Mr. ANDERSON of Illinois, Mr. DANIEL of Virginia, Mr. DON H. CLAUSEN, Mr. ZWACH. Mr. WINN, Mr. HASTINGS, Mr KUYKENDALL, Mr. ASHBROOK, Mr. WAGGONNER, Mr. SCOTT, Mr. HOGAN, and Mr. LANDGREBE):

H. Res. 797. Resolution to create a Select Committee on the Investigation of Pornographic Enterprises; to the Committee on Rules.

By Mr. WINN:

H. Res. 798. Resolution to express the sense of the House with respect to peace in the Middle East; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BARRETT:

H.R. 15535. A bill for the relief of Rosario Scavuzzo; to the Committee on the Judiciary.

By Mr. ROYBAL:

H.R. 15536. A bill for the relief of Esperanza Melendrez de Gonzalez; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

274. By the SPEAKER: A memorial of the Legislature of the State of Oklahoma, relative to enactment of the bill, H.R. 13111, regarding appropriations for health, education, and welfare; to the Committee on Appropriations.

275. Also, a memorial of the House of Representatives of the Commonwealth of Kentucky, relative to establishing January 15 as a legal holiday honoring Dr. Martin Luther King, Jr.; 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:

378. By the SPEAKER: Petition of Dr. Daniel J. Condon, Phoenix, Ariz., relative to redress of grievances; to the Committee on Interstate and Foreign Commerce.

379. Also petition of the quarterly county Daniel J. Condon, Phoenix, Ariz., relative to amending the Constitution of the United States prohibiting the taxation of interest on obligations of a State or political subdivision; to the Committee on the Judiciary.

380. Also, petition of Henry Stoner, York, Pa., relative to authorizing an investigation by a House committee; to the Committee on Rules.

SENATE—*Monday, January 26, 1970*

The Senate met at 11 o'clock a.m. and was called to order by the President pro tempore (Mr. RUSSELL).

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

Eternal God, who has been the hope and joy of many generations, and who in all ages has given men the power to seek Thee and in seeking Thee to find Thee, grant us a constant sense of Thy presence. Sustain us through the hours of work. Enlarge our souls with a clearer vision of Thy truth, a greater faith in Thy power, a more confident assurance of Thy love, and a greater determination to do Thy will. When the distant scene is still confused and clouded, make clear at least the next step. So use as Thy servants all who work in this place for the betterment of this Nation. May the same mind be in us which was also in Jesus, who went about doing good, and in whose name we pray. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Saturday, January 24, 1970, be dispensed with.

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

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent, following completion of the speech by the distinguished Senator from Maryland (Mr. TYDINGS), to limit statements to 3 minutes in relation to routine morning business.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

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

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the order previously entered, the Chair now recognizes the distinguished Senator from Maryland (Mr. TYDINGS).

U.S. MIDDLE EAST POLICY

Mr. TYDINGS. Mr. President, we have set aside the next hour to discuss the volatile Middle East situation for a particular reason. Many Americans, including Members of the Congress, have been deeply disturbed by what appears to be a dangerous retrogression in U.S. Mideast policy in recent months.

Following the 6-day war of June 1967, between Israel and her Arab neighbors, the official U.S. position on a Mideast peace settlement was based on the principle that a lasting settlement could only be achieved through direct negotiations between Israel and the Arab governments on all matters of substance.

As the President well knows, the Jarring resolution in the United Nations of November 22, 1967, contained these basic points and was the only resolution or statement of policy which has been agreed to by all the concerned parties.

As President Johnson stated on June 19, 1967:

> The parties to the conflict must be the parties to the peace. . . . It is hard to see how it is possible for nations to live together in peace if they cannot learn to reason together.

President Nixon reaffirmed American support for the principle of direct negotiation as the only avenue to a durable peace as recently as last September.

We in Congress have supported direct negotiations on all substantive matters, not because of whim, or because the Government of Israel or any other nation favored such an approach by our Government. We supported this posture because the history of the Mideast conflict revealed the futility of attempting to impose a settlement on the parties to the conflict.

As the distinguished President pro tempore of the Senate will recall, after the Suez campaign of 1956, the United States and the Soviet Union imposed terms of settlement on Israel and Egypt and, indeed, on Great Britain and France, as a substitute for direct negotiations. Israel was ordered to retreat from Sinai in return for theoretical big power guarantees of shipping rights in the Suez Canal and the Gulf of Aqaba, and a supposed guarantee of the Israeli borders security. However, the result of this enforced settlement was an unstable truce, not a peace, which Egypt had no intention or interest in maintaining; a false peace that was shattered by an abrogation of Israel's shipping rights and renewed hostilities a decade later.

In short, we supported the principle of direct negotiations following the 6-day war in 1967, because the experience of 1956 had taught us that the alternative approach did not work; it did not produce a meaningful settlement of the conflict.

Then, last month the press began to report U.S. proposals to the Soviet Union suggesting possible terms for an Israel-Egyptian and an Israel-Jordanian settlement. Unfortunately, we have never seen these specific proposals, but bits and parts have been leaked by the various governments involved.

Secretary of State Rogers confirmed the existence of these proposals which included specific recommendations on matters such as permanent boundaries, the resettlement of refugees, and the status of Jerusalem.

At that time, in late December, I asked the State Department for an explanation of the significance of these U.S. proposals. For they appeared to indicate a significant departure from the official U.S. posi-

tion; a step in the direction of substituting a settlement imposed by the Big Four Powers for one reached by Israel and the Arabs across the negotiating table.

The State Department emphatically denied that its settlement proposals to the Soviets signified any shift in U.S. policy. I fervently hope this is the case. But their denials to date have produced some disturbing inconsistencies.

State Department officials claim that the proposals merely represent a framework within which Arab-Israel negotiations can take place. However, a framework on which all parties have agreed already exists: the United Nations resolution of November 22, 1967, proposed by Ambassador Jarring, and supported, as I indicated, by the major parties involved.

Our current proposals to the Soviets appear to be an attempt to go beyond the framework of the Jarring resolution, an attempt to define unilaterally what was purposely left ambiguous in the United Nations resolution.

The State Department further claims that the U.S. proposals are merely "suggested" settlement terms and cannot reasonably be viewed as "imposed." But this, too, is less than convincing.

In a recent briefing for my office, State Department officials conceded that it would be extremely difficult for Israel to reject the terms of a settlement agreed to in advance by both the United States and the Soviet Union.

Therefore—and I hope I am wrong—I fear a dangerous retrogression in U.S. policy is occurring. I say retrogression because it appears the administration may be sliding back to the disastrous U.S. Middle East policy of 1956.

The lessons of 1956 are clear. Much as we might desire it, there is no shortcut to a durable peace in the Middle East. Our own national interests dictate that we stand firm behind the principle of direct negotiations between Israel and the Arab Governments in which all major substantive questions are decided.

For there can be no lasting peace in the area until all of the parties to the conflict truly want peace. And as the Israelis have properly pointed out, willingness to negotiate directly is certainly a reasonable test of sincere commitment to a peaceful resolution of differences.

In the meantime, until a permanent peace is possible, it is essential that the United States provide Israel with the economic and military assistance she needs to survive. I believe we must do so for two principal reasons.

First, the United States is morally committed to the preservation of Israel as a Jewish homeland. History has made tragically clear the necessity for a place to which Jews may turn in the face of the persecution which has continued to infect Western history. The spectacle of Jews vainly seeking a haven from Hitler's death camps must never be repeated. No man of conscience can believe otherwise.

Second, until a meaningful peace settlement is possible the best deterrent to open conflict in the Middle East is an Israel strong enough to maintain a regional balance of power vis-a-vis her Arab neighbors. I shall certainly support adequate assistance to insure Israel the means to defend herself successfully.

Mr. President, I do not question the motives of the administration. I believe they are sincere in their desire for a balanced Middle East policy which will promote a just and lasting peace between Israel and her Arab neighbors. However, I am fearful we may have embarked on a course that can only lead instead to a fourth round of hostilities in the area and the renewed possibility of a United States-Soviet confrontation in the Middle East.

With that in mind, on January 16, I wrote the following letter to the President of the United States:

DEAR MR. PRESIDENT: I write out of a great sense of urgency created by what I perceive to be a dangerous retrogression in U.S. Middle East policy. Those who authored this policy change are no doubt sincere in their desire for a just peace in the Middle East and a balanced U.S. position. Nonetheless the effects of this policy shift deeply concern me and many other Americans.

It has been my understanding that from the conclusion of the Six Day War between Israel and her Arab neighbors in June of 1967 until the fall of 1969, the official U.S. position on a Mideast peace settlement had been based on the principle of direct negotiations between the governments of Israel and the Arab States on all matters of substance. This was made clear by President Johnson on June 19, 1967, when he stated, "the parties to the conflict must be the parties to the peace . . . It is hard to see how it is possible for nations to live together in peace if they cannot learn to reason together." You reaffirmed our commitment to direct negotiations as the only way to secure a true and lasting peace in the area, as recently as last September in your address before the U.N. General Assembly.

It was not until last month, with the publication of reports of U.S. proposals to the Soviet Union outlining possible terms of an Israeli-Egyptian settlement and an Israeli-Jordanian settlement, that evidence of a significant departure from the official U.S. position appeared. For the existence of these U.S. proposals, confirmed by Secretary Rogers in his speech of December 9, 1969, and his press conference of December 23, 1969, constitutes a major step towards the substituting of a settlement imposed by the Big Four powers for a settlement reached through negotiation between Israel and the Arabs.

The claim that these U.S. proposals merely represent a framework within which Arab-Israeli negotiations can take place is not a convincing one. A framework on which all parties have agreed already exists; the U.N. Resolution of November 22, 1967. The U.S. proposals of October 28 and December 18, 1969, represent an attempt to go beyond that framework and to define the substantive terms of a settlement, including such specific matters as permanent boundaries, the status of Jerusalem and the settlement of refugees.

The further claim that these U.S. proposals are merely suggested settlement terms and cannot reasonably be viewed as "imposed" terms is equally unconvincing. In a briefing for my office, State Department officials conceded that it would be very difficult for Israel to reject the terms of a settlement agreed to in advance by both the U.S. and the Soviet Union.

The substantive terms of the U.S. proposals aside—and I regard some of them as highly debatable—the real question before us is whether it is consistent with the national interests of the U.S. to abandon the principle of insisting on direct negotiations as the only means of achieving a lasting Middle East settlement. As you recall, the U.S. and the Soviet Union sought to settle the 1956 Middle East conflict by imposing settlement terms on both sides instead of requiring the parties to the conflict to sit down and negotiate their differences. The result was an unstable peace which neither side had a vested interest in maintaining; a fragile settlement that was shattered by renewed hostilities a decade later.

The present State Department actions appear to ignore this and similar lessons of history. They presume a real interest on the part of the Soviet Union in a Middle East settlement now. But the facts are that the Soviet Union continues to be the main source of support for Arab acts of aggression against Israel and Arab hostility towards the United States. There is no evidence that the Soviet Union's present leaders consider the reduction of tension in the Middle East consistent with their own national interest.

Thus in my view, the reports of U.S. proposals of October and December, 1969, indicate the ominous beginnings of a return to the disastrous policy of an imposed settlement that failed in 1956. Our failure to support the only meaningful approach to a durable peace settlement can only lead to a fourth round of hostilities in the area and the renewed possibility of a U.S.-Soviet confrontation in the Middle East.

Therefore, in the name of U.S. national interests, our commitment to the survival of Israel, and our desire for a lasting peace in the Middle East consistent with the just demands of Arab and Israeli alike, I urge you to reaffirm U.S. support for direct negotiations between Israel and the Arab governments to determine all substantive elements of a peace settlement. Nothing could better serve the interests of peace at this time.

Sincerely,

JOSEPH D. TYDINGS.

Mr. President, I was somewhat encouraged by a news release which appeared in this morning's Washington Post in which President Nixon is quoted as saying yesterday:

> The United States believes that peace can be based only on agreement between the parties, and that agreement can be achieved only through negotiations between them.

I sincerely hope that this latest statement by the President means that the United States is going to continue the basic policy enunciated in the Jarring resolution and pursued by both Presidents Kennedy and Johnson.

I hope that those words are not merely a clever use of language to justify an enforced settlement imposed on Israel agreed to beforehand by the big powers, with the basic points reached before any direct negotiations between Israel and the Arab States.

But if the statement means that, if it reaffirms the State Department approach, then it is misleading and I think contrary to the interests of world peace and peace in the Middle East. I hope it does not. I hope the President is affirming the basic U.S. foreign policy of direct negotiations between the Middle East adversaries.

In the name of our vital national security interests, our commitments to the survival of Israel, and our desire for a durable peace consistent with the just demands of Arab and Israeli alike, I think it is vital that the President continue to affirm the basic U.S. policy of direct negotiations between Israel and the Arab governments on all substantive

points as the most efficient and effective way for peace settlement to be reached.

[Applause in the galleries.]

Mr. President, nothing could better serve the interests of peace at this time.

The PRESIDING OFFICER (Mr. ALLEN in the chair). The Presiding Officer reminds our guests and friends in the galleries that no demonstrations or expressions of approval or disapproval of statements of any Senator are permitted under the Senate rules. The Chair requests that visitors in the galleries kindly observe that rule.

The Senator from Maryland may proceed.

Mr. TYDINGS. Mr. President, the Senator from New Jersey (Mr. CASE), a number of Members of Congress, and I are in the process of circulating a declaration in support of peace in the Middle East, and we are requesting the signatures of our colleagues in support of the declaration. The declaration reads:

DECLARATION IN SUPPORT OF PEACE IN THE MIDDLE EAST

We, the undersigned Members of the United States Congress, declare:

A just and lasting peace in the Middle East is essential to world peace.

The parties to the conflict must be parties to the peace achieved by means of direct, unhampered negotiations. We emphasize these significant points of policy to reaffirm our support for the democratic State of Israel which has unremittingly appealed for peace for the past 21 years. Our declaration of friendship for the State of Israel is consistent with the uninterrupted support given by every American President and the Congress of the United States since the establishment of the State of Israel.

It would not be in the interest of the United States or in the service of world peace to create the impression that Israel will be left defenseless in face of the continuing flow of sophisticated offensive armaments to the Arab nations. We adhere to the principle that the deterrent strength of Israel must not be impaired. This is essential to prevent full-scale war in the Middle East. All the people of the Middle East have a common goal in striving to wipe out the scourge of disease, poverty and illiteracy, to meet together in good faith to achieve peace and turn their swords into plowshares.

Mr. President, I ask unanimous consent to have printed in the RECORD two articles which were published in the New York Times on December 28, 1969, in the section entitled "The Week in Review." The first article is entitled "U.S. Shifts Roles and Causes Deep Tremors," and was written by Peter Grose; and the second article is entitled "Israel Sees Her Security Threatened," written by James Feron. I think they demonstrate clearly that there was a definite shift in U.S. policy this winter.

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

U.S. SHIFTS ROLES AND CAUSES DEEP TREMORS

(By Peter Grose)

WASHINGTON.—The symbolism of the Holy Land, its meaning of peace for all mankind, grew thin during Christmas week as the savage reality of the Middle East, its aspirations and its passions, intruded upon official Washington's holiday season. Smoldering suspicions among Arabs, among Israelis, among Russians and even many Americans flared into the open; they found a common target in William P. Rogers, the successful practicing lawyer who became the American Secretary of State and tried to inject the juridical notion of "fairness" into international affairs.

Mr. Rogers composed his now controverisal proposals for peace between Arabs and Israelis as if he were a mediator, not a supporter of one side against another, and this is where the trouble started.

Israel, which had counted on the United States as its sole advocate among the four powers, cried treachery. The Arab leaders, geared up at a summit meeting at Rabat, Morocco, for an orgy of anti-Americanism as about the only thing they thought they had in common, sulked and said it was all a trick. The Russians, invited to meet American concessions toward a balanced peace formula with some of their own, seemed instead to have decided that the Rogers demarche was a move from panic or desperation; Moscow refused any more concessions and even withdrew some it had made earlier.

AMERICAN REACTION

And at home, supporters of the Israeli cause, from former Vice President Humphrey to the leaders of the American Jewish community, were harsh in condemning the Nixon Administration for appearing to weaken Israel's bargaining position and security. The pressure of the pro-Israel lobby, both inside and outside Congress, will remain a significant factor in the months ahead.

About the softest voice in the whole brouhaha was that of Mr. Rogers himself who stood wearily before the international press corps in Washington last week and insisted against all criticism that "we think the proposals are fair."

The Rogers proposals are scattered through several wordy documents and took shape in the public eye only gradually. The Secretary's speech of Dec. 9 revealed many of the basic points that had previously been expressed in a secret note to the Soviet Union dated Oct. 28. It was a further note, given to the four-power meeting at the United Nations on Dec. 18—and disclosed last Sunday—that provided the missing pieces to complete the pattern.

In capsule form this is how the United States defines the shape of peace between Arabs and Israelis:

Between Israel and the United Arab Republic—Israel must concede the Sinai Peninsula occupied in the 1967 war and pull its troops back to the prewar border. In return, the U.A.R. must sign a commitment to peace with Israel and recognition of its sovereignty. The U.A.R. must permit Israeli shipping through the Suez Canal and the Gulf of Aqaba and enter into negotiations with Israel to settle these points: The future administration of the Gaza Strip, the delineation of demilitarized zones to insure both sides' security, and arrangement of a practical security system to control the strategic point of Sharm el Sheik.

Between Israel and Jordan—Israel must concede the occupied West Bank and agree to withdraw to the prewar border except for "insubstantial" alterations which may be negotiated between the two governments. Jordan would be required to sign the same commitment to peace and recognition as the U.A.R., assume responsibility for preventing guerrilla raids by Palestinian refugees from its territory, and enter into negotiations on these points; West Bank demilitarized zones and security arrangements, a long-range program for allowing the refugees to resettle or re-enter Israel, and an arrangement for the unified city of Jerusalem to be governed jointly by Israel and Jordan.

Mr. Rogers' decision to change America's role in the peace-making effort—from being Israel's friend in court to becoming the more impartial judge on the bench—came about early last fall.

LOSS OF INFLUENCE FEARED

The four-power and two-power talks had almost ground to a halt. The military clashes along the frontiers and terrorism from an increasingly hostile Arab population in Israel's occupied territories were causing alarm. Moderate influences in the Arab world were losing out as impatience and despair fed the flames of militancy. There seemed a real danger that the widely heralded Arab summit at Rabat would hear the death rattle of moderation and any American influence among the Arabs.

