the President.

I have never expected to live so long that it would be suggested from the lips of two Presidents—an ex-President and the present President—that criticism should be silenced in free America when elected representatives of free people in the Senate believe that the President's policy is wrong.

President Johnson is quoted as having told the building and construction trades convention on Monday:

I warn you, and I plead of you, if you have got any suggestions or any views or any differences with your President * * * communicate them to me through Uncle Sam or Western Union, or directly, or your friends. Don't send them through my intelligence bulletin via Peking or Hanoi or Moscow.

And he has quoted a letter from President Eisenhower which states:

If there is any who oppose the President in his conduct of our foreign affairs, he should send his views on a confidential basis to the administration; none of us should try to divide the support that citizens owe to their head of state in critical international situations.

It is obvious that, to recent Presidents, what the Communists think is more important than what the American people think. We are far down the road of allowing the Communists to make our policies for us because we do not know what we are for and against until we learn first what Hanoi and Peking and Moscow are for and against.

To make U.S. foreign policy that way is unsound. And it surely is contrary to a system of government that is supposed to be directly the opposite of the politburo system of government. Apparently we are on the way to adopting another tactic of the Communist system in the name of opposing it.

We have the clear duty and trust to raise our criticisms for the consideration of the American people and to let the American people exercise the final check on us, and on the President. I am willing to stand for that check. The President of the United States will feel that check in future years unless he stops leading America into this unnecessary and unjustifiable war in Asia.

MEANS OF NEGOTIATING ARE STILL UNUSED

Some of the speakers in the Senate today said they will support the President in this instance because they are satisfied that the President believes in negotiations. What kind of negotiations? If the President really believes in negotiations, he ought to exhaust the existing procedures under existing treaties for negotiation. The President should at least say to the United Nations, "You have an obligation to step in and seek to settle this conflict by negotiation through the procedures of the United Nations."

I do not want anyone to give me the old alibi that it will not work. We do not know whether it will work until we have tried.

Khrushchev ran into the opposition of some 80 to 90 nations when they took jurisdiction over the Congo, and I am satisfied, as a former delegate to the United Nations, that we might very well find that 85 or 95 nations would decide that the procedures provided in the Charter of the United Nations would provide an honorable basis for an international conference of the representatives of both sides, with the United Nations at the head of the table and the combatants on each side, which would lead to an honorable and enforceable peace.

Until the President makes that proposal, all his talk about unconditional discussion, referred to in the Johns Hopkins speech, does not ring true, because the kind of discussion he is talking about is bilateral discussion. The kind of discussion he was talking about was discussion that eliminated the Vietcong.

As the report to the Japanese Government by the emissary it sent to report on the situation in South Vietnam shows, the Vietcong are not represented by North Vietnam, and only a small portion of them really are from North Vietnam.

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

Mr. MORSE. I yield myself 2 more minutes.

Only a small portion of them are really North Vietnamese. The overwhelming majority of them are South Vietnamese. It is sad for me to say it—it pains me to say it—but in my judgment, the President of the United States has never lived up to the obligations of this country under the United Nations Charter. Our signature is on that charter. We are pledged to use the procedures of that charter to meet a threat to the peace of the world. The peace of the world is threatened in Asia, and the President ought to proceed to use those procedures.

There has been some talk about the Geneva accords. I have said many times in the past year and a half on the floor of the Senate that we have been violating the Geneva accords from the very beginning. I read again, as a part of my speech, article 16 of the Geneva accords:

Effective from the date of entry into force of the present agreement, the introduction into Vietnam of any troop reinforcements and additional military personnel is prohibited.

That article will be directly violated by this joint resolution.

So will article 17, which prohibits the introduction of additional weapons, and article 18, which forbids foreign military bases from being established. The President has announced that all these things will be done with the $700 million.

Mr. President, the Geneva accords also provide that the sending in of military aid is prohibited. The United States, along with the Communists, has stood in violation of the Geneva accords from the very beginning. That will be the sorry sentence of history against the United States for the wrongs that we have committed not only in Vietnam, along with the Communists, but also wrongs that in effect we have committed against the world.

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

Mr. MORSE. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 2 additional minutes.

Mr. MORSE. Eventually, we no longer bothered with retaliation, as conducted in the Bay of Tonkin, but began a simple undeclared war against North Vietnam. Now, Americans are questioning whether that is going to do any good and whether it is in fact making the achievement of peace in Asia on American terms more remote than ever.

Here, again, the President has no answer. On the one hand, he says in his message that North Vietnam shows no sign of wanting to negotiate. Presumably, the purpose of the air attacks was to drive North Vietnam to the bargaining table, but now the President says nothing of the kind appears likely to happen. On the other hand, he told reporters:

Our firmness and the actions we have taken in the last few weeks may well have already brought us much closer to peace.

"How has it brought us closer to peace?" I ask the President. "How? Why has it brought us closer to peace if you say at the same time that you cannot find anyone to negotiate with, and that our intelligence is agreed that the North Vietnamese see no need for negotiations?"

The great missing element in the administration's policy is that it does not, and probably cannot, explain how more war by the United States is going to achieve an American peace in Asia. No doubt it seeks to make North Vietnam and China merely give up their opposition to American dominance of South Vietnam.

But I warn the Congress and the American people that our attempt to dominate the kind of government that reigns in Saigon is going to require eternal, perpetual war. The only question before us is whether it will get bigger and become a total war.

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

Mr. MORSE. I yield myself 3 additional minutes.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 3 additional minutes.

Mr. MORSE. I am satisfied that more and more Americans are beginning to doubt that the policy we have been pursuing in southeast Asia is going to lead us anywhere else but into a full-scale war. I only regret that while the President invokes the name of freedom to justify what he has decided to do there, he is unwilling to see the free institutions of the Government he heads operate as they are intended to operate.

FEAR OF DEBATE PREVAILS

Why is debate in Congress so feared downtown? Why are Cabinet and sub-Cabinet members, and the President's personal advisers, sent up to the Hill every time the word gets out that some Member of Congress is thinking of questioning anything about to be done in Asia?

The official answer is that they are afraid that North Vietnam will be encouraged to think we are weak and divided at home. But we are weak and divided when people do not understand where its Government is taking them, and how it expects to reach the announced end of peace in Asia. Shutting up public debate does not unite the American people. Cutting off challenges does not unite Congress.

Does the President of the United States want to enjoy the appearances and the images and the labels of national support, or does he want to lead a country that is truly unified because it knows where it is going and how it is going to get there?

Perhaps the President understands that such a national unity will not come on the program he is presenting in Asia. Perhaps he understands that too many Americans instinctively realize that all the American military power in the world will not acomplish a permanent American hegemony and military foothold on the mainland of Asia.

Too many Americans are also beginning to appreciate that the unwise and unfortunate commitment in South Vietnam has not only cost them dearly, but it will cost them untold billions in the future until some means is found to bring in other nations to guarantee that territory's freedom from communism.

How many more resolutions will we be asked to adopt, and how many more billions will we be asked to appropriate, and how many more Americans will die in Vietnam before our Government recognizes that it cannot call the shots in Asia alone and unsupported by the other countries of Asia?

PAST U.S. POLICY HAS FAILED

I say that the Eisenhower-Kennedy-Johnson commitment in South Vietnam has been a total and disastrous failure for the United States. It has not saved that area from communism, because the Communists controlled little or none of South Vietnam when we started helping her, and now they control perhaps half its people and territory. Our commitment has been a failure because it has served only to suck us in deeper and deeper, to cause our conspicuous presence as the only white Western participant in the war to become more and more obvious to all Asians, and because it is unifying the people of Asia against the United States and not with us.

Of course, I know quite well that when the President puts this appropriation in the terms of being either for or against communism, he will get it through Congress. But it is a poor and feeble means of compelling agreement in a democratic society. It begs all the questions of how communism can most effectively be opposed. And I seriously question how often his case can be confined to such oversimplification without losing all its effectiveness. It is always easier for a President to act in international affairs than it is to judge, to estimate, and to think about the future effects of various alternative actions.

But the effects of those actions will be either enjoyed or paid for by future Americans. That is the reason why we have a Congress in this country that was designed to check the executive branch in international affairs, as well as in domestic affairs. Unless this Congress checks this President, I fear that future generations of Americans are going to be fighting and paying for wars in Asia indefinitely. I think that is going to result from what we are doing in Vietnam right now because the other great nations of Asia, whether Communist or not, have no interest in our continued presence in Vietnam. The more we force ourselves on southeast Asia, the more opposition we are going to generate, and, while it may start out as Communist opposition, it will not long remain a purely Communist opposition.

Ten years ago, we organized the Southeast Asia Treaty Organization in order to control events in that part of the world. Japan, India, and Indonesia, the largest countries of the region, had no part in it. Of the eight countries that were Western or pro-Western enough to join, two have all but repudiated our war in Vietnam. One is France, whose opposition to us is well known, and the other is Pakistan, the only Asian country of any size that joined SEATO in the first place.

The events of the SEATO conference are a further indication of the failure of our Asian policy of the last 10 years.

I am at a complete loss to understand why any American administration can continue to think it must try to make good on this series of commitments and policies that have, since their inception, lost more than they have gained for the United States. But I do understand that, so long as they continue to be pursued, the American people will pay an ever-increasing price for them. I do understand that to back with endless money and military power an involvement in South Vietnam that many officials have admitted for years was a gross mistake 10 years ago, will lead the American people into a war that not even their leaders want to fight.

Ten years ago we recognized that, while French withdrawal from Indochina was bad for us, it was not a war the United States should pick and fight for Western interests. So we embarked upon financial support instead. Yet when financial support was not enough, we began those first steps into military participation that have brought us to the present level of fighting. With each increment in money and then in military force, we told ourselves that this one would do the trick—that this money and this program and these helicopters and these advisers—would be the ones that would finally defeat the Vietcong and enable us to go home.

Not once in 10 years has any of these judgments proved right. The only result has been to increase our ante each time.

How long will it take us to realize that it is our policy that is wrong, and there is no means of implementing it that will make it succeed? Yes, we can drop the "nukes" on China. That will be the culmination of these 10 years of activity in southeast Asia. But what then? Will China disappear? Will communism in Asia disappear with her? No. The result will be more Chinese influence and probably Communist influence than before. Neither do I think containment is a policy that can be said to work against China merely because it had some success against Russia.

Asia is not Europe, and what worked with Russia will not work with China. In Europe, it was not white Americans imposing Western standards and ways upon countries only recently freed from colonialism. In Europe, we helped but we did not have to do the job all alone as we are trying to do in Asia. In Europe, we gained partners as the Marshall plan and then NATO progressed; but in Asia we are losing what few partners we ever had in SEATO.

If we want to try a containment policy toward China we should first set some limits upon China that we can thereafter contain. We never tried to contain Russia on her borders. Her satellites and buffer states were fully established before we began drawing any circle around her, and, in 1956, we recognized that in Hungary she was still acting within her logical sphere of national security interest.

We have never recognized any such sphere of influence for China. We have not been able to recognize even the logical fact that the island nations to the east of the Asian mainland are the natural areas where Chinese expansionism might be forestalled. On the continent of Asia, only the independence of the subcontinent can serve as a counterweight to China. White westerners will no longer be accepted in that role by anyone.

This appropriation of money is but one more step down the road to war in Asia, which is the only end our policy can lead to. It saddens me that it is designed as much to close off further discussion of that policy as anything else.

FUNDS WILL BE SPENT TO VIOLATE 1954 ACCORDS

But it also saddens me that the President, in announcing how it will be spent, has outlined still another whole series of violations of the Geneva accords of 1954 which the United States will commit in the name of enforcing them.

One hundred million will be spent for construction of new airfields and warehouses, which are flatly forbidden by article 18 of the 1954 accord. One hundred and thirty-four million will be for maintenance and day-to-day operations, although the introduction of foreign military personnel beyond the 600 or so we had in the south in 1954 is strictly forbidden by article 16; $270 million will be for weapons and ammunition; and $140 million for additional aircraft, although article 17 of the Geneva accord specifically forbids the introduction of additional weapons other than replacements for those left by the French.

Who is supposed to stop violating the Geneva accords first? Why, we would say, North Vietnam and China. They would say the United States and South Vietnam.

This is 1 year's measure—$700 million plus $500 million more in the foreign aid bill—of how impossible it has been for the United States to enforce alone an international agreement to which it is not even a party. And this was the year the Secretary of Defense told us we would be able to start bringing American troops back home from Vietnam.

Next year the price will be higher, and I predict we will be even further from reaching the President's objectives than we are now.

I can only hope that, despite the vote of confidence sought by the President and which I expect Congress to give

him, the public will continue questioning and debating his Asian policy. The wisdom and intelligence of the American people are their last and ultimate check against their own disaster. No President can make the American people stop asking questions, even if he can stop Members of Congress from asking them.

I reserve the remainder of my time.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 10 minutes.

Mr. STENNIS. Mr. President, may we have order? Will the Chair ask those who are standing to be seated?

The PRESIDING OFFICER. The Senator from Illinois will discontinue for a moment. All those in the Chamber will please be seated and refrain from conversation. The Senate will be in order. The Senator from Illinois is recognized.

Mr. DIRKSEN. Mr. President, I listened with great interest to the distinguished Senator from Oregon. I have no doubt that he is earnest, sincere, and completely convinced of the position that he takes. But when the house is afire, it requires the use of the fire hose to extinguish the fire. But even a fire hose is of no consequence unless there is water in the reservoir. And when the President asked us for $700 million, he wanted to be sure that not only now, but in the days ahead, in the weeks ahead, and in the months ahead there will be water in the reservoir in the form of bases, in the form of planes, and in the form of whatever is needed effectively to prosecute the difficulty that exists in Vietnam at the present time.

I do not believe that the President would have asked for $700 million unless it were on the basis of advice he received from the Security Council, the advice he received from General Taylor, and the advice he received from the Joint Chiefs of Staff, because he is not a military man and he does what any President would do. He relies on expert judgment and opinion for the purpose of successfully prosecuting the problem that confronts us in Vietnam at the present time.

We have a duty to support the President; and there are many reasons for it. The first reason is that under no circumstances, with the world so full of fever, with the world so full of aggressive forces that would destroy our system forever, could we do other than to present a thoroughly united front, for when it appears that we have feet of clay and that we are leading from weakness, may the Lord help our country. We know what the aggressive forces are. So I propose to stand up and cast my vote for the President's request, because he is the Commander in Chief of the Armed Forces of this country; and, together with the tactical and strategic experts that he has, it is for him to determine.

I do not know the military background of my distinguished friend from Oregon. I know my own. I was a very humble second lieutenant on the western front in World War I. But I would not pit my vast military mental resource against those who are practiced and trained in the art of warfare, whether it be formal or whether it be guerrilla warfare that confronts us in the Orient. So I wish to see a united front presented on an occasion like this.

I want the word to go out to those who represent us in Vietnam that we back home, on the homefront, are in their corner if they need us. It would be a sorry spectacle, indeed, if word should be sent out this afternoon by shortwave: "You have been let down by the U.S. Senate," as the Senator from Oregon wants us to do. What would that do to the morale of those who are willing to forfeit their lives 12,000 miles from home in the bilge, in the sludge, in the jungles, in all those infested holes? I have been to Vietnam twice, from Hanoi to Haiphong to Saigon, and back again. I know a little something about the country, and I know the difficulty under which young Americans are struggling there this very afternoon. No word of mine will ever impair their morale; no word of mine will get into an international monitoring service to be broadcast on the radio out of Hanoi, as has been done with the words of the Senator from Oregon [Mr. MORSE].

If Senators want to see them, they need only ask the Senator from Pennsylvania [Mr. SCOTT] to show them a copy, which anyone can get if he wants to buy it. It is an amazing thing to listen to excerpts carefully and skillfully excerpted from speeches made on the Senate floor, saying to the Vietcong, "Hold on a little while longer and America will cave in." Is that good for morale in a critical hour like this?

There is another reason. We have said to the humble people of Vietnam and their leaders that we would stand with them. We said we would help to defend their freedom and let them articulate their own destiny. By supporting the Commander in Chief this afternoon, we shall make good on that commitment and that promise.

There is another reason. If the additional money is needed, and if the President thinks it is needed and the Security Council thinks it is needed, I will accept their word, and I do. I merely say, with General MacArthur, "There is no substitute for victory." Can we retreat with good grace? Can we back out? What would happen to the prestige of the United States in every part of the world? It is low enough as it is. To let it sink further and to let the words "paper tiger" finally apply to the United States and make them stick would be the worst thing that could happen in the history of this Republic.

There is no substitute for victory. Our prestige must be maintained, because if there is anything to the appellation that we are the leaders of the free world, what a tragic impairment of that title there will be. We shall be scoffed at.. All the little countries everywhere in the world will be able to say, with some truth, that a little country of 14 million people humbled the greatest country on the face of the earth and made it appear like the old illustration of Toussaint L'Ouverture, in Haiti, who with his ragged troops sent the finest flower of the French Army back in disgrace. Is that what we are bargaining for?

Is there anyone so naive as to believe that the President would ask for $700 million if he did not believe that now or in the foreseeable future, in the interest of victory, these funds for the purposes of bases and procurement would be needed?

There is another reason. There is but one passion on which to rely in our dealings with other nations. It is not love. I am not so naive as to believe that one people with an expansive heart can love another.

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

Mr. STENNIS. I yield 2 additional minutes to the Senator from Illinois.

Mr. DIRKSEN. Mr. President, I am not so naive as to believe that there is any other passion except respect for strength that will restore the position of our country and will ultimately bring victory to our arms in Vietnam, and will also carry out the commitment to keep intact the freedom that was vouchsafed to us with the accord at Geneva in 1954. That is about the whole situation.

I dislike to inject this note, but on the 7th of February the Communist Party of Illinois met in Chicago. They sent out the word by telegrams: "Write to your Senators; write to your Representatives. Tell them to insist on sitting down at the negotiation table." What was the word? They said we were "the brutal aggressors" in Vietnam. What an appellation to apply to the country where they were nurtured and gained their sustenance. I do not want to be in that class. I do not ever want it to be said that they finally succeeded in persuading enough people, finally, to relent in our efforts in Vietnam, and then to crow about it and say how they are influencing American policy both at home and abroad, thereby humbling this great Republic. It would be a tragedy of the first order if that should ever happen.

My regret is that the joint resolution, perforce, probably will not carry by a unanimous vote of the Senate. I recognize fully the right of my distinguished friend from Oregon [Mr. MORSE] to say what he wants about the joint resolution, but I do not share his views.

Mr. MORSE. Mr. President, I yield myself 2 minutes.

We have heard it, now, from within the Senate, as well as from within the White House: "Criticize the warmaking policy of this administration, and you aid and abet Communists." That is the smear.

Let me say on the floor of the Senate that a person who does not believe in the unjustifiable war of Johnson in South Vietnam has the duty to take the facts as he sees them to the American people. But I say to my friend from Illinois [Mr. DIRKSEN]: "I would be perfectly willing to let those thousands of GI's determine whether that war ought to be conducted, by way of a referendum in South Vietnam and North Vietnam." I, too, have received their communications; I have listened to some of the

tapes that had to be smuggled out of South Vietnam by war correspondents because of the policy of this administration to deny freedom of the press in South Vietnam. We have had presented to us the spectacle of an administration that really has sought to censor a free press in South Vietnam.

Thousands of our soldiers want to know what they are doing in South Vietnam. Those who want to keep them there ought to offer themselves as substitutes for the boys who want to know why they are over there, and should go over and do the dying for them. That ought to be the policy of those who are so desirous of keeping the boys in South Vietnam in an undeclared war.

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

Mr. MORSE. I yield myself an additional minute.

Until there is a declaration of war, this voice will not be silenced by the Senator from Illinois [Mr. DIRKSEN], the President of the United States, the Communist Party of Illinois, by Hanoi or Peiping or any other force, because I do not yield to the Senator from Illinois or to the President in my devotion to my country. My patriotic duty is to try to do what I can to help lead my President into an honorable negotiated settlement, by asking him and pleading with him to return to our obligations under signed treaties, to stop violating the Geneva accords to stop violating the United Nations Charter, and to stop carrying on what is, in my judgment, a war outside the Constitution of the United States.

I ask unanimous consent that at the conclusion of these remarks there be printed the article "War With China?" by Prof. Hans Morganthau from the April 3 issue of the New Republic; a telegram from Congressman DON EDWARDS, chairman of Americans for Democratic Action; and an editorial from the May 5 St. Louis Post-Dispatch entitled, "A Crying Need for Debate."

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

[From the New Republic, Apr. 3, 1965]

WAR WITH CHINA?

(By Hans J. Morgenthau)

It illuminates the many misunderstandings that beset our Vietnam policy that in order to criticize that policy in public one has first to justify one's right to do so. The President himself has declared such criticism to be unhelpful and even damaging. A former President has supported him, and many eminent men interviewed on television and elsewhere have at least implied that to support these policies was the only decent thing to do under the circumstances. This position is incompatible both with the principles of democracy and the requirements of sound policy formation.

The Constitution assigns to Congress the right to declare war. How can Congress discharge this function if its Members and the citizens who have elected them are precluded from discussing the merits of the issues which might lead to war? The Constitution implies that Congress has a choice in the matter of war. How can it make that choice if neither it nor the people it represents have the right to debate the issues? To say that the most momentous issues a nation must face cannot be openly and critically discussed is really tantamount to saying that democratic debate and decision do not apply to the questions of life and death and that, as far as they are concerned, the people have given carte blanche to one man.

Not only is this position at odds with the principles of democracy, but it also removes a very important corrective for governmental misjudgment. Would Great Britain have been better off if in the months preceding and following the outbreak of the Second World War Churchill had kept quiet and rallied behind Chamberlain, however disastrous he thought his policies to be? The Chamberlain government was driven out of office in the midst of war; was it the duty of the opposition to keep quiet and rally behind it? Should the German Reichstag have kept silent in 1917 instead of passing a resolution asking for a peace with annexations? The German Government of the day indeed thought so, but history showed that the parliamentary opposition had better judgment that the Government. In the years preceding Pearl Harbor, this country engaged in a great debate about the best foreign policy to follow. Did the country not benefit from this clarification of the issues and was its later unity not in good measure founded upon it?

Two main arguments are advanced in favor of the proposition that the people should rally behind the President and not criticize his Vietnamese policies. One is that only the President has all the facts and therefore only he has the right to judge. The truth is that nobody has all the facts and nobody needs them all. What both the President and his critics need and have are the relevant facts, and what they need more than anything else is sound judgment. No one man can have a monopoly of that judgment. More particularly, the President cannot have it under present conditions.

It must be obvious to anyone who is acquainted with the President's principal advisers that the most powerful advice he gets seeks the extension of the war, and that it is hardly anything more than his innate good sense that has thus far prevented these advisers from carrying the day completely. The President ought to welcome, rather than regret, those voices from Congress and the public at large which give arguments and support to his sound instinct. The President would no doubt have personally an easier time of it, but only in the short run, if his Vietnamese policies were not exposed to criticism. Yet what the President must seek is not the convenience of one day but the approbation of history for all time to come. President Johnson is as conscious of his historic mission and of his place in history as any of his predecessors. Why, then, does he in this instance not practice what he knows to be right?

The answer to this question is to be found in the other argument in favor of silently rallying behind the President. It is the conception of consensus. Certainly the political health of the Nation and the effectiveness of government are greatly enhanced when the policies of the government are supported by the great mass of the people. But consensus is a means to an end, not an end in itself. Here is one of the differences between a totalitarian and a democratic society. In the former, disent is a moral vice and a political crime by definition and, conversely, consensus is the ultimate good. In a democracy, the ultimate standard is the soundness of policy for the support of which popular consensus is sought.

The democratic statesman is faced with an inevitable dilemma if he cannot get popular support for the sound policies he would like to pursue. He will choose the easy disastrous way out if he sacrifices sound policies on the altar of a fleeting popularity. If he chooses to pursue the policies he deems to be right against the opposition of the popular consensus, he must seek to change the consensus in favor of his policies in order to be able to pursue them. Doing this, he risks domestic political failure, but if he succeeds domestically, he will gain the immortality of a great statesman.

George Washington knew how to resolve this dilemma of democratic statesmanship. He proclaimed the neutrality of the United States in the War of the First Coalition against revolutionary France in 1793, while the popular consensus fervently wanted him to join France in that war. For weeks, crowds roamed the streets of Philadelphia clamoring for Washington's head, and John Marshall reports in his biography of Washington that if a motion for Washington's impeachment had not been tabled in Congress, it would have passed with an overwhelming majority. Yet if Washington had made consensus the ultimate yardstick of his policy, he would have gone down in history as the wrecker, not the father, of his country.

TWO DIFFERENT ANSWERS

A critical assessment of our involvement in Vietnam must start with the question, Why are we involved in Vietnam? Spokesmen for our Government have given two different answers. One answer is implicit in the Secretary of State's often repeated statement that our military mission in Vietnam will end when North Vietnam leaves its neighbor alone. In other words, we are in Vietnam in order to protect the independence of a sovereign state. Once that sovereignty is assured we can go home. It follows from this position that we would not presume to control the way in which that sovereignty might be exercised. If, for instance, the Vietcong should take over the Government in Saigon without support from the North or if a South Vietnamese Government should come to an understanding with the North through which the country would be united under Ho Chi Minh, we would not intervene.

The other answer to our question has been most clearly formulated by the Secretary of Defense when he said on February 18 that "the choice is not simply whether to continue our efforts to keep South Vietnam free and independent but, rather, whether to continue our struggle to halt Communist expansion in Asia." It is the same answer Senator DODD has given at length in his Senate speech of February 23. This answer is tantamount to saying that we shall oppose communism in South Vietnam or wherever else we find it in Asia, by military means if necessary. In other words, we shall contain communism in Asia, as we have contained it in Europe. Other official spokesmen, such as Under Secretary of State Ball, in his speech of March 16, have expressed the same thought less concisely by defining our mission in Asia as the defense of "freedom," that is, of non-Communist governments, against communism.

It is obvious that these two positions are irreconcilable. For if one takes the Secretary of State at his word, then we are engaged in a limited undertaking which could be liquidated through a negotiated settlement without too much difficulty. If Hanoi made a gesture toward noninterference in the affairs of South Vietnam, we could find a formula which would allow us to disengage ourselves from South Vietnam. If, on the other hand, one takes the Secretary of Defense at his word, then we are engaged in a global crusade against communism which we must fight wherever we find it. Consequently, there is no possibility for a negotiated settlement, and we shall stay in South Vietnam as long as communism threatens to expand in Asia, that is, indefinitely.

There can be no doubt, on the basis of external and internal evidence, that the position of the Secretary of Defense is at present

in the ascendancy in our Government. It is with that position, therefore, that I am here concerned. I am emphatically opposed to it on two grounds: because of the intellectual errors from which it derives, and because of its likely consequences.

The intellectual errors of that position are two: misunderstanding of the nature of contemporary communism; misunderstanding of the policy of containment.

We are in Asia in order to contain communism. But what do we mean by communism? To answer that question we must take a critical look at the two equations that provide the implicit foundation for our Asian policies. On the one hand, we have equated communism with the power of China; on the other hand, we have equated communism anywhere in Asia with Chinese communism. Yet what has been true of the Soviet Union in Europe has proved to be true also of China in Asia: that the basic direction of her policies is determined primarily by her traditional national interests, and that communism only adds a new dynamic dimension to the means by which those policies are to be achieved. In other words, the fundamental fact in Asia is not that China has a Communist government but that she has resumed her traditional role as the predominant power in Asia. That that power has been restored under Communist auspices is the only relevant fact for our anti-Communist crusaders. Yet it is but of secondary importance to the nations of Asia which, from Japan to Pakistan, behold with awe and admiration the new Chinese power and try to come to terms with it.

The identification of Asian with Chinese communism is similarly the result of the crusading opposition to communism as a political philosophy and a way of life. Such identification is justified in philosophy and ethics, but it has no place in foreign policy. For it is an obvious fact of experience that in the conduct of our foreign policy we are faced not with one monolithic communism, but with a number of different communisms whose character is determined by the character and the interests of the particular nation embracing it. Thus we find in Asia, as elsewhere, different kinds of communism whose relations to China and the Soviet Union range all the way from complete independence to complete subservience. To treat all these communisms alike on the assumption that they are all equally subservient to either China or the Soviet Union or to both is the height of doctrinaire folly. In its intellectual debility, it is no different from the doctrinaire excesses of a vulgar Marxism which sees the capitalistic world as a monolithic monster bent upon the destruction of communism.

Not only is such an attitude of indiscriminate hostility intellectually untenable, but it also precludes any possibility at diplomatic maneuver, subtle bargaining, and tolerable accommodation. In other words, it renders impossible the conduct of a foreign policy worthy of the name. One only needs to consider in the light of such opportunities for creative diplomacy the present relations among the United States, the Soviet Union, China, North and South Vietnam in order to see how self-defeating this doctrinaire crusading attitude toward communism is. Instead of bombing North Vietnam because we don't know what else to do, we would at least have a chance at bending the situation in southeast Asia to our rationally defined interests if the President were advised by a Richelieu, a Talleyrand, a Bismarck or—why go abroad?—a Hamilton.

FOREIGN POLICY CURSE

Alas, the President of the United States has no such advisers. Instead, he is advised to continue our struggle to halt Communist expansion in Asia, regardless of its character, its aims, its relevance to the interests of the United States. For such simple-minded conception of the enemy, the complexities and subtleties of diplomatic maneuver hold no promise. It needs an instrument as simple, indiscriminate, and crude as itself, and it has found such an instrument in the policy of the peripheral military containment of China. Here we are in the presence of the other intellectual error that dominates our Asian policy.

It seems to have been the curse of our foreign policy since the end of the Second World War that it has become the victim of its own successes. The Marshall plan was eminently successful in Europe, and so we have fashioned a global policy of foreign aid on the assumptions of the Marshall plan. The policy of containment was eminently successful in Europe, and so we have extended it to the rest of the globe.

Yet the factors which made the policy of containment a success in Europe are present nowhere else and least of all in Asia. First, a line could be drawn across the European Continent which clearly delimits the Western borders of the Soviet Empire. Second, two armies face each other across that line of demarcation, which is guaranteed symbolically by the presence of American troops and actually by the nuclear power of the United States to which the Soviet Union is vulnerable. Third, to the west of that boundary there lies an ancient civilization which was but temporarily in disarray and proved itself capable of containing Communist subversion. These factors add up to a threat which is primarily military in nature and to be countered primarily by military means. None of these factors is present in Asia.

The threat here is not primarily military but political in nature. Weak governments and societies are exposed to Communist subversion, which may or may not be an extension of Chinese power, as Chinese power may or may not be carried abroad by communism. Military containment has no bearing upon such a threat. Thus SEATO has been irrelevant to the expansion of Chinese influence into Indonesia and Pakistan. More particularly, China can, in the present state of her development, be hurt but not destroyed by nuclear weapons.

But even if the threat emanating from China were primarily military in nature, it could not be contained through the defense of accidentally selected local outposts at the periphery of China. For since the ascendancy of China in Asia is due primarily to its cultural and political predominance, it is futile to think that one can contain that predominance by militarily defending South Vietnam or Thailand. That Chinese predominance is as much a fact of life as is American predominance in the Western Hemisphere, and our attempts to contain Chinese predominance in Asia through local military operations is about as sensible as would be China's trying to contain the American predominance in the Western Hemisphere by committing her military forces in defense of one or the other of the Latin American countries.

Whoever wants to contain American predominance in the Western Hemisphere must strike at the very sources of American power; he must destroy that power itself. The same conclusion applies to the containment of China. Thus the policy of the peripheral military containment of China leads with logical necessity to war with China. Such a war cannot be fought with even a remote chance for success from the air and the sea; it must be fought and won where the sources of Chinese power lie, that is, on land. It must be fought as Japan tried to fight it, from 1932 to 1945, without ever coming close to winning it.

It is beside the point that all our leaders, past and present, even those who have deemed a war with China inevitable, have recoiled from the idea of sending millions of American soldiers to the mainland of Asia to fight. President Eisenhower said on February 10, 1954, that he "could conceive of no greater tragedy than for the United States to become involved in an all-out war in Indochina," and General MacArthur, in the congressional hearings concerning his dismissal and in personal conversation with President Kennedy, emphatically warned against sending American soldiers to the Asian mainland to fight China. We are here concerned not with the intentions of statesmen but with the inevitable consequences of their policies. None of the statesmen who made the fateful decisions in July and August 1914, could have looked back in November 1918, on the European scene and said, "I planned it that way." Yet what happened in Europe during the First World War was the inevitable result of what statesmen decided at its beginning, without wanting or even imagining the consequences. As Mephistopheles said to Faust: "At the first step you are free, at the second you are a slave."

In Vietnam today, we are in the process of taking that fateful first step. At the moment of this writing, at least, our policy is still ambiguous. On the one hand, it seeks to create a position of strength from which to negotiate. There is an ominous similarity between this attempt to fashion somehow out of the wreckage of a lost war a favorable negotiating position, and the French policies leading to the surrender at Dienbienphu. General Navarre's last offensive also sought to establish favorable conditions for a negotiated French withdrawal, and the concentration of the French forces in strong points like Dienbienphu was to serve the protection of those armed forces from uncontrollable guerrilla actions. Is Danang destined to become the American Dienbienphu? And if it is, shall we follow the French example and withdraw, or shall we go forward until we encounter China? It is here that the ambiguity of our present policy comes into play.

The extension of the war into North Vietnam can be interpreted as an attempt to create in Hanoi the psychological precondition for a negotiated settlement. But it can also be interpreted as an attempt to change the fortunes of war in South Vietnam by rupturing the assumed causal nexus between the policies of Hanoi and the victories of the Vietcong. This causal nexus is a delusion, which has been given the very flimsy appearance of fact through the white paper of February 28. A policy derived from such a delusion is bound to fail. Yet when it has failed and when failure approaches catastrophe, it would be consistent in terms of that delusionary logic to extend the war still farther. Today, we are holding Hanoi responsible for the Vietcong; tomorrow we might hold Peiping responsible for Hanoi. "At the first step you are free, at the second you are a slave."

To call attention to these implications of our present policies has nothing to do with pacifism, isolationism, appeasement, and softness on communism. The difference between calling attention to these implications now, when we have still the freedom of choice, and of stumbling unawares deeper and deeper into a morass from which there is no retreat, is the difference between prudence and recklessness; between a rational, discriminating understanding of the heirarchy of national interests and the power available for their support, and a doctrinaire emotionalism which drowns all vital distinctions in the fervor of the anti-Communist crusade.

France owes more to Mendès-France who liquidated the Indochinese War, and to De Gaulle who stopped the fighting in Algeria, than to those who wanted to continue fighting without regard for the limits of their country's interests and power. Those few

who warned Athens against the Sicilian expedition, which was to become the grave of Athens' greatness, were better patriots than its promoters. To point to the likely consequences of present policy is, then, not only a right, which ought not to require apologetic assertion, but it is also a duty, burdensome yet inescapable.

[From the St. Louis Post-Dispatch, May 5, 1965]

A CRYING NEED FOR DEBATE

President Johnson's request for $700 million more to prosecute his military adventures in Vietnam and the Dominican Republic ought not to be approved by Congress without thorough and extended debate.

The President concedes that he does not need the appropriation to prosecute his two armed excursions; he has ample authority to transfer already appropriated funds to meet any emergency needs. He wants a new appropriation solely to demonstrate "a firm and irrevocable commitment" behind his policies in Asia and the Caribbean. In other words, he is using a political bludgeon to halt debate and criticism of those policies.

We do not doubt that the appropriation can be blackjacked through Congress. But, for once, the legislative branch which so frequently complains of executive usurpation should firmly insist on its duty to examine carefully what it is the Nation is asked to support with "a firm and irrevocable commitment."

Men like Senators FULBRIGHT, of Arkansas; MANSFIELD, of Montana; CLARK, of Pennsylvania; MORSE, of Oregon; NELSON, of Wisconsin, MCGOVERN, of South Dakota, CHURCH, of Idaho; AIKEN, of Vermont—all of these Senators and others who have shown the independence to do their own thinking on foreign policy and the courage to differ with the President now ought to stand up and be counted.

It is essential that the American people understand what is at stake in a foreign policy that comes closer to the triggerhappy philosophy of Barry Goldwater than to the principles which Lyndon Johnson proclaimed when he won the peoples' votes last November. A calm and rational Senate debate would contribute to that public understanding; whooping the appropriation through in a surge of follow-the-leader emotion would betray the constitutional responsibilities of Congress.

Do the American people really want to use armed power for the purpose of dictating internal politics in any country anywhere in the world? Do they really believe it is our mission to intervene with force in any domestic revolution which our leadership unilaterally proclaims to be "undesirable"?

These questions are posed in their sharpest form when armed intervention takes place simultaneously in the Caribbean and in Vietnam, 12,000 miles away. It can be argued that our national security is closely engaged in the Caribbean and we have a special interest there which justifies the President's policy. In that case, what justifies the same policy in Vietnam? If the United States has the right to say what kind of governments shall exist in the Caribbean, why does not China have the same right as regards Southeast Asia?

Some Americans hold that the doctrine of great-power spheres of influence warrants some such trade as that. We disagree. A nation does have the right to take action against overt military threats against its homeland. That is why President Kennedy was justified in threatening force to get Soviet missiles out of Cuba. But it is quite another thing to say that we also have the right to decide what kind of governments our neighbors can establish. Whether or not hostile governments shall exist (Communist or otherwise) is not a question for us to determine, even in our "sphere of influence"—least of all when we have signed an inter-American treaty explicitly forbidding unilateral intervention.

Such questions as these cry out for a comprehensive Senate review of the dangerous road President Johnson is traveling. Failure to debate his appropriation request fully and deeply would be an inexcusable dereliction of duty.

WASHINGTON, D.C.
May 6, 1965.

Hon. WAYNE MORSE,
Old Senate Office Building,
Washington, D.C.:

Americans for Democratic Action supports your efforts opposing President's $700 million request for Vietnam. Such funds represent unnecessary authorization and constitute ratification by Senate of expanded conflict which may bring wider war. ADA believes time is right now for full discussion of war in Vietnam in open foreign policy committee hearings before further steps are taken.

Representative DON EDWARDS,
Chairman, Americans for Democratic Action.

Mr. STENNIS. Mr. President, I yield 2 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. TOWER. Mr. President, I fully support the President's request for additional funds for the Vietnam fight against Communist aggression and terror. I hope all Americans will support the President. Communism can be stopped in southeast Asia, and stopping communism now will preserve the peace of the world for the future.

It had been my fear for several months that the present defense budget, and the budget planned for the next fiscal year, provided insufficient funds to support American commitments against increasing Communist pressures. I was pleased that this year both the House and the Senate Armed Services Committees authorized increases in the budgets prepared by the Defense Department.

There was a particular concern that attrition of our attack planes and helicopters could not adequately be compensated for under funds originally budgeted, and I think the President and the Nation have made a wise choice in providing additional money to insure that we are not caught short in the face of present and future Red moves.

For the sake of future peace, we resist tyranny today, and for the sake of future peace, I support our President in the actions he has thus far taken to thwart communism's advance.

As a very frequent and severe critic of Lyndon Baines Johnson, I am proud to rally around and support my President in bringing an end to Communist encroachment in this world. I fervently hope that the Senate will give a resounding endorsement to the President's request.

Mr. STENNIS. Mr. President, I yield 5 minutes to the senior Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. SALTONSTALL. Mr. President, we are faced with a realistic but a simple fact. Our troops are in South Vietnam and we must supply them.

As a senior representative on the Armed Services Committee, and a senior representative on the Appropriations Defense Subcommittee, I support the additional request of the President.

I have talked with the Secretary of Defense. I have listened to the testimony of General Wheeler, Chairman of the Joint Chiefs of Staff. I have talked with the Under Secretary of Defense.

Our armed services need this appropriation to build up the safety, comfort, and security of our men in South Vietnam, to supply them with American airplanes, and maintain them with food and supplies.

We hope and pray that there may be negotiations that will lead to the end of the conflict in southeast Asia. But, until this comes about, we must see to it that our soldiers, sailors, and aviators are supplied. That is what this appropriation would help to do. Let us pass it overwhelmingly.

Mr. STENNIS. Mr. President, I yield 1 minute to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 1 minute.

Mr. SIMPSON. Mr. President, I should like to add my comments to those of Senators who support the President in his request for an appropriation of $700 million to bolster our efforts to win the war in Vietnam.

I wholeheartedly applaud the forthrightness of our President in the sending of additional U.S. troops to Vietnam and for his courage in committing military personnel to the Communist-controlled revolution in the Dominican Republic.

As I see the facts, there is a relationship between the war and the revolution. Although separated by half the world, they both reflect continuing efforts to implement communism's plan for world conquest. Regardless of whether or not the Dominican revolution could be termed a well-planned effort by Fidel Castro to involve the United States in a second front and take her eyes and efforts from Vietnam, there can be little doubt that the Dominican revolution represents in itself a profoundly serious challenge to the freedom and security of the Western Hemisphere.

Much was said on the floor of the Senate some 2 years ago about that celebrated doctrine articulated by President Monroe. The death of the Monroe Doctrine was toasted in many capitals, while a number of Senators, myself included, were pointing out that the doctrine was never law or a treaty, but only the announced and enforced policy of Presidents of the United States. Its strength and credibility were only as great as the strength and credibility of the American President. In his hands the doctrine was either sterile, an anachronism, or an instrument of policy.

In the Dominican crisis I believe we have seen verified the assertion that the doctrine was never dead, only dormant. In the American response to the Communist takeover of the Dominican revolution, we see the apparent determination of the United States to breathe life back

into what has been historically the cornerstone of hemispheric foreign policy.

In regard to the Dominican crisis, I ask unanimous consent that an editorial from the May 2 Casper, Wyo., Star-Tribune be printed in the CONGRESSIONAL RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. SIMPSON. Mr. President, we are concerned primarily with the war in Vietnam, for it is to southeast Asia that the moneys appropriated today by the Congress will be sent.

One distinguished columnist has described Vietnam as the wrong war at the wrong place at the wrong time. Admittedly, there could have been since 1945 a more propitous time in which to challenge Communist expansion. The independence and autonomy of the free world have been challenged repeatedly by the Moscow- and Peiping-based philosophies that are determined to conquer the world by the convenient process of "wars of liberation," subterfuge, assassination, and all of the little clandestine ploys that fall short of war in the classic sense. We could and should have made a stand in Cuba, but we did not and we are paying in Santo Domingo the price of our indecision.

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

Mr. STENNIS. I yield the Senator one-half minute.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for one-half minute.

Mr. SIMPSON. Mr. President, the war in Vietnam—the war in which aggressors from the north have crossed over a recognized international boundary to attack a state in the south—has become the arena in which the reliability of American resolution and the credibility of Communist revolution are met and joined in battle. Every principle with which the United States has identified itself in the nearly 200 years of its existence, and every solemn commitment to stand at the defense of an ally and a friend is at stake in Vietnam. But even more important are the simple but vital lessons of history which suggest that aggression unchecked feeds upon aggression, that little wars beget big wars if they are not stopped before they can burgeon, and that a big war in this era of nuclear weaponry and pushbutton tactics could produce a disaster of immeasurable proportions.

If we fail to fight in Vietnam and if the Congress, Republicans and Democrats alike, fails to give the President its unequivocal support in the prosecution of this "dirty little war," the day may come when we must fight a powerful and rapacious nation peopled by one-fifth of the world's population. We will then be fighting that nation when its military superiority in relation to ours is far in excess of that ratio today. We may have to fight that nation when this schism between it and its competitor for power in the Communist camp has been bridged. We may then face a Communist phalanx extending from Siberia, to Stettin, to Indonesia, while behind us poises the most heavily fortified island in the world, Cuba, ready to pummel us from behind with the Soviet-supplied weaponry which today makes that island the second most powerful military force in the Western Hemisphere.

The war in which we are engaged today in southeast Asia can be considered a preemptive conflict. It is an alternative. It may prove to be the only alternative we have to engaging mainland China in open hostilities. It is notice to the Communist camp that the days are gone in which America acquiesced meekly in communism's quiet conquest of nations.

If we fight and win in Vietnam, we may not have to fight and win in China. If we fight and lose in Vietnam, or if we negotiate and lose, we will have given the green light to Communist expansion on at least two continents and signaled the end of what during the past few months has been a clear sign to international communism that "you have gone this far, but you may go no farther."

I believe no more prophetic or topical utterance can be found to put the war in Vietnam in perspective than the words of Winston Churchill:

> Still, if you will not fight for the right when you can easily win without bloodshed; if you will not fight when your victory will be sure and not too costly; you may come to the moment when you will have to fight with all the odds against you and only a precarious chance of survival. There may even be a worse case. You may have to fight when there is no hope of victory, because it is better to perish than to live as slaves.

EXHIBIT 1

[From the Casper (Wyo.) Star-Tribune, May 2, 1965]

DOMINICAN CRISIS

The right and the duty of the United States to protect its nationals anywhere in the world should be recognized. The action in sending marines to the Dominican Republic is in an American tradition which unfortunately has become somewhat faded in recent years.

With the current international political philosophy that has become so rampant, it is not surprising that there should be loud protests by demonstrators in a number of Latin American countries. Any strong action taken by the United States leads to the cry of Yankee imperialism and aggression.

Whether the United States has either the obligation or the justification to shore up a particular government, is another question, but in this instance there appears to be ample evidence that the rebellion has been engineered by Communists trained in Cuba and Czechoslovakia. The American record in its dealing with the Cuban situation has left much to be desired. The quick and firm action in regard to the Dominican Republic should restore some badly needed prestige in the Western Hemisphere.

Venezuela's accusation that the United States has violated the Charter of the Organization of American States may have some technical validity. There are times, however, when it is not the part of wisdom to wait on technicalities.

Mr. STENNIS. Mr. President, I yield 1 minute to the Senator from Louisiana.

Mr. LONG of Louisiana. Mr. President, it is clear that the Nation is committed. Perhaps some of us do not like it to be that way. Nevertheless, this country is committed to defending South Vietnam against aggression.

Speeches delivered on this floor and votes which would suggest that this Nation should get out of Vietnam at a time when we are fighting to defend that which we are committed to defend contribute to the Communist notion that they can put pressure upon us, and that if they continue their campaign of assassination and terror and step it up, America will pull out.

The only successful measure that we have managed to develop by which to stop Communist aggression is a show of strength. I hope that we will show that strength here today.

Mr. STENNIS. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

Mr. PASTORE. Mr. President, the only question before the Senate today is whether we shall grant the request of the President of the United States and appropriate $700 million.

Whether we should have become a party to SEATO in the first place is subject to debate. Whether we should have committed our boys in Vietnam at anytime is subject to debate. Whether we should negotiate at this time is subject to debate. However, what is not subject to debate is that while thousands of our boys are committed in that area of the world, we in the United States owe them all our support. That is why the $700 million is being requested. That is the reason why we should vote for the joint resolution this afternoon.

I hope and pray that there would not be one single vote in opposition to prove to the rest of the world that America is behind her boys 100 percent, without equivocation, without reservation, and without question.

Mr. STENNIS. Mr. President, I yield 2 minutes to the majority leader.

Mr. MANSFIELD. Mr. President, the Senate is about to vote on the pending measure. As majority leader, I shall vote in favor of it. It will pass overwhelmingly. But let no one misunderstand this vote.

There is not one Senator who does not regret, with the President, the necessity for it. There is not a Senator who would not prefer, with the President, that a decent peace might be achieved quickly in Vietnam. But we will vote for this measure because there is not one Member of this body who does not desire to uphold the President and those who are risking their lives in seeking to carry out the policies of this Government. Even Senators who vote against this measure do so out of a sincere conviction that it is the best way to help him. And let no one question the sincerity of the motives, the beliefs, and the patriotism of any Member of this body, regardless of how he may vote.

This request for funds has come to us from the President on the basis of his belief that the action we are about to take is necessary for the effective conduct of the policies and defense of the United States.

That is his decision. No man can share that decision with him. It is his

responsibility and his burden. All we can do is to give him as much support as we are able to give.

He wants this support, and he shall have it.

Mr. MORSE. Mr. President, I yield myself 5 minutes under the arrangement which I have with my good friend, the Senator from Mississippi, that he take 5 minutes and I take the remaining 5 minutes.

The issue before the Senate this afternoon is not the issue of a bill involving $700 million to be made available for the war in Asia. The $700 million is not needed. The President's lips have told the country so.

The boys in South Vietnam now have the best equipment which this Republic can supply. They have adequate resources to get all the additional equipment they need as of now. The President himself has told the American people that he has the authority without even coming to Congress to provide the funds with which to supply the equipment.

Let us face the issue. What the President is doing is using this resolution calling for $700 million to supply funds which he can use—which he does not need because he already has access to the funds—as the vehicle for obtaining a vote of confidence from the Congress of the United States for his policies in Vietnam.

That is the issue. In my judgment, we cannot justify giving him that vote until the President himself makes some drastic changes in his policy.

I recapitulate the position I have taken on this floor for a year and a half. This is a position which the voice of the Senator from Oregon has been pleading for across the country, as he has on the floor of the Senate. I want to pay my great respects to my great teacher, the Senator from Alaska [Mr. GRUENING], for he and I have stood up against the opposition to this policy as Members of Congress have rubberstamped the action of the President in an illegal war in Asia, as they have rubberstamped his action in violating the constitutional responsibility that rests upon the President in conducting a war without a declaration of war.

That is the first change in Presidential policy I shall continue to plead for across the land. There are millions of Americans who agree with me. There is not a Senator who does not have thousands of constituents who agree with the Senator from Alaska and the Senator from Oregon.

The first thing the President ought to do is ask for a declaration of war against Vietnam. That is the only place I know of to be cited as a place making war against the United States.

I answer those who ask me the $64 question, the smearists who would like to topple me, that if the President asked for a declaration of war tomorrow, I would vote against it. In my judgment, we cannot justify a declaration of war until our country has tried to keep its international commitments.

That is the second thing the President should do. He should live up to the signing by our country of the United Nations Charter. The day is long past when that should have been done. It should be done when a threat to peace occurs in any area of the world. It should have been done when the violation of the Geneva accords began, which accords we did not sign, and which we induced our puppet, Ngo Dinh Diem not to sign. That question should have been laid before the United Nations. Every nation that signed the United Nations Charter also stands with the United States in violation of that charter.

Mr. President, have we forgotten San Francisco? Have we forgotten the pleas of Roosevelt, Vandenberg, and Truman? Have we forgotten the dark days of this Republic when, on the floor of the Senate, we voted to confirm or ratify that Charter, by which we pledged to the world that we stood for the substitution of the rule of law for the jungle law of military power? We stand in violation of that pledge.

I shall continue to oppose this illegal action. The President should ask for a declaration of war. If it is presented, I will vote on the basis of the facts at the time it is presented, but once it is declared I shall then be silent and stand in unity behind the President.

I want my President to get behind the framework of the Constitution and the framework of the United Nations Charter.

Mr. STENNIS. Mr. President, I yield myself such time as I may have remaining.

I speak with the greatest deference to every Senator who is opposed to this bill. I know they do so in the greatest of good faith. I have listened to every word of this debate. I have heard mention of President Eisenhower, Former Secretary of State Dulles, and President Johnson. This is not a question of whether President Eisenhower, Former Secretary Dulles, or President Johnson is or was right or wrong. The only question is, Are we going to give the men who we have already sent off to do jungle battle the tools with which to fight? That is the only question.

This is an appropriation measure. No Senator has attacked the figures in it. No Senator has questioned how the figures were arrived at.

Some question was raised as to the way this measure was rushed through a joint meeting of the Armed Services Committee and the Appropriations Committee. The joint meeting was well attended. We had before us the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. They made their statements. Every Senator present asked questions and was given all the time he requested. I am certain that every single one of them will support the joint resolution when it comes up for passage.

It has been said—and I believe a quotation of the President was used—that we already have the money, that we do not have to pass this joint resolution. I believe that is a fair comment. Something to that effect is in the President's message. But when we get down to the actual figures, in certain categories, the only money available for this fiscal year that can be expended is limited. For example, in military construction there is only $20 million available for reprograming.

There is something like $30 to $50 million that can now be made available by transfer for operation and maintenance costs. Already the operations in southeast Asia have almost depleted those funds. Some of our military programs elsewhere are being deferred because of what has happened. Members of the legislative branch have mentioned this and urged that something should be done to set up a fund to use for this purpose.

We can go into the next fiscal year and start depleting those funds, but the day will come—it has already come—when we must do something through special appropriations. That is the only question before us. The purpose of this measure is not to review policy questions. The only question is whether we are going to back up our men with these funds. Combat in this area is expensive. One shot from an antiaircraft gun of 1942 vintage can knock down a $5 million airplane.

I speak with great respect to the Senator from Oregon. I agree that it might be well to have a review of this policy at the proper time. The policy questions involved could be discussed on an appropriate occasion. Perhaps there should be discussions with the President. Perhaps the Foreign Relations Committee should discuss it.

But to refuse to appropriate funds for defense is not the proper way to solve the problem. Barracks must be built. Warehouses must be supplied. We are suffering because of lack of runways and facilities for adequate dispersal of our aircraft.

This money should have been made available before now.

May I mention one thing parenthetically. This is the first military appropriation bill since 1933 that has been considered by this body that has not felt the guiding hand of our good friend the senior Senator from Georgia [Mr. RUSSELL]. I have not talked to him about this bill particularly. I know he is not happy about the current situation in Vietnam. But I know that if he were, he would be standing in the Chamber today with every nerve and every fiber of his body urging that the joint resolution be promptly passed, not only because the money is needed, but also because the message of its enactment will carry around the world—to our people and our friends and to our adversaries. I feel it in the air that he will be back with us soon. I know that will make every Senator happy, as I know it will make him happy.

No one knows what the future holds in store—not the Senator from Mississippi, not the Senator from Oregon—no one knows. No one can give a guarantee of the future.

However, I feel that if the Senate should refuse to pass the joint resolution or even should pass it by less than an overwhelming vote, that it will be notice to the world that the United States is backing up. The only inference

from that would be that soon the United States will pull out.

Furthermore, it would be a message to that effect, not only to the American people but also to our adversaries—Red China, Communist China, North Vietnam, and the other nations of the world which are not on our side.

Moreover, it would be a direct message sent by us to our fighting men whom we sent forth to foreign lands, that we are not going to back them up with a sufficient quantity of the tools of war. If the Senate should do that, it would be the first time that this great Government ever sent its men to fight on foreign soil, or to fight on any soil, and then failed to provide the necessary money with which to purchase the tools of war.

God save our Nation from such a day. God save our boys from such a fate.

I hope that the Senate will give overwhelming and quick approval to the pending measure.

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

Mr. MANSFIELD. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield to the Senator from Montana.

Mr. MANSFIELD. If the Senator from Mississippi will allow me, I believe that in view of the debate yesterday and today, one statement should be made in conclusion and that is, to the best of my knowledge—and I believe I can state this unequivocally—no Member of this body has ever advocated withdrawal.

Mr. STENNIS. I do not believe I said that——

Mr. MANSFIELD. No, no—I know that the Senator from Mississippi did not say that any Senator has advocated withdrawal and I do not wish to imply that he did so. I merely wish the RECORD clearly to show that no one has suggested at any time during this debate, that any Member of this body has advocated withdrawal.

Mr. STENNIS. Very well. I thank the Senator from Montana.

The PRESIDING OFFICER (Mr. RUSSELL of South Carolina in the chair). The question is on the third reading of the joint resolution.

The joint resolution was ordered to a third reading, and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

On the question the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Arkansas [Mr. FULBRIGHT], and the Senator from South Dakota [Mr. MCGOVERN] are absent on official business.

I also announce that the Senator from Connecticut [Mr. DODD] is absent because of the death of his sister.

I further announce that the Senator from Montana [Mr. METCALF], the Senator from Georgia [Mr. RUSSELL], the Senator from Florida [Mr. SMATHERS], and the Senator from Missouri [Mr. SYMINGTON] are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota [Mr. BURDICK], the Senator from Connecticut [Mr. DODD], the Senator from Florida [Mr. SMATHERS], and the Senator from Missouri [Mr. SYMINGTON] would each vote "yea."

Mr. DIRKSEN. I announce that the Senator from California [Mr. KUCHEL] is necessarily absent, and, if present and voting, would vote "yea."

The result was announced—yeas 88, nays 3, as follows:

[No. 64 Leg.]

YEAS—88

Aiken	Hart	Mundt
Allott	Hartke	Murphy
Anderson	Hayden	Muskie
Bartlett	Hickenlooper	Neuberger
Bass	Hill	Pastore
Bayh	Holland	Pearson
Bennett	Hruska	Pell
Bible	Inouye	Prouty
Boggs	Jackson	Proxmire
Brewster	Javits	Randolph
Byrd, Va.	Jordan, N.C.	Ribicoff
Byrd, W. Va.	Jordan, Idaho	Robertson
Cannon	Kennedy, Mass.	Russell, S.C.
Carlson	Kennedy, N.Y.	Saltonstall
Case	Lausche	Scott
Church	Long, Mo.	Simpson
Clark	Long, La.	Smith
Cooper	Magnuson	Sparkman
Cotton	Mansfield	Stennis
Curtis	McCarthy	Talmadge
Dirksen	McClellan	Thurmond
Dominick	McGee	Tower
Douglas	McIntyre	Tydings
Eastland	McNamara	Williams, N.J.
Ellender	Miller	Williams, Del.
Ervin	Mondale	Yarborough
Fannin	Monroney	Young, N. Dak.
Fong	Montoya	Young, Ohio
Gore	Morton	
Harris	Moss	

NAYS—3

Gruening	Morse	Nelson

NOT VOTING—9

Burdick	Kuchel	Russell, Ga.
Dodd	McGovern	Smathers
Fulbright	Metcalf	Symington

So the joint resolution (H.J. Res. 447) was passed.

Mr. STENNIS. Mr. President, I move that the Senate reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

VOTING RIGHTS ACT OF 1965

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, if Senators will give attention, I should like to query the majority leader with respect to the time for the next vote, so that Senators may be advised.

Mr. MANSFIELD. In view of the unanimous-consent agreement, allocating 2 hours of debate on the Ervin amendment, 1 hour under the control of the distinguished Senator from North Carolina [Mr. ERVIN] and the other under the control of the distinguished Senator from Michigan [Mr. HART], I would anticipate that the Senator from North Carolina would use all of his hour, and that the Senator from Michigan would use a portion of his hour; and my guess would be that the vote on the amendment would be forthcoming between 4 and 5 o'clock.

Mr. GORE. Mr. President, what are the prospects for a vote tomorrow?

Mr. MANSFIELD. Rather thin. I do not know.

Mr. ERVIN. Mr. President——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. ERVIN. I yield myself 30 minutes, or so much thereof as I may use.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, the 15th amendment to the Constitution provides that—

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

I would favor a statute providing for the enforcement of the 15th amendment by means which are constitutional and which harmonize with a proper regard for the federal system of government, and which are essentially fair. I cannot vote for the pending bill in its present form because I consider it to be unconstitutional, incompatible with a proper respect for the federal system of government, and inconsistent with the fundamental principles of fairplay. For those reasons I propose my amendment No. 135. That amendment would remove the most serious constitutional objections from the bill and would bring the bill into harmony with a proper respect for the federal system and would introduce the fundamentals of fairplay.

I ask unanimous consent that a copy of my amendment be printed at this point in the RECORD.

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

> On page 2, line 8, change the figure 6 to the figure 5.
>
> On pages 4 to 8, both inclusive, strike out sections 4 and 5 in their entirety and insert the following in lieu thereof:
>
> "SEC. 4. When he has reason to believe that any State or political subdivision of a State is engaged in denying or abridging the rights of citizens to vote on account of race or color, the Attorney General may institute an action in the name of the United States in the district court of the United States against such State or political subdivision in the district in which the capital of the State in question is located or in which the political subdivision in question is situated, against such State or political subdivision, alleging that it is engaging in denying or abridging the rights of citizens to vote on account of race or color. Upon demand of the Attorney General, such action shall be tried by a three-judge district court convened in the manner prescribed by Sixty-second Statutes at Large, page 968 (28 U.S.C. 2284). In case the court finds on the trial of such action that the State or political subdivision in question is denying or abridging the rights of citizens to vote on account of race or color, the court shall so adjudge and shall authorize the appointment of examiners by the Civil Service Commission in accordance with sec-

tion 5 to serve for such period of time and in such political subdivisions of such State or such political subdivision as the court shall determine is appropriate to enforce the guaranties of the fifteenth amendment."

On pages 8 and 9, strike out everything from the semicolon on line 22 on page 8 through the word "amendment" on line 11 on page 9, and insert in lieu thereof the following: "or section 4."

On page 19, lines 14 and 15, strike out the words "any declaratory judgment pursuant to section 4."

Renumber sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 as sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.