The Nixon Administration was aware of long-standing American oil and business interests in the Arab world, as well as of the articulate American Jewish community. Neither, Mr. Rogers reasoned, would be well served by the continuation of tension or the collapse of the international peace-making machinery. Though up to now Israel has been in a strong position to stand pat, with defensible de facto frontiers, Administration analysts were fearful that internal security problems would mount in Israel and that the Middle East as a whole would become sharply polarized—the Arabs and the Russians versus the Americans and the Israelis. Hence, the Administration's probe for the middle ground, fully aware that it would anger friends without necessarily satisfying enemies.

Mr. Rogers and his Middle East experts are playing for the long term. Apparently trying to gain short-term advantage, Moscow sent in its long awaited reply to the Oct. 28 note last Tuesday, and the State Department sadly called it a backward step. Speaking for their Arab clients, the Russians withdrew their endorsement of the ambiguous Rhodes formula for negotiations—the key element in the American package—and suggested that the Arab governments need not take the responsibility for the unofficial Palestinian guerrilla activities.

So now the diplomats are returning to their drawing boards. It seemed a vaguely hopeful sign that the Arab leaders were unable to make common cause at Rabat. And the United States has some pending aid requests from Israel which might provide useful leverage for the diplomatic maneuvering that lies ahead.

ISRAEL SEES HER SECURITY THREATENED

(By James Feron)

JERUSALEM.—The Israelis knew something was up when news programs began announcing that Foreign Minister Abba Eban and Ambassador to Washington Yitzhak Rabin were being called home for an emergency Cabinet meeting. The reason: a new American peace plan.

It was the latest of more than a dozen proposals formulated by Washington since the end of the 1967 war. From the Israeli standpoint, each proposal made the American position more attractive to the Arabs, while the Arab position, as represented by the Russians, remained unchanged.

The Cabinet met last Monday in an atmosphere of deepest gravity. The new American plan—suggestions for an Israeli-Jordanian agreement submitted to the Big Four Mideast conference at the United Nations—seemed to the Israelis to go further than any previous United States initiative in whittling away Israel's vial interests. Around the table, Premier Golda Meir said in an interview with this reporter later, "there was a deep feeling of injustice. After all that's happened, we're asked . . . to start all over again, as though it were 1948. Why?"

A Cabinet communique rejected Washington's "disquieting initiatives" in diplomatic language. Mrs. Meir in her interview was blunter. "Look," she said, pounding the table, "Israel won't accept this. We didn't survive three wars in order to commit sui-

cide so that the Russians can celebrate victory for Nasser."

What was there about the latest American proposal to create such alarm in Jerusalem? Partly it was a question of procedure. One of the things that disturbed the Israelis was that Mr. Eban, according to Mrs. Meir, had not been told about the new plan when he conferred with Secretary of State Rogers only 30 hours before the proposal was unveiled, and Mr. Rabin got a copy only after it was submitted. To the Israelis it seemed that the Nixon Administration was moving away from consultation with Israel and toward imposing solutions of its own.

But mostly it was a question of substance. From the Israeli standpoint, this is what the new American plan and the earlier one for an Israeli-Egyptian settlement signify for Israel's vital security interests:

On the West Bank—Where it once decried any return to "fragile" armistice lines, the United States was now proposing the return of this whole area to Jordan except for "insubstantial" border adjustments. Apart from the fact that the Hashemite Kingdom of Transjordan lay entirely east of the Jordan River before it seized land on the west bank in the 1948 war—an annexation only two countries, Britain and Pakistan, have recognized—returning to the 1967 border would move the Jordanian border back to within 12 miles of Israel's Mediterranean coast, "so that Jordanian Long Tom guns can shoot straight into Netanya," a coastal town.

ISRAELIS SEEM WILLING

The Israelis seem willing to contemplate the return of only part of the West Bank to Jordan in the best of circumstances, probably the eastern half, including all the populated towns. The rest of it would remain—for security reasons—under Israeli administration.

On Jerusalem—From advocating a Jordanian role in certain aspects of the unified city's life, the American position has apparently shifted to one of urging that Israel and Jordan share arrangements for the city's administration. A new reference to the need to take the "international Jewish, Islamic and Christian communities" into account in the regime for Jerusalem was seen as an entering wedge for reintroducing the two-decade-old proposal (then accepted by the Israelis but rejected by the Arabs) for Jerusalem's internationalization. The Government is helping Jews settle in the former Jordanian sector of the city to give substance to its legal annexation by the Israeli Parliament, and insists that this annexation will never be reversed.

On the Arab refugees—Where it had once said that Israel need take back only a limited number of refugees, Washington was now urging that both Israel and Jordan accept the principle that all refugees have the choice of repatriation to Israel or resettlement with compensation. The Israelis are determined that whatever else happens, the Arab refugees will never return to Israel except, perhaps, in token numbers. Not even a peace treaty signed after direct negotiations would open the way to any large-scale return of what the Israelis consider to be a potentially subversive force.

On the Sinai Peninsula—Where the United States once spoke of an Israeli withdrawal to "negotiated" borders, Secretary of State Rogers in his Dec. 9 speech called for a pullback to the 1967 borders. As the Israelis see it, part of the Sinai could be returned in a peace settlement that would also guarantee Israeli shipping rights in the Suez Canal, but the eastern edge reaching to Sharm el Sheik, the outpost commanding the Gulf of Aqaba and Israel's outlet to the Indian Ocean, is expected to remain part of Israel. A highway is being built from the Israeli port of Elath to Sharm el Shiek.

On the Gaza Strip—Held by Egypt until taken by Israel in the 1967 war, this part of former mandated Palestine would be covered by some kind of Israeli-Jordanian arrangement under the new American plan. The Israelis insist that the coastal strip, "a dagger pointed at the heart of Israel," will remain under exclusive Israel administration.

The United States has yet to announce a proposal for an Israeli-Syrian settlement, where the major issue centers on the Golan Heights, from which Syrian guns bombarded farming settlements in the prelude to the 1967 war. The Golan Heights are fast becoming a part of Israel. A dozen civilian and para-military settlements ring the cease-fire line, and new settlement, forestation and farming areas are planned here. An American proposal for a withdrawal from this region would also be bitterly opposed by Israel.

The Israeli position on all these issues has not been formally fixed; to do so, it is believed, would prompt the resignations of the more dovish cabinet ministers. An Israeli peace plan awaits a negotiating partner.

Israel believes that the American proposals were developed by a well-meaning State Department that is under increasing pressure to find a settlement. And what seems diplomatically broad and vague to the Americans is too specific for the Israelis. They believe that the mere statement of principle on troop withdrawals, on refugees, and on Jerusalem undercuts their bargaining position and encourages the Arabs to think that someone else—not the Jews and Arabs themselves—will settle their problems.

And to the Israelis, their demand for direct negotiations with the Arabs goes to the very essence of the problem. As Mrs. Meir put it last week, "if they won't sit with us, how will they live with us?"

Mr. TYDINGS. Mr. President, I also ask unanimous consent to have printed in the RECORD a speech I delivered on March 21, 1969 entitled "The Middle East," discussing the Jarring Resolution in detail.

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

THE MIDDLE EAST

The accession of a new administration in Washington provides a particularly appropriate time for reexamining the state of affairs in the Middle East and reviewing U.S. policy in that part of the world. For the Arab-Israeli conflict, like the war in Vietnam, represents a volatile and terribly dangerous international problem which has shown few signs of significant improvement over the past year.

Based on briefings I received from State Department officials on Wednesday and a careful reading of the President's public remarks on the matter, I detect little difference to date between the Nixon administration's Middle East policy and that pursued by President Johnson. The overriding U.S. objectives continue to be the prevention of hostilities that might lead to a confrontation between the U.S. and the Soviet Union and the maintenance of American influence in the area.

As the land bridge spanning three continents with the richest oil deposits in the world, it is not difficult to understand the interest the great powers have shown in the Middle East. If any one power were to dominate the region the global balance of power would shift sharply in its favor.

Thus when the British began their steady withdrawal of troops and ships from the Mideast after World War II, it was inevitable that the U.S. and the Soviets would seek to fill the resulting strategic power vacuum. It is this cold war competition which has given the current Arab-Israeli conflict its additional dangerous dimension—the possibility of direct U.S.-Soviet confrontation and the triggering of a nuclear war.

Since the founding of the State of Israel in 1948, the U.S. had sought to implement a two-pronged policy in the Middle East: We have supported Israel in her fight to survive, while seeking to maintain our influence with the Arab governments. Obviously, these two aspects of our policy have conflicted more often than not.

When circumstances forced us to decide between them—with the exception of President Eisenhower's decision in the Suez crisis in 1956—we have always chosen to stand behind Israel.

We have done so for two principal reasons. First, the U.S. is morally committed to the preservation of Israel as a Jewish homeland. History has made tragically clear the necessity for a place to which Jews may turn in the face of persecution which has continued to infect western history. The spectacle of Jews vainly seeking a haven from Hitler's death camps must never be repeated. No man of conscience can believe otherwise.

Second, it has been our position that the best deterrent to open conflict in the Middle East is an Israel strong enough to maintain a regional balance of power vis-a-vis her Arab neighbors. The decision of the Johnson administration to sell fifty F-4 fighter planes to Israel is further evidence of our commitment to ensure Israel the means to defend herself successfully.

Israel's extraordinary six-day victory in 1967 shattered what remained of our two-pronged strategy. Egypt, Syria, and a number of other Arab governments broke off diplomatic relations with the U.S. and turned increasingly to Moscow for aid and advice.

Therefore, to return the balance to our Middle East policy which American security requires, it is increasingly imperative that we secure a settlement that assures Israel's freedom and survival while enabling the U.S. to reestablish diplomatic relations with the Arabs.

It is toward this end that the keystone of our current Middle East policy remained in support of the United Nations mission of Ambassador Jarring and his effort to implement the U.N. resolution of November 22, 1967. For that resolution represents the only guideline for a settlement of the 1967 war that has been endorsed in principle by all parties involved.

I would like briefly to examine the provisions of that resolution with you, offering some personal interpretations and recommendations for their implementation.

The first two steps towards a settlement prescribed by the resolution are the recognition of the right of all nations in the region to exist in peace, and the withdrawal of Israeli armed forces from occupied territories. However, a major obstacle to their realization has been chronology.

For good reason, Israel is hesitant to yield occupied territories without first receiving assurances that the Arabs concede Israel's right to exist peacefully and have abandoned the illusion of someday driving the Jews into the sea.

Likewise, internal political pressures make it difficult for President Nasser and King Hussein to make or even entertain such concessions without the prior certainty that at least part of their occupied lands will be returned. Thus, one of the major tasks facing the Jarring mission—perhaps with the support of the big four powers—is to engineer the simultaneous execution of these two steps.

As for the question of which occupied territories Israel should yield, former Ambassador Goldberg has pointed out that the UN resolution simply calls for the "withdrawal of Israeli armed forces from occupied tertories." The word "all" before occupied territories was purposely omitted.

Clearly, Israel intends to make and should make her borders more defensible than they were prior to June of 1967. The U.S., Britain,

and France have publicly acknowledged that Israel may justly insist on retaining certain strategic conquered areas like the Golan Heights and parts of Gaza. However, parts of the West Bank and Sinai which are not vital to Israel's defense will have to be returned to Jordan and Egypt respectively.

The third principle for settlement set forth in the resolution is the freedom of navigation. Israel must be assured free passage of the Suez Canal and the Straits of Tiran. After Nasser's pledge to permit Israeli use of the Suez in 1956 was so flagrantly broken, it is difficult to expect Israel to accept new Arab promises. It may well fall to the big four powers—whose role I shall discuss shortly—to serve as the guarantors of any agreement.

The fourth principle is the just settlement of the refugee problem. With the June war, their number has swollen to 1.7 million. Humanitarian considerations demand action be taken immediately. For the vast majority live in conditions of the worst imaginable squalior and disease not to mention political agitation.

Obviously, Israel cannot absorb all or even most of these refugees and remain a Jewish state. Therefore, Tel Aviv will have to help compensate these people for the loss of their property and participate in a program to resettle them throughout the Middle East.

Territorial inviolability is the final settlement principle laid down in the November 22 resolution. To rely on trust and good will to preserve the peace in the Middle East is naive. Hate and suspicion still dominate Arab-Israeli relations.

Therefore, I am urging the President to propose that any Mideast settlement must provide for demilitarized zones along the Arab-Israeli frontiers to be actively and continuously patrolled by U.N. peacekeeping forces. In this way the border clashes and terrorist incursions that keep tensions high in the area may be reduced or eliminated.

Let me now turn briefly to the question of the big four powers—U.S., Britain, France, and the Soviet Union—in a Middle East settlement. I am convinced the major powers can play a constructive part in the search for peace providing we recognize the limitations inherent in their role.

The four powers cannot—I repeat cannot—impose the terms of a peace settlement on Israel or the Arabs. They possess neither the right nor, in reality, the influence to do so.

We and the other powerful nations of the world must work to create the environment which can lead to a peaceful settlement. The U.S. and the Soviet Union, in particular, must urge the parties to be flexible in their approach. The Soviets must influence the Arabs to talk, to adopt no rigid views on procedures. In addition, the big four powers may guarantee the compliance of all parties with the terms of the final settlement.

The proposed four power conference also is important as an opportunity for us to work out with the Russians then necessary understandings to avoid a direct military confrontation and to limit the arms buildup in the area.

I wish I could predict an imminent settlement of all outstanding issues in the Middle East and the onset of a just and permanent peace. Unfortunately, I cannot. The hates and hostilities still run too deeply.

The best we can hope for in the coming decade is a policy which prevents the outbreak of a fourth round in the Arab-Israeli war and which buys more time. Time to heal the bitterness and salve hurt pride. Time for dialogue and communication. Time for the mutual trust and understanding to take root which are the foundations of lasting peace.

Mr. TYDINGS. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Connecticut (Mr. RIBICOFF) without losing my right to the floor.

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

Mr. RIBICOFF. Mr. President, I wish to take this opportunity to commend the distinguished Senator from Maryland for the excellence of his remarks in connection with this most important problem facing this Nation, the State of Israel, and the world.

Mr. President, reactions by the nations most directly effected by our Government's recent initiatives in the Middle East have been sharp, swift, and not surprising. We have, in what is unfortunately becoming a common pattern of American diplomacy, managed to antagonize a trusted ally, while satisfying no one. There have been no takers for the State Department's latest proposals for a political settlement between Israel and the Arab States. This is understandable if the basic positions of the parties involved are stripped down to barest essentials.

It is clearly in the interest of the Soviet Union to aid and encourage Arab hostility against Israel short of armed confrontation with the United States, in order to extend Soviet influence in the Mediterranean and in the Arab world.

It is in the interest of the Arab rulers to stoke the fires of hatred against Israel in order to conceal their own shortcomings in caring for the needs of their peoples, and in order to provide the only consistent basis for Arab unity.

It is in the interest of the Arab terrorists to perpetuate the illusion of the Middle East as a continuing powder keg, unless their demands for the dismantlement of Israel are met, since of all the parties concerned, they have the least to lose.

It is in the interest of Great Britain and France to preserve the illusion they are on a par with the United States and Russia in the "Big Four" talks while seeking to preserve and expand their own narrow interests in the area.

And to put it bluntly, it is in the interest of Israel to survive as a nation.

Critical Israeli comments on the administration's recent initiatives have been made more in sorrow than in anger. After all, what is there to do when a well-meaning but overanxious friend tries to do what he considers is best for everybody by giving away your most valued possession as a start?

In Israel's case, her trump card and crucial bargaining point in trying to get her Arab neighbors to negotiate has been the territory it occupied in 1967.

In essence, our Government is now attempting to pull the rug out from under Israel's feet. By proposing a detailed, comprehensive settlement, including specific border arrangements, little is left to the parties themselves to hammer out. In fact, a built-in veto by Egypt over a Jordan-Israel pact and vice versa, is provided, further exposing the fragility of such anticipated arrangements.

These proposals represent a definite reversal of our previously stated position since 1967. Only last September, President Nixon, in addressing the United Nations General Assembly, stated, that peace cannot be achieved with "anything less than a binding, irrevocable commitment by the parties to live together in peace." I agree. Why then have we departed from this sound, sensible approach in favor of one leading to what amounts to an imposed settlement which will carry with it the seeds of future conflicts? If peace is to finally come to this troubled region, it must be based upon explicit mutual recognition and reconciliation. This can be achieved only through negotiated agreements.

With the best of intentions and good faith, our State Department has been outclassed and outmaneuvered by the Soviets in the past few months. Our impatience over the stalemate and our eagerness to get things settled have resulted in an erosion in our own original position without any corresponding "give" whatsoever by the Russians. We have been left with egg a la Russe on our faces as a result of the Soviet backtracking while the Israelis are now faced with a serious undercutting of their bargaining position. Regrettably, significant concessions were offered without consultation by Israel's major ally, the United States. Fortunately, it is not too late to reverse ourselves and realine our future policies to conform to the vital interests of the United States in the Middle East.

Sentiment, guilt feelings, history, and domestic politics aside, in the cold light of international politics. Israel today is America's most valuable asset in the Middle East.

I would extend the geographic confines of the area to be considered here to what I call the "Greater Middle East"—and to include Iran, Turkey, and even Ethiopia. It is clear that the Russians hope to become the dominant Mediterranean power and also to penetrate into Africa. It is equally obvious that while some significant inroads have already been made, they are of a limited nature. Turkey still controls the Dardanelles, Russia's outlet to the Mediterranean; Tunisia, Morocco, Saudi Arabia, Lebanon, and Jordan are still well disposed toward the United States; Iran, with its reform-minded Shah is still a major oil producer, selling freely to the West; and Ethiopia, just across the Red Sea from the Arabian Peninsula, is a stanch and stable ally. The dam preventing Soviet pressures from being exerted in all these diverse directions has been Israel. But it should be obvious that only a well-armed Israel, within secure borders and with a strong economy can withstand the Soviet pressures.

If we attempt to abate the Soviet flood southward by punching small holes in the dam, temporary results might be achieved, but inevitably the barrier would be weakened and the tide would sweep throughout the Middle East and Africa. Our proposals have undermined and weakened Israel's position both vis-a-vis the Arabs and the Soviet Union. If current U.S. policies were, in fact, to be followed, a much weaker, neutralized Israel would result.

Assuming the unlikelihood that the

Arabs would take advantage of the major concessions we are offering, the United States would receive no credit for weakening Israel in the eyes of her Arab foes. Any deterioration of Israel's position would be viewed as a Soviet triumph resulting from her steadfast support for the Arab cause. Unless the United States were to completely repudiate and assume an active role in preparing for Israel's destruction, we cannot compete on even terms with the Soviets in currying favor with Egypt, Syria, Iraq, and Algeria. It is inconceivable that we would want to compete on these terms. But why expect anything less to satisfy the leaders of these countries.

Aside from the basic strategic considerations of containing Soviet encroachments there are other aspects of United States-Israeli relations which should be mentioned in a discussion of our national interest in the Middle East.

One myth which is rebutted by available statistics has to do with the importance to the United States of Middle Eastern oil. This is simply not so. We are not dependent at all on Middle Eastern oil, in view of our own resources and those of nearby Venezuela. In fact, for years now there has been a glut of oil in the world markets—and the prospects are that it will remain so.

New oil development is proceeding rapidly all over the globe—in Indonesia, Nigeria, Alaska, and the Soviet Union, for example. The possibility we will ever need oil from the Middle East is remote. Besides, past experience has shown that it is the "have-nots" of the Arab nations who shout the loudest, and the "haves" who seek to sell their oil to the West.

Given the minor importance to us of Arab oil, the concern strongly, and secretly expressed recently, by representatives of some of the major oil companies for U.S. interests in the Arab world, should be exposed for what it is. The best motives I can ascribe to the eminent Americans who participated in the White House audience is avarice. The oil companies are, and appropriately so, in business to make profits. They would seem to be ill-equipped and singularly lacking in perspective given their own vested interests, to make serious judgments on the national interest of the United States in the Middle East.

One major European power, France, has most recently demonstrated how well she can look after herself when it comes to oil—and in one-upmanship over the United States.

I will be most interested to hear how President Pompidou will explain the latest cynical, doubledealing French maneuvering in the Middle East to our own President next month. Particularly intriguing, to put it politely, are the latest disclosures in the French-Libyan arms deal for 100 of the latest French jets. While it was patently clear as to who would really be using these aircraft against whom, the Egyptian instigation and implementation of the deal leaves a stench of duplicity that even the most insensitive diplomatic nostril must take notice of.

France's entire role in the Middle East since the 1967 war has been outrageous, given the yawning gap between its protestations of neutrality and peaceful intentions and its deeds. At least, the Russians are more candid in their support of the Arabs. French conduct toward Israel has been scandalous, and toward the United States only slightly less so. The French Government's speed in seeking to replace us in Libya is truly amazing. They might not even have to cut the grass around the runways at Wheelus after we depart.

Another convenient myth, sometimes expressed in the vicinity of Foggy Bottom, is that at the root of many of the troubles plaguing our friends in the Middle East is Israel. Without a strong Israel these past 20 years, what would have been the chances of the Jordanian and Lebanese Governments surviving until 1970? The Libyan coup is also mistakingly blamed on Israel by some sources in our own country. But who expected the feudal and futile regime of a septuagenarian monarch to last as long as it did? The forces of change sweeping over the Arab world probably would have toppled even more Arab governments by now if Israel had not existed as a convenient whipping boy.

A final myth that is often advanced as an argument against support for Israel, particularly by some young people today, is the analogy they make to our commitment in Vietnam.

The fear of another tragic involvement is understandable. But the realities of the two situations show basic differences. Israel has made it abundantly clear, both publicly and privately, that she will never ask for a single American soldier to come to her defense. Prime Minister Golda Meir recently spelled this out again when she said:

> We don't want anybody to come and fight our battles, but we have the right to demand that we not stand empty-handed against better and better tanks, planes and cannons.

From past experience, Israel has shown how well she can defend hereself without outside help. Unlike Vietnam, where after 40,000 Americans died we are still seeking to "Vietnamize" the war, Israel's war is and has always been 100-percent "Israelized."

If our policies toward Israel are to be more "evenhanded," I hope this does not mean Israel will be "emptyhanded."

At tremendous sacrifice to her economy, Israel has been paying cash on the barrelhead for the sophisticated weaponry she needs to counter the huge number of planes and tanks lavishly given to her enemies by the Soviet Union and now France. If we are truly seeking a "better balanced" policy in this area, the arms balance also must not be overloaded. The United States, in its own best interests, must assure that Israel does not fall behind in this critical race. How long can Israel bear the burden of spending 25 percent of her gross national product on defense? Courage, skill, and blood can make up for vastly inferior numbers of weapons—but not forever and not without doing damage to the quality of her society. With the realization of how Israel is steadfastly serving the interests of the United States in the Greater Middle East, a small investment by the United States in her future security would yield considerable dividends.

At present, however, Israel is deeply concerned over the long-run implications to her security by our recent proposals. But in a very short time, given the Soviet and French efforts on behalf of the Arabs, this will become critical.

While our official position still is that there must be negotiation between the parties, we have let the Arabs know in advance what we are willing to accept as the outcome. From past experiences, and we have had our share, in negotiating with the Russians it should by now be clear that what we consider to be a concession is regarded by them as a sign of weakness to be further exploited. I need not elaborate on this point.

If Israel is willing to endure until the Arab governments she has thrice bested on the battlefield are ready to negotiate, why is the United States in such a hurry? Israel is asking us to be patient. The Russians, perhaps above all else, appreciate the value in international relations of military power.

They are not blind to the military prowess of the Israeli Army, and the lack of it on the part of their clients. The United States should exploit Israel's strength, not seek to dissipate and squander this asset.

While the United States in its global chess game with the Soviet Union can afford to "win a couple, and lose a couple," the Israelis with an area the size of New Jersey and a population roughly that of my own State of Connecticut lack this flexibility. If Israel is pressured by our own country into making a poor move at this critical juncture in her history, it could mean another 2,000 years of the Diaspora.

Mr. President, I ask unanimous consent that the attached article from the New York Times regarding Egypt's role in the French-Libyan arms deal be included in the RECORD at this point.

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

[From the New York Times, Jan. 24, 1970]

U.A.R. ROLE SEEN IN LIBYAN JET DEAL—NEGOTIATORS SAID TO HAVE INCLUDED KEY EGYPTIANS POSING AS LIBYANS

(By Peter Grose)

WASHINGTON, January 23.—The Arab negotiating team that concluded France's controversial arms deal with Libya included key military experts from the United Arab Republic posing as Libyan officals, according to diplomatic intelligence reports.

It was a veteran Egyptian intelligence official, known as Fathi el-Dib, who discretely initiated the transaction with the French Defense Ministry about three months ago, it was reported.

Israeli officials have insisted since the arms sale became known five weeks ago that the transaction had been conceived as a means of by-passing the French arms embargo, imposed on the principal combatants of the Arab-Israeli war of June, 1967. American diplomats immediately acknowledged, this as a possibility, but suggested that Israel was overreacting to what might turn out to be a straightforward transaction.

These reports originated with foreign intelligence agents operating in Western Eu-

rope from sources assigned a high credibility rating by American Government analysts even though United States officials did not have impending confirmation of the reports.

The reports said that Fathi el-Dib had pressed the eager young revolutionary leaders of Libya to buy aircraft that Cairo had been seeking from France for more than two years. The two countries, together with the Sudan, have drafted a common defense pact providing for a pooling of forces for war against Israel.

The story of the French arms sale to Libya, together with the activities of Israeli agents in getting five gunboats out of Cherbourg last month, has shaken the credibility of the French Government and may have impaired relations between Defense Minister Michel Debré and his fellow Cabinet members. It is threatening open deterioration in French-American relations and presages a new spiral of the arms race in the Middle East.

During the Paris negotiations, the French are said to have insisted that the Libyan delegation sign a standard clause in arms contracts, that the equipment would not be transferred to another country.

The intelligence reports state that the Egyptians on the delegation were amenable, apparently confident that ways could be found to circumvent this restriction, but that the Libyans resisted through December, saying that they refused to have their hands tied about the use of their properly purchased armaments.

PERSUADED TO AGREE

The Libyans finally were persuaded to agree, and simultaneously Libya, Egypt and the Sudan drafted a defense pact providing for a central command and pooling of the three armed forces in the event of war against Israel.

The intelligence reports were available many days ago to agencies of the United States Government, American officials concede, but were discounted at the highest levels of the Administration.

MOTIVATION PUZZLING

These policymakers were said to have been puzzled over France's motivation, although they were said to have been partly convinced by the French explanations that it was better for the West to establish military ties with Arab Governments than to allow them to turn to the Communist world, as President Gamal Abdel Nasser of the United Arab Republic has done.

American diplomats were reported relieved at what appeared to be full disclosures given, though belatedly, by the French Foreign Minister, Maurice Schumann, to the United States Ambassador, Sargent Shriver, at a meeting two weeks ago.

Finally, both President Nixon and Secretary of State William P. Rogers were said to be determined to prevent a rift between Washington and Paris virtually on the eve of President Pompidou's visit next month. Such a rift was threatened by the expanding French involvement in Libya on the heels of the order by the new Libyan regime to the United States to close its Wheelus air base near Tripoli.

PROTEST BY ROGERS

It was only when Mr. Debré conceded on Wednesday that the proposed sale was twice as large as previously disclosed—100 aircraft instead of 50—that Secretary Rogers was moved to protest and to warn that the delicate arms balance of the Middle East could be upset.

The Nixon Administration may now have to face a decision on whether to move to restore the balance, specifically by selling to Israel 24 more F–4 Phantom jets and other military equipment requested last September after the visit to Washington by Premier Golda Meir.

State Department officials said today that these requests were still under review, and they declined to predict when a decision would be made.

According to intelligence reports now available, the origins of the Libyan arms purchases go back two years, to President Nasser's unsuccessful efforts to buy Mirage aircraft from France.

SOUGHT BETTER PERFORMER

Though the Soviet Union was already supplying the Egyptians with MIG–21 jets, Cairo wanted a better performer, a plane with longer range and higher speeds, capable of carrying bombs.

The Sukhoi-7, which the Russians were also supplying, could be used as a bomber but was even slower than the MIG-21. The French-made Mirage III-E combined high speeds with the important ability to operate effectively at low altitudes.

According to the intelligence reports, Cairo made tentative inquiries to Paris in the fall of 1967, after the six-day war in June, using the figure of 100 Mirages. The French Government was said, to have responded coolly, unwillingly to break an embargo so recently imposed, and also to have doubted Cairo's ability to pay for the aircraft.

A NEW ELEMENT

The matter then lay dormant until last Sept. 1, when a new element entered Middle Eastern politics.

Libya, which had grown rich in the nineteen-sixties from vast oil revenues, had long been considered a silent, sandy expanse of the Arab world under the conservative leadership of King Idris. The United States and Britain had military ties with the monarchy, maintained air bases in Libya and casually sold small numbers of aircraft, most of which were quickly lost by the fledgling Libyan Air Force in crashes.

Libya had little interest in the Arab-Israeli conflict, which dominated the thinking of militant Arabs.

The 79-year-old King was at a Turkish spa on Sept. 1 for treatment of a leg ailment. He was unable to return quickly to his capital, upon hearing of the coup attempt since he had long refused to fly, and was overthrown. An obscure group of young officers seized control of the Government almost effortlessly, and suddenly Muammar el-Quaddafi, a 27-year-old colonel, found himself in control of a wealthy and strategically situated Arab country.

NASSER MOVES QUICKLY

President Nasser moved quickly to exploit the new opportunity. He was said to have sent his North African intelligence chief, Fathi el-Dib, to Tripoli to offer his services as political adviser to the inexperienced officers-turned politicians.

Following his arrival, it was reported, at least one battalion of Egyptian combat troops was sent to Libya to provide security for the shaky new regime.

One of the new Government's first acts was to order that the British and Americans, leave the country and evacuate their air bases. Then the junta looked around for an alternate supply of military equipment and expertise.

It was Fathi el-Dib who was reported to have suggested France, and to have recalled President Nasser's old shopping list, which had gone unfilled. Colonel Quaddafi was termed amendable to accepting Egyptian guidance on military requirements and each to pool forces with President Nasser.

WELL KNOWN TO FRANCE

Fathi el-Dib was well known to the French, and not always popular. He had been President Nasser's liaison representative with the Algerian rebels during the long war with France, and was for many years said to have been on the blacklist of the French intelligence services.

In politics and intelligence, relationships can change quickly, particularly in the Middle East. Fathi el-Dib and other Egyptian officials were reported to have casually approached the French with the idea of a Libyan arms purchase similar to the requests President Nasser had made two years before.

The idea was said to have been discussed with Andre Bettencourt, French Minister of Planning and Development, who visited Cairo soon after the Libyan coup.

At first, senior French defense officials were said to have been skeptical that anyone would believe that Libya needed advanced military equipment in such large quantities. With no known enemies pressing at borders.

Toward the end of October, according to the intelligence reports, these high officials received a curt message from the office of the Defense Minister, Mr. Debre, saying, in effect, "forget about the Egyptian side: the deal is now strictly Libyan."

A few days later, what was identified as a Libyan arms purchasing mission arrived secretly in Paris, and was comfortably lodged in suites at the Hotel Cayre, on the Boulevard Raspail.

OFFICIALS NOT INFORMED

The reports specified that though Mr. Debre and a few of his top aides were fully aware that some of the negotiators during the November discussions were Egyptians carrying Libyan passports, the Foreign Ministry representatives in the talks were not so informed.

A preliminary deal was said to have been initialed at the end of November, though the exact quantities and type of military materiel to be sold were not fully spelled out. Negotiations continued, but the Defense Ministry began pressing President Pompidou for quick approval of the transaction, fearful that the Libyan regime might be too shaky to remain long in power, the reports said.

This apprehension was reinforced in December by reports of the arrest, of some high Libyan officials charged with plotting against Colonel Quaddafi, it was said.

The disclosure of the arms negotiations, in a dispatch of The New York Times on Dec. 19, caused sharp confusion in both the French and United States Governments. The United States was at that moment negotiating the terms for the evacuation from the Wheelus base.

Ambassador Charles Lucet in Washington denied the Time's report, as did official spokesmen in Paris, until gradually other officials began to confirm it. The figures cited by The Times were wrong, French spokesmen insisted; it is now clear that no final agreement on quantities had been reached at the time the original news report appeared.

SMALLER SALE CONCEDED

Most specifically, the Times's report that France was ready to sell 50 Mirage jets to Libya was derided, though French officials conceded that the sale of "10 or 15" Mirages might be under consideration.

Several attempts by Ambassador Shriver to obtain authoritative information from the Foreign Ministry finally succeeded to the extent that the State Department was prompted to say flatly that the report of a sale of 50 Mirages was "exaggerated."

Finally on Wednesday, Mr. Debre went before the Defense Committee of the French National Assembly to state authoritatively that the original news reports were indeed wrong: the figure of planes to be sold was not 50, but 100.

The enlarged number, Mr. Debre said includes not only the Mirage 5's reported earlier, but 30 Mirage III–E aircraft meeting the expressed Egyptian need for a fast, low-flying jet.

Mr. RIBICOFF. I wish to call attention to the fact that 66 Members of

the Senate and some 280 Members of the House of Representatives have joined the distinguished Senator from Pennsylvania (Mr. SCOTT) and me in issuing a statement calling for direct negotiations between the parties to bring peace to the Middle East.

The statement, made on April 25, 1969, outlines the basic requirements for peace in the Middle East.

I am pleased to announce that the following Senators have signed this statement:

Messrs. ALLEN, ALLOTT, ANDERSON, BAYH, BENNETT, BIBLE, BOGGS, BROOKE, BURDICK, BYRD of Virginia, BYRD of West Virginia, CANNON, CASE, CHURCH, COOK, COTTON, and CRANSTON.

Messrs. DODD, DOLE, EAGLETON, ERVIN, FONG, GOLDWATER, GOODELL, GORE, GRAVEL, GURNEY, HANSEN, HARRIS, HART, HARTKE, HOLLAND, and HOLLINGS.

Messrs. INOUYE, JACKSON, JAVITS, JORDAN of North Carolina, KENNEDY, MCGEE, MCGOVERN, MCINTYRE, MAGNUSON, MATHIAS, METCALF, MILLER.

Messrs. MONDALE, MONTOYA, MOSS, MURPHY, MUSKIE, NELSON, PASTORE, PEARSON, PELL, PERCY, PROUTY, PROXMIRE.

Messrs. RIBICOFF, SAXBE, SCHWEIKER, SCOTT, SPARKMAN, SPONG, STEVENS, TYDINGS, WILLIAMS of New Jersey, YARBOROUGH, YOUNG of Ohio.

I ask unanimous consent that the statement be printed at this point in the RECORD.

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

On the occasion of Israel's 21st birthday, we offer our congratulations to the people of Israel on their progress: the absorption of more than 1,250,000 refugees and immigrants; the reclamation of the land; the development of their economy; the cultivation of arts and sciences; the revival of culture and civilization; the preservation and strengthening of democratic institutions; their constructive co-operation in the international community.

On this 21st anniversary we express our concern that the people of Israel are still denied their right to peace and that they must carry heavy defense burdens which divert human and material resources from productive pursuits.

We deeply regret that Israel's Arab neighbors, after three futile and costly wars, still refuse to negotiate a final peace settlement with Israel.

We believe that the issues which divide Israel and the Arab states can be resolved in the spirit and service of peace, if the leaders of the Arab states would agree to meet with Israelis in face-to-face negotiations. There is no effective substitute for the procedure. The parties to the conflict must be parties to the settlement. We oppose any attempt by outside powers to impose halfway measures not conducive to a permanent peace.

To ensure direct negotiations and to secure a contractual peace settlement, freely and sincerely signed by the parties themselves, the United States should oppose all pressures upon Israel to withdraw prematurely and unconditionally from any of the territories which Israel now administers.

Achieving peace, Israel and the Arab states will be in a position to settle the problems which confront them. Peace will outlaw belligerence, define final boundaries, and boycotts and blockades, curb terrorism, promote disarmament, facilitate refugee resettlement, ensure freedom of navigation through international waterways, and promote economic co-operation in the interests of all people.

The United Nations cease-fire should be obeyed and respected by all nations. The Arab states have an obligation to curb terrorism and to end their attacks on Israel civilians and settlements.

We deplore one-sided United Nations Resolutions which ignore Arab violations of the cease-fire and which censure Israel's reply and counter-action. Resolutions which condemn those who want peace and which shield those who wage war are a travesty of the United Nations charter and a blow at the peace.