Mr. ERVIN. Mr. President, I wish to modify my amendment. Since the yeas and nays have been ordered on the amendment, it will be necessary for me to obtain unanimous consent to do so. I therefore ask unanimous consent that I may modify my amendment by adding at the end of line 17 on page 2 an additional sentence reading as follows:

It shall be the duty of the judge or judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and discussion thereof, and to cause the case to be in every way expedited.

The PRESIDING OFFICER. Is there objection?

Mr. HART. Mr. President, may I ask the Senator for the substance of his request?

Mr. ERVIN. I was asking unanimous consent to modify my amendment so as to make my amendment No. 135 provide that cases arising under it would be expedited as far as possible.

Mr. HART. I have no objection.

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

Mr. ERVIN. In brief, my amendment would do the following things:

First, it would eliminate entirely the provisions of the pending bill which contain the so-called triggering device, and would substitute for them a requirement that the Attorney General should go into court, and prove, as a prerequisite to obtaining the appointment of Federal examiners, that a State or a political subdivision of a State was actually violating the 15th amendment by denying or abridging the rights of qualified citizens to vote on the basis of their race or color.

Second, it would give the Attorney General the option of having the case tried in the U.S. district court for the district in which the capital of the State is located or in which the political subdivision is situated, or to call for the appointment of a three-judge court to hear the case.

Third, it would provide that in the event the Attorney General established before the district court or the three-judge court trying the case that a State or political subdivision of a State was actually engaged in denying or abridging the right of qualified citizens to vote on account of race or color, Federal examiners could be appointed by the court and the other provisions of the bill would come into play, subject to one condition; namely, that the Federal examiners should determine the eligibility of persons seeking registration to vote according to the qualifications established by the State.

My amendment, if adopted, would do much to remove from the bill the most substantial objections based upon constitutional grounds and the most substantial objections based upon the disregard of this bill for our Federal system and the most substantial objections based upon the fact that the bill does not observe the essentials of fair play. The constitutional power to prescribe qualifications for voters belongs to the States. That is true because section 2 of article I of the Constitution specifies that those who vote for Representatives in the national House of Representatives shall possess the qualifications of electors of the most numerous branch of the State legislature. The same phraseology is repeated in the 17th amendment, which specifies in exactly the same words the qualifications of those who can vote for Members of the Senate of the United States.

The first section of article II of the Constitution provides that Presidential electors shall be chosen in the manner prescribed by the State legislatures.

The 10th amendment to the Constitution provides that all powers not delegated by the Constitution to the United States or prohibited by it to the States are reserved to the States or to the people of the States.

Every decision of the Supreme Court on the subject has given to these provisions of the Constitution their true meaning, and that is that the States have the constitutional power, expressly so far as Federal elections are concerned and by way of reservations so far as State elections are concerned, to prescribe the qualifications of voters in both Federal and State elections.

This interpretation was placed upon the Constitution by the Supreme Court in a number of cases, notably in the case of *Williams* v. *Mississippi*, 170 U.S. 225, *Guinn* v. *United States*, 238 U.S. 341, and *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45.

The most serious constitutional objection to the bill arises from the fact that the bill undertakes to nullify or suspend the constitutional power of seven States—Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia—to establish and use literacy tests as qualifications for voting in both Federal and State elections.

When the Supreme Court handed down its decision in the Lassiter case, which I have cited, it made the following statement in its opinion:

Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise.

It was said last century in Massachusetts that a literacy test was designed to insure an "independent and intelligent" exercise of the right of suffrage. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards. * * *

The present requirement, applicable to members of all races, is that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language." That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot.

Mr. President, I ask unanimous consent that the entire opinion in the Lassiter case be printed at this point in the RECORD.

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

SUPREME COURT OF THE UNITED STATES—LOUISE LASSITER, APPELLANT, *v.* NORTHAMPTON COUNTY BOARD OF ELECTIONS, 360 U.S. 45 No. 584.—OCTOBER TERM, 1958

(On Appeal From the Supreme Court of North Carolina, June 8, 1959.)

Mr. Justice Douglas delivered the opinion of the Court.

This controversy started in the Federal District Court. Appellant, a Negro citizen of North Carolina, sued to have the literacy test for voters prescribed by that State declared unconstitutional and void. A three-judge court was convened. That court noted that the literacy test was part of a provision of the North Carolina Constitution that also included a grandfather clause. It said that the grandfather clause plainly would be unconstitutional under *Guinn* v. *United States*, 238 U.S. 347. It noted, however, that the North Carolina *statute* which enforced the registration requirements contained in the State constitution had been superseded by a 1957 Act and that the 1957 Act does not contain the grandfather clause or any reference to it. But being uncertain as to the significance of the 1957 Act and deeming it wise to have all administrative remedies under that Act exhausted before the federal court acted, it stayed its action, retaining jurisdiction for a reasonable time to enable appellant to exhaust her administrative remedies and obtain from the State courts an interpretation of the statute in light of the State constitution. (152 F. Supp. 295).

Thereupon the instant case was commenced. It started as an administrative proceeding. Appellant applied for registration as a voter. Her registration was denied by the registrar because she refused to submit to a literacy test as required by the North Carolina statute.[1] She appealed to the County Board of Elections. On the *de novo* hearing before that Board appellant again refused to take the literacy test and she was again denied registration for that reason. She appealed to the Superior Court which sustained the Board against the claim that the requirement of the literacy test violated the Fourteenth, Fifteenth, and Seventeenth Amendments of the Federal Constitution. Preserving her federal questions, she appealed to the North Carolina Supreme Court which affirmed the lower court (248 N.C. 102, 102 S. E. 2d 853). The case came here by appeal (28 U.S.C. § 1257 (2)), and we noted probable jurisdiction (358 U.S. 916).

The literacy test is a part of section 4 of article VI of the North Carolina Constitution. That test is contained in the first

[1] This act, passed in 1957, provides in sec. 163–28 as follows:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section."

Sections 163–28.1, 163–28.2, and 163–28.3 provide the administrative remedies pursued in this case.

sentence of section 4. The second sentence contains a so-called grandfather clause. The entire section 4 reads as follows:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: *Provided,* he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration; and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article."

Originally article VI contained in section 5 the following provision:

"That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together."

But the North Carolina Supreme Court in the instant case held that a 1945 amendment to article VI freed it of the indivisibility clause. That amendment rephrased section 1 of article VI to read as follows:

"Every person born in the United States, and every person who has been naturalized, 21 years of age, and possessing the qualifications set out in this article shall be entitled to vote."

That court said that "one of those qualifications" was the literacy test contained in section 4 of article VI; and that the 1945 amendment "had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act" (248 N.C., at 112).

In 1957 the Legislature rewrote General Statutes 163–28 as we have noted.[2] Prior to that 1957 amendment section 163–28 perpetuated the grandfather clause contained in section 4 of article VI of the Constitution and section 163–32 established a procedure for registration to effectuate it.[3] But the 1957 amendment contained a provision that "All laws and clauses of laws in conflict with this Act are hereby repealed."[4] The federal three-judge court ruled that this 1957 amendment eliminated the grandfather clause from the statute (152 F. Supp., 298).

The Attorney General of North Carolina, in an amicus brief, agrees that the grandfather clause contained in article VI is in conflict with the Fifteenth Amendment. Appellee maintains that the North Carolina Supreme Court ruled that the invalidity of that part of article VI does not impair the remainder of article VI since the 1945 amendment to article VI freed it of its indivisibility clause. Under that view article VI would impose the same literacy test as that imposed by the 1957 statute and neither would be linked with the grandfather clause which, though present in print, is separable from the rest and void. We so read the opinion of the North Carolina Supreme Court.

Appellant argues that that is not the end of the problem presented by the grandfather clause. There is a provision in the General Statutes for permanent registration in some counties.[5] Appellant points out that although the cutoff date in the grandfather clause was December 1, 1908, those who registered before then might still be voting. If they were allowed to vote without taking a literacy test and if appellant were denied the right to vote unless she passed it, members of the white race would receive preferential privileges of the ballot contrary to the command of the 15th amendment. That would be analogous to the problem posed in the classic case of *Yick Wo* v. *Hopkins* (118 U.S. 356), where an ordinance unimpeachable on its face was applied in such a way as to violate the guarantee of equal protection contained in the 14th amendment. But this issue of discrimination in the actual operation of the ballot laws of North Carolina has not been framed in the issues presented for the state court litigation. Cf. *Williams* v. *Mississippi* (170 U.S. 213, 225). So we do not reach it. But we mention it in passing so that it may be clear that nothing we say or do here will prejudice appellant in tendering that issue in the federal proceedings which await the termination of this State court litigation.

We come then to the question whether a State may consistently with the Fourteenth and Seventeenth Amendments apply a literacy test to all voters irrespective of race or color. The Court in *Guinn* v. *United States, supra,* 366, disposed of the question in a few words, "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted."

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope* v. *Williams* (193 U.S. 621, 633); *Mason* v. *Missouri* (179 U.S. 328, 335) absent of course the discrimination which the Constitution condemns. Article I, section 2 of the Constitution in its provision for the election of members of the House of Representatives and the Seventeenth Amendment in its provision for the election of Senators provide that officials will be chosen "by the people." Each provision goes on to state that "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures." So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough* (110 U.S. 651, 663–665); *Smith* v. *Allwright* (321 U.S. 649, 661–662)) it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. See *United States* v. *Classic* (313 U.S. 299, 315). While section 2 of the Fourteenth Amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of "the right to vote," the right protected "refers to the right to vote as established by the laws and constitution of the State." *McPherson* v. *Blacker,* 146 U.S. 1, 39.

We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (*Davis* v. *Beason,* 133 U.S. 333, 345–347) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show.[6] Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin* v. *Harper,* 205 Ga. 779, appeal dismissed 339 U.S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an "independent and intelligent" exercise of the right of suffrage.[7]

---

[2] Note 1, supra.

[3] Section 163–32 provided:

"Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such persons shall take and subscribe before such officer an oath in the following form, viz.:

"I am a citizen of the United States and of the State of North Carolina; I am — years of age. I was on the first day of January, A.D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ————, in which I then resided (or, I am a lineal descendant of ————, who was on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ———— wherein he then resided."

[4] N.C. Laws 1957, c. 287, p. 277.

[5] Section 163–31.2 provides:

"In counties having one or more municipalities with a population in excess of 10,000 and in which a modern loose-leaf and visible registration system has been established as permitted by G.S. 163–43, with a full time registration as authorized by G.S. 163–31, such registration shall be a permanent public record of registration and qualification to vote, and the same shall not thereafter be cancelled and a new registration ordered, either by precinct or countywide, unless such registration has been lost or destroyed by theft, fire or other hazard."

[6] World Illiteracy at Mid-Century, Unesco (1957).

[7] Nineteen States, including North Carolina, have some sort of literacy requirement as a prerequisite to eligibility for voting. Five require that the voter be able to read a section of the State or Federal Constitution and write his own name. Arizona Rev. Stat. section 16–101; Cal. Election Code section 220; Del. Code Ann., c. 15, section 1701; Me. Rev. Stat., c. 3, section 2; Mass. Gen. L. Ann., c. 51, section 1. Five require that the elector be able to read and write a section of the Federal or State Constitution. Ala. Code, Tit. 17 section 32; N.H. Rev. Stat. Ann. sections 55:10–55:12; N.C. Gen. Stat. section 163–28; Okla. Stat. Ann., Tit. 26, section 61; S.C. Code section 23–62. Alabama also requires that the voter be of "good character" and "embrace the duties and obligations of citizenship" under the Federal and State Constitutions. Ala. Code, Tit. 17, section 32.

Two States require that the voter be able to read and write English. N.Y. Election Code sec. 150; Ore. Rev. Stat. sec 247.131. Wyoming (Wyo. Comp. Stat. Ann. sec. 31–113) and Connecticut (Conn. Gen. Stat. sec. 9–12) require that the voter read a constitutional provision in English, while Virginia (Va. Code sec. 24–68) requires that the voting application be written in the applicant's hand before the registrar and without aid,

Stone v. *Smith* (159 Mass. 413–414) North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot. No such influence is charged here. On the other hand, a literacy test may be unconstitutional on its face. In *Davis* v. *Schnell* (81 F. Supp. 872, aff'd 336 U.S. 933), the test was the citizen's ability to "understand and explain" an article of the Federal Constitution. The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy. We cannot make the same inference here. The present requirement, applicable to members of all races, is that the prospective voter "be able to read and write any section of the constitution of North Carolina in the English language." That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot.

Affirmed.

Mr. ERVIN. Mr. President, what I have said makes it as clear as the noonday sun that the States, not Congress, have the power to prescribe qualifications for voters, and that the qualifications which they have the constitutional power to prescribe include the power to prescribe literacy tests.

The bill is based upon the highly peculiar theory that the Constitution of the United States is such a puny instrument that Congress can suspend its provisions for reasons satisfactory to Congress. This is contrary to the very nature of the Constitution and is inconsistent with the purpose for which the Constitution was drawn. It is incompatible with the decisions of the Supreme Court of the United States to the effect that no single provision of the Constitution can be suspended at any time, under any circumstances. That was held in the most graphic form by the Supreme Court in the celebrated case of *Ex parte Milligan*, 4 Wallace (U.S.) 2. I read these words from page 121 of that great opinion:

> No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the Government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority.

That statement was made by the Supreme Court in a case in which an attempt was made to suspend provisions of the Constitution during the troublous days of the War Between the States. In that case, the Supreme Court said that no more pernicious doctrine had been invented by the wit of man than the notion that any provision of the Constitution could be suspended in any of the great exigencies of government.

Despite that decision, and despite the nature of the Constitution and the purposes for which it was drawn, we are witnessing today in Congress an attempt to put into practice what the Court correctly described as the most pernicious doctrine ever invented by the wit of man; that is, the doctrine that the provisions of the Constitution of the United States, giving the States the power to prescribe literacy tests as prerequisites to registration and voting, can be suspended.

It is interesting to note the method which the proponents of the bill adopt to suspend the constitutional powers of 7 States of the Union. How does the bill propose to robe Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia of their constitutional power to establish literacy tests as qualifications for voting? It does so in two ways.

In the first place, it attempts to do so by a bill of attainder and an ex post facto law, which article I, section 9, clause 3 of the Constitution itself declares Congress has no power to pass. I invite the attention of the Senate to 3 great decisions of the Supreme Court of the United States: *Cummings* v. *Missouri*, 4 Wallace (U.S.) 277; *Ex parte Garland*, 4 Wallace (U.S.) 333; and *United States* v. *Lovett*, 321 (U.S.) 303. These cases hold that a bill of attainder within the meaning of article I, section 9, clause 3 of the Constitution is a legislative act which inflicts punishment without a judicial trial. Any deprivation or suspension of a constitutional or legal right or power constitutes punishment under this constitutional provision. Moreover, it makes no difference whether the legislative act declares guilt or assumes guilt, because the ultimate result is the same, and Congress cannot do indirectly what it is forbidden to do directly.

The bill undertakes to declare that 5 States as a whole and certain political subdivisions of 2 other States are guilty of violating the 15th amendment. The bill is designed to effect this condemnation of wrongdoing by a congressional declaration and without a judicial trial.

It then undertakes, on the basis of that legislative assertion, to deprive the States and the political subdivisions of States of their power and right under the Constitution to use literacy tests as qualifications for voting. It does so on the basis of events which occurred in connection with the presidential election of 1964. This being true, the bill is clearly a bill of attainder and an ex post facto law, because it undertakes to impose punishment upon States and subdivisions of States without a judicial trial, on the basis of events which occurred in the past.

The great opinions in the Cummings case, the Garland case, and the Lovett case also set forth these propositions:

An ex post facto law within the meaning of article I, section 9, clause 3 of the Constitution is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.

Although the prohibition of the Constitution to pass an ex post facto law is aimed at criminal cases, it cannot be evaded by giving a civil form to that which is in substance criminal.

(At this point, Mr. JORDAN of North Carolina assumed the chair.)

Mr. ERVIN. The bill constitutes an ex post facto law under each of the tests which these decisions enumerate. It would punish the States and the political subdivisions for events which were not punishable at the time they happened. It would even punish the States and the political subdivisions for something they were not responsible for; namely, the failure of 50 percent of their registered voters to vote. It would impose punishment upon the States and the political subdivisions additional to that prescribed by law at the time of the presidential election of 1964. It would create new rules by which less or different evidence would raise an assumption that the States and the political subdivisions were violating the 15th amendment than that required in 1964.

One great case which should be read by the President of the United States before he signs the bill into law, and which should be read by the 66 Senators who cosponsored the bill before they finally approve it, is one of the cases I cited a moment ago, Cummings against the State of Missouri.

I ask unanimous consent that the entire opinion in the case of Cummings against the State of Missouri be printed at this point in the RECORD.

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

---

suggestion or memoranda. Washington (Wash. Rev. Code sec. 29.07.070) has the requirement that the voter be able to read and speak the English language.

Georgia requires that the voter read intelligibly and write legibly a section of the State or Federal Constitution. If he is physically unable to do so, he may qualify if he can give a reasonable interpretation of a section read to him. An alternative means of qualifying is provided: if one has good character and understands the duties and obligations of citizenship under a republican government, and he can answer correctly 20 or 30 questions listed in the statute (e.g., How does the Constitution of Georgia provide that a county site may be changed? What is treason against the State of Georgia? Who are the solicitor general and the judge of the State Judicial Circuit in which you live?) he is eligible to vote. Geo. Code Ann. secs. 34–117, 34–120.

In Louisiana one qualifies if he can read and write English or his mother tongue, is of good character, and understands the duties and obligations of citizenship under a republican form of government. If he cannot read and write, he can qualify if he can give a reasonable interpretation of a section of the State or Federal Constitution when read to him, and he is attached to the principles of the Federal and State Constitutions. La. Rev. Stat., Tit. 18, sec. 31.

In Mississippi the applicant must be able to read and write a section of the State Constitution and give a reasonable interpretation of it. He must also demonstrate to the registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. Miss. Code Ann. sec. 3213.

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

CUMMINGS *v.* THE STATE OF MISSOURI

SYLLABUS

1. Under the form of creating a qualification or attaching a condition, the States cannot in effect inflict a punishment for a past act which was not punishable at the time it was committed.

2. Deprivation or suspension of any civil rights for past conduct is punishment for such conduct.

3. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution bills of attainder include bills of pains and penalties.

4. These bills, though generally directed against individuals by name, may be directed against a whole class, and they may inflict punishment absolutely, or may inflict it conditionally.

5. The clauses of the second article of the constitution of Missouri (set forth at length in the statement of the case, infra, pp. 279–281), which require priests and clergymen, in order that they may continue in the exercise of their professions, and be allowed to preach and teach, to take and subscribe an oath that they have not committed certain designated acts, some of which were at the time offenses with heavy penalties attached, and some of which were at the time acts innocent in themselves, constitute a bill of attainder within the meaning of the provision in the Federal Constitution prohibiting the States from passing bills of that character.

6. These clauses presume that the priests and clergymen are guilty of the acts specified, and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath: they assume the guilt and adjudge the punishment conditionally.

7. There is no practical difference between assuming the guilt and declaring it. The deprivation is effected with equal certainty in the one case as in the other. The legal result is the same, on the principle that what cannot be done directly cannot be done indirectly.

8. The prohibition of the Constitution was intended to secure the rights of the citizen against deprivation for past conduct by legislative enactment, under any form, however disguised.

9. An ex post factor law is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.

10. The clauses of the second article of the constitution of Missouri, already referred to, in depriving priests and clergymen of the right to preach and teach, impose a penalty for some acts which were innocent at the time they were committed, and increase the penalty prescribed for such of the acts specified as at the time constituted public offenses, and in both particulars violate the provision of the Federal Constitution prohibiting the passage by the States of an ex post facto law. They further violate that provision in altering the rules of evidence with respect to the proof of the acts specified—thus in assuming the guilt instead of the innocence of the parties; in requiring them to establish their innocence, instead of requiring the government to prove their guilt; and in declaring that their innocence can be shown only in one way, by an expurgatory oath.

11. Although the prohibition of the Constitution to pass an ex post facto law is aimed at criminal cases, it cannot be evaded by giving a civil form to that which is in substance criminal.

STATEMENT OF THE CASE

In January 1865, a convention of representatives of the people of Missouri assembled at St. Louis, for the purpose of amending the constitution of the State. The representatives had been elected in November 1864. In April 1865, the present constitution—amended and revised from the previous one—was adopted by the convention; and in June 1865, by a vote of the people. The following are the 3d, 6th, 7th, 9th, and 14th sections of the 2d article of the constitution:

"SEC. 3. At any election held by the people under this Constitution, or in pursuance of any law of this State, or under any ordinance or by-law of any municipal corporation, no person shall be deemed a qualified voter, who has ever been in armed hostility to the United States, or to the lawful authorities thereof, or to the government of this State; or has ever given aid, comfort, countenance, or support to persons engaged in any such hostility; or has ever, in any manner, adhered to the enemies, foreign or domestic, of the United States, either by contributing to them, or by unlawfully sending within their lines, money, goods, letters, or information; or has ever disloyally held communication with such enemies; or has ever advised or aided any person to enter the service of such enemies; or has ever, by act or word, manifested his adherence to the cause of such enemies, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in exciting or carrying on rebellion against the United States; or has ever, except under overpowering compulsion, submitted to the authority, or been in the service, of the so-called "Confederate States of America"; or has ever left this State, and gone within the lines of the armies of the so-called "Confederate States of America," with the purpose of adhering to said States or armies; or has ever been a member of, or connected with, any order, society, or organization, inimical to the government of the United States, or to the government of this State; or has ever been engaged in guerrilla warfare against loyal inhabitants of the United States, or in that description of marauding commonly known as "bushwhacking;" or has ever knowingly and willingly harbored, aided, or countenanced any person so engaged; or has ever come into or left this State, for the purpose of avoiding enrolment for or draft into the military service of the United States; or has ever, with a view to avoid enrolment in the militia of this State, or to escape the performance of duty therein, or for any other purpose, enrolled himself, or authorized himself to be enrolled, by or before any officer, as disloyal, or as a southern sympathizer, or in any other terms indicating his disaffection to the Government of the United States in its contest with rebellion, or his sympathy with those engaged in such rebellion; or, having ever voted at any election by the people in this State, or in any other of the United States, or in any of their Territories, or held office in this State, or in any other of the United States, or in any of their Territories, or under the United States, shall thereafter have sought or received, under claim of alienage, the protection of any foreign government, through any consul or other officer thereof, in order to secure exemption from military duty in the militia of this State, or in the army of the United States: nor shall any such person be capable of holding in this State any office of honor, trust, or profit, under its authority; or of being an officer, councilman, director, trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority; or of acting as a professor or teacher in any educational institution, or in any common or other school; or of holding any real estate or other property in trust for the use of any church, religious society, or congregation. But the foregoing provisions, in relation to acts done against the United States, shall not apply to any person not a citizen thereof, who shall have committed such acts while in the service of some foreign country at war with the United States, and who has, since such acts, been naturalized, or may hereafter be naturalized, under the laws of the United States; and the oath of loyalty hereinafter prescribed, when taken by any such person, shall be considered as taken in such sense.

"SEC. 6. The oath to be taken as aforesaid shall be known as the Oath of Loyalty, and shall be in the following terms:

"'I, A. B., do solemnly swear that I am well acquainted with the terms of the third section of the second article of the Constitution of the State of Missouri, adopted in the year eighteen hundred and sixty-five, and have carefully considered the same; that I have never, directly or indirectly, done any of the acts in said section specified; that I have always been truly and loyally on the side of the United States against all enemies thereof, foreign and domestic; that I will bear true faith and allegiance to the United States, and will support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will, to the best of my ability, protect and defend the Union of the United States, and not allow the same to be broken up and dissolved, or the Government thereof to be destroyed or overthrown, under any circumstances, if in my power to prevent it; that I will support the Constitution of the State of Missouri; and that I make this oath without any mental reservation or evasion, and hold it to be binding on me.'

"SEC 7. Within sixty days after this Constitution takes effect, every person in this State holding any office of honor, trust, or profit, under the Constitution or laws thereof, or under any municipal corporation, or any of the other offices, positions, or trusts, mentioned in the third section of this Article, shall take and subscribe the said oath. If any officer or person referred to in this section shall fail to comply with the requirements thereof, his office, position, or trust, shall, ispo facto, become vacant, and the vacancy shall be filled according to the law governing the case.

"SEC. 9. No person shall assume the duties of any state, county, city, town, or other office, to which he may be appointed, otherwise than by a vote of the people; nor shall any person, after the expiration of sixty days after this Constitution takes effect, be permitted to practise as an attorney or counsellor at law; nor, after that time, shall any person be competent as a bishop, priest, deacon, minister, elder, or other clergyman of any religious persuasion, sect, or denomination, to teach, or preach, solemnize marriages, unless such person shall have first taken, subscribed, and filed said oath.

"SEC. 14. Whoever shall, after the times limited in the seventh and ninth sections of this Article, hold or exercise any of the offices, positions, trusts, professions, or functions therein specified, without having taken, subscribed, and filed said oath of loyalty, shall, on conviction thereof, be punished by fine, not less than five hundred dollars, or by imprisonment in the county jail not less than six months, or both such fine and imprisonment; and whoever shall take said oath falsely, by swearing or by affirmation, shall, on conviction thereof, be adjudged guilty of perjury, and be punished by imprisonment in the penitentiary not less than two years."

ARGUMENT FOR MR. CUMMINGS

In September, A.D. 1865, after the adoption of this constitution, the Reverend Mr. Cummings, a priest of the Roman Catholic Church, was indicted and convicted in the Circuit Court of Pike County, in the State of Missouri, of the crime of teaching and preaching in that month, as a priest and minister of that religious denomination, without having first taken the oath prescribed by the constitution of the State; and was sentenced to pay a fine of five hundred dollars and to be committed to jail until said fine and costs of suit were paid.

On appeal to the Supreme Court of the State, the judgment was affirmed; and the case was brought to this court on writ of error, under the twenty-fifth section of the Judiciary Act.

(Mr. David Dudley Field, for Mr. Cummings, plaintiff in error:)

My argument will first be directed to that part of the oath which affirms that the person taking it has never "been in armed hostility to the United States, or to the lawful authorities thereof, or to the government of this State;" * * * and has never "given aid, comfort, countenance, or support to persons engaged in any such hostility;" and has never "been a member of or connected with any order, society, or organization inimical to the Government of the United States, or to the government of this State." If the imposition of this is repugnant to the Constitution or laws of the United States, the whole oath must fall; for all parts of it must stand or fall together. Mr. Cummings was convicted, because he had not taken the oath, as a whole. If there be any part of it which he was not bound to take, his conviction was illegal. The oath is not administered by portions, and there is no authority so to administer it.

My first position is, that this provision of the constitution of Missouri is repugnant to the Constitution and laws of the United States; because it requires or countenances disloyalty to the United States.

Stripping the case of everything not immediately pertaining to the first position, the oath required may be considered as if it contained only these words:

"I hereby declare, on oath, that I have never been in armed hostility to the government of the State of Missouri, nor given aid, comfort, countenance, or support to persons engaged in any such hostility, and have never been a member of or connected with any organization inimical to the government of this State."

This is not an oath of loyalty to the United States. The government of Missouri has been, in fact, hostile to the United States. This is matter of history. Being in armed hostility to this hostile State government was an act of loyalty to the United States: an act not to be punished, but to be rewarded.

The loyal citizens of the State were obliged to array themselves against its government; they did so; they took up arms against it; they seized its camp and overthrew its forces. Had it not been for this act of hostility the State might have been drawn into the abyss of secession. It was, therefore, an act which was not only lawful but which was required of the citizen by his allegiance to the United States.

The Constitution and laws of the United States require allegiance and active support from every citizen, whatever may be the attitude of the State government. The difference between the Constitution and the Confederation consists in this, chiefly, that under the Constitution the United States act directly upon the citizen, and not upon the State. What the United States lawfully require must be done, though it be the seizure of the State capitol. The State of Missouri could not subject the plaintiff in error to any loss or inconvenience for giving, in 1861, a cup of coffee to the soldiers who under General Lyon marched out to St. Louis to take Camp Jackson.

Let us consider, in the second place, the tendency of this oath, in its relation to possible occurrences. It certainly is possible for the government of a State to be hostile to the United States. The governments of the eleven States lately in rebellion were so. If the legislature of South Carolina were to pass a law excluding from the pulpit and the offices of religious teachers every person who has been, at any time during the late war, "connected with any organization inimical to the government" of South Carolina, that law would be held disloyal and unconstitutional. Suppose the legislature of South Carolina were to go further, and enact that no person, white or black, should ever vote in that State, who, during the war, gave aid, comfort, or countenance to persons engaged in armed hostility to the government of South Carolina, would not every lawyer pronounce such a law utterly void?

If such an oath were required in Tennessee, the present President of the United States could not take it, and would be disqualified. If it were required in Virginia, more than one of our generals and admirals would be disqualified. And so of thousands of other citizens of the States lately in rebellion, who fought in the Union ranks, and opposed the governments of their own States.

There may be collisions between the Federal and the State governments, not breaking out, as the last has done, into flagrant war. A State government may attempt to resist the execution of a judgment of a Federal court; and the President may be obliged to call out the militia to assist the marshal. In such event, every man in the ranks will be in armed hostility to the government of the State. But the State cannot make him suffer for it.

This results from the rule of the Constitution, that the instrument itself, and the laws made in pursuance of it, are the supreme law of the land; and whatever obstructs or impairs, or tends to obstruct or impair, their free and full operation is unconstitutional and void.

The second position which I take is, that the provision imposing this oath as a condition of continuing to preach or teach as a minister of the Gospel, is repugnant to that part of the tenth section of the first article of the Constitution of the United States which prohibits the States from passing "any bill of attainder" or "ex post facto law."

Here, again, let us take a particular part of the oath, and refer to so much as affirms that the person taking it has never, "by act or word, manifested his * * * sympathy with those * * * engaged in * * * carrying on rebellion against the United States." Making a simple sentence of this portion, it would read thus:

"I declare, on oath, that I have never, by act or word, manifested my sympathy with those engaged in rebellion against the United States."

It may be assumed that previous to the adoption of this Constitution it had not been declared punishable or illegal to manifest, by act or word, sympathy with those who were drawn into the Rebellion. It would be strange, indeed, if a minister of the Gospel, whose sympathies are with all the children of men—the good and the sinful, the happy and the sorrowing—might not manifest such sympathy by an act of charity or a word of consolation. We will start, then, with the assumption that the act which the plaintiff in error is to affirm that he has not done was at that time lawful to be done.

Test oaths, in general, have been held odious in modern ages, for two reasons: one, because they were inquisitorial; and the other, because they were used as instruments of proscription and cruelty. In both respects they are contrary to the spirit, at least, of our institutions, and are indefensible, except when applied to matters outside of the domain of rights, and when prospective in their operation. Whatever the people may give or withhold at will, they may have a constitutional right to burden with any condition they please. This is at once the origin and extent of the rule.

When applied to past acts, another principle interposes its shield; that is, that no person can justly be made to accuse himself. This is incorporated in the fifth amendment, in the following words:

"No person * * * shall be compelled, in any criminal case, to be a witness against himself."

And although this prohibition is in terms applied to criminal cases, it cannot be evaded by making that civil in form which is essentially criminal in character.

Retrospective test oaths, that is to say, oaths that the persons taking them have not theretofore done certain things, are almost unknown.

Among the constitutional guarantees against the abuse of Federal power thrown around the American citizen, are these three: First, he cannot be punished till judicially tried; second, he cannot be tried for an act innocent when committed; and, third, when tried he cannot be made to bear witness against himself.

Two of these guarantees, and the last two, are set also against the abuse of State power.

The prohibition to pass an ex post facto law is, in the sense of the Constitution, a prohibition to pass any law which "renders an act punishable in a manner in which it was not punishable when it was committed." The question in the present case, therefore, becomes simply this: Is it a punishment to deprive a Christian minister of the liberty of preaching and teaching his faith? What is punishment? The infliction of pain or privation. To inflict the penalty of death, is to inflict pain and deprive of life. To inflict the penalty of imprisonment, is to deprive of liberty. To impose a fine, is to deprive of property. To deprive of any natural right, is also to punish. And so is it punishment to deprive of a privilege.

Depriving Mr. Cummings of the right or privilege, whichever it may be called, of preaching and teaching as a Christian minister, which he had theretofore enjoyed, and of acting as a professor or teacher in a school or educational institution, was in effect a punishment.

It is not necessary to inquire whether it was intended as a punishment. If the legislature may punish a citizen, by deprivation of office or place, on the ground that his continuing to hold it would be dangerous to the State, then every punishment, by deprivation of political or civil rights, is taken out of the category of prohibited legislation. Congress and the State legislatures—for in this respect they lie under the same prohibition—can pass retroactive laws at will, depriving the citizen of everything but his life, liberty, and accumulated capital.

The imposition of this oath was, however, intended as a punishment. This is evident from its history and its circumstances. It is patent to all the world that the object of the exclusion was to affect the person, and not the profession. Mr. Cummings may possibly, at some moment during the last 5 years, have manifested, by act or word, his sympathy with those engaged in carrying on rebellion against the United States; he may have given alms to the wounded rebel prisoners lying in our hospitals, or he may have spoken to them words of consolation; but no reason can be assigned, from all that, why he should not solemnize marriage or teach the 10 commandments; nor can any man arrive at the belief that the convention which devised this constitution had any such notion.

Let us turn now to the other prohibition, that against passing any "bill of attainder." This expression is generic, and includes not only legislative acts to punish for felonies, but every legislative act which inflicts punishment without a judicial trial. If the offence be less than felony, the act is usually called a bill of pains and penalties.

It is not necessary that the persons to be affected by a bill of attainder should be named in the bill. The attainder passed in the 28th year of Henry VIII, against the Earl of Kildare and others (chap. 18, A.D. 1536), enacted that "all such persons which be, or heretofore have been comforters, abettors, partakers, confederates, or adherents unto the said late earl, &c., in his or their false and traitorous acts and purposes, shall in likewise stand and be attained, adjudged, and convicted of high treason."

It is therefore certain, that if Mr. Cummings had been by name designated in the constitution of Missouri, and thereby declared to be deprived of his right to preach as a minister of religion, or to teach in a seminary of learning, for the reason that he had done some of the acts mentioned in the oath, such an attempt would have been in contravention of the prohibition against passing a bill of attainder; and it is equally certain, that if he had been thereunder judicially convicted for doing the same things, being not punishable when done, the conviction would have been in contravention of the other prohibition against passing an ex post facto law.

Does it make any difference that these results are effected by means of an oath, or its tender and refusal? There is only this difference, that these means are more odious than the other. The legal result must be the same, if there is any force in the maxim, that what cannot be done directly cannot be done indirectly; or as Coke has it, in the 29th chapter of his Commentary upon Magna Carta, "Quando aliquid prohibetur, prohibetur et omne, per quod deventuir ad illud."

The constitutional prohibition was intended to protect every man's rights against that kind of legislation which seeks either to inflict a penalty without a trial or to inflict a new penalty for an old matter. Of what avail will be the prohibition, if it can be evaded by changing a few forms? It is unquestionably beyond the competency of the State of Missouri, by any legislation, organic or statutory, to enact in so many words, that if Mr. Cummings on some occasion, before it was made punishable, manifested by an act or a word sympathy with the rebels, therefore he shall, upon trial and conviction thereof, be deprived of the right (or privilege) which he has long enjoyed, of preaching and teaching as a Christian minister. It must be equally incompetent to enact, that all those Christian ministers, without naming them, who thus acted, shall be thus deprived. And this is because it is prohibited to the State to pass an ex post facto law. It is also unquestionably beyond the competency of the State, to enact in so many words, that because Mr. Cummings, on some occasion, after it was made punishable, manifested such sympathy, therefore, he shall, without trial and conviction thereof, be deprived of his profession. It must be equally incompetent to enact that all those Christian ministers who have thus acted shall be thus deprived. And this because it is prohibited to the State to pass a bill of attainder.

It does not help this kind of legislation that its taking effect was made to depend on the neglect or refusal to take a prescribed oath; nor help it, to declare that the omission to take the oath is deemed a confession of guilt. If Mr. Cummings had even admitted in the presence of the convention his alleged complicity, that would not have dispensed with a judicial trial.

The legal positions taken on the part of Mr. Cummings may be thus restated. He is punished by deprivation of his profession, for an act not punishable when it was committed, and by a legislative instead of a judicial proceeding. If this is held to be constitutional because it is not done directly, but indirectly, through the tender and refusal of an oath, so contrived as to imply, if declined, a confession of having committed the act, then the prohibition may be evaded at pleasure. You cannot imagine an instance of oppression, that the Constitution was designed to prevent, which may not be effected by this means. Suppose the case of a man tried for treason, and acquitted by a jury. The legislature may nevertheless enact, that if the person acquitted by a jury does not take an oath that he is innocent, he shall be deprived of political and civil rights or privileges. Suppose that the legislature of New York were to pass an act disqualifying from preaching the Gospel, or healing the sick, or practising at the bar, all who during the last year were "connected with any organization inimical" to the administration of the State government. Such an act would of course be adjudged inconsistent with the Federal Constitution. But suppose, instead of passing the law in this form, it should be in the form of requiring an oath from every person desiring to preach the Gospel, or to heal the sick, or practise at the bar, that he had not been connected with such an organization, would that make the case any better? You can punish in two ways: you can charge with the alleged crime, and proving it, punish for it; or you can require the party to purge himself on oath; and if he refuses, punish him by exclusion from a right, privilege, or employment.

Mr. Montgomery Blair filed a brief, on the same side, and after citing several authorities, and enforcing some of the arguments of Mr. Field, thus referred especially to the opinions of Alexander Hamilton.

Mr. John C. Hamilton, in his "History of the Republic of the United States," [1] says:

"The animosity natural to the combatants in a civil conflict, the enormities committed by the Tories, when the scale of war seemed to incline in their favor, or where they could continue their molestations with impunity; the inroads and depredations which they made on private property and on the persons of non-combatants, and the harsh and cruel councils of which they were too often the authors, appeared to place them beyond the pale of humanity. This was merely the popular feeling.

"In the progress of the conflict, and particularly in its earliest periods, attainder and confiscation had been resorted to generally . . . as a means of war; but it was a fact important to the history of the revolting colonies, that acts prescribing penalties usually offered to the persons against whom they were directed the option of avoiding them by acknowledging their allegiance to the existing government."

But there were exceptions to this wise policy. In New York, especially, there was a formidable party who indulgd the worst feelings and went to the greatest extremes. The historian of the Republic thus narrates the matter:

"Civil discord," says this author, "striking at the root of each social relation, furnished pretexts for the indulgence of malignant passions; and the public good, that oft abused pretext, was interposed as a shield to cover offences which there were no laws to restrain. The frequency of abuse created a party interested in its continuance and exemption from punishment, which, at last, became so strong that it rendered the legislature of the State subservient to its views, and induced the enactment of laws attainting almost every individual whose connections subjected him to suspicion, who had been quiescent, or whose possessions were large enough to promise a reward to this criminal cupidity."

"Two bills followed. One was entitled, 'An act declaring a certain description of persons without the protection of the laws, and for other purposes therein mentioned.' On its being considered, a member, a violent partisan * * * moved an amendment prescribing a test oath, which was incorporated in the act. It disfranchised the loyalists forever. The Council of Revision rejected this violent bill, on the ground that the 'voluntary remaining in a country overrun by the enemy,' an act perfectly innocent, was made penal, and was retrospective, contrary to the received opinions of all civilized nations, and even the known principles of common justice, and was highly derogatory to the honor of the State, and totally inconsistent with the public good."

The act nevertheless was passed. In regard to the test oath, General Hamilton said:

"A share in the sovereignty of the State which is exercised by the citizens at large in voting at the elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist, as a free people, and it will certainly therefore never be admitted that less ceremony ought to be used in divesting any citizen of that right than in depriving him of his property. Such a doctrine would ill suit the principles of the Revolution which taught the inhabitants of this country to risk their lives and fortunes in asserting their liberty, or, in other words, their right to a share in the government. Let me caution against precedents which may in their consequences render our title to this great privilege precarious."

General Hamilton further remarks:

'The advocates of the bill pretend to appeal to the spirit of Whigism, while they endeavored to put in motion all the furious and dark passions of the human mind. The spirit of Whigism is generous, humane, beneficent, and just. These men inculcate revenge, cruelty, persecution, and perfidy. The spirit of Whigism cherished legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial and conviction of some crime declared by antecedent laws, reprobates equally the punishment of the citizen by arbitrary acts of the legislature as by the lawless combinations of unauthorized individuals, while these men are the advocates for expelling a large number of their fellow-citizens, unheard, untried, or, if they cannot effect this, they are for disfranchising them in the face of the Constitution, without the judgment of their peers and contrary to the law of the land. Nothing is more common, than for a free peope in times of heat and violence to gratify momentary passions by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disfranchisement, disqualification, and punishments by acts of the legislature. The dangerous consequences of this power are manifest. If the legislature can disfranchise any number of citizens at pleasure, by general descriptions, it may soon confine all the voters to a small number of partisans, and establish an aristocracy or oligarchy. If it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government would be a mockery of common sense. The people are sure to be losers in the event, whenever they suffer a departure from the rules of general and equal justice, or from the true principles of universal liberty."

There is another sentiment of the great statesman and lawgiver which may be

[1] Vol. 3, p. 24.

deemed not inappropriate to the present unhappy times. He says:

"There is a bigotry in politics as well as in religion, equally pernicious to both. The zealots of either description are ignorant of the advantage of a spirit of toleration. It is remarkable, though not extraordinary, that those characters throughout the States who have been principally instrumental in the Revolution are the most opposed to persecuting measures. Were it proper, I might trace the truth of these remarks from that character who has been the first in conspicuousness, through the several gradations of those, with very few exceptions, who either in the civil or military line, have borne a distinguished part in the war."

ARGUMENT FOR THE STATE

(Mr. G. P. Strong, contra, for the State, defendant in error:)

I. The separate States were originally possessed of all the attributes of sovereignty, and these attributes remain with them, except so far as the people may have parted with them in forming the Federal Constitution.[2]

The author of the Federalist, No. 45, says:

"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."

II. Among the rights reserved to the States which may be considered as established upon principle, and by unvarying usage beyond question or dispute, is the exclusive right of each State to determine the qualification of voters and office-holders, and the terms and conditions upon which members of the political body may exercise their various callings and pursuits within its jurisdiction. Authorities already cited establish this proposition; so, also, do others.[3]

III. The provisions of the second article of the constitution of Missouri come within the range of these reserved rights, and are neither "bills of attainder," or of pains and penalties, nor "ex post facto laws," nor "laws impairing the obligation of contracts." They are designed to regulate the "municipal affairs" of the State, that is, to prescribe who shall be voters, who shall hold office, who shall exercise the profession of the law, and who shall mould the character of the people by becoming their public teachers.

Bills of pains and penalties, and ex post facto laws, are such as relate exclusively to crimes and their punishments.[4]

The true interpretation of these laws by our own courts is settled by numerous cases in addition to those already cited.[5]

Not one of these examples of bills of pains and penalties, or ex post facto laws, bears any resemblance to the constitutional provisions which the court is now called to pass upon. They were, in terms, acts defining and punishing crimes. They designated the persons to be affected by them, and did not leave it optional whether they would suffer the penalty or not.

IV. Every private calling is subject to such regulations as the State may see fit to impose. The privilege of appearing in courts as attorneys-at-law, and the privilege of exercising the functions of a public teacher of the people, have always been the subjects of legislation, and may be withheld or conferred, as may best subserve the public welfare. Private rights have always been held subordinate to the public good.

Even the freedom of religious opinion, and the rights of conscience which we so highly prize, are secured to us by the State constitutions, and find no protection in the Constitution of the United States.

If any State were so unwise as to establish a State religion, and require every priest and preacher to be licensed before he attempted to preach or teach, there is no clause in the Federal Constitution that would authorize this court to pronounce the act unconstitutional or void.[6]

V. But we are told that this is not an oath of loyalty to the government of the United States, because it requires a declaration that the party has not taken up arms against the government of the State.

The Constitution of the United States is a part of the government of the State. It is as much the Constitution of the people of Missouri as the State constitution. Those who defended the one defended the other. The State government was never hostile to the Federal government. The hostility of Governor Jackson was individual and personal, and was intended to subvert both State and Federal governments.

Mr. Hamilton says:[7] "We consider the State governments and the National Government, as they truly are, in the light of kindred systems, and as parts of one whole."

Chief Justice McKean[7a] also says: "The Government of the United States forms a part of the government of each State. These (the State and National) form one complete government."

Mr. Jefferson,[8] speaking of the State and Federal Governments, says: "They are co-ördinate departments of one simple and integral whole."

(Mr. J. B. Henderson, on the same side, for the State, defendant in error:)

Do the provisions of the second article of the Missouri constitution conflict with the Constitution of the United States? The acts objected to are not acts of a State legislature. Even in regard to the constitutionality of such acts it has ever been thought a delicate duty to pass. If doubt exists, that doubt is always given in favor of the law. If ordinary acts of legislation are to be presumed valid, and are to be set aside only when patient examination brings them beyond doubt, into conflict with the supreme law of the land, how much stronger the presumption in favor of the act of the people themselves in framing such organic laws as they may think demanded by the exigency of the times and necessary to their safety?

The tenth amendment to the Constitution of the United States provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

No question, therefore, can arise as to the power of the people of Missouri to adopt the provisions in question unless they fall within the powers delegated to the United States, or are prohibited to the States by the Federal Constitution. The subject matter of them is clearly not within the powers delegated to the United States, but belongs to that class of legislation reserved to the States or to the people, and unless it be directly prohibited to the States by some clause or clauses of the Federal Constitution the provisions must be held valid. Among the powers prohibited to the States is one in the tenth section of the first article of the Constitution, which provides "that no State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." This clause is chiefly relied on to avoid the provisions alluded to in the constitution of Missouri.

It has been decided that bills of pains and penalties, which inflict a milder degree of punishment, are included within bills of attainder, which refer to capital offenses. It has been said by an accurate writer[9] that in cases of bills of attainder, "the legislature assumes judicial magistracy, weighing the enormity of the charge and the proof adduced in support of it, and then deciding the political necessity and moral fitness of the penal judgment." He says these acts, instead of being general, are leveled against the particular delinquent; instead of being permanent they expire, as to their chief and positive effects, with the occasion. Now, do these provisions fall within this definition? To be obnoxious as bills of attainder, the provisions must operate against some particular delinquent, or specified class of delinquents, and not against the whole community. They must not be permanent laws, operating as a rule to control the conduct of the whole community, but must expire upon the infliction of punishment on the individual or individuals named. Before these provisions can be called bills of attainder, it must appear that they criminate the defendant for the commission of some act specified in the third section of the second article of the Constitution; and that they assume to pronounce the punishment for that act. The law itself must assume to convict him.

If any means be left by which the defendant can escape the punishment prescribed in the act, the act cannot be a bill of attainder; for a bill of attainder assumes the guilt and punishes the offender whatever he may do to escape. If the act in question applies as well to the entire community as to him, and operates upon all alike, only prescribing an oath, which may or may not be taken by him and others, as a condition of a future privilege, it is in no sense a bill of attainder.

If any objections really exist against these provisions of the Missouri constitution it is because they are retrospective in their operation. Whether they are ex post facto laws is, therefore, the chief question for our examination.

Before proceeding to that examination, an argument of one of the counsel for the plaintiff must be noticed. He errs not perhaps in logical deduction, but in the statement of premises.

He argues thus: Mr. Cummings had the right to preach. A test oath is prescribed for a person following his profession which he cannot truthfully take, hence he has to forfeit his right to preach.

---

[2] Declaration of Independence: Art. 2, Articles of Confederation; Art. 10, Amendments to the Constitution of the United States. Federalist, No. 45, p. 216, Masters, Smith & Co.'s edit, of 1857. Calder *v.* Bull, 3 Dallas, 386; City of New York *v.* Miln, 11 Peters, 102, 139.

[3] Federalist, No. 45; Butler *v.* Pennsylvania, 10 Howard, 415; City of New York *v.* Miln, 11 Peters, 102, 139; In re Oliver, Lee & Co.'s Bank, 21 New York, 9.

[4] 1 Blackstone's Commentaries, 46; *Sewall* v. *Lee,* 9 Massachusetts, 367, citing "Conspirator's Bill;" 2 Woodeson, 41, p. 621; Chase, J., in *Calder* v. *Bull,* 3 Dallas, 390, 391; Paterson, J., Id. 397; *Carpenter* v. *Commonwealth of Pennsylvania,* 17 Howard, 456, 463; *The Earl of Strafford's* Case, 8 Howell's State Trials, 1515; *Sir John Fenwick's* case, 7 and 8 Wm. III, ch. 3; *Bishop of Rochester's* case, 9 Geo. I, ch. 17.

[5] *Ross's* case, 2 Pickering, 165; *Rand's* case, 9 Grattan, 738; *Boston* v. *Cummins,* 16 Georgia, 102; *Charles River Bridge* v. *Warren Bridge,* 11 Peters, 420.

[6] *Austin* v. *The State,* 10 Missouri, 591; *Simmons* v. *The State,* 12 Id. 268; *State* v. *Ewing,* 17 Id. 515; *The State of Mississippi* v. *Smedes & Marshall,* 26 Mississippi, 47; *The State* v. *Dews,* R. M. Charlton, 397; *Coffin* v. *The State,* 7 Indiana, 157, 172; *Conner* v. *City of New York,* 2 Sanford, 355; Same case, 1 Selden, 285; *Bendford* v. *Gibson,* 45 Ala. 521; *West Feliciana Railroad Co.* v. *Johnson,* 5 Howard's Mississippi, 277.

[7] Federalist, No. 82.

[7a] Dallas, 473.

[8] Letter to Major Cartwright, June 5, 1824; Jefferson's Works, vol. 4, p. 396.

[9] Woodeson, Lecture 41.

This is called a punishment, for the acts of which he is guilty, and of which he cannot purge himself by oath. The punishment, then, consists in the forfeiture of this assumed right to preach the Gospel. Of course, punishment must be impending to make the objection apply. The real objection to an ex post facto law is not that it declares a past innocent action a crime, but in the fact that it undertakes, after so declaring, to punish it. The Constitution of the United States steps in to prevent the punishment, not the passage of the act. Now, if the supposed forfeiture pronounced by the act is no punishment at all in the eye of the law, the objection ceases.

What is this thing we call punishment for crime in this country? Punishment under our institutions, legally considered, must affect person or property. It must take the "life" of an individual, impose restraints on his "liberty," or deprive him of his "property." Common sense teaches us that no man is punished by the loss of something that never was his absolute property. If I retake from my neighbor what I had granted him during my pleasure, I inflict no loss on him. He loses nothing. I gain nothing. The thing may be of value, but it is mine. If the thing taken has no value, although he may not have received it of me, he does not suffer. Punishment is to inflict suffering. This view of the subject is strengthened by the language of the fifth article of Amendments to the Federal Constitution, and by similar language in each State constitution. This article declares, first, that prosecutions, except in particular cases, shall be commenced by presentment or indictment of a grand jury. Coming to the trial, it is next provided, that no man shall be twice tried for the same offence, nor compelled to be a witness against himself, and then, in the same connection, it provides that he shall not "be deprived of his life, liberty, or property, without due process of law." The latter part of the clause evidently refers to the punishment of crime. To punish one, then, is to deprive him of life, liberty, or property. To take from him anything less than these, is no punishment at all. These are natural rights, and to take them away is what we properly call punishment. All other rights are conventional, and may at any time be resumed by the public, in the most summary way, without any regard to due process of law. Hence, public offices have always been taken away from the incumbents, by the sovereign act of the people, without consulting the incumbents, without informing them, without hearing them in their defence, and yet nobody ever supposed this to be a punishment of the incumbents. It is not a punishment, because it deprives them of no property whatever. The public, it is true, had given them a trust, but the public had created that trust for their own purposes, and the public can resume it whenever necessity or convenience require it. And the public alone can judge of that necessity or convenience.

Let us now proceed to the examination of ex post facto laws.

Story, J.,[10] defines an ex post facto law to be one "whereby an act is declared a crime, and made punishable as such, which was not a crime when done: was not a crime, and made punishable as such, which was not a crime when done: or whereby the act, if a crime, is aggravated in enormity or punishment, or whereby different or less evidence is required to convict an offender than was required when the act was committed." This court, in the case of *Fletcher* v. *Peck*, said:

"An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed."

[10] Commentaries on the Constitution.

In *Watson et al.* v. *Mercer*,[11] this court said:

"The phrase ex post facto laws, is not applicable to civil laws, but to penal and criminal laws, which punish a party for acts antecedently done, which were not punishable at all, or not punishable to the extent or in the manner prescribed."

Each and every act enumerated in the third section may have been committed, and yet no provision of this State constitution attempts to punish it. Indeed, it makes no provision to punish even in the future the commission of such acts as are therein specified. The acts enumerated are not denounced in the constitution as crimes at all, nor is any punishment whatever attached to their commission. How, then, is this test oath an ex post facto law? It does not operate on the past. If one stands on his past record, however guilty he may be, this provision cannot touch him. If he is ever punished for what he has done, it must be according to some previous existing law, and not under this act. This act does not deal with the past. It looks only to the future. If it refers to the past at all, it is only for the purpose of ascertaining moral character and fitness for the discharge of high civil duties, which give credit and influence in the community, and can never be safely intrusted in the hands of base or incompetent men.

But to proceed with the definition. Justice Washington, delivering the opinion of the court in *Ogden* v. *Saunders*,[12] speaking of bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, said: "The first two of these prohibitions apply to laws of a criminal, and the last to laws of a civil character."

In *Calder* v. *Bull*, the first great case involving a definition of the term ex post facto, in this court, Chase, J., delivered the opinion of the court, and gave a definition which has been ever since substantially adopted as the law. He said, it is:

"First. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

"Second. Every law that aggravates a crime and makes it greater than it was when committed.

"Third. Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.

"Fourth. Every law that alters the legal rules of evidence and receives less or different testimony than the law required at the commission of the offence in order to convict the offender."

Does this provision of the State constitution assume to declare any act already done by the defendants, at anytime, to be criminal? Is it, in any sense, a criminal law to operate upon the past? If it had declared that previous acts of practising law, innocent as they were when done, should now be offences, and might be punished in the courts, the provision could not, and should not, be enforced. If the provision had declared that any person guilty of a previous expression of sympathy with the public enemy, or of previously enrolling himself as disloyal, to evade military service in the Union forces, or of seeking foreign protection as an alien against military service, might now be indicted and punished therefor, by fine and imprisonment, or both, I could well understand an argument against its validity.

But this provision does no such thing. It declares no past act of the defendant to be an offence, nor does it prescribe for any such act any forfeiture whatever, much less the deprivation of a property right. What is a criminal law? It defines an offence, and fixes the punishment, and the mode of inflicting it. If it stamps as crime an innocent past action it is no law. But if it looks only to the future, and gives the choice to the citizen to violate it or comply with it, it is a valid law, at least so far as this prohibition is concerned. This act, it is true, defines an offence, but the offence defined is one that cannot be committed before the expiration of sixty days after the act shall have been adopted. No man is compelled to be guilty. That is not the case under an ex post facto law. In such cases there is no option for the victim. The act to be punished is done, and cannot be undone.

A punishment is also denounced in the act, but that punishment is to be applied only to acts of the future. This act, then, does not make a crime of an action which was innocent when done, and proceed to punish it, and it cannot in that respect be classed as an ex post facto law.

If one be guilty of treason, of course he cannot in such case take the oath, and must therefore stand excluded. It is not a new or additional penalty or forfeiture for the crime of treason. It was not so intended. In its true purpose, such an act is not a criminal law at all, much less an ex post facto law. It is an act to fix the qualifications of voters, and applies to the innocent as well as to the guilty. If a man, having long enjoyed the franchise, be excluded by the sovereign act of the people, unless he will take an oath that he can read and write, is it to be construed an act to punish ignorance, or an act to preserve the purity and usefulness of the ballot-box? If an act were passed vacating the offices of all sheriffs who had not practised law for five years under a license, before their election, is the act void?

But we are told that this act alters the legal rules of evidence, and receives less testimony than was necessary at the time the act was committed to convict the offender. If perjury be committed, and at the time of its commission two witnesses are required to convict, we can understand that a subsequent act authorizing a conviction on the testimony of one witness is not valid. We can well understand that a law which makes testimony competent, that was not competent at the time of the act, is void. But the law will not be declared void until its obnoxious provisions are attempted to be enforced in some specific case, that is, until a case arises. The difficulty here is that plaintiffs in error insist that they are on trial for the offences, or rather the acts of disloyalty, named in the third section. But they are not now on trial, for no conviction or judgment therefor can follow these proceedings. The taking of the oath is not an acquittal of the offences or acts enumerated. The refusal to take it is not a conviction, nor does it tend to a conviction. This act has nothing to do with the trial or conviction of the offender for past actions; it fixes no rule or rules of evidence by which a conviction may be had more easily, for there can be no trial or conviction at all under the act for anything previously done.

The Constitution provides that no person "shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." It is insisted that the provisions of the Missouri law conflict with this clause, which clothes in language a great principle of national right. If, on the trial of the case of Mr. Cummings, he had been compelled to testify against himself, there would be some ground for the complaint. We have already attempted to show that he is not deprived of life, liberty, or property under this law. He is surely not deprived of life or liberty, and the right to pursue his profession is not such an absolute right of property as to be above the control and regulation of State law. It is said he is punished without the right of trial "by

[11] 8 Peters, 110.

[12] 12 Wheaton, 267.

an impartial jury," and without the right "to be confronted by the witnesses against him;" without the right of "compulsory process for obtaining witnesses" in his favor, and without that other invaluable right, "the assistance of counsel" in his defence. Suppose it were so, what has this court to do with it? These great rights are only secured by the Constitution "in all criminal prosecutions" set on foot by the United States and not in those set on foot by the States.

And now, in the present prosecution against Mr. Cummings for violating the act itself, or in any prosecution that may be hereafter instituted against him, or other persons, for such violation, if any of these rights shall be denied them we may say the act is unjust, but that is the end of it. The State may do acts of injustice if it chooses. We must trust something to the States. Mr. Cummings, however, had the right of trial by jury; the right to be confronted with the witnesses against him; the right of process to compel the attendance of his witnesses; and even those beyond the limits of our own country will know that he has had "the assistance of counsel," for he was ably defended in the courts of the State, and they who now defend him are known wherever enlightened jurisprudence itself is known.

Whenever prosecutions arise under these provisions, there will, doubtless, be granted, in Missouri, to the accused, all these guarantees of constitutional liberty. The State cannot deny them to one of its citizens without denying them to all; and to suppose a people so lost to common sense as to deprive themselves, voluntarily, of these great and essential rights, necessary to a condition of freedom, is to suppose them incapable of self-government.

But an objection is also urged which is well calculated to excite interest. The rights of conscience are sacred rights. They are too often confounded, however, with the unrestrained license to corrupt, from the pulpit, the public taste or the public morals. However this may be, the American people are exceedingly sensitive on the subject of religious freedom; and whenever the people are told, as they have been in this case, that the indefeasible right to worship God according to the dictates of conscience is about to be invaded, the public mind at once arouses itself to repel the invasion. The first article of the Amendments to the Constitution is in these words:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The third clause of the sixth article declares that

"No religious test shall ever be required as a qualification to any office or public trust under the United States."

Story, J., commenting on these provisions, says:

"The whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their own sense of justice and the State constitutions."

The Jew, the infidel, and the Christian are equal only in the national councils. The States may make any discrimination in favor of any sect or denomination of Christians, or in favor of the infidel and against the Christian. North Carolina had the right to exclude the Catholic from public trusts; and other States have the right, so long exercised, to deny ministers of all denominations a place in their legislative halls. Congress cannot establish a national faith; but where are the limitations on the powers of the States to do so? There are none, unless they be found in this provision against bills of attainder and ex post facto laws—a provision which, in its present interpretation, saps and withers every right once fondly claimed by the States. In the formation of State constitutions, I have never doubted the power to regulate the modes of worship or prescribe forms for the public observance of religion. Hence it is that the bills of right, to be found in all the State constitutions, attempt to secure this great right of free and unrestricted worship against the caprice or bigotry of State legislators. But within the limits of the State constitution, when thus framed, the legislature has entire control of the subject.

It is said these oaths are unprecedented. They are, no doubt, extraordinary, perhaps unprecedented; but the provisions themselves are no more extraordinary than the circumstances which called them into existence. These last are not known to all, and indeed are known fully but to few. I must ask the privilege of departing so far from the line of strict legal argument as partially to state them. Such a statement is indispensable truly to understand this case.

The bare recital of these provisions, I am aware, has fallen harshly on the public ear. Loyal men in other States hesitated to justify them, while the disloyal hastened to denounce them. Beyond the limits of Missouri, they, perhaps, have had but few advocates. But beyond those limits, no man knows the terrible ordeal through which her people passed during the late Rebellion. To appreciate their conduct properly, one must have been on the soil of the State, and that alone is not sufficient: he must have been an active participant in the struggle for national life and personal security. The men of Missouri, at an early day in this war, learned to be positive men. They were for, or they were against. When the struggle came, each man took his place. The governor and the legislature were disloyal. A convention called by that legislature, merely to give character to the mockery of secession, proved to be loyal, and refused to submit an ordinance of secession to a pretended vote of the people. Hence came a fierce war of opinion. The first great contest was for political power. Each party saw the absolute necessity of obtaining it. With it, ultimate success might be achieved; without it, success was impossible. In the midst of this controversy, while the issue was yet in doubt, Fort Sumter was attacked, and civil war suddenly broke upon the land. In Missouri, it was a hand-to-hand contest, each party fighting for the possession of power, and each feeling that expulsion was the penalty of failure. Acts of the grossest treason were committed; but no man could be found who confessed himself present, or who would speak the truth against his neighbor. His silence, however, made him no less earnest. Neighbors and friends of long standing separated and joined hostile forces. Each county had its military camps, and each municipal township its opposing military and political organization. Traitors and spies came from the confederate armies of Arkansas and Texas to organize regiments secretly in the State, and found shelter and food in the houses of the disloyal. Organized armies sprang into existence around us, and joined the advancing hosts. to assist in the work of devastation and death.

Some who did not themselves go into open rebellion from prudential reasons, some too old to bear arms, urged others to go, and furnished means and money to equip them. Some acted as spies in their respective neighborhoods, and sent secret information to the enemy, which often sealed the fate of their neighbors. The merchant in his storeroom talked treason to his customers; the school teacher instilled its poison into the minds of his pupils; the attorney harangued juries in praise of those whose virtue demanded the great charters of English liberty, and denounced the spirit of this age for its submission to usurpation and tyranny. And even the minister of heaven, forgetting of what world his Master's kingdom was, went forth to perform the part allotted to him in this great work of iniquity.

No man was idle. No man could be idle. Men might be silent, but they were earnest; because life, and things dearer than life, depended on the issue. The whole man, mental and physical, was employed. The whole community was alike employed, and every profession, and every avocation in life was made subservient to the great end—the success or overthrow of the Government. On the day when the delegates to the convention which framed this constitution were elected General Price at the head of 20,000 desperate men from Arkansas, Texas, Louisiana, and Missouri, was sweeping through the State, leaving behind him smouldering ruins and human suffering; and he and they who made this desolate path, were received with shouts of joy and approbation by thousands of citizens, who sought by the ballot, on that day, to give lasting welcome to the invaders.

I have referred to these things to vindicate the people of Missouri against the charges which have been made against them, and to show the reasons and the reasonableness of their action.

REPLY FOR MR. CUMMINGS

Mr. Reverdy Johnson, for the plaintiff in error, Mr. Cummings, in reply:

I. Is the provision in the constitution of Missouri obnoxious to the objection of being ex post facto?

Opposing counsel seem to suppose that the clause in the Federal Constitution which would prevent an ex post facto law is not applicable to the organic law of a State. They argue that even if a provision such as is contained in the constitution of Missouri would be void in a statute law of the State, yet it is not void when in her constitution.

There is no warrant for the distinction. The ninth section of the first article of the Constitution of the United States restrains Congress from passing any bill of attainder or any ex post facto law, and the great men by whom that instrument was framed were so well satisfied that legislation of this description was inconsistent with all good government, that they deemed it necessary to impose the same restriction upon the States; and this they did by providing that "no State"—not no legislature of a State, but that "no State"—should pass any ex post facto law or any bill of attainder. If we consult the contemporaneous construction—and which has ever been received almost as conclusive authority upon its meaning—given it by the Federalist, we will find [18] that it was not thought necessary to vindicate the Constitution upon the ground that it contained a provision of this description. It was thought sufficient to say that the provision was but a declaration of a fundamental principle of free government, a principle without which no such government could long exist, and that it was adopted not because there was any doubt in regard to it upon the part of the convention, or because any doubt was entertained what would be the public opinion in relation to it, but because it was so universally held to be important that it was deemed necessary not only by express constitutional provision to inhibit to Congress the power to pass such law, but to prohibt the States at any time from doing so either.

It can make no difference, therefore, whether such legislation is found in a constitution or in a law of a State; if it be within the prohibition it is void; and the only question, therefore, is whether the constitution of Missouri, in the particular which is involved in this case, is not liable to the objection of being ex post facto.

My brothers of the other side suppose that there is no punishment imposed by the constitution of Missouri upon one who refuses to take the oath. They do not mean, surely, no punishment in the general sense of the term; that he whose livelihood depends on

[18] No. 44, by Mr. Madison.

his profession is not, in the general acceptation of the term, punished if he is not permitted to pursue it; that he whose business it is, claiming to derive his authority from a higher than any human source, to preach peace on earth, good will to men, is not punished when he is told that he shall do neither; that a man is not punished when he is prevented from teaching his own child (for this oath comprehends that act) the ways which he believes are the only ways that lead to perpetual happiness in the future; cannot teach him what he deems to be man's duty to man and man's duty to God;—without taking an oath which any State from party, political, or religious prejudice, may think proper to prescribe.

A prohibition of the sort here enacted, operating to the extent that it does, is not only punishment but most severe punishment; perhaps the most severe.

And, if it is a punishment in fact, why is it not a punishment that falls within the inhibition of the Constitution? The inhibition is absolute and as comprehensive as language can make it.

Now what does the constitution of Missouri assume? It assumes that there are persons in the State of Missouri who have been guilty of disloyalty to the United States. Opposing counsel argue that it was of importance to the future welfare of Missouri, when the constitution was adopted, that such a provision as this should be incorporated in her fundamental law. And why? Because, as they assert, there were secret, silent, insidious traitors in her midst; traitors, also, whose hands were red with the blood of loyal citizens. The argument, therefore, as well as the provision itself, assumes that crime has been committed, and that it is important to the State that all who have been guilty of that crime shall forever be excluded from any of the offices or the employments mentioned in the third section of the second article of the constitution. Then it was put there evidently for the purpose of disfranchising those who were thus assumed to be guilty. Whether they were guilty or not, and how they were to be punished if that guilt should be established by due course of law, is one question. Whether, if guilty, they could be punished in the way in which they are punished by this constitution is a different question. If they are guilty, and are so to be punished, how that guilt is to be established is a third question.

How was their guilt to be established, according to the requirements of the constitution, if the charge of treason was made against them? By two witnesses. What would be the effect upon an individual if he was convicted? No disfranchisement. Capacity to hold office as far as any positive legal disability was concerned—capacity to appear as attorney—capacity to pursue his religious pursuits; all would remain unaffected.

What does this provision in the constitution of Missouri do? It assumes that it is not sufficient that society is secured by such punishment as the previous law provided. If the court should think proper in its discretion to award the punishment of imprisonment, and the party survives, he cannot be punished again in any way in the remainder of his life. If he seeks employment afterwards, the question of prior guilt may be held to affect his character; but that found to be fair and he trustworthy, the road to honor and to office may be open to him. This constitution of Missouri says that this is not enough; that the public safety demands that, if he is guilty, he shall be excluded from all offices in that State; not only from all offices, but from all employments; not only from professional employment, but from carrying on the avocation with which, in his own belief, heaven itself has endowed him; not only that, but from being an officer in any municipal or other corporation, although he may own nearly all the stock, and from holding any trust.

Is that not ex post facto? The very definition of such a law, which opposing counsel have given upon the authority of this court in the case of Calder v. Bull, and in the subsequent cases, brings such a provision within it. Even if we were to stop here, any law, and, as has been already shown, any constitution, which imposes a punishment for crime in addition to that which the existing law at the time of its commission imposed, is ex post facto.

But that is not all. It not only imposes an additional punishment, but it changes altogether the evidence by which, under the previous law, the crime was to be established. Two witnesses to the same overt act were necessary to prove the offence of treason. This constitution says, in effect, that "it is true that hundreds and thousands in the State of Missouri have been guilty of acts of disloyalty which would subject them to punishment for treason under the existing law; and it is true that they may be punished under that law effectively, provided the government which thinks proper to prosecute them can establish their guilt by such evidence as the constitution demands; but that will not answer our purpose; we cannot accomplish our end in that mode; we not only propose to aggravate the punishment, but we propose to establish the crime by evidence which is now inadmissible for that purpose." And what is that evidence as they themselves present it? "You, Mr. Cummings, desire to preach, to solemnize marriage, to bury the dead, to administer the sacrament of the Eucharist, to console the dying; you shall not do either, unless you will swear that you have not committed the offence: you must purge yourself by your own oath, or, as far as we are concerned, we find you guilty. We believe you are guilty; and if you are guilty, we do not mean that you shall execute your religious functions at all. And we make the fact of your refusing to swear that you are innocent conclusive evidence of your guilt, and punish you accordingly."

Now, Congress has treated an exclusion from the right to hold office as a punishment. The act of the 10th April, 1790, defines and punishes perjury, and for punishment, it is declared that the party shall undergo "imprisonment not exceeding three years, and a fine not exceeding eight hundred dollars; and shall stand in the pillory for one hour, and be thereafter rendered incapable of giving testimony in any of the courts of the United States until such time as the judgment so given against the said offender shall be reversed." [14] It is plain that to take from him the privilege of being a witness was considered a punishment. By the twenty-first section, the crime defined is that of attempting to corrupt a judge, and as punishment, it is declared that the party "shall be fined and imprisoned, and shall forever be disqualified to hold any office of honor, trust, or profit under the United States." In accordance with the impression that that was not only punishment, but punishment of a very severe nature, we find in the act of July 17, 1862,[15] "an act to suppress insurrection, to punish treason," &c., passed of course whilst the Rebellion was in full force, this provision:

"That every person guilty of either of the offences described in this act shall be forever incapable and disqualified to hold any office under the United States."

Counsel on the other side maintain that the exclusion of the priest from the right to preach or to teach is not ex post facto legislation within the meaning of those terms in the Constitution, because it is not the legal consequence of any crime; something having no connection with the crime. They admit, therefore, that if the punishment can attach itself to the crime, and it be a punishment not known to the laws at the time the crime was committed, it is void. Now, what does the State constitution do? Does it not exclude because of the crime, in consequence of the crime, and only in consequence of the crime? If it does, it is, in the judgment of Missouri, or in the judgment of its constitution, a punishment of the crime just as effectually as if a party was tried upon an indictment and convicted, and the law authorized a party, upon that conviction, to be excluded from the right to practise or to preach. That no proceeding, judicial in its nature, is provided for, can make no difference; a proceeding still more effective is provided. A proceeding by indictment might or might not accomplish the end; the two witnesses required might not be found; the party might, therefore, be acquitted. His guilt might be in his own bosom, and no witness could be found, and, consequently, he would be acquitted. And as its object was to strike at the crime, and remove those who were supposed to be loyal in the State of Missouri from the contamination of the crime or of the criminal, it requires him to swear that he has not committed it, and tells him, "Not swearing, we find you have committed the crime, and will punish you accordingly."

Suppose that, instead of excluding Mr. Cummings from the practice of his calling, it had said that if he did not answer he should be subjected to a pecuniary penalty, a fine, or to imprisonment, both or either; would not that be void because of the restriction? And if so, must not this be held void, provided we agree with Congress in the opinion contained in the two acts already referred to, that exclusion from the right to hold office is "punishment?"

The degree, the extent, the character of the punishment, has nothing to do with the fact of punishment. Admit that Mr. Cummings and all standing in like relation are punished by this State constitution, and the constitution falls just as absolutely as if, instead of ordaining that persons should be punished by not being permitted to exercise and carry on their occupations, it had said, "if you do not swear to your innocence we infer you to be guilty, and we fine and imprison you." It would be as much in that case, and not more, a consequence of the crime, as it is in this case. And once hold it to be consequential upon the crime, and you bring it within the inhibition, provided the punishment which it does inflict is not the punishment which the law inflicted at the time the crime is alleged to have been committed.

As a member of that Church which claims to have its authority directly through a regular and unbroken apostolic succession from the Author of our religion, Mr. Cummings is found in the enjoyment and practice of all the privileges belonging to the function and of all the sacred rights which are incident to it. The Constitution of the United States, to be sure, so far as the article which proclaims that there shall be no interference with religion is concerned, is not obligatory upon the State of Missouri; but it announces a great principle of American liberty, a principle deeply seated in the American mind, and now almost in the entire mind of the civilized world, that as between a man and his conscience, as relates to his obligations to God, it is not only tyrannical but un-Christian to interfere. It is almost inconceivable that in this civilized day the doctrines contained in this constitution should be considered as within the legitimate sphere of human power. "This question," it has been truly said by another clergyman sought to be restrained by this constitution, "is not one merely of loyalty or disloyalty, past, present, or prospective. The issue is whether the Church shall be free or not to exercise her natural and inherent right of calling into,

[14] 1 Stat. at Large, p. 116, § 18.
[15] 12 Stat. at Large, pp. 589–590, § 3.

or rejecting from, her ministry whom she pleases; whether yielding to the dictation of the civil power she shall admit those only who, according to its judgment, are fit for the office, or, admitting those to be fit, whether she shall not be free to admit those also who, though at first not fit, afterwards become so through pardon and forgiveness.

"The question is whether the Church is not as much at liberty and as fully competent nowadays as at the beginning to call in as well the saints as those who were sinners, as well the Baptist and Evangelist as St. Peter and St. Paul, the denier and persecutor of the Redeemer, as well as his presanctified messenger and beloved disciple. With all these questions the State itself has nothing to do. Their decision is the high and unapproachable prerogative of the Church, under the guidance of its Redeemer, who alone is the searcher of hearts, and whose power it is to recall or reject whom he pleases."

My associate, in his opening of the case, has stated that the State government of Missouri was at one time, 1861, hostile to the government of the United States; and that loyal citizens were obliged to take up arms and overthrow it. No doubt the fact must be so admitted. Governor Claiborne Jackson, holding the executive authority of the State under a proper election, and the judiciary and the legislative departments of the same State holding their respective authorities under a proper election, held in pursuance of a constitution then existing and not disputed, were at one time in the full possession of all the sovereignty of the State of Missouri, as far as that sovereignty was delegated by the people to its government. The Representatives of the State elected during the continuance of that constitution were received here. Their Senators were here, chosen by that legislature, and their credentials testified by the then governor. Their courts were in session under the authority of that constitution.

Under the decision in *Luther* v. *Borden*,[16] the court cannot go beyond these facts for the purpose of ascertaining in what condition, politically, Missouri was, for the purpose of answering the inquiry, what was the government of Missouri in 1861? Then it is plain that this oath calls upon the party to swear that he has been loyal to two governments of Missouri, one of which was directly opposed to the other.

Opposing counsel, indeed, say that the government of Missouri does not mean the government strictly speaking of the State of Missouri, constituted by the people of the State of Missouri; but that the government of Missouri is a compound, according to their view, consisting of the constitution and laws of Missouri and the Constitution and laws of the United States. But the argument is without force. When a law speaks of a State government it does not mean the government of the United States. Nor does it mean to include any authority over the people of a State which the government of the United States may possess by virtue of the Constitution of the United States. It means that political institution created by the people of the State for the government of the people of the State, without any regard at all to the other inquiry, over what subjects the people of that State have a right by government to assume jurisdiction.

If this is so, and it be true that a State government is one government as contradistinguished from all others, and that the government of the United States is another government as contradistinguished from a State government, then an oath which requires a party to swear that he has committed no act of hostility against the State government, and no act of hostility as against the government of the United States, is an oath which, if he has committed acts of hostility against the State government, renders it impossible that he can enjoy the franchise made dependent upon the failure to exercise any acts of hostility. Yet that is this oath.

It is said that what Missouri has done, in regulating the qualifications of those who are to hold office and pursue certain professions, is simply the right to define the qualifications which Missouri, in the exercise of her sovereignty, thinks proper to demand. Is it so? In one sense it is so; but is that the sense in which the provision has been incorporated in the constitution? To prescribe age, property qualifications, or any other qualification that any body has an equal opportunity of acquiring, is one thing; to disqualify because of imputed crimes, is quite another thing. The powers of government exerted in the doing of these two things are entirely distinct. In the one, the power of regulate the qualifications for office, or for the pursuit of callings, only is involved; in the other, the power of forfeiture under the power to punish is involved, and those two powers are altogether distinct. The one is the power which belongs to every government to define and punish crime. The other, that which belongs to every free government to provide for the manner in which its agents are to be chosen, and the conditions upon which its citizens may exercise their various callings and pursuits.

OPINION OF THE COURT

(Mr. Justice Field delivered the opinion of the court:)

This case comes before us on a writ of error to the Supreme Court of Missouri, and involves a consideration of the test oath imposed by the constitution of that State. The plaintiff in error is a priest of the Roman Catholic Church, and was indicted and convicted in one of the circuit courts of the State of the crime of teaching and preaching as a priest and minister of that religious denomination without having first taken the oath, and was sentenced to pay a fine of five hundred dollars, and to be committed to jail until the same was paid. On appeal to the Supreme Court of the State, the judgment was affirmed.

The oath prescribed by the constitution, divided into its separable parts, embraces more than thirty distinct affirmations or tests. Some of the acts, against which it is directed, constitute offences of the highest grade, to which, upon conviction, heavy penalties are attached. Some of the acts have never been classed as offences in the laws of any State, and some of the acts, under many circumstances, would not even be blameworthy. It requires the affiant to deny not only that he has ever "been in armed hostility to the United States, or to the lawful authorities thereof," but, among other things, that he has ever, "by act or word," manifested his adherence to the cause of the enemies of the United States, foreign or domestic, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in rebellion, or has ever harbored or aided any person engaged in guerrilla warfare against the loyal inhabitants of the United States, or has ever entered or left the State for the purpose of avoiding enrolment or draft in the military service of the United States; or, to escape the performance of duty in the militia of the United States, has ever indicated, in any terms, his disaffection to the government of the United States in its contest with the Rebellion.

Every person who is unable to take this oath is declared incapable of holding, in the State, "any office of honor, trust, or profit under its authority, or of being an officer, councilman, director, or trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution, or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society, or congregation."

And every person holding, at the time the constitution takes effect, any of the offices, trusts, or positions mentioned, is required, within sixty days thereafter, to take the oath; and, if he fail to comply with this requirement, it is declared that his office, trust, or position shall ipso facto become vacant.

No person, after the expiration of the sixty days, is permitted, without taking the oath, "to practice as an attorney or counsellor-at-law, nor after that period can any person be competent, as a bishop, priest, deacon, minister, elder, or other clergyman, of any religious persuasion, sect, or denomination, to teach, or preach, or solemnize marriages."

Fine and imprisonment are prescribed as a punishment for holding or exercising any of "the offices, positions, trusts, professions, or functions" specified, without having taken the oath; and false swearing or affirmation in taking it is declared to be perjury, punishable by imprisonment in the penitentiary.

The oath thus required is, for its severity, without any precedent that we can discover. In the first place, it is retrospective; it embraces all the past from this day; and, if taken years hence, it will also cover all the intervening period. In its retrospective feature we believe it is peculiar to this country. In England and France there have been test oaths, but they were always limited to an affirmation of present belief, or present disposition towards the government, and were never exacted with reference to particular instances of past misconduct. In the second place, the oath is directed not merely against overt and visible acts of hostility to the government, but is intended to reach words, desires, and sympathies, also. And, in the third place, it allows no distinction between acts springing from malignant enmity and acts which may have been prompted by charity, or affection, or relationship. If one has ever expressed sympathy with any who were drawn into the Rebellion, even if the recipients of that sympathy were connected by the closest ties of blood, he is as unable to subscribe to the oath as the most active and the most cruel of the rebels, and is equally debarred from the offices of honor or trust, and the positions and employments specified.

But, as it was observed by the learned counsel who appeared on behalf of the State of Missouri, this court cannot decide the case upon the justice or hardship of these provisions. Its duty is to determine whether they are in conflict with the Constitution of the United States. On behalf of Missouri, it is urged that they only prescribe a qualification for holding certain offices, and practising certain callings, and that it is therefore within the power of the State to adopt them. On the other hand, it is contended that they are in conflict with that clause of the Constitution which forbids any State to pass a bill of atttainder or an ex post facto law.

We admit the propositions of the counsel of Missouri, that the States which existed previous to the adoption of the Federal Constitution possessed originally all the attributes of sovereignty; that they still retain those attributes, except as they have been surrendered by the formation of the Constitution, and the amendments thereto; that the new States, upon their admission into the Union, became invested with equal rights, and were thereafter subject only to similar restrictions, and that among the rights reserved to the States is the right of each State to determine the qualifications for office, and the conditions upon which its citizens may exercise their various callings and pursuits within its jurisdiction.

[16] 7 Howard, 1.

These are general propositions and involve principles of the highest moment. But it by no means follows that, under the form of creating a qualification or attaching a condition, the States can in effect inflict a punishment for a past act which was not punishable at the time it was committed. The question is not as to the existence of the power of the State over matters of internal police, but whether that power has been made in the present case an instrument for the infliction of punishment against the inhibition of the Constitution.

Qualifications relate to the fitness or capacity of the party for a particular pursuit or profession. Webster defines the term to mean "any natural endowment or any acquirement which fits a person for a place, office, or employment, or enables him to sustain any character, with success." It is evident from the nature of the pursuits and professions of the parties, placed under disabilities by the constitution of Missouri, that many of the acts, from the taint of which they must purge themselves, have no possible relation to their fitness for those pursuits and professions. There can be no connection between the fact that Mr. Cummings entered or left the State of Missouri to avoid enrollment or draft in the military service of the United States and his fitness to teach the doctrines or administer the sacraments of his church; nor can a fact of this kind or the expression of words of sympathy with some of the persons drawn into the Rebellion constitute any evidence of the unfitness of the attorney or counsellor to practice his profession, or of the professor to teach the ordinary branches of education, or of the want of business knowledge or business capacity in the manager of a corporation, or in any director or trustee. It is manifest upon the simple statement of many of the acts and of the professions and pursuits, that there is no such relation between them as to render a denial of the commission of the acts at all appropriate as a condition of allowing the exercise of the professions and pursuits. The oath could not, therefore, have been required as a means of ascertaining whether parties were qualified or not for their respective callings or the trusts with which they were charged. It was required in order to reach the person, not the calling. It was exacted, not from any notion that the several acts designated indicated unfitness for the callings, but because it was thought that the several acts deserved punishment, and that for many of them there was no way to inflict punishment except by depriving the parties, who had committed them, of some of the rights and privileges of the citizen.

The disabilities created by the constitution of Missouri must be regarded as penalties—they constitute punishment. We do not agree with the counsel of Missouri that "to punish one is to deprive him of life, liberty, or property, and that to take from him anything less than these is no punishment at all." The learned counsel does not use these terms—life, liberty, and property—as comprehending every right known to the law. He does not include under liberty freedom from outrage on the feelings as well as restraints on the person. He does not include under property those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors. The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment. Disqualification from the pursuits of a lawful avocation, or from positions of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator, or guardian, may also, and often has been, imposed as punishment. By statute 9 and 10 William III, chapter 32, if any person educated in or having made a profession of the Christian religion, did, "by writing, printing, teaching, or advised speaking," deny the truth of the religion, or the divine authority of the Scriptures, he was for the first offence rendered incapable to hold any office or place of trust; and for the second he was rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, besides being subjected to three years' imprisonment without bail.[17]

By statute 1 George I, chap. 13, contempts against the king's title, arising from refusing or neglecting to take certain prescribed oaths, and yet acting in an office or place of trust for which they were required, were punished by incapacity to hold any public office; to prosecute any suit; to be guardian or executor; to take any legacy or deed of gift; and to vote at any election for members of Parliament; and the offender was also subject to a forfeiture of five hundred pounds to any one who would sue for the same.[18]

"Some punishments," says Blackstone, "consist in exile or banishment, by abjuration of the realm or transportation; others in loss of liberty by perpetual or temporary imprisonment. Some extend to confiscation by forfeiture of lands or movables, or both, or of the profits of lands for life; others induce a disability of holding offices or employments, being heirs, executors, and the like." [19]

In France, deprivation or suspension of civil rights, or of some of them, and among these of the right of voting, of eligibility to office, of taking part in family councils, of being guardian or trustee, of bearing arms, and of teaching or being employed in a school or seminary of learning, are punishments prescribed by her code.

The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined.

Punishment not being, therefore, restricted, as contended by counsel, to the deprivation of life, liberty, or property, but also embracing deprivation or suspension of political or civil rights, and the disabilities prescribed by the provisions of the Missouri constitution being in effect punishment, we proceed to consider whether there is any inhibition in the Constitution of the United States against their enforcement.

The counsel for Missouri closed his argument in this case by presenting a striking picture of the struggle for ascendency in that State during the recent Rebellion between the friends and the enemies of the Union, and of the fierce passions which that struggle aroused. It was in the midst of the struggle that the present constitution was framed, although it was not adopted by the people until the war had closed. It would have been strange, therefore, had it not exhibited in its provisions some traces of the excitement amidst which the convention held its deliberations.

It was against the excited action of the States, under such influences as these, that the framers of the Federal Constitution intended to guard. In *Fletcher* v. *Peck*,[20] Mr. Chief Justice Marshall, speaking of such action, uses this language: "Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State."

" 'No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.' "

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the textbooks, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offence.

"Bills of this sort," says Mr. Justice Story, "have been most usually passed in England in times of rebellion, or gross subserviency to the crown, or of violent political excitements; periods, in which all nations are most liable (as well the free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others." [21]

These bills are generally directed against individuals by names; but they may be directed against a whole class. The bill against the Earl of Kildare and others, passed in the reign of Henry VIII,[22] enacted that "all such persons which be or heretofore have been comforters, abettors, partakers, confederates, or adherents unto the said" late earl, and certain other parties, who were named, "in his or their false and traitorous acts and purposes, shall in likewise stand, and be attained, adjudged, and convicted of high treason;" and that "the same attainder, judgment, and conviction against the said comforters, abettors, partakers, confederates, and adherents, shall be as strong and effectual in the law against them, and every of them, as though they and every of them had been specially, singularly, and particularly named by their proper names and surnames in the said act."

These bills may inflict punishment absolutely, or may inflict it conditionally.

The bill against the Earl of Clarendon, passed in the reign of Charles the Second, enacted that the earl should suffer perpetual exile, and be forever banished from the realm; and that if he returned, or was found in England, or in any other of the king's dominions, after the first of February, 1667, he should suffer the pains and penalties of treason; with the proviso, however, that if he surrendered himself before the said first day of February for trial, the penalties and disabilities declared should be void and of no effect.[23]

"A British act of Parliament," to cite the language of the Supreme Court of Kentucky, "might declare, that if certain individuals, or a class of individuals, failed to do a given act by a named day, they should be deemed to be, and treated as convicted felons or traitors. Such an act comes precisely within the definition of a bill of attainder, and the English courts would enforce it without indictment or trial by jury." [24]

---

[17] 4 Black, 44.
[18] Id. 124.
[19] Id. 377.
[20] 6 Cranch, 137.
[21] Commentaries, § 1344.
[22] 28 Henry VIII, chap. 18; 3 State of the Realm, 694.
[23] Printed in 6 Howell's State Trials, p. 391.
[24] *Gaines* v. *Buford*, 1 Dana, 510.

If the clauses of the second article of the constitution of Missouri, to which we have referred, had in terms declared that Mr. Cummings was guilty, or should be held guilty, of having been in armed hostility to the United States, or of having entered that State to avoid being enrolled or drafted into the military service of the United States, and, therefore, should be deprived of the right to preach as a priest of the Catholic Church, or to teach in any institution of learning, there could be no question that the clauses would constitute a bill of attainder within the meaning of the Federal Constitution. If these clauses, instead of mentioning his name, had declared that all priests and clergymen within the State of Missouri were guilty of these acts, or should be held guilty of them and hence be subjected to the like deprivation, the clauses would be equally open to objection. And, further, if these clauses had declared that all such priests and clergymen should be so held guilty, and be thus deprived, provided they did not, by a day designated, do certain specified acts, they would be no less within the inhibition of the Federal Constitution.

In all these cases there would be the legislative enactment creating the deprivation without any of the ordinary forms and guards provided for the security of the citizen in the administration of justice by the established tribunals.

The results which would follow from clauses of the character mentioned do follow from the clauses actually adopted. The difference between the last case supposed and the case actually presented is one of form only, and not of substance. The existing clauses presume the guilt of the priests and clergymen, and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath—in other words, they assume the guilt and adjudge the punishment conditionally. The clauses supposed differ only in that they declare the guilt instead of assuming it. The deprivation is effected with equal certainty in the one case as it would be in the other, but not with equal directness. The purpose of the lawmaker in the case supposed would be openly avowed; in the case existing it is only disguised. The legal result must be the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding.

We proceed to consider the second clause of what Mr. Chief Justice Marshall terms a bill of rights for the people of each State—the clause which inhibits the passage of an ex post facto law.

By an ex post facto law is meant one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.

In *Fletcher* v. *Peck*, Chief Justice Marshall defined an ex post facto law to be one "which renders an act punishable in a manner in which it was not punishable when it was committed." "Such a law," said that eminent judge, "may inflict penalties on the person, or may inflict pecuniary penalties which swell the Public Treasury. The legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime, which was not declared by some previous law to render him liable to that punishment. Why, then, should violence be done to the natural meaning of words for the purpose of leaving to the Legislature the power of seizing for public use the estate of an individual, in the form of a law annulling the title by which he holds the estate? The Court can perceive no sufficient grounds for making this distinction. This rescinding act would have the effect of an ex post facto law. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. This cannot be effected in the form of an ex post facto law, or bill of attainder; why, then, is it allowable in the form of a law annulling the original grant?"

The act to which reference is here made was one passed by the State of Georgia, rescinding a previous act, under which lands had been granted. The rescinding act, annulling the title of the grantees, did not, in terms, define any crimes, or inflict any punishment, or direct any judicial proceedings; yet, inasmuch as the legislature was forbidden from passing any law by which a man's estate could be seized for a crime, which was not declared such by some previous law rendering him liable to that punishment, the Chief Justice was of opinion that the rescinding act had the effect of an ex post facto law, and was within the constitutional prohibition.

The clauses in the Missouri constitution, which are the subject of consideration, do not, in terms, define any crimes, or declare that any punishment shall be inflicted, but they produce the same result upon the parties, against whom they are directed, as though the crimes were defined and the punishment was declared. They assume that there are persons in Missouri who are guilty of some of the acts designated. They would have no meaning in the constitution were not such the fact. They are aimed at past acts, and not future acts. They were intended especially to operate upon parties who, in some form or manner, by action or words, directly or indirectly, had aided or countenanced the rebellion, or sympathized with parties engaged in the rebellion, or had endeavored to escape the proper responsibilities and duties of a citizen in time of war; and they were intended to operate by depriving such persons of the right to hold certain offices and trusts, and to pursue their ordinary and regular avocations. This deprivation is punishment; nor is it any less so because a way is opened for escape from it by the expurgatory oath. The framers of the constitution of Missouri knew at the time that whole classes of individuals would be unable to take the oath prescribed. To them there is no escape provided; to them the deprivation was intended to be, and is, absolute and perpetual. To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is nothing less than punishment imposed for that act. It is a misapplication of terms to call it anything else.

Now, some of the acts to which the expurgatory oath is directed were not offences at the time they were committed. It was no offence against any law to enter or leave the State of Missouri for the purpose of avoiding enrollment or draft in the military service of the United States, however much the evasion of such service might be the subject of moral censure. Clauses which prescribe a penalty for an act of this nature are within the terms of the definition of an ex post facto law—"they impose a punishment for an act not punishable at the time it was committed."

Some of the acts at which the oath is directed constituted high offences at the time they were committed, to which, upon conviction, fine and imprisonment, or other heavy penalties, were attached. The clauses which provide a further penalty for these acts are also within the definition of an ex post facto law—"they impose additional punishment to that prescribed when the act was committed."

And this is not all. The clauses in question subvert the presumptions of innocence, and alter the rules of evidence, which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume that the parties are guilty; they call upon the parties to establish their innocence; and they declare that such innocence can be shown only in one way—by an inquisition, in the form of an expurgatory oath, into the consciences of the parties.

The objectionable character of these clauses will be more apparent if we put them into the ordinary form of a legislative act. Thus, if instead of the general provisions in the constitution the convention had provided as follows: Be it enacted, that all persons who have been in armed hostility to the United States shall, upon conviction thereof, not only be punished as the laws provided at the time the offences charged were committed, but shall also be thereafter rendered incapable of holding any of the offices, trusts, and positions, and of exercising any of the pursuits mentioned in the second article of the constitution of Missouri;—no one would have any doubt of the nature of the enactment. It would be an ex post facto law, and void; for it would add a new punishment for an old offence. So, too, if the convention had passed an enactment of a similar kind with reference to those acts which do not constitute offences. Thus, had it provided as follows: Be it enacted, that all persons who have heretofore, at any time, entered or left the State of Missouri, with intent to avoid enrolment or draft in the military service of the United States, shall, upon conviction thereof, be forever rendered incapable of holding any office of honor, trust, or profit in the State, or of teaching in any seminary of learning, or of preaching as a minister of the gospel of any denomination, or of exercising any of the professions or pursuits mentioned in the second article of the constitution;—there would be no question of the character of the enactment. It would be an ex post facto law, because it would impose a punishment for an act not punishable at the time it was committed.

The provisions of the constitution of Missouri accomplish precisely what enactments like those supposed would have accomplished. They impose the same penalty, without the formality of a judicial trial and conviction; for the parties embraced by the supposed enactments would be incapable of taking the oath prescribed; to them its requirement would be an impossible condition. Now, as the State, had she attempted the course supposed, would have failed, it must follow that any other mode producing the same result must equally fail. The provision of the Federal Constitution, intended to secure the liberty of the citizen, cannot be evaded by the form in which the power of the State is exerted. If this were not so, if that which cannot be accomplished by means looking directly to the end, can be accomplished by indirect means, the inhibition may be evaded at pleasure. No kind of oppression can be named, against which the framers of the Constitution intended to guard, which may not be effected. Take the case supposed by counsel—that of a man tried for treason and acquitted, or, if convicted, pardoned—the legislature may nevertheless enact that, if the person thus acquitted or pardoned does not take an oath that he never has committed the acts charged against him, he shall not be permitted to hold any office of honor or trust or profit or pursue any avocation in the State. Take the case before us;—the constitution of Missouri, as we have seen, excludes, on failure to take the oath prescribed by it, a large class of

persons within her borders from numerous positions and pursuits; it would have been equally within the power of the State to have extended the exclusion so as to deprive the parties, who are unable to take the oath, from any avocation whatever in the State. Take still another case:—suppose that, in the progress of events, persons now in the minority in the State should obtain the ascendency, and secure the control of the government; nothing could prevent, if the constitutional prohibition can be evaded, the enactment of a provision requiring every person, as a condition of holding any position of honor or trust, or of pursuing any avocation in the State, to take an oath that he had never advocated or advised or supported the imposition of the present expurgatory oath. Under this form of legislation the most flagrant invasion of private rights, in periods of excitement, may be enacted, and individuals, and even whole classes, may be deprived of political and civil rights.

A question arose in New York soon after the treaty of peace of 1783, upon a statute of that State, which involved a discussion of the nature and character of these expurgatory oaths, when used as a means of inflicting punishment for past conduct. The subject was regarded as so important, and the requirement of the oath such a violation of the fundamental principles of civil liberty, and the rights of the citizen, that it engaged the attention of eminent lawyers and distinguished statesmen of the time, and among others of Alexander Hamilton. We will cite some passages of a paper left by him on the subject, in which, with his characteristic fullness and ability, he examines the oath, and demonstrates that it is not only a mode of inflicting punishment, but a mode in violation of all the constitutional guarantees, secured by the Revolution, of the rights and liberties of the people.

"If we examine it" (the measure requiring the oath), said this great lawyer, "with an unprejudiced eye, we must acknowledge not only that it was an evasion of the treaty, but a subversion of one great principle of social security, to wit: that every man shall be presumed innocent until he is proved guilty. This was to invert the order of things; and, instead of obliging the State to prove the guilt, in order to inflict the penalty, it was to oblige the citizen to establish his own innocence to avoid the penalty. It was to excite scruples in the honest and conscientious, and to hold out a bride of perjury. It was a mode of inquiry who had committed any of those crimes to which the penalty of disqualification was annexed, with this aggravation, that it deprived the citizen of the benefit of that advantage, which he would have enjoyed by leaving, as in all other cases, the burden of the proof upon the prosecutor.

"To place this matter in a still clearer light, let it be supposed that, instead of the mode of indictment and trial by jury, the legislature was to declare that every citizen who did not swear he had never adhered to the King of Great Britain should incur all the penalties which our treason laws prescribe. Would this not be a palpable evasion of the treaty, and a direct infringement of the Constitution? The principle is the same in both cases, with only this difference in the consequences—that in the instance already acted upon the citizen forfeits a part of his rights; in the one supposed he would forfeit the whole. The degree of punishment is all that distinguishes the cases. In either, justly considered, it is substituting a new and arbitrary mode of prosecution to that ancient and highly esteemed one recognized by the laws and constitution of the State. I mean the trial by jury.

"Let us not forget that the Constitution declares that trial by jury, in all cases in which it has been formerly used, should remain inviolate forever, and that the legislature should at no time erect any new jurisdiction which should not proceed according to the course of the common law. Nothing can be more repugnant to the true genius of the common law than such an inquisition as has been mentioned into the consciences of men. * * * If any oath with retrospect to past conduct were to be made the condition on which individuals, who have resided within the British lines, should hold their estates, we should immediately see that this proceeding would be tyrannical, and a violation of the treaty; and yet, when the same mode is employed to divest that right, which ought to be deemed still more sacred, many of us are so infatuated as to overlook the mischief.

"To say that the persons who will be affected by it have previously forfeited that right, and that, therefore, nothing is taken away from them, is a begging of the question. How do we know who are the persons in this situation? If it be answered, this is the mode taken to ascertain it—the objection returns—'tis an improper mode; because it puts the most essential interests of the citizens upon a worse footing than we should be willing to tolerate where inferior interests were concerned; and because, to elude the treaty, it substitutes for the established and legal mode of investigating crimes and inflicting forfeitures, one that is unknown to the Constitution, and repugnant to the genius of our law."

Similar views have frequently been expressed by the judiciary in cases involving analogous questions. They are presented with great force in *The matter of Dorsey*,[25] but we do not deem it necessary to pursue the subject further.

The judgment of the Supreme Court of Missouri must be reversed, and the cause remanded, with directions to enter a judgment reversing the judgment of the Circuit Court, and directing that court to discharge the defendant from imprisonment, and suffer him to depart without day.

And it is so ordered.

The Chief Justice, and Messrs. Justices Swayne, Davis, and Miller dissented. In behalf of this portion of the court, a dissenting opinion was delivered by Mr. Justice Miller. This opinion applied equally or more to the case of *Ex parte Garland* (the case next following), which involved principles of a character similar to those discussed in this case. The dissenting opinion is, therefore, published after the opinion of the court in that case.

Mr. ERVIN. Mr. President, I stated a moment ago that the bill would undertake to rob seven States of the power they possess under the Constitution of the United States to establish and use literacy tests in two ways. The first is by means of a bill of attainder and an ex post facto law. I have discussed this point.

The second is by means of an artificial presumption or triggering device in which the three specified conditions on which the presumption or triggering device rest bear no rational relation to the inference created—namely, that Alabama, Georgia, Louisiana, Mississippi, South Carolina, and certain cities and counties in North Carolina and Virginia are engaged in violating the 15th amendment.

The artificial presumption or triggering device contained in the bill is wholly inconsistent with the decisions of the Supreme Court which establish these two propositions: First, that a constitutional provision cannot be transgressed indirectly by creating a statutory presumption any more than by a direct enactment; Second: That a legislative body denies due process when it creates a statutory presumption in which there is no rational relation between the fact proved and the fact to be inferred, and in which the party to whom the presumption applies is denied an opportunity to submit all the facts bearing on the issue.

These principles were recognized and applied by the Supreme Court in the famous case of *Bailey* v. *Alabama*, 219 U.S. 219.

Other cases dealing with these basic principles are the following:

Speiser v. *Randall*, 357 U.S. 513; *Heiner* v. *Donnan*, 285 U.S. 312; *Western & Atlanta Railroad Company* v. *Henderson*, 279 U.S. 639; and *McFarland* v. *American Sugar Company*, 241 U.S. 79.

Let us see how this artificial presumption would operate. It would operate as an automatic condemnation of seven States, in whole or in part. The automatic condemnation provisions of section 4(b), which my amendment would strike, would apply to a State or political subdivision of a State if these three conditions exist:

First. If the State or political subdivision maintained a literacy test as a prerequisite for voting on November 1, 1964;

Second. If more than 20 percent of the persons of voting age residing in the State or subdivision in 1960 were nonwhites; and

Third. If less than 50 percent of the persons of voting age residing in the State or political subdivision were registered on November 1, 1964, or if less than 50 per centum of such persons voted in the presidential election of November 1964.

To show the absurdity of this artificial presumption or triggering device, I invite the attention of Senators to the alternative portion of the device in the third of these conditions. Under this provision a State or political subdivision could register every citizen of voting age without discrimination. Yet, if less than 50 percent of those registered voted in 1964, the State or political subdivision would be condemned by the artificial presumption or triggering device if it had a literacy test, and if more than 20 percent of its residents of voting age were nonwhite. That would punish some States and some political subdivisions of States for something for which they were not responsible, and which they could not have prevented under the system of free government which this country is supposed to have.

I submit that the first of the three conditions giving rise to the artificial presumption or triggering device reveal the absolute absurdity and utter injustice of the attempt to condemn certain States and political subdivisions of States of the offense of violating the 15th amendment by a congressional declaration rather than by a judicial trial.

I say that for the simple reason that there are 21 States in the United States which use literacy tests as qualifications for voting. Seven of those States are Southern States—the States at which the bill is aimed. The other 14 States are in the North and the West.

This bill is directed at Alabama, Georgia, Louisiana, Mississippi, North Caro-

[25] 7 Porter, 294.

lina, South Carolina, and Virginia. These States employ literacy tests as a prerequisite for voting.

The States of Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Maine, Massachusetts, New Hampshire, New York, Oklahoma, Oregon, Washington, and Wyoming likewise use literacy tests as qualifications for voting.

With all due respect to them, I submit that the proponents of the bill are suffering from a species of schizophrenia in respect to what they think literacy tests prove. They use the literacy tests of 7 States to justify an inference of discrimination against them, but they use the literacy tests of the other 14 States to justify an inference of righteousness on their part.

The provisions of the bill relating to literacy tests offends a very basic constitutional truism which is expounded in the celebrated case of *Coyle* v. *Oklahoma*, 221 U.S. 559. Such provisions forbid 7 States to use literacy tests, and permit the other 14 States to use them.

I do not have time to read the Coyle case in full.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ERVIN. Mr. President, I yield myself 10 more minutes.

The Coyle case, which I do not have time to read, holds that the Constitution not only looks to an indestructible union of indestructible States, but to a union of equal States as well.

A bill which provides that 14 States can exercise their constitutional power to employ literacy tests and 7 States cannot puts the 7 States on a secondary plane and denies them their constitutional right to stand on an equal basis of dignity and power with the 14 States which are permitted by the bill to continue to use their literacy tests.

I will not discuss the second of the conditions in detail. It is manifest that the fact that more than 20 percent of persons of voting age in a State, or city, or county are nonwhite does not show anything one way or the other with regard to discrimination in violation of the 15th amendment.

This brings us to the third condition, which is alternative in nature, and which in connection with the first two conditions condemns any State or political subdivision where less than 50 percent of the persons of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the presidential election of November 1964.

The proponents of the bill say the three conditions on which the artificial presumption or automatic triggering device rest justify the inference that literacy tests are being used in 34 counties in North Carolina to deprive citizens of the right to vote on account of race or color in violation of the 15th amendment.

Figures assembled by the U.S. Commission on Civil Rights show how absurd and unjust the presumption or triggering device is in its application to the 34 North Carolina counties. These figures show that 99.99684 percent of all North Carolinians of all races who take the literacy test pass it.

To reverse the proposition, the figures assembled by the U.S. Civil Rights Commission show that of the people of both races in North Carolina taking the literacy test only 0.000316 percent fail.

In other words, according to the figures assembled by the U.S. Civil Rights Commission, of every 1,000 people in the State, of all races, who take the literacy test, 997 of them pass, and only 3 out of 1,000 fail.

Yet North Carolina has 34 counties covered by the bill, notwithstanding these figures and notwithstanding the fact that when the Attorney General of the United States came before the Senate Judiciary Committee and urged the passage of this bill, he admitted that the Department of Justice had no evidence whatever that any of these North Carolina counties covered by the bill, and deprived of some of their rights of sovereignty by it, are engaged in the violation of the 15th amendment.

The triggering device constitutes an unconstitutional presumption under the decisions of the Supreme Court, because there is no rational relation between the registration figures contained in the triggering device and the discrimination inferred.

North Carolina ought not to be included in the bill. Even the proponents of the bill must concede that registration figures shed no light on this subject sufficient to create a presumption of discrimination against North Carolina.

The figures assembled for the House Judiciary Committee by the Attorney General himself show that North Carolina has registered 76 percent of all persons of voting age residing within its borders.

This is a far greater percentage than the percentage of persons of voting age registered in at least 13 States not covered by the bill. Those 13 States are Arizona, with 66 percent; Arkansas, with 56 percent; California, with 75 percent; Florida, 54 percent; Hawaii, 60.6 percent; Kentucky, 51 percent; Maryland, 70.6 percent; Michigan, 72 percent; Nevada, 67 percent; New York, 74.5 percent; Oregon, 75 percent; Tennessee, 72.7 percent; and Texas, 56.3 percent.

These figures show the absurdity of raising a presumption, on the basis of this triggering device, that North Carolina is engaged in violating the 15th amendment, and that 13 other States, which have a smaller percent of their adult population registered, are not engaged in violating the 15th amendment.

The triggering device is also unconstitutional under the decisions of the Supreme Court insofar as it attempts to base an assumption or presumption of discrimination on the fact that less than 50 percent of the adult population voted in the presidential election of 1964. This is so because of a lack of any rational relation between the 5 percent voting and the discrimination to be inferred.

During the hearings before the Judiciary Committee I made a statement showing the absurdity of applying any part of this triggering device to any part of the State of North Carolina. The statement appeared in part 1, pages 777 through 798, of the hearing record.

I ask unanimous consent that the statement may be printed at this point in the RECORD, as a part of my remarks.

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

PART I

Senator ERVIN. I also offer my own statement analyzing the ridiculous crazy quilt created by the triggering device used in this bill and showing how there is no relationship between the triggering device in the States which are excluded by the bill and in the States which are included. I put that in the record.

(The statement referred to follows:)

"The voting bill and voting statistics

"The height of paradox is presented by the formula proposed in the administration's voting rights bill, S. 1564, to establish the presumption that the 15th amendment had been violated. New York, which uses a literacy test, had 74.5 percent of its citizens registered, while North Carolina, which also uses a literacy test upheld by the Supreme Court, had 76 percent of its voters registered. Given these facts, any reasonable man would think that a voting bill designed to secure the right of citizens to register and to vote would touch both New York and North Carolina. Yet, Mr. President, the State of New York is untouched by S. 1564, while 34 counties in North Carolina are presumed guilty of voter discrimination under the 15th amendment.

"Section 3(a) of S. 1564 creates a presumption that any State or political subdivision using a literacy test has violated the 15th amendment if 50 percent or less of those of voting age were not registered on November 1, 1964, or did not vote in the 1964 presidential election. Volume 12 of American Jurisprudence states that '* * * facts may be prima facie evidence of other facts if there is a rational connection between what is proof and what is to be inferred, and if the rule is not arbitrary.' There is no rational connection, however, between the fact that less than 50 percent of the persons of voting age in a State failed to vote and the presumption that this low voting percentage is due to a violation of the 15th amendment. Lack of participation in elections is brought about by many factors: a strong one-party system, a confidence in victory, dissatisfaction with both candidates, or a plain lack of concern. For instance, under the proposed bill, a single county in Maine would be affected. Yet as the Attorney General pointed out, 'A snowstorm could have kept the voters away from the polls.'

"I am in favor of any law that is constitutional and operates on a fair basis to end violations of the 15th amendment, but I think this bill does not do it. The absurdity of the 50-percent tests contained in section 3(a) of the bill is exhibited by reference to my own State.

"Almost 52 percent of all the North Carolinians of voting age voted in the last general election. Had the percentage fallen below 50 percent, then every one of the 100 counties in North Carolina would have been subjected to the sanctions of this bill. Thirty-four counties did vote less than 50 percent in the 1964 elections; therefore, these counties will be presumed to have violated the 15th amendment. It is also noteworthy, that North Carolina's literacy test, which is a simple test of reading and writing, has been held constitutional in the case of *Lassiter* v. *Northampton Board of Elections* (360 U.S. 45). New York County, N.Y., which uses a literacy test, has a population of almost one-half that of North Carolina. The percentage of the voting age population of New York County that participated in the 1964 presidential election was 51.3. What kind of logic would accuse Hyde County, N.C., which voted

49.7 percent of its voting age population, of violating the 15th amendment, but leave New York County untouched?

"In the District of Columbia during the last election only 38.4 percent of the residents voted, and only 42.6 percent were registered. This resulted despite the fact that the Constitution had been amended to permit District residents to vote in presidential elections and a strong drive had been made to increase voter registration. Special registration booths were established and kept open evenings and weekends to facilitate voter registration. In the District there is no literacy test, and the only requirement for registration is that the applicant be 21 years or older and have resided in the District for at least a year. Yet, if the District had a literacy test, the bill would condemn District officials for discrimination on the basis of race or color.

"These voting figures strongly indicate that considerations—other than discrimination—may cause low voting statistics. In short, voting statistics alone do not demonstrate that the 15th amendment has been violated by use of a literacy test.

"Florida has no literacy tests; there, in 1964, 52.7 percent of the voting age population voted. In five Florida counties the voting percentage was less than 50 percent. In one Florida county, only 36.6 percent voted—a smaller percentage than that for any North Carolina county. Yet 34 of North Carolina's counties are covered by this bill whereas no Florida county is covered.

"Arkansas has no literacy tests, but in 1964 only 49.9 percent of the voting age population voted. It would not be covered by this bill but North Carolina which voted 51.8 percent of its voting age population would be.

"Kentucky has no literacy test and in the last election 52.9 percent of the residents voted. In 13 counties, however, less than 50 percent voted. Kentucky, like Arkansas, would not be covered by this bill; neither would any of the 13 counties which voted less than half of their voting age population.

"Maryland has no literacy test, and while the State achieved a statewide percentage of 56 percent, there were three counties where less than 50 percent voted but these counties are covered by the bill.

"The absurdity of using percentages is further illustrated by comparing North Carolina, which has a literacy test, with its neighbor Tennessee which does not have a literacy test. North Carolina's voting percentage was 51.8 percent while the voting percentage of Tennessee was 51.1 percent or slightly lower. In North Carolina, 34 out of 100 counties had a percentage of less than 50 percent; in Tennessee, 22 out of 95 counties had a voting percentage of less than 50 percent. Was it literacy tests that caused the low percentage, or just the general apathy of voters, both white and Negro? Can it be demonstrated by any law or logic that North Carolina is guilty of discrimination under the 15th amendment, while Tennessee is not, simply because the latter does not have a literacy test?

"In Louisiana, to take another example, 47.3 percent of the people voted; in Texas only 44.4 percent voted. Under the proposed bill, these statistics would be used to justify the conclusion that there were violations of the 15th amendment in Louisiana, but none in the State of Texas.

"According to the bill, 34 counties in North Carolina have been violating the 15th amendment. There are 137 counties in Texas which voted less than 50 percent, but these counties are not covered by the bill. The State of Texas, which voted 44 percent, is deemed not to be guilty of violating the 15th amendment simply because it had no literacy test. Nineteen of North Carolina's condemned counties actually had a higher voting percentage than the "guiltless" State of Texas. The State of North Carolina voted over 50 percent and yet one-third of the State is deemed to have violated the 15th amendment simply because it does have a literacy test, which has been held constitutional by the U.S. Supreme Court.

"According to statistics submitted by the Attorney General, 75 percent of the voting age population in North Carolina is registered. This is a greater percentage than in at least 13 States not covered by the bill.

"State	*Registered voters (percent)*
Arizona	66.0
Arkansas	56.0
California	75.0
Florida	54.0
Hawaii	60.6
Kentucky	51.0
Maryland	70.6
Michigan	72.0
Nevada	67.0
New York	74.5
Oregon	75.0
Tennessee	72.7
Texas	56.3

And yet, one-third of the State of North Carolina, through the illogical inferences sanctioned and compelled by section 3(a) of the voting bill, are singled out by the Congress and pronounced guilty of violating the 15th amendment.

"In view of these facts, it becomes clear, that the criteria developed under the administration's bill for determining violations of the 15th amendment are illogical, discriminatory, and represent a vivid example of hurried draftsmanship.

"It would be well for our country if those who advocate this hasty legislation would pause and ponder these words of Mr. Justice Davis, speaking for the Court in Ex parte Milligan:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

Senator ERVIN. I should like to make this statement for myself as a witness, and I shall be glad to be cross-examined by anyone.

The 1960 census shows that North Carolina has a total white population of 3,399,285, a total nonwhite population of 1,156,870.

Of this nonwhite population, 1,116,021 is Negro, and while it may be surprising to some people not familiar with North Carolina, the bulk of the other 40,849 nonwhite is Indian. North Carolina ranks fourth, incidentally, in Indian population in the States of the Union.

Senator HART. Mr. Chairman, even if I were free to remain, I would not presume to cross-examine you. But I must make my apologies. I think that the reader of the record from this point on will be listening to a man who has served with distinction for many years as a trial judge, as an appellate court judge, preceded by many years as a practicing lawyer and is serving now as a Senator. It will be interesting to see how a really qualified witness will sound in the record.

Senator ERVIN. I appreciate the kind remarks of the Senator from Michigan, and I understand why any Senator is impelled to leave a committee, because most of us have three or four committees going on at the same time.

The first thing I would like to point out is that there are 100 counties in North Carolina, and according to the reports of the Civil Rights Commission, complaints have been received from only 5 of those counties since the passage of the Civil Rights Act of 1957, of alleged denials of voting rights on the basis of race or color.

The total number of these complaints has been 36; 17 of them were received in 1959, which means that they could not have arisen earlier than 1958. This is true because North Carolina has had no registration and no election in the year 1959. North Carolina holds its elections in even years and does not register voters except during a period of about 1 month before the primary, which comes on the last Saturday of May in each year, and about a month before the general election, which comes on the first Tuesday in November of each year. So at least 17 of these complaints arose at least 7 years ago.

The Civil Rights Act of 1957 provides for the receipt by the Civil Rights Commission and by the State advisory committees of complaints in writing and under oath from any persons who claim they have been wrongfully denied the right to register to vote on account of race or color.

North Carolina has a State advisory committee which is charged with the duty to investigate conditions in North Carolina and to make reports on such conditions in this field to the U.S. Commission on Civil Rights. This committee was composed of Mr. J. McNeill Smith, of Greensboro, N.C., as chairman, who is an extremely able lawyer; A. T. Spaulding, of Durham, N.C., vice chairman.

Incidentally, Mr. Spaulding is a Negro and is the president of the largest insurance company owned and operated by members of the Negro race. The principal office, or home office, of his company is in Durham, N.C. Its name is the North Carolina Mutual Life Insurance Co.

The secretary is Mrs. Margaret R. Vogt, of Wilson, N.C.; Millard Barbee, of Durham, N.C., who is the president of the AFL–CIO in North Carolina; and Paul R. Ervin, an attorney at law, of Charlotte, N.C.

I wish to acquit Paul of any charge of any relationship to myself, notwithstanding the fact that I would be proud to be related to him and notwithstanding the fact that he spells his surname exactly like I do. I held court over a period of 7 years in the county in which he practices law, and he has had cases before me and many cases in which I was superior court judge. I know no man who has a greater capacity for objective viewing of any problem and who has a higher degree of intellectual integrity than he has.

Another member of the committee was Hector MacLean of Lumberton, N.C., who is a banker and is the son of a former Governor of North Carolina.

Another member of the commission is Conrad O. Pearson, an attorney at law, of Durham, N.C., who is a Negro lawyer of excellent character and ability.

Another member of the committee was William L. Thorp, Jr., of Rocky Mount, N.C. He is an attorney at law, and incidentally, the son of a college mate of mine and one of the brightest young lawyers in the State.

Another member is Curtiss Todd of Winston-Salem and Marion A. Wright, to complete the membership of this committee.

This committee is located throughout the State so that every area of the State is represented—east, west, and Piedmont, the three great sections of our State.

This committee, over a period of several years, conducted hearings throughout the State for the purpose of receiving complaints from any person who claimed that he had been denied the right to vote on account of race or color. According to page 451 of the U.S. Civil Rights Commission report entitled "The 50 States Report," published in 1961, they held hearings in New Bern, Greenville, Rocky Mount, and Fayetteville in the eastern part of the State.

Incidentally, New Bern is the county seat of Craven County, one of the counties that is being deprived of its constitutional prerogatives under this bill, and Greenville is

the county seat of Pitt County, another one of these counties. Fayetteville is the county seat of Cumberland County which is also one of the 34 counties.

Rocky Mount is situated right in the area of others of these 34 counties.

Then hearings were held in Raleigh, Durham, Greensboro, Winston-Salem, and Charlotte, the chief cities of the Piedmont, which is the middle area of North Carolina. Hearings were also held at Asheville, which is in the western part of the State.

The hearings were held at these places over a period of several years, and the times and places were announced in the papers and the press of North Carolina. Notice was given that anyone who had any complaint that he had been denied the right to vote in violation of the 15th amendment was invited to come and be present and present his claim to them.

In addition to this, public notice was given that any citizen of North Carolina who claimed he had been denied the right to vote in violation of the 15th amendment could present his claim individually to any member of the North Carolina State Advisory Commission.

Now, I mentioned the fact that the record shows that only a total of 36 complaints of deprivations of voting rights were received from the 1,156,870 nonwhites in North Carolina. So far as I know, only one of these claims was ever litigated in court, that was a case from Bertie County, entitled *"Basemore* v. *the Board of Elections of Bertie County."* It was held by the North Carolina Supreme Court in that case that the registrar in Bertie County had committed an error of law in permitting a person to copy a section of the North Carolina law from dictation. They found that under the North Carolina literacy test, a person is entitled to have the Constitution laid beside him where he can read it and copy it.

I have also noted the fact that 17 of these 36 cases had to originate at least as early as 1958. The other originated in 1960.

I want to make an additional statement on the location of the cities where these hearings were held.

Half of Rocky Mount is in Edgecombe County and the other half is in Nash County. Edgecombe County is 1 of these 34 counties.

I would like to call attention to the fact that at page 451 of the same publication of the U.S. Civil Rights Commission it states this: "To date, the committee has received sworn written statements from 5 of the 100 counties of the State." Those complaints were among the 36 that I have mentioned.

I would call attention to another publication of their Civil Rights Commission entitled "Equal Protection of the Laws of North Carolina," which covers the period 1959–62. On page 19, it states, and I quote: "In the more than 3 years that this committee has been in existence, there have been no such complaints"—that is, complaints of denials of voting rights—"on the basis of race from any of the other 95 counties of the State."

Now, nine of these complaints came from Franklin County. While the record does not so state, it indicates that all of them came from one precinct and involved the action of one registrar. These complaints all originated in 1960 in connection with the May primary. Four of the other complaints came from Greene County, one of them being at least as far back in origin as 1959. Three of these complaints in Greene County originated in connection with registration for the May primary of 1960, and involved the same registrar in that county.

Seven complaints were received from the third county, Bertie County, by the North Carolina Advisory Committee on May 20, 1960. These originated apparently in three different precincts. One of them gave rise to this case, *Basemore* v. *The Bertie County Board of Elections*, which is reported in "254, North Carolina Supreme Court Reports," page 398.

Ten of these complaints originated in 1959 in Halifax County, and the evidence given by the Attorney General, as well as a copy of the opinion in the case by the U.S. District Court of the Eastern District of North Carolina shows that all objections arising in Halifax County were corrected within about 12 days after the filing of the suit. The suit was dismissed on the ground that there was no occasion for it to be prosecuted further.

The fifth county where complaints were received was Northampton County. All of these complaints were received in 1959 and they total six in number.

North Carolina has approximately 2,200 precincts and in each of these precincts there is one registrar who passes on the qualifications for voters.

The registrar in the present setup is a member of the Democratic Party.

Then there are two judges, one a Republican and one a Democrat. But the judges have nothing to do with passing on registration.

So it would appear, that out of the 2,200 registrars in North Carolina since the creation of the U.S. Civil Rights Commission in 1957, not more than approximately 7 registrars out of 2,200 have been charged with denying any person the right to vote on account of race or color. Whether these complaints were justified in any of these cases except the Basemore case is not clear, because there was no adjudication made with respect to them.