The United States should make it clear to all governments in the Near East that we do not condone a state of war, that we persist in the search for a negotiated and contractual peace, as a major goal of American policy.

Mr. RIBICOFF. I thank the Senator from Maryland for yielding.

Mr. TYDINGS. I thank the distinguished Senator from Connecticut.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Missouri (Mr. EAGLETON) without losing my right to the floor.

The PRESIDING OFFICER. Without objection, the Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, let me state, first of all, that I believe unequivocally that the United States must reaffirm its moral and political commitment to the continued existence and independence to the State of Israel.

Since the time I began my campaign for the Senate, I have advocated certain principles which, I believe, must be followed if peace is to come to the Middle East. I believe these principles are no less valid today.

First. We must work to bring the arms race in the Middle East to an end. This cannot be done until the United States, the Soviet Union, France, and any other country which might be tempted to sell arms there act in conjunction—I emphasize, act in conjunction—to limit the sale of arms to the area. Such action is not likely until the balance of weaponry is at equilibrium, with both sides convinced that further arms escalation is useless and dangerous. The United States must, therefore, consider acting to offset any arms sales which disturb that delicate balance.

Second. We must encourage direct negotiations between the belligerents. While other parties can be helpful in arranging negotiations and guaranteeing the agreements of such negotiations, clearly, the parties to the conflict must be the parties to the peace and other outside parties cannot and should not impose or dictate the binding terms of any ultimate settlement.

Third. The refugee problem must be solved with justice to both sides, and this point cannot be overemphasized.

Fourth. As a part of any permanent settlement, the territorial boundaries of Israel must be agreed to and recognized by all parties concerned.

I believe that the consummation of an honorable and just peace in the Middle East is of the highest priority.

I thank the Senator from Maryland.

Mr. TYDINGS. I thank the distinguished Senator from Missouri for his contribution to this dialog. I think this dialog is important because for the last decade the conduct of the foreign affairs of the United States in the Middle East has been a matter of great concern to the Presidents of the United States, particularly President Kennedy and President Johnson. During the last decade those Presidents personally gave their time and attention to provision for, direction of, and leadership in the conduct of U.S. foreign policy in that unhappy part of the globe. From time to time I am certain that the considered judgment of Presidents Kennedy and Johnson was different from that of some of the career diplomats within the Middle Eastern Department of the Department of State. I am happy that, when that was the case, the President of the United States personal direction was controlling and paramount.

During that period of time the policy of the United States consistently was to work toward peace and to encourage stability in the Middle East by providing a balance of power and by a policy which was based principally upon the need for direct negotiation and dialog between the Israeli Government and the Arab States.

Unfortunately, the Arab States, at least to date, have been unwilling to sit down in direct negotiations to consider any compelling problems. We all know that these are complex problems and that they are not susceptible to easy solution, for example, we know there is a great problem of refugees in the Middle East. We know it is a problem of concern to the Israeli Government, and, hopefully, of equal concern to the Arab Government. But I think we recognize that any attempt by the United States, the Soviet Union, France, and England to substantively negotiate themselves and present a complete agreement to Israel and her Arab neighbors would only lead to a repetition of the events of 1956, which, of course, set the foundation for the tragic war of 1967.

The purpose of this dialog and the purpose of my speech on the floor of the Senate today is to encourage the President of the United States to continue the policy which was formulated by President Kennedy and President Johnson, and to continue his personal role of leadership in this area, and not to permit an enforced settlement by the big four powers on the Arab states and Israel.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from California (Mr. CRANSTON) without losing my right to the floor.

The PRESIDING OFFICER. Without objection, the Chair recognizes the Senator from California.

Mr. CRANSTON. Mr. President, I first wish to express my deep support for the leadership that is being provided by the Senator from Maryland today in his eloquent, forceful, and careful statement in regard to the situation in the Middle East.

There were stories in the press this morning of a perhaps modified position taken by the administration in regard to American policies in the Middle East. I reserve judgment on what those policies may now actually be. I think we have to wait to see whether words are followed by deeds.

The action by the United States in making a public statement on the Middle East in the context of negotiations between ourselves, the Russians and other major powers to achieve a settlement in the Middle East was rejected by the past administration, for a variety of very sound reasons. This policy was advocated and apparently is still advocated by certain bureaucrats in the Department of State, whose advice was wisely rejected at higher levels in the past administration. People at higher levels in this administration chose to respond more favorably to this erroneous advice. The advice was accepted, the policy statement was enunciated, it was immediately disavowed by those with whom we had been differing in the Middle East, by the United Arab Republic and Russia; it was also immediately disavowed by our allies in that area, and now hopefully the administration has disavowed it.

I think it should be made very plain that a major reason for the problems in the Middle East relates to the positions taken by President Nasser of Egypt. He is undoubtedly responding, in a political sense, to pressures that he feels within his own nation, and perhaps there should be some understanding of that aspect of his behavior. But he should be providing leadership that he is not providing. He is following a course that is very confusing tc those who do not carefully study the record of just what Mr. Nasser is up to in the Middle East. I should like to read something into the RECORD that demonstrates the intransigent nature of this man in relationship to the Arab-Israeli conflict.

In January of 1969, President Nasser said to Egypt's national assembly:

Regarding political settlement and its possibilities, we are not intransigent. Nor do we allow ourselves to indulge in the illusion of dictating terms, but there are possible and impossible things.

Giving up one inch of occupied Arab territory is impossible and I cannot do it.

Accepting negotiations with Israel is impossible and I cannot do it.

Conclusion of peace with Israel is impossible, and I cannot do it.

This is my stand, and on its basis we have provided the opportunity for a political settlement and have accepted the U.N. Security Council resolution, despite its drawbacks. We have cooperated with the special representative of the U.N. Secretary-General over the past 7 months.

Although he concludes by saying, "We have provided the opportunity for a political settlement," it is plain in the rest of his remarks, that he has provided no opportunity for any sort of a political settlement. He makes remarks for the world, in one sense, and he makes remarks for his domestic constituents, in another sense, that are quite contradictory; and to demonstrate just how he goes about doing that, I ask unanimous consent to have printed in the RECORD at this point the transcript of a direct interview with him entitled "A Talk With President Nasser," published in Newsweek magazine of February 10, 1969, and an article entitled "Nasser Statements Are Hardened in Home Version," written by Alfred Friendly, and published in the Washington Post of the following day, February 11, 1969, indicating how he hardened, for domestic use, the somewhat softer language he used for overseas distribution.

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

[From Newsweek magazine, Feb. 10, 1969]

A TALK WITH PRESIDENT NASSER

In the ever-intensifying Middle Eastern crisis no man plays a more central role than Gamal Abdel Nasser, the President of the United Arab Republic. Last week, in the first interview he has granted a Western journalist in more than a year, the Egyptian President gave Newsweek Senior Editor Arnaud de Borchgrave his views on the Arab-Israeli conflict and his thoughts about how it might be settled.

Q. Mr. President, you have called for a more "even-handed" U.S. policy in the Middle East. What do you feel President Nixon should do?

A. A fair policy means one that does not agree with the occupation of other countries' territories. Every day Israel says the occupation will continue and there is no reaction from the U.S. Does this mean the U.S. agrees? If you don't, all you have to do is say so. That would be a good start.

Q. But the U.S. agreed to the U.N.'s Nov. 22, 1967, resolution.

A. Agreeing to a resolution is one thing; condoning continued occupation is quite another. You say Israel should not withdraw before a settlement, but this then means a settlement unfavorable to the Arabs, because Israel now has the whip hand. If you give Israel Phantom fighter-bombers while they are occupying Arab lands, this can only mean you support this occupation. Otherwise, you would make delivery contingent on withdrawal.

Q. What does the resumption of relations between the U.S. and the U.A.R. now depend on?

A. On the point I just made. If the new Administration says it does not agree with this occupation, this will change the whole policy.

Q. If, as you have often said, the Soviets do not control anything in the U.A.R., what leads you to believe that the U.S. could make Israel do something against its will?

A. There is a difference between forcing Israel and stating your viewpoint. For instance, when there was a cease-fire proposal during the June war, it called for withdrawal, too. But the U.S. opposed this for the first time in the history of the United Nations. You were, in effect, encouraging Israel. You repeatedly supported the Israeli stand and were against any condemnation of the invasion. So this naturally gives us the idea that U.S. policy is to support their occupation. At first, the Israelis called them "conquered" territories, then changed the label to "occupied" and subsequently to "liberated," and the United States remained silent. It is not a question of American pressure against Israel. Just be fair and just. Instead, you gave them Skyhawk jet fighters and now Phantoms.

Q. You apparently agree with King Hussein, who says the situation is deteriorating rapidly. In that case, what is the relevance of the Soviet peace plan?

A. I was not optimistic about the U.N. resolution or the Soviet plan because I know Israeli strategy and views. I said to Gromyko when he came here just before Christmas: "The U.S. will not agree to your plan." Why? Because I know the U.S. supports Israel 100 per cent.

Q. And if that were to change under President Nixon?

A. We have to wait and see.

Q. You have said that there will be no solution to the crisis until the Israelis believe that you are strong enough to push them out of occupied territories. When do you think Israel will become convinced of this?

A. Well, of course, they have information about our military development. And from that standpoint, the situation is not deteriorating, as King Hussein suggests. He is in a very difficult position, because he was not able to make up the losses he suffered in the war. We are now in a much better position than last year.

Q. Than before the war?

A. [Laughing] You'd better not say that, or the Israelis will use it as another pretext to attack. No, better than last year. At first, I told my people we would have the strength to reconquer what belongs to us in six months. Then I raised it to twelve. We have now been patient for nineteen months. Every day we are getting stronger. But Israel is buying armaments everywhere it can and this, of course, affects the timing.

Q. France has been Israel's biggest arms supplier, and French-made helicopters were used in the Beirut raid. Why, then, are you so grateful to France?

A. I don't know about the helicopters. France kept very quiet about what it was doing. Its most important decision, however, was to embargo 50 Mirage fighter-bombers, and now they have frozen spare parts, too. For this we are indeed grateful.

Q. If the Israelis had pulled back right after the June '67 war, how would the situation be different today?

A. It was not at all in our plans to attack Israel. I promise you, we had no plans for this. In fact, three of our best divisions were in Yemen at the time, and if we had been preparing for an attack, it would have been logical to bring them home first. What I did say, however, was that if they attacked Syria, we would retaliate by attacking them.

So I could not deceive myself and say that if they had pulled back right away we would have forgotten about their attack. But by not withdrawing, they have merely generated more hatred. There is a vast difference between occupation and nonoccupation, because occupation merely forces mobilization against the Israelis. I think if they had agreed to leave in accordance with the U.N. resolution, this step could have been of tremendous effect in promoting a peaceful settlement. The resolution specifically mentioned a settlement. We agreed. We still agree.

Q. And if they pulled back now, how would Israel's security be enhanced? What quid pro quo would the Arab states offer for evacuation?

A. (1) A declaration of nonbelligerence; (2) the recognition of the right of each country to live in peace; (3) the territorial integrity of all countries in the Middle East, including Israel, in recognized and secure borders; (4) freedom of navigation on international waterways; (5) a just solution to the Palestinian refugee problem.

Q. Do you insist on the choice of repatriation to what is now Israel or compensation for all refugees?

A. The United Nations has said over and over again "the right to return or compensation."

Q. Israel is convinced that neither you nor the Soviet Union wants permanent peace, but only a breathing spell in which to get ready for the fourth round. What can you say to convince Israel that both you and the Soviet Union want permanent peace?

A. First of all, we were not preparing for the second or third round. We did not attack. In 1956 they attacked with the U.K. and France. Books by Western authors have made clear they had also been preparing for the third round, whose success was predicated on a preemptive first strike. Now they are preparing for a fourth round. So we must be prepared, too. You must believe me when I tell you the Soviet Union wants a peaceful settlement. I am convinced that their motives are sincere. As for us, we do not want to go

on mobilizing everything for war. We crave peace. We desperately need peace for economic development. But we must defend ourselves. The Israelis have said many times their country stretches from the Nile to the Euphrates.

Q. *Do you really believe this is their objective?*

A. Of course. Remember what Defense Minister Dayan told the youth of the United Labor Party after the war. "Our fathers made the borders of '47. We made the borders of '49. You made the borders of '67. Another generation will take our frontiers to where they belong." Every day the Israeli Prime Minister, or Deputy Prime Minister, says they will not withdraw from everything they took, that big chunks will be permanently joined to Israel. They are settling Israelis in the Sinai, on the Golan Plateau in Syria and in Hebron in Jordan. So it is very hard to escape the conclusion that their *raison d'être* is expansion.

Q. *You have publicly supported the Palestinian commandos in their attacks on Israel. But you also support the U.N. Middle Eastern resolution of 1967 and the Soviet peace plan. How do you reconcile the two positions?*

A. Israel publicly refused the Soviet plan. And the U.S. answer to Moscow means the U.S. also refuses the Soviet plan. The Israelis, moreover, refuse to implement the Security Council resolution. We agreed to it. So really what choice do I have but to support courageous resistance fighters who want to liberate their lands?

Q. *Would you allow the Soviet Union, the United States, France and Britain to station troops in the Sinai as part of an agreement on Israeli withdrawal?*

A. No. We will not agree to the stationing of any soldier from the four major powers in our country.

Q. *But don't you already have Soviet military personnel in your country?*

A. No, they are advisers, not in uniform, and they take their orders from us.

Q. *Would you accept units from smaller countries under the U.N. flag?*

A. We would have no objection.

Q. *Would you agree to keep the Sinai demilitarized if Israel withdrew to its pre-June boundaries?*

A. No. We could only agree to the demilitarization of areas that are astride the boundaries.

Q. *If Israel were to pull back as the first phase of a settlement, would Egpyt be prepared to sit down with the Israelis to discuss other issues?*

A. I could not give you an answer about that until they pull out. Obviously, you would not sit down with a foreign power occupying part of the U.S. until it withdrew. But I can tell you we sat down with the Israelis after the 1948 war under the armistice agreement until the 1956 war, and that we are prepared to do so again. We had joint committees with United Nations observers and it was Israel who refused to continue this procedure after 1956.

Q. *You have said that you recognize realities and that Israel is one of them. How does this differ from de facto recognition of Israel's prewar frontiers?*

A. This question has been complicated by the Israelis themselves. Under the 1949 armistice agreements, Arabs and Israelis were supposed to agree on the rehabilitation of Palestinian refugees. If this had been done, it would have been a mighty step toward lasting peace. But the Israelis refused to discuss rehabilitation. So the situation got progressively worse. Before, there were under 1 million refugees. Now there are almost 1.5 million.

Q. *Could you spell out how you see a lasting solution?*

A. The only way is for Israel to become a country that is not based on religion, but on all religions—a nation of Jews, Moslems and Christians. They lived for centuries together with few problems, but as long as the Israelis insist on depriving the Palestinians of their rights, the crisis will be with us for 10, 20, 30 and 40 more years.

Q. *Do you see any chance for that kind of evolution?*

A. Perhaps the next generation in Israel. Some Israelis are beginning to say they should think another way. But present leaders are shortsighted.

Q. *Do you believe that Israel has a nuclear capability? If so, what do you plan to do about it?*

A. Our experts don't believe Israel will develop this capability soon. But, on the other hand, we know they are highly advanced in this field and are spending lots of money to speed things up. There is no doubt that this is one of their top priority objectives.

Since the latest U.S. news reports, we have re-examined our own position. I called a meeting of our top people. The conclusion was that we have the experts and the wherewithal, but not the money. It would be terribly costly.

Q. *How much?*

A. About $250 million. But we have no plans.

Q. *And if Israel did achieve nuclear capability?*

A. We signed the noproliferation treaty. Israel refused. And under the treaty, the nuclear powers are obligated to guarantee us against nuclear blackmail.

Q. *If the events of June 1967 were repeated, what would happen this time? Would Russia intervene?*

A. We were not waiting for Russia last time, and we will not be waiting for her if there is a next time. We will defend ourselves. What helped the Israelis the last time was not so much their cleverness, but the conceit and complacency of our generals. They felt Israel would never dare to attack. They overestimated their own strength. And because of that, they failed to take elementary precautions. The situation is now completely different. It would be impossible for the Israelis to repeat June 5. They could strike first again, but they would certainly not destroy our air force.

Q. *Your detractors say that you have mortgaged your country to the Soviet Union. What is your answer?*

A. Well, we are not an independent country now, not because of the Russians, but because of the Israeli occupation. The Soviets have never asked me for anything. in Moscow last July, I told Brezhnev, Kosygin and Podgorny: "All I do is ask, ask and ask, but you never ask for anything. What can I do for *you* for a change?" They replied: "Nothing. We support your cause because it is a just one."

But if they asked me for something now, I would do it if it helped me liberate my country from the Israelis. I need all the help I can get. [Chuckling] I would gratefully accept any help the United States would give us to achieve this objective.

The Soviets give us all the raw materials we cannot obtain in the West because of foreign-exchange shortage. They don't ask for money. They take anything we can give them—refrigerators, clothes, furniture.

Q. *Aren't you afraid of being absorbed into the Soviet-bloc economy?*

A. It is not as complex as you seem to think. When you are in debt to somebody, you are always in a strong position. [Laughing] Debtors are always stronger than creditors.

Q. *How do you assess Soviet strategy in the Arab world? Why the enormous military and economic aid?*

A. You are exaggerating what you seem to think is a grand design. They just don't want to be isolated. They are trying to win friends and counterbalance American influence. We are accused of giving the Soviets bases. They have no bases in Egypt.

Q. *Perhaps no, but they come and go as they please.*

A. Before the war, the U.S. Sixth Fleet was free to visit us, too. When your ambassador requested permission for a visit, we granted it. Warships from many countries came to see us.

Q. *Looking back on your seventeen years in power, what would you have done differently?*

A. There is little time for reflection in my job. It all looks like a machine. It must go forward. This is my destiny. I believe in God and destiny, and that one should not look back.

Q. *In 1948, as a young officer embittered by defeat, you resolved to overthrow the regime responsible. If you were a young officer today, wouldn't you be just as bitter and just as determined to overthrow the regime now in power?*

A. In 1948, we were a small army of ten battalions—no tanks, no planes. The reason for our revolt was a feudal regime, corrupt from top to bottom, that supported the British occupation of our country. That's how we were let down at the front. But after that, the army was able to get everything it needed. I see many young officers, of course, and they are bitter, but against Israel and U.S. support of Israel. They want to know how long they have to wait.