But I submit that no State that has 2,200 election officials should be deprived of this constitutional right to use the literacy test in determining the qualifications for voters, because possibly 6 or 7 or 8 election officials out of 2,200 may not have exercised good judgment in administering a literacy test.

I consider this a punishment for supposed guilt upon an awful lot of innocent people.

I want to call attention to some registration figures for 1960; during the 1960 general election, 210,450 nonwhites were registered to vote, according to figures supplied by the U.S. Civil Rights Commission as appears from page 454 of their publication entitled "The 50 States Report."

On that same page is a mathematical or typographical error stating that these 210,450 nonwhites who were duly registered amounted to only 31.2 percent of the nonwhites of voting age. That should be 38.2 percent, as appears from anybody's arithmetic and also as appears in another publication of the U.S. Civil Rights Commission. The calculation appears correctly as 38.2 percent on page 283 of the publication of the Civil Rights Commission entitled "Voting 1961, U.S. Commission on Civil Rights Report."

Now, at that time, the total number of nonwhites in North Carolina of voting age, as shown upon the same page of the last publication, was 550,929, of whom 210,450 or 38.2 percent, were registered.

So much for the 1960 figures.

I pointed out this morning that according to the publication of the U.S. Civil Rights Commission entitled "The 50 States Report," which bears the date of 1961, a total of 239,687 new names were added to the registration books of North Carolina in 1960, and of that number 208,672 were whites and 31,015 were nonwhites.

I also called attention this morning to the fact that on page 473 of the same publication, it appears that 759 people who applied for registration in North Carolina were denied registration on the ground that they could not pass the literacy test.

What this means in very simple language is that the following percentage of all people in North Carolina applying for registration, both white and nonwhite, during 1960 passed the literacy test; 99.—and I am going to give you a lot of figures beyond the decimal point—99.99684.

To my mind, as I said this morning, it is like using an atomic bomb to get rid of one mouse to say that you are going to abolish literacy tests in a State where 99.99684 percent of the people passed the literacy test. Certainly on that kind of a basis no rational man can honestly contend that those figures show that the literacy test is being used to deny people the right to register to vote on account of race or color.

Now, to put this thing in reverse, the figures of the Civil Rights Commission itself show that during 1960, this percentage of people, whites and nonwhites both, applying for registration, failed the test: 0.000316. That means that only three-thousandths of 1 percent of the people in North Carolina, both white and nonwhite, who applied for registration in 1960 failed to pass the literacy test.

Now, I want to show some other figures about 1964. I cannot get official figures; they are not available. But I have been supplied by the Civil Rights Commission with certain figures which are based on compilations made by the voter education project of the Southern Regional Council.

As I understand it, the Southern Regional Council is financed by the Ford Foundation and it certainly is not engaged in picturing conditions in Southern States any better than they are. There are some very interesting things in this connection.

In 1960, as I pointed out, 38.2 percent of the nonwhites in North Carolina were registered. The figures for 1964 show that that had increased from 38.2 to 46.8 percent. The number had increased from 1960 to 1964 by approximately 58,000, because 258,000 nonwhites of voting age in North Carolina were registered in 1964. That is a very substantial figure and a very substantial increase, because the total number of nonwhites of voting age in North Carolina, according to the 1960 census was only 550,929.

Now, I want to address myself very briefly as far as I can to some of these counties that were charged with discrimination. In fact, no discrimination has been proved in any case, even in the Basemore case, because that was based upon misinterpretation of a law by the registrar. Thus far, I have been relying on figures supplied by the Civil Rights Commission. I do not think it is infallible, because in its publication for 1963, called "Civil Rights," at page 20, it is stated that there were 100 counties in the United States where denials of voting rights were indicated. Then they said on page 20 of that same publication that 7 of these 100 counties were in North Carolina. They added this, however: "The most recent figures available for these seven counties indicated a marked increase in Negro registration."

I think that is bound to be a mistake as to one of them. On page 35, it lists among those seven North Carolina counties the county of Graham. That is a county that is cited as having discrimination against persons in voting on account of race or color. The county of Graham, according to information supplied me, has not a single Negro resident in the entire county. Certainly it could not be discriminating against people who did not exist within the borders of this county.

Now, at that time, Bertie County was included in that report because of these complaints, and also because it had allegedly only 713 Negroes registered. The latest figures which I have just obtained from the Borad of Elections of Bertie County show that number has doubled in 4 years. There are now 1,434 Negroes registered to vote in Bertie County. To my mind this is a very substantial increase.

Hertford County was one of the counties included in the seven listed in this publication as counties where there were indications of the denial to vote on the basis of race or color. So far as I can ascertain, that is based solely upon the percentage of Negroes voting and not upon the actual complaints or investigations.

Another one of these counties that is listed by the Civil Rights Commission as being a county where discrimination was indicated—not proved, but indicated—was Green County, where 385 Negroes were registered in 1960. Now their number has risen to 622.

Another one of these counties was Halifax County, the one that was involved in the lawsuit, in 1962.

These figures I have given you are for 1962 rather than 1960.

In 1962, there were 1,954 Negroes registered, or 14.3 percent of those of voting age in Halifax County. By 2 years later—that is, in 1964, 3,644 Negroes were registered, amounting to 26.5 percent, which is a very substantial increase.

I do not have the figures for Hertford County, but I have been informed that there are no impediments whatever offered to Negroes to register in Hertford County. In fact, I have been furnished with a newspaper from Hertford County which has an article to that effect.

I am sorry, I do not have these figures from these other counties. I have requested all of the county election boards in North Carolina to furnish me information concerning their county regarding the number of persons voting in the November 1964 election, the number of whites and Negroes registered, the number of years records have been kept on literacy tests, the number of Negroes who passed and failed the State literacy tests and the number of whites who passed and failed the State literacy tests. Because of time restrictions placed on S. 1564 by the Senate, I have not been able to receive replies from all North Carolina counties. However, I have 50 replies, including those from 19 of the 34 counties which would be included under the administration's voting rights bill. These official statistics indicate that the number of Negroes who failed North Carolina's literacy test and the number of whites who failed this test were approximately the same in most cases. For example, in 6 of the 50 counties reporting, no Negroes failed the test, and in 7 of the counties, no whites failed the test.

Additional statistics point out that the number of Negroes who passed the literacy test was high in relation to the number who failed.

Also, these general observations held true for the 19 counties that reported out of the 34 that would be covered by the bill. In other words, there is no statistical evidence from these official records that indicated there was any systematic discrimination by election officials in North Carolina.

These official statistics disagree with those reported weekly in the Congressional Quarterly and indicate that even an invariably accurate source such as the Congressional Quarterly may be in error. In nine of the North Carolina counties which would be affected by S. 1564, the March 19 edition of the Congressional Quarterly inaccurately reported the total number of persons who voted in the 1964 presidential election. In every case except two, the erronerous figures reported by the Congressional Quarterly was less than that reported by the county election officials.

I would like to insert at this point the statistical data based upon information furnished to me by the county boards of election of these various counties.

(The document referred to follows:)

"The report of 50 North Carolina counties on voting and literacy test statistics

"I have requested all of the county election boards in North Carolina to furnish me information concerning their county regarding the number of persons voting in the November 1964 general election, the number of whites and Negroes registered, the number of years records have been kept on literacy tests, the number of Negroes who passed and failed the State's literacy test, and the number of whites who passed and failed the State's literacy test. Because of the time restrictions placed on S. 1564 by the Senate, I have not been able to receive replies from all North Carolina counties. However, I have received 50 replies, including those from 19 of the 34 counties which would be included under the administration's voting rights bill.

"These official statistics indicate that the number of Negroes who failed North Carolina's literacy test and the number of whites who failed this test were approximately the same in most cases. For example, in 12 of the 50 counties that reported, no Negroes failed the test and in 11 of the counties, no whites failed the test. Additionally, these statistics point out that the number of Negroes that passed the literacy test was high in relation to the number that failed. Also, these general observations held true for the 19 counties that reported out of the 34 which will be covered by the voting bill. In other words, there is no statistical evidence from these official records that indicate there was any systematic discrimination by election officials in North Carolina.

"These official statistics disagree with those reported recently in the Congressional Quarterly, and indicate that even an invariably respectable source such as the Congressional Quarterly may be in error. A comparison will show that in 9 of the 34 North Carolina counties which would be affected by S. 1564, the March 19 edition of the Congressional Quarterly inaccurately reported the total number of persons who voted in the 1964 Presidential election. In every case except two, the erroneous figure was reported in the Quarterly was less than the figure reported by the county election officials.

"County	Congressional Quarterly figures	Official figures
Beaufort [1]	9,685	9,855
Bertie	4,263	4,252
Camden	1,404	1,449
Hoke	3,033	3,060
Lenoir	13,234	13,353
Martin	6,332	6,328
Warren	4,758	4,824
Wayne	17,346	17,914
Wilson	12,240	12,329

[1] 2 statistical tables are attached.

"The report of 50 North Carolina counties on voting and literacy test statistics

"County	Total registered, Nov. 1, 1964	White	Negro	Voting, November 1964 general election	Years records kept on literacy tests	Negroes who failed test, 1964	Negroes who passed test, 1964	Whites who failed test, 1964	Whites who passed test, 1964
Alexander	10,887	10,290	597	7,541	1	0			
Ashe	12,846	12,751	95	9,275	Have not kept them	0	All	0	All.
Avery	5,882	5,847	35	4,512	1	0	0	1	All but 1.
Beaufort	21,195	18,286	2,909	9,855	1964, 1st year	(1)	(1)	(1)	(1).
Bertie	6,673	5,239	1,434	4,252	1964	30	560	1	306.
Caldwell	24,160	22,227	1,933	19,779	1964 general election	4	Unknown	14	Unknown.
Camden	2,083	1,800	283	1,449	Keep only current tests.	4	43	2	51.
Craven	13,749	10,939	2,810	12,133	April 1964	32	2,810	20	10,939.
Clay	3,181	3,145	36	2,800	1	0	1	0	74.
Columbus	22,301	18,384	3,917	13,775	No written test	0	All	0	All.
Cumberland	31,638	25,798	5,840	22,957	No answer	Approximately 8	No answer	No answer	No answer.
Currituck	3,090	2,719	371	2,231	1 election past	No record	135	No record	229.
Davie	10,153	9,314	827	7,709	1	1	68	1	243.
Durham	49,278	34,580	14,698	39,777	2	0	All	0	All.
Forsyth	86,134	69,062	17,072	63,822	No record	Approximately 4	Unknown	Approximately 2	Unknown.
Greene	6,017	5,395	622	3,613	1	5	87	7	140.
Guilford	102,485	85,689	16,796	77,160	No records	3	3,718	4	11,254.
Henderson	18,415	17,700	715	14,846	1964 general election	0	263	3	1,835.
Hertford	6,118	4,058	2,060	5,014	1 year				
Hoke [2]	3,770	2,820	817	3,060	1	3	116	3	228.
Hyde	2,612	2,308	304	1,641	1	5	96	5	15.
Jackson	9,000	8,822	178	8,250	No answer	None	All	0	All.
Jones	6,231	4,770	1,431	2,910	There is no written record of literacy test.	Estimate 12	Estimate 490	Estimate 10	Estimate 241.
Lenoir	18,469	14,977	3,492	13,353	No answer	10	942	3	2,161.
McDowell	14,913	14,303	610	10,488	1964 general election	0		9	
Macon	7,942	7,884	58	6,786	No test	0	All	0	All.
Martin	10,299	8,508	1,791	6,328	6 months	25	454	4	297.
Mecklenburg	124,695	106,006	18,689	96,391	April 1964	Possibly 12	3,452	Possibly 8	15,117.
Montgomery	9,787	8,365	1,422	7,726	1	14	386	16	493.
Moore	14,464	12,418	2,046	11,574	October 1964	9	642	7	1,275.
New Hanover	30,742	24,154	6,588	24,983	1	5 or less	Several hundred	5 or less	Several hundred.
Pasquotank	8,017	6,455	1,562	6,771	Oct. 10, 1964	Approximately 26	551	Approximately 10	968.
Pender	6,250	4,600	1,650	5,200	12 months	12	288	2	80.
Person	12,140	10,098	2,042	6,902	1 year	1	150	0	250.
Randolph	32,627	30,000	2,627	24,041	No record	(3)	(3)	(3)	(3).
Robeson [4]	18,763	11,770	3,935	17,371		13	3,935	3	11,770.

See footnotes at end of table.

"The report of 50 North Carolina counties on voting and literacy test statistics—Continued

"County	Total registered, Nov. 1, 1964	White	Negro	Voting, November 1964 general election	Years records kept on literacy tests	Negroes who failed test, 1964	Negroes who passed test, 1964	Whites who failed test, 1964	Whites who passed test, 1964
Rowan	36,235	32,006	4,229	29,980	1964	No record	961	No record	6,939.
Rutherford	26,109	24,651	1,458	16,710	1964	2	178	0	685.
Scotland	6,102	4,743	1,359	5,163	1964	12	1,319	18	4,743.
Stanley	20,058	18,749	1,309	17,089	3	1	129	1	1,538.
Stokes	12,020	10,714	1,306	9,650	0			2	
Transylvania	8,758	8,368	390	8,452	No record	0	All	0	All.
Tyrrell	2,995	2,492	503	1,406		3	124	2	115.
Union	14,000	12,869	1,131	11,437	2	5 since 1962	1,131 since 1962	5 since 1962	12,869 since 1962.
Wake	74,274	62,475	11,799	56,294	1	(1)	(1)	(1)	(1).
Washington	4,165	3,294	871	3,667	1 year	0	165	0	251.
Wayne	25,350	19,228	6,122	17,914	None				
Wilkes	29,946	28,170	1,776	20,530	No literacy test as such administered.				
Wilson	16,941	13,814	3,127	12,329	1	6	919	5	1,831.

"[1] Not sufficient records to answer.
"[2] Hoke County reported that 133 Indians were registered in November 1964; 4 Indians failed the literacy test in 1964 and 16 passed.
"[3] No record—few failed.
"[4] Robeson County reported that 3,058 Indians were registered in November 1964; 17 Indians failed the literacy test in 1964 and 3,058 passed.
"[5] No record on failure by race.

"The report on voting and literacy test statistics of 19 North Carolina counties that will be covered by the administration voting bill

"County	Total registered, Nov. 1, 1964	White	Negro	Voting, November 1964 general election	Years records kept on literacy tests	Negroes who failed test, 1964	Negroes who passed test, 1964	Whites who failed test, 1964	Whites who passed test, 1964
Beaufort	21,195	18,286	2,909	9,855	1964, 1st year	(1)	(1)	(1)	
Bertie	6,673	5,239	1,434	4,252	1964	30	560	1	306.
Camden	2,083	1,800	283	1,449	Keep only current tests.	4	43	2	51.
Craven	13,749	10,939	2,810	12,133	April 1964	32	2,810	20	10,939.
Cumberland	31,638	25,798	5,840	22,957	No answer	Approximately 8	No answer	No answer	No answer.
Greene	6,017	5,395	622	3,613	1	5	87	7	140.
Hertford	6,118	4,058	2,060	5,014	1 year				
Hoke [2]	3,770	2,820	817	3,060	1	3	116	3	228.
Hyde	2,612	2,308	304	1,641	1	5	96	5	15.
Lenoir	18,496	14,977	3,492	13,353	No answer	10	942	3	2,161.
Martin	10,299	8,508	1,791	6,328	6 months	25	454	4	297.
Pasquotank	8,017	6,445	1,562	6,771	Oct. 10, 1964	Approximately 26	551	Approximately 10	968.
Person	12,140	10,098	2,042	6,902	1 year	1	150	None	250.
Robeson [3]	18,763	11,770	3,935	17,371		13	3,935	3	11,770.
Scotland	6,102	4,743	1,359	5,163	1964	12	1,319	18	4,743.
Union	14,000	12,869	1,131	11,437	2	5 since 1962	1,131 since 1962	5 since 1962	12,869 since 1962.
Wayne	25,350	19,228	6,122	17,914	None				
Wilson	16,941	13,814	3,127	12,329	1	6	919	5	1,831.

"[1] Not sufficient records to answer.
"[2] Hoke County reported that 133 Indians were registered in November 1964; 4 Indians failed the literacy test in 1964 and 16 passed.
"[3] Robeson County reported that 3,058 Indians were registered in November 1964; 17 Indians failed the literacy test in 1964 and 3,058 passed."

Senator ERVIN. There is an old expression that "Figures do not lie, but liars figure." This hearing has proved not only that, but that figures do lie. The figures supplied me by the Civil Rights Commission for 1964 are very interesting figures. For example, in Alamance County, which is the county where my colleague, Senator JORDAN, lives, 69.7 percent of all the nonwhites are registered. I think that registration would probably compare favorably with virtually any registration throughout the United States.

But here is a queer thing. Buncombe County, where Asheville is located, and where hearings were held, has a white population of voting age of 72,249, and a nonwhite population of voting age of 8,510. Only 28,894 of the white are registered, whereas 5,695 of the nonwhites are registered. In other words, in Buncombe County, N.C., according to figures supplied me for 1964 by the U.S. Civil Rights Commission, only 39.9 percent of the whites of voting age are registered, whereas 66.9 percent of the nonwhites of voting age are registered.

Now, if you take the reasoning of those who support the administration bill, you would say that would establish beyond all question that in Buncombe County, N.C., the election officials are discriminating against whites and in favor of nonwhites. This proves that when you take figures you can prove anything with them.

Now, here is another county in North Carolina, Forsythe County, which is where Winston-Salem is located, and the center of the great R. J. Reynolds Tobacco Co., which employs thousands of Negroes. The white registration is 76.6 percent, and the nonwhite is 40.1 percent.

In Beaufort County, N.C., 61.5 percent of the nonwhite adults are registered, as compared with 73.4 percent of the whites.

In Mecklenburg County, N.C., whose county seat is Charlotte, 58.8 percent of the adult whites are registered and 44.6 percent of the adult nonwhites are registered.

Here is a very interesting figure. The State capital of North Carolina is located in Raleigh, N.C. If the State of North Carolina were engaged in discrimination, it certainly seems it ought to be reflected in the figures for the county where the State capital is located. The white population of Wake County is 76,799; the nonwhite is 22,856—that is, I am talking about people of voting age. The number of whites registered is 43,869, the number of nonwhites is 12,586. And this means that 57.1 percent of the whites are registered and 55.1 percent of the nonwhites are registered.

I have already pointed out that 46.8 percent of all the nonwhites in North Carolina are registered on a statewide basis, according to the figures supplied me by the U.S. Civil Rights Commission for the year 1965.

It would appear that the reasons attributed by the North Carolina Advisory Committee to the Civil Rights Commission for the small percentage of North Carolina Negroes voting might also be applicable to New York County where only 51.3 percent of the people of voting age voted, and particularly New York's 18th and 19th Congressional Districts which voted 46.7 percent and 43.5 percent respectively.

The 18th Congressional District is one of the few districts in the United States with a Negro Congressman, Mr. ADAM CLAYTON POWELL, and includes the heart of Harlem.

By the same token, there appears to be an analogy to the situation in the District of Columbia which also has a large Negro population and voted 38.4 percent, a much smaller percentage of its population of voting age than did North Carolina which voted 51.8 percent of her residents of voting age. Yet all of these districts would be exempt from the provisions of this law. This has no rhyme and no reason whatever.

I add these observations. North Carolina has 100 counties, and only 11 of them voted smaller percentages of the vote on Republican and Democratic tickets than Congressman FARBSTEIN'S 19th Congressional District located in New York County.

I put in the record the other day a letter from the chairman of the North Carolina State Board of Elections, William Joslin, who stated that he had notice of only one or two complaints about literacy test matters, and which stated further that the Norh Carolina State Board of Elections had been holding meetings throughout the State, giving instructions to registrars and voting officials so as to have a uniform application of the law.

North Carolina has a very simple literacy test. The North Carolina law merely provides that a person must have five qualifications in order to vote. The first is a residence qualification. He must be a resident of the State of North Carolina 1 year at the

date of election, and resident in the precinct 30 days by the date of election.

The second requirement is the literacy test. He must be able to read and write any section of the State constitution, and that, as I stated a moment ago, the Supreme Court holds, requires that he be given an opportunity just to look at it and read or copy a certain section of the State constitution.

The third requirement is he must be 21 years of age by the date of election.

The fourth requirement is that he must be an American citizen, either by birth or by naturalization. If he has lost his citizenship by reason of having received imprisonment in the State's prison, he must have his citizenship restored by the manner prescribed by law.

I might add that is a very simple procedure by which he files a petition with the superior court and proves that he has been of good character since his release from prison.

The fifth requirement is that he must be of sound mind in that he must be neither an idiot nor a lunatic.

I would like to put in the record at this point some instructions issued in Mecklenburg County, N.C., outlining the requirements for voting and certain procedures which are required to be followed by the registrars and judge at election.

(The document referred to follows:)

"Mecklenburg County instructions for registration

"Read page 26, section 29 of Election Laws of the State of North Carolina.

"An applicant for registration must meet these qualifications:

"1. Residence: He must be a resident of the State of North Carolina 1 year by the date of the election, and a resident of his present precinct 30 days by the date of the election.

"2. Literacy: He must be able to read and write any section of the State constitution.

"3. Age: He must be 21 years of age by the date of the election.

"4. Citizenship: He must be an American citizen, either by birth or by naturalization. If he has lost his citizenship by reason of having served imprisonment in the State's prison, he must have had his citizenship restored in the manner prescribed by law.

"5. Sound mind: He must be neither an idiot nor lunatic.

"Register only voters in your precinct.

"Put polling place sign in conspicuous place. When a voter enters your polling place for registration, follow this procedure:

"1. Ask if he has been registered before. (See transfers below).

"2. Ask where he lives, to determine if he is in your precinct. Learn your precinct boundary lines.

"3. If he has not been registered before ask how long has he lived in the State, and how long in your precinct.

"4. Ask the applicant to write in the ledger book one section of the constitution which he will select from the six excerpts herein provided by the board. (See attached mimeographed sheet.) When the applicant has completed the section have him sign his name on the line below. If applicant is unable to fulfill these requirements in a reasonably legible handwriting do not register him. In any case in which an applicant fails to meet this literacy test, registrar will note in margin 'rejected' and initial this notation. All entries shall be dated by registrar.

"5. Ask him to put his left hand on the Bible and raise his right hand while you administer the oath of registration to him.

"6 Ask for his party affiliation. If he does not wish to declare his party, explain that you can register him either as an Independent and as such be barred from voting in party primaries, or you can register him as 'No party' (designated on blue form by NP) which gives him the privilege of declaring a party affiliation on primary day to the registrar and voting in the party primary of his choice.

"7. Using the duplicator with carbon, fill out proper registration forms for him: use white if he is a Democrat, buff is he is a Republican and blue if he is Independent or no party. You will have two forms for each voter: one original and one carbon copy.

"8. Print his full name, no initials, with correct address and supply all information asked for on the form. Use all capital letters in printing. Print small.

"9. You sign and then ask him to sign both copies without carbon, using his regular signature.

"Transfers

"When you ask the voter if he has been registered before, and his reply is that he has been voting at any one of the precincts in the county, instead of filling out new forms for him, have him sign his full name, his new address, his old address and his party affiliation on one transfer form. He cannot change his party affiliation on this transfer (see change of party, below). If he has not voted in 6 years, fill out new forms as if he were a new voter. Be sure he has been a registered voter in Mecklenburg County and has merely moved into your precinct from another one. If you have the least doubt, register him anew.

"When a woman who has married or remarried comes to transfer, fill out new forms for her. The old forms we have would not have her correct name, and we could not change it. Give us a note with the new form, telling who the voter was before marriage.

"Change of Party

"If a voter wishes to change his party affiliation he may do so by reading the oath on page 22 of the green guidebook 'Primary and General Election Law and Procedure,' (by Henry W. Lewis). If an independent wishes to declare his party, he too must read the same oath.

"Mail all transfers and registration forms, both used and unused on Saturday night at the close of registration. Do not use paper clips when mailing forms. Put the forms and transfers you have used in small envelope; put unused ones in large envelope marked fourth-class mail.

"CATHERINE C. CARPENTER,
"Exectuive Secretary, Mecklenburg County, Board of Elections."

Senator ERVIN. I want to put in the RECORD a literacy test requirement. The registrar writes in the name of the man and the date he applies for registration, and he set out this:

"Under provisions of General Statute 163-28 and North Carolina"—

This is directions to the registrar—

"and North Carolina Constitution, article VI, paragraph 4, it shall be the duty of each registrar to administer to each applicant for registration these literacy provisions according to standards laid down by the North Carolina Supreme Court. He (the applicant) must be able to read and write any section of the State constitution in the English language."

That is the literacy test in North Carolina. That is the way they give it.

Instructions to the voter are as follows:

"Copy the following, writing in the English language:"

Then they quote about the shortest section of the North Carolina Constitution. Here is the quotation of the North Carolina Constitution he is required to write:

"That the people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof."

And I might digress to say that if this bill passes, that will no longer be true. They will not have the right to regulate the internal affairs.

Then they have some blank lines, just to copy that, and that is the whole literacy test in North Carolina. There is no understanding test. Then he signs his name. Then the registrar has to say whether he approves it or it is disapproved and signs his name. So the record is very simple.

(The form referred to follows:)

"Literacy test

---------- ---------
"Name "Date

"Under provisions of G.S. 163-28 and North Carolina Constitution, article VI, part 4, it shall be the duty of each registrar to administer to each applicant for registration these literacy provisions according to standards laid down by the North Carolina Supreme Court. He (the applicant) must be able to read and write any section of the State Constitution in the English language.

"Instructions: Copy the following, writing in the English language:

" 'That the people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof,'

"(Signature of applicant)

"Approved _____.
"Disapproved _____.

"Registrar"

Senator ERVIN. Here is a sample of an individual who took the literacy test. This was even shorter than the other one, because all he had to write was:

"All elections ought to be free."

This is an actual literacy test administered to a man who was a Negro. I struck out his name, because he does not want it to go into the record. He fills out the age, the race, the address, county where born, the question whether he was ever convicted of a felony, what party he is affiliated with.

Then the applicant is required to copy the shortest thing in the North Carolina Constitution:

"All elections ought to be free."

Well, it shows the registrar passed this man, and I would like to have this reproduced in the record in photostatic copy to see what poor writing you can do and still pass the literacy test in North Carolina.

(The document referred to follows:)

"New Hanover County Board of Elections literacy test

"1. ---------- 41
(Print your full legal name) (Age)

"2. ---------- Negro
(Address) (Race)

"3. Bishop Kille SC
(County in which you were born)

"4. Have you ever been convicted of a felony? 'No' If so, has your citizenship been restored? --------

"5. D
(Your political party: you may write a D for Democrat or R for Republican)

"6. Copy in your own handwriting the following underlined portion of the North Carolina Constitution in the space provided below: 'All elections ought to be free.' (North Carolina Constitution, art. I, sec. 10).

All elections ought to be free North Caroline Constitution art. I, section 10

"7. Date: 10-10-64

"Signature ----------.

"I hereby certify that I have this day examined the above literacy test and I further

certify that the applicant has passed this test.

"Registrar B. E. Hollis,
"3d Ward, 1st Precinct.

"(NOTE.—Any person who fails to pass this test will be given a copy of his or her test paper upon request in writing to the New Hanover County Board of Elections.)"

Senator ERVIN. Now, as I pointed out, the North Carolina State Advisory Committee to the U.S. Commission on Civil Rights is composed of men and women of both races residing in all areas of North Carolina. I have pointed out that since 1960, they have only received 19 complaints of denials of voting rights on the basis of race or color. I have also pointed out that there is nothing to indicate that these denials actually existed. They are not proved except in the Basemore case.

Now, these people who know North Carolina, white in some cases and nonwhite in others, and who are numbered among the leading citizens of North Carolina, made a report which the U.S. Civil Rights Commission accepted and printed. It is in the book, "The Fifty States Report." That was printed in 1961. Here is what they say on page 43:

"We believe that in respect to voting, the people of North Carolina are in agreement that no citizen of our State should be denied the right to register, vote, and have that vote counted on account of his race, religion, or national origin. Where registrars have artifically imposed more difficult literacy tests on Negro applicants than on the white, wherever there has been discrimination against Negroes, in respect to their right to register and to vote, such denial of the basic right of citizenship does not have the approval, either open or tacit, of the vast majority of officials and citizens of our State. We believe that where such discrimination has been practiced, it has already disappeared or will soon disappear."

I wish to read into the record a statement made by the North Carolina advisory committee and accepted and printed by the U.S. Commission on Civil Rights in the book entitled "Equal Protection of the Laws in North Carolina," which covers a period down through 1962:

"There were no voting complaints filed by this committee after the May registration prior to the general election in November 1960. This fact, plus the fact that there have been no complaints from 95 out of the 100 counties, may mean that the disproportionately low registration and low voting of Negroes in North Carolina is due more to apathy or, as the registrars in Bertie and Green Counties suggested, to poor schooling and poor school attendance than to election officials' arbitrary denial of the right to register on account of race."

I mentioned the fact that one of the members of the North Carolina State advisory committee is Paul R. Ervin, an attorney at law of Charlotte, who so far as I know can be justly acquitted of being any relation of mine, notwithstanding the fact that we both spell our surnames in the same way—I have already mentioned the fact that I do no know a human being who has a greater capacity for viewing problems objectively and who has a higher degree of intellectual integrity than Paul Ervin. He wrote an article which is published in the North Carolina Law Review for December 1963, and which was part of an issue on civil rights in the South. This was a symposium, and to which such persons as Berle I. Bernhard, who was the Executive Director of the U.S. Civil Rights Commission, and Marion A. Wright, another member of the North Carolina commission and other persons contributed.

Paul Ervin, assisted in conducting investigations of this subject throughout North Carolina under the authority delegated to the North Carolina State Advisory Committee on Civil Rights by the U.S. Commission on Civil Rights under the 1957 act. This is what he said in this issue of the North Carolina Law Review, page 35:

"As of today—

That is as of December 1963—

it may fairly be said that if our nonwhite citizens do not exercise their civil right to vote, they have no one to blame but themselves."

I think that the proposal that 34 North Carolina counties be included in this bill on an artificial basis has no justification in fact or in simple fairness. I think that I am a typical North Carolinian in this respect. The overwhelming majority of North Carolinians believe that every citizen who possesses the qualifications to vote as prescribed by State law, is entitled to register and to vote, and that the denial of this right on any grounds should not be tolerated.

I favor the enforcement of the 15th amendment and I would support appropriate legislation to enforce it. I do not believe, however, that I can be true to my oath as a Senator of the United States to support the Constitution and still support a bill based on the theory that in order to enforce the 15th amendment, Congress must nullify at least four other provisions of the Constitution. Section 2 of article I and the 17th amendment, provide in express language that electors or Senators and Representatives in Congress must possess the qualifications of electors of the most numerous branch of the State legislature and by their own terms, confer upon the States the power to prescribe the qualifications for voters for Senators and Representatives in Congress.

I also feel that this bill would nullify amendments 9 and 10, which reserve to the States the undoubted power to prescribe the qualifications for voting in State and local elections. The Supreme Court of the United States has held in every case that has come before it that any State has a right to prescribe a literacy test. I think that this bill is unconstitutional and certainly unfair in that it would select out of all the 50 States of this Union 6 States and 34 counties in another State, and deprive them of the right to exercise constitutional powers conferred upon them by the Constitution of the United States, while permitting all of the other States to freely exercise such constitutional powers.

I do not believe that the Constitution of the United States permits Congress to degrade one State or six or seven States to such an extent that they are not on an equality with the other States of the Union.

Furthermore, I think that all courthouses should be open, and I think it would make a mockery of the judicial process for Congress to pass a law saying that one side to a controversy, namely, the Government of the United States, should have access to every Federal court in this land and that the States and the political subdivisions of States that ought to be covered by this unequal and unjust bill should not have access to any court except the District Court of the District of Columbia.

When our forefathers drew the Declaration of Independence they gave as one of their reasons why the Thirteen Colonies should sever their bonds with the mother country, England, the fact that Americans had been transported beyond the seas for trial. It is merely a question of degree between transporting people beyond the seas in order to try them and compelling them to journey anywhere from 250 to 1,000 miles in order to get access to a court. This bill would create an assumption which has no reasonable relationship to the fact on which the assumption is based.

And they would then deny the States and political subdivisions covered by it of the legal power to rebut that presumption and disprove its truth. I find it impossible to reconcile this bill with the Constitution. I find it impossible to reconcile this bill with the most fundamental principles of fair play.

The Department of Justice now has at least four separate laws at its disposal. It permits two of them to accumulate dust. It comes here and complains of what it states are outrageous deprivations of the right to vote in certain areas and although it has the right to have the men that commit those alleged offenses arrested and brought to trial, it refuses to do so.

Instead of using the laws it already has, it wants more laws. In my modest judgment, the Department of Justice now has at its disposal sufficient laws to secure the registration of every qualified citizen of any race in any area in the United States.

I am sorry that none of my brethren on the committee are here to cross-examine me.

I mentioned in the course of my statement the comparatively low voter turnout in New York County, which embraces part of New York City, as I understand it, which is commonly called Harlem. I also stated that the North Carolina Advisory Committee on Civil Rights had stated that the disparity between the registration and voting of Negroes and whites in North Carolina was due in large measure to apathy. It would seem to me that you might infer from these figures about Harlem that apathy prevails there because certainly there are no sinful southerners to impede their way to the polls. They are certainly free to vote in New York.

Unless there is somebody here who wants to cross-examine me, we will now take a recess until 10.30 a.m. Monday.

(Whereupon, at 4:04 p.m. the committee recessed to reconvene at 10:30 a.m., Monday, April 5, 1965.)

Mr. ERVIN. Mr. President, to illustrate the absurdity of the bill, 34 North Carolina counties are presumed by the triggering device to have discriminated against qualified citizens in violation of the 15th amendment because less than 50 percent of their residents of voting age voted in the presidential election of 1964. North Carolina itself voted 51.8 percent of all of its adult population in the Presidential election of 1964. North Carolina outvoted Alaska, Arkansas, the District of Columbia, Tennessee, and Texas. Yet North Carolina is covered by the bill; but these four States and the District of Columbia are exempt from the bill.

Alaska voted 48.7 percent; Arkansas 49.9 percent; the District of Columbia 38.4 percent; and Tennessee 51.1 percent of their adult populations. The State of Texas voted only 44.4 percent of its adult population. Yet, under the peculiar triggering devices created by the bill——

The PRESIDING OFFICER. The additional time of the Senator from North Carolina has expired.

Mr. ERVIN. May I inquire of the Chair how much time I have left?

The PRESIDING OFFICER. Twenty minutes.

Mr. ERVIN. Mr. President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 additional minutes.

Mr. ERVIN. Under this peculiar triggering device, North Carolina would be presumed to be violating the 15th amendment; but States such as Alaska,

Arkansas, Tennessee, Texas, and the District of Columbia would be presumed innocent of any such conduct.

The State of North Carolina has a literacy test, and so does the State of New York. In New York County in the last presidential election, only 51.3 percent of the adult population voted. This is one-half of 1 percent less that the percentage of adults voting in North Carolina. Yet under this strange bill, North Carolina would be covered by the bill to the extent of 34 counties, while New York County in the State of New York would be exempt from the bill and could still use the New York literacy test.

In three of the congressional districts of New York State, the percent of the persons of voting age participating in the presidential election of 1964 was much less than the percent of those voting in North Carolina. In the 19th Congressional District—Representative FARBSTEIN'S district—only 41.9 percent of the adult voting population voted in the presidential election of 1964. In the 18th District of New York—Representative POWELL'S district—only 44.6 percent of the adult population voted in the presidential election of 1964. In the 20th District of New York State—Representative RYAN'S district—only 50.4 percent of the adult population voted. Yet, North Carolina would be included under this "wonderful," this "fair," this "just" triggering device, while the three New York congressional districts which I have just mentioned would be exempt from coverage under the bill.

Mr. President, the bill becomes more absurd when we look into the situation regarding counties. North Carolina would be covered by the bill in respect to 34 counties because in those counties less than 50 percent of the adult population voted. Yet the entire State of Texas would be exempt from the bill, even though in 137 Texas counties less than 50 percent of the adult population voted.

Incidentally, of the 34 North Carolina counties, 19 outvoted the State of Texas in respect to the percentage of its adult population who cast ballots in the presidential election of 1964.

Another absurdity, which shows how the bill would operate, is that Beaufort County, N.C., would be presumed to be violating the 15th amendment because 48.6 percent of its adult population voted, whereas Bell County, Tex., would be presumed not to be violating the 15th amendment, although only 31.7 percent of its adult population voted.

Mr. President, Josh Billings said, "It's better to be ignorant than to know what ain't so." There is a great deal of truth in that statement. The trouble with the pending bill is that its adoption is being urged, and it is being sponsored, by Members of Congress who are not ignorant—but who "know what ain't so" with respect to the territory which they are attempting to regulate by the provisions of the pending bill. They ignore the fact that in most of the South we have a single-party system, and advocate the passage of a bill based on their supposition that all Southern elections are bitterly fought contests in which two political parties contest every office.

Mr. TALMADGE. Mr. President, will the Senator from North Carolina yield?

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. ERVIN. Mr. President, I yield myself 5 additional minutes. I believe that will give me 10 remaining minutes?

The PRESIDING OFFICER. The Senator is correct. Ten remaining minutes.

Mr. ERVIN. I shall be glad to yield to the Senator from Georgia in just a moment.

The North Carolina counties included in the bill lie in the eastern part of North Carolina. They have been overwhelmingly Democratic since Reconstruction. In these counties no local Republican tickets were running in 1964. Let me state the percent of Republican strength in some of the counties which are being condemned by this bill because 50 percentum of the adults did not vote in the presidential election of 1964.

Gates County—9.4 percent. Hertford County, 9.9 percent. Martin County 5.8 percent. Warren County, 9.2 percent. Greene County, 6.7 percent. These percentages are based on the Senatorial race of 1960.

In those counties the Republican party runs no candidates for local offices. Consequently there is no reason in the world for Democratic candidates to spend their money or time urging voters to go to the polls, when all they need, is one vote to get elected.

Those people are Democratic. They are not accustomed to scratch the Democratic ticket. Some of them did not like the Democratic national ticket. Since they did not wish to vote Republican, they stayed at home. The bill seeks to penalize them for so doing.

I am now very glad to yield to the Senator from Georgia.

Mr. TALMADGE. Is not the purpose of the Senator's amendment to give States and counties the same constitutional due process of law that anyone accused of treason, murder, or rape, is entitled to have under our Constitution?

Mr. ERVIN. My amendment does not even go that far. All the amendment provides is to give them a trial in court. It does not even provide that they be given a jury trial. The Senator from Georgia is absolutely correct in his inference that persons accused of the most heinous crimes have rights superior to those this bill would give States or counties.

Mr. TALMADGE. What the amendment of the Senator from North Carolina seeks to accomplish is not legislative conviction, but the opportunity for every citizen in America to have his day in court, to which he is entitled under the Constitution. Is that not correct?

Mr. ERVIN. Absolutely. That is what the amendment is designed to bring about, for every citizen to have his day in court, in his own home territory, if possible, unless the Attorney General would require a three-judge court.

Mr. President, I believe in enforcement of the 15th amendment; but I believe in enforcement of the 15th amendment by methods which are constitutional, by methods which harmonize with the federal system, and by methods which are fair.

The pending bill does not comply with any of these three conditions. My amendment does.

If my amendment should be adopted, it would remove most of the objections to the pending bill.

Mr. President, I yield the floor at this time, and then I shall yield the remainder of my time to the Senator from Louisiana.

Mr. HART. Mr. President——

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. HART. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. HART. The amendment which is now pending would have the effect of striking from the bill the "meat and potatoes" and the "bread and butter," its whole purpose and justification. Section 4, which would be struck, provides for the suspension of tests or devices in areas in which a formula is objectively sound and strongly indicates that racial discrimination has been and is being practiced.

Section 6 is the means whereby Federal examiners could be appointed in certain areas, if in the judgment of the Attorney General they are required.

Section 5 would enable the Attorney General and the courts to insure against changing the laws since November of last year, which would have the effect of perpetuating discrimination. The most important features of sections 4, 5, and 6 is the fact that their application does not depend on prior judicial determination that racial discrimination is occurring in these areas.

That determination is the fatal weakness in the existing voter legislation. The record before the committee, available to the Senate, establishes the complete inadequacy of a case-by-case basis to eliminate effectively such discrimination.

Sections 4, 5, and 6, which the amendment would strike, are Congress determination that it must deal with voter discrimination in a largely self-executing law.

I hope very much that Senators who have joined in sponsoring the bill will recognize that the amendment which is offered is the surest way to disable the effort to respond to those areas where the case-by-case method had been conscientiously sought to be applied by the Department of Justice and where it clearly demonstrated its inadequacy.

Those who believe that there is urgent need to find a means effectively to enroll persons in areas where the ratio between white voting age citizens who are registered to vote and nonwhite citizens is strikingly disproportionate will realize that this effort can be achieved only by rejecting the amendment which is offered and by continuing to support the basic approach which the bill provides.

I wish to add a word with respect to the suggestion by the senior Senator

from North Carolina that there is no rational explanation for the formula. I believe the evidence lays a very convincing rational basis for the formula. Indeed, I suggest it may create the feeling that it is compulsory that we adopt such a formula.

In brief, in the presidential election of last November 62 percent of the people of this Nation voted. Those were people of voting age eligible to vote. However, only 17 States of the Union fell below the 62 percent average. Only 9 States averaged fewer than 50 percent. Only 7 States fell below 50 percent, when, as is provided in the bill, we eliminate persons in the armed services and their dependents and aliens from the population of a State.

Six of these States have tests and devices. There are characteristics common to them which further highlight the reasonableness or rationale embodied in the formula. Each of the six States had a substantial nonwhite population. In each case there is a great disparity between white and nonwhite citizens of voting age who were registered to vote.

There was a clear correlation between the low nonwhite registration and the low voting totals.

Additionally, over the years, including the recent past, there was racial discrimination in the public policy of those States with respect to travel, recreation, amusements, and schools.

The evidence lays a rational foundation for the formula which is established in the bill. As I say, it suggests a very strong compulsion for the adoption of the formula.

Again, those who would have Congress provide an effective instrument which will, within a reasonably quick period of time, register persons to vote all across the country, those who feel that this is a responsibility of Congress, and those who wish to support such an effort must understand that under the amendment offered, the effectiveness of the bill would largely be nullified. I hope that all Senators who have joined in the introduction of the bill will resist the amendment.

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

Mr. HART. I yield.

The PRESIDING OFFICER. The time of the Senator has expired. How much time does the Senator yield himself?

Mr. DOMINICK. I should like to ask a few questions.

Mr. HART. I yield myself 2 additional minutes. I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, section 4 in effect outlaws tests or devices which result in discrimination. It provides for the bringing of a suit in the U.S. District Court for the District of Columbia. Section 9 refers to the right of the Attorney General to bring an immediate action—in fact, he has an obligation to do so—to determine the constitutionality of any poll tax, if it is a local method for determining who shall or who shall not vote in a State or local election. That action would be brought in a three-judge court in the appropriate district.

My question is, first of all, Is the poll tax deemed to be, within section 4(a), a test or device? If it is, why does the bill contain two sections, one in which a suit is brought in the District of Columbia, and another one which is brought before a three-judge court in the State?

Mr. HART. In the definition of a test or device, a poll tax is not included. The Senator will find that definition at the top of page 7. Provision is made in section 4 for an action to be brought by a State to obtain a declaratory judgment that it does not engage in discriminatory action and that the effect of discrimination has been removed. This would be a suit against the United States.

The bill proposes that the venue for such action shall be in the District Court for the District of Columbia. The action proposed in section 9 would be brought by the Attorney General against the State, and there it is intended that the venue lie within the State.

Mr. DOMINICK. Under section 4, if a subdivision within a State is discriminating by the use of a test or device, is the suit brought against the entire State or only against that subdivision of the State?

Mr. HART. No suit is brought by the United States under section 4. The suit would occur when the formula, the triggering device in section 4, operates to suspend the use of a test or device in a State or political subdivision. It would occur in the case——

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

Mr. HART. I yield myself 2 additional minutes. It would occur, in the case of a State, in the event the State voting figure was less than 50 percent and it had more than a 20-percent nonwhite population. If the State figure did not reach that level, but a county or other political subdivision had the 50-percent voting figure and the figure of 20 percent of nonwhite population, section 4 would operate to suspend the test or device. The suit would be brought either by the State, if applicable to a State, or by the county, if it were a local matter, against the United States in the District Court in Washington.

Mr. DOMINICK. I thank the Senator. His explanation helps me. One other point which the Senator from North Carolina brought up, referred to the distinction between some counties in North Carolina and some counties in Texas.

I presume this is because the Texas counties did not have the necessary number of so-called nonwhites in order to activate the triggering mechanism; is that correct?

Mr. HART. No. The reason it is not applicable to Texas is that Texas does not apply a test or device.

Mr. DOMINICK. They do not have any requirements; and the people do not vote?

Mr. HART. No. They have no requirement that meets the definition of a test or device within the bill.

Mr. President, I yield myself an additional 5 minutes to make some comments with respect to the argument that the bill constitutes a bill of attainder or would operate as an ex post facto law. That subject was discussed thoroughly in the hearings of the Judiciary Committee. The Attorney General has responded to it rather fully in the record. The point which I believe we should bear in mind is that since 1798 it has been held that the constitutional prohibition against ex post facto laws applies only to criminal statutes. The criminal provisions of the bill before the Senate do not operate retroactively. They punish only future acts. Nor do the provisions of the bill before the Senate constitute an unlawful bill of attainder since they do not involve punishment. There are numerous provisions in the United States Code which grant or withhold rights or impose regulations on the basis of past events. The agricultural laws are a common example familiar to all of us. Frequently they refer to certain base years in the past for the purpose of establishing parity indexes and crop quotas. So the immigration laws refer to immigration ratios as of the year 1920, and the Emergency Price Control Act of 1942, which I believe came under the shorthand label of "OPA," established price limitations on products based upon conditions existing at certain periods in the past. But what is most significant and what must be clearly kept in mind is that the bill we are offering does not proscribe or prohibit discrimination in voting on account of race or color. That prohibition, that proscription, has been barred by our Constitution for almost 100 years. The bill merely seeks to enforce effective existing constitutional rights.

Mr. President, it is my understanding that the Senator from Iowa had sought an opportunity to engage in colloquy with the Senator from North Carolina [Mr. ERVIN], whose time is severely limited. I am satisfied that it would be possible for those of us opposing the amendment to make some time available. I should like to inquire of the Chair how much time I have remaining.

The PRESIDING OFFICER. The Senator from North Carolina has 12 minutes remaining and the Senator from Michigan has 45 minutes remaining.

Mr. HART. Mr. President, I yield 10 minutes to the Senator from Iowa.

Mr. MILLER. I thank my friend the Senator from Michigan very much.

I should like to ask the indulgence of the Senator from North Carolina for a colloquy which I believe might develop for the RECORD the substantial differences between the amendment that he has offered and the bill in the nature of a substitute to which the amendment is offered, not only to draw out the differences, but also provide the legislative history which might be necessary to interpret the amendment in the law if the amendment is adopted.

First, I should like to make very clear that under the bill in the nature of a substitute there is a very rapid triggering device consisting of a determination by the Attorney General, and then very prompt action. I understand that the Senator has modified his amendment to

provide for the most expeditious type of legal action through court procedure that is possible. Is that correct?

Mr. ERVIN. That is true. I modified my amendment at the suggestion of the Senator from Iowa, who I thought made a good suggestion. I modified it, according to his suggestion, to provide that cases brought under the amendment should be expedited as far as possible.

Mr. MILLER. That language, I believe, is identical to language on pages 14 and 15 of the bill, is it not?

Mr. ERVIN. That is true.

Mr. MILLER. In bringing out the differences between the Ervin amendment and the bill in the nature of a substitute, first, let us talk about the coverage for the appointment and use of Federal examiners. It is my understanding that the amendment in the nature of a substitute would limit that activity to cases in which the use of a test or a device has resulted in the denial of the right to vote. The Ervin amendment would not be so limited, but would actually cover the use of a test, a device, or any other action which had resulted in a denial of the right to vote. Is that correct?

Mr. ERVIN. The Senator from Iowa is absolutely correct on that point. It would cover any denial or abridgment, however it might be effected.

Mr. MILLER. Regardless of whether it was a test, device, or something else.

Mr. ERVIN. Or anything else.

Mr. MILLER. It is my understanding that the amendment in the nature of a substitute would limit the use of Federal examiners under section 4(b) to States or political subdivisions in which less than 50 percent of persons of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the presidential election of November 1964, and more than 20 percent of the persons of voting age were nonwhite, or where the total number of persons of any race or color who are registered to vote is less than 25 percent of all such persons of voting age, whereas the Ervin amendment would be unlimited in its coverage. Is that correct?

Mr. ERVIN. That is correct. The triggering device would cover only seven States or parts of States, while my amendment would cover all States.

Mr. MILLER. And all political subdivisions thereof?

Mr. ERVIN. That is correct.

Mr. MILLER. With respect to the period of suspension of tests or devices, it is my understanding that under the amendment in the nature of a substitute the suspension period would be 5 years, whereas under the Ervin amendment the suspension period would be left open under the following language:

> For such period of time as the court shall determine is appropriate to enforce the guarantees of the 15th amendment.

Is that not so?

Mr. ERVIN. That is correct. In other words, it might be less than 5 years or more than 5 years, depending upon what the particular situation was.

Mr. MILLER. Under the amendment in the nature of a substitute the triggering mechanism would consist of determinations by the Attorney General that a test or a device was actually used on November 1, 1964, and the determination of the Director of the Census that certain statistical conditions which I have previously enumerated, were present, and, moreover, I might point out, according to the amendment in the nature of a substitute, would not be reviewable at all, whereas the triggering mechanism under the Ervin amendment would be a finding by a court—and it might be either a single-judge court or a three-man court, at the option of the Attorney General—that rights to vote had been denied or abridged.

Mr. ERVIN. The Senator is absolutely correct in his observations.

Mr. MILLER. I should like to make the further observation about what the Ervin amendment seems to me to be avoiding, which would, I believe, be a rather undesirable situation if the amendment in the nature of a substitute is not amended. First, it seems to me that the Ervin amendment would avoid a presumption of guilt that a political subdivision or State had violated the 15th amendment, which the amendment in the nature of a substitute does contain. Is that not correct?

Mr. ERVIN. That is correct.

Mr. MILLER. Second, once that presumption is operative under the amendment in the nature of a substitute, I think it could be recognized that a certain amount of hardship would be visited upon a political subdivision or a State in having to come into the District of Columbia to a Federal district court to purge itself. Under the Ervin amendment there would be no problem in that respect. The Federal court procedure would be followed entirely. It might be a single judge or a three-judge Federal court that would hear the case, but the procedure would be according to normal Federal judicial procedure. Is that not correct?

Mr. ERVIN. That is correct. The amendment would avoid the hardship which the unamended bill would impose on 34 North Carolina counties that would have to come to the District of Columbia to prove themselves innocent of acts of which the Attorney General has always admitted they are innocent.

Mr. MILLER. It seems to me that under the amendment in the nature of a substitute we would use mere statistical conditions as the basis for conclusions that a violation of the 15th amendment does in fact exist.

The Ervin amendment does not use such statistical conditions. I recognize the probability that violations of the 15th amendment have occurred if certain statistical conditions have existed; but that is not necessarily a sequitur; there may be exceptions. However, the Ervin amendment avoids the possibility of reaching an unsound conclusion merely because certain conditions are found to exist.

Mr. ERVIN. That is correct. My amendment depends on what the truth is, rather than on some artificial presumption which might be correct in one case and incorrect in another.

Mr. MILLER. Another thing that it seems to me the Ervin amendment avoids is a situation in which there is, in fact, a violation. Let us say a three-judge Federal court has found a violation, and that there are Federal registrars; but that after a period of, perhaps, 2 years, a Federal judge was persuaded that there would be no danger in lifting the suspension of the use of a test or device, or anything else, and that things would be handled properly according to the 15th amendment. That would be after 2 years.

Under the amendment in the nature of a substitute, nothing could be done for 3 more years. So the Ervin amendment does, in fact, avoid the possibility of suspending the legitimate use of a legitimate test or device during the period when a suspension is not required.

Mr. ERVIN. That is correct. It puts the question in the hands of a judicial officer, rather than a political officer who is the chief political adviser to the President.

Mr. MILLER. Finally, on page 7 of the amendment in the nature of a substitute, there is an interesting provision which reads:

> For purposes of this section, no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose of denying or abridging the right to vote on account of race or color if (1) incidents of such have been limited in number and have been promptly and effectively corrected by State or local action.

The Ervin amendment avoids any controversy—and I can see much of it coming—about what constitutes "limited" for the purposes of the substitute amendment. The number might be 5, it might be 50, it might be 100. There is no problem about that under the Ervin amendment. Is that not so?

Mr. ERVIN. That is correct. Under my amendment, it is merely a question of finding out if the 15th amendment is being violated, irrespective of the number of times.

Mr. MILLER. I thank the Senator from North Carolina for engaging in the colloquy. If the Senator from Michigan has any observations to make concerning whether he believes the colloquy has been faulty, I should be most happy to have him point out wherein the colloquy has been contrary to what his understanding of the situation is, because I believe there is much merit in the Ervin amendment. It avoids some of the problems which I am afraid are contained in the amendment in the nature of a substitute and which I hope could be removed. I thank the Senator from Michigan for yielding time.

Mr. HART. I was delighted to yield.

Mr. President, it seems to me that underlining the exchange between the Senator from Iowa and the Senator from North Carolina was the assumption on the part of the Senator from Iowa that the amendment in the nature of a substitute, which is pending, and to which the Ervin amendment has been offered, prohibits a State or a political subdivision from establishing that it is not engaged in a discriminatory practice in the application of a testing device for

5 years. This, I suggest, is not the case in connection with the amendment in the nature of a substitute. Rather, a State or a political subdivision may come to the district court at any time and seek a declaratory judgment.

Mr. MILLER. May I make a comment? I realize that that provision is in the substitute; but I point out to the Senator from Michigan that on page 5 is a proviso which makes it clear that the court shall retain jurisdiction for 5 years, and that if there is an attempt to come in, as the Senator from Michigan has suggested, any judgment that there have been tests which have resulted in discrimination that has been rendered within 5 years may be introduced as prima facie evidence to rebut the effort on the part of the State or local subdivision.

So while perhaps in theory what the Senator says is correct, as a matter of practical fact is would be very difficult, with the prima facie case, to rebut it. I am not saying that it could not be rebutted, but I am saying that it could be extremely difficult.

I am not sure that it is necessary to have such a situation. If a Federal judge finds, as a matter of fact, that the suspension can be lifted, what more is needed?

Mr. HART. We are agreed, however, that there is no bar for a period of 5 years. That is implicit in the Senator's earlier questions. We are agreed as to that.

Second, we who feel strongly that the bill is constructive and will respond effectively to any overreaching or overreacting to the needs of the moment believe that the retention of the case by the court for a period of 5 years is a highly desirable safeguard; and surely a declaration that prior judgments within the past 5 years that discrimination on the part of a State or subdivision existed is a prudent recital by Congress.

Mr. MILLER. That is a reasonable position; but, at the same time, I do not see much difference between that position and our position in pointing out that a Federal judge must make a determination that there is no longer any need for the suspension of a test or device. This is provided by the Ervin amendment. A nice question could be raised as to whether or not a three-judge Federal court would make an invalid determination under the Ervin amendment or would make a valid determination because it has jurisdiction for 5 years.

The Senator from North Carolina has pointed out that the 5-year limitation would actually be exceeded under his amendment if the Federal judge felt that after 5 years it was still not proper to lift the suspension.

I am not certain that we are talking about anything that is very substantial, but I wanted to bring out what seemed to me to be the main differences between the amendment in the nature of a substitute and the Ervin amendment.

Mr. HART. I was very glad to make it possible for the Senator from Iowa to do so. The proponents of the amendment in the nature of a substitute believe that the basic difference between the Ervin amendment approach and the approach proposed by us who support the bill is that the case-by-case controversy will be avoided, a situation which over the past few years has been demonstrated, nothwithstanding the good faith effort on the part of the Department of Justice to respond, to be completely inadequate in the face of a very difficult situation and the present uncertainty.

Mr. MILLER. I am as much concerned about the case-by-case, long delay of judicial process as is the Senator from Michigan. The recitals on that subject are known to all of us, particularly as they have come from the Attorney General during his testimony at the hearings. But I do not believe the problem would exist under the Ervin amendment.

Under the Ervin amendment, a suit would be filed by the Attorney General. One suit would be all that would be necessary to cover a whole State; there would be no multiplicity of suits. One suit would be all that would be necessary to cover a political subdivision; there would be no multiplicity of suits.

With the modification that the Senator from North Carolina has made of his amendment, the case must be expeditiously handled, and must be handled by a three-judge court if the Attorney General asks for it, from which the appeal would lie directly to the Supreme Court.

I would not favor the Ervin amendment if it were not clear that there would be expeditious judicial machinery, which has not existed most of the time heretofore. But such expeditious machinery would exist under the Ervin amendment.

I would hope that the vote on the Ervin amendment would not go off on the question whether there was to a multiplicity of suits or long delays in the judicial process, because I do not believe that that would happen.

Mr. HART. The Senator from Iowa and I disagree clearly on this one point. This is one of many compelling reasons why the Ervin amendment should be rejected.

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

Mr. HART. I yield 4 minutes to the Senator from Florida.

The PRESIDING OFFICER (Mr. KENNEDY of New York in the chair). The Senator from Florida is recognized for 4 minutes.

Mr. HOLLAND. Mr. President, two points appear very clearly from the statement of my friend the Senator from Michigan. They are points on which we can never agree. They are points which strike at the very pillars of this country.

I shall make this statement as brief as I can. First, I talk about the suspension of constitutional rights. This is the first effort at the suspension of constitutional rights of sovereign States.

Mr. President, many Senators believe that that is quite justifiable in this case. The suspension of constitutional provisions is a completely new field into which we would wander if we were to enter it at this time.

The suspension of one constitutional provision on one occasion opens the door to suspensions of other constitutional provisions on other occasions when a majority of Congress feels that should be done. I believe that is extremely dangerous. I would never give my consent to it.

My State is not affected by the bill. My State has no literacy test for voting. My States has voted more than 50 percent of its eligible people. My State has registered more than 50 percent of its eligible people.

I am merely stating what I believe to be a sound constitutional approach. I can never give my approval to the commencement of suspension of important constitutional guarantees. That is what is proposed here.

My learned friend the Senator from Michigan has used the word suspension in his address. I thank my friend the Senator from North Carolina, for calling attention to the fact that this element of suspension is the first attempt toward this end in our Nation. I accentuate the point that if we were to suspend a constitutional provision once, we would be offering the invitation to suspend a constitutional provision again when a temporary heavy majority in Congress feel that it should be done.

The second point is that I was extremely sorry to see the Attorney General testify that the courts are hopelessly inadequate to deal with a problem which lies in the judicial field under our form of government.

Mr. President, we have a tripartite form of government. We have lived, prospered, and grown under it. I dislike to see anyone strike at the roots of the judicial branch of the Government by saying that the courts are inadequate to deal with this temporary problem.

I could never give my consent to joining in the conclusion that because the courts have not been able to deal with some particular question with as much expedition as people would want, therefore we should deprive the courts of jurisdiction, shortcircuit the proceedings provided by our law, and cut away from the judicial jurisdiction a part thereof and deliver it to the executive department, which is already overgrown and overswollen.

Mr. President, I thank my distinguished friend for yielding to me. These two points hit at the very root of the question of the constitutionality of the bill as proposed. I cannot believe that the bill is constitutional. I am completely against the two approaches that I have just mentioned. I hope that the Senate will think very cautiously and carefully before following a course which would first suspend an important constitutional guarantee, and second, find as a matter of congressional finding that the court are helpless to deal with a problem which lies clearly in the judicial field.

I thank my distinguished friend for yielding.

Mr. HART. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 1 minute.

Mr. HART. Mr. President, no State has ever had the constitutional right to apply tests and devices in a fashion which would violate the 15th amendment or suspend these tests or devices. Registering people to vote is not exactly a judicial function. I believe that the courts are less effective and less concerned with effectively handling the manner of registration and voting than executive officials; by administrative action.

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

Mr. HART. I yield.

Mr. LAUSCHE. Mr. President, the Senator said that the right to register to vote is separate from the actual voting right. How would the Senator from Michigan justify declaring invalid the constitutional provision that each State shall have the right to determine the qualifications of voters?

Mr. HART. Mr. President, powers which under section 2 of the first amendment are reserved to the States include the establishment of qualifications for voters; and that includes a literacy test. The very case that the Senator from North Carolina so frequently cited, the Lassiter case, makes the point that a literacy test on its face may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot.

Again, in the Lassiter case, the Supreme Court said that the suffrage is subject to the imposition of State standards which are not discriminatory and do not contravene any instruction that Congress, acting in pursuit of its constitutional powers, has imposed.

Congress is not legislating in an area that is reserved to the States in this instance. It is merely enforcing a right expressly guaranteed by the Constitution.

The 15th amendment is the basis on which we act. I believe that fact has given us a direction that we shall affirmatively legislate, and not leave everything to the courts to safeguard and prevent violation of the 15th amendment.

Mr. LAUSCHE. Mr. President, to me it appears that there are three phases to this suspension. They are: First, suspension of State law; second, suspension of the operation of the Constitution of the United States; and third, suspension of the device that is used to prevent nonwhite people from voting.

The first two phases cannot be pursued. The third phase can be stopped, but it can only be stopped by the Federal Government taking over the machinery of registration.

Mr. HART. Which indeed this bill would, in effect, in those areas where a formula identifies the likelihood of the discriminatory use of tests and devices.

Mr. HOLLAND. Mr. President, will the Senator yield for a question?

Mr. HART. I yield.

Mr. HOLLAND. Mr. President, relating this question to the statement of the distinguished Senator that the courts have proved their inadequacy to deal with this matter, and the similar statement of the Attorney General given before the committee, I wonder if the distinguished Senator realizes that that is exactly the same justification that has been urged time after time, to stand back of lynching processes when citizens have taken the law in their own hands because, as it is felt and stated, the courts were inadequate.

Mr. HART. Mr. President, I am aware of no constitutional right to lynch. I am very conscious of a constitutional right to be permitted to vote without discrimination.

Mr. MILLER. Mr. President, will the Senator yield for a question?

Mr. HART. I yield.

Mr. MILLER. With all deference to my friend from Ohio, is it not true that under the Ervin amendment or under the substitute bill, once the triggering device has started—in the case of the Ervin amendment a finding of the court and under the substitute bill a finding by the Attorney General—there would be in fact a Federal examiner system in running elections? Is that not so?

Mr. HART. I thought the Senator was directing his question to the Senator from Ohio.

In answer, the Ervin amendment, after the court had made the determination under section 3, would so permit.

Mr. MILLER. Then, there is no difference between the Ervin amendment and the substitute in its mechanics of operating, once the triggering device goes into action.

Mr. HART. But there is a world of difference in the determination to be made.

Mr. MILLER. I detected that there was a difference from the statement of the Senator from Ohio between the Ervin amendment and the bill with respect to the suspension of tests; but there is none.

Mr. HART. Mr. President, in view of the time limitation and the relevance of the matter, I ask unanimous consent to have printed in the RECORD at this point a memorandum commenting on the existing inadequacy as developed from the cases that have been attempted to be brought and have been brought over the past few years.

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

INADEQUACIES OF THE LITIGATION APPROACH TO DISCRIMINATION IN VOTING

Experience has demonstrated that the civil litigation approach to the elimination of racial discrimination in voting is woefully inadequate.

The Department of Justice has brought suit after suit in county after county in Alabama, Mississippi, and Louisiana during the last 5 years, but the results of these suits, measured, as they must be, by current registration statistics in these counties, show that such suits will not do the job.

Some of the principal problems that the Department has encountered in suits under 42 U.S.C. 1971 are delay, inadequate relief, and willful defiance of court orders by local officials. And it has become increasingly evident that the traditional litigation process is institutionally inadequate to cope with this deeply rooted social problem.

Various aspects of the most serious problems which arise under existing law are illustrated by the efforts of the Department of Justice to eliminate racial discrimination in the voter registration process in Dallas County, Ala. (of which Selma is the seat) and Clarke County, Miss.

(A) TWO CASE HISTORIES OF VOTING DISCRIMINATION, DALLAS COUNTY, ALA., AND CLARKE COUNTY, MISS.

(1) Registration statistics, 1961: In 1961, Dallas County had a voting age population of approximately 29,500, of whom 14,500 were white persons and 15,000 were Negroes. At that time, 9,195 of the whites—64 percent of the voting age total—and 156 Negroes—1 percent of the total, were registered to vote.

The 1961 registration statistics in Clarke County, Miss., revealed a similar pattern. There were approximately 6,000 white persons and 3,000 Negroes of voting age living in the county. Of these, 4,611 of the whites—76 percent of the voting age total—were registered to vote. Not one Negro was registered in Clarke County.

(2) Delays in trying lawsuits: On April 13, 1961, the Department of Justice filed suit against the Dallas County Board of Registrars in Federal district court. The case came to trial in May 1962, 13 months after the complaint was filed.

On July 7, 1961, the Department filed a similar suit against the registrar of Clarke County, Miss. The case was not tried until December 1962, almost 18 months after the complaint was filed.

(3) Delayed and inadequate relief in the trial court: In the Dallas County case, the district court did not decide the case until November 1962, over 6 months after the trial. The district court found that, although prior registrars had discriminated against Negro voter applicants, the present board was not discriminating and it declined to issue an injunction against discrimination. In addition, the court refused the Government's request for a finding of a "pattern or practice" of discrimination (the finding which triggers the voting referee machinery of the 1960 Civil Rights Act) and for an order requiring the board to register specific qualified Negroes. The Government appealed.

Although the Clarke County case was decided with unusual promptness in February 1963, the court granted wholly inadequate relief. The court did find that the registrar had discriminated against Negro applicants and that the registration forms of white applicants were full of irregularities but the court also found that the discrimination had not been pursuant to a "pattern or practice." Moreover, the court denied the Government's request for an order directing the registrar to apply to Negro applicants the same easy standards that had been applied to white applicants during the period of discrimination until the effects of the past discrimination had been dissipated. Accordingly, an appeal again was necessary.

(4) Delayed and inadequate relief on appeal: The Court of Appeals for the Fifth Circuit has been burdened with an overloaded docket for the past several years. This problem is aggravated in voting cases because it is often necessary for the appellate panel to pore over voluminous records and exhibits, particularly when the trial court's findings of fact are challenged on appeal as "clearly erroneous." The Dallas and Clarke County cases point up this problem.

In the Dallas County case, the appeal from the trial court's decision of November 1962 was argued in June 1963. The appeal was decided in September 1963, almost 11 months after the district court's decision.

The appeal in the Clarke County case was argued in December 1963, 10 months after the district court's decision. This appeal was decided in February 1964. The Government then petitioned for a rehearing which was granted. In April 1964, following rehearing and over 14 months following the district court's decision, the court of appeals

reversed and remanded the case to the trial court.

In both the Dallas and Clarke County cases, the Government asked the court of appeals to direct the district court to order the registrars to apply to Negroes the same standards applied to whites during the period of discrimination. This form of relief, usually characterized as "freezing" relief, is embodied in the voting referee provisions of the Civil Rights Act of 1960 (42 U.S.C. 1971(e)) and, in more recent cases, the court of appeals has applied the freezing principle. See *United States* v. *Mississippi* (Walthall County), 339 F. 2d 679 (C.A. 5, 1964); *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5, 1964). But the failure to secure "freezing" relief in the Dallas and Clarke County appeals meant that, as a practical matter, no real progress had been made.

(5) Defiance of decrees against discrimination: The Dallas County case illustrates the lamentable fact that State registration officials who are determined to thwart the efforts of qualified Negroes to register and vote may simply flout a Federal Court's decree against discrimination. In November 1963 the district court issued an injunction against discrimination by the Dallas County Board of Registrars pursuant to the court of appeals' mandate.

Among other matters, the registrars were specifically enjoined from (1) rejecting Negro applicants for immaterial errors and omissions on their application forms, (2) asking applicants oral questions unless they complied with both State and Federal law, and (3) using the State-prescribed questionnaire as a "test," unless grading standards were submitted to and approved by the court. Subsequent investigations by the Department of Justice showed that the registrars were defying the court's injunction. At a subsequent hearing in October 1964, it was shown, for example, that the board had continued to "test" and arbitrarily reject Negro applicants after the issuance of the November 1963 injunction. Existing civil and criminal contempt sanctions have proved inadequate to coerce compliance with injunctions against discrimination.

(B) OTHER DEFICIENCIES IN THE CIVIL LITIGATION PROCESS

In addition to the prolonged delays, inadequate relief, and intransigence of local officials, which are encountered in individual cases, there are at least two other reasons for concluding that the civil litigation approach to the problem is inadequate.

The first is that there is nothing in the present law to prevent local officials and, indeed, State legislators who are hostile to the awakening political aspirations of Negroes, from continuously erecting additional barriers to the ballot. As Burke Marshall, former Assistant Attorney General of the Civil Rights Division of the Department of Justice, has pointed out:

"When the will to keep Negro registration to a minimum is strong, and the routnie of determining whose applications are acceptable is within the discretion of local officials, the latitude for discrimination is almost endless. The practices that can be used are virtually infinite."

On the local level, registration officials, determined to retain white political supremacy, have proved themselves adept in devising new discriminatory techniques not covered by the letter of an injunction against discrimination. Likeminded State officials and legislators in Alabama, Mississippi, and Louisiana have thrown up additional barriers before prospective Negro voters. For example, in January 1964, a new and difficult literacy and knowledge-of-government test was prescribed for use by all Alabama county registrars. Since registration in Alabama is permanent and most of the white residents of voting age were already registered, the impact of the new requirements was primarily on the Negroes, the great majority of whom were unregistered. And another, still more difficult test was adopted in September 1964. The Mississippi Legislature adopted a bundle of new voter registration laws in 1962, including a law which forbids registrars from telling rejected applicants for registration the reason for rejection. The Louisiana Legislature, not to be outdone, adopted a new "citizenship" test in 1962, which was made more difficult early in 1965.

The legality of all of these laws has been challenged by the Department of Justice, and relief has been granted in a suit involving the legality of the Louisiana tests. See *Louisiana* v. *United States*, 85 S. Ct. 817 (1965). But such proceedings are inevitably time consuming and the practical results are, at best, mixed. The only certainty is that the State legislatures remain free to adopt new discriminatory devices if they are so inclined or are subjected to sufficient pressure.

A second formidable difficulty arises out of the nature of the voter registration process and the institutional limitations of judicial proceedings. Voter registration is a continuing administrative process which generates a strong and steady volume of simple factual disputes. Judicial proceedings, on the other hand, are traditionally concerned with the application of the law to a discrete set of facts. It is completely impracticable to attempt to police the State's registration process through an endless series of enforcement proceedings, once an injunction has been obtained. The problem demands a simplified administrative remedy.

(C) DEFICIENCIES IN THE VOTING REFEREE MACHINERY—42 U.S.C. 1971(e)—OF THE CIVIL RIGHTS ACT OF 1960

The voting referee provisions of the Civil Rights Act of 1960, 42 U.S.C. 1971 (e), may, in the long run, prove to be of some limited utility in dealing with the problem of racial discrimination in voter registration. (This statute does not deal at all with discrimination against registered Negro voters, for example, in refusing to count their votes.) But analysis readily shows that the referee machinery of the 1960 act is completely inadequtae to solve the problem quickly and effectively. The following deficiencies are particularly noteworthy:

(1) Proof of prior discrimination a prerequisite: The remedy is not even available until the Government has brought and won a lawsuit and proved past discrimination "pursuant to a pattern or practice."

(2) Limited availability of the remedy: After a "pattern or practice" of discrimination has been proved, the remedy is, of course, available only in the geographical area where the pattern existed. In the usual case, this means a single county or parish.

(3) The problem of community pressures: The statute requires that referees be qualified voters of the Federal judicial district in which they are appointed to serve. In areas where segregationist sentiment is strong, it may be difficult to find conscientious and qualified persons to serve as referees.

(4) Burdens on the Federal district courts: Even where a referee is appointed, the statutory machinery imposes substantial burdens on the Federal district courts. Factual disputes over qualifications of individual applicants must be resolved by the district judge personally.

(5) Other problems—The Perry County case: The foregoing deficiencies are apparent from a reading of the statute and a general familiarity with the nature and scope of the porblem. Practical experience under the statute has shown that additional problems may arise in its administration. The experience of the Department of Justice with the referee machinery in Perry County, Ala., is most instructive.

In August 1962, the Department brought suit against the Perry County Board of Registrars, alleging racial discrimination against Negro applicants for voter registration. At that time, 3,100 white persons—90 percent of the adult whites and 257 Negroes, 5 percent of the adult Negroes, were registered to vote. The case was tried in October, and in November 1962, the Federal district court enjoined the board of registrars from discriminating.

In January 1963, it was apparent that the board was defying the court's order and civil contempt proceedings were initiated by the Government. At the same time, the voting referee machinery of the 1960 act—which permits application for registration to be made directly to the court or a voting referee—was set in motion in order to bring about the registration of qualified Negroes. A total of 173 Perry County Negroes wrote letters to the Federal district court explaining that their applications for registration had been rejected by the Board of Registrars since the court's decree and asking the court's help. The court provided no relief other than to order the board to meet on special registration days and reconsider the qualifications of those who had written the letters. The Board of Registrars met, reconsidered, and again rejected most of these Negro applications.

During August and September 1963, an additional 175 letters were filed in the district court. The court ruled that these letters "do not contain requisite information to qualify them as applications" under the statute. The Government appealed.

In July 1964, the court of appeals reversed, directed the district court to process the applications, and suggested that the court might find it helpful to appoint a referee.

In September 1964, the district court appointed a practicing attorney from nearby Hale County, Ala., to act as referee. The referee notified the Negroes who had written letters to the court that he would hold hearings on their applications, and 134 Negroes subsequently presented themselves to demonstrate their qualifications.

Although the statute provides that in judging the applicant's qualifications to vote, the standards used may be no more stringent than those previously applied to white applicants during the period of discrimination, and although only minimal standards of literacy had been imposed in the past, the referee administered to the Negroes a knowledge-of-government test and a literacy test. He also subjected them to an oral dictation test, notwithstanding the earlier enactment of the 1964 Civil Rights Act requiring literacy tests to be "wholly in writing."

Following the hearings, the referee filed his reports in the Federal district court, recommending the rejection of the applications of 110 of the 134 Negroes. On November 18, the district court confirmed the referee's report in all respects.

Once again, the Government appealed and, this time, obtained an order expediting the hearing of the appeal, which is now set for argument on May 20, 1965—over 2 years after the first applications were filed in the district court under the voting referee provisions of 42 U.S.C. 1971(e).

The inevitable conclusion is that the voting referee machinery of the 1960 Civil Rights Act is not the answer to the problem.

Mr. HART. Mr. President, I yield 5 minutes to the Senator from New York [Mr. JAVITS].

Mr. JAVITS. Mr. President, we heard almost every argument made against this bill—and the amendment seeks to strike out the very heart of the bill—when we were discussing title II of the Civil Rights Act of 1964, the public accommodations sections. At

that time the proponents, just as the proponents now, could not cite precedents which were precisely on all fours, as we lawyers say, with what was proposed to be done. But we felt the factual basis which had been laid for the legislation, when added to the principles established by the cases, demonstrated its constitutionality. We turned out to be right. Precisely the same issue is involved today.

I consider this to be a decisive point: The cases clearly indicate that qualifications for voting are in the hands of the States. The cases also indicate that this power is subject to the supreme power of the United States under the 15th amendment to the Constitution.

That is the case in regard to the suspension of tests or devices under this bill. The Congress has as the basis of fact the lack of success in eradicating voter discrimination with judicial proceedings under the acts of 1957, 1960, and 1964, and previous acts. Therefore the Congress must do what is needed to implement the safeguards of the 15th amendment. It must find a new way to safeguard those rights which is compatible with a reasonable implementation of the right sought to be safeguarded.

We submit that the triggering devices contained in the section of the bill which the Ervin amendment seeks to strike are reasonable implementations, based upon experience, and necessary in order to safeguard the right guaranteed by the 15th amendment.

There is no question that the right guaranteed by the 15th amendment is superior to the power of the States to fix the qualifications of voters. That is the very meaning of the 15th amendment. It came later than and modifies the earlier provision of the Constitution.

So the real question is whether or not the so-called triggering devices are reasonably adapted to safeguard the rights which are sought to be protected by the 15th amendment.

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

Mr. JAVITS. I cannot. I have not begun to complete my argument.

The PRESIDING OFFICER. The 5 minutes of the Senator from New York have expired.

Mr. JAVITS. May I have 2 additional minutes?

Mr. HART. I yield 2 additional minutes to the Senator from New York.

Mr. JAVITS. The situation as I see it is that when the triggering devices are measured against the States to which they apply, we find we are reaching just about those areas, on the whole, although not in every case—we cannot possibly tailor legislation that neatly—in which experience has shown that previous laws Congress has enacted have not been as effective as they should be in safeguarding the 15th amendment.

The fulcrum of the argument is that, once that right is denied, it represents an irremediable loss, because a person cannot later cast a vote.

It is for these reasons that I believe the scheme of this law will be held constitutional as a reasonable way, notwithstanding the very astute argument made by the Senator from North Carolina that it reaches county A and does not reach county B. It cannot be perfect. But it reaches the places Congress has found need to be reached in order to safeguard the rights under the 15th amendment.

Therefore, I believe the constitutionality of the provision will be sustained. I believe the measure to be as limited as it can reasonably be drawn, and yet take care of conditions which facts show require action by the Congress.

Mr. LAUSCHE. Mr. President, will the Senator yield for a question?

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

Mr. HART. I yield the Senator 2 more minutes.

Mr. JAVITS. I yield to the Senator from Ohio.

Mr. LAUSCHE. The Senator has stated a series of events under which the triggering of the act will go into operation. That triggering means a suspension of the constitutional provision or a suspension of State law or a suspension of a device that is used to deny a nonwhite the right to vote. My question is, Where in the Constitution does the Senator find authority placed in the Congress to suspend, nullify, or render void provisions of the Constitution, or provisions of State law? Where in the Constitution is there that power or right?

Mr. JAVITS. I should like to read it to the Senator. Section 2 of the 15th amendment states that "the Congress shall have power to enforce this article by appropriate legislation."

Mr. LAUSCHE. Yes; but——

Mr. JAVITS. And it resides on the Lassiter case, which was mentioned here, in which the Supreme Court reserved the right to strike down a State literacy test when it finds it violates the 15th amendment guarantee of the right to vote without discrimination on grounds of race or color.

Therefore Congress has full power to impose reasonable restrictions, acting pursuant to its constitutional powers, which we are doing under section 2 of the 15th amendment.

Mr. LAUSCHE. I believe now we reach the crux of the whole issue. The Senator from New York construes that to mean that Congress has power to suspend, provided it adopts a law, but the law must be consistent with the provisions of the Constitution. The Senator from New York read that it can provide regulations consistent with the Constitution.

I say to the Senator from New York that when the Constitution of the United States is suspended, or when the Constitution or law of any State adopted pursuant to the Constitution is suspended, the Congress is acting beyond the scope of its powers.

I do not like to utter these words, but I took an oath when I came into the Congress; and I heard the last Senator to enter this Congress take his oath.

When he took it, I trembled. I did so because I realized how much it meant. We must stand by the Constitution, come hell or high water.

Mr. CLARK. Mr. President, will the Senator from New York yield?

Mr. HART. Mr. President, I yield 1 minute to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. JAVITS. Let me say briefly that I took the same oath, and I am not going to suspend the 15th amendment so long as I am conscious. Therefore I shall vote "nay" on the Ervin amendment.

I yield to the Senator from Pennsylvania [Mr. CLARK].

Mr. CLARK. I ask my friend this question: Is it not an egregious error into which the Senator from Ohio is falling, due to his misapprehension of the principles of hornbook constitutional law, to fail to recognize that the 15th amendment, having been passed later than the earlier portion of the Constitution must be construed as partially modifying and amending that earlier portion?

We know that in certain parts of the country the right to vote is denied because of discrimination. Obviously the 15th amendment supersedes the earlier portion of the Constitution where discrimination is shown and Congress finds discrimination has been shown.

Mr. LAUSCHE. If that were true, the 15th amendment would be nullified. If it were, no State law can stand in the face of that.

Mr. CLARK. The trouble with the Senator from Ohio and his colleagues is that they are——

Mr. LAUSCHE. Mr. President, let me answer the statement which has just been made.

Mr. HART. Mr. President—Mr. President——

The PRESIDING OFFICER. The Senator from New York has 15 seconds remaining.

Mr. LAUSCHE. I am fully familiar with the proposition that the last law passed, if it conflicts with preceding law, becomes the law; but the 15th amendment is merely a limitation upon the second section of the first article in the 14th amendment. Both stand.

Mr. THURMOND. Mr. President, will the Senator from Ohio yield?

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

Mr. HART. Mr. President, I reserve the remainder of my time. How much time remains to me?

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes remaining.

Mr. HART. How much times remains to the Senator from North Carolina?

The PRESIDING OFFICER. The Senator from North Carolina has 12 minutes remaining.

Mr. THURMOND. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield myself 2 minutes for the purpose of answering the Senator from New York.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 2 minutes.

Mr. ERVIN. Mr. President, the 15th amendment has been interpreted by the Court many times. The 15th amendment does not authorize Congress to violate the rest of the Constitution. The clearest case on the meaning of the 2d section of the 15th amendment is *Karem* v. *the United States*, 121 F. 250, a decision by Judge Lurton, while a member of the Sixth Circuit Court of Appeals. This is what he said, in part:

The affirmative right to vote in such elections is still dependent upon and secured by the Constitution and laws of the State, the power of the State to prescribe qualification being limited in only one particular. The right of the voter not to be discriminated against at such elections on account of race or color is the only right protected by this amendment, and that right is a very different right from the affirmative right to vote.

There are certain very obvious limitations upon the power of Congress to legislate for the enforcement of this article: First, legislation authorized by the amendment must be addressed to State action in some form, or through some agency; second, it must be limited to dealing with discrimination on account of race, color, or condition.

Mr. President, the pending bill is defective. It is not limited to legislation dealing with discrimination on account of race, color, or previous condition of servitude. The proposed legislation would outlaw literacy tests which are authorized by other parts of the Constitution.

With respect to the comments of my good friend the Senator from Pennsylvania [Mr. CLARK], the 15th amendment was adopted after article II, section 1 was ratified in the original Constitution; but when the Congress submitted the 17th amendment to the States and prescribed the qualifications of U.S. Senators, it used exactly the same phraseology as the second section of the 1st article to the Constitution, and that amendment was passed long after the 15th amendment.

Mr. President, I ask unanimous consent to have the entire decision in Karem against United States printed in the RECORD.

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

KAREM AGAINST UNITED STATES

(Circuit Court of Appeals, Sixth Circuit, February 24, 1903, No. 1,068.)

1. Election—Federal Legislation Affecting State Elections—Limitation of Power. The power of Congress to legislate on the subject of voting at purely state elections is entirely dependent upon the fifteenth constitutional amendment, and is limited by such amendment to the enactment of appropriate legislation to prevent the right of a citizen of the United States to vote from being denied or abridged by a state on account of race, color, or condition; and since the amendment is, in terms, addressed to action by the United States or a state, appropriate legislation for its enforcement must also be addressed to state action, and not to the action of individuals.

2. Penal Statute—Construction—Constitutional Power to Enact.

A penal act of Congress cannot be sustained, as an exercise of the power given by a constitutional provision to enact appropriate legislation for its enforcement, where the act is broader in its terms than the constitutional provision, and the language used covers wrongful acts without as well as within the same. In such case the courts cannot limit the act by construction, and bring it within the constitutional grant of power.

3. Elections—Preventing Citizen From Voting at State Election—Federal Statute.

Rev. St. § 5508 [U.S. Comp. St. 1901, p. 3712], which makes it a criminal offense "if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States," is not appropriate legislation for the enforcement of the fifteenth constitutional amendment, both because it relates to the acts of individuals, and not of a state, and because it is broader in its terms than the legislation authorized by the amendment; and it will not sustain an indictment for conspiring to prevent a citizen from voting at a purely state or municipal election on account of his race or color, whether the defendants are charged as individuals, or as officers of the state.

In Error to the District Court of the United States for the Western District of Kentucky.

The plaintiff in error has been convicted under an indictment framed under section 5508 of the Revised Statutes [U.S. Comp. St. 1901, p. 3712]. The indictment, in substance, charges that the plaintiff in error and C. H. Watson and G. P. Bohn and others, to the grand jury unknown, combined and conspired together to injure, oppress, threaten, and intimidate certain named persons of color, citizens of the United States and of the state of Kentucky, and lawfully qualified voters under the law of Kentucky, from exercising and enjoying "a right and privilege secured to them * * * by the Constitution and laws of the United States, to wit, the right and privilege to vote at the election hereafter named, without distinction of race, color, or previous condition of servitude." It is then averred that there was held within the state of Kentucky on November 7, 1899, an election for state and municipal offices only, and that at a certain named precinct the defendant Karem was a judge of election, C. H. Watson a clerk, and G. P. Bohn the sheriff holding the election, and that the said persons of color were lawful voters in said precinct, and legally entitled to vote at said election, and that they each appeared at the polls within the time fixed by law and offered to vote in and at said election, but that, in pursuance of the conspiracy aforesaid, the said defendants did prevent them from voting on account of their race, color, and previous condition of servitude. To this indictment the defendant Karem demurred upon the ground that the facts stated did not constitute an offense against the laws of the United States. The demurrer was overruled. The indictment was dismissed as to the alleged conspirator Bohn. The remaining defendants, Karem and Watson, entered pleas of not guilty. At the conclusion of all the evidence each of the defendants moved the court to instruct the jury to find against the government. This motion was allowed as to Watson and disallowed as to Karem, who has sued out this writ to reverse a judgment based upon a verdict of guilty.

W. M. Smith and Swager Shirley, for plaintiff in error.

R. D. Hill, for defendant in error.

Before Lurton, Day, and Severens, Circuit Judges.

Lurton, Circuit Judge, after making the foregoing statement of the case, delivered the opinion of the court.

Many errors have been assigned and argued, but, inasmuch as we are of opinion that no offense was charged against the United States in the indictment, it is wholly unnecessary to pass upon any of the other questions of either fact or law.

If Congress has not declared the acts charged to have been done by Karem to be an offense against the United States, the courts have no power to treat them as such, even though the Congress may have the constitutional power to make such acts a crime against the United States. *United States* v. *Reese*, 92 U.S. 214, 23 L. Ed. 563.

The contention of the Government is that the acts charged constitute an offense indictable and punishable under sections 2004 and 5508 [U.S. Comp. St. 1901, pp. 1272, 3712]. Those sections are in these words:

"Sec. 2004. All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or territory, or by or under its authority, to the contrary notwithstanding."

"Sec. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than 10 years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

Neither the act from which section 2004 is taken, nor any section of the Revised Statutes, undertakes, in terms, to make its violation an offense against the United States, or provide for any punishment. It does nothing more than the amendment does proprio vigore. As said in *Ex parte Yarbrough*, 110 U.S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274, the amendment "annulled the discriminating word 'white,'" wherever it was found in a state constitution or election law, "and thus placed the colored person in the enjoyment of the same right as white persons." "And," said Justice Miller, in the same case, "such would be the effect of any future constitutional provision of a state which should give the right of voting exclusively to white people, whether they be men or women."

But if section 2004 be regarded as anything more than a declaration of the effect of the fifteenth amendment, no penalty is provided for its violation. In *United States* v. *Reese*, 92 U.S. 214, 216, 23 L. Ed. 563, the court said:

"If Congress has not declared an act done within a state to be a crime against the United States, the courts have no power to treat it as such."

Referring to this section 2004, then the first section of the act of 1870 (Act May 31, 1870, c. 114; 16 Stat. 140), the court said:

"It is not claimed that there is any statute which can reach this case, unless it be the one in question. Looking, then, to this statute, we find that its first section provides that all citizens of the United States, who are or shall be otherwise qualified by law to vote at any election, * * * shall be entitled and allowed to vote thereat, without distinction of race, color, or previous condition of servitude, any constitution * * * of the state to the contrary notwithstanding. This simply declares a right, without providing a punishment for its violation."

The indictment in this case must therefore be predicated wholly upon section 5508, or the acts charged have not been constituted an offense punishable by the United States. But the constitutional authority for the legislation embodied in this section is very much broader than the fifteenth amendment. It was the sixth section of the enforcement act of 1870 (Act May 31, 1870, c. 116; 16 Stat.

141). The character of the "rights and privileges" protected is best illustrated by some of the cases in which it has been construed and enforced. The right of a qualified voter to vote for a member of Congress is a right "secured by the Constitution or laws of the United States," within the meaning of section 5508 of the Revised Statutes. Ex parte Yarbrough, 110 U.S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274. In the case cited the indictment was brought under sections 5508 and 5520 of the Revised Statutes. The indictment in that case charged that the conspiracy was to deprive certain qualified colored voters, on account of their color, race, or previous condition of servitude, "of the enjoyment of the right and privileges of suffrage in the election of a lawfully qualified person as a member of the Congress of the United States, * * * which said right and privilege of suffrage was secured to the said Berry Saunders by the Constitution and laws of the United States." The Supreme Court held that the right to vote in a congressional election was a right secured by, and dependent upon, the Constitution and laws of the United States. In Lackey v. United States, 46 C. C. A. 189, 107 Fed. 114, 53 L. R. A. 660, after quoting from the opinion the argument for that conclusion, we said:

"The judgment of the court was also rested, in part, upon the broader ground that the Congress had the general implied power to protect the elections on which its existence depends from violence and corruption. But all that is said in that case upon this aspect of the question was said of elections at which electors or Congressmen are to be chosen, and of the direct interest of the United States in securing such elections from violence, corruption, and fraud. But whether the power of Congress to legislate in respect to congressional elections depends upon the effect of the second and fourth sections of article 1 of the Constitution, or arises out of the implied power to protect such elections against violence and fraud because they are federal elections so far as federal officials are thereby directly chosen, it is very obvious that, whether such power be attributed to either the one or the other source, it furnishes no reason for any interference at a purely state election."

In United States v. Waddell, 112 U.S. 76, 5 Sup. Ct. 35, 28 L. Ed. 673, an indictment under this section was also sustained. "The particular right held in that case to be dependent on and secured by the laws of the United States, and to be protected by section 5508 of the Revised Statutes, against interference by individuals, was the right of a citizen, having made a homestead entry on public land, within the limits of the state, to continue to reside on the land for five years, for the purpose of protecting his title."

In *Logan* v. *United States,* 144 U.S. 263, 12 Sup. Ct. 617, 36 L. Ed. 429, it was held that a citizen of the United States, in the custody of a marshal of the United States under a lawful commitment to answer an offense against the United States, has the right to be protected by the United States against lawless violence, and that this right is a right secured to him by the Constitution and laws of the United States and that a conspiracy to prevent his enjoyment of this right of protection is indictable under section 5508.

None of the cases in which an indictment under this section has been sustained involved a discrimination against voters in a purely state election on account of race, color, or previous condition of servitude. It is plain that resort can be had to this section only upon the theory that the right to vote at a purely state election is a right or privilege secured by the Constitution or laws of the United States. But the power of Congress to legislate at all upon the subject of voting at purely state elections is entirely dependent upon the fifteenth amendment. *United States* v. *Reese,* 92 U.S. 214, 24 L. Ed. 563; *United States* v. *Cruikshank,* 92 U.S. 542, 23 L. Ed. 588. The plain purpose of that amendment was to prevent all discrimination by the United States and by the states in the exercise of the suffrage on account of "race, color, or previous condition of servitude." The amendment reads thus:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

"Sec. 2. The Congress shall have the power to enforce this article by appropriate legislation."

The well-settled construction of the article is that it does not confer the right of suffrage upon any one. *United States* v. *Reeves,* 92 U.S. 214, 23 L. Ed. 563; *United States* v. *Cruikshank,* 92 U.S. 542, 23 L. Ed. 588.

In the case last cited the opinion in the Circuit Court was by Justice Bradley, and is reported as *U.S.* v. *Cruikshank,* 1 Woods, 308, and Fed. Cas. No. 14,897. In the opinion referred to, the learned justice, referring to the amendment, said:

"It does not confer the right to vote. That is the prerogative of the state laws. It only confers a right not to be excluded from voting by reason of race, color, or previous condition of servitude, and this is all the right that Congress can enforce."

Referring to the power of Congress to enforce this amendment by appropriate legislation, he said:

"It is not the right to vote which is guarantied to all citizens. Congress cannot interfere with the regulation of that right by the states, except to prevent, by appropriate legislation, any distinction as to race, color, or previous condition of servitude. The state may establish any other conditions and discriminations it pleases, whether as to age, sex, property, education, or anything else."

In *United States* v. *Reese,* cited above, the court said:

"The fifteenth amendment does not confer the right of suffrage upon any one. It prevents the states, or the United States, however, from giving preference in this particular to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a state to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property, or education. Now it is not. If citizens of one race, having certain qualifications, are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment there was no constitutional guaranty against this discrimination. Now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right, which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

In *United States* v. *Cruikshank,* cited above, the court said:

"In *Minor* v. *Happersett,* 21 Wall. 178, 22 L. Ed. 627, we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the states. In *United States* v. *Reese et al., supra,* we hold that the fifteenth amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship, but that exemption from discrimination in the exercise of that right on account of race, etc., is. The right to vote in the states comes from the states, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been."

The fifteenth amendment is therefore a limitation upon the powers of the states in the execution of their otherwise unlimited right to prescribe the qualification of voters in their own elections, and the power of Congress to enforce this limitation is necessarily limited to legislation appropriate to the correction of any discrimination on account of race, color, or condition. The affirmative right to vote in such elections is still dependent upon and secured by the Constitution and laws of the state, the power of the state to prescribe qualification being limited in only one particular. The right of the voter not to be discriminated against at such elections on account of race or color is the only right protected by this amendment, and that right is a very different right from the affirmative right to vote.

There are certain very obvious limitations upon the power of Congress to legislate for the enforcement of this article: First, legislation authorized by the amendment must be addressed to state action in some form, or through some agency; second, it must be limited to dealing with discrimination on account of race, color, or condition. These in their order:

1. That state, and not individual, action, is the subject of this article, would seem clear from many considerations. The right to vote in a purely state election, being, as we have seen, a right granted by and dependent upon the law of the state, is therefore a right which can only be denied or abridged by the state. The amendment is therefore, in terms, addressed to state action. Action by the United States and by the state in contravention of this right of nondiscrimination on account of race, color, or condition is inhibited. It has been argued that the amendment operates only to annul discriminations in existing constitutions and laws, and to prohibit all future legislation denying or abridging the right of suffrage on account of race, color, and condition, and that the power of Congress to enforce it is therefore limited to legislation appropriate to the prevention and punishment of conduct based upon discriminating legislation. We think this too narrow a view of the article. Although it has reference to state, and not individual, action, it has a wider scope than the mere nullification or inhibition of state legislative action, and avoids and inhibits not only state legislation, but all state action of every kind, and by every one assuming to exercise the power of the state, whether the state's authority be exceeded or not. When the Constitution speaks of a state, and inhibits the doing of certain things, it sometimes includes under the term "state" every instrumentality or agency of the state which presumes to act by authority of the state, and in other cases the action of the state in its sovereign or legislative character is alone referred to. This amendment is not limited to the prohibition of "laws" denying or abridging the elective function. For this very reason we conclude that legislation enforcing it may be corrective of any state action, whether based on state laws authorizing discrimination or not. With the exception of the first clause of the first section of the fourteenth amendment, that section is, like the fifteenth amendment, addressed broadly to the state. The other clauses of that section read as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws."

Each of the clauses quoted above has been authoritatively construed as addressed to state action in some form, and not to mere individual conduct. *Slaughter House* case, 16 Wall, 36, 21 L. Ed. 394; *Ex parte Virginia*, 100 U.S. 339, 25 L. Ed. 676; *United States* v. *Cruikshank*, 92 U.S. 542, 23 L. Ed. 588; *United States* v. *Harris*, 106 U.S. 629, 638, 1 Sup. Ct. 601, 27 L. Ed. 290; *Virginia* v. *Rives*, 100 U.S. 313, 25 L. Ed. 667; *Civil Rights* case, 109 U.S. 3, 11, 3 Sup. Ct. 18, 27 L. Ed. 835; *Chicago, B. & Q. R.* v. *Chicago*, 166 U.S. 226, 17 Sup. Ct. 581, 41 L. Ed 979.

In *United States* v. *Cruikshank*, the Chief Justice said:

"The 14th amendment prohibits a State from depriving any person of life, liberty, or property without due process of law, or from denying to any person the equal protection of the laws; but this provision does not add anything to the rights of one citizen against another. It simply furnishes an additional guaranty against any encroachment by the State upon the fundamental rights which belong to every citizen as a member of society."

In *Virginia* v. *Rives* the court said:

"The provisions of the 14th amendment here refer to State action, exclusively, and not to any action of private individuals."

In *United States* v. *Harris*, Justice Woods, after citing and commenting upon the earlier cases, said of the 14th amendment:

"The language of the amendment does not leave this subject in doubt. When the State has been guilty of no violation of its provisions; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; when no one of its departments has deprived any person of life, liberty, or property without due process of law, or denied to any person within its jurisdiction the equal protection of the law; when, on the contrary, the laws of the State, as enacted by its legislative and construed by its judicial and administered by its executive departments, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress."

Referring to *Ex parte Virginia*, 100 U.S. 339, 25 L. Ed. 676, where a law of Congress prohibiting discrimination in jury service on account of race, color, etc., was upheld as warranted by the last clause of the first section of the fourteenth amendment, the court, in the *Civil Rights Case*, 109 U.S. 3, 151, 3 Sup. Ct. 18, 24, 27 L. Ed. 835, said:

"In *Ex parte Virginia*, 100 U.S. 339, 25, L. Ed. 676, it was held that an indictment against a state officer under this section for excluding persons of color from the jury list is sustainable. But a moment's attention to its terms will show that the section is entirely corrective in its character. Disqualifications for service on juries are only created by the law, and the first part of the section is aimed at certain disqualifying laws, namely those which make mere race or color a disqualification; and the second clause is directed against those who, assuming to use the authority of the state government, carry into effect such a rule of disqualification. In the Virginia case, the state, through its officer, enforced a rule of disqualification which the law was intended to abrogate and counteract. Whether the statute book of the state actually laid down any such rule or disqualification or not, the state, through its officer, enforced such a rule; and it is against such state action, through its officers or agents, that the last clause of the section is directed. The aspect of the law was deemed sufficient to divest it of any unconstitutional character, and makes it differ widely from the first and second sections of the same act which we are now considering."

In *Chicago Burlington & Quincy R. Co.* v. *Chicago*, 166 U.S. 226, 17 Sup. Ct. 581, 41 L. Ed. 979, it is said, referring to the fourteenth amendment:

"That the prohibitions of the amendment refer to all the instrumentalities of the state, to its legislative, executive, and judicial authorities; and therefore whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation by the state, violates the constitutional inhibition; and as he acts in the name and for the state, is clothed with the state's power, his act is that of the state."

In *Logan* v. *United States*, 144 U.S. 263, 293, 12 Sup. Ct. 617, 626, 36 L. Ed. 429, the cases cited above were reviewed, and the doctrine to be deduced from them thus formulated:

"The whole scope and effect of this series of decisions is that, while certain fundamental rights, recognized and declared, but not granted or created, in some of the amendments to the Constitution, are thereby guaranteed only against violation or abridgement by the United States, or by the states, as the case may be, and cannot, therefore, be affirmatively enforced by Congress against unlawful acts of individuals, yet that every right created by, arising under, or dependent upon the Constitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion, deem most eligible and best adapted to attain the object."

The principles of interpretation applicable to the first section of the fourteenth amendment are equally applicable to the construction of the fifteenth amendment. The amendment simply limits state power in respect to suffrage at state elections by prohibiting discrimination in the enjoyment of the elective franchise on account of race, color, or condition. The right to vote in its own election can be conferred only by the state. No one, therefore, but the state, can "deny or abridge" the right to vote. The amendment is therefore properly addressed to the state. Individuals may by unlawful force or fraud prevent an otherwise lawful voter from voting. But it would simply be an act of lawless violence. The right of suffrage would not be denied or abridged. Individuals cannot deny or abridge the right of suffrage, for they cannot confer it. It is a right which is secured by, and dependent upon, law. Individuals cannot "deny or abridge" a right of suffrage confirmed by law by a mere lawless act of fraud or intimidation or violence. To deny or abridge it in the sense and meaning of the fifteenth amendment, there must be some act of the state, through its legislative, judicial, or executive departments. Some one exercising the power of the state, whether with or without the sanction of the law of the state, must deny to otherwise qualified voters the right to vote on account of race, color, or condition. That would be an act of the state, and such act might be made an offense against the United States by virtue of the power granted by the fifteenth amendment. To justify legislation directed to the mere lawless acts of individuals at a purely state election, even though such acts be based upon color or race, would be to enter the domain of the police power of the state. We speak only of purely state elections, for the power of Congress over its own elections rests upon altogether different principles. There is no more reason for assuming that this amendment authorizes legislation for the punishment of the ruffianly act of an individual in preventing the enjoyment of the right to vote in a state or municipal election, even though the intimidation be grounded upon race, color, or previous condition of servitude, than there would be for legislation punishing a trespass upon property upon the ground that such a trespass would be a denial of due process of law. Both the fourteenth and the fifteenth amendments are addressed to state action through some channel exercising the power of the state.

2. Appropriate legislation grounded on this amendment is legislation which is limted to the subject of discrimination on account of race, color, or condition. The act commonly known as the "Enforcement Act" (being the act of May 31, 1870; 16 Stat. 140) contained a number of sections which were plainly intended to enforce the provisions of the fifteenth amendment. These sections were the first, third, fourth, and fifth. The first has been carried into the Revised Statutes as section 2004 [U.S. Comp. St. 1901, p. 1272]. The third, having been held unconstitutional, is dropped out. The fourth, in a somewhat changed form, is carried into the Revised Statutes as section 5506, and the fifth section is section 5507 [U.S. Comp St. 1901, p. 3712] of the Revised Statutes. The third, fourth, and fifth sections of that act have been held to have been in excess of the jurisdiction of the Congress under the fifteenth amendment, and therefore null and void. The ground upon which this conclusion was reached was that neither section was confined in its operation to discriminations on account of race, color, or previous condition of servitude, and all were broad enough to cover wrongful acts both within and without the jurisdiction of Congress under the article. *United States* v. *Reese*, 92 U.S. 214, 23 L. Ed. 563; *Lackey* v. *United States*, 46 C.C.A. 189, 107 Fed. 114, 53 L.R.A. 660.

3. It may be conceded that the Congress has power to provide for the indictment and punishment of any person exercising the power of the state who should exclude, on account of race, color, or previous condition of servitude, the vote of lawfully qualified voters, even at a purely state election. But has congress so legislated? Section 5508 [U.S. Comp. St. 1901, p. 3712] is plainly not limited to acts done by persons acting under and exercising the power of the state. The indictment charges that the defendant conspirators were officers of election, and, as such officers, excluded colored voters from voting on account of race, color, etc. If the case made by the indictment is within this section, it is not because it provides specifically for the punishment of the offense charged, but because it comes under the general provision providing for the punishment of any unlawful interference with the free enjoyment of some right or privilege secured by the Constitution or laws of the United States. This section has for its object the punishment of all persons who conspire to prevent the free enjoyment of any right or privilege secured by the Constitution or laws of Congress, without regard to whether the persons so conspiring are private individuals or officials exercising the power of the United States or of a State. Neither does it draw any distinction between a conspiracy directed against the exercise of the right of suffrage based upon race or color, and a conspiracy not so grounded. It is therefore not legislation appropriate to the enforcement of the fifteenth amendment; and, if the only warrant for its enactment was that article, we should be obliged to hold that Congress had exceeded its jurisdiction, because broad enough to cover wrongful acts without as well as within its jurisdiction. That it is not within the province of the courts to so limit an act by judicial construction as to make it operate only on that which Congress may rightfully prohibit and punish is now a well-settled principle of constitutional interpretation. *United States* v. *Reese*, 92 U.S. 214, 23 L. Ed. 563; *United States* v. *Cruikshank*, 92 U.S. 542, 23 L. Ed. 588; *Trade-Mark Cases*, 100 U.S. 82, 25 L. Ed. 550; *United States* v. *Harris*, 106 U.S. 629, 1 Sup. Ct. 601, 27 L. Ed. 290; *Civil Rights Cases*, 109 U.S. 3, 3 Sup. Ct.

18, 27 L. Ed. 835; *Lackey* v. *United States*, 46 C.C.A. 189, 107 Fed. 114, 53 L.R.A. 660.

The case of *United States* v. *Reese*, above cited, is very much in point. The court had under consideration the constitutionality of sections 3 and 4 of the act of May 31, 1870, now constituting section 5506 of the Revised Statutes. The indictment charged two inspectors of a municipal election in the state of Kentucky with refusing to receive the votes of certain colored voters, in contravention of the terms of the third section of the act. The section in question was directed to the conduct of election judges and inspectors, but did not limit the operation of the act to exclusions from suffrage on account of race, color, or condition. The court said, in speaking of the section then under consideration:

"We find there no words of limitation, or reference, even, that can be construed as manifesting any intention to confine its provisions to the terms of the fifteenth amendment. That section has for its object the punishment of all persons who, by force, bribery, etc., hinder, delay, etc., any person from qualifying or voting. In view of all these facts, we feel compelled to say that, in our opinion, the language of the third and fourth sections does not confine their operation to unlawful discriminations on account of race, etc. If congress had the power to provide generally for the punishment of those who unlawfully interfere to prevent the exercise of the elective franchise, without regard to such discrimination, the language of these sections would be broad enough for that purpose. It remains now to consider whether a statute so general as this in its provisions can be made available for the punishment of those who may be guilty of unlawful discrimination against citizens of the United States, while exercising the elective franchise, on account of their race, etc. There is no attempt in the sections now under consideration to provide specifically for such an offense. If the case is provided for at all, it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are therefore directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language, broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those which are not now there. Each of the sections must stand as a whole, or fall altogether. The language is plain. These is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will, when ascertained, if within the constitutional grant of power. Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and, when called upon in due course of legal proceedings must, annul its encroachment upon the reserved power of the states and the people. To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty. We must therefore decide that congress has not as yet provided by 'appropriate legislation' for the punishment of the offense charged in the indictment, and that the Circuit Court properly sustained the demurrers and gave judgment for the defendants."

In United States v. Harris, 106 U.S. 629, 637, 1 Sup. Ct. 601, 27 L. Ed. 290, section 5519 [U.S. Comp. St. 1901, p. 3714] was held void, as not warranted by the constitution. That section is in these words:

"Sec. 5519. If two or more persons in any state or territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the law; or for the purpose of preventing or hindering the constituted authorities of any state or territory giving or securing to all persons within such state or territory the equal protection of the laws; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment."

It was sought to be supported under the thirteenth, fourteenth, and fifteenth amendments. The court said:

"It is clear that the fifteenth amendment can have no application. That amendment, as was said by this court in the case of United States v. Reese, 92 U.S. 214, 23 L. Ed. 563, 'relates to the right of citizens of the United States to vote. It does not confer the right of suffrage on any one. It merely invests citizens of the United States with the constitutional right of exemption from discrimination in the enjoyment of the elective franchise on account of race, color, or previous condition of servitude.' See, also, United States v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588; s. c. 1 Woods, 308, Fed. Cas. No. 14,897. Section 5519 of the Revised Statutes [U.S. Comp. St. 1901, p. 3714] has no reference to this right. The right guarantied by the fifteenth amendment is protected by other legislation of Congress, namely, by sections 4 and 5 of the act of May 31, 1870, c. 114, and now embodied in section 5506 and 5507 of the Revised Statutes [U.S. Comp. St. 1901, p. 3712]. Section 5519, according to the theory of the prosecution, and as appears by its terms, was framed to protect from invasion by private persons the equal privileges and immunities, under the laws, of all persons and classes of persons. It requires no argument to show that such a law cannot be founded on a clause of the Constitution whose sole object is to protect from denial or abridgment by the United States or States, on account of race, color or previous condition of servitude, the right of citizens of the United States to vote."

The court further held that the act was not warranted by either of the other amendments, because it covered cases both within and without the authority of Congress. Referring to the claim that it might be supported by the fourteenth amendment, the court said:

"As, therefore, the section of the law under consideration is directed exclusively against the action of private persons, without reference to the laws of the state, or their administration by her officers, we are clear in the opinion that it is not warranted by any clause of the fourteenth amendment."

Assuming that exemption from discrimination at a state election is a "right or privilege secured by the Constitution or laws of the United States," it is a right which originates only in the fifteenth amendment, and can only be enforced by legislation directed to state action in some form, by which otherwise qualified voters are denied the elective franchise on account of race or color. This is the limit of the power of Congress under the article. Section 5508 is not so limited, and is not, therefore, appropriate legislation for the enforcement of the fifteenth amendment. The warrant for the section is found in other provisions of the Constitution, and other sections of the act of 1870, from which this section was taken, carried into the Revised Statutes as sections 5506 and 5507, were intended to enforce this amendment. We therefore conclude that the offense charged in the indictment is not included within or covered by section 5508.

The judgment must be reversed, with directions to sustain the defendants' demurrer to the indictment.

Mr. CLARK. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. If I have any more time left. I have already given 10 minutes of my time to the Senator from Louisiana [Mr. ELLENDER] and I do not know whether I have any time left at this moment.

The PRESIDING OFFICER. The Senator from North Carolina has 15 seconds left.

Mr. CLARK. I wish to know if the Senator from North Carolina agrees that the 15th amendment, section 1 and 2, are parts of the Constitution of the United States?

Mr. ERVIN. If the Senator had been in the Chamber to hear me, he would have known that I admitted that fact and that I urged that the 15th amendment be enforced by constitutional methods rather than by such an unconstitutional and ridiculous bill as that pending before the Senate.

Mr. President, I yield the remainder of my time to the Senator from Louisiana [Mr. ELLENDER].

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. ELLENDER. Mr. President, I regret that the entire Senate was not present to listen to this debate, because I am satisfied that if all Senators had been present and acted on their own, there would be no question as to what the vote would be on the Ervin amendment.

I support the amendment proposed by the distinguished Senator from North Carolina [Mr. ERVIN] to the Mansfield-Dirksen amendment in the nature of a substitute to S. 1564, a bill supposedly designed to enforce the 15th amendment to the Constitution of the United States.

I use the word "supposedly" in all good conscience, Mr. President, for a careful analysis of S. 1564 as sent to Congress by the administration, or reported by the Judiciary Committee, or as amended by the Mansfield-Dirksen substitute, shows that it goes far beyond the powers granted to Congress by the 15th amendment. The 15th amendment relates only to the right to vote and does not convey any powers allowing the Federal Government to step in and assume control of voter qualifications. It has been previously demonstrated to the Senate that when the 15th amendment was being

considered, many efforts were made to broaden its provisions and strike down the right of the States to establish voter qualifications based on grounds other than race, color, or previous condition of servitude.

I point out that in the House of Representatives many efforts were made to have the amendment so worded as to provide Congress with the right to declare qualifications, but all were voted down in the House, as well as in the Senate.

I have gone deeply into the legislative history of the 15th amendment when it was under consideration by the 40th Congress. There can be no doubt of the meaning of the 15th amendment. There can be no doubt that the 40th Congress, radical though it was, did not intend for the 15th amendment to strike down voter qualifications adopted by the States, based on such factors as education or literacy qualifications, or even property requirements. The fact is, as I found in my researches into the legislative history, each effort to so broaden the amendment was struck down decisively. The House of Representatives was particularly adamant in refusing to accept the extension of the 15th amendment language to cover fields of voter qualifications. This was, no doubt, because the House of Representatives was much closer to the people than was the Senate in 1869.

Without doubt, Mr. President, there is no basis in the 15th amendment to support this vicious bill as it was drafted by the attorneys in the Justice Department. Let us see how the Attorney General faces up to this fact.

In testifying before the Senate Judiciary Committee on S. 1564, Attorney General Katzenbach stated that it was not the purpose of the bill to nullify State laws, which, of course, Mr. President, is just what this bill would do. He admitted that the power of the States to set down and determine voter qualifications is a valid exercise of State power. To get around the constitutionally protected power of the States, he contends that this bill would merely suspend State law.

Mr. President, the question immediately comes to mind as to where in the Constitution can be found a power granted to Congress to suspend valid laws enacted by the States. More importantly, where in the Constitution or in any legal precedent is to be found the authority to allow the Attorney General of the United States to suspend valid State laws under some illogical statistical formula that reeks of political implications.

The section of S. 1564 which would be changed by the pending amendment, in line with logic and the legal and constitutional precedents which have always guided our Nation, closely parallels a section of a March 8 Supreme Court judgment rendered in the case of *United States* v. *Louisiana*, U.S. 1965. In that instance, literacy tests were suspended in 21 north Louisiana parishes on the grounds that they had not been fairly administered to all registrants. The Attorney General and the proponents of this measure are now claiming that Congress can on its own motion, without the production of so much as one iota of legal evidence in any court in our land, suspend valid and legally enacted laws adopted by the States.

Mr. President, it is one thing for a duly constituted court of law to enjoin, suspend, or strike down a State law which it finds discriminatory and subject to administrative abuses of a constitutional nature, but it is quite another thing for the Congress of the United States to hand over such judicial powers to the Attorney General of these United States. If the Ervin amendment is adopted by the Senate, as I hope it shall be, a grave defect in this legislation will be corrected. The bill will still be pernicious, but less so. It will still be subversive of the constitutional guarantees, but our States and people will have at least some protection against the personal notions of justice entertained by the Attorney General.

By the present terms of this legislation, determinations made by the Attorney General are to be based on statistics furnished him by the Census Bureau. The most odious and unjustifiable part of this provision is that the bill contains no requirement for any showing of discrimination, the formula is self-executing on the basis of statistical circumstances which, as I indicated earlier, are of questionable fairness.

Now, Mr. President, the amendment submitted by the Senator from North Carolina [Mr. ERVIN] would provide the following:

First. Allow the Attorney General discretion in instituting lawsuits anywhere in the United States to enforce the 15th amendment.

Second. Provide that the suit be brought in the district court where the discrimination is alleged to have occurred.

Third. Allow the Attorney General to remove the case to a Federal three-judge court sitting without a jury.

Fourth. Upon a finding by the court of discrimination, provide for the appointment of Federal examiners to register voters in accordance with State laws.

Senator ERVIN and others have correctly pointed out that:

> There is no rational connection between the fact that less than 50 percent of the persons of voting age in a State vote and the presumption that this low voting percentage is due to a violation of the 15th amendment.

The Ervin amendment would bring the judicial process once again into place. Findings would be based strictly on the merits of each case wherein discrimination was charged. As such, it would be far superior to declaring certain sections of the Nation guilty based on illogical statistics drawn on an ex post facto basis.

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

Mr. HART. I yield 1 additional minute to the Senator from Louisiana.

Mr. ELLENDER. Mr. President, in conclusion I point out that under the terms of the Ervin amendment the Attorney General could have these cases tried by a special three-judge court, as was approved by the Congress in title I of the Civil Rights Act of 1964. This should answer the claims of many that fair judges cannot be found in our Southland, and would serve to expedite the judicial process. Also, cases tried before these special three-judge courts are heard without benefit of jury. Senator ERVIN has stated that he sees no reason why a three-judge court sitting in Richmond, Va., Charlotte, N.C., Charleston, S.C.—or I might add, New Orleans, La.—could not try a case with the same intelligence, integrity, and dispatch as the already overburdened district court in the District of Columbia. With this sentiment I fully agree, and I hope that the Senate does likewise.

Mr. HART. Mr. President, I yield the remaining time on our side to the Senator from Illinois.

Mr. DIRKSEN. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. KENNEDY of New York in the chair). Five minutes remain. The Senator from Illinois is recognized for 5 minutes.

Mr. DIRKSEN. Mr. President, anyone listening to this discussion might think that the Constitution of the United States was framed in a vacuum, that it is a static thing, and that it is presently somewhere in orbit. It is not anything of the kind. After the 13th amendment was adopted, it was discovered that the emancipated people had few rights. They could not serve on juries. They did not dare come into town. They could not vote, of course. Obviously it was necessary to confer upon them an additional citizenship. What did the 14th amendment do? It made them citizens not only of Illinois or Louisiana or North Carolina, but also citizens of the United States. Then, for good measure, the 15th amendment was adopted in the 1870's, to provide that no citizen shall be denied the right to vote on account of race or color or previous condition of servitude.

People shout about the powers of the Attorney General. I wish someone would tell me who in our form of government is to enforce the Constitution and the laws if it is not the Attorney General. Will someone point to a law officer or to an administrator who is going to do it except the Attorney General?

This is the situation that confronts us. That is the reason why we tried to set up an automatic device, and tried to make it as automatic as possible, in section 4, to provide that if the Attorney General finds there is a device or test of some kind, and the Bureau of the Census discovers that only a few of the registered voters actually voted, it would be the kickoff machinery, and would provide for some examiners to go in and examine into the qualifications of these people under the Constitution and the laws of the United States and the laws of the State—because that is what it provides—and to give the people a fair shake.

What does the Senator from North Carolina propose to do? He proposes to strike out section 4 and section 5 and a portion of section 6 and have us go back to what we have today. What have we today? We do not have anything today, really, notwithstanding the act of 1957,

the act of 1960, and the act of 1964, because the voting right is still being denied those people.

One can say what he will—and the occupant of the chair (Mr. KENNEDY of New York) can bear this out himself, having occupied the distinguished office of Attorney General at one time—that when a suit is started, it takes 3 years to process it, and that when the suit is settled, another one is started, and one's great great grandchildren will never live long enough to see this problem whipped unless we have a device such as we have incorporated in the bill, in order to meet this problem. It has been here all too long, for 100 years since the Great Emancipator disappeared from the scene, and we are still arguing about the problem of people of color.

The amazing thing is that so much of the opposition comes from the very area—I do not like to see it—where there is a misuse and an abuse. I say to the opponents: You can stand on your tradition, if you like. You can say we are punitive, that we are pointing the finger of scorn at you. However, we are doing nothing of the kind. We are going where the abuse lies and where certain tests and devices have been used to discriminate. Where else shall we go? Shall we go to a State that is as clean as a hound's tooth and that lets people vote within the compass of the Constitution and State law?

That is all we ask for.

Mr. President, the Ervin amendment ought to be resoundingly defeated, because it is retrogressive and would bring us back to where we are at the present time. We need the proposed legislation in the amendment in the nature of a substitute. We do not claim perfection for that proposal. The House must impress its will. Then the bill will go to conference. If there are bugs in it, we can iron them out, but at least the proposed legislation will make a start, and an infinitely better start than we achieved in 1957, 1960, and 1964. I ought to know because I was either the captain or the cocaptain on nearly every one of those measures that went through this body.

So I hope the amendment will be resoundingly rejected.

Mr. HART. Mr. President, in our judgment, adoption of the Ervin amendment would result in the total emasculation of the amendment in the nature of a substitute. I ask unanimous consent that there be printed at this point in the RECORD, a summary of literacy tests and devices as reported from the Judiciary Committee by the 12 members of that committee who submitted their views.

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

LITERACY TESTS AND SIMILAR DEVICES

Beginning in the early 1890's a number of States enacted legislation establishing new voting qualifications. Among them was the literacy test. Prior to 1890, apparently no Southern State required proof of literacy, understanding of constitutional provisions or of the obligations of citizenship, or good moral character, as prerequisites to voting. However, as the following table shows, these tests and devices were soon to appear in most of the States with large Negro populations.[1]

1. Reading and/or writing: Mississippi (1890), South Carolina (1895), North Carolina (1900), Alabama (1901), Virginia (1902), Georgia (1908), Louisiana (1921). And see Oklahoma (1910).

2. Completion of an application form: Louisiana (1898), Virginia (1902), Louisiana (1921), Mississippi (1954).

3. Oral constitutional "understanding" and "interpretation" tests: Mississippi (1890), South Carolina (1895), Virginia (1902), Louisiana (1921).

4. Understanding of the duties and obligations of citizenship: Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1954).

5. Good moral character requirement (other than nonconviction of a crime): Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1960).

It is significant that in 1890, 69 percent or more of the adult Negroes in seven Southern States which adopted these tests were illiterate (Alabama, 78 percent; Louisiana, 77 percent; Georgia, 75 percent; Mississippi, 74 percent; South Carolina, 73 percent; North Carolina, 70 percent; Virginia, 69 percent). These percentages were much higher than comparable figures for white illiteracy (Alabama, 19 percent; Louisiana, 19 percent; Georgia, 17 percent; Mississippi, 13 percent; South Carolina, 18 percent; North Carolina, 25 percent; Virginia, 15 percent). See Compendium of the 11th Census, part III, page 316.