Q. *And what do you tell them?*

A. Be patient.

Q. *But how long can you go on telling them the same thing?*

A. Not indefinitely, of course. But as long as it takes.

[From the Washington (D.C.) Post, Feb. 11, 1969]

NASSER STATEMENTS ARE HARDENED IN HOME VERSION

(By Alfred Friendly)

BEIRUT, February 10.—The second thoughts of Egyptian President Nasser about what portions of his recent long interview with Newsweek were fit for the ears of Egyptians are revealed by a comparison of the text published in the American magazine and the one published in Cairo.

The version issued in Egypt differs substantially in no less than 17 places, through additions, excisions, and major changes in phrasing. In particular, statements by Nasser of a conciliatory nature toward Israel were toned down or eliminated in the Cairo version.

The interview, given to Newsweek Senior Editor Arnaud de Borchgrave, was published simultaneously by agreement in Al Ahram, Egypt's most influential and authoritative daily, on Feb. 4 and in the Newsweek issue appearing on that day. De Borchgrave made a copy of his transcript available to the Egyptians for that purpose.

VERSION'S DIFFER

It appeared in Arabic translation in Al Ahram and that version was apparently retranslated to English for publication in Cairo's English-language daily, the Egyptian Gazette. That version differs as would be expected from Newsweek's in wording, but the changes of real significance were those of substance.

For example, in referring to increased Egyptian military strength and Israel's awareness of it, Nasser told de Borchgrave: "Of course, they (the Israelis) have information about our military development." The Egyptian version read: "It is certain that they are trying to obtain information."

Nasser also told de Borchgrave that, contrary to suggestions from King Hussein of Jordan, the military situation was not deteriorating although Hussein himself "is in a very difficult position, because he was not

able to make up the losses he suffered during the (1967) war." The entire passage was eliminated in the Cairo version.

De Borchgrave asked: "How would Israel's security be enhanced" and what would be the quid pro quo if Israel withdrew from the territories it occupied during the war? In answer, Nasser detailed five points, including an Arab declaration of nonbelligerence, "the recognition of the right of each country to live in peace; the territorial integrity of all countries in the Middle East, including Israel, in recognized and secure borders; freedom of navigation on international waterways, (and) a just resolution to the Palestinian refugee problem."

ANSWER CHANGED

In the Cairo version there was no mention of enhancing Israel's security in the interviewer's question, and Nasser's reply became merely: "The answer is clear in the Security Council resolution" of Nov. 22, 1967.

As part of one question, de Borchgrave asked: "What can you say to convince Israel that both you and the Soviet Union want permanent peace?" The entire sentence was eliminated from the Cairo version.

To the reporter's question of whether Egypt would object to a United Nations peacekeeping force made up of soldiers from smaller nations in the world, Nasser replied: "We have no objections." In the Cairo version, the reply was: "There are many proposals in this respect."

PHRASE IS ABSENT

The interviewer asked if Egypt would be willing to sit down with the Israelis and discuss issues if Israel withdrew from the occupied territories. In answer, Nasser recalled that Egypt had done so before and "we are prepared to do so again." The quoted phrase is absent from the Cairo publication.

At the end, de Borchgrave asked: "In 1948, as a young officer embittered by defeat, you resolved to overthrow the regime responsible. If you were a young officer today, wouldn't you be just as bitter and just as determined to overthrow the regime now in power?"

In The Egyptian Gazette, the question reads only: "How do you describe the feeling of the younge officers in the army today? Can this be compared to the feeling they had in 1958?"

Mr. CRANSTON. The hardship that all this entails for the people of Israel, and one of the reasons for American sympathy and understanding of their problem, relates to our own involvement at this time directly in the Vietnam war. Since the 1967 war, 480 Israelis have been killed in incidents, in addition to 1,859 having been wounded. As for those killed, that is an average of 16 a month killed by subversive enemy action or in direct conflict with the Arabs in the Middle East. For Israel to lose 16 men in 1 month is comparable, in population ratios, to the United States losing 1,400 men per month in Vietnam.

Yesterday in the New York Times there was an important statement by the American Professors for Peace in the Middle East which clearly outlined the problems in that area.

The five basic propositions that the article mentioned were, I believe, the most important ones in this issue. These were: that the United States strives for peace and stability in the Middle East; that the United States believes that no arrangement is realistic which does not rest upon the free consent of the participants; that the United States has cause for continued misgivings about the disruptive role of the Soviet Union; that the U.S. national interests rides with those societies and governments that are friendly, viable, progressive, and democratic, and finally, that the security of America's friends, as determined by these criteria, should be assisted to the point where they can defend themselves and where U.S. intervention will be unnecessary.

It seems to me that these five assumptions are crucial to understanding the situation in the Middle East. However, it does not seem that the State Department accepts these assumptions. Rather, as the article points out, the assumptions of the State Department seem to be: that the United States along with France, Britain, and the Soviet Union have a special prerogative to impose its will on other nations. We continue to offer "peace" proposals without fully consulting the nations of the Middle East. In all these activities Israel is being treated more as a pawn than as a victor. Clearly crucial to the success of negotiations in the Middle East is the respect for the sovereignty and integrity of Israel as well as the other nations. We must acknowledge that Israel has a right to determine the composition of her population, and the extent of the boundaries she fought for in 1967, in the context of direct negotiations and binding contractual agreements with her enemies.

We have sought to impose our will, unrealistically and unjustly in other areas of the world, and we must not continue to make these tragic mistakes. I am glad that the President, in his state of the Union message the other day, indicated that in the future we will not seek to impose our will on other parts of the world.

American troops are fighting in Vietnam and a large amount of U.S. aid is pouring into that country, as I said earlier. Yet the government in Saigon is not deprived of the right to negotiate face to face with its enemies. Indeed, the United States insists that Hanoi agree to this arrangement in that part of the world. U.S. negotiators on their part closely consult with Saigon on all matters affecting both countries. Israel, on the other hand, is prevented from negotiating with her enemies since the four powers have usurped the right, or seek to do so, to speak on her behalf. They now do so without even consulting Israel, and, according to recent reports, without even keeping her informed.

The recent proposal by the State Department is certainly not in keeping with the five assumptions I have outlined. Rather, this plan strengthens the Arab conviction—the State Department's approach—that they do not have to negotiate directly with the Israelis. Further this plan is a clear imposition on our part in seeking to dictate policies to the Government of Israel.

So while I am somewhat pleased by the President's latest statement on the Middle East which seems to be a repudiation of the State Department's plan—which has already been rejected by the parties concerned—we must wait to see if this new rhetoric will be put into comprehensive action which accepts the sound assumptions I have just discussed in these five points.

I close by again complimenting the Senator from Maryland and pledging my support to work with him in efforts to lead to the adoption of a sensible American policy in this vital, sensitive, and dangerous part of our world.

Mr. TYDINGS. I thank the distinguished junior Senator from California for the contribution he has made to this debate and dialog today.

Mr. President, I ask unanimous consent that I may yield to the distinguished senior Senator from Tennessee, without losing my right to the floor.

The PRESIDING OFFICER (Mr. BYRD of Virginia in the chair). Without objection, it is so ordered.

The Chair recognizes the Senator from Tennessee.

Mr. GORE. Mr. President, I wish to compliment the able senior Senator from Maryland for initiating a discussion upon a delicate and dangerous question. With a deescalation of the Vietnam war in prospect, the most acute danger of confrontation between the major powers would appear now to be in the Middle East.

The first imperative is an avoidance of a confrontation between the major nuclear powers, because in a confrontation between nuclear powers, the overwhelming danger of ignition must be recognized. This being true, an ongoing dialog between the United States and the Soviet Union is extremely imperative. Had such a dialog been pursued with sufficient vigor, a recent aberration in understanding may have been avoided.

I do not wish, however, to be critical at this point. Let us look to the future. One way to prevent a flare of hostilities is the preservation of a balance of military strength. This balance is a matter that can be preserved or achieved either by preserving the present respective power positions of the contending forces, by reducing each, or by augmenting the firepower of each. The last choice, it seems to me, would be a further armaments race in the Middle East. But this cannot be avoided by one side alone, and it seems to me dangerous for the United States to permit an imbalance of firepower and military strength by ignoring the armaments which the Soviet Union has fostered and which has been acquired from other sources by the Arab States.

Let us hope that the action which President Nixon announced as of yesterday is sufficient—sufficient in action with respect to performance on our part and sufficient, too, in its notice to the Soviet Union that an imbalance will not be permitted.

Therefore, we come back to the imperative, Mr. President, of not only maintaining an ongoing dialog between the two great nuclear powers, but also the very careful and tedious development of an equation between these two powers and equations between the two powers themselves, on the one hand, and the Arab States and Israel, on the other, that holds promise for a peaceful settlement; because ultimately, if there is a peace in the Middle East, there must be a will for peace on the part of people who live and have their being there.

This is the goal—I think the proper goal—for the U.S. peace. This, it appears

to me, would be the proper goal for the Arab States and for Israel. Israel is in the Middle East; it is going to remain in the Middle East; and if it is to live there in peace and prosperity, it must do so through the achievement of a relationship of peace and understanding with her neighbors there. I am sure this is her goal. To the extent that we can assist her in the achievement of this goal, I hope we will do so.

Mr. TYDINGS. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Ohio (Mr. YOUNG), without losing my right to the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. YOUNG of Ohio. Mr. President, first, I wish to praise and compliment most highly the distinguished senior Senator from Maryland for the magnificent speech he has made this morning.

Mr. President, the recent shift in U.S. policy toward Israel and the Middle East as announced by Secretary of State Rogers seriously undermines efforts to bring about a just and lasting peace in that troubled area of the world.

The change in policy has undercut Israel's insistence on direct negotiations with Arab governments. Furthermore, it has hampered Israel's flexibility in any negotiations that should finally come about. I feel outraged that State Secretary Rogers, presumably expressing the views of President Nixon, has proposed that Israel return all the territory taken by its forces in the victorious war against Nasser's aggression. Americans have a responsibility toward this little state we helped create. Apparently, Nixon administration leaders are reciprocating large campaign contributions from rich oilmen with huge investments in Libya, Saudi Arabia, Kuwait, and other Arab nations. It is ironic that the leaders of the Soviet Union immediately rebuffed the proposals set forth by Secretary of State Rogers.

Israel is the only true democracy in the Middle East and our only real friend in that part of the world. This so-called balanced policy does violence not only to Israel interests but also to the best national interests of the United States.

I oppose firmly all pressures by Nixon administration leaders upon Israeli leaders to surrender territories taken by this valiant little nation fighting against Nasser's aggression; at least until security from Arab aggression is pledged in face-to-face negotiations.

Following the 6-day war, in June of 1967, President Johnson stated this country's commitment to a peace that is based on five principles:

> First, the recognized right of national life; second, justice for the refugees; third, innocent maritime passage; fourth, limits on the wasteful and destructive arms race; and fifth, political independence and territorial integrity for all.

In the same speech, President Johnson made it clear that peace would have to be reached in direct negotiations between Israel and the Arab nations.

In September of 1968, President Johnson, in discussing the question of borders, stated:

> We are not the ones to say where other nations should draw lines between them that will assure each the greatest security. It is clear, however, that a return to the situation of June 4, 1967, will not bring peace. There must be secure and there must be recognized borders.

The new U.S. proposal categorically calls for withdrawal to the old Sinai international frontier insofar as Egypt is concerned. In the case of Jordan it calls for a return approximately to the former armistice lines with only "insubstantial changes."

These proposals are harmful to the cause of peace. They limit Israel's ability to negotiate frontier lines which are consistent with her security needs. The issue is not territorial expansionism by Israel. The prime concern is security for the valiant people of Israel. Return to the 1967 lines means retreat to 1967 close-range exposure of Israeli civilians to terrorism and siege. It is an open invitation to future aggression by the Arab leaders.

May I say that the 1967 borders were created as a result of the 1948 armistice agreement after the Arab Nations failed in their attempt to destroy Israel before it even came into being. These borders are not immutable. When Nasser and his cohorts continued on their path of aggression in 1956 and again in 1967 they risked the chance of the defeats they suffered. It was their aggression that brought Israeli forces to the Suez Canal and to the Jordan River. Now, having failed to destroy Israel, the Arab Nations naively expect Israeli leaders to withdraw to the 1967 borders with no guarantees in return.

No self-respecting nation would accede to such demands. The terms proposed by Secretary Rogers are tantamount to a surrender to the territorial and political demands of the Arab States, even though it was they who launched the 1967 aggression against Israel, who lost that war and who are still determined to destroy Israel.

In discussing the refugee problem President Johnson urged Israel and her Arab neighbors to "participate directly and wholeheartedly in a massive program to assure these people a better and more stable future."

Israeli leaders have stated time and time again that they are willing to negotiate anytime, anywhere with Arab leaders the outstanding issues in dispute—including the refugee problem. In that regard it is interesting to note that the administration fails to consider that Israel has accepted almost one-half million persecuted Jews from Arab lands, many of whom were virtually expelled. At the same time the Arab governments have refused to make any serious effort to resettle Arab refugees. They prefer to let them remain in squalid refugee camps on Israel's border, where their hate and thirst for revenge grows unabated.

It may be that the Nixon administration is seeking a peaceful solution to the tragic conflict in the Middle East. However, in rejecting the idea of direct negotiations and seeking to involve other parties in the settlement, the administration undermines the Israel position, encourages continued hostility by the Arab nations, and decreases the chance for a peaceful and binding settlement.

U.S. policy toward Israel has been one of continual retrogression. It has gone from the commitment under the Johnson administration for a peace made by the parties to the conflict to a plan whereby the parties would merely fill in the details of specific proposals made by our Government and others; from adjustment of borders to insure security to withdrawal to the 1967 borders; from maneuverability in resolving the refugee problem to the demand that Israel accept 1.4 million Palestinian refugees filled with hatred for Israel and committed to her destruction. This potential fifth column would then constitute more than a third of the population of Israel.

Mr. President, when the Arab leaders realize that they cannot defeat Israel in war—and perhaps only then—they may abandon belligerence and agree to negotiate the terms of peace treaties with Israel. There is no effective substitute for the procedure. The parties to the conflict must be the parties to the settlement. Any attempt by outside powers to impose halfway measures not conducive to a permanent peace must be averted.

Mr. President, there is a basic understanding and friendship between the United States and Israel which rests on their common dedication to democracy and freedom—an understanding which is crucial to Israel's development and survival and, at the same time, consistent with the highest interests of the United States.

Permanent peace in the Middle East will not be achieved by sacrificing the interest of that beleaguered democracy. It is essential that our Government continue to insist on direct negotiations between the Arabs and Israelis and that our Government take all practical measures to insure that Israel continues to be strong enough to deter renewed aggression against her.

Finally, may I say, in 1968, returning from a factfinding mission in Vietnam, I spent 3 days and 2 nights in Israel. The general commanding the Air Force of Israel gave me the use of one of their warplanes, piloted by an English-speaking officer who had fought in the 6-day war. I was taken over the Sinai Desert and over every other part of that little country. It was one of the bright experiences of my life.

We Americans helped to create that brave little nation. We must stand by them. We must continue to support and encourage this brave little nation which repelled the aggression of Nasser in the 6-day war.

We must stand by its side if it is compelled to defend itself against further Arab aggression.

Mr. TYDINGS. I thank the distinguished Senator from Ohio for the contribution he has made to this debate, dialog and discussion here this morning.

Mr. President, I ask unanimous consent that I may now yield to the distinguished Senator from Pennsylvania (Mr. SCHWEIKER).

The PRESIDING OFFICER. The

Chair would inform the Senator from Maryland that his time has now expired.

Mr. TYDINGS. Mr. President, I ask unanimous consent that we may continue for an additional 10 minutes in order to permit the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Indiana (Mr. BAYH), and perhaps other Senators also to speak on this important subject.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maryland? The Chair hears none, and it is so ordered.

Mr. SCHWEIKER. Mr. President, I am pleased to join many of my distinguished colleagues today in speaking out on the serious situation in the Middle East, and in reaffirming our solid support for Israel.

The deteriorating situation in the Middle East represents one of the most serious threats to world peace today, and we must recognize that any outbreak of hostilities between Israel and the Arab nations could quickly grow into a major crisis involving all major countries.

The Arab nations have never ceased open aggression and open hostility toward Israel, and despite the strong Israeli victory in the June 1967 war, the Arab nations still actively thirst for more hostility, and actively seek Soviet Union support for their efforts.

Therefore it is clear that there are not equal sides in the Middle East, and in the face of unequal opposition, it is imperative that the United States firmly back Israel's efforts to stand up against this Arab hostility.

So long as Israel is strong, and so long as it is clear that the Israeli forces can turn back any Arab threats, the threat of war in the Middle East is reduced. But as soon as Israel appears weak, and as soon as the United States lessens its firm support of the Israeli position, then the prospects for war increase. The best insurance against another full-scale Middle East war, therefore, is to keep Israel strong, and to fully support the Israeli bargaining positions.

Yesterday, President Nixon echoed these thought when he wrote to the Conference of Presidents of Major American Jewish Organizations that the United States is "prepared to supply military equipment necessary to support the efforts of friendly governments like Israel's to defend the safety of their people," and when he said that "The United States believes that peace can be based only on agreement between the parties and that agreement can be achieved only through negotiations between them."

I applaud this message by the President, and pledge to give the President my full support in any actions which carry out this pledge of U.S. backing for Israel.

In December, I was concerned over the possible implications of statements made by Secretary of State William P. Rogers, and I wrote the Secretary to warn against any undercutting of Israel's bargaining position, and asked:

Why are we putting pressure on Israel to compromise her bargaining position when that position is taken by Israel solely in the interest of its national security and of permanent peace in the Middle East?

The President's message this weekend should be reassuring to all who were alarmed at the prospect of a change of long-time U.S. support for Israel. It indicates that the President is well aware of the necessity of maintaining a strong Israel if there is to be peace in the Middle East, and also the necessity of direct negotiations between the Israeli and Arab parties without intervention by the United States, or any other major power.

I was also pleased by the President's comment that "we are maintaining careful watch on the relative strength of the forces there, and we will not hesitate to provide arms to friendly states as the need arises."

I previously supported the sale of 50 U.S. phantom jets to Israel, which I understand is now being completed, because I felt that this addition to Israeli forces would preserve the balance and enable Israel to maintain equal strength with the Arab forces.

The recent sale of 100 jets, including 80 mirage jet fighters, to Libya by France, is disturbing. The balance of power in the Middle East is easily upset by a sale such as this, and the United States cannot sit back if we determine that such an increase in Arab forces would mislead the Arab Nations into the false belief that they could now overpower Israel.

I share the President's view that restraint in arms buildup is the best policy, but welcome his affirmation of U.S. policy to continue to provide arms to Israel if that is necessary to restore balance of power.

Mr. President, on the question of war and peace in the Middle East, the Arab countries can afford to lose over and over again, which they have done, and still seek more hostility. But if Israel loses just once, she will be annihilated. It is imperative that the United States lend full support to insure that this tragic event never occurs.

On the question of negotiations, we must fully support the Israeli bargaining position, and not ask Israel to make unreasonable concessions for a fictious permanent peace. It is the Arab Nations which have been unreasonable and if concessions are to be made now, the Arab Nations should make them.

The Congress and the executive branch must work together, to present a clear, unified policy to the world. No nation and no person must ever assume that we will not fully support Israel, and I look forward to working with my Senate colleagues and President Nixon in assuring that there is no misunderstanding of our total support for Israel, and of our firm wish for a permanent peace in the Middle East.

Mr. BAYH. Mr. President, on December 9, 1969, Secretary of State Rogers presented the Nixon administration's first major policy statement on the Middle East. The Secretary noted, at the outset that current American policy was based on the realization that—

The parties to the conflict alone would not be able to achieve a political settlement." The new administration, therefore, "decided it had a responsibility to play a direct role in seeking a solution.

Having decided on a more active diplomatic role for the United States, the Nixon administration, according to the Secretary, was very receptive to France's February 1969 suggestion—also put forth by the Secretary General of the United Nations—that the major powers "assist" Ambassador Jarring in working out a peace settlement. The Secretary also stated that, on our own initiative, we decided to "consult directly with the Soviet Union, hoping to achieve as wide an area of agreement as possible between us."

After 8 months of four power talks at the United Nations and two-power discussions with the Soviet Union, the Secretary thought it was time to give the American public its first glimpse of what had been going on behind the scenes—amid rumors that the United States was prepared to make a dramatic gesture toward the Arabs. Among the most revealing—and disturbing—glimpses Secretary Rogers offered us was his statement that while prewar boundaries and international arrangements had been inadequate, any changes "should be confined to insubstantial alterations required for mutual security." A realistic look at the Middle East would have quickly revealed that mutual security and only "insubstantial alterations" are incompatible, but that did not seem to trouble the Secretary.

The territorial arrangements required for mutual security—and one must wonder what the Secretary means since it is Egypt that is committed to the destruction of Israel—must involve such vitally strategic points as the Sinai, the Golan Heights, and Sharm-el-Sheikh. In view of recent history, it is folly for an American Secretary of State to categorically assert that there can be only "insubstantial" changes in these boundary lines or in the way these territories are administered. The exact nature of the territorial changes required as a prelude to a permanent political settlement is something that is best left to the parties themselves to decide. For the United States to establish this type of precondition is to complicate an already confused picture by forcing the Israelis and the Egyptians to accept an imposed framework for negotiating a settlement that may be unacceptable to either. An imposed peace, as we should have learned from our ill-fated 1957 experience in the Middle East, is no peace.

In his speech the Secretary of State alluded to the even more precise formulations that the United States had formally submitted to the Soviet Union on October 28, 1969. The Russians, he noted regretfully, had not yet responded to our "balanced" initiatives. Precisely what those "balanced" initiatives had been was left to speculation, though the description of a "balanced" and "evenhanded" proposal could fairly have implied that the United States was moving away from Israel and toward the Arabs. It was a disturbing prospect, Mr. President.

My own apprehensiveness about these new departure in our Middle East policy was heightened when the press reported

that a "concrete and specific" American proposal on the Israeli-Jordanian question had been formally submitted to the big four powers. It seemed to me then—and it seems to me now—that in our well-intentioned desire to break the diplomatic logjam and move the parties off dead center, we had become a little overzealous in attempting to find common ground with the Soviet Union. In fact, Mr. President, we seemed to have forgotten our own rhetoric about the need for the parties directly involved to reach agreements among themselves on boundary lines, navigation rights, refugees, and demilitarized zones. Or, was it just that, rhetoric?

The Secretary seemed to have recognized this when, in his December 9 speech, he pointed out that "an agreement among other powers cannot be a substitute for agreement among the parties themselves." What Secretary Rogers did not recognize is that the search for so-called parallel views and their formulation publically can restrict the flexibility of the parties. Simply, it reduces the incentive to bargain as well as the bargaining areas. Mr. President, why would any one of the parties to the Middle East dispute concede in direct negotiations what may have been already secured for it by one of the major powers? It would not—be it Arab or Jew.

As we now know, Mr. Presdent, on December 23, 1969, much of this became academic. Secretary Rogers received the Russian reply: "Nyet." The Soviets rejected eight of the 10 points our State Department had drawn up as the bases for beginning and implementing a permanent political settlement. Obviously, the administration had misread the Russians, who seem content to keep the Middle East heated up. The Russians are not about to let their Arab clients get out from under the shadow of Soviet influence at a time when that influence is not yet firmly established in the eastern Mediterranean. There is, in addition, the matter of more than $1 billion in Soviet military materiel—a sizable investment by any measure, including U.S. assistance to Israel—and to date the return on investment has been zero. I am afraid, Mr. President, that we will find the Soviets an unwilling partner in the Secretary's search for "parallel views."

The question on most minds now, Mr. President, is whether or not our recent diplomatic initiatives represent a departure in our Middle East policy, a policy based on our political, social, economic, and moral ties to Israel. Is the United States following Britain's and France's lead, abandoning Israel for whatever concessions can be won from the Arab States? That is the question we in Congress cannot answer. Only the President and the Secretary of State know the answer. But we in Congress must let the President and the American public know whether we favor such a shift in our policy, for it may possibly come about as much by inadvertence and lack of public discussion as by design. I, for one, am not in favor of abandoning Israel.

The merits of our specific proposals aside—and I must confess that certain aspects of both the Egyptian and Jordanian plans trouble me—I think the real tragedy of our diplomatic initiatives is that we have played out our hand in the Middle East. By violating our own stricture, and making public what we feel are acceptable terms, we have lost whatever bargaining power we may have had to bring the Israelis and the Egyptians to the bargaining table—and that is the only place where a permanent peace can be written and they are the only ones who can write it.

The greatest danger now, as I see it, Mr. President, is that having once felt compelled to break the diplomatic impasse, we will continue to formulate peace proposals in the hope of someday finding the Soviets agreeable. In the process, I fear, we are likely to lose for Israel the trump cards she possesses by virtue of her victory in the 6-day war.

How ironic it is, Mr. President, that it was at France's suggestion that we undertook this futile mission of seeking, along with the other major powers, an expanded interpretation of the Security Council's November 1967 resolution. France's concern in the Middle East, under Pompidou as well as De Gaulle, is not negotiations leading to a peace settlement, but a broadening of French influence among the oil-rich Arab States and protection of its military influence in Chad. Is there any other meaning to France's farce-like embargo on arms to the Middle East, which when interpreted means no arms to Israel but Mirages for Libya and supplies for Iraq? Mr. President, are there 50 trained pilots in all of Libya who can fly these Mirage II–E jets, an even more sophisticated version of the Mirage than Israel has ordered and paid for but that remain undelivered? No one doubts that they will be flown by Russian-trained Egyptian pilots and against Israel.

Mr. President, if the Nixon administration feels it is so important that we find a common ground with the other major powers—and obviously it does—then it ought to find it equally as important to take Mr. Pompidou to task. The President will have that opportunity shortly. I urge him to call France to account for its recent actions. Failure to do so during Pompidou's upcoming visit would be an unfortunate sign that, in fact, American policy has changed. It would signal a willingness to sit idly by as France and the Soviet Union take advantage of the present state of unrest to extend their spheres of influence.

The one area where the major powers themselves can make a direct contribution to an easing of tensions is by limiting the spiraling arms race. France, Mr. President, is taking the opposite course. The United States, as a consequence, should now reevaluate Mrs. Meir's recent request for assistance. We must take the steps necessary to see that the present balance of military power in the Middle East is maintained. To do otherwise is to invite another outbreak of hostilities.

As I said upon my return from the Middle East following the 6-day war—and it bears repeating again—a strong and secure Israel is the best deterrent to aggression.

Mr. President, I share the deep concern which has been expressed by several of my colleagues today. I think it is vitally important that our country not permit itself to be maneuvered into a position, either by what State Department officials say or by interpretations of their statements, that represents a departure from our present policy.

There is only one sure path to peace in the Middle East: that is for the parties involved to sit down and negotiate reasonably, in a face-to-face confrontation, a final political settlement. They are the ones who must live there. They are the only indispensable parties to the negotiations. We do not want to have another situation, such as that which followed the power agreement in 1957, only postponing another outbreak of hostilities for 10 years. We want the dispute to be permanently settled by having the parties themselves reach a solution.

I think the timeliness of this dialog, in view of French Premier Pompidou's impending visit to the United States, is most appropriate. I hope that the President of the United States will take this opportunity to express American concern over the situation in the Mideast. I urge the President of the United States to call France to account, to make it perfectly clear to the French that we are not going to tolerate their present policy of deliberately courting the Arabs. But if this is the direction they are headed it seems to me that the United States must insure the present balance of power by providing Israel with the means to deter Arab aggression.

I thank my colleague from Maryland for this opportunity.

ISRAEL—SUSTAINING A FRIEND

Mr. PROXMIRE. Mr. President, the United States has strongly supported the State of Israel since President Truman recognized that country in May 1948. Now is not the time to change or in any way weaken our political, military, moral, and ideological commitment to Israel.

Israel has an undeniable right to life—a right to exist. We must respect the integrity of the Israeli State and should urge all of Israel's neighbors to respect her borders. Acts of terrorism against the civilian population in Israel as well as against Israeli nationals and property in other countries is deplorable. The United States must not condone by silence deliberate acts of terrorism for which certain groups in Israel's neighbor states defiantly and actively seek international acclaim and credit.

Firm, unequivocal American support of Israel does not and should not in any way deny our desire to see the Arab States around Israel develop and prosper. We should continue to help all states in the Middle East expand and stabilize their economies and expand internal development. But can this not be done in a manner which encourages Israel and all her neighbors to live in relative peace? Is there not some way in which we can bring the states in the Middle East together to solve common problems like irrigation, land development, and even refugees?

A so-called "balanced policy" in the Middle East which will enable us to gain

respect with the Arab States as well as with Israel is not impossible. But I emphatically reject the concept of a balanced policy if it implies we weaken our support for Israel. Our continued resolve to maintain our strong support for Israel must not even come into question for in so doing we encourage miscalculations as to our intent and vital interests in the Middle East. Such miscalculations could lead to broader conflagration and might involve the United States.

The United States should urge direct negotiations between all parties in the Middle East dispute to settle their differences at the conference table. Where there is a real desire to achieve some sort of peace, those who genuinely want to resolve differences will sit down at the conference table. Where there is only demagoguery and the talk of peace exists only for political propaganda, there will be no progress. Israel's desire to simply sit down and begin to explore the possibilities of peace and negotiations with the Arab States directly can receive nothing less than full U.S. support.

A NEW AND DANGEROUS POLICY FOR THE MIDDLE EAST—ISRAEL'S SECURITY MUST NOT BE COMPROMISED

Mr. YOUNG of Ohio. Mr. President, the distinguished senior Senator from Indiana (Mr. HARTKE), has long been an astute observer of the tragic conflict in the Middle East. He was the first Senator to visit Israel following the 6-day war.

Last April, Senator HARTKE pointed out that America's vital interests are far more intimately involved in the Middle East than they are in Southeast Asia; and he cautioned us that to force Israel to sacrifice its defensive positions in exchange for vague Big Four guarantees would be not only immoral but destructive of America's own position in the region. That warning was never more appropriate than it is today.

Senator HARTKE recently again in Indiana reviewed the present situation in light of the Nixon administration's dangerous new initiatives in Middle East policy. His speech deserves careful attention and I ask unanimous consent that it be printed at this point in the RECORD.

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

A NEW AND DANGEROUS POLICY FOR THE MIDDLE EAST

(By Senator VANCE HARTKE)

I am sorry to report to you tonight that the present administration has embarked on a course that offers great danger to world peace. I refer to the shift in traditional American policy in the Middle East, a shift articulated by Secretary of State William Rogers on October 28 and December 9 of last year.

In essence, this new policy is designed to force Israel into relinquishing every bargaining card it now possesses before the bargaining even begins. This new policy would impose a "settlement" in the Middle East that settles nothing except the Arabs' right to attack Israel with impunity and to continue to refuse to make peace.

The main points of the new policy are these. First, Israel would be required to withdraw from practically all the territory it occupied following the Six Days War. Second, Israel would be required to take back within its narrow post-1956 boundaries all Arab refugees who want to return. Third, Israel would be required to turn over its capital city, Jerusalem, to a sort of condominium consisting of herself and Jordan. And fourth, Israel and the Arab states would work out the details of these and other arrangements in negotiations held under the auspices of the United Nations.

I think the first question that any reasonable man has to ask is this: What does Israel get in return for all these concessions? The concessions, again, are withdrawal from occupied territories, acceptance of a flood of Arab refugees, and abandonment of sovereignty over Jerusalem.

Well, what Israel would get in return for all this is certain Big Four guarantees of its security. Does that sound familiar? That is what Israel got in 1957 in return for withdrawing from the territory it occupied following the Suez War.

But, ten years after those guarantees were given, they disappeared without a trace the first time President Nasser raised his voice. State Department policy makers may have conveniently forgotten that fact, but we may be sure that Israel has not.

Let there be no mistake about it. If Israel is forced once again, as in 1957, to surrender the fruits of dearly won victory, the Arabs will once again, as in 1967, return to the attack—secure in the knowledge that they have everything to gain and, literally, nothing to lose. For if the Soviet Union will make good their material losses and the United States restore their political and geographic losses, what really do they have to lose by trying again?

In fact, of course, the Administration authors of this so-called "peace plan" are just as aware of its one-sidedness as you and I are. Why, then, have they offered it?

Secretary Rogers himself has said that the United States is aiming for—quote—a *"balanced* policy in the Middle East"—unquote. We have, he says, "friendly relations with both Arabs and Israelis."

Translated into the language of the real world, what that means is that the Administration is bent on courting Arab favor at the expense of our traditional ties with Israel. I assume their reasoning goes something like this: Israel has no one else to turn to anyway, and the Arab states possess most of the material resources that we and other great nations have always coveted in backward areas; so why let the Russians have a monopoly of influence with the Arabs?

That is a cold-eyed, hardheaded assessment of the situation. But it is also unprincipled. And it is a mistake.

For it cannot possibly achieve the objectives its designers hope for—except at a price no American Administration could, or should, ever pay. That price is destruction of Israel and extermination of its two and a half million Jewish citizens.

Let us make no mistake about it. That is what the Arab nations are committed to. And, more important, that is what the Soviet Union is prepared to countenance in order to maintain political ascendancy in the area. In other words, in the simplest possible terms, we cannot outbid the Russians for Arab favor. The utter ruthlessness of the Soviet Union in pursuing its objectives makes that impossible. At some point in our foolish quest for Arab "friendship" we would have to draw back; we would have to say, "No, we cannot go along with you any farther." And at that point the Russians would step forward and say, "Oh, but *we* can. You see, *we* were your true friends all along."

That point will come when, through our own ill-considered maneuvers, Israel will be stripped of its means of defense and confronting an overwhelming combination of forces bent upon its destruction. It will come when the Arabs, fully armed and ready to launch a final all-out assault, demand our neutrality as the price for their continued good will.

What then will this Administration do? I assure you, it will not be able to stand idly by and watch the Soviet-sponsored destruction of Israel and slaughter of its people. But its only alternative to that catastrophe will be active intervention on our part—an alternative that would be bitterly opposed by the American people and full of danger for world peace.

That is a grim and terrible prospect indeed. But that is the inevitable outcome of this new departure in Middle East policy.

The price for ignoring basic, tested historical principles is almost always disastrously high. So it was in Vietnam when the previous Administration ignored the fundamental principle that we should never again become involved in a land war in Asia. So it will be in the Middle East if we ignore the even more fundamental principle that you cannot buy influence in politics by selling out your friends.

De Gaulle's France, to its eternal discredit, tried—and is trying—just such a hopeless initiative when it suddenly repudiated its intimate relationship with Israel and began currying favor with the Arabs. The result? Not favor and influence—only power has influence with the Arabs—but contempt. The Arabs will *use* France, but not listen to her.

I am fearful that the new Administration policy—predicated on the same mistakes, embodying the same errors in judgment—will lead to even worse results. It is vitally important that it be changed while there is still time.

Too often in recent years our foreign policy has been shortsighted if not downright backward. Our material support has been given, in many cases, to those nations and governments which are alien to freedom. It is only the historic good will of the United States that has prevented a greater falling-away of our friends. This "blindman's" policy has caused our allies confusion and embarassment. But there are some places where our commitment is clear and just and our responsibility obvious. Such it is in Israel. This little country, so reminiscent of the early United States, which has been in a literal state of siege since its inception, is the only real democracy in the Middle East. It has been consistent in its preservation of individual and collective freedom and has always extended a hand of friendship to its neighbors—friend or foe.

No effective or constructive Middle East policy can come from any discussion that omits Israeli representation. The Six Day War was a fullfledged attempt by the Arab world to destroy Israel. The early demise of the Arabic military mass does not diminish its seriousness. Nor did it deter the Arab world from making another attempt, again with strong outside help, to destroy Israel. That is the essence of the danger to Israel today. There is no visible sign that the Arab nations are any more interested in peace today than they were two years ago. Our mission, it seems to me, is therefore to use all of our influence and moral persuasion to persuade the Arabs that they have absolutely nothing to gain in delaying the start of direct negotiations with their Israeli neighbors.

But that, unfortunately, is just what the new American policy fails to do. On the contrary, it actively encourages Arab leaders in the belief that by being intransigent long enough they can look forward to the United States forcing Israel to make major concessions. They badly need to be disabused of that notion before they become too convinced that their gamble has paid off.

The Middle East fuse grows shorter and

shorter every day. Statesmanship on the part of the United States is needed as never before, and true statesmanship is inseparable from honor. We serve neither honor nor justice nor the cause of lasting peace when we threaten to turn our backs on our one true friend in the area in hopes of currying favor with those who have aligned themselves first with the Nazis and now with the Communists.

Let us never forget we need to live with ourselves and with the world we will help to create.