At the same time alternative provisions for qualifying to vote were adopted to assure that illiterate whites were not disfranchised. Thus, in Louisiana, North Carolina, and Oklahoma, white voters were exempted from the literacy test by a " 'voting' grandfather clause." Louisiana constitution, 1898, article 197, section 5; North Carolina constitution, 1876, article VI, section 4, as amended in 1900; Oklahoma constitution, 1907, article III, section 4a, as amended in 1910. The same result was accomplished in Alabama, Georgia, and Virginia by the so-called fighting grandfather clause. See Alabama constitution, 1901, section 180; Georgia constitution, 1877, article II, section 1, paragraph IV (1–2), as amended in 1908; Virginia constitution, 1902, section 19. Several of these States provided a separate exemption from the literacy requirement for property holders. See Louisiana constitution, 1898, article 107, section 4; Alabama constitution, 1901, section 181, second; Virginia constitution, 1902, section 19, third; Georgia constitution, 1877, article II, section 1, paragraph IV(5). And Alabama and Georgia additionally exempted persons of "good moral character" who understood "the duties and obligations of citizenship under a republican form of government." Alabama constitution, 1901, section 180, third; Georgia constitution, 1877, article II, section 1, paragraph IV(3), as amended in 1908. Another device, invented by Mississippi, and followed, for a time, by South Carolina and Virginia (and later Louisiana) offered white illiterates an opportunity to qualify by satisfying the registrar that they could "understand" and "interpret" a constitutional text when it was read to them. Mississippi constitution, 1890, section 244; South Carolina constitution, 1895, article II, section 4(c); Virginia constitution, 1902, section 19, fourth; Louisiana constitution, 1921, article VIII, section 1(d). For later registrants, South Carolina substituted a property alternative. South Carolina constitution, 1895 article II, section 4(d). The grandfather clause was struck down by the Supreme Court in 1915 (*Guian* v. *United States*, 238 U.S. 347) but the other devices remained and discrimination continued.

The history of 15th amendment litigation in the Supreme Court—from the beginning (*United States* v. *Reese*, 92 U.S. 214; *Ex parte Yarborough*, 110 U.S. 651) through the "grandfather clause" (*Guinn, supra; Myers* v. *Anderson*, 238 U.S. 368), and the "white primary" (*Nixon* v. *Herndon*, 273 U.S. 536; *Nixon* v. *Condon*, 286 U.S. 73; *Smith* v. *Allwright*, 321 U.S. 649; *Terry* v. *Adams*, 345 U.S. 461), the resort to procedural hurdles (*Lane* v. *Wilson*, 307 U.S. 268), to racial gerrymandering (*Gomillion* v. *Lightfoot*, 364 U.S. 339), to improper challenges (*United States* v. *Thomas*, 362 U.S. 58), and, finally, the discriminatory use of tests (*Schnell* v. *Davis*, 336 U.S. 933; *Alabama* v. *United States*, 371 U.S. 37; *Louisiana* v. *United States, supra*)—indicates both the variety of means employed to bar Negro voting and the durability of these discriminatory policies.

The barring of one contrivance has too often caused no change in result, only in methods. See dissenting opinion of Judge John Brown in *United States* v. *Mississippi*, 229 F. Supp. 925, reversed and remanded, — U.S. — (1965). The 15th amendment was intended to nullify "sophisticated as well as simple-minded modes of discrimination," *Lane* v. *Wilson*, 307 U.S. 263, 275 (1939).

[1] A number of examples appearing in the committee record showing that these tests and devices were adopted to disenfranchise the Negro. See, for example, *Ratliff* v. *Beall*, 74 Miss. 247, 20 S. Rept. 865, where the Mississippi Supreme Court, referring to the convention which adopted the Mississippi constitution of 1890 which contained literacy requirements, remarked that "within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the Negro race," 74 Miss. 266. See also *United States* v. *Mississippi*, No. 73, October term 1964, decided Mar. 8, 1965 (slip op. pp. 14–15).

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

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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

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

All time having expired, the question is on agreeing to the amendment of the Senator from North Carolina to the amendment offered by the Senator from Montana [Mr. MANSFIELD] and the Senator from Illinois [Mr. DIRKSEN]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. LONG of Louisiana. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Arkansas [Mr. FULBRIGHT], and the Senator from South Dakota [Mr. MCGOVERN] are absent on official business.

I also announce that the Senator from Wyoming [Mr. MCGEE], the Senator from Montana [Mr. METCALF], the Senator from Georgia [Mr. RUSSELL], the Senator from Florida [Mr. SMATHERS], and the Senator from Missouri [Mr. SYMINGTON] are necessarily absent.

I further announce that the Senator from Connecticut [Mr. DODD] is absent because of the death of his sister.

On this vote, the Senator from North Dakota [Mr. BURDICK] is paired with the

Senator from Georgia [Mr. RUSSELL]. If present and voting, the Senator from North Dakota would vote "nay" and the Senator from Georgia would vote "yea."

I further announce that, if present and voting, the Senator from Connecticut [Mr. DODD], the Senator from Wyoming [Mr. MCGEE], the Senator from South Dakota [Mr. MCGOVERN], and the Senator from Missouri [Mr. SYMINGTON] would each vote "nay."

Mr. DIRKSEN. I announce that the Senator from California [Mr. KUCHEL] is necessarily absent.

The Senator from Vermont [Mr. PROUTY] is absent to attend the funeral of a close friend.

If present and voting, the Senator from California [Mr. KUCHEL] and the Senator from Vermont [Mr. PROUTY] would each vote "nay."

The result was announced—yeas 25, nays 64, as follows:

[No. 65 Leg.]

YEAS—25

Byrd, Va.	Hill	Russell, S.C.
Byrd, W. Va.	Holland	Sparkman
Curtis	Jordan, N.C.	Stennis
Eastland	Lausche	Talmadge
Ellender	Long, La.	Thurmond
Ervin	McClellan	Tower
Fannin	Miller	Young, N. Dak.
Hayden	Mundt	
Hickenlooper	Robertson	

NAYS—64

Aiken	Gruening	Moss
Allott	Harris	Murphy
Anderson	Hart	Muskie
Bartlett	Hartke	Nelson
Bass	Hruska	Neuberger
Bayh	Inouye	Pastore
Bennett	Jackson	Pearson
Bible	Javits	Pell
Boggs	Jordan, Idaho	Proxmire
Brewster	Kennedy, Mass.	Randolph
Cannon	Kennedy, N.Y.	Ribicoff
Carlson	Long, Mo.	Saltonstall
Case	Magnuson	Scott
Church	Mansfield	Simpson
Clark	McCarthy	Smith
Cooper	McIntyre	Tydings
Cotton	McNamara	Williams, N.J.
Dirksen	Mondale	Williams, Del.
Dominick	Monroney	Yarborough
Douglas	Montoya	Young, Ohio
Fong	Morse	
Gore	Morton	

NOT VOTING—11

Burdick	McGee	Russell, Ga.
Dodd	McGovern	Smathers
Fulbright	Metcalf	Symington
Kuchel	Prouty	

So Mr. ERVIN's amendment (No. 135) to the amendment in the nature of a substitute was rejected.

Mr. HART. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 162

Mr. KENNEDY of Massachusetts. Mr. President, I call up my amendment No. 162. I ask unanimous consent that the reading of the amendment be dispensed with but that the amendment be printed in the RECORD.

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

The amendment is as follows:

On page 14, beginning with line 8, strike out all through line 3, on page 15 (section 9 of the bill), and insert in lieu thereof the following:

"SEC. 9. (a) Congress hereby declares that to prohibit the collection of a poll tax or other tax or payment as a precondition of voting is necessary to secure the rights guaranteed by the fourteenth and fifteenth amendments to the Constitution against denial or abridgment.

"(b) To assure that such rights are not denied or abridged in violation of the Constitution, no State or political subdivision shall enforce the collection of a poll tax or other tax or payment as a precondition of registration or voting.

"(c) The Attorney General of the United States shall forthwith institute, in the name of the United States, actions against any State or political subdivision for declaratory judgment or injunctive relief against the enforcement, or threatened enforcement of such tax or payment as a precondition of voting. Such actions shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. Such action shall not preclude any remedy available to the Attorney General or to any other person under the laws or Constitution of the United States. For the purposes of this subsection the term "threatened enforcement" shall include the failure of a State or political subdivision to direct the appropriate election officials, no later than sixty days after the effective date of this Act, to permit otherwise eligible persons to register or vote notwithstanding their failure to pay a poll tax or make any other payment.

"(d) If subsection (b) of this section is held invalid in its application to a State or political subdivision, for one year after the entry of a final judgment in such action no person shall be denied the right to vote in any election for failure to pay a poll tax or to make timely payment thereof if at least forty-five days prior to such election he pays the amount of the tax or taxes for one year as may be required by State law."

LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, I should like to ascertain from the majority leader, if possible, what the program of the Senate will be for tomorrow and the remainder of the week, and whether or not there has been some discussion of a time limitation on the so-called poll tax amendment.

Mr. MANSFIELD. Mr. President, it is my understanding that the distinguished senior Senator from Mississippi [Mr. EASTLAND] will make some remarks tonight on the pending bill and that it is possible that the distinguished junior Senator from Massachusetts [Mr. KENNEDY] may lay the groundwork for his amendment, which is now pending.

I do not anticipate any further votes today. It is my understanding that the distinguished Senators from Hawaii [Mr. FONG and Mr. INOUYE] wish to make an announcement regarding the passing of our beloved former colleague, Senator Oren Long, of Hawaii.

I would assume that tomorrow would be taken up with debate on the amendment of the Senator from Massachusetts [Mr. KENNEDY] and that the debate on the amendment would continue into Monday.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I should like to propound a unanimous-consent request at this time. I had considered suggesting that the vote on the pending amendment be taken at 5 o'clock on Monday afternoon, but as the best means of accommodating the greatest number of Senators, I propose that the vote be taken on the amendment at 1 o'clock p.m. on Tuesday next, and that the time for debate on the amendment be equally divided between the distinguished junior Senator from Massachusetts [Mr. KENNEDY] and the majority leader or whomever he may designate.

Mr. HOLLAND. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. HOLLAND. At what time would the division of time begin?

Mr. MANSFIELD. I should say that the division of time should begin tomorrow at the conclusion of morning business.

Mr. HOLLAND. I thank the majority leader.

The PRESIDING OFFICER (Mr. KENNEDY of New York in the chair). Does the majority leader make that a part of the unanimous-consent request?

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

The unanimous-consent request was subsequently reduced to writing, as follows:

Ordered, That the Senate proceed to vote at 1 o'clock on Tuesday, May 11, 1965, on the Kennedy Amendment, No. 162, to the substitute amendment by Senators MANSFIELD and DIRKSEN, No. 124, as amended, for the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

Provided, That all time for debate after the transaction of routine morning business on Friday, May 7, 1965, and until 1 p.m. on Tuesday, May 11, 1965, be equally divided and controlled by the Senator from Massachusetts [Mr. KENNEDY] and the majority leader [Mr. MANSFIELD], or some Senator designated by him.

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent the following routine business was transacted:

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following communication and letters, which were referred as indicated:

PROGRAM TO STRENGTHEN PERSONNEL CAPABILITIES OF FOREIGN AFFAIRS AGENCIES OF THE GOVERNMENT

A communication from the President of the United States, relating to a program designed to strengthen the personnel capabilities of all the foreign affairs agencies of the Government; to the Committee on Foreign Relations.

NATIONAL CAPITAL AIRPORTS CORPORATION ACT

A letter from the Administrator, Federal Aviation Agency, Washington, D.C., transmitting a draft of proposed legislation to create the National Capital Airports Corporation, to provide for the operation of the federally owned civil airports in the District of Columbia or its vicinity by the Corporation, and for other purposes (with an accompanying paper); to the Committee on Commerce.

REPORT ON COMMONWEALTH PARLIAMENTARY ASSOCIATION CONFERENCE, KINGSTON, JAMAICA, 1964

A letter from the Chairman of the U.S. Delegation to the 10th Commonwealth Parliamentary Conference in Kingston, Jamaica, 1964, transmitting, for the information of the Senate, a report of that Conference (with an accompanying report); to the Committee on Foreign Relations.

REPORT OF COMPTROLLER GENERAL OF THE UNITED STATES

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on overpayments of rentals for automatic data processing machines, George C. Marshall Space Flight Center, Huntsville, Ala., National Aeronautics and Space Administration, dated May 1965 (with an accompanying report); to the Committee on Government Operations.

REPORT RELATING TO BONNEVILLE POWER ADMINISTRATION

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, that due to a conflict of opinion between that Department and the General Accounting Office, no report was made for the fiscal year 1964; to the Committee on Interior and Insular Affairs.

FINANCIAL REPORT OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

A letter from the executive vice president, The American Society of International Law, Washington, D.C., transmitting, pursuant to law, a financial report of that society, for the period April 1, 1964–March 31, 1965 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the VICE PRESIDENT:

A concurrent resolution of the Legislature of the State of Hawaii; to the Committee on Public Works:

"S. CON. RES. 7

"Whereas the settlement at Kalaupapa on the island of Molokai requires better facilities for bringing in supplies and more adequate and convenient living arrangements for physicians; and

"Whereas the Federal Government presently accepts heavy responsibility for the program; and

"Whereas the construction of a service road from the top of Molokai Island to the settlement at Kalaupapa would serve to: (1) provide more frequent delivery of food and other supplies; (2) permit physicians with families to live in a location convenient to the settlement; and (3) facilitate the laying of water pipeline that would not have to follow the coastline: Now, therefore, be it

"Resolved by the Senate of the Third Legislature of the State of Hawaii, regular session of 1965 (the House of Representatives concurring), That the Congress of the United States be and hereby is respectfully requested to consider the construction of such a road; and be it further

"Resolved, That certified copies of this concurrent resolution be forwarded to the President of the Senate and the Speaker of the House of Representatives of the United States, and to the individual members of Hawaii's delegation to the Congress of the United States.

"KAZUSHIA ABE,
"President of the Senate.
"ELMER F. CRAVALHO,"
"Speaker, House of Representatives."

A resolution of the Legislature of the State of California; ordered to lie on the table:

"H. RES 262

"Resolution relative to the right of all citizens to vote

"Whereas President Lyndon B. Johnson has announced he will submit to Congress legislation which will establish a simple, uniform standard to establish the right to vote, and will strike down restrictions on voting in all elections—Federal, State, and local—which have been used to deny Negroes the right to vote; and

"Whereas in the words of the President, 'It is wrong, morally wrong, to deny any of your fellow Americans the right to vote in this country'; and

"Whereas recent incidents forcibly demonstrate the urgent need for legislation of the nature proposed by the President: Now, therefore, be it

"Resolved by the Assembly of the State of California, that the assembly respectfully urges the Congress of the United States to take prompt action on President Johnson's legislation to insure the right to vote, and to enact such legislation as soon as possible; and be it further

"Resolved, That the chief clerk of the assembly is directed to transmit copies of this resolution to the President, Vice President of the United States, the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

"JAMES D. DRISCOLL,
"Chief Clerk of the Assembly."

The petition of Rafael G. Lugo, of San Juan, P.R., relating to a referendum to decide if the people of Puerto Rico want to become a State of the Union or an autonomous state; to the Committee on Interior and Insular Affairs.

ADDITIONAL ASSISTANCE FOR DISASTER VICTIMS—REPORT OF A COMMITTEE (S. REPT. NO. 177)

Mr. PROXMIRE. Mr. President, from the Committee on Banking and Currency, I report favorably, with an amendment, the bill (S. 1796) to amend the Small Business Act to provide additional assistance for disaster victims, and I submit a report thereon.

The PRESIDING OFFICER (Mr. RUSSELL of South Carolina in the chair). The report will be received and printed, and the bill will be placed on the calendar.

PURPOSE OF THE BILL

Mr. PROXMIRE. Mr. President, S. 1796, as amended by the Committee on Banking and Currency, would amend the Small Business Act to provide for an increase in the maturity of Small Business Administration disaster loans from 20 to 30 years.

It would provide for a suspension of up to 5 years on the payment of principal and interest on disaster loans at the discretion of the Administrator of the Small Business Administration. If the disaster loan upon which a suspension is granted is a participation loan, SBA shall, at the request of the lender, first, purchase the participating lender's portion of the loan; or second, in order to avoid default of the loan, make payments to the participating lender on behalf of the borrower during the suspension period. The bill would also increase SBA's revolving fund by $50 million.

GENERAL STATEMENT

The damage to property and the suffering to humanity which has resulted in the recent floods and tornadoes in the Midwest have shown that the disaster loan programs of the Government and the action of private relief groups have not been enough to care adequately for these flood and tornado victims. In the past, the Congress has taken piecemeal action as a result of a particular disaster; for example, the New England floods, the Alaska earthquake, and more recently by action in the Senate to provide disaster relief to the States of Oregon, California, Washington, and Idaho.

The Senate has recently passed a bill, S. 408, which would direct the Housing and Home Finance Administrator to undertake a study of alternative programs to help provide financial assistance to victims of future flood disasters. Also the President has directed the Office of Emergency Planning, first, to examine experience with Public Law 81–875—the National Disaster Act—to determine whether modifications are required to insure the most effective response in future disasters; second, to initiate a study to develop recommendations for improving Federal Government natural disaster planning; and third, to review Federal aid policies for hazardous areas.

These studies are needed and when completed will undoubtedly improve our present system of providing assistance to disaster victims. However, these studies will take time and something must be done quickly. S. 1796 will afford immediate relief to some of the victims of future disasters. This is a stopgap measure and will in no way impede the consideration of other more comprehensive bills relating to disaster relief now pending before the Congress. It will apply, not to one particular area, but to the entire country. This bill does not go as far as some of the members of the committee wished, but it will be of immediate and valuable assistance to many victims of the present disasters and of future disasters wherever they may strike.

HISTORY OF LEGISLATION

S. 1796 was introduced on April 22, 1965, by Senator PROXMIRE—for himself and Senators DOUGLAS, MCCARTHY, MONDALE, NELSON, HARTKE, LONG of Missouri, and BAYH. Hearings were held on this bill by the Small Business Subcommittee of the Banking and Currency Committee on April 27, 1965. At the hearings, testimony was received from Senators HARTKE, NELSON, DOUGLAS, and BAYH. Officials of the Small Business Administration also testified.

AMENDMENTS TO THE ACT MADE BY THE BILL—INCREASE IN MATURITY OF SBA'S DISASTER LOANS

Section 7(b) of the Act provides that the maturities of SBA disaster loans shall

be no more than 20 years. Section 7(c) of the Act provides that in order to aid in the orderly liquidation of loans SBA may further renew the maturity of or renew any SBA loan for a period of 10 years.

Section 1 of S. 1796, as amended by the committee, would increase the maximum maturity of all SBA disaster loans from 20 to 30 years.

In many cases a person or small business concern whose home or business is destroyed or extensively damaged is reduced to serious financial straits. Many have existing mortgage payments to meet, along with the additional financial burden of debt brought about by the disaster damage. Thus, SBA is often compelled to refuse to make a loan because the applicant cannot demonstrate ability to repay on a 20 year amortization basis. This extension of maturity to 30 years would result in smaller installments spread over a longer period, and would enable SBA to meet the needs of individuals and small business concerns for whom the existing minimum would entail extreme hardship.

S. 1796, as amended by the committee, would provide that in the case of disaster loans of maturities over 20 years, section 7(c) of the Small Business Act permitting an additional 10-year extension of the maturity for orderly liquidation would not apply. Otherwise the application of this section of the act to disaster loans with maturities of over 20 years might result in loans with maturities of up to 40 years. Also S. 1796, as amended by the committee, provides for a possible extension, in some cases, of maturities of up to 5 years. This would create the possibility of a disaster loan with a maturity of 45 years. The committee believes that 40- or 45-year loans would be undesirable and has added this amendment which would make the provisions of section 7(c) of the Small Business Act inapplicable in any disaster loan with maturities over 20 years.

SBA MAY CONSENT TO A SUSPENSION OF PAYMENTS OF PRINCIPAL AND INTEREST ON CERTAIN DISASTER LOANS UPON SHOWING OF NEED

S. 1796, as amended by the committee, would provide that SBA may suspend the payment of principal and interest and extend the maturity on the Federal share of any disaster loans up to a period of 5 years. This suspension applies to homeowners or small business concerns and may be granted either at the time the loan is made or at a later date.

To be eligible for such a suspension, the disaster loan must be made to a homeowner to enable him to repair or replace his home or to a small business concern to repair or replace plant or equipment, and the home or the plant or equipment must have been damaged or destroyed as a result of a disaster. This disaster must be, first, a major disaster as declared by the President, or second, a natural disaster as declared by the Secretary of Agriculture.

In order to grant suspension of payments of principal and interest and the extension of maturity on the disaster loan up to 5 years, SBA must determine that such action is necessary in order to avoid severe financial hardship. The SBA is expected to act with caution and restraint in exercising this authority, and to grant suspensions and extensions only when and only to the extent necessary to avoid severe financial hardship. This suspension of payment of principal and interest would not stop the running of interest during the suspension period. At the end of the suspension period the borrower would still owe the amount of interest that had accrued during that time. This amount would be amortized over the remaining life of the loan.

The Administrator of SBA testified before the Small Business Subcommittee that SBA, on new disaster loans following the recent disaster in Alaska, has permitted a moratorium of principal and interest for up to 1 year, and a moratorium on principal only up to an additional 4 years.

The committee commends SBA for taking this step in Alaska. The committee believes, however, that this additional assistance is needed for victims of disasters in other parts of the country as well. The clear authority for this additional assistance would be placed in the act by this provision of S. 1796.

This suspension of payments of principal and interest will enable a small business concern to repair or replace its equipment and give it time to resume normal business activities. It would also soften the impact of additional indebtedness of a disaster loan on the part of those homeowners with outstanding mortgages on their homes.

SBA MAY PURCHASE BANK'S OR OTHER LENDER'S SHARE OR MAKE PAYMENTS TO BANKS OR OTHER LENDERS ON PARTICIPATION DISASTER LOANS ON WHICH SUSPENSION OF PAYMENTS HAVE BEEN GRANTED

S. 1796, as amended by the committee, would amend section 7(c) of the Small Business Act to provide that SBA, during any period of suspension of payments of principal and interest on a disaster loan in which a bank or other lender has a participation interest, shall at the request of the bank, or other lender, purchase such participation or SBA may assume the obligations of the borrower and make the payments to the lender during the period of suspension. Such payments may be made by SBA only in order to prevent a default on the loan. After the suspension period is over, the borrower will repay SBA the amount which SBA had paid to the lender on his behalf.

It is the committee's understanding that there are very few participations on disaster loans. The Administrator of SBA testified that from 90 to 95 percent of SBA's disaster loans are direct loans. When a participation is on a disaster loan on a dwelling the lender may only charge 3 percent, the same interest that is charged by SBA. However, in disaster loan participation on loans to small businesses the regulations provide that the participating lender may charge a "reasonable interest" on its share.

This amendment, containing the provisions of S. 1822, which was introduced by Senator BENNETT, is designed to encourage banks and other lenders to participate more in disaster loans with SBA.

INCREASE IN SBA'S REVOLVING FUND

S. 1796, as amended by the committee, would increase SBA's revolving fund by $50 million.

Public Law 87–550 pooled the authorization for disaster loans with the authorization for regular business loans and SBA's prime contract authority. By administrative action SBA has set aside $200 million for the use of its disaster loan programs. This increase should enable SBA to increase the amount available to take care of its disaster loan programs.

REPORT OF JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES—FEDERAL EMPLOYMENT AND PAY

Mr. BYRD of Virginia. Mr. President, as chairman of the Joint Committee on Reduction of Nonessential Federal Expenditures, I submit a report on Federal employment and pay for the month of March 1965. In accordance with the practice of several years' standing I ask unanimous consent to have the report printed in the RECORD, together with a statement by me.

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

FEDERAL PERSONNEL IN EXECUTIVE BRANCH, MARCH 1965 AND FEBRUARY 1965, AND PAY, FEBRUARY 1965 AND JANUARY 1965

PERSONNEL AND PAY SUMMARY

Information in monthly personnel reports for March 1965 submitted to the Joint Committee on Reduction of Nonessential Federal Expenditures is summarized as follows:

Total and major categories	Civilian personnel in executive branch			Payroll (in thousands) in executive branch		
	In March numbered—	In February numbered—	Increase (+) or decrease (−)	In February was—	In January was—	Increase (+) or decrease (−)
Total [1] [2]	2,466,052	2,459,595	+6,457	$1,315,630	$1,392,735	−$77,105
Agencies exclusive of Department of Defense	1,448,043	1,441,886	+6,157	771,538	823,424	−51,886
Department of Defense	1,018,009	1,017,709	+300	544,092	569,311	−25,219
Inside the United States	2,306,466	2,300,350	+6,116			
Outside the United States	159,586	159,245	+341			
Industrial employment	540,588	540,762	−174			
Foreign nationals	132,326	131,678	+648	23,538	25,895	−2,357

[1] Exclusive of foreign nationals shown in the last line of this summary.
[2] March figure includes 489 employees (enumerators, clerks, supervisors, crew leaders, etc.) of the Department of Commerce engaged in taking the 1964 Census of Agriculture, as compared with 886 in February.

Table I, below, breaks down the above figures on employment and pay by agencies.

Table II, page 7, breaks down the above employment figures to show the number inside the United States by agencies.

Table III, page 9, breaks down the above employment figures to show the number outside the United States by agencies.

Table IV, page 10, breaks down the above employment figures to show the number in industrial-type activities by agencies.

Table V, page 11, shows foreign nationals by agencies not included in tables I, II, III, and IV.

TABLE I.—*Consolidated table of Federal personnel inside and outside the United States employed by the executive agencies during March 1965, and comparison with February 1965, and pay for February 1965, and comparison with January 1965*

Department or agency	Personnel				Pay (in thousands)			
	March	February	Increase	Decrease	February	January	Increase	Decrease
Executive departments (except Department of Defense):								
Agriculture	99,089	96,597	2,492		$50,467	$53,293		$2,826
Commerce [1]	32,241	32,347		106	20,868	23,142		2,274
Health, Education, and Welfare	83,928	83,803	125		45,204	47,699		2,495
Interior	62,522	61,720	802		35,940	37,776		1,836
Justice	32,355	32,366		11	21,904	23,103		1,199
Labor	8,962	9,018		56	5,959	6,267		308
Post Office	593,752	591,419	2,333		286,453	310,735		24,282
State [2 3]	40,725	40,799		74	24,656	24,065	$591	
Treasury	93,119	93,464		345	54,612	56,333		1,721
Executive Office of the President:								
White House Office	320	322		2	239	257		18
Bureau of the Budget	483	478	5		464	496		32
Council of Economic Advisers	41	45		4	39	53		14
Executive Mansion and Grounds	74	74			42	38	4	
National Aeronautics and Space Council	32	32			30	26	4	
National Council on the Arts	4	3	1		2	1	1	
National Security Council	39	41		2	38	40		2
Office of Economic Opportunity	846	634	212		474	399	75	
Office of Emergency Planning	364	348	16		320	338		18
Office of Science and Technology	85	48	37		43	43		
Office of the Special Representative for Trade Negotiations	28	27	1		29	30		1
President's Commission on the Assassination of President Kennedy						3		3
President's Committee on Consumer Interests	11	11			9	8	1	
President's Committee on Equal Opportunity in Housing	11	11			8	9		1
Independent agencies:								
Advisory Commission on Intergovernmental Relations	25	25			23	25		2
American Battle Monuments Commission	440	416	24		81	71	10	
Atomic Energy Commission	7,194	7,195		1	5,755	6,036		281
Battle of New Orleans Sesquicentennial Celebration Commission	1	1			(4)			
Board of Governors of the Federal Reserve System	639	634	5		436	453		17
Civil Aeronautics Board	829	832		3	691	716		25
Civil Service Commission	3,731	3,729	2		2,312	2,413		101
Civil War Centennial Commission	4	4			4	5		1
Commission of Fine Arts	6	6			4	5		1
Commission on Civil Rights	91	92		1	62	63		1
Delaware River Basin Commission	2	2			3	3		
Export-Import Bank of Washington	296	297		1	218	232		14
Farm Credit Administration	235	232	3		174	175		1
Federal Aviation Agency	44,819	44,768	51		33,031	36,609		3,578
Federal Coal Mine Safety Board of Review	7	7			4	5		1
Federal Communications Commission	1,507	1,510		3	1,102	1,120		18
Federal Deposit Insurance Corporation	1,434	1,461		27	976	978		2
Federal Development Planning Committee for Appalachia	8	8			7	5	2	
Federal Field Committee for Development Planning in Alaska [5]	1		1					
Federal Home Loan Bank Board	1,248	1,239	9		875	1,036		161
Federal Maritime Commission	239	240		1	198	205		7
Federal Mediation and Conciliation Service	415	412	3		382	400		18
Federal Power Commission	1,122	1,122			835	864		29
Federal Radiation Council	5	5			4	5		1
Federal Trade Commission	1,142	1,141	1		882	919		37
Foreign Claims Settlement Commission	191	190	1		120	125		5
General Accounting Office	4,154	4,171		17	2,903	3,084		181
General Services Administration	35,227	35,086	141		17,737	19,589		1,852
Government Printing Office	7,321	7,352		31	4,070	4,437		367
Housing and Home Finance Agency	13,521	13,553		32	8,802	9,222		420
Indian Claims Commission	20	20			23	26		3
Interstate Commerce Commission	2,397	2,383	14		1,742	1,832		90
National Aeronautics and Space Administration	33,097	33,075	22		26,744	27,020		276
National Capital Housing Authority	429	420	9		201	214		13
National Capital Planning Commission	52	51	1		39	42		3
National Capital Transportation Agency	31	32		1	32	31	1	
National Commission on Food Marketing	40	34	6		24	13	11	
National Commission on Technology, Automation, and Economic Progress	19	17	2		2		2	
National Gallery of Art	303	310		7	139	148		9
National Labor Relations Board	2,108	2,109		1	1,578	1,651		73
National Mediation Board	117	132		15	124	117	7	
National Science Foundation	1,079	1,010	69		723	735		12
Panama Canal	15,465	15,492		27	6,090	8,969		2,879
President's Advisory Commission on Labor-Management Policy	1	2		1	2	2		
President's Committee on Equal Employment Opportunity	59	59			41	42		1
Railroad Retirement Board	1,737	1,750		13	1,052	1,118		66
Renegotiation Board	185	186		1	174	186		12
St. Lawrence Seaway Development Corporation	158	161		3	102	100	2	
Securities and Exchange Commission	1,386	1,387		1	1,009	1,050		41
Selective Service System	7,353	7,272	81		2,330	2,439		109
Small Business Administration	3,565	3,546	19		2,390	2,493		103
Smithsonian Institution	1,819	1,749	70		928	936		8
Soldiers' Home	1,095	1,095			370	419		49
Subversive Activities Control Board	26	26			28	29		1
Tariff Commission	275	276		1	213	223		10
Tax Court of the United States	149	150		1	140	148		8
Temporary Alaska Claims Commission [6]						1		1
Tennessee Valley Authority	16,244	16,173	71		9,874	10,671		797
U.S. Arms Control and Disarmament Agency	161	158	3		145	148		3
U.S. Information Agency	11,649	11,764		115	6,068	6,373		305
United States-Puerto Rico Commission on the Status of Puerto Rico	18	14	4		9	9		
Veterans' Administration	171,818	171,381	437		79,598	83,143		3,545
Virgin Islands Corporation	302	314		12	113	142		29
Woodrow Wilson Memorial Commission	1	1			(4)	(4)		
Total, excluding Department of Defense	1,448,043	1,441,886	7,073	916	771,538	823,424	711	52,597
Net change, excluding Department of Defense			6,157				51,886	

See footnotes at end of table.

TABLE I.—*Consolidated table of Federal personnel inside and outside the United States employed by the executive agencies during March 1965, and comparison with February 1965, and pay for February 1965 and comparison with January 1965*—Continued

Department or agency	Personnel				Pay (in thousands)			
	March	February	Increase	Decrease	February	January	Increase	Decrease
Department of Defense:								
Office of the Secretary of Defense	2,126	2,111	15		$1,882	$1,929		$47
Department of the Army	360,607	360,575	32		188,882	196,098		7,216
Department of the Navy	326,035	325,652	383		179,620	[7] 189,425		9,805
Department of the Air Force	291,635	291,792		157	152,973	160,211		7,238
Defense Atomic Support Agency	2,032	2,008	24		1,025	1,063		38
Defense Communications Agency	963	956	7		695	715		20
Defense Intelligence Agency	2,165	2,162	3		1,613	1,627		14
Defense Supply Agency	31,907	31,912		5	17,093	17,922		829
U.S. Court of Military Appeals	40	40			37	39		2
Interdepartmental activities	9	8	1		5	5		
International military activities	55	55			43	44		1
Armed Forces information and education activities	435	438		3	224	233		9
Total, Department of Defense	1,018,009	1,017,709	465	165	544,092	569,311		25,219
Net change, Department of Defense			300				$25,219	
Grand total, including Department of Defense [8 9]	2,466,052	2,459,595	7,538	1,081	1,315,630	1,392,735	711	77,816
Net change, including Department of Defense			6,457				77,105	

[1] March figure includes 489 employees (enumerators, clerks, supervisors, crew leaders, etc.) of the Department of Commerce engaged in taking the 1964 Census of Agriculture, as compared with 886 in February, and their pay.
[2] March figure includes 15,324 employees of the Agency for International Development, as compared with 15,414 in February, and their pay. These AID figures include employees who are paid from foreign currencies deposited by foreign governments in a trust fund for this purpose. The March figure includes 4,174 of these trust fund employees and the February figure includes 4,187.
[3] March figure includes 1,193 employees of the Peace Corps, as compared with 1,170 in February, and their pay.
[4] Less than $500.
[5] New agency, created pursuant to Executive Order 11182, dated Oct. 2, 1964.
[6] Agency expired pursuant to Executive Order 11144, dated Mar. 5, 1964.
[7] Revised on basis of later information.
[8] Exclusive of personnel and pay of the Central Intelligence Agency and the National Security Agency.
[9] Includes employment in the Job Corps by Federal agencies, under the Economic Opportunity Act of 1964 (Public Law 88-452), as follows:

Agency	March	February	Change
Agriculture Department	305	283	+22
Interior Department	432	243	+189
Total	737	526	+211

TABLE II.—*Federal personnel inside the United States employed by the executive agencies during March 1965, and comparison with February 1965*

Department or agency	March	February	Increase	Decrease
Executive departments (except Department of Defense):				
Agriculture	97,839	95,346	2,493	
Commerce	31,634	31,729		95
Health, Education, and Welfare	83,263	83,139	124	
Interior	61,884	61,080	804	
Justice	31,992	32,008		16
Labor	8,892	8,946		54
Post Office	592,132	589,813	2,319	
State [1 2]	11,083	11,048	35	
Treasury	92,413	92,768		355
Executive Office of the President:				
White House Office	320	322		2
Bureau of the Budget	483	478	5	
Council of Economic Advisers	41	45		4
Executive Mansion and Grounds	74	74		
National Aeronautics and Space Council	32	32		
National Council on the Arts	4	3	1	
National Security Council	39	41		2
Office of Economic Opportunity	846	634	212	
Office of Emergency Planning	364	348	16	
Office of Science and Technology	85	48	37	
Office of the Special Representative for Trade Negotiations	28	27	1	
President's Committee on Consumer Interests	11	11		
President's Committee on Equal Opportunity in Housing	11	11		
Independent agencies:				
Advisory Commission on Intergovernmental Relations	25	25		
American Battle Monuments Commission	7	7		
Atomic Energy Commission	7,161	7,161		
Battle of New Orleans Sesquicentennial Celebration Commission	1	1		
Board of Governors of the Federal Reserve System	639	634	5	
Civil Aeronautics Board	829	832		3
Civil Service Commission	3,728	3,726	2	
Civil War Centennial Commission	4	4		
Commission of Fine Arts	6	6		
Commission on Civil Rights	91	92		1
Delaware River Basin Commission	2	2		
Export-Import Bank of Washington	296	297		1
Farm Credit Administration	235	232	3	
Federal Aviation Agency	43,698	43,635	63	
Federal Coal Mine Safety Board of Review	7	7		
Federal Communications Commission	1,502	1,506		4
Federal Deposit Insurance Corporation	1,432	1,459		27
Federal Development Planning Committee for Appalachia	8	8		
Federal Field Committee for Development Planning in Alaska [3]	1		1	
Federal Home Loan Bank Board	1,248	1,239	9	
Federal Maritime Commission	239	240		1
Federal Mediation and Conciliation Service	415	412	3	
Federal Power Commission	1,122	1,122		
Federal Radiation Council	5	5		
Federal Trade Commission	1,142	1,141	1	
Foreign Claims Settlement Commission	180	179	1	
General Accounting Office	4,097	4,116		19
General Services Administration	35,198	35,059	139	
Government Printing Office	7,321	7,352		31
Housing and Home Finance Agency	13,312	13,344		32
Indian Claims Commission	20	20		
Interstate Commerce Commission	2,397	2,383	14	
National Aeronautics and Space Administration	33,081	33,059	22	
National Capital Housing Authority	429	420	9	
National Capital Planning Commission	52	51	1	
National Capital Transportation Agency	31	32		1
National Commission on Food Marketing	40	34	6	
National Commission on Technology, Automation and Economic Progress	19	17	2	
National Gallery of Art	303	310		7
National Labor Relations Board	2,075	2,076		1
National Mediation Board	117	132		15
National Science Foundation	1,075	1,005	70	
Panama Canal	155	148	7	
President's Advisory Committee on Labor-Management Policy	1	2		1
President's Committee on Equal Employment Opportunity	59	59		
Railroad Retirement Board	1,737	1,750		13
Renegotiation Board	185	186		1
St. Lawrence Seaway Development Corporation	158	161		3
Securities and Exchange Commission	1,386	1,387		1
Selective Service System	7,200	7,116	84	
Small Business Administration	3,495	3,478	17	
Smithsonian Institution	1,795	1,726	69	
Soldiers' Home	1,095	1,095		
Subversive Activities Control Board	26	26		
Tariff Commission	275	276		1
Tax Court of the United States	149	150		1
Tennessee Valley Authority	16,241	16,170	71	
U.S. Arms Control and Disarmament Agency	161	158	3	
U.S. Information Agency	3,462	3,468		6
United States-Puerto Rico Commission on the Status of Puerto Rico	12	10	2	
Veterans' Administration	170,841	170,405	436	
Woodrow Wilson Memorial Commission	1	1		
Total, excluding Department of Defense	1,385,494	1,379,105	7,087	698
Net increase, excluding Department of Defense			6,389	

See footnotes at end of table.

TABLE II.—*Federal personnel inside the United States employed by the executive agencies during March 1965, and comparison with February 1965*—Continued

Department or agency	March	February	Increase	Decrease
Department of Defense:				
Office of the Secretary of Defense	2,078	2,064	14	
Department of the Army	312,217	312,831		614
Department of the Navy	302,924	302,721	203	
Department of the Air Force	266,220	266,122	98	
Defense Atomic Support Agency	2,032	2,008	24	
Defense Communications Agency	912	907	5	
Defense Intelligence Agency	2,165	2,162	3	
Defense Supply Agency	31,906	31,911		5
U.S. Court of Military Appeals	40	40		
Interdepartmental activities	9	8	1	
International military activities	34	33	1	
Armed Forces information and education activities	435	438		3
Total, Department of Defense	920,972	921,245	349	622
Net decrease, Department of Defense			273	
Grand total, including Department of Defense	2,306,466	2,300,350	7,436	1,320
Net increase, including Department of Defense			6,116	

[1] March figure includes 2,976 employees of the Agency for International Development, as compared with 2,980 in February.

[2] March figure includes 773 employees of the Peace Corps, as compared with 761 in February.

[3] New agency created pursuant to Executive Order 11182, dated Oct. 2, 1964.

TABLE III.—*Federal personnel outside the United States employed by the executive agencies during March 1965, and comparison with February 1965*

Department or agency	March	February	Increase	Decrease
Executive departments (except Department of Defense):				
Agriculture	1,250	1,251		1
Commerce	607	618		11
Health, Education, and Welfare	665	664	1	
Interior	638	640		2
Justice	363	358	5	
Labor	70	72		2
Post Office	1,620	1,606	14	
State [1] [2]	29,642	29,751		109
Treasury	706	696	10	
Independent agencies:				
American Battle Monuments Commission	433	409	24	
Atomic Energy Commission	33	34		1
Civil Service Commission	3	3		
Federal Aviation Agency	1,121	1,133		12
Federal Communications Commission	5	4	1	
Federal Deposit Insurance Corporation	2	2		
Foreign Claims Settlement Commission	11	11		
General Accounting Office	57	55	2	
General Services Administration	29	27	2	
Housing and Home Finance Agency	209	209		
National Aeronautics and Space Administration	16	16		
National Labor Relations Board	33	33		
National Science Foundation	4	5		1
Panama Canal	15,310	15,344		34
Selective Service System	153	156		3
Small Business Administration	70	68	2	
Independent agencies—Continued				
Smithsonian Institution	24	23	1	
Tennessee Valley Authority	3	3		
U.S. Information Agency	8,187	8,296		109
United States-Puerto Rico Commission on the Status of Puerto Rico	6	4	2	
Veterans' Administration	977	976	1	
Virgin Islands Corporation	302	314		12
Total, excluding Department of Defense	62,549	62,781	65	297
Net decrease, excluding Department of Defense			232	
Department of Defense:				
Office of the Secretary of Defense	48	47	1	
Department of the Army	48,390	47,744	646	
Department of the Navy	23,111	22,931	180	
Department of the Air Force	25,415	25,670		255
Defense Communications Agency	51	49	2	
Defense Supply Agency	1	1		
International military activities	21	22		1
Total, Department of Defense	97,037	96,464	829	256
Net increase, Department of Defense			573	
Grand total, including Department of Defense	159,586	159,245	894	553
Net increase, including Department of Defense			341	

[1] March figure includes 12,348 employees of the Agency for International Development, as compared with 12,434 in February. These AID figures include employees who are paid from foreign currencies deposited by foreign governments in a trust fund for this purpose. The March figure includes 4,174 of these trust fund employees and the February figure includes 4,187.

[2] March figure includes 420 employees of the Peace Corps, as compared with 409 in February.

TABLE IV.—*Industrial employees of the Federal Government inside and outside the United States employed by the executive agencies during March 1965, and comparison with February 1965*

Department or agency	March	February	Increase	Decrease
Executive departments (except Department of Defense):				
Agriculture	3,629	3,618	11	
Commerce	6,025	5,409	616	
Interior	9,557	9,455	102	
Post Office	264	264		
Treasury	5,483	5,523		40
Independent agencies:				
Atomic Energy Commission	255	256		1
Federal Aviation Agency	2,565	2,565		
General Services Administration	2,172	2,175		3
Government Printing Office	7,321	7,352		31
National Aeronautics and Space Administration	33,097	33,075	22	
Panama Canal	7,503	7,588		85
St. Lawrence Seaway Development Corporation	157	156	1	
Tennessee Valley Authority	13,062	13,060	2	
Virgin Islands Corporation	302	314		12
Total, excluding Department of Defense	91,392	90,810	754	172
Net increase, excluding Department of Defense			582	
Department of Defense:				
Department of the Army:				
Inside the United States	[1] 132,831	[2] 133,418		587
Outside the United States	[1] 4,381	[2] 4,342	39	
Department of the Navy:				
Inside the United States	182,730	183,108		378
Outside the United States	1,273	1,270	3	
Department of the Air Force:				
Inside the United States	125,581	125,405	176	
Outside the United States	865	871		6
Defense Supply Agency:				
Inside the United States	1,535	1,538		3
Total, Department of Defense	449,196	449,952	218	974
Net decrease, Department of Defense			756	
Grand total, including Department of Defense	540,588	540,762	972	1,146
Net decrease, including Department of Defense			174	

[1] Subject to revision.

[2] Revised on basis of later information.

TABLE V.—*Foreign nationals working under U.S. agencies overseas, excluded from tables I through IV of this report, whose services are provided by contractual agreement between the United States and foreign governments, or because of the nature of their work or the source of funds from which they are paid, as of March 1965, and comparison with February 1965*

Country	Total		Army		Navy		Air Force	
	March	February	March	February	March	February	March	February
Crete	81	81					81	81
England	2,329	2,457	102	102	101	100	2,126	2,255
France	14,751	14,816	11,496	11,557	10	10	3,245	3,249
Germany	66,880	65,992	56,442	55,501	70	70	10,368	10,421
Greece	308	311			39	38	269	273
Japan	41,573	41,620	14,179	14,188	12,314	12,336	15,080	15,096
Korea	5,443	5,448	5,443	5,448				
Morocco	543	534			543	534		
Netherlands	52	53					52	53
Trinidad	366	366			366	366		
Total	132,326	131,678	87,662	86,796	13,443	13,454	31,321	31,428

STATEMENT OF SENATOR BYRD OF VIRGINIA

Executive agencies of the Federal Government reported civilian employment in the month of March totaling 2,466,052. This was a net increase of 6,457 as compared with employment reported in the preceding month of February.

Civilian employment reported by the executive agencies of the Federal Government, by months in fiscal year 1965, which began July 1, 1964, follows:

Month	Employment	Increase	Decrease
July 1964	2,492,061	10,479	
August	2,495,606	3,545	
September	2,461,376		34,230
October	2,470,330	8,954	
November	2,493,837	23,507	
December	2,485,771		8,066
January 1965	2,464,012		21,759
February	2,459,595		4,417
March	2,466,052	6,457	

Total Federal employment in civilian agencies for the month of March was 1,448,043, an increase of 6,157 as compared with the February total of 1,441,886. Total civilian employment in the military agencies in March was 1,018,009, an increase of 300 as compared with 1,017,709 in February.

Civilian agencies reporting larger increases were the Agriculture Department with 2,492 and the Post Office Department with 2,333. The increase in the Agriculture Department was largely seasonal.

In the Department of Defense the largest increase in civilian employment was reported by the Department of the Navy with 383. The largest decrease was reported by the Department of the Air Force with 157.

Total employment inside the United States in March was 2,306,466, an increase of 6,116 as compared with February. Total employment outside the United States in March was 159,586, an increase of 341 as compared with February. Industrial employment by Federal agencies in March totaled 540,588, a decrease of 174.

These figures are from reports certified by the agencies as compiled by the Joint Committee on Reduction of Nonessential Federal Expenditures.

FOREIGN NATIONALS

The total of 2,466,052 civilian employees certified to the committee by Federal agencies in their regular monthly personnel reports includes some foreign nationals employed in U.S. Government activities abroad, but in addition to these there were 132,326 foreign nationals working for U.S. agencies overseas during March who were not counted in the usual personnel reports. The number in February was 131,678. A breakdown of this employment for March follows:

Country	Total	Army	Navy	Air Force
Crete	81			81
England	2,329	102	101	2,126
France	14,751	11,496	10	3,245
Germany	66,880	56,442	70	10,368
Greece	308		39	269
Japan	41,573	14,179	12,314	15,080
Korea	5,443	5,443		
Morocco	543		543	
Netherlands	52			52
Trinidad	366		366	
Total	132,326	87,662	13,443	33,221

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. ROBERTSON, from the Committee on Banking and Currency:

Hugh F. Owens, of Oklahoma, to be a member of the Securities and Exchange Commission.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

NOMINATION OF HUGH F. OWENS TO SECURITIES AND EXCHANGE COMMISSION

Mr. ROBERTSON subsequently said: Mr. President, I am pleased to announce that the Senate Banking and Currency Committee has today approved the nomination of Mr. Hugh F. Owens, of Oklahoma, for a 5-year term on the Securities and Exchange Commission, following the partial term Mr. Owens has served since April of 1964.

Mr. Owens has a distinguished background; and we have had excellent reports of his service on the Commission during the past year.

We were glad to receive from the senior Senator from Oklahoma a letter supporting the nomination; and I ask unanimous consent that the letter be printed at this point in the RECORD.

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

U.S. SENATE,
COMMITTEE ON COMMERCE,
May 5,1965.

Hon. A. WILLIS ROBERTSON,
Chairman, Banking and Currency Committee, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I was happy to see that President Johnson has nominated Mr. Hugh F. Owens, of Oklahoma, for a five-year-term on the Securities and Exchange Commission, following the partial term Mr. Owens has served since April 1964. I hope you and the other members of the committee will add you approval by reporting his nomination to the Senate.

You will remember that I testified when Mr. Owens was considered in March of 1964 that he had made an enviable record as administrator of the Oklahoma Securities Commission. That was at a time when the State was cited as one of the two States in the Nation doing the best job of State regulation of the securities industry. He has tackled his job as SEC Commissioner with the same devotion and competence.

Owens' very substantial knowledge of State regulation of securities has contributed greatly, I understand, to the liaison between the SEC and the State regulatory agencies. I understand that he also has been helpful in interpreting the Security Act Amendments of 1964, signed last August, to several national and regional conferences of attorneys and security brokers. I believe he was an excellent choice for Commission membership and could render continued superior service in the coming 6 years.

A native of Muskogee, Okla., he has degrees from the Universities of Oklahoma and Illinois. He had practiced law in Chicago and in Oklahoma City before his service with the Oklahoma Securities Commission from 1959 to 1964.

Sincerely yours,

MIKE MONRONEY.

BILLS INTRODUCED

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

By Mr. BYRD of Virginia:

S. 1905. A bill for the relief of Walter L. Crider; to the Committee on the Judiciary.

By Mr. WILLIAMS of New Jersey:

S. 1906. A bill to give the Court of Claims jurisdiction over the claim of Rifkin Textiles Corp.; to the Committee on the Judiciary.

By Mr. SCOTT:

S. 1907. A bill to amend chapter 161 of title 28 of the United States Code by adding a new section with respect to certain restraining writs or orders issued by U.S. district courts that affect property situated outside the United States; to the Committee on the Judiciary.

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

By Mr. NELSON:

S. 1908. A bill to expand and improve existing law and to provide for the establishment of regulations for the purpose of controlling pollution from vessels and certain other sources in the Great Lakes and other navigable waters of the United States; to the Committee on Public Works.

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

AMENDMENT OF CHAPTER 161 OF TITLE 28, UNITED STATES CODE, RELATING TO CERTAIN RESTRAINING WRITS OR ORDERS

Mr. SCOTT. Mr. President, I introduce for appropriate reference a bill to amend chapter 161 of title 28 of the United States Code by adding a new section with respect to certain restraining writs or orders issued by U.S. district courts that affect property situated outside the United States. This legislation is necessitated by a decision handed down last winter by the Supreme Court of the United States.

By way of background, Mr. President, Omar, S.A., a corporation organized under the laws of Uruguay, is claimed to owe to the U.S. Internal Revenue Service unpaid taxes, penalties, and interest. Although Omar has no offices or personnel in this country, the U.S. District Court for the Southern District of New York, on October 31, 1962, granted an injunction against the First National City Bank forbidding it to pay out any funds that might be on deposit for the account of Omar in any of its branches anywhere in the world. It subsequently appeared that Omar had a small deposit account in Uruguayan pesos—equivalent to about $1,500—in First National City Bank's Montevideo branch.

The Court stated that its injunction was intended to be "temporary" pending the Government's efforts to obtain jurisdiction over Omar. Today, more than 2½ years later, the Government has not obtained jurisdiction over Omar but the "temporary" injunction is still in effect.

The U.S. court of appeals reversed the decision of the district court, concluding that the deposits held by First National City Bank in Uruguay, which were "collectible only outside the United States," were not within the jurisdiction of the district court and that granting the power demanded "would lead only to harmful consequences for our banking system abroad without any concomitant benefits at home."

The Government appealed the decision. The Supreme Court, by a 7-to-2 vote announced January 18, 1965, reversed the rulings of the court of appeals and held that a Federal district court in New York does have the power to grant an injunction.

The majority opinion of the Supreme Court pointed out that the injunction was supposedly "temporary" and intended primarily to preserve the status quo pending the adjudication of the merits of the Government's tax claim against Omar. The Court did not rule on whether First National City Bank could be ordered by the district court to return funds held in the account of Omar.

The majority opinion discussed many important points which were omitted by the majority—the question of the equities involved, the possibility of multiple liability being incurred by the bank, and the adverse effects of the ruling on the bank's business.

The bank's position is that it is inequitable and unjustifiable for a court to order it to freeze a customer's account in a foreign country which is beyond the grasp of both the Internal Revenue Service and the court, simply because the bank's head office in the United States is within the grasp of the court. Such an account is entrusted to the foreign branch of the bank in accordance with the laws of the foreign country in which that branch operates. The injunction of a U.S. court requiring the foreign branch to dishonor checks and drafts drawn against such a foreign currency account, would expose the bank to liability and damages under the laws of the foreign country.

The ruling in this case obviously impairs the competitive position of U.S. banks abroad. It opens the banks to risk of loss on breach of contract under the laws of the foreign countries in which they do business. It encourages the withdrawal of foreign currency deposits, handicapping the ability of American banks to finance foreign commerce. It invites foreign countries everywhere to claim the right to subject U.S. citizens and firms to the jurisdiction of their laws and court decisions.

Realizing the implications of this case for the foreign activities of U.S. commercial banks, Chase Manhattan Bank, First National Bank of Boston, and Bank of America filed amici curiae briefs with the Supreme Court.

On April 13, 1964, the day the petition for review was filed with the Supreme Court, the Treasury Department announced regulations relating to the exercise of authority by the Internal Revenue Service over taxpayers' deposits in foreign branches of U.S. banks. The regulations state that jurisdiction will be exercised against bank accounts of foreigners under either of the following circumstances:

1. Whenever a district director of the Internal Revenue Service "believes" that the taxpayer is within the jurisdiction of a U.S. court at the time of the action; or

2. Whenever a district director "believes" that, even though the taxpayer is not within the jurisdiction of the court, all or some part of the deposits in question consist of funds transferred from the United States for the purpose of avoiding payment of taxes to the U.S. Treasury.

In issuing this regulation, the Treasury has tried, in effect, to indicate that this is an extraordinary power which it does not propose to use to the full at the present time, and that it plans to pursue a moderate policy, at least for the present. This attitude may be reassuring to the Treasury but it does not reassure a company overseas which, if it maintains an account with a U.S. bank, must subject itself to changing policies of a foreign government and even to the beliefs of district directors of the U.S. Internal Revenue Service. Consequently, U.S. banks do not regard this regulation as having solved the problems created by the Supreme Court's Omar decision. They believe that unless remedial action is taken, their competitive position abroad vis-a-vis foreign banks will be affected adversely.

Furthermore, the Treasury's regulation is almost sure to be completely ineffective from the standpoint of seizing assets of delinquent taxpayers. I find it difficult to conceive that a taxpayer smart enough to remove his funds from a U.S. bank would proceed to deposit these funds in the foreign branch of an American bank where they would be under the jurisdiction of U.S. courts.

In the judgment of U.S. banks which operate branches abroad, the only solution is for Congress to clarify the application of relevant statutes to countries overseas. Perhaps the best way to do this is through the legislation I am introducing today which would amend chapter 161 of title 28 of the United States Code to specify that the courts may not restrain a bank with respect to property or rights to property of any depositor in accounts maintained at branches of U.S. banks in foreign countries unless the compliance with such restraint will not violate foreign law or involve civil liability where the branch is located.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 1907) to amend chapter 161 of title 28 of the United States Code by adding a new section with respect to certain restraining writs or orders issued by U.S. district courts that affect property situated outside the United States, introduced by Mr. SCOTT, was received, read twice by its title, and referred to the Committee on the Judiciary.

GREAT LAKES SHIP POLLUTION ACT

Mr. NELSON. Mr. President, I am introducing legislation today designed to end the pollution of the Great Lakes and other navigable waters of the United States by ships and the shore installations which service them.

Such legislation has been recommended by responsible persons and organizations in widely separated parts of the country. It results from a growing nationwide concern about the grave problem of pollution. It will not, by itself, solve our nationwide pollution problem, but, along with a number of other legislative proposals recently enacted or under consideration by the Congress, it will provide for a coordinated attack on pollution at all levels.

Every major river system in America is now polluted and the tide of pollution is moving inexorably through our Great Lakes, the greatest fresh water resource on the face of the earth.

Lake Erie is already so gravely polluted that some expert scientists wonder whether it ever can be restored as a recreational resource and a habitat for aquatic life.

A study by the Public Health Service and recent public hearings have documented a degree of pollution in the southern tip of Lake Michigan that must surely shock the conscience of every thoughtful American.

The southern tip of Lake Michigan is becoming an industrial cesspool. Chicago's source of drinking water is threatened. On 150 days during 1964 water coming into Chicago's purification plant from Lake Michigan exceeded what the water department considers a permissible limit of pollution. The water was

purified to acceptable standards by the addition of chemicals, but on several occasions the department came close to running out of the necessary chemicals.

For 64 days last year, beaches on Chicago's South Side were unsafe for bathing. One beach at Hammond, Ind., has been closed for 15 years. At Milwaukee, some public beaches have been closed off and on since 1959. At Green Bay, public beaches have been closed for 25 years.

Experts tell us that the pollution of the southern tip of Lake Michigan may already have progressed so far that it is irreversible.

This is a shocking situation which I hope the American public will not continue to tolerate.

The pollution that is slowly but steadily destroying our lakes and rivers comes in a number of different forms. Many communities do not have adequate sewage treatment plants and discharge raw sewage into our lakes and rivers. Even some communities with excellent sewage treatment plants discharge raw sewage directly into public waters during times of heavy rainfall because their storm and sanitary sewers are interconnected. Many industries do not have adequate sewage treatment plants and dump industrial acids and other chemicals into lakes and streams.

Detergents provide a special pollution problem. By their very nature, many detergent chemicals pass through our sewage disposal plants or seep underground from household septic tanks and enter wells and surface water supplies.

I support strong legislation to meet all of these pollution problems.

The bill I introduce today will meet a phase of the pollution problem which is often neglected—the pollution resulting from vessels and shore installations.

Even though this is a comparatively small percentage of the total pollution problem, it is still a serious matter, particularly in our harbors and in other bodies of water where a large number of ships are concentrated.

The Ohio River Valley Water Sanitation Commission adopted a resolution on January 9, 1964, expressing concern about pollution resulting from the discharge of untreated wastes from commercial and pleasure watercraft and floating facilities. The Commission recommended that "no marine waste disposal system on any watercraft or floating facility operated on waters within the district shall be so constructed and operated as to discharge inadequately treated wastes into these waters." The Wisconsin State Committee on Water Pollution, the State agency charged with enforcing our antipollution laws, has recommended that "laws and regulations pertaining to sewage disposal facilities by commercial vessels operating interstate should be developed and be enforced by the Federal Government." I have had similar recommendations from the health commissioners at Green Bay, Superior, and Milwaukee, Wis. The Mississippi Valley Association, in a letter to me dated March 18, states that "our association is vitally interested in the abatement of pollution in this Nation and feels very strongly that more and better reuse of our Nation's water resources is as important an aspect of sound water resource development as is the construction of dams and other water control structures."

The St. Lawrence Seaway and all the States involved are gravely concerned about pollution in the seaway. The U.S. Coast Guard and the U.S. Public Health Service are working on this problem.

All of this indicates a rising degree of concern about that portion of pollution which can be attributed to vessels and shore installations.

In previous sessions of the Congress, committees of the House have conducted very valuable hearings into this problem, and I have drawn upon the testimony presented at those hearings in developing the legislation I offer today.

There already is considerable law on the statute books relating to vessel pollution. At the Federal level, at least six agencies are empowered to deal with vessel pollution under 12 different laws. Most of these laws are not directed at pollution itself but deal with matters such as navigation, safety, and public health. For instance, the Refuse Act of 1889 is considered to apply only in situations in which navigation is impeded. The Oil Pollution Control Act of 1924 is confined to navigable coastal waters and provides no help whatever on the Great Lakes. The Public Health Service Act of 1944 deals only with the interstate transmission of communicable disease. The Water Pollution Control Act of 1956 is very general in its coverage and provides only for judicial enforcement.

There is no central Federal agency for coordinating the responsibility of Federal agencies in this field.

This bill attacks the problem of vessel pollution directly and provides simple, effective enforcement.

First, the bill provides a statement of policy, making clear that the pollution of the Great Lakes and other navigable waters by oil, sewage, and refuse discharged or dumped from vessels is contrary to the public interest.

The bill gives the Secretary of Health, Education, and Welfare the authority to establish reasonable regulations and standards for facilities to be used in the retention or treatment of sewage and refuse.

The Secretary is directed to consult the other Federal officials and governmental agencies which are presently involved in matters relating to navigable waters. It also directs the Secretary to appoint a technical committee of Government representatives, owners, and operators of Great Lakes vessels and such other persons as the Secretary determines. In this way, the Secretary will develop regulations which are workable and, at the same time, adequate to protect the public interest.

Considerable interest has been expressed in the exact regulations which might be adopted. I have had inquiries from boating and shipping interests and from governmental agencies which deal with this problem, asking whether I would propose to require all vessels regardless of size to retain sewage for disposal ashore; whether I would propose to accept sewage treatment systems which discharge treated effluent overboard, and many similar technical questions.