OIL, ISRAEL, AND THE UNITED STATES

Mr. PROXMIRE. Mr. President, Middle Eastern oil has long been used as a bogeyman by the oil industry: On one hand, they claim it is too insecure a source to rely upon, thus, we must limit its importation. On the other hand, they claim it is too important to us to alienate the Arab States, thus, we must not be too friendly with Israel. About the only consistent thread running through their argument is that which keeps their pocketbooks full.

Richard L. Gordon, professor of mineral economics at Pennsylvania State University, analyzed the issues involved in oil, Israel and the U.S. interests in the Middle East in a short paper. Although it does not claim to be definitive, it does analyze the major issues quite well. Because of the obvious importance of these issues to the United States, I ask unanimous consent that Professor Gordon's paper be printed in the RECORD at the conclusion of my remarks.

The lesson he draws is that the Arab States need us as a market for their oil more than we need their oil and this will continue to be true for the foreseeable future. If this be the case, and I believe it is, it is to our benefit to allow more Middle Eastern oil into the United States and thus make them more dependent upon our market. This would have two additional benefits: First, it would lower consumer costs in the United States and take off a great deal of inflationary pressure from our economy. Second, it would allow us greater flexibility in encouraging the development of Israel, a David surrounded by Goliaths.

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

MIDDLE EAST OIL, ISRAEL, AND THE UNITED STATES

(By Richard L. Gordon)

In recent months, Middle East Oil has become an important consideration in two U.S. foreign policies. The reevaluation of oil import policy centers on the reliability of Arab oil supplies. Press reports indicate that oil companies have made their Middle Eastern interests part of the Arab-Israel peace problem.

Two basic questions thus arise: Is Arab oil dangerously insecure? Can U.S. policy towards Israel affect this insecurity?

From a purely economic point of view, it is only possible to note that Arab oil is simply the cheapest source of energy and can be replaced by its consumers at a price, but the Arab oil states have hardly any resources other than their oil income. Critical questions arise, in a no-man's land between economics and politics, about the social cost of using Arab oil.

Clearly, any country in the world can, if it has sufficient time and is willing to pay the price, find substitutes for Arab oil. Indeed the United States has essentially followed such a policy for many years. The key question is whether such a sacrifice makes sense. In particular, the nature of the threat remains unclear.

It can be argued, as has been done in Belgium and British government reports, that only further short crises are likely. The reports argue that the Arabs cannot afford disruption of oil incomes. It is implicitly assumed that economic rationality will ultimately dominate Arab policy. Such conclusions lead to confinement of security measures to stockpiles of oil.

Whether such a view is prudent remains a matter to be resolved by policymakers. All an outside observer can do is point out that something more reliable than selfserving statements of oil companies is needed to substantiate the pessimism. Oil companies have notoriously overestimated the difficulties of maintaining low cost energy supplies from the Middle East.

Granting that these dangers exist, it does not follow that U.S. policy implies either continuation of existing oil policies or a strongly pro-Arab policy toward the dispute with Israel. The two, of course, are mutually inconsistent. It makes no sense to make Arabs more willing to supply oil if we do not plan to buy it. Seeking favor with the Arabs by a change of policy towards Israel is useful only if we want the oil.

Thus, we must consider both whether U.S. oil policy should change and what the changes should be. One point seems clear—many innocent bystanders have been harmed. We do not make full use of extremely safe Canadian oil and include equally secure Venezuelan oil under the program. Similar questions can be raised against the inclusion of Iran, Indonesia, and perhaps Nigeria.

The question of whether we wish to take more risks about Arab oil remains less easy to resolve. It does seem likely that we can safely secure more imports of Arab oil. Whether this necessitates contingency measures also is unclear but maintenance of crude oil inventories seems a prudent policy. Other alternatives might be considered. Changed policies toward Israel are a logically possible step. The relevant issue is whether it makes sense.

It may be deduced from the above that a long chain of reasoning is required to justify such policies. A danger must exist and all alternatives must be inferior. The pro-Arab policy must work. Moreover, the U.S. must be convinced that the new policy does not cost too much in moral terms.

It seems that the chain is weak at every stage. It appears improbable that a pro-Arab policy is either necessary or likely to succeed. Needless to say, I also consider it morally indefensible.

Another justification of a more pro-Arab policy is to protect U.S. investments in the Middle East. Clearly, it would be contradictory to insist that the U.S. listen to citizens who support Israel and not hear those who have interests in Arab countries. We can only ask that the policymakers correctly appraise the different concerns and reach a sound conclusion. Analysis can only indicate the economic issues involved to see what weaknesses may exist in the oil companies' case.

The only relevant concern obviously is the protection of U.S. property abroad. The U.S. receives no significant strategic benefits from operation of oil concessions. The traditional argument for ownership of foreign resources is that it prevents unfriendly powers from cutting off supplies. This does not apply to the Arabs themselves. They have full control over flow and indeed have tried to influence policies in other countries. The only alternative to U.S. ownership that would create a significant extra threat would be Russian ownership. This possibility seems remote enough to discount.

The risks involved can be seen by examining the more pressing question of the dangers facing the U.S. oil companies. Observers of the oil industry have long noted that oil companies are being steadily squeezed by economic forces at work. Prices are steadily falling through the pressure of competition. At the same time, oil producing states have steadily increased per barrel taxes. Fears are expressed that severe crises will emerge once the profit level reaches a barely acceptable rate.

The crisis might end in confiscation. Some observers suggest that, in fact, the oil companies will sell out and let the countries assume the problems of marketing oil under more competitive conditions. Others suggest that the services of the oil companies are so valuable that the countries will purchase management assistance.

All this adds up to considerable doubts about the importance of threats to U.S. oil interests. Granting that policy changes toward Israel would have any effect, it is not clear that the results will amount to much. If one adopts the pessimistic view that seizure is inevitable, we only purchase a delay. If we believe the companies' aid is essential, the threat is illusory.

In short, even if no moral questions were involved, it is not obvious that U.S. policy can contribute greatly to saving U.S. oil investments abroad. Clearly, the moral issues are less clearcut than simple statements about property versus people would suggest. People benefit from their profit income. Nevertheless, the impacts are probably such that our usual moral principles would lead us to conclude a pro-Arab policy would have a undesirable effect.

Of course, I do not mean to imply that the latest U.S. proposals necessarily constitute the excessively pro-Arab policy I fear. Nevertheless, the proposals do seem to go too far back to the conditions before the six day war. To be sure the talk of guarantees is sufficiently ambiguous to suggest that Israel will be provided something more than the easily abrogated "guarantee" provided in 1956. However, it is all too possible that this is precisely the direction U.S. proposals will take. An obvious danger arises that the U.S. will repeat the mistakes of 1956 and in a frantic search for the appearance of peace, exert pressure for conditions that simply make other wars inevitable.

AIR FORCE'S DECISION TO ACCEPT AND FLY DEFECTIVE C–5A'S

Mr. PROXMIRE. Mr. President, the decision by the Air Force to accept and fly defective C-5A's is deplorable and scandalous. The American taxpayer has already been bilked millions of dollars because of the giveaway contract entered into with the Lockheed Corp., because of the huge cost overrun, and because of the schedule delays that have plagued this program.

Now, to add insult to injury, the Air Force plans to continue to accept delivery of C–5A aircraft which are structurally unsound and which will impose additional cost overruns on the public.

For the last year and a half, the Subcommittee on Economy in Government has been calling attention to the mismanagement and waste in the C–5A program. It took two separate hearings, direct appeals by myself to the Air Force, to the Secretary of Defense, and to the General Accounting Office before any official cognizance was taken of these problems. Finally, it will be recalled that

hearings were conducted last summer by the Armed Services Committees of both the House and Senate into the C–5A. The results of those hearings can best be summarized in the fact that the Air Force continued to insist on the additional $1 billion for the C–5A program.

Apparently no one with authority is willing to step in and call a halt to one of the greatest fiscal fiascos ever to have occurred in connection with a weapons system contract. In light of the structural defects that have been established in the C–5A aircraft, this example of irresponsibility is now compounded.

Let me remind my colleagues in the Senate that only a few months ago, during the debate over my amendment to delete the funds for the fourth squadron of C–5A's, we were all assured by the proponents of this program, that although a bad contract had been entered into, at least the Air Force was assured of getting a plane that would perform well. Indeed, throughout 1969, the C–5A supporters boasted that their plane would meet "101 percent" of the contract performance specifications.

What an empty boast this was in view of last week's grounding of all C–5A's because of a wing crack, and in view of the defective radar system reported to us for the first time last week by the Senator from Mississippi (Mr. STENNIS).

In the hearings before the Subcommittee on Economy in Government last year, testimony was received that the performance specifications for the C–5A had been lowered during its production. In other words, the charge was made that the standards of performance were degraded so that the contractor could build the plane without meeting the high specifications provided in the original contract.

When the first report was issued last July of the wing crack in the C–5A, I raised the question of the lowering of performance standards directly with the Air Force. The response to my question was that the wing crack could be fixed with a relatively minor modification and that it would not affect production or delivery of the planes. We learned last week that the wing crack that occurred on Friday, January 16, involved the same problem which resulted in the wing crack during the static test in July 1969.

Let me cite some examples from the Whittaker report of the changes that have been allowed for the C–5A which have degraded its overall performance specifications:

First. There has been a reduction in the gross weight for substandard fields from 678,500 pounds to 571,000 pounds.

Second. There has been a reduction in the sink rate.

Third. There has been a reduction in the landing design gross from the weight associated with maximum weight payload to a basic mission weight payload.

Fourth. There has been a reduction in turning side load factor during taxi.

Fifth. There has been a reduction in the ramp gross weight for full ground handling.

Sixth. There has been a reduction in maximum speed for full flaps.

Seventh. There has been a reduction in limit speed.

Eighth. There has been a reduction in flutter speed.

To date, the Air Force has identified 46 design performance changes, almost all of which have the effect of lowering the performance standards of the C–5A.

There can be no question any longer of the relaxation of performance specifications. What we are now witnessing is the fact that this plane cannot even meet the relaxed specifications.

I call on the administration to reverse the bland acceptance of incompetence which is so evident in the history of the C–5A. As a first step, the Air Force should advise the Lockheed Corp. that no further C–5A's will be accepted until it can be shown that they can meet the performance specifications set out in the original agreement.

Second, the Air Force should immediately ground all of the C–5A's currently in operation. We are informed that modifications of the structural weaknesses in the plane will not be incorporated until after 32 aircraft are delivered. Only then will the first 32 planes be retrofitted with the modifications. Until then, the plane is to fly with only 50 percent of its load capacity. I find this arrangement reprehensible, unsafe, unwise, and unacceptable, and it should be rescinded at once. I say this because in my opinion, the C–5A is unsafe at any load.

Third, the administration should withhold all funds for the 4th Squadron. Last fall, I argued at great length against the 4th Sqaudron. In my judgment, it was a mistake to appropriate an additional $500 million to obtain even more of the dubious C–5A's. The events of the last few months clearly underline what a sad mistake it was to pour good money after bad into this program. This could prevent the notorious repricing formula and the escalation clause from going into effect.

There was no showing throughout last year's debate of a military need for the additional 23 aircraft in the 4th Squadron requested by the Air Force. We have already committed ourselves to 58 C–5A's. The question I raised last year was whether we need any more than 58. I believe that the facts showed that any aircraft after the 58th would be unwarranted, by any economic or military justification.

After the bill was acted upon, and my arguments rejected, the Air Force announced its decision to purchase only 81 C–5A's, rather than 120. However, the 4th Squadron, consisting of the 23 planes for which almost $500 million was appropriated and an additional $500 million will be needed, were retained by the Air Force.

In other words, the Air Force made a belated concession that it did not need 120 C–5A's, and that it could get along with 81. I believe that it can get along with 58, rather than 81.

I urge the appropriate committee of Congress to launch a full-scale investigation into the performance characteristics of this plane. It is time that someone penetrate behind the glib explanations of the Air Force about the effects of the numerous changes in design and performance characteristics, and learned just how far they have degraded the overall performance of the C–5A.

I fail to see how, in good conscience, the Government can stand by and allow the American taxpayer to be saddled with additional C–5A's, additional C–5A costs, and additional C–5A failures.

I ask unanimous consent to have printed in the RECORD at this point a letter to the editor that appeared in the Washington Post on January 23, 1970.

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

CRACKS AT THE C–5A

I most fervently wish that The Washington Post would stop giving aid and comfort to the enemies of the United States by publishing stories about the defects in the C–5A. Look at all the trouble this creates. Mendel Rivers will now have to summon his trained juggling act from the Pentagon to do their thing before the Armed Forces Committee again, and the American people will be exposed to testimony along the following lines:

General Overrun: No sir, of course there is no crack in the wing of the C–5A. That's just a meretricious rumor being spread by enemies of the military and other Commies who are trying to destroy our way of life. Acting on the guidelines you laid down for us previously, Mr. Chairman, we have abolished the positions of the inspectors who claimed there was a crack, and I can assure this committee—and Lockheed stockholders everywhere that the C–5A is the best bargain this country will ever get for $5 billion.

I am sure that upon mature deliberation the editors of The Post will agree that no good can come from this type of journalism, and that they will heed the words of Senator Goldwater who said after flying the C–5A that what this country needs is more, not less, of the military-industrial complex. I'm with Barry. Though the C–5A develop a crack as big as the Grand Canyon of the Colorado, thank God it's one of ours!

ROD KEISER.

WASHINGTON.

Mr. MANSFIELD. Mr. President, I wish to commend the distinguished Senator from Wisconsin for his constant boring in and for his diligence in bringing to the attention of the Senate and the American public the fact that cost overruns are still continuing and that there are still defects in many of these exorbitant defense contracts. I am very hopeful that this campaign by the distinguished Senator from Wisconsin will not diminish, but continue through the months ahead, to the end that better practices will come into being, that better contracts can be let, and that this matter of cost overruns, which have reached, to hazard a guess, in the tens of billions of dollars, could be done away with and so that we could use these funds to face domestic problems instead of continuing such wasteful procedures.

Mr. PROXMIRE. I thank the distinguished Senator from Montana. I wish to point out that representatives from the General Accounting Office in testimony within the last 2 weeks stated that overruns on 38 major weapons systems were at least $20.9 billion over original estimates.

Mr. MANSFIELD. At least $20.9 billion.

Mr. PROXMIRE. I think we could document that it is much more than that.

That was a minimum conservative estimate.

Mr. MANSFIELD. Will the Senator attempt to get that information from the General Accounting Office and have it printed in the RECORD?

Mr. PROXMIRE. I shall.

MESSAGES FROM THE PRESIDENT

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

REPORT OF AMENDMENT TO THE AGREEMENT BETWEEN THE UNITED STATES AND THE UNITED KINGDOM AND NORTHERN IRELAND FOR COOPERATION ON THE USES OF ATOMIC ENERGY FOR MUTUAL DEFENSE PURPOSES—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was referred to the Joint Committee on Atomic Energy:

To the Congress of the United States:

Pursuant to the Atomic Energy Act of 1954 as amended, I am submitting to the Congress an authoritative copy of an amendment to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the Uses of Atomic Energy for Mutual Defense Purposes of July 3, 1958, as amended. The Amendment was signed at Washington on October 16, 1969.

The Agreement as amended included a provision (Paragraph A of Article III *bis*) under which the Government of the United States agreed to transfer to the Government of the United Kingdom for its atomic weapons program prior to December 31, 1969 in such quantities and on such terms and conditions as may be agreed non-nuclear parts of atomic weapons and atomic weapons systems as well as source, by-product and special nuclear material. A second provision of the Agreement (Paragraph C of Article III *bis*) stipulated that the Government of the United Kingdom would transfer to the Government of the United States for military purposes such source, by-product and special nuclear material, and equipment of such types, in such quantities, at such times prior to December 31, 1969 and on such terms and conditions as may be agreed.

Under the Amendment submitted herewith the period during which the provisions of Paragraphs A and C of Article III *bis* of the Agreement for Cooperation remain in force would be extended for five years so that transfers could be made any time prior to December 31, 1974. The continued authorization of the two Governments to cooperate with each other in these respects would contribute to our mutual defense, particularly in the North Atlantic Treaty area.

I am also transmitting a copy of the Secretary of State's letter to me accompanying authoritative copies of the signed Amendment, a copy of a joint letter from the Chairman of the Atomic Energy Commission and the Secretary of Defense recommending approval of this Amendment, and a copy of my memorandum in reply thereto, setting forth my approval.

RICHARD NIXON.

THE WHITE HOUSE, *January 26, 1970.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 476) for the relief of Mrs. Marjorie Zuck, and it was signed by the Vice President.

PETITION

The PRESIDENT pro tempore laid before the Senate a concurrent resolution adopted by the Legislature of the State of Oklahoma, which was ordered to be printed and to lie on the table, as follows:

RESOLUTION

Whereas, there is not a country in the world where the importance of education is ranked higher and accepted more universally than in these United States; and

Whereas, current trends support the conclusion that there will be an abnormal need to expand expenditures for education; and

Whereas, good and adequate education requires dedicated parents, teachers and taxpayers; and

Whereas, good and adequate education must be measured by the end product—the child; and

Whereas, the education and future welfare of the public school children is affected by House Bill No. 13111, United States House of Representatives; and

Whereas, the education and future welfare of the public school child of Oklahoma is affected by said bill; and

Whereas, Public Law 874 regarding Impacted Areas Assistance is directly affected by House Bill No. 13111; and

Whereas, Oklahoma has large federal installations exempt from ad valorem taxes; and

Whereas, the loss of Impacted Areas Assistance would seriously jeopardize the Oklahoma school child's future.

Now, therefore, be it resolved by the House of Representatives of the 2d session of the 32d Oklahoma Legislature, the Senate concurring therein.

Section 1. The Congress of the United States be, and is hereby respectfully memorialized to enact into law House Bill No. 13111, commonly referred to as the fiscal 1970 Labor, Health, Education and Welfare Appropriation Bill, and that the President of the United States sign the bill into law.

Section 2. That copies of this Resolution, after consideration and enrollment, shall be forwarded to United States Congress, President of the United States, Secretary of Health, Education and Welfare and the Oklahoma Congressional Delegation.

Adopted by the House of Representatives the 14th day of January, 1970.

REX PRIVETT,
Speaker of the House of Representatives.

Adopted by the Senate the 15th day of January, 1970.

DON BALCHUM,
Acting President of the Senate.

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. MANSFIELD:

S. 3334. A bill to amend the Interstate Commerce Act to increase the daily hire rates for the use of certain freight cars, and for other purposes; to the Committee on Commerce.