I do not think that the floor of the U.S. Congress is the place to design a seagoing sewage system. At the same time, I think that such facilities are seriously needed. I think that the exact specifications should be left up to a qualified committee which could study the matter at great length and consider all of the complicated problems involved.

This is moderate legislation. It provides that the regulations and procedures adopted by the Secretary and his technical advisers shall not become effective until January 1, 1970. The Secretary is directed to report back to the Congress annually for 4 years, which would allow ample time for further legislative action if it should prove necessary.

This part of the bill—which calls a halt to the dumping of oil, sewage, and refuse from vessels into our lakes and other navigable waters—is the heart of the bill. Undoubtedly, many persons will come forth to say that, while it is desirable to stop this pollution, the problems involved are so great that it should not be undertaken.

The best answer I have seen to that point of view comes from Dr. E. R. Krumbiegel, the Milwaukee City Health Commissioner, who stated in a letter to me:

> The only practical solution to the problem is to enact Federal legislation relating to all ships of all nations. It would be impractical to enact legislation requiring fairly extensive alteration of present ships unless a reasonable leadtime for compliance was specified. I am not so much concerned with the question of whether this leadtime should be 10 or 20 years. The important thing is that we look to the future and attempt to enact legislation without unnecessary delay which will lead to alleviation of the problem at some time in the reasonably foreseeable future.

The other sections of the bill are also important.

The changes in the Oil Pollution Act of 1924 extend that act to apply to shore installations and to terminal facilities, from which pollutants often are discharged directly into our waters or accidentally dumped or spilled. This section also removes the restriction of the act to coastal and inland waters in which "the tide ebbs and flows," and extends it to navigable waters generally. It also provides that anyone who discharges oil must remove it or reimburse the Federal Government for doing so. It transfers administration and enforcement of the Oil Pollution Act from the Corps of Engineers to the Coast Guard. This is necessary to make enforcement more efficient and effective.

The changes which this bill makes in the Oil Pollution Act of 1961 transfers administration and enforcement of the act from the Corps of Engineers to the Coast Guard.

The changes which this bill makes in the Refuse Act removes the exemption of refuse matter flowing from sewers in the liquid state. It thus extends the

act to cover sewage discharged from vessels. The bill also transfers administration and enforcement of the Refuse Act from the Corps of Engineers to the Coast Guard.

At present, the Corps of Engineers has the responsibility for administration of these acts while the Coast Guard, as the general maritime policy agency, enforces them. The Coast Guard must presently report violations to the Corps of Engineers, which in turn prepares a case and sends it to the Department of Justice for prosecution. Enforcement would be much more effective if responsibility for recommending prosecution rested with the Coast Guard. Mr. President, this bill will give us, for the first time, the machinery we need to move against the rapidly increasing pollution of the Great Lakes and other navigable waters by vessels and shore installations which service them. It would set in motion some carefully organized governmental machinery which would lead to the solution of a serious public problem over the next 5 years. It provides broad latitude for the wisdom and judgment of experts. Unless we are prepared to take positive steps to solve this problem—and to meet all the other pollution threats which are facing us—we must simply resign ourselves to the fact that in the next 5 to 10 years the pollution of our lakes and rivers and our fresh water resources will continue at unprecedented speeds and that many of these resources will shortly be destroyed beyond hope of recovery.

I think that the American public and even the industries and economic interests involved are now aware of the problem and are ready for thoughtful action toward the objective sought in this bill.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point three articles from Milwaukee newspapers commenting on the serious Lake Michigan pollution problem.

The first is an editorial from the Milwaukee Sentinel of April 13, 1965, reporting that the pollution of two Milwaukee beaches is up to seven times the total limit set by the Public Health Service. The editorial states:

> The water is so foul that the State board of health and a special citizens' committee has recommended that guards be hired to keep people out of the water.

What a commentary on our standards of values when a city on the shores of one of the largest and most beautiful lakes in the world must spend the taxpayers' money to protect the public from its polluted waters.

The next article is from the Milwaukee Journal of April 9, 1965, reporting the findings of State and local officials in regard to the pollution of Lake Michigan waters. And the third article is an editorial from the Milwaukee Sentinel of March 6, 1965, commenting on the specific problem of water pollution by boats and ships.

Mr. President, I also ask unanimous consent that the text of the bill, the "Navigable Waters Pollution Control Act of 1965," be printed in full in the RECORD at the close of my remarks.

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

The bill (S. 1908) to expand and improve existing law and to provide for the establishment of regulations for the purpose of controlling pollution from vessels and certain other sources in the Great Lakes and other navigable waters of the United States, introduced by Mr. NELSON, was received, read twice by its title, referred to the Committee on Public Works, and ordered to be printed in the RECORD, as follows:

S. 1908

A bill to expand and improve existing law and to provide for the establishment of regulations for the purpose of controlling pollution from vessels and certain other sources in the Great Lakes and other navigable waters of the United States

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Navigable Waters Pollution Control Act of 1965".

STATEMENT OF POLICY

SEC. 2. The Congress finds that the waters of the Great Lakes and of the harbors and ports on such lakes, and other navigable waters of the United States constitute an irreplaceable natural resource of incalculable value to the Nation now and in the future; and that these waters are being polluted by oil, sewage, and refuse of every kind discharged or dumped by vessels plying them. The Congress further finds that to abate and prevent such pollution in the public interest, it is necessary that the disposal by vessels of oil, sewage, and refuse on these waters be controlled by forbidding it to the greatest practical extent, by establishing standards for treatment before disposal, and by designating points and places where disposal may take place.

ESTABLISHMENT OF POLLUTION CONTROL REGULATIONS

SEC. 3. (a) For the purpose of this section the term—

(1) "oil" includes fuel oil, sludge, oil refuse, and other oil of any kind or in any form;

(2) "sewage" includes human toilet waste, wash and laundry waste; and kitchen and galley waste; and

(3) "refuse" includes garbage, dunnage, and other trash.

(b) For the purpose of providing such control of pollution, in addition to that provided under existing law as amended by this Act, as may be necessary to carry out the policy of this Act, the Secretary of Health, Education, and Welfare, with the assistance and cooperation of the Secretary of the Army, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of Commerce, shall establish—

(1) reasonable regulations with respect to equipment and facilities on, and treatment and disposal of oil, sewage, and refuse from, vessels on such part of the Great Lakes as is under the jurisdiction of the United States, in harbors or ports of such lakes under such jurisdiction, and on other navigable waters of the United States; and

(2) procedures for carrying out such regulations by the Coast Guard under the direction of the Secretary of the Department in which the Coast Guard is operating.

Such regulations and procedures shall become effective on such date, not later than January 1, 1970, as is established by the Secretary of Health, Education, and Welfare.

(c) The Secretary of Health, Education, and Welfare shall appoint a technical committee to meet at his direction and advise in the formulation of regulations and procedures pursuant to this section. Such committee shall be composed of representatives of the Departments of Health, Education, and Welfare, the Army, and Commerce, the Department in which the Coast Guard is operating, owners and operators of Great Lakes vessels, and such other persons as the Secretary may determine. Members of such technical committee who are not regular full-time employees of the United States shall, while attending meetings of such committee or otherwise engaged on business of such committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

(d) Not later than January 1, 1966, and January 1 of the four succeeding years, the Secretary of Health, Education, and Welfare shall make a report to the Congress with respect to activities pursuant to this section together with any recommendations for additional legislation.

AMENDMENT OF OIL POLLUTION ACT, 1924

SEC. 4. The Oil Pollution Act, 1924 (43 Stat. 604) is amended to read as follows: "That this Act may be cited as the 'Oil Pollution Act, 1924'.

"SEC. 2. When used in this Act, unless the context otherwise requires—

"(a) 'oil' means oil of any kind or in any form, including fuel oil, sludge, and oil refuse;

"(b) 'person' means an individual, company, partnership, corporation, or association; any owner, operator, master, officer, or employee of a vessel; any owner, operator, officer, or employee of a shore installation or terminal facility; and any officer, agent, or employee of the United States;

"(c) 'terminal facility' means any pier, wharf dock, or similar structure to which a vessel may be moored or secured, or upon, within, or contiguous to which equipment and appurtenances dealing with oil may be located, including, but not limited to, storage tanks, pipelines, pumps, and oil trucks;

"(d) 'shore installation' means any building, group of buildings, manufacturing or industrial plants or equipment of any kind adjacent to the navigable waters of the United States, upon, within, or contiguous to which equipment and appurtenances dealing with oil may be located, including, but not limited to, storage tanks, pipelines, pumps, and oil trucks;

"(e) 'discharge' means any accidental, negligent, or wilful spilling, leaking, pumping, pouring, emitting, emptying, or other release of liquid; and

"(f) 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"SEC. 3. (a) Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary as hereinafter authorized, it is unlawful for any person to discharge or permit the discharge from any vessel, shore installation, or terminal facility of oil by any method, means, or manner into or upon the navigable waters of the United States.

"(b) Any person discharging or permitting the discharge of oil from any vessel, shore installation, or terminal facility into or upon the navigable waters of the United States shall remove the same from the navigable waters immediately. If such person fails to do so, the Secretary may remove the oil or may arrange for its removal, and such person

shall be liable to the United States, in addition to the penalities prescribed in section 4 of this Act, for all costs and expenses reasonably incurred by the Secretary in removing the oil from the navigable waters of the United States. When the oil has been discharged from a vessel, these costs and expenses shall constitute a lien on such vessel which may be recovered in proceedings by libel in rem. When the oil has been discharged from a shore installation or terminal facility, these costs and expenses may be recovered in proceedings by libel in personam.

"(c) The Secretary may prescribe regulations which—

"(1) permit the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or marine life or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters;

"(2) relate to the loading, handling, and unloading of oil on or contiguous to vessels, shore installations, and terminal facilities; and

"(3) relate to the removal or cost of removal, or both, of oil from the navigable waters of the United States.

"SEC. 4. (a) Any individual who violates section 3(a) of this Act shall, upon conviction thereof, be punished by a fine not exceeding $2,500, or by imprisonment not exceeding one year, or by both such fine and imprisonment for each offense.

"(b) Any vessel other than a vessel owned and operated by the United States from which oil is discharged in violation of section 3(a) of this Act shall be liable for a penalty of not more than $10,000. Clearance of a vessel liable for this penalty from a port of the United States may be withheld until the penalty is paid. The penalty shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be.

"(c) The owner or operator of a shore installation or terminal facility from which oil is discharged in violation of section 3(a) of this Act shall be liable for a penalty of not more than $10,000 which may be recovered in proceedings by libel in personam in the district court of the United States of the district within which the shore installation or terminal facility is located.

"(d) Any person who violates any regulation prescribed under section 3(c) of this Act shall, if there has been no discharge of oil, be liable for a penalty of not more than $100.

"SEC. 5. The Commandant of the Coast Guard may, subject to the provisions of section 4450 of the Revised Statutes, as amended (46 U.S.C. 239), suspend or revoke a license issued to the master or other licensed officer of any vessel found violating the provisions of section 3 of this Act.

"SEC. 6. In the administration of this Act the Secretary may make use of the organization, equipment, and personnel of the Coast Guard. For the better enforcement of this Act, the officers and employees of the Coast Guard, the Bureau of Customs, and the officers and agents of the United States in charge of river and harbor improvements, and persons employed under them by authority of the Secretary of the Army, shall have power and authority and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions. No person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials. Whenever any arrest is made under the provisions of this Act the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States.

"Sec. 7. This Act shall be in addition to other laws for the preservation and protection of navigable waters and shall not be construed as repealing, modifying, or in any manner affecting the provisions of such laws."

AMENDMENTS TO OIL POLLUTION ACT, 1961

SEC. 5. The Oil Pollution Act, 1961 (75 Stat. 402) is amended—

(1) in section 2(h) by striking out "of the Army" and inserting in lieu thereof "of the department in which the Coast Guard is operating";

(2) by striking out section 6 and inserting in lieu thereof the following:

"SEC. 6. (a) Any person who violates any provision of this Act, except sections 8(b) and 9, or any regulation prescribed in pursuance thereof, is guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $2,500, or by imprisonment not exceeding one year, or by both such fine and imprisonment, for each offense.

"(b) Any ship (other than a ship owned and operated by the United States) from which oil is discharged in violation of this Act, or any regulation prescribed in pursuance thereof, shall be liable for a penalty of not more than $10,000, and clearance of such ship from a port of the United States may be withheld until the penalty is paid, and said penalty shall constitute a lien on such ship which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the ship may be."; and

(3) by striking out section 8 and inserting in lieu thereof the following:

"SEC. 8. (a) In the administration of sections 1–12 of this Act, the Secretary may make use of the organization, equipment, and personnel of the Coast Guard. For the better enforcement of the provisions of said sections, the officers and employees of the Coast Guard and the Bureau of Customs and the officers and agents of the United States in charge of river and harbor improvements and persons employed under them by authority of the Secretary of the Army, shall have power and authority and it shall be their duty to swear out process and to arrest and to take into custody, with or without process, any person who may violate any of said provisions. No person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials. Whenever any arrest is made under the provisions of said sections, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crime against the United States. Representatives of the Coast Guard and Bureau of Customs and of the Secretary of the Army may go on board and inspect any ship in a prohibited zone or in a port of the United States as may be necessary for enforcement of this Act.

"(b) To implement article VII of the convention, ship fittings and equipment, and operating requirements thereof, shall be in accordance with regulations prescribed by the Secretary. Any person found violating these regulations shall, in addition to any other penalty prescribed by law, be subject to a civil penalty not in excess of $100."

AMENDMENTS TO REFUSE ACT

SEC. 6. (a) Section 13 of the Act of March 3, 1899 (30 Stat. 1152) is amended—

(1) by striking out "and sewers"; and

(2) by striking out "the Secretary of War, whenever in the judgment of the Chief of Engineers" and inserting in lieu thereof "the Secretary of the department in which the Coast Guard is operating, whenever in the judgment of the Commandant of the Coast Guard".

(b) The administration of such provisions other than section 13 of such Act of March 3, 1899, as relate to the enforcement of section 13 and are being carried out by the Secretary of the Army is hereby transferred to the Secretary of the department in which the Coast Guard is operating.

EFFECTIVE DATE

SEC. 7. Sections 4, 5, and 6 of this Act shall be effective after ninety days following the date of enactment of this Act.

The editorial and articles presented by Mr. NELSON are as follows:

[From the Milwaukee Sentinel, Apr. 13, 1965]

BEACH POLLUTION

If there is any lingering doubt that water pollution is a critical problem in Wisconsin, it should be put to rest by the report of the sewerage commission of Milwaukee about the condition of the waters off Milwaukee area beaches.

The pollution of the two Grant park beaches is up to seven times the tolerable limit set by the U.S. health service. The water is so foul that the State board of health and a special citizens' committee has recommended that guards be hired to keep people out of the water.

There was a time when lifeguards were used exclusively to prevent drownings; now along Lake Michigan, they're needed to keep prospective swimmers from poisoning themselves in the water.

In spite of the insistence by some South Milwaukee officials that these beaches within their city limits are suitable for swimming, the extent of pollution clearly creates a health hazard.

The fact that the Grant park beaches have been officially closed to swimming since 1958 reinforces the conclusion that these beaches are too polluted for swimming. For, in the last 7 years, the sewage and other effluent pouring into the lake at Grant park has substantially increased.

It's a sad day when any of our lake beaches must be closed to swimming. It's even worse when the water becomes so polluted that we have to put guards to make sure no one goes in.

Water pollution is, of course, a problem not only along Lake Michigan but in many of Wisconsin's waterways. The problem demands the immediate attention of all governments and all citizens. The longer we delay in cleaning up our waters, the less likely that we will ever be able to do anything about it. Here is an immediate crisis demanding immediate attention.

[From the Milwaukee Journal, Apr. 9, 1965]

STATE SAYS BEACH IS STILL UNSAFE

Prospects of opening Grant Park Beach in South Milwaukee to swimming this summer appeared dim after a 4-hour discussion in the courthouse Thursday.

A committee formed last summer to study the possible sources of pollution at the beach was unable to agree on steps that should be taken. The committee was headed by Howard H. Knuth of the county public works department.

O. J. Muegge, sanitary engineer for the State board of health and a member of the committee, stated that he would send a letter to the county park commission declaring the beach unsafe for swimming and urging that it be patrolled to keep swimmers out of the water.

Muegge said he also would give recommendations to South Milwaukee officials on installations needed in the suburb's sewage treatment plant to chlorinate effluent emptied into Lake Michigan.

This effluent has been blamed for polluting the water at Grant Park Beach.

James N. Peschel, assistant general manager of parks, said he did not believe that he could recommend to the park commission that the beach be reopened on the basis of a report made recently by South Milwaukee officials.

The beach has been closed to swimming since 1958.

South Milwaukee officials, headed by Mayor Joseph M. Kehoe, took the position, as they had previously, that it was safer to permit swimming in the polluted water under the supervision of lifeguards than to have swimmers sneaking into the water with no protection against possible drowning.

[From the Milwaukee Sentinel, Mar. 6, 1965]

DON'T DELAY

One problem facing State and local governments that cannot wait is that of water pollution. Ignore it, temporize, delay—and this problem may become forever insoluble.

POLLUTION WON'T WAIT

The solution of the pressing problems of taxes, budgets, transportation and governmental organization should be sought at the earliest practicable date. But the postponement of a solution, although inconvenient, is usually not disastrous. The damage caused by delay is usually reversible. Not so with water pollution. A river, lake or stream polluted will remain so for many years, perhaps forever. Effluent and waste are not eliminated by an act of the legislature; bacteria and human waste cannot be outlawed by a commission order. The longer a body of water remains polluted, the more it becomes polluted, the more difficult it becomes to unpollute it. Much of the pollution is irremediable.

It is, therefore, imperative that the Wisconsin Legislature reject all attempts to delay the application of the State's new toilet boat law, passed in 1963. The thought of another summer going by with thousands of boats dropping sewage into Wisconsin waters nauseates us, as it does Assemblyman Borg (Republican, Delavan), who opposes delay in the effective date of the law.

The dismay of boating associations and many boaters with the new law is understandable. Many will be inconvenienced by having to install closed toilet facilities in their boats.

But the conflicting interests must be weighed. On the side of immediate and full enforcement of the new law is the certainty that if we do not demand that pollution be kept from our waters, Wisconsin's heritage of pure, clean water may be gone—not for 2 years but forever, not for ourselves only but also for our children and our children's children.

The boaters, who have as great an interest as anyone in clean water, would do better to persuade the legislature to amend the law to permit the use of alternative, perhaps less expensive, devices for keeping waste out of our lakes and streams. But to ask that we delay the effective date of the toilet boat law is to legitimatize intolerable pollution for 2 more years.

SOCIAL SECURITY AMENDMENTS OF 1965—AMENDMENTS

AMENDMENTS NOS. 163 THROUGH 165

Mr. BOGGS submitted three amendments, intended to be proposed by him, to the bill (H.R. 6675) to provide a hospital insurance program for the aged under the Social Security Act with a supplementary health benefits program and an expanded program of medical assistance, to increase benefits under the old-age, survivors, and disability insurance system, to improve the Federal-State public assistance programs, and for other purposes, which were referred to the Committee on Finance and ordered to be printed.

VOTING RIGHTS ACT OF 1965—AMENDMENTS

AMENDMENT NO. 166

Mr. ERVIN submitted an amendment, intended to be proposed by him, to the Mansfield-Dirksen amendment (No. 124), in the nature of a substitute, to the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 167

Mr. FONG (for himself, Mr. BAYH, Mr. BURDICK, Mr. CASE, Mr. CLARK, Mr. DODD, Mr. HART, Mr. JAVITS, Mr. KENNEDY of Massachusetts, Mr. LONG of Missouri, Mr. MCCARTHY, Mr. RIBICOFF, Mr. SCOTT, Mr. TYDINGS, and Mr. WILLIAMS of New Jersey) submitted amendments, intended to be proposed by them, jointly, to the Mansfield-Dirksen amendment (No. 124), in the nature of a substitute, to Senate bill 1564, supra, which were ordered to lie on the table and to be printed.

ADDITIONAL COSPONSORS OF BILL

Under authority of the order of the Senate of April 23, 1965, the names of Mr. BARTLETT, Mr. BURDICK, Mr. FONG, Mr. JAVITS, Mr. MURPHY, Mr. SALTONSTALL, Mr. SCOTT, Mr. TOWER, and Mr. TYDINGS were added as additional cosponsors of the bill (S. 1808) to amend section 4082 of title 18, United States Code, to facilitate the rehabilitation of persons convicted of offenses against the United States, introduced by Mr. LONG of Missouri (for himself and Mr. HRUSKA) on April 23, 1965.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported on today, May 6, 1965, he presented to the President of the United States the enrolled bill (S. 60) to authorize the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes.

MESSAGE FROM THE HOUSE—ENROLLED JOINT RESOLUTION SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled joint resolution (H.J. Res. 447) making a supplemental appropriation for the fiscal year ending June 30, 1965, for military functions of the Department of Defense, and for other purposes, and it was signed by the Vice President.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. RANDOLPH:

Remarks by him relating to the switch activation of an electrostatic precipitator at the Weirton Steel operation of the National Steel Corp.

SEVENTEEN YEARS OF ISRAEL INDEPENDENCE

Mr. PELL. Mr. President, in the history of civilization, 17 years is not a long time; in the history of man, 17 years is not sufficient time to measure the impact of a momentous event; in the history of nation-state, a 17-year-old state is but an infant. The importance of Israel independence 17 years ago cannot however be viewed only in terms of years, but rather must be seen in the impact that state has had on the lives of millions of Jews around the world, and specifically the 2.5 million inhabitants of Israel.

In spite of a violent beginning and sometime shaky life there is abundant hope for an auspicious future. Today, 2.5 million Israelis live in a democratic republic where individual freedom and social justice prevail. Israel is quickly and surely becoming a model of governmental stability in the Middle East. A model I might hasten to add, with democratic institutions.

The marvel of Israel has been the growth of a modern economic system in an area once largely an arid desert, within the framework of democratic ideals and institutions. Israel offers a lesson to other less developed nations that economic growth can be accomplished within the context of democratic freedoms and social justice and without recourse to totalitarianism.

Mr. President, this stability to which I refer has been gained in spite of a changing world and aggressive Arab nationalism. If we review briefly the events since World War II, we can appreciate all the more the accomplishment of this infant state which we honor and congratulate today.

Following World War II it became apparent to the British and others that millions of Jews and non-Jews around the world expected the British to honor the 1917 Balfour Declaration which promised a Jewish state in the Middle East. The problem, however, could not be clearly solved, and it was referred to the United Nations. The General Assembly plan for partition was not acceptable to Jews and Arabs alike, and finally on May 14, 1948, the last day of the old league mandate, the Jews proclaimed the formation of the State of Israel. On the same day, six Arab States launched an armed attack on the new state, but the Israeli forces beat back the attackers, asking only that they be allowed to live in peace. An armistice in 1949 failed to bring peace to the area, and there has been fighting ever since. The U.N. forces presently oversee an unsteady peace.

During these past 17 years large-scale migration that would tax the ability of more mature governments, has taken place. Israel's declaration of independence opened the doors, and between 1948

and 1961, well over a million persons had sought a home in the new state. That the Israeli Government has been largely successful in accepting these persons into a well-ordered society cannot be denied.

Israel has indeed taken its place as a respected member of the international community, sympathetic to feelings and aspirations of the newly independent countries of Africa and Asia, and helping with technical assistance the underdeveloped countries everywhere in the world. Israel has been a member of the United Nations since 1949, and presently participates in almost every one of the U.N.'s affiliated agencies.

I join with my colleagues and with millions of Americans in wishing the State of Israel continued prosperity and a long life.

Mr. SALTONSTALL. Mr. President, today marks the 17th anniversary of the establishment of the free and independent State of Israel as a homeland and place of refuge for Jews from all over the world. Our Government has the distinction of being the first to extend diplomatic recognition to the fledgling state, and we have watched her continued growth with a deep sense of pride. We immediately recognized that the people of this new nation were dedicated to the same basic principles of freedom which are at the foundation of our own democracy. The history of the Jewish people is a history of persecution and struggle against the forces of tyranny. With the establishment of the State of Israel came the hope for a better life for Jews from all over the world.

The people of Israel were beset with many problems in trying to build an economically prosperous and politically stable state. Her very survival has been threatened daily by her Arab neighbors. She has been forced to spend large sums of money to build a strong defense establishment, capable of protecting her sovereignty.

At the same time, she has also been successful in meeting her internal political, social, and economic challenges. In the past 17 years Israel has admitted more than 1 million immigrants and has had a large measure of success in assimilating these newcomers with their divergent backgrounds. An outstanding system of universal education has been devised. She has made the most of the limited natural resources available to her to strengthen her domestic economy. Once the recipient of technical aid and financial assistance from other nations, Israel is now in a position to share her technical know-how with other developing countries, and has embarked on a program of technical assistance in the fields of agriculture, health, and education to many nations in Africa and Latin America.

The parliamentary government of Israel has been notably stable, and the country stands as a positive force for peace in the turbulent and volatile Middle East. She is an important and valuable ally in the world's community of free nations.

The outstanding achievements of this nation are a source of pride to all of us who cherish the ideals of freedom, and a source of hope to all of us who pray for a world of prosperity and peace. To all the people of Israel, I say "mazeltov," congratulations for what you have accomplished in the past 17 years.

Mr. WILLIAMS of New Jersey. Mr. President, today Israel celebrates the 17th anniversary of its independence.

On this auspicious occasion, it is equally fitting that the American people should rededicate the strong bonds of freedom and friendship that unite our two nations.

Although Israel is young among the nations of the world, the contributions which its people have made can be traced back thousands of years to the founding of Western civilization itself.

Although it occupies but a small area, the industry and ability of its people are well known, and the dynamism and stability of its Government are admired and respected.

American society has benefited more than most by the influence of the Jewish people, and we attribute many of our highest achievements to their ingenuity.

Yet even as we commemorate this happy event, the severe pain and hardship which these courageous people endured through many dark days, remains all too fresh in our memories. Even today, while we pause to honor this nation's liberation from the forces of tyranny, in some places such as the Soviet Union, the oppression on these people is still great and freedom is only a dim hope.

Israel stands as a symbol to the world of man's unrelenting determination to overcome these forces which threaten to destroy his fundamental rights and rob him of his dignity. In this cause the people of both our nations will always stand together.

Mr. SCOTT. Mr. President, 17 years ago, the United States was the first nation to recognize the new State of Israel. Our ties to this small democracy have been close, and we in America can today share some of the satisfaction and pride of the Israelis in that formerly bleak land which they have transformed into a fruitful garden.

Surrounded by hostile neighbors dedicated to her destruction, Israel has fought, labored, and toiled to create a haven for the oppressed and an isle of democracy and progress in that ancient land. She has harnessed the sun and exploited her limited resources in an area still ridden with feudal strife and ancient hatreds. Living in constant danger, she has built schools, homes, and hospitals within range of enemy snipers and moments away from belligerent aircraft.

The United States must continue to work for peace in the Near East. One thing we can do to achieve this end is to sell Israel the necessary defensive arms to protect herself against hostile nations pledged to her destruction.

The United States should also urge in the strongest terms a renewed effort for direct Arab-Israel peace talks. Tunisian President Bourguiba recently aroused new hope in this regard by urging progress toward a settlement under which Arabs and Jews could live side by side in peace.

We should welcome President Bourguiba's initiative and support all such efforts to end hostility in the Middle East and secure peace for Israel and her neighbors.

Mr. MONTOYA. Mr. President, today marks a significant anniversary in the world's continuing search for peace and freedom.

This is the 17th anniversary of the independence of the State of Israel, according to the Hebrew calendar which that nation employs. To us who use the Gregorian calendar, this anniversary will fall on May 17, but it is appropriate to observe the date used by the Israelis.

In those 17 years, Israel and the Jewish people have given the Eastern Mediterranean region an example of what an intelligent, determined and democratic people can accomplish.

From a wasteland, and with a bitter war disrupting every phase of community life, Israel has progressed to become an example of self-help and peace that the whole Western World can point to with pride.

Unfortunately, though the shooting has stopped, Israel still suffers greatly from the unremitting hostility of her Arab neighbors. Under Egypt's leadership, the Arabs are pledged to destroy the State of Israel no matter what the cost in human progress.

This anniversary is an appropriate time to reiterate our country's continuing support of the people and the State of Israel, and to restate our pledge to defend her independence, security, and territorial integrity.

Mr. President, let us urge those nations which have for so long treated their neighbor with hatred to reconsider their attitude and seek ways to live together in peace.

Mr. CASE. Mr. President, today marks the 17th anniversary of the birth of Israel as an independent nation. In recognition of this occasion, we are honored today by the presence of Rabbi Joachim Prinz, who presented the invocation at today's session, accompanied by a group of distinguished citizens representing both national and New Jersey organizations within the Jewish community.

With each passing year, Israel's dramatic success story becomes more impressive. The 17th anniversary of Israel's independence is a significant occasion, because this small nation has successfully maintained its freedom in spite of the hostility of many of its neighbors.

It is essential to all free nations that Israel's independence be maintained. Insofar as I can affect it, the U.S. Government will continue to use its influence to assure that this progressive, pioneering nation remains free to preserve and strengthen its tradition of democracy.

Mr. TYDINGS. Mr. President, on this date 17 years ago, a new and yet old nation took its place in the world community—the State of Israel.

In these 17 years, Israel has achieved an enviable record of progress in almost every field of human endeavor. Her industry is rapidly expanding: Her agricultural output has soared as new lands

and resources were brought into productive use: And the standard of living and per capita income of her inhabitants is increasing at one of the highest rates in the world.

During this period of rapid development, Israel has remained free and independent, she has remained steadfastly committed to democratic government, and she has remained firm to her commitment to the principles of social justice.

In recent years, Israel has begun to make its talent and technology available to other, less fortunate nations, in an effort to help others help themselves.

On this anniversary, then, I join my colleagues and all Americans in congratulating Israel on her past progress, and in expressing the conviction that this Nation will continue to provide an example to others.

BALANCE-OF-PAYMENTS PROBLEM

Mr. PROUTY. Mr. President, there has been a great deal of thought and discussion recently about our balance-of-payments problem. Unfortunately, as has so frequently happened in similar situations in the past, much of this thought and discussion has been in a negative vein. Tuesday of this week, however, Mr. Juan T. Trippe, chairman and chief executive officer, Pan American World Airways, a man not inclined to negative thinking, proposed a positive program of action in support of the voluntary effort undertaken by U.S. industry, at the request of the administration, to ease the country's balance-of-payments problem.

The Pan Am program will provide a 30-percent increase over last summer's transatlantic service, and will include: new low-fare charters, at rates 36 percent below present rates, offered on a large scale for residents of Western Europe, to permit more Europeans to visit the United States this summer, as well as increased air service between the United States and Europe to offer more opportunity for U.S. citizens, who wish to do so, to assist in easing the payments problems by making their transatlantic trips aboard U.S.-flag airliners.

Mr. Trippe, at the company's annual stockholders' meeting, at the Commodore Hotel in New York City went on to point out that Pan Am will increase its lift capability by 30 percent over 1964, notwithstanding the fact that only a 15-percent increase in transatlantic traffic is predicted for the 1965 season.

Mr. Trippe also announced that 1964 was the first year in which revenue from air cargo exceeded 10 percent of the company's gross revenues.

ACTION OF PRESIDENT JOHNSON IN DOMINICAN REPUBLIC

Mr. LONG of Missouri. Mr. President, on May 4, the St. Louis Globe-Democrat published an editorial expressing its full support for the decisive and correct action of President Johnson in the Dominican Republic. The editorial with high praise went on to comment on the President's courage and wisdom in the Stanleyville rescue operation and Vietnam. I find myself in complete accord with the editorial's high commendation of President Johnson's policies in meeting the challenge of Communist aggression and subversion. The President has proven himself a true leader in the cause of freedom. I believe the editorial would be of interest to the Senate. Therefore, I ask unanimous consent that the editorial "Lyndon Johnson's Finest Hour" be printed at this point in the RECORD.

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

LYNDON JOHNSON'S FINEST HOUR

U.S. intervention in the Dominican Republic is totally justified by events in that tiny Caribbean nation. The revolution had created conditions of chaos in the capital. Communist conspirators had seized direction and control of the revolt. The lives of thousands of Americans and other nationals were endangered.

"In this situation hesitation and vacillation could mean death for many of our people, as well as many of the citizens of other lands." So spoke the President in his splendid address to the world Sunday night.

Lyndon Johnson did not hesitate or vacillate. He acted instantly, courageously, and correctly.

Freemen everywhere will admire this display of strength. And the Nation will admire his decisiveness and his determination that there will be no more shameful tragedies like Cuba in the Caribbean and the Western Hemisphere.

With that mission of mercy into Stanleyville, with the presidential decision to punish the North Vietnamese aggressors daily, with this decisive stroke to abort a Communist-supported coup on the island of Hispaniola, Lyndon Johnson has demonstrated a resolve to stand up to communism, to punish aggression and to defend just Western interests such as we have not seen in the White House in years, if not decades.

Those millions upon millions of Americans who have yearned for the type of leadership and purpose, so evident Sunday from the White House, ought to let their Government know of their support. The American people should no longer leave the public podium to sophists, appeasers, pacifists, and confused and frightened professors.

The New York Times maintains the President did not give sufficient documentation for his charge of Communist expropriation of the revolt.

As the President explained, he acted upon the unanimous advice of the knowledgeable Americans in the Dominician Republic. It was an emergency, calling for decision. There was no time to call the Security Council or the Organization of American States into debate. We might have paid for our hours of debating in the coin of innocent American blood. The evidence of Reds in the Dominican revolt seems adequate and convincing.

The OAS should now be given the full case of Castroite and other Communist involvement in this revolt. Then the time will be at hand for something more meaningful than diplomatic and political sanctions against the Communist megalomaniac who rules in Havana.

Should the OAS fail to act against Cuba, we might hearken to the words of a former President, which were regrettably a substitute for action:

"Should it ever appear that the inter-American doctrine of noninterference merely conceals or excuses a policy of nonaction; if the nations of this hemisphere should fail to meet their commitments against outside Communist penetration, then I want it clearly understood that this Government will not hesitate in meeting its primary obligations which are the security of the Nation."—John F. Kennedy, April 20, 1961.

In the Dominican Republic, as in Vietnam, we are confronted by a Communist "war of national liberation." The face of aggression has changed; but it is nonetheless aggression. It is not conducted by large armies crossing fixed frontiers. The aggressors are trained terrorists, subversives, propagandists who infiltrate backward nations, exacerbate tensions, loot and murder and create conditions of chaos. These wars are directed and supported and supplied by the Communists in Moscow, Havana, and Peiping.

Their ultimate objective is not just control of the Dominican Republic or seizure of all Hispaniola or even all Vietnam. It is the destruction of the one thing that blocks the road to world conquest: U.S. power.

These Communist revolutions have never granted the people the pledged political or social benefits. Instead of peace, land, bread, agrarian reform, free elections, there is the seizure of all property, impoverishment, totalitarianism, and terror.

The one point about which every Communist is in total agreement is their mutual hatred of America and mutual recognition that our power and resolve alone thwarts the realization of their wildest dreams.

The greatest power in the history of the world cannot pack up, abandon commitments, come home to wage gallant war on Appalachia while tiny states which would stand for their freedom if we would stand with them, fall singly into the agonies of Communist terror.

President Johnson has shown the proper use of power. The Communist road to world conquest is less certain and more hazardous than it was just a year ago.

A NEW WATER RESOURCES RESEARCH CATALOG AVAILABLE

Mr. ANDERSON. Mr. President, during consideration of expanded water resources research by the committees of Congress, and by the House and the Senate, considerable concern was expressed about expenditures for duplicating research projects.

The original water resources research bill, which I introduced in 1962, provided for the Office of Water Research to maintain a register or catalog of all federally sponsored water research and as much non-Federal and private research as the sponsors would voluntarily report. One of the purposes of the catalog was to avoid duplication of research projects. Another was to make knowledge of all such projects—and the results as projects were completed—widely available.

In processing the legislation, the task of maintaining a comprehensive record of water research projects was assigned to the Science Information Exchange at the Smithsonian Institution, where it could be kept with other scientific research data.

As one of its first projects, the new Office of Water Resources Research, has obtained from the Science Information Exchange a catalog of all federally supported water resources research projects underway and published the catalog in a well-classified and indexed 450-page volume.

The catalog lists a total of 1,545 project summaries under eight chapter headings including "Nature of Water," "Water Cycle," "Water and Land Management,"

"Development and Control," "Qualitative Aspects," "Reuse and Separation," "Economic and Institutional Aspects," and "Engineering Works."

There are four indexes, by corporate author, by subject, by supporting agency, and by principal investigator.

The publication of this first catalog is the achievement of a milestone in water research, Mr. President, which is very gratifying to me, and I have taken the floor to call attention to it in the RECORD because of the great potential value that the document will have as it is circulated and used in water research circles.

The catalog will do a great deal to prevent expensive duplication of research effort by both public and private agencies. With a shortage of competent hydroscientists, the savings in manpower which results from avoiding duplication may be even more important than savings in dollars.

The catalog will also have increased water problems with leads to sources of information, and as the catalog is reissued from year to year, the accumulated record of research underway and completed will have increasingly great value in this respect.

The catalog will provide those with value in the future as the Science Information Exchange is able to add non-Federal research projects.

Copies of the catalog are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., for $2.50.

If that sounds like a commercial, it is intended to be, for I hope the document will come into wide use.

I congratulate all those officials who have had a part in the issuance of the catalog, including Dr. John Calhoun, who served as Acting Director of the Office of Water Research when it was organized, Dr. Roland Renne, the Director of the Office of Water Research, and his Associate Director, E. D. Eaton, Secretary of the Interior Stewart Udall, and Dr. Monroe E. Freeman, Director of the Science Information Exchange of the Smithsonian Institution, for the very fine job they have done.

TAX EXEMPTION FOR MILITARY PERSONNEL

Mr. McCLELLAN. Mr. President, I ask unanimous consent to have printed in the RECORD an article appearing in the Washington Evening Star explaining the procedures established by the Internal Revenue Service for military personnel eligible to claim the tax exemption, recently granted by Executive Order No. 11216, for those serving in Vietnam subsequent to January 1, 1964.

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

UNITED STATES SET TO SPEED TAX REFUNDS FOR VIETNAM SERVICE

The Government has set up a plan to speed income tax refunds to military personnel who served in Vietnam during 1964.

Thousands of servicemen paid taxes on military pay which President Johnson recently ruled was at least partially tax exempt.

The White House announced today that taxpayers who served in Vietnam in 1964 and have already filed returns may claim refunds by submitting amended returns.

To speed processing of the refunds, amended returns should be marked at the top of the form: "Amended—Combat Zone."

While tax returns on 1964 normally were due April 15, servicemen in Vietnam have been granted an automatic extension of time for filing. Any original claims and returns they file should be marked simply "Combat Zone" to speed processing.

The White House said servicemen filing amended returns, original returns or claims should attach a statement showing the number of months served in Vietnam in 1964 and the total amount of pay excluded from taxation.

PROTECTING OUR OWN—FOR ONCE

Mr. PELL. Mr. President, none of us is happy that circumstances have forced us to send the marines to the Dominican Republic, but as the facts have unfolded none of us can doubt that there was no alternative if we were to protect our own national interests against a proliferation of Castroism in the Caribbean. It is gratifying indeed that responsible elements of the press have been sensitive to the realities of the situation and have thrown their support behind the President's commitment. In this connection I ask unanimous consent to have printed in the RECORD at this point an excellent editorial from the Philadelphia Inquirer entitled "Protecting Our Own—for Once."

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

PROTECTING OUR OWN—FOR ONCE

There seems to be considerable surprise mingled with the expectable Communist uproar over the landing of American marines and airborne troops in the Dominican Republic to protect American lives and property. It has been a long while since we exerted our strength in our own interest.

Well, let them yelp. The United States has bent over backward—almost double—in the last generation to be a good neighbor to the whole world community, with particular emphasis on nearer neighbors in this hemisphere. As a result, we have endured the charming spectacle of having our libraries and embassies attacked, sometimes burned; our touring citizens insulted and at times imperiled; our envoys subjected to every kind of boorish behavior, and our avidly solicited investments wiped out.

If the landing in bloody Santo Domingo and the sealing off of our Embassy from the raggle-taggle assaults of every juvenile or adult Dominican delinquent betokens a "tougher line," most Americans, we believe, will agree it's time.

It is interesting what a thunderous clamor Fidel Castro is making in this connection. The lesson may have special meanings to him—he caught us when we were still trying to be polite if it killed us.

How many Castroists may be in the Dominican jobs is still problematical, but it is a certainty that if they didn't precipitate this situation it was made to order for them.

We await firm and useful action by the Organization of American States—this mess is really the whole hemisphere's baby—but for once we are not standing still, with a foolish grin shining through the tears—while we wait.

POLISH CONSTITUTION: A TRIBUTE

Mr. WILLIAMS of New Jersey. Mr. President, today we commemorate the anniversary of the Polish Constitution of May 3. This is an occasion long remembered among Poles and among those who have a reverence for constitutional democracy.

For the Poles, the proclamation of this Constitution was an act of sublime patriotism, because in this Constitution were infused all the hopes for a free, independent, and democratic Poland and all the glory that is Poland.

For those who revere constitutional democracy this anniversary has special significance because the Constitution of May 3, while not a revolutionary break with the past, was an extraordinary document for its time which contained all those ingredients that would insure an evolving system of constitutional democracy in Poland.

Unfortunately, the Constitution was never given a chance to achieve its purposes. Not from any defects on the part of the document itself; not from any want of will or determination on the part of the Poles; but because a strong, democratic Poland was a political fact that the Russians could not tolerate. It was the Russians who in the final analysis must bear the responsibility for destroying this Polish dream of constitutional democracy.

But this dream of constitutionalism lives on in Poland and among Poles everywhere; it lives on in a national tradition that deserves the respect and honor of free peoples everywhere. It is fitting, therefore, that we commemorate this anniversary.

THE SITUATION IN THE DOMINICAN REPUBLIC

Mr. MONTOYA. Mr. President, an editorial from the April 29, 1965, issue of the Chicago Tribune has come to my attention and I think it merits the attention of my colleagues. Therefore, I ask unanimous consent that it be printed in the RECORD.

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

THE MARINES LAND

President Johnson has sent a contingent of 400 marines into the Dominican Republic to save the lives of American citizens and to protect American property. A rebellion has endangered both, and Dominican military authorities admitted that they could no longer guarantee the safety of foreign nationals in the country.

Rescued Americans arriving in Puerto Rico told of rebel hostility to Americans. The rebels invaded a hotel where Americans were principally concentrated and took delight in threatening them.

Communist propaganda will undoubtedly seek to make the most of this first marine landing in a Latin American republic in 38 years. Cries of "imperialism" and "colonialism" may be expected, and the intervention in the Caribbean will be likened to the intervention in Vietnam.

Yet, historically, it has been American policy to protect American lives and interests in strife-torn areas of the Americas. Theodore Roosevelt enunciated the doctrine,

and William Howard Taft put it into practice by sending marines into Nicaragua. In 1914 Woodrow Wilson sent marines to Haiti, and 2 years later ordered a full military occupation of that country. Calvin Coolidge endeavored to withdraw the marines from Nicaragua in 1924, but 3 weeks later another revolution broke out and they were hastily returned to the country, remaining there until a semblance of order was established in 1934. President Wilson's punitive expedition into Mexico in 1916 was another expression of American determination to protect its rights.

President Johnson's action a year ago in providing an American military airlift to carry Belgian paratroopers into the Stanleyville area of the Congo, where the rebel Simbas were threatening the lives of several thousand Americans and foreigners, was similar in purpose to the present mission in the Dominican Republic. Had no effort been made to rescue these Americans and Europeans, they would have been butchered, as many of them were.

The Dominican revolt is believed to have been animated by Communist elements, if not Castroites, bent on restoring the exiled president, Juan Bosch, to power. Bosch was deposed in September 1963 after the military charged that he had permitted Communists to infiltrate his regime. From the loud howls from Havana about the present American intervention, Castro has such a close interest in the outcome of the fighting that the rebellion probably is a mask for an attempted takeover by his agents. If that is so, the marines may find they have a further mission.

TRIBUTE TO THORNTON WILDER

Mr. RIBICOFF. Mr. President, a few days ago, Thornton Wilder received the first National Medal for Literature. In a brief White House ceremony, Mrs. Lyndon B. Johnson praised Mr. Wilder, in whose works "the commonplaces of living yield the gaiety, the wonder, and the vault of the human adventure."

These are the apt words to describe the abundant talent of this rare individual. His writings are outstanding. The mention of Pulitzer Prize winners such as "The Bridge of San Luis Rey," "Our Town," and "The Skin of Our Teeth," brings excellence to mind.

As poet and playwright and novelist, he has enriched the literature of our Nation and thus the experience and pleasure of every person who chooses to partake of his achievements.

We are proud of Thornton Wilder—a resident of our great State of Connecticut, whose books and plays are enjoyed by millions. We wish him many, many more productive years. We congratulate him for this latest, well-deserved honor that has come his way.

I ask unanimous consent that an editorial about Mr. Wilder in today's Washington Post be included in the RECORD.

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

ON THE RAZOREDGE

Presentation of the National Medal for Literature to Thornton Wilder Tuesday in ceremonies at the White House suitably acknowledged the remarkable career of a distinguished American. The First Lady, in conferring the award upon Wilder, spoke for her countrymen when she praised his skill in treating the commonplaces of American living with gaiety and wonder.

It might have been, besides, a good occasion to have given the country again the benefit of the wisdom that flowed from such Wilder characters as Mr. Antrobus. In a time when the role of this country seems especially hard, difficult, and perplexing, it might have been useful to quote Mr. Antrobus, the central figure in "Skin of Our Teeth." Mr. Wilder's followers will remember that Mr. Antrobus said:

"Oh, I've never forgotten for long at a time that living is struggle. I know that every good and excellent thing in the world stands moment by moment on the razoredge of danger and must be fought for—whether it's a field, or a home, or a country."

PACIFIC MEDICAL CENTER—HELPFUL LEGISLATION PROPOSED

Mr. BARTLETT. Mr. President, today I am proud to cosponsor a bill submitted by the farsighted Senator from Hawaii [Mr. INOUYE] which authorizes the establishment of a Pacific Medical Center.

I am most interested in programs designed to help the people of Asia. I have been concerned about our failure to communicate the aims of our way of life to citizens of the Pacific nations.

Because of this concern, I supported President Johnson's proposal made at Johns Hopkins University to participate in a program designed to improve the lot of the poor in southeast Asia.

I welcome suggestions to explore greater trade possibilities with the people of Asia.

In the same spirit, I cosponsor this bill which would help bring the miracles of modern medicine to all the people of the Pacific.

I can think of no better way to tell the story of America, of no surer program to demonstrate our good intentions than by helping other countries improve their health programs and services.

INVESTIGATION OF INVASIONS OF PRIVACY

Mr. LONG of Missouri. Mr. President, in recent weeks, there have been published hundreds of editorials in newspapers in all parts of the country with respect to our investigation of invasions of privacy. Fortunately, most have been favorable.

I have gathered some of the more provocative ones and ask unanimous consent to have them printed at this point in the RECORD.

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

[From the Richmond News Leader, Apr. 28, 1965]

THE GREAT COVERUP

Any definitive list of the country's 10 most frustrated men surely would include the name of EDWARD V. LONG, a Senator from Missouri. For the past many months, as chairman of a Senate committee investigating invasions of privacy, the Senator has been trying assiduously to get information from Federal agencies on what their investigators are up to. And all the Senator has received is the royal runaround.

Mr. LONG did manage to get some limited material from the Post Office Department, about which we have commented earlier. He finally wrung from the Department an admission that certain first-class mail is in fact opened for the Internal Revenue Service, but he failed altogether in his effort to get a list of 24,000 "mail covers" over the past 2 years. (A "mail cover" is a surveillance and a listing of all the mail a person receives, according to return address.)

When the Long committee sent its chief investigator to Boston, in an effort to get information on postal surveillance activities there, "our man was tailed, trailed, and photographed by a squad of Federal agents in that city."

The committee's problems in dealing with the Department of Health, Education, and Welfare have proved more maddening still. Secretary Celebrezze will not even answer the Senator's letters. Lower level bureaucrats are evasive, noncommittal, uncooperative. Last week the Senator wrathfully subpenaed some of the HEW officials to appear before his committee today, but he has little hope of getting much out of them.

There is a constitutional problem in all this, arising from the wise tradition that separates the powers of legislative, executive, and judicial branches of Government; plainly the Post Office Department, the Welfare Department, and other agencies are part of the executive branch. Yet the problem is not as difficult as the bureaucracy insists. The Congress has no power to trespass upon true executive prerogatives, but the Congress surely has power to find out how public appropriations are spent. And if public funds are being spent to invade the privacy of American citizens, as Senator LONG soundly suspects, the Congress has both the right and the power to get the facts.

"If it takes a year, so be it," said Mr. LONG last week. "If it takes 2 years or 3 years, so be it. But one day or the other, this committee will get the information."

We wish him all the luck in the world. When Big Brother is watching the people, some one—preferably the elected Congress—had better keep an eye on Big Brother.

[From the Houston (Tex.) Post, Feb. 22, 1965]

SUPER-SOPHISTICATED SNOOPING

You've heard the joke about the two psychiatrists who met one morning in the elevator. "You're all right, Jack," one greeted the other. "How'm I?"

Maybe it isn't so funny after all, if you consider what came out of the Senate Judiciary Subcommittee hearing last week in Washington on snooping on Government employees and private citizens.

Among the revelations were the bugged martini olive for cocktail party eavesdropping, a cup-shaped listening device that can record your conversation from a block away, a tie clasp monitor that can do everything but read your mind, tiny electronic units to bug home lamps, curtains and draperies, and a unit that signals in Morse code through impulses felt on the skin of the person to whom it is strapped.

Telephone wiretapping is no longer modern, it was agreed, although some of the less sophisticated private eyes still practice it.

Privacy, of course, is something that modern man will have to look for in the dictionary. What with cameras that are made as small as a thimble and microphones the size of a sugar lump.

So move over, Marx Brothers, now that you can't even trust the olive in your martini.

[From the Wilmington (Ohio) News-Journal, Mar. 22, 1965]

CHECKING FOR BUGS

Electronic listening devices have reached a degree of sophistication that makes it comparatively easy and inexpensive to invade the privacy of an individual. This is an early conclusion of a Senate investigating committee.

The committee is looking into the use of electronic snooping devices by governmental agencies. Many of the revelations are startling. A martini can be bugged. A device can be attached to a telephone line and used to monitor conversations in a far-distant room merely by dialing the number of the telephone to which the device is attached.

The investigation will raise controversy. Many of the practices and procedures alleged to be invasions of privacy are stanchly defended by users as necessary for security reasons. Law enforcement officials say the devices aid in crime detection and prevention.

In many cases the snoopers are helpful, but the question of invasion of privacy remains, nevertheless.

The chairman of the committee, Senator EDWARD LONG, says the purpose of the investigation is not to hamper law enforcement, but to see if techniques of surveillance and modern electronics are not beginning seriously to infringe on the privacy of individuals. The findings could show need for Federal regulations.

Today the area of privacy is both a legal desert and a legal jungle. A desert because of the sparsity of law; a jungle because of the conflicting nature of existing laws.

History has proved George Orwell's "Big Brother" is not simple fiction. Americans must safeguard their rights. The committee's investigation should help.

[From the Star, Lincoln, Nebr., Mar. 16, 1965]

PRIVACY A LOST CAUSE?

Considerable concern is expressed now and then in regard to the various ways in which the privacy of the individual is infringed upon. The Post Office Department, of late, has been hard put to defend its practice of peeking on employees and patrons, and its practice of watching the mail of selected individuals.

American industry has had to defend, too, some of its practices aimed at finding out about its employees and even its prospective employees. Many large industries now use a lie detector machine in the interview process, making sure that the company comes to know the most intimate details of an individual's life.

One of the problems with the lie detector is that the company might not know what to do with information it obtains. An applicant may show on the lie detector to have been involved in something unfavorable at some time in his life but the machine can't say much about rehabilitation or the current state of the individual's affairs.

If that situation is discouraging to you, you might be still more upset to learn that even the White House is not safe from bugging devices of various kinds. A New York Times story reports that, despite all precautions, someone still manages now and then to plant a listening device in the White House.

One way of meeting the problem is through a highly amplified wave length system set up throughout the White House. If the President is talking on the phone, he merely turns up the music and the eavesdroppers get a pleasant melody instead of the Chief Executive's conversation. If even the President's privacy cannot be guaranteed, what chance is there for the rest of us?

[From the Pittsburgh (Pa.) Press, Mar. 6, 1965]

THE GOVERNMENT "SNOOPERS"

The Senate subcommittee investigating "snooping" by Government agencies apparently is getting little cooperation from Postmaster General John A. Gronouski.

The committee, headed by Senator EDWARD V. LONG of Missouri, asked for a list of 24,000 persons whose mail has been "under surveillance" in the last 2 years. This is called a "mail cover" and it consists of making a record of mail sent from or to addresses of persons who may or may not be involved in some legal offense.

Mr. Gronouski said he was opposed to giving up this list because it would "seriously violate the civil liberties of many innocent persons."

He used as an example this story:

Two bandits held up a post office. The license plate on the getaway car led to the name of the person to whom the car was registered. A "cover" was put on this person's mail. When a letter was found addressed to this person from the city where the stickup took place the addressee was reached and turned over the letter, which contained some of the loot.

Mr. Gronouski's point is that in this way a crime was solved (the bandits were convicted) and that the addressee had nothing to do with the crime. But if the name were published, the Postmaster General said, he might risk bodily harm from the convicted holdup men.

This seems like pretty murky reasoning. But even granting its validity, Senator LONG didn't ask for the list of 24,000 names to publish it. He asked it for the committee's information. He said he would hold the list confidential so long as this was in the "public interest" as it surely would be in the case recited by Mr. Gronouski.

But the Postmaster General also said in his reply to Senator LONG that in addition to the Post Office Department 21 agencies of the Government, including the Central Intelligence Agency and the Air Force have had hundreds of "mail covers" in effect recently.

A good many "civil liberties of innocent persons" could be involved in such a widespread practice by so many agencies of the Government.

Maybe not, but with this much "snooping" going on, there should be some outside check and review of it. Senator LONG is competent to do this. And Mr. Gronouski seems to have evaded the real issue—not publication of the list, but giving the Long committee a look at it. How else can the committee complete its investigation?

[From the Cincinnati (Ohio) Enquirer, Mar. 7, 1965]

BIG BROTHER MARCHES ON

In the maze of hearings conducted in connection with pending Federal legislation, those of the Administrative Practice and Procedure Subcommittee of the Senate Judiciary Committee should be of particular interest to the general public.

Federal invasion of privacy is the concern, and the hearings have touched on electronic eavesdropping, peepholes, so-called mail covers, censorship, and psychiatric testing.

What is being revealed is that what we once believed were inviolable rights of privacy are now little more than nice-sounding theoretical preachments, while "Big Brother Is Watching You" is more than just a catchy bit of low-grade witticism.

Senator EDWARD V. LONG, Democrat, of Missouri, and Representative ROBERT L. LEGGETT, Democrat, of California, have introduced bills to prohibit the use of mail covers—a system by which all mail received by a firm or person is examined and all information obtainable without actually opening the mail is recorded. The theory behind this form of surveillance (involving 750 individual covers every day, 1,000 every month) is that it would be used when there is good reason to believe it might be instrumental in solving a crime.

Senator LONG argues that in practice, however, "there is absolutely no effort at control."

Peepholing has been publicized recently by several writers looking into the practice of industry as well as the Government checking on employees—in this case, spying in locker rooms and restrooms where concealment of theft might be attempted.

What has proved to be most frightening of all, perhaps, is the extent of the development in electronic eavesdropping.

Readers of some forms of magazines may be aware of snooping devices that can pick up whispered conversations in the next room or other devices that can pick up, and record, normal conversations several blocks away. Minute microphones have been developed that can be hidden in tie clasps, purses, cigarette packages—and even disguised as a martini olive. There are recording devices activated by a telephone ring that can continue to record even after the telephone is hung up.

There is at issue here, we believe, a very basic question of infringement on the public's right to privacy. There can be and have been solid arguments introduced favoring telephone tapping, but it seems to us there is a fine line beyond which individual liberties are violated.

There have been previous investigations, and other limiting bills introduced, but "Big Brother" continues marching.

[From Camden (N.J.) Courier Post, Mar. 5, 1965]

RIGHT TO PRIVACY MUST BE PROTECTED

Snooping is threatening to become a national nuisance, and Senator EDWARD V. LONG, Democrat of Missouri, is properly alarmed.

He heads a Senate subcommittee which is investigating the rising invasion of privacy by official and unofficial eavesdroppers.

Wiretapping may be necessary when it is the only way that the FBI and other police can catch spies and racketeers. But some "refinements" of snooping are alarming.

Wiretapping by private detectives is reportedly on the increase. Peepholes and one-way mirrors are being used in more public and private buildings. "Mail covers" are provided by the Post Office Department to inform Government agencies about what appears on the outside of envelopes addressed to suspects (will the letter be steamed open next?).

And now there is even the possibility that laser light beams will be used to transmit conversations, plus television pictures, over a distance of several blocks to receiving devices.

As the St. Louis Post-Dispatch observes, "unlimited snooping has always been the mark of tyrannies." Yet it seems that we are close to having it today.

At hearings by LONG's committee, electronic eavesdropping equipment was displayed, and the display was truly shocking. One $400 gadget permits its owner to eavesdrop on any room equipped with a telephone that can be dialed direct. The eavesdropper hitches up the device and dials his target. The phone rings and is answered. From then on, even after the phone has been hung up, the eavesdropper can hear every sound in the target room. The device works at any distance, even, as its maker testified, from Hawaii to Washington.

Microphones and transmitters can be made so small and efficient that (as was demonstrated) they can be hidden in the olive in a martini cocktail. That one works even when dunked in gin.

"It is obvious that proliferation of snooping paraphernalia is increasing, placing the constitutional right of privacy of the individual citizen in peril," says LONG. "Modern Americans are so exposed, peered at, inquired about, and spied upon as to be increasingly without privacy—members of a naked society and denizens of a goldfish bowl."

Law enforcement and individual rights of privacy must sometimes be balanced against

each other, and striking the proper balance is not always easy.

But we must try to reach it as nearly as we can. New legislation to control snooping is needed if innocent Americans are to retain their legitimate rights of privacy.

[From the Virginian-Pilot, Norfolk, Va., Apr. 16, 1965]

HOW TO LOSE CONFIDENCE

Section 4057 of title 39 of the United States Code seems pretty unambiguous. It flatly states that only an employee of the dead letter office or a person holding a search warrant may open first-class mail in the custody of the Post Office Department.

Upon the rock of this law we Americans for years have rested secure in a belief in the sanctity of the mails. Now it appears that we have been misled. Basing their action on the supposed authority of the Internal Revenue Service, some postal officials have been seizing first-class mail and turning it over to the tax agency.

Before a subcommittee of the Senate Judiciary Committee, Mr. Harvey H. Hannah, Deputy General Counsel of the Post Office, admitted this week: "We've been doing wrong, no question about it."

No question indeed. Yet only 2 months ago the Nation's top postal inspector had assured the subcommittee that first-class mail was inviolate. "Citizens must have confidence in their mail system," said Henry B. Montague, "or they lose it in other Government institutions." Faced this week with Mr. Montague's earlier assertion, the uncontested fact of seizure of first-class mail, and the firm language of the law barring such action, Post Office and IRS officials pointed to a section of the tax code which does not specifically exempt mail from the kinds of property that the Revenue Service may seize for tax collection purposes.

The chairman of the subcommittee, Senator EDWARD V. LONG, of Missouri, called this "warped and tortuous reasoning." We could not agree more heartily.

The subcommittee received a letter from Postmaster General John A. Gronouski saying seizures for the IRS by his Department had been stopped last August by agreement with the Treasury Department. It is encouraging to know that the Departments involved saw their error before Senator LONG's antisnooping investigation uncovered the practice, but we cannot help thinking back to Mr. Montague's earlier statement. Citizen confidence in Government institutions is essential to our whole political structure, and it is difficult to maintain when prying gumshoes are caught making end runs around the laws they are sworn to uphold.

[From the Independent, Ashland, Ky., Mar. 6, 1965]

CHECKING FOR BUGS

Electronic listening devices have reached a degree of sophistication that makes it comparatively easy and inexpensive to invade the privacy of an individual. This is an early conclusion of a Senate investigating committee.

The committee is looking into the use of electronic snooping devices by governmental agencies. Many of the revelations are startling. A martini can be bugged. A device can be attached to a telephone line and used to monitor conversations in a far distant room merely by dialing the number of the telephone to which the device is attached.

The investigation will raise controversy. Many of the practices and procedures alleged to be invasions of privacy are stanchly defended by users as necessary for security reasons. Law enforcement officials say the devices aid in crime detection and prevention.

In many cases the snoopers are helpful, but the question of invasion of privacy remains, nevertheless.

The chairman of the committee, Senator EDWARD LONG, says the purpose of the investigation is not to hamper law enforcement, but to see if techniques of surveillance and modern electronics are not beginning seriously to infringe on the privacy of individuals. The findings could show need for Federal regulations.

Today the area of privacy is both a legal desert and a legal jungle—a desert because of the sparsity of law; a jungle because of the conflicting nature of existing laws.

History has proved George Orwell's "Big Brother" is not simple fiction. Americans must safeguard their rights. The committee's investigation should help.

[From the Mount Vernon (Ohio) News, Mar. 5, 1965]

BLOW FOR INDIVIDUAL PRIVACY

A Brooklyn judge, Nathan R. Sobel, struck a blow for the right of the individual to enjoy his privacy when he ruled unconstitutional a New York State law which permits electronic eavesdropping by police when it is done under a court order. Justice Sobel held the New York law violates the U.S. Constitution, in which the fourth amendment guarantees a citizen against unreasonable searches and seizures, and which requires a warrant for a search of a home which states what is sought, and who or what is to be seized.

Justice Sobel's decision was handed down in a State court which corresponds to our Ohio court of common pleas, and is subject to review by successively higher courts.

However, his reasoning is on firm ground when he holds an electronic listening device is necessarily indiscriminate, and adds, "Technologically, no electronic device has been discovered which shuts itself off to all social discourse and turns itself on when the conversation turns to criminal acts."

The recent growth of new types of electronic bugging devices is a matter of real concern. A person sitting in an auto can now hear your conversation as you walk along the street a block away. A cruising auto can identify a radio or television program to which you are tuned as it cruises by your home. It's only a matter of time until it can pick up conversations in your home.

The right of privacy in our homes is one of our deepest needs and most valuable freedoms. Our forefathers recognized this when they insisted upon attaching the Bill of Rights to the Constitution.

It is difficult to see where any government representative has a justifiable right to eavesdrop on any conversation in your home. About the only conceivable justification would be a matter of great national peril.

It may be difficult to prevent the manufacture and use of such devices, but we can ban the use of information obtained by such methods as evidence in court. The day may also come when the manufacture or possession of such devices may be declared illegal.

[From the Evansville (Ind.) Courier, Mar. 6, 1965]

UNCLE PEEPING SAM

The Government of the United States does not look well in the role of Peeping Tom. It does not look well when it imposes numerous "mail covers" on a none too discriminating basis. It does not look well when it uses lie detectors without acceptable safeguarding of individual rights. It does not look well when it operates post office peepholes to spy on postal employees.

There may be some justification for these and other Government invasions of privacy. Mail covers, though they are imposed without legislative authorization, may in some instances be a tolerable means of investigating subversive or other criminal activity. Use of the polygraph, or lie detector, may be warranted in some cases if the instrument is operated by experts under proper conditions. Conceivably even the post office peepholes are justifiable as a deterrent to postal theft, even though the secret inspection system reportedly costs far more than the value of items involved in the mail theft thus exposed.

The problem lies in two possibilities—abuse, and against invasions of privacy. When mail covers are common, rather than exceptional; when lie detectors are used indiscriminately; when any other means of prying into the behavior of individuals are used without scrupulous regard for individual rights, there is danger ahead. The trend is one to resist as strongly as possible, for invasion of privacy is characteristic of totalitarian systems. The current investigation by a Senate subcommittee headed by Senator LONG of Missouri is thus of prime importance. Its findings will deserve the most careful attention.

[From the Syracuse Post Standard, Feb. 21, 1965]

SNOOPING MADE EASY

New electronic devices have brought the art of snooping to a point where man's privacy on this planet may soon vanish.

A Senate subcommittee investigating surveillance as practiced by Government agencies must have been startled by a display of witnesses of what these contraptions can do.

The Senators were shown a laser that when perfected will transmit a concentrated beam of light on a room several blocks away, and reflect back a picture of everything happening in the room, including sound.

They saw microphones concealed in a tie clasp, a cigarette package, a picture frame, a cigarette lighter, and even in the olive in a martini.

But the crowning achievement is a gadget that can be attached to a telephone line and be used to monitor a conversation in a room any place direct dialing will reach. Thus a private conversation in Washington could be monitored in Hawaii.

The snooper merely calls the number of the phone to which the device is attached, and then can hear all conversations in the room even though the phone is hung up.

When these devices become generally available electronic surveillance will be something to contend with—that is unless something is developed to render them useless.

What price progress?

[From the Pittsburgh (Pa.) Press, Mar. 1, 1965]

THE MAIL "COVER"

For several years the Post Office Department has been carrying on a special surveillance of the mail it handles—some mail, at least.

Under this practice, called a "cover," the Post Office boys make a record of the origins and postmarks of mail destined for certain persons. The mail is not opened.

Henry B. Montague, Chief Postal Inspector, testified before a Senate subcommittee that the mail cover had provided clues to fraud, capture of fugitives from the law, tax violations, and other crimes.

The Senate committee, headed by Senator EDWARD V. LONG, of Missouri, is investigating all forms of Government snooping which might be regarded as an invasion of privacy. And has demanded the Post Office Department furnish a list of 24,000 names of persons whose mail has been subjected to the cover in the last 2 years.

The Post Office is studying the request. It should accede.

This whole business may be necessary, or at least sometimes useful, but it gives us a creepy feeling. The Post Office Department is a service (which annually runs a deficit) and it should not be used as a pry unless there are unusually valid reasons for it.

Senator LONG has said he would keep this list confidential unless there was some important public reason to the contrary. His judgment can be trusted.

Any time we have an agency of the Government setting itself up as a "censor" or "snoop" there at least ought to be an outside authority checking on it.

Whether the American people want to tolerate this covert business is something they could decide better after the Long committee has examined the whole busybody system and discovered whether it has any merit.

[From the Middlesboro (Ky.) News, Mar. 18, 1965]

SOMETHING OUT OF FOCUS?

A Senate investigating committee has been told that it is now possible for electronic wizards to bug the olive in your martini, so that it records with lethal clarity everything you say.

The olive, you see, contains a teensy microphone. And what looks like a toothpick stuck in the olive is in reality a miniature antenna.

This ingenious bit of supersnooping naturally brings up the question of invasion of privacy. It also brings up a couple of other questions:

First. What's to keep the unwitting martini guzzler from swallowing the olive, microphone and all? (What could happen to him then might be stronger than fiction.)

Second. If a little bitsy microphone with a toothpick antenna can do all that, how come the big television set in the living room, with its long, ungainly rabbit ears, can't bring in a decent picture from a television station only 5 miles away?

Is the viewer supposed to sit there drinking martinis with olives in them hour after hour—just to get a clearer picture?

Or is there something fuzzy about this whole thing?

[From the Middletown (Ohio) Journal, Mar. 3, 1965]

"MAIL COVER" DEBATE

In his testimony before a Senate Judiciary subcommittee probing Government invasion of privacy, Chief Postal Inspector Henry B. Montague, defended the use of the "mail cover" as a law enforcement tool. He denied that any unwarranted invasion of privacy was involved.

This brings to public attention one of the gray areas, neither wholly black nor white, so often found in Government policy and practice. The question is one that ought to be discussed.

The "mail cover" consists in keeping a record of mail received by a given person—the name of the sender, the point of origin, the postmark, the class of mail. There is no doubt that this has its uses in some criminal investigations, and in efforts to keep tabs on subversive activities. This is an argument for continuation of the mail cover as an investigatory tool.

The matter shades from white toward black, though, as one begins to think about possible abuses of this practice. Is the Government entitled to examine the mail of anyone, for example, as a sort of "fishing expedition" to discover possible subversive or criminal connections? We think not. Perhaps it is unfair to suggest that such a thing might be done, but the danger of abuse is clearly present.

Though that is true, the mail cover is at present a relatively minor aspect of the Government's many-faceted intrusions into the private lives of citizens. The investigation being conducted by a subcommittee under the chairmanship of Missouri's Senator EDWARD LONG, is of great importance as part of the continuing fight to safeguard individual freedom in an increasingly Government-centered society.

[From the Salt Lake City (Utah) Tribune, Mar. 7, 1965]

ANTISNOOPER SNOOPER

Science, it's wonderful.

For every kind of fertilizer there's a new power mower. The antimissile is abreast of the missile. There's a sedative for every perk-up pill and so on.

And now there is a little gadget which reveals the presence of any "snooper" gadgets hidden in the room.

At a recent "postgraduate course in the higher sciences of eavesdropping," held on the campus of the University of San Francisco, the usual line of "bugging" equipment was demonstrated. This included telephone tapping transmitters, microphones for listening through walls, amplifiers small enough to carry in a shirt pocket, and transmitters less than 2 inches square. The "bumper beeper," a little transmitter which can be fastened with magnets to the bumper of a car, making it easy to follow, made a mild sensation.

But the star of the show was the device to make other snooping devices useless. "Take a portable receiver into the room and start talking. If you get feedback you know you're bugged," the demonstrator said.

There's the answer to all those harried souls who long ago clammed up, convinced that privacy was a thing of the past. All they have to do is take along a portable receiver, clear the room of all hidden electric snoopers and start talking—at the risk, of course, of having the other fellow tattle.

[From the Rocky Mountain News, Denver, Colo., Mar. 4, 1965]

GRONOUSKI ON MAIL COVERS

Postmaster General Gronouski is holding out on the Senate subcommittee investigating assorted forms of "snooping" by Federal agencies.

The committee, headed by Senator EDWARD V. LONG of Missouri, asked for a list of 24,000 persons whose mail has been "under surveillance" in the last 2 years. This is called a mail cover and it consists of making a record of mail sent from or to addresses of persons who may or may not be involved in some illegal offense.

Gronouski said he was opposed to giving up this list because it would "seriously violate the civil liberties of many innocent persons."

He used as an example this story:

"Two bandits held up a post office. The license plate on the getaway car led to the name of the person with whom the car was registered. A 'cover' was put on this person's mail. When a letter was found addressed to this person from the city where the stickup took place the addressee was reached and turned over the letter, which contained some of the loot."

Gronouski's point is that in this way a crime was solved (the bandits were convicted) and that the addressee had nothing to do with the crime.

But if the name were published, the Postmaster General said, he might risk bodily harm from the convicted holdup men.

This seems like pretty murky reasoning to us. But even granting its validity, Senator LONG didn't ask for the list of 24,000 names to publish it. He asked it for the committee's information.

He said he would hold the list confidential so long as this was in the public interest, as it surely would be in the case recited by Gronouski.

But the Postmaster General also said in his reply to Senator LONG that, in addition to the Post Office Department, 21 agencies of the Government, including the Central Intelligence Agency and the Air Force, have had hundreds of "mail covers" in effect recently.

A good many "civil liberties of innocent persons" could be involved in such a widespread practice by so many agencies of the Government.

Maybe not, but with this much "snooping" going on, there should be some outside check and review of it. Senator LONG is competent to do this. And Gronouski, it seems to us, has evaded the real issue—not publication of the list, but giving the Long committee a look at it. How else can the committee complete its investigation?

[From the Houston (Tex.) Post, Apr. 17, 1965]

IRS MAIL OPENING IS SHOCKING

Disclosure that the Internal Revenue Service, in some cases, has seized sealed, first-class mail without a proper search warrant and opened it before it was delivered to the person to whom it was addressed, in an effort to catch tax dodgers, was nothing less than shocking. It was, in fact, scandalous and should arouse unanimous indignation.

Both the Treasury and the Post Office Departments say that the practice has been discontinued, but there are few Americans who will not agree with Senator EDWARD V. LONG of Missouri, head of the Senate subcommittee checking into governmental snooping, that there should be an ironbound law to prevent this sort of thing if present laws can be interpreted to permit it.

Privacy for the individual citizens is taking a beating these days under the best of circumstances. Even the sanctity of the home is under attack despite the constitutional guarantee against unreasonable search and seizure. The impression has existed, however, that the privacy of first-class mail was inviolate so far as Government is concerned.

The practice of putting mail covers on some individuals has received a great deal of publicity in the course of the subcommittee's investigation. It is a borderline practice, however, since the mail is not actually opened and actually amounts to surveillance, somethink like a police stakeout. Opening of sealed mail, except possibly for purposes of making delivery, falls into the same category as forcible entry into a private residence without a court order.

There is a law on the books that carries a maximum penalty of 5 years in jail and a $2,000 fine for opening first-class mail addressed to another person. If this does not cover all agents of the Government, it certainly should. If the IRS-Post Office agreement does not violate existing statutes, it definitely is in conflict with the constitutional guarantee against unreasonable search and seizure.

The Senate subcommittee has performed an invaluable service to the Nation in bringing the IRS practice to light, even though it is said to have been discontinued.

The Post Office Department should be the first to seek whatever corrective legislation is needed to prevent the practice. It is going to great lengths to try to break even on its operations, but if the public ever loses confidence in the absolute privacy of first-class mail, it will stop using the service to the extent that it can turn to other means for transmitting confidential communications.

In the case of the IRS seizures, it is not that anybody has any sympathy for tax evaders. They should be caught and punished just as the violators of any law should be.

But those entrusted with the responsibility for enforcing the law must stay within the restrictions imposed upon Government for the protection of the rights of the individual, no matter how loudly they complain that it handicaps them in their work and keeps them from doing the most efficient job. This is just as true for the Nation's tax collectors as for other law enforcement officers.

[From the Times-Picayune, New Orleans, La., Mar. 8, 1965]

"SEARCH BY BUG" HELD ILLEGAL

As some predicted, after a study of court decisions which reached a sort of climax in 1961, a trial judge (New York) has ruled electronic eavesdropping unconstitutional per se.

Though his decision might merely have followed U.S. Supreme Court bans on illegal physical trespass—in the "planting" of so-called "bugs"—the judge chose also, and primarily, to apply the fourth and fifth amendments in a basically restrictive sense.

Thus he says that the process represents a search, and conversation overheard or transcribed a seizure thereof. To this premise he applies jurisprudence of long standing relating to search and seizure of tangibles. These interpretations limit the legal products of search to fruits of and instruments used in commission of crime, and to "contraband" unlawful to possess. They exclude mere evidence of guilt, especially if it partakes of self-incrimination.

A "search by bug" invariably represents, he holds, a search for "mere evidence"; furthermore by its nature it cannot be restricted to specific statements which law enforcement desires to be seized, but sweeps up any and all statements, pertinent or otherwise.

This reasoning by analogy and extension is expected to precipitate the Scandefia case, through a long chain of appeals to final decision at Washington. It has become more and more customary that broad issues thus are settled where narrower principles could be invoked. Thus it seems dubious that the act of breaking into an establishment by night to plant a listening device would be condoned as a legal search by the Supreme Court, in light of previous decisions, even though the officers had a warrant to eavesdrop. The New York ruling is that the process can't be used at all, under any circumstances.

To equate illegal trespass with search seems in accord with the fundamental safeguards of the fourth amendment. To equate both a trespass and a nontrespass eavesdrop with search and seizure of tangible things seems more like an exercise in flexible semantics. In trying to erect reasonable and desirable safeguards against abuse of police practice, by statutory means, it may be that some lawmakers and courts have themselves helped wipe out any distinction, by equating conventional search warrants with warrants to eavesdrop.

[From the Trenton (N.J.) Times, Mar. 2, 1965]

VIOLATING PRIVACY

Blameless and upright you may be, honest as the day is long, but your mail could be watched. Deliveries can be delayed while the Post Office Department snoops on the people whom it serves.

Records have been kept on the incoming mail of 24,000 persons. The return address and postmark are recorded, and then the letters are delivered. A Senate committee has called for the names of the addressees.

There could be abuses here. It is called the "mail cover" system, and the postal people say it has been going on for years. Usually surveillance begins when requested by the professionally suspicious agents of any enforcement authority—presumably as an assist to criminal investigation.

Distaste is lent this practice because it seems cut from the same cloth as wiretapping and the recent electronic peeping which is also concerning the Senate. It has the Big Brother taint, a sort of police stakeout on persons who don't know their privacy is being violated.

One need not have committed any crime. He simply may have aroused the suspicion of personnel from any one of a hundred Government agencies—or of law enforcement officials from the Federal or State level down to the local cop. Admittedly it has served at times to help solve crimes, but it was testified that mail covers have been used as a "retaliatory measure" against some who have simply incurred the dislike of bureaucrats.

Some of our cherished safeguards lose something in such practices. Something more than an occasional quizzing by a congressional committee should invite correction of possible abuses of constitutional and other traditional rights.

We would be better served by the Post Office if it explained how far it is involved in these clandestine exercises, and how many of its employees are thus engaged—taken away from their traditional appointed rounds.

[From the San Mateo (Calif.) Times and News Leader, Mar. 6, 1965]

PROBING THE SNOOPERS

A Senate judiciary subcommittee headed by Senator EDWARD LONG is trying hard to look over the shoulder of the Post Office Department. It is not a case of checking on the historic inefficiency of the mail system, but on an entirely extraneous activity—that of snooping.

The committee has been told by the Department that it provides approximately 1,000 mail covers a month on individuals at the request of a great variety of police agencies, from the FBI down to local law enforcement. When such a cover is instituted, post office employees keep track of all mail received, including such information as the sender and the postmarks of origin.

Among the committee's revelations is the fact that the post office forms by way of which such covers are ordered have—in the best tradition of the spy thriller—instructions on them to be destroyed after use. The institution of a mail cover is made without examination of the reasons behind such a request.

The work of the subcommittee is part of a larger effort by Congress to look into snooping activities by Federal agencies, to search out invasions of the privacy of individuals. The material gathered by the committee has shown a vast effort in existence, including a variety of snooping equipment to stagger the imagination of comic book authors.

The subcommittee has encountered some difficulty in obtaining cooperation in its work. The Post Office Department has refused repeated requests for the list of individuals subjected to mail cover in the last 2 years.

The committee owes it to the public to persist both in its demands and in its devotion to the investigation of the entire subject. This effort is particularly essential in relation to a Government agency, such as the Post Office Department, which has a monopoly by law to an indispensable public service. It should serve its customers, not those who wish to snoop into their affairs.

Executive agencies must recognize their responsibility to protect individual rights in the performance of their duties. If they do not, Congress has an equal obligation to examine the facts and, when abuse is discovered, to protect those rights by law.

[From the Philadelphia (Pa.) Inquirer, Feb. 21, 1965]

DON'T TALK INTO THE MARTINI

People who talk into their martinis have always been suspect. But, from now on, they will be living more dangerously than ever: the olive may really be a microphone. Putting a "mickey" in your drink may take on new and more sinister meanings.

This grim overtone to living in the electronic age was developed at a hearing of a Senate subcommittee that is inquiring into wiretapping and other types of snooping by Federal agencies, legitimate or perhaps otherwise.

Before the meeting was over, the Senators had been thoroughly "bugged" by a variety of devices introduced by private eyes, manufacturers of listening-in-devices and other experts. The chairman, Senator EDWARD V. LONG of Missouri, found himself talking into a hidden tape recorder through a red rose harbored in a vase on his desk. In addition to the martini that can listen—with a toothpick serving as the antenna—there was produced a device that can put the tap on telephone conversations and other even after the phone is hung up.

Counterbug equipment is also available, but the best defense against electronic eavesdroppers, the committee was told is: Turn up the TV set loud; step into the shower with the water running; hold conversations in the subway. Or don't talk: your martini may be listening.

CAPT. EUGENE R. FOWLER

Mr. BAYH. Mr. President, I would like the Senate to turn its attention for 1 moment to a fellow townsman of mine, Capt. Eugene R. Fowler, of the U.S. Army Reserve.

It seems appropriate to mention Captain Fowler today because the Senate is about to approve a supplemental appropriation of $700 million to enable us to continue the U.S. presence in Vietnam in defense of freedom.

On this same day, at 10 a.m., Captain Fowler was laid to rest in Arlington Cemetery. The caisson which carried his casket to its final resting place was the same caisson used to bear the casket of our martyred President, John Fitzgerald Kennedy. Captain Fowler's grave is located 150 yards down the slope from the grave of America's 35th President.

Gene Fowler, of Terre Haute, Ind., was the first Hoosier killed in Vietnam to be buried at Arlington. He is the fourth son of Indiana to give his life for his country in Vietnam.

Last March 16, Captain Fowler celebrated his 34th birthday. He had been a member of the U.S. Army Reserve for more than 14 years. In September of last year he was assigned to Vietnam as an assistant sector adviser in the Phouc Binh Thanh special zone. On April 25, while accompanying an Army of Vietnam force on a combat mission, Captain Fowler stepped on a land mine. He died of wounds 2 days later. He was an expert pistol shot and held the expert carbine badge. He was awarded the Armed Forces Reserve Medal, the Army of Occupation Medal for Germany, the Armed Forces Expeditionary Medal for Vietnam.

Gene Fowler had much to live for. He had a lovely wife and two fine children—"Genie," 9 years old, and Stephen, 5 years old. Yet, he gave his life in the effort of his Nation to contain Communist advances in southeast Asia.

Mrs. Fowler decided to remain in Washington for a day after the funeral. She told Army officials that she wants her children to see the White House and the Capitol and other symbols of the country for which their father died.

I think I speak for all my colleagues when I say for Captain Fowler and his gallant comrades from all our States:

They shall grow not old, as we that are left grow old;
Age shall not weary them, nor the years condemn.
At the going down of the sun and in the morning
We will remember them.

POLITICAL CLIMATE IN THE DOMINICAN REPUBLIC

Mr. MONRONEY. Mr. President, the perplexing, complex problems which the United States must deal with in the Dominican Republic have been brewing for a long time. They obviously will not yield to quick or easy solutions. I do not believe the American people expect them to be quickly or easily solved.

It is equally apparent, I believe, that an overwhelming majority of our people have confidence in President Johnson's handling of this most difficult situation.

The historic vote today by the Organization of American States suggests that our confidence in the President's acumen and courage is shared by most Americans, north and south.

The OAS commitment proves once again that we are on the side of the angels. This Nation has the most potent, the most formidable military force in all history, yet since we have achieved this tremendous power we have never imposed military force for selfish purposes, for territorial expansion or to limit the rights of other nations for self-determination in free elections. The record of the United States speaks far more eloquently than the strident and shrill promises of the Communist conspirators who have deviously sought to infiltrate liberal and democratic movements throughout the world.

Perhaps we have seen today in the action by the OAS a signpost of maturity, of significant progress in the development of international law and order in this troubled world. I take this means of saluting President Johnson and those dedicated and conscientious advisers who have helped him bring this vexatious problem to such a promising point.

An editorial in last Friday's Chicago Sun-Times provided an interesting insight into the President's perspective on this matter. The editorial reminded us that the President, in February of 1963, got a firsthand look at the rough and tumble internal politics of that nation.

This editorial offers background information that will be helpful to Members of the Senate.

I ask unanimous consent that it be printed in the RECORD at this point.

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

[From the Chicago (Ill.) Sun-Times, Apr. 30, 1965]

TWOFOLD ACTION

President Johnson knows through personal knowledge how volatile and dangerous the political climate can be in the Dominican Republic. As Vice President, Mr. Johnson attended the inauguration of Juan Bosch as President of the Dominican Republic on February 27, 1963. The inaugural parade was attacked by a mob of pro-Communist demonstrators. Mr. Johnson was hustled from the parade stand by security police and into the protection of a nearby building.

The President took swift action on Wednesday when the Dominican Government admitted it could not guarantee the safety of American citizens in the current revolt. He ordered U.S. marines landed as a protective force and offered the umbrella of that military protection to the citizens of other nations.

The Dominican Republic is still in the throes of trying to recover from more than 30 years of brutal and bloody dictatorship under Generalissimo Rafael Trujillo. Juan Bosch, the first President elected in that sad nation in 38 years, was backed by the United States. Bosch lasted less than 7 months as President before being overthrown and his government dissolved by the rightwing army on charges that he had not made good on promises, that he was soft on communism and that his proposed constitutional reforms were more socialist than democratic.

The current revolt, mounted by some officers in the army, has apparently been beaten back by the air force and navy, led by the officers that overthrew Bosch.

President Johnson's decision to provide protection for U.S. citizens has been criticized by the Organization of American States. While admitting the situation is serious and something must be done, the OAS said the United States did not have the right to act without first consulting them.

This sensitivity can be recognized. But safety for U.S. citizens comes first. If the landing of the marines (who were fired on yesterday, shortly after going ashore) also helps to stabilize the situation on behalf of the recognized government both the Dominican Republic—which needs time to recover from the evils of dictatorship—and the OAS itself will have benefited.

TRIBUTE TO WALTER BURKE

Mr. NELSON. Mr. President, it has been my privilege for many years to have as my constituent and friend Hon. Walter Burke, newly elected secretary-treasurer of the United Steelworkers of America. Mr. Burke, in his new position, will move from his home in Milwaukee, Wis., to Pittsburgh. Commenting on the loss to Milwaukee, the Milwaukee Journal on May 3 editorialized concerning Walter.

I ask unanimous consent that the Milwaukee Journal editorial be printed in the CONGRESSIONAL RECORD.

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

WALTER BURKE DEPARTS

In the 17 years that he has directed steelworkers' union activities in Wisconsin, Walter J. Burke has been a credit to his union and the labor movement.

Those who have watched his work on the coordinating committee for higher education, the legislature's "committee of 25," the blue ribbon tax committee and other public groups will long remember his quiet efficiency and careful regard for the total public interest. The esteem he commands within his union is amply demonstrated by the size of the vote he received for the post of secretary-treasurer.

That victory means that he will now move on to union headquarters in Pittsburgh. His departure will be regretted by those in the city and State who know of his many helpful public services.

SUMMARY OF MEDICARE TESTIMONY, MAY 6

Mr. HARTKE. Mr. President, as a sequel to the summary of testimony heard before the Finance Committee on Tuesday and Wednesday, which I introduced into the RECORD yesterday, I offer a further summary of the highlights presented by witnesses at today's hearings. While it is, of course, impossible to do more than point out highlights, I believe this unofficial summary by my staff is nevertheless a useful effort to bring out the major points as made by the various witnesses.

I request unanimous consent that this summary may appear in the CONGRESSIONAL RECORD.

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

TESTIMONY OF MAY 6, 1965

NATIONAL ASSOCIATION OF BLUE SHIELD PLANS

Dr. Russell B. Carson, Fort Lauderdale, Fla., chairman of the board. Represents 85 Blue Shield plans, covering 56 million people.

1. Voluntary supplemental benefits program should include a choice instead of a single pattern "virtually identical to the Governmentwide indemnity program" for Federal employees.

2. Choice should include opportunity to continue present prepayment health insurance patterns. Five million over 65 are now covered by Blue Shield, which has a "relatively uncomplicated program." The present bill will be confusing to many elderly, complicated in administration.

3. Blue Shield is "the most expert, efficient, and personal subscriber service organization in its field." It desires to make a maximum contribution, and "would expect to do so on a nationwide scale." Objects to narrower regional or geographic basis; proposes uniform national service and transferability of coverage.

4. Specifically, Blue Shield urges amendment to provide: (1) A nationwide service benefit plan, contracting with physicians and other health service providers; (2) an indemnity benefit plan, providing cash payment not exceeding actual expenses; (3) comprehensive medical plans, including (*a*) group practice prepayment plans and (*b*) individual practice prepayment plans.

5. Blue Shield would offer its services as a carrier under the service benefit plan option, including (1) basic surgical-medical benefits, with no deductible: surgical care, emergency first aid, in-hospital medical care, anesthesia, radiation therapy, in-hospital diagnostic X-ray, laboratory, pathology, and physiatry services; (2) extended and other medical health services, subject to annual deductible of $100 and 20 percent copayment, including: out-of-hospital diagnostic X-ray and laboratory, home and office calls and consultation, home health services, ambulance service, prosthetic devices, braces, artificial limbs and eyes, rental of medical equipment (iron lung, etc., psychiatric services (60 days in-hospital, $312.50 annual maximum outpatient).

6. These services would be offered "within the financing specified in H.R. 6675 for the voluntary supplementary program."

NATIONAL ASSOCIATION OF LIFE UNDERWRITERS

Raymond E. King, Jr., Charlotte, N.C., member NALU board, chairman of its committee on social security. Trade association, 50 States, 855 local life underwriter associations, membership 90,000, most selling health as well as life insurance.

1. Favors Government-financed health care for "aged people who are actually in need." "Vigorously opposed" to a system taxing younger workers and employers.

2. Objects to use of new payroll tax on current earnings for benefit of those who have not paid this tax; also, "general revenue financing * * * an unwholesome and even dangerous departure" from the payroll financing concept.

3. Association is "if anything, even more opposed to the supplementary program" than to the basic program, because it (a) will virtually eliminate private health insurance business among the aged; (b) is derived from general revenues; (c) is voluntary, violates previous workable compulsory concept. The financially better off would tend to enroll, lower income group stay out.

4. Liberalized disability payments (to those disabled 6 months) is unsound. Result will be situations providing more take-home income than while working, deterring rehabilitation, and encouraging incidence and duration of claims.

AMERICAN ASSOCIATION OF MEDICAL CLINICS

Dr. Edward P. Jordan, executive director, Charlottesville, Va. Voluntary medical society, 160 private medical clinics in 38 States and District of Columbia, with 18 percent of members owning or controlling their own hospitals.

1. Opposes confining of outpatient diagnostic services to hospitals; recommends transfer of section 1861(p) to section 1832. This would put diagnostic and therapeutic services in the same category; diagnosis and treatment cannot well be separated, as in the case of a broken leg.

2. Favors present deletion of services by doctors in anesthesiology, radiology, etc.

3. Provision should be made for entry into an "extended care facility" without the bill's requirement of prior hospital stay.

4. "Spell of illness" should be better defined. Clarification is needed in other specific points, such as section 1812(f) and section 1813(a)(1).

AMERICAN DENTAL ASSOCIATION

Dr. I. Lawrence Kerr, private practice, Endicott, N.Y., and member, council on legislation of the association.

1. Opposes the principle of providing care without regard to need, involved in both the hospital and medical plans. The medical plan will help least those in greatest need, who will be least likely to join, and conversely.

2. The need is declining, the present system serving increasingly well. This is "a permanent solution for a problem that very probably is temporary." "Both (hospital and medical) plans should be eliminated from the bill."

3. Dental care for dependent children under the medical assistance program, as recommended by the President, should be included.

4. Oral surgery performed in a hospital is covered only if done by an M.D. or D.O. Dentists should be included.

5. The ADA opposes reimposing the 3-percent medical and dental expense deductibility for taxpayers over 65 (sec. 106).

COMMUNITY COUNCIL OF GREATER NEW YORK, INC.

Dr. Samuel Standard, surgeon, speaking for the "central coordinating body for welfare and health services in New York City."

1. "Endorses all three portions of this bill."

2. Endorses restoration of hospital specialists' services in anesthesiology, radiology, etc. Otherwise you have "hotel care, not hospital care."

3. "We regret the deductible provisions," especially as to diagnostic services, often delayed because of this initial cost to patient.

4. Sees need for "a mechanism with authority to establish standards of professional competence as well as facilities." National Medical Review Committee should be extended to State levels.

5. Endorses improvement and extension of Kerr-Mills program to other groups, especially children.

LIBERTY LOBBY

W. B. Hicks, Jr., Washington, executive secretary. "Liberty Lobby represents over 130,000 Americans."

1. Opposes the bill as "a threat to the future of the Nation," irrevocable.

2. Adovcates a measure such as Congressman FRANK BOW's bill in the 88th Congress (H.R. 21), with insurance in private hands unconnected with the social security program.

DR. JACK SCHREIBER

"Family physician," Canfield, Ohio. "I speak entirely for myself."

Opposes the bill. Voluntary effort, responsibility, is American tradition. "Medicare" would "shift this personal responsibility directly to the Federal Government." "The real issue * * * is philosophical."

TALKING OUT OF TURN

Mr. HARTKE. Mr. President, the postponement of Indian Prime Minister Shastri's visit to the United States raised some eyebrows around the world. Our President's decision, many said, was harsh and would lead to severely strained relations with India.

Putting this incident into its proper perspective, however, results in the conclusion that the Prime Minister brought the postponement upon himself with an irrational show of international bad manners. Michael Padev, foreign editor of the Indianapolis Star, sees this situation clearly in a recent column.

I ask, Mr. President, that the text of Mr. Padev's 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:

[From the Indianapolis (Ind.) Star, Apr. 25, 1965]

INDIA'S PREMIER TACTLESS IN CRITICIZING U.S. POLICY

(By Michael Padev)

WASHINGTON.—"You are angry—you must be wrong."

This ancient proverb, said to have originated in China, comes to my mind as I read the furious outbursts of the Indian press against the United States and President Johnson. The Indian Prime Minister, Lal Shastri, has also let it be known that he feels nothing but "growing anger" toward L.B.J. Shastri says he won't come to the United States this year even if invited, and that "it will be a long time" before the "damage" to United States-Indian relations is repaired. The impression is given that this "damage" to United States-Indian relations has been caused by President Johnson and nobody else.

Why? Because President Johnson last week postponed, rather abruptly, the official visit which Prime Minister Shastri was about to pay to Washington. Nobody in India seems to be asking the question, what was the real reason for the postponement of this visit, or whether or not Shastri had anything to do with it.

HE TALKS OUT OF TURN

The truth is that Shastri made the visit impossible himself. In the last few weeks and on many public occasions Shastri has openly critized U.S. policy in Vietnam. In particular he insisted that the U.S. bombing raids on Communist targets in North Vietnam should be stopped immediately—to create an "atmosphere of peace."

But why shouldn't we allow foreign critics of our policies to visit Washington?

We should, of course, otherwise Washington would be a very dull place indeed. We should always be ready to listen—and listen carefully—to foreign critics of our policies. But there is a world of difference between friendly constructive criticism and a public "stab in the back" at a particularly difficult stage of the war in Vietnam.

U.S. HOLDS FORT FOR DECADE

Prime Minister Shastri should have presented all his critical points personally and privately to President Johnson. He had no business in making public speeches asking that U.S. bombing raids should be stopped. The United States has been holding the fort in Vietnam for 10 years—and this has been done at the request of a friendly Asian government.

India hasn't helped much in this difficult U.S. endeavor, and that's India's business. But as India pretends to be a friend and depends for economic assistance and military protection entirely upon the United States, she has the duty to observe a certain international decency and not kick us in the teeth, publicly, at every opportunity.

NEUTRALISTS SHOW ARROGANCE

It is, of course, true that we are at least partly to blame for this strange Indian attitude. For some 20 years now we have bent ourselves backward to be nice to all and sundry and to be especially generous to arrogant neutralists who love our money and hate our policies.

India, in particular, whose economic solvency and military protection depend wholly on the United States, has proved very tactless and even cruel in denouncing basic U.S. foreign policy positions at very critical moments. And the United States has never protested or complained.

Mr. Johnson's postponement of Prime Minister Shastri's visit tends to introduce a certain sense or proportion in United States-India relations. That's why it is a most welcome and encouraging development. It is bound to benefit the United States and, eventually, India as well.

DEATH OF FORMER SENATOR OREN E. LONG OF HAWAII

Mr. FONG. Mr. President, today, the Nation, and my State in particular, mourn the loss of an outstanding adopted son of Hawaii—one whom I am proud to call a friend and one with whom it was my privilege to serve in this body as the first U.S. Senators of the 50th and newest State in the Union—our former colleague Oren E. Long, now at rest following a lifetime of dedicated public service.

When he retired from the Senate in 1963, Oren Long had spent 45 years in the service of his fellow man—as an educator, as a Government administrator, and as a legislator in both the Territory of Hawaii Senate and the U.S. Senate.

Though he retired from the Senate in 1963, Oren Long did not retire from public life. He continued to serve this Nation and the State of Hawaii as a member of the U.S. South Pacific Commission and also as chairman of the Hawaii Higher Education Facilities Committee, which was created to administer the Federal Higher Education Facilities Construction Act.

Not only Hawaii, but also our entire country is poorer because of the passing of this fine, outstanding citizen, who was an untiring force for good government and the brotherhood of man.

Nearly 6 years ago, on August 24, 1959, Oren Long and I, side by side, took the oath of office as U.S. Senators—the first Senators from the new State of Hawaii.

We shared the deep thrill of that moment which brought the fact of statehood home to both of us. The dream of statehood that the people of Hawaii had nurtured for more than half a century, and for which Oren and I and so many citizens of Hawaii had labored so long, had at last come true.

I know Oren Long shared with me a deep sense of humility along with a great awareness of our responsibility to serve our State and our country to the best of our ability.

Until his term ended in January 1963, Oren Long and I worked hand in hand on many pressing matters involving the new State of Hawaii. Together we served on the Interior and Insular Affairs Committee, where we devoted hours upon end to the exacting task of devising legislation amending 54 sections of Federal laws to effect Hawaii's transition from territory to State. We served together also on the Public Works Committee, where we were able to have Hawaii included in the provisions of the Defense Highway Act and to obtain approval of many needed projects for Hawaii.

Together we labored to persuade Congress to establish in Hawaii a Center of Cultural and Technical Interchange Between East and West. With the help of many friends in Congress, we were successful in 1960. The East-West Center was promptly built and it is already making significant contributions to mutual understanding among peoples of the Asia and Pacific region.

Success also crowned our cooperative efforts to obtain funds for the University of Hawaii in lieu of a land grant under the Morrill Act so as to strengthen higher education for young people from the islands and from out-of-State.

Oren Long and I joined forces to obtain authorization and funds for a breakwater to protect the city of Hilo on our largest island, Hawaii, from tidal waves which, in two devastating strikes, killed more than 220 persons. Again, with the help of our sympathetic colleagues in Congress, we were successful.

We both pressed for an irrigation project on the island of Molokai to turn desert land into fertile fields in the hope that some day Molokai might become the breadbasket of our State, which now is forced to import two-thirds of the food we consume.

These are only a few of our many cooperative endeavors in behalf of our State. Although we belonged to different political parties, I am happy to report that no thought of petty partisanship interferred when the serious affairs of our State were at stake.

That we attained such a fine working relationship attests in large measure to the serene and unimpeachable integrity of Oren Long and to his mellow wisdom and perspective born of his wide experience.

An educator by profession, Oren Long rose through the ranks of his chosen field after receiving his bachelor of arts degree from Johnson College, Tenn.; his master's degree in English and American history at the University of Michigan in 1916; and his master's degree in administration from Columbia University in 1922. While working on his advanced degrees, he was a high school teacher and, in due time, became principal.

During these years of education and training, Oren Long showed discerning judgment by marrying Miss Geneva Rule, of Knoxville, a capable teacher in her own right, who has been a never-failing source of encouragement and inspiration to him throughout his career. On their wedding day, Oren and Geneva Long departed for the Territory of Hawaii, little realizing that someday Hawaii would be a State and that Oren would be chosen by its people to represent them in Congress.

Since 1917, Oren Long has served in a number of posts. He was deputy superintendent of public instruction for the islands from 1925 to 1934 and then was named superintendent of public instruction, in which post he served with great distinction until 1946, when the President appointed him Secretary of Hawaii.

In 1951, President Truman selected Oren Long to be Governor of Hawaii. At that time, I was serving as speaker of Hawaii's house of representatives. I was privileged to work closely with Oren Long in the affairs of our territory for about 2 years until February 1953 when a change of administration in Washington resulted in a new Governor for Hawaii.

On leaving the governorship, Oren Long engaged in an active campaign for statehood for Hawaii, serving as member and vice chairman of the Statehood Commission from 1954 to 1956.

In the latter year, Oren ran for elective office and won a seat in the territorial senate, in which he served until 1959. On July 28, 1959, Oren Long was elected a U.S. Senator.

An adopted son of Hawaii, Oren Long endeared himself to the native-born sons and daughters of the islands. Countless numbers of our children are better educated because of Oren Long's sound and enlightened leadership of our school system. They are also better citizens because of Oren Long and his belief that, "understanding and tolerance and a willingness to work together do not constitute an ideal, but rather, a necessity."

Kansas born, Oren Long also earned the gratitude of the people for Hawaii for his efficient administration as Governor, his record of steady progress, and his constant efforts toward full statehood for us. As the Honolulu Advertiser, one of the Hawaii fine daily newspapers, stated in an editorial:

> His guiding light has been a deep sense of history and an abiding faith in the essential wisdom of an informed electorate.

Another fine daily newspaper in Hawaii, the Honolulu Star-Bulletin, accurately observed:

> Senator Long carries with him into retirement the respect and affection of his friends on both sides of the political aisle.

A measure of the widespread esteem for Oren Long is the action of the Hawaii House of Representatives in 1962 when it adopted a resolution offering felicitations to him on his 73d birthday.

On his 75th birthday on March 4, 1964, friends honored Oren Long at a banquet attended by thousands at the Hilton Hawaiian Village.

It is not ability alone that endeared Oren Long to Hawaii. He won a permanent place in our hearts with his pleasing personal attributes, his gentle, kindly manner, his exemplary life, his quiet perseverance—which qualities proved to be so effective. A veteran of the political arena, he showed none of the scars or bitterness of battle. He remained constantly good natured and affable. He was indeed a credit to Hawaii, to Congress, and to all America.

All Hawaii mourns his passing. My wife Ellyn and I express our heartfelt condolences and deepest sympathy to his bereaved wife and companion, Geneva, and to other members of his family.

Mr. FONG. I yield now to my colleague from Hawaii [Mr. INOUYE].

Mr. INOUYE. Mr. President, tomorrow, I am taking a sad journey to Hawaii to pay my last respects to Hawaii's first Senator, and Hawaii's most distinguished public servant, the Honorable Oren E. Long, who passed away today.

Senator Long was truly Hawaii's first citizen. Pages in his life's history cover nearly five decades of dedicated, unselfish, and honest public service. He served Hawaii's people first as a social worker, then as a school teacher, a school principal, the director of public welfare, the superintendent of public instruction, the secretary of the Territory of Hawaii, the Governor of the Territory of Hawaii, and as a member of the territorial legislature. In 1959, the people of Hawaii, in appreciation of his great public service and in recognition of his immense store of talent and integrity, elected him as one of our first U.S. Senators to serve the new State of Hawaii.

Hawaii will long remember Oren E. Long. Today is a sad day for all of us in Hawaii. Hawaii has lost a kindly gentleman. Hawaii has lost a leader, and I think all of us have lost a great friend of whom Lawrence Fuchs has written in his book, "Hawaii Pono":

> He supported * * * and favored progressive legislation to improve the health, welfare, and education of Hawaii's people * * *. He neither patronized nor disparaged any of Hawaii's racial groups * * *. He worked behind the scenes to further Hawaii's educational system, supporting such dynamic teachers as Miles Cary and visiting parent-teacher groups throughout the islands * * *. In many of his appointments * * * and in

his legislative proposals, he revealed his lifelong interest in extending opportunity to the underdog.

We shall all miss this good and gallant gentleman.

Mr. CARLSON. Mr. President, will the Senator from Hawaii yield?

Mr. FONG. I yield now to the Senator from Kansas.

Mr. CARLSON. Mr. President, Oren Long was born in Kansas. He spent his early years and received his education in our State. He still has many acquaintances and ties with friends remaining in Kansas.

Oren Long had a sweet character, and he was a person one enjoyed being with. Mrs. Carlson and I enjoyed his being in the U.S. Senate.

I shall always remember the interesting comment of a Kansan who went out to the Hawaiian Islands and received the privilege of serving as Governor and later a U.S. Senator. He remarked on one occasion that as an educator he started educating young people from their youth and kept an interest in them through college, and he knew practically all of them by their first names.

He was a great educator and a great Senator and a great person. Mrs. Carlson and I wish to express to Mrs. Long our deepest sorrow.

Mr. BARTLETT. Mr. President, will the Senator from Hawaii yield?

Mr. FONG. I yield to the Senator from Alaska.

Mr. BARTLETT. Mr. President, I grieve at the loss of Oren Long. He was a kind man. He was a gentle man. He was an effective man. He did a great deal for the State and the Nation which he served. He had many friends. He was an educator. He loved people. He did many good things for the Territory and the State of Hawaii, and the people honored him in recognition of his work for them. He had a distinguished career in the islands, the paradise of the Pacific, and he had a distinguished career in the U.S. Senate.

He was a wonderful friend. Mrs. Bartlett and I treasured the friendship of Senator Long and his wife. Our deepest sympathy goes out to her.

Mr. HOLLAND. Mr. President, will the Senator from Hawaii yield?

Mr. FONG. I yield now to the Senator from Florida.

Mr. HOLLAND. I thank the Senator for yielding.

Mr. President, my acquaintance with the late Governor and Senator Oren Long began when he came to the Senate and to the Congress as a member, or perhaps as chairman, of the committee which was sponsoring statehood for Hawaii, our 50th State. I remember having numerous conferences with him. He learned early in his stay here that I favored statehood for Hawaii.

I remember that he threw himself with all possible vigor into that campaign. He used to sit in one of the seats in the gallery that look down on the Senate floor. I remember looking up and seeing him peering with his scholarly face over the edge of the balustrade, wondering, I suppose, whether he was going to be able to succeed in the effort which he and his predecessors were making which ended in statehood for Hawaii.

He was one of the gentlest, most gracious, most likable persons I ever met. He always carried with him the demeanor of a schoolmaster, but not in any disagreeable way. He was always kind and friendly to those with whom he came in contact. He served with distinction as one of the first two Senators from Hawaii, along with my friend the present senior Senator from Hawaii.

I am deeply saddened to hear of his death today. Mrs. Holland and I extend our warm sympathy to Mrs. Long.

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

Mr. FONG. I yield now to the Senator from Idaho.

Mr. CHURCH. Mr. President, I wish, first of all, to express my sense of loss and sorrow at hearing the news of the passing of Oren Long, who was a man of many faceted accomplishments. His life was one in which a man could take just pride.

Through his years he was a teacher, an administrator, a public servant, and through it all a kindly and considerate gentleman.

I first met Oren Long in 1947 when, as a college student, I had an opportunity to travel to Hawaii to debate the question of statehood. From that moment onward, he was a friend.

When the opportunity again came in later years to renew the friendship, after he had come to the U.S. Senate as one of the first Senators to represent the 50th State of Hawaii, he had added many laurels to his long list of accomplishments. He had served as Governor. He had been one of the principal architects in bringing about the successful enactment of the statehood bill.

Finally, he had come, in just reward, to Washington as a U.S. Senator.

It is said that Thomas Jefferson, when asked about an epitaph, thought of three of his greatest accomplishments, the first being that of the founder of the University of Virginia, the second being that of author of the Declaration of Independence, and the third being that of serving as President of the United States.

When I think of the life of Oren Long, it seems to me that perhaps his service in the field of public education and his long association with young people might have been regarded, in his own estimate, as the service that was most rewarding of all.

He was a great citizen and a noble public servant.

I am deeply grieved to learn of his passing. My wife, Bethine, and I extend to his widow our deepest sympathy.

Mr. THURMOND. Mr. President, will the Senator from Hawaii yield to me?

Mr. FONG. I yield now to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I was indeed sorry to learn of the passing of former U.S. Senator Oren Long, of Hawaii. I had the pleasure of serving in the Senate with Senator Long. I found him to be a man of the most exemplary character, high principles, and integrity.

He will be missed by all.

He was a member of our Wednesday morning breakfast prayer group. I looked forward to seeing him there. He was present almost every Wednesday.

He stood for principles which I think could well be emulated by young people throughout the land.

Senator Long was not only an educator, but he set an example for all the people of our country.

I am indeed sorry to learn of his passing, and extend to Mrs. Long my deepest sympathy.

Mr. FONG. Mr. President, again I wish to say that the Nation and Hawaii have lost a great citizen.

I thank my distinguished colleagues for their fine tributes to the late Oren E. Long. I know that Mrs. Long and all Hawaii will appreciate very much the appropriate, excellent, and gracious remarks which were spoken on the floor of the Senate today.

VOTING RIGHTS ACT OF 1965

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

Mr. EASTLAND. Mr. President——

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. MANSFIELD. Mr. President, will the Senator from Mississippi yield, without losing his right to the floor?

Mr. EASTLAND. I am happy to yield.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanmious consent that the Journal be considered as read.

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

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

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

VOTING RIGHTS ACT OF 1965

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

Mr. EASTLAND. Mr. President, this bill reduces the Southern States to the status of second-class statehood by depriving them of their right to set voting qualifications; by denying them access to their local courts; by giving the Attorney General veto power over their legislative acts; by transferring the administration of voting registration from their duly elected county officials to politically appointed Federal registrars; by allowing Federal poll watchers to interfere with the orderly conduct of their elections; and by preventing the certification of their election returns pending determination of federally instituted election contests. This bill is the worst kind of tyranny. This bill and the civil

rights bill passed last year are the most far-reaching acts in the history of this country. These bills are designed to destroy the culture and the civilization of a great people. They are designed to hamper, hamstring, and destroy the right to a job, to those best qualified, and to hamper and destroy the operation of business and commerce and the ownership of property. There has never been a step which goes further toward the destruction of this country than this voting rights bill.

The people in the States and counties involved will become second-rate citizens. Deprived of the control of their institutions—deprived of the rights to which every American citizen is entitled—deprived of the protection of their Constitution. This bill is a vicious, punitive measure aimed at the destruction of southern people because southern people have stood foursquare and resolute in defense of their country, their Government, and the principles which built the United States and made her the greatest country upon which the sun ever shone.

Mr. President, some say the bill furthers democracy. The cold facts are that we are watching the sun set on human liberty and individual freedom in this country.

Mr. President, I am wholly and completely opposed to the enactment of S. 1564 in its entirety or in any single one of its parts. In the long history of the Senate, I do not believe any one piece of legislation has been introduced that had more unconstitutional features encompassed in 18-odd pages of print than does this presently proposed legislation.

The new amendment in the nature of a substitute, offered jointly by the distinguished majority and minority leaders, does little or nothing to make this proposed legislation more acceptable or more in line with the Constitution. It does, however, recognize the fact that the abolition of the poll tax as a prerequisite to voting in State or local elections should not be attempted by congressional act, and the new language leaves open this question for judicial determination. By and large, the new substitute adds to the confusion and complication that surrounds the bill.

Pursuant to the order of the Senate, agreed to March 18, 1965, S. 1564, with amendments in the nature of a substitute, was reported close to midnight on April 9, without recommendation. The short and terse language of the report wholly and completely fails to inform this body of the absolute impossibility of performing the statutory function of a congressional committee when the committee is forced to operate under instructions that require action in a shorter period of time than is humanly possible to perform the assigned task. As previously stated on the floor, both by proponents and opponents of the bill, S. 1564 in the language in which it was introduced is an intricate and complicated bill. In a sense it plows new ground—ground involving grave constitutional questions that have never before been considered by the Congress of the United States. It was cosponsored by 66 Senators and, with deference to my colleagues, I seriously doubt whether a handful of them had even read completely the language of the proposed legislation, much less attempted to digest and understand it, at the time it was introduced. Yet, without fully realizing the content, it was arbitrarily referred on March 18 to the Judiciary Committee, with orders to report back to the Senate on or before April 9.

Let me add that the President of the United States had promised to send forward to Congress civil rights legislation for many weeks before a bill was received. On the day that he appeared to deliver a joint message to the Congress, the text of the bill had not been prepared or agreed upon. The evidence is clear that this was due to the difficulty in attempting to surmount the constitutional barriers that were inherent in an effort to transgress on the reserved rights of the States and the people in areas where no delegation of power had been given by the Constitution to the Federal Government.

As I recall the testimony of the Attorney General, the final draft of what became S. 1564 was completed and agreed upon only 15 minutes before it was rushed to Capitol Hill and introduced in the House of Representatives as H.R. 6400. That date was March 16, and the House Committee on the Judiciary immediately scheduled hearings which commenced the day following. The House committee has conscientiously met and considered the bill, but it is still before the committee, and there is no present indication as to when it will be reported to the House of Representatives.

The Senate Judiciary Committee, operating under the mandate of the Senate, conducted public hearings on March 23, 24, 25, 29, 30, and 31 and April 1, 2, and 5. These were not bobtailed sessions. Every hearing started early in the morning and continued into the late afternoon. The testimony taken and exhibits offered now appear in 2 volumes containing over 1,500 pages of fine printed matter. However, it was utterly impossible for the committee to hear but a fraction of the witnesses, or obtain but a small portion of the evidence that would have been necessary to thoroughly understand the terms and implications of the bill. Only the Attorney General of the United States, the Director of the Bureau of the Census, and the Chairman of the Civil Services Commission, all of whom have delegated functions to perform under the terms of the proposed legislation, appeared on behalf of the proponents. The only public witnesses heard in opposition to S. 1564 were representatives of five of the six States which the Attorney General says are included within the terms of the proposed legislation. The bobtailed hearings raised many grave and fundamental constitutional questions which were directed solely and alone to the provisions of S. 1564 as introduced, a bill which covered slightly more than 10 bill pages.

The committee then went into executive session, and long and arduous sessions were held on April 6, 7, 8, and 9, considering the bill. What bill? Not the bill as introduced. Not the bill about which thousands upon thousands of words of testimony had been taken and additional hundreds of thousands of words had not been heard, but the executive sessions took up a substitute bill. The substitute revised in great detail and particularly many of the sections of the bill as introduced, and also contained new provisions which were wholly outside the scope and contemplation of those contained in the original bill. Then, in executive session, the substitute was "revised" and "clarified" by so-called revisions to substitute, which contained no less than 23 revisions of greater or lesser degree, many of which, in my judgment, are not revisions or clarifications at all, but major changes in the substantive language of the substitute. Then, both preceding and following consideration of revisions of the substitute, there were manifold amendments offered and adopted to the substitute. Some of these might be designated as "Attorney General amendments." Others were suggested by one or another member of the committee. If my arithmetic is correct, one of the sponsors of the bill offered, explained, and had voted upon, either by a rollcall vote or a show of hands, 26 separate amendments, all of which were promptly rejected. Even the sponsors of the original bill and the substitute bill now cry out that some of the amendments that were offered and adopted in executive session jeopardize the constitutionality of the entire bill. The distinguished minority leader, the primary architect of the substitute, and one of the architects of the original bill, admitted on the floor that the legislation was difficult and complicated and that the work of the committee had been arduous and faithful in trying to meet the time limitation set by the Senate. This bill was constructed like a jigsaw puzzle as class legislation. While utilizing language which is vague and general in terms, it was adroitly devised to give awesome power and discretion to the Attorney General of the United States to be applied only in those instances and in those areas where the Attorney General makes what amounts to a judicial determination that the bill shall apply.

In one colloquy which took place during the course of the hearings, the bill was characterized as "legislative lynch law." The mob lynched those people whom it considered so patently guilty of an offense that there was no need for a court trial and sentence. This legislation charges that a handful of Southern States are so guilty of certain alleged offenses that they are not entitled to a trial and verdict by a court, but that the Attorney General is justified in arbitrarily meting out punishment in his own discretion and to the extent which he thinks necessary.

It is a sad day in the history of this country, Mr. President, when a situation such as this is brought about by those who seek to intimidate both the people and the Congress by unlawful and lawless demonstrations and marches, demonstrations designed to play upon both the fears and sympathy of the people who are not present in these southern areas and who do not know and appreciate the

extent to which outside agitators are deliberately creating situations and crises. They are roiling the waters of tranquillity for the deliberate purpose of dividing and setting at odds large segments of the populations of towns, cities, counties, and States throughout the South, and also in the North where there is a large concentration of Negro population.

It is a tragic circumstance that with headlong and heedless haste Congress is being stampeded into the enactment of vicious, punitive legislation which, while today it is directed solely as a lash and goad against a handful of the white people—and also the Negro people—in what are called the hard core Southern States, will ultimately result in the absolute destruction and annihilation of the constitutional liberties of all the people of the United States, regardless of the area in which they may live.

Mr. President, I ask unanimous consent that my remarks today be not counted as one speech against the pending bill.

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

RABBI JOACHIM PRINZ

Mr. TYDINGS. Mr. President, the Senate was honored today by the presence of Rabbi Joachim Prinz, who delivered the opening prayer.

Rabbi Prinz, spiritual leader of Temple B'Nai Abraham, of Newark, N.J., is the national president of the American Jewish Congress and of the national conference of presidents of major American Jewish organizations. He was a former rabbi in Berlin, Germany, where his outspoken criticisms of Hitler resulted in his repeated arrests by the Nazis before his expulsion from Germany in 1937. Rabbi Prinz is an outstanding leader in the United States in the fight against racism and bigotry.

ADJOURNMENT

Mr. HART. Mr. President, if there is no further business to come before the Senate, I move, under the order previously entered, that the Senate adjourn until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 48 minutes p.m.) the Senate adjourned, under the order previously entered, until tomorrow, Friday, May 7, 1965, at 12 o'clock meridian.

EXTENSIONS OF REMARKS

Joseph Baranowski: One of Nation's 12 Outstanding Physical Fitness Leaders of 1964

EXTENSION OF REMARKS
OF
HON. JOHN BRADEMAS
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 6, 1965

Mr. BRADEMAS. Mr. Speaker, it is with a great deal of pride that I salute Joseph Lewis Baranowski of Mishawaka, Ind., in my congressional district, on his selection as one of the Nation's 12 Outstanding Physical Fitness Leaders of 1964.

The 12 winners were honored this week in Washington, D.C., by the U.S. Junior Chamber of Commerce. They were selected from hundreds of candidates from 44 States.

The purpose of the national award, which was initiated at the suggestion of the President's Council on Physical Fitness, is to "honor individuals who contribute much but receive little of the publicity going to championship athletes and bigtime football coaches."

Twenty-five years ago Joe Baranowski organized the Indiana Independent Athletic Association to give the youth of Mishawaka an opportunity to participate in sports. The activities of the IIAA include summer softball, winter basketball leagues, bowling, and golf.

Particularly noteworthy is the fact that Joe Baranowski's longtime efforts on behalf of the youth of his city were not performed as a part of his regular occupation but on a volunteer basis. Mr. Baranowski works as a plant guard at the Dodge Manufacturing Corp., Mishawaka.

The occasions are few in which we give recognition to our Nation's private citizens who devote their time, efforts and money on behalf of their fellow citizens. I am pleased that the Jaycees have seen fit to do so. It is also fitting that Joe Baranowski should receive the recognition and gratitude that he so well deserves.

Dr. Gilbert Klaperman

EXTENSION OF REMARKS
OF
HON. HERBERT TENZER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 6, 1965

Mr. TENZER. Mr. Speaker, I listen with reverence to our opening prayer each day. Today I had the honor of hearing my own spiritual leader, Dr. Gilbert Klaperman, rabbi of Congregation Beth Sholom, Lawrence, Long Island, N.Y. Our guest chaplain today served during World War II as chaplain in the Canadian Army with the reserve rank of captain. Ordained by the Rabbi Isaac Elchanan Theological Seminary in 1941, he received his B.A., and doctoral degree at Yeshiva University and his M.A. at the State University of Iowa.

Rabbi Klaperman is president of the National Jewish Book Council, vice president of the New York Board of Rabbis, assistant professor of sociology at Yeshiva University, vice president of the Hadoar, chaplain at the Nassau County Jail, and active in many Jewish and civic organizations.

Previously, Dr. Klaperman taught comparative religion, history, Bible, ethics and related courses at the State University of Iowa and Talmud at the Teachers Institute of Yeshiva University. He was the director of the B'nai B'rith Hillel Foundation of Queens University in Kingston, Ontario; at the State University of Iowa and Iowa State College in Iowa; The Citadel at Charleston, S.C. and at Clemson College in Clemson, S.C.

Rabbi Klaperman served in pulpits at Charleston, S.C.; West New York and Kingston, Ontario, prior to coming to Lawrence.

He is listed in "Who's Who in Religion," "Who's Who in World Jewry," "Who's Who in the East," and "Who's Who in American Colleges and Universities," and is a past president of Yeshiva College Alumni Organization and past national secretary of the Rabbinical Council of America.

Rabbi Klaperman has contributed extensively to "Jewish Life," "Opinion, Horizon," "Jewish Spectator" and the "American Educator Encyclopedia," is the author of a definitive history of Yeshiva University and coauthor with his wife of a four-volume history of the Jewish people.

Rabbi Klaperman has traveled extensively and was a member of the five-man delegation of the Rabbinical Council of America that conducted a 7-week fact-finding mission in Russian and other countries behind the Iron Curtain in 1956.

Mr. Speaker, I wanted my colleagues to know about my spiritual leader, so they would better understand my pride and happiness today.

Results of a Public Opinion Poll

EXTENSION OF REMARKS
OF
HON. DAVE MARTIN
OF NEBRASKA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 6, 1965

Mr. MARTIN of Nebraska. Mr. Speaker, listed below are the results of the questionnaire mailed out to 100,000 people about 6 weeks ago. Results have been most gratifying as we have had a return of over 15,000.

One of the most significant results is the answer to question No. 4, if you favor the medicare bill tied in with social security. A resounding "No" was given to this question as 86.6 percent of our replies voted "No" and only 7.7 percent in favor.