(The remarks of Mr. MANSFIELD when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. EASTLAND (for himself and Mr. ALLEN):

S. 3335. A bill to amend the Internal Revenue Code of 1954 with respect to the tax-exempt status of, and the deductibility of contributions to, certain private schools; to the Committee on Finance; and

S. 3336. A bill to compensate States and local educational agencies for the replacement cost of all public school buildings and facilities owned by them which have been or will be closed or abandoned by such agencies by reason of: (1) any order issued by a court of the United States; (2) compliance with any plan, guideline, regulation, recommendation, or order of the Department of Health, Education, and Welfare; (3) decisions arrived at by such State and local educational agencies in good faith efforts to comply with the decision of the U.S. Supreme Court requiring desegregation of public schools; to the Committee on the Judiciary (by unanimous consent).

(The remarks of Mr. EASTLAND when he introduced the bills appear later in the RECORD under the appropriate headings.)

By Mr JACKSON (for himself and Mr. MAGNUSON) (by request):

S. 3337. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Yakima Tribes in Indian Claims Commission dockets Nos. 47–A, 162, and consolidate 47 and 164, and for other purposes.

By Mr. HART:

S. 3338. A bill to amend section 5 of the Federal Trade Commission Act by providing for suits for damages by parties injured by reason of violations of section 5 and for class actions for such damages and for other purposes; to the Committee on Commerce.

(The remarks of Mr. HART when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. JORDAN of North Carolina:

S. 3339. A bill to authorize the Public Printer to fix the subscription price of the daily CONGRESSIONAL RECORD; to the Committee on Rules and Administration.

By Mr. MILLER:

S. 3340. A bill for the relief of Olga Brooks Smith; to the Committee on the Judiciary.

By Mr. FULBRIGHT (by request):

S.J. Res. 171. A joint resolution to amend the joint resolution authorizing appropriations for the payment by the United States of its share of the expenses of the Pan American Railways Congress Association; to the Committee on Foreign Relations.

(The remarks of Mr. FULBRIGHT when he introduced the joint resolution appear later in the RECORD under the appropriate heading.)

S. 3338—INTRODUCTION OF THE 1969 AMENDMENT TO THE FEDERAL TRADE COMMISSION ACT

Mr. HART. Mr. President, I introduce, for appropriate reference, a bill to amend section 5 of the Federal Trade Commission Act to provide for suits for damages by parties injured by reason of violations of section 5 and for class actions for such damages.

For many years I have urged that private citizens, including independent businessmen, should have more latitude in bringing lawsuits against companies whose unfair business practice causes them injury. Recently the American Bar Association Commission, appointed by President Nixon to study the Federal Trade Commission, made a similar recommendation. Let me quote the section of that report dealing with private recovery:

(2) Private Recovery. We recommend that private rights of action for damages and injunctive relief be created for and on behalf of consumers and other persons who are injured by deceptive practices which are violations of Section 5 of the FTC Act. This private right of recovery, particularly to the extent that it does not depend upon the utilization of FTC resources, would multiply the effectiveness of the enforcement mechanism and the seriousness of the sanction against violation.

Such actions could be brought in Federal court, and the State courts could be given concurrent jurisdiction. Wherever the action is brought, the private party might rely for his right of recovery simply on violation of Section 5 to his injury. To make more meaningful to consumers these private rights, there might be created a type of consumer action which would require lowering or elimination of jurisdictional amounts or, alternatively, more permissive aggregation of claims to meet the jurisdictional amount.

A whole range of questions would need to be answered in defining the nature of the private right, but we do not regard the solution to these questions as within our jurisdiction. Should automatic or discretionary trebling of damages be permitted? Should the existence of an FTC cease- and-desist order constitute a prima facie case for the private party against the respondent subject to the cease-and-desist order? Should the private right arise only upon, and pursuant to, a finding of a violation by the FTC? should it, instead, be restricted to actions based on settled interpretation of Section 5 by the FTC? Should the right accrue, not directly to individual consumers, but, instead, for their benefit, to some public authority like FTC as parens patriae to collect amounts of which consumers have been defrauded, either to hold in the public fisc or to distribute among the defrauded private parties to the extent that they can be identified? As in Sherman Act suits, Truth in Lending Act suits, or Civil Rights Act suits, should successful plaintiffs be awarded attorneys fees and, if so, in what amounts? Are safeguards on such actions required to avoid the filing of frivolous or nuisance cases?

"However these questions are resolved, legislation to provide an adequate private remedy to reimburse injured parties and to deter Section 5 violators should be sought with vigor.

Since assuming the chairmanship of the Senate Antitrust and Monopoly Subcommittee scores of witnesses, both businessmen and private citizens, have appeared before us relating how they have been injured by unscrupulous business practices. The existing remedies—action by the FTC—the Department of Justice, the Post Office Department, and other Government agencies have too often proved unsatisfactory. This is not meant as criticism of these agencies since oftentimes they are powerless to act for a number of reasons. As an example, the practice may not be nationwide and therefore does not justify the expenditure of the manpower necessary to stop the practice. In many cases the agencies do act—but too late to assist those already injured. In no case is the injured party compensated for the damages he has sustained by reason of a successful Government action.

Besides compensating the injured party, this proposal would also act as a strong deterrent to violation of section 5 of the Federal Trade Commission Act and in that manner assist in the enforcement of that act by the Commission.

It is time that the individual citizen and businessman be given the right to protect himself against unfair business practices. This bill would accomplish that purpose. I ask consent that the bill be printed in the RECORD.

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

The bill (S. 3338), to amend section 5 of the Federal Trade Commission Act by providing for suits for damages by parties injured by reason of violations of section 5 and for class actions for such damages and for other purposes, introduced by Mr. HART, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3338

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "1969 Amendment to the Federal Trade Commission Act".

SEC. 2. Section 5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, is hereby amended by adding thereto a new subsection "(m)" as follows:

"Right of Action of damaged parties—

(m) (1) Any person, partnership, or corporation who shall be injured in his business or property by any other person, partnership, or corporation by reason of any unfair method of competition in commerce, or unfair or deceptive acts or practices in commerce forbidden or declared to be unlawful by this section, may sue therefor in any district court of the United States in the district in which the defendant resides or is found, or has as an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

(2) An order to cease and desist of the Commission which has become final as provided in this section to the effect that the defendant in any damage suit has violated the provisions of this section shall be prima facie evidence against such defendant in the damage suit brought by any other party against such defendant under this subsection as to all matters respecting the violation of this section as declared by the Commission.

(3) Such suits for damages shall be brought within three years from the commission of the unfair methods of competition or unfair or deceptive acts or practices, or in case of a continuing violation from the commission of the last violation, or be forever barred: *Provided,* That the running of the three years limitations in respect of each and every private right of action arising under this subsection and based in whole or in part on any matter complained of in the proceedings under this section of the Commission shall be suspended during the pendency of such proceedings and until any order to cease and desist entered therein has become final.

(4) The several district courts of the United States of America are hereby invested with jurisdiction to receive and proceed with suits under this subsection as in other civil suits in those courts.

(5) Federal Rules of Civil Procedure for the United States District Courts, rule 23, U.S.C.A., relating to class actions shall be applicable to actions for damages as provided in this subsection if the prerequisites of rule 23 are satisfied, except as is provided in paragraph 1 of subsection (m) as to the amount in controversy.

SENATE RESOLUTION 323—SUBMISSION OF A RESOLUTION EXTENDING THE SELECT COMMITTEE ON NUTRITION AND HUMAN NEEDS

Mr. McGOVERN submitted a resolution (S. Res. 323), that the Select Committee on Nutrition and Human Needs, established by Senate Resolution 281, 90th Congress, agreed to on July 30, 1968, as amended and supplemented, is hereby extended through January 31, 1971, which, by unanimous consent, was referred to the Committee on Rules and Administration.

(The remarks of Mr. McGOVERN when he submitted the resolution appear later in the RECORD under the appropriate heading.)

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969—AMENDMENT

AMENDMENT NO. 456

Mr. HUGHES submitted an amendment, intended to be proposed by him to the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 457

Mr. GRIFFIN proposed an amendment to the bill (S. 3246) supra which was ordered to be printed.

THE ELEMENTARY AND SECONDARY EDUCATION ACT AMENDMENTS OF 1970—AMENDMENTS

AMENDMENT NO. 458

Mr. SPONG. Mr. President, I wish to submit an amendment intended to be proposed by me to H.R. 514, the Elementary and Secondary Education Act Amendments of 1970. My amendment is a simple one. It is designed only to accomplish what the Congress has already authorized no less than three times, and what it will undoubtedly again authorize in this bill.

My amendment would create an 18-member Commission to study means of implementing the advanced funding procedure for education programs. I emphasize "implement" because the procedure is already authorized. The Commission

would be composed of six members of the Senate, six members of the House and six members of the executive branch to be appointed as soon as possible. It would have until 1 year after enactment of the bill to report to the Congress and the President.

Three times the Congress has approved the concept of advanced funding for education programs. In 1967, we voted to permit advanced funding of all programs contained in the Elementary and Secondary Education Act—Public Law 90–247. In 1968, we voted to permit advanced funding of higher education programs—Public Law 90–575. That same year, in the vocational education legislation, we voted to permit advanced funding of all programs which the Commissioner of Education administers—Public Law 90–576.

Twice, in the fiscal 1969 and fiscal 1970 budgets, the President requested advanced funding for title I of the Elementary and Secondary Education Act. Once, in fiscal 1969, advanced funding was provided for one education program, title I of the Elementary and Secondary Education Act. We are about to authorize advanced funding for education programs for the fourth time.

But, we have no advanced funding in operation. We have spoken words and we have cast votes. And not much has happened. We have said how wonderful advanced funding would be; how much it would help local school officials in the planning of their budgets. We have offered advanced funding to them in the authorization bills, and then slipped it off the tray in the appropriations process.

And we have compounded the fiscal problems of local education personnel by late funding of education programs—by failing to make money available until after the school year for which the funds are to be used has begun or, as in the case of the current year, until the school year is almost half over.

I submit that it is time for action. We must either take definite steps to implement the procedure, or we must admit that it was a good idea which we are not quite willing to carry through. In other words, it is time to fish or cut bait.

I simply do not feel that we can continue under the current procedures. I am inserting a chart which shows the date when the Labor-Health, Education, and Welfare appropriations bill has passed Congress in each of the last 11 years. As can be seen, the date has become later and later. And passage of the bill is only a beginning. Once the appropriations are cleared, they must then be allotted to the departments and agencies by the Bureau of the Budget. Then the individual offices must obligate them to the States and school districts. All of this takes time. And all too often the result is that school districts do not receive their funds until the spring.

In some cases, the situation is even worse. I learned recently that some school districts in my State had just received their final impacted areas funds for fiscal 1968.

Clearly school districts cannot function effectively or efficiently under the current procedure, where there is almost always uncertainty over available funds. Federal funds account for about 10 percent of the educational expenditures in the Nation. They can mean the difference between hiring special and remedial teachers, between good libraries and bad libraries, between having sufficient equipment and not having it.

With the passage of the many educational programs in the past few years, we have made a strong commitment to education. The future of our Nation is bound up in that commitment. If that commitment means anything at all, we must give it the chance to work—to work effectively and efficiently. And it cannot work effectively and efficiently under the current funding process.

Certainly, there are potential problems involved in the advanced funding procedure, but they are problems which can be overcome; problems which we have admitted can be overcome or have been willing to disregard in our earlier votes.

To implement the procedure will require the cooperation of the Congress, which appropriates money, and the executive, which prepares the budgets and administers the programs. For these reasons, I have included representatives of both the Congress and the executive on the Commission, for which my amendment provides. I would assume that the Commission would contain representatives from both the legislative and the appropriations committees which have jurisdiction over education programs, as well as from the Budget Bureau and the Office of Education.

It can, of course, be argued that advanced funding is impossible at a time when budgetary and financial problems facing our Nation are so great. I disagree. Procedures could, for example, be adopted whereby 80 or 90 percent of the funding is made on an advanced basis or where funding is provided on a higher basis, say 95 percent, but provision is made for modifications before April 1 of the year preceding the fiscal year in which the funds are to be used. There are, of course, other means of meeting unexpected financial problems and one of the duties of the Commission would be to investigate these.

There will always be times when we wish to modify programs, to change emphases. Advance funding will not affect that. It will simply require that schools be given leadtime in which to prepare for any change which might be made in Federal support for education—time which schools need and deserve.

As I noted earlier, Congress has voted for advanced funding three times in recent years. In doing so, we have indicated that it is a desirable procedure. If our votes of the past years mean anything and if we have any concern for orderly planning in education then I believe we must move to implement the advanced funding procedure which we have already accepted in previous votes.

LABOR-HEALTH, EDUCATION, AND WELFARE APPROPRIATIONS BILLS (1959-69)

Date	Bill number	Date bill passed Congress
1969	H.R. 18037	Oct. 10, 1968
1968	H.R. 10196	Oct. 27, 1967
1967	H.R. 14745	Oct. 21, 1966
1966	H.R. 7765	Aug. 17, 1965
1966	H.R. 10586 [1]	Sept. 9, 1965
1965	H.R. 10809	Sept. 3, 1964
1964	H.R. 5888	Sept. 26, 1963
1964	H.J. Res. 875 [1]	Jan. 29, 1964
1963	H.R. 10904	Aug. 2, 1962
1962	H.R. 7035	Sept. 12, 1961
1961	H.R. 11390	Aug. 26, 1960
1960	H.R. 6769	July 30, 1959
1959	H.R. 11645	July 18, 1958

[1] These were special supplemental appropriation bills for the Departments of Labor and Health, Education, and Welfare. In addition, certain educational programs received additional funds in each of the above years under general supplemental appropriations bills. These general supplemental appropriations bills passed after the regular appropriations bills and thus were allocated to local school districts at a later date.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

AMENDMENT NO. 459

Mr. TYDINGS submitted an amendment, intended to be proposed by him, to the bill (H.R. 514) to extend programs for Elementary and Secondary Education, and for other purposes, which was ordered to lie on the table and to be printed.

S. 3334—INTRODUCTION OF BILL INCREASING THE DAILY HIRE RATES FOR THE USE OF CERTAIN FREIGHT CARS

Mr. MANSFIELD. Mr. President, in the past 10 years the Montana congressional delegation has been plagued with an annual problem for which no reasonable solution has been developed. I refer to the continual and, in some instances, increasing shortage of boxcars on the Western railroad lines.

This is a very serious matter to States like Montana where so many farmers and elevator operators are dependent upon an adequate source of boxcars to ship their wheat to the export market on the west coast.

Today Montana ranchers are buying large, expensive trucks to transport grain to water outlets on the Columbia River for transport to the coast. This situation has been compounded by our expanded export of grain. Despite the annual discussion on how best to facilitate a return of boxcars to owner lines, very little effective action has been taken by the Interstate Commerce Commission or the Congress.

This year the car shortage on the Great Northern Railroad line has reached ridiculous proportions. Recently, there was a Montana request for 3,500 cars and they were receiving something on the order of 10 or 15 per day. Fortunately, this year the situation has not been as bad on the Northern Pacific line, which also crosses the State of Montana. This does not mean, however, that it will not happen in the future. To date, there has been no effective means of convincing the eastern railroad lines

that they should return the cars to the owners as expeditiously as possible.

To date, the ICC has been hesitant to issue strong orders establishing incentive charges and increased penalties.

I have joined with a number of my colleagues here in the Senate in cosponsoring S. 3223 to give the ICC additional authority to handle the situation. The proposed bill would authorize an increase in the incentive per diem and penalties. The congressional interest in this proposal seems to have generated little activity at the agency level.

I believe that we must impress upon the railroads and the Commission the seriousness of this situation. I will, therefore, send to the desk a bill which would set per diem rates at $100 minimum and an increase of penalty charges from $1,000 and up to $10,000. These provisions seem to be severe, and they are meant to be so. The boxcar shortage should not be allowed to disrupt the industry each year, as has been the case as far as Montana is concerned, over the past two decades. Recently, it has been so on an almost continual basis. Hopefully, this latest proposal will give notice to all parties that the boxcar shortage in the West will not be permitted any longer. There are solutions and Congress and the Interstate Commerce Commission must act to provide the necessary relief.

Mr. President, I send to the desk a bill to amend the Interstate Commerce Act to increase daily hire rates for use of certain freight cars, and for other purposes, and I ask that the bill be referred to the Committee on Commerce.

The PRESIDING OFFICER. The bill will be received and referred to the Committee on Commerce.

The bill (S. 3334), to amend the Interstate Commerce Act to increase the daily hire rates for the use of certain freight cars, and for other purposes, introduced by Mr. MANSFIELD, was received, read twice by its title, and referred to the Committee on Commerce.

S. 3335 AND S. 3336—INTRODUCTION OF BILLS RELATING TO PRIVATE AND PUBLIC SCHOOL SYSTEMS

Mr. EASTLAND. Mr. President, the distinguished junior Senator from Alabama (Mr. ALLEN) and I are today introducing two bills dealing with the very serious school problems in our section of the Nation. The purpose of one of these bills is to assure fair and equitable treatment for the public schools of the South. The purpose of the other bill is to assure fair and equitable treatment for the private schools of the South.

Surely all of the Members of this body can unite in support of legislation which would accomplish these worthy goals. The enactment of these bills into law will not be a cure-all or a panacea, but I am convinced their enactment will be a step in the right direction.

S. 3336, the bill dealing with the public schools simply provides that the United States shall compensate States and local education agencies in an amount equal to the replacement cost of all public school buildings and facilities owned by any such State or agency which have been or will be closed or abandoned by any such agency as a result of, first, any order issued by any court of the United States; second, compliance with any plan, guideline, regulation, recommendation or order of the Department of Health, Education, and Welfare, or; third, actions taken by any such State or agency in good faith efforts to comply with the decision of the U.S. Supreme Court requiring desegregation of public schools.

Jurisdiction is vested in the district courts of the United States to hear and determine any claims based upon the provisions of the act. The bill also authorizes appropriation of such sums as may be necessary to carry out this act.

Mr. President, the only result of the enactment of this bill into law would be to afford the public schools of the Southern States basic justice and fair treatment.

The fact of the matter is that the Federal courts and HEW, in their blind zeal to bring about instant total integration and revolutionize the social and economic structure of the South, have taken actions which have caused many public school buildings and facilities in my State to be abandoned. These school buildings and facilities are sitting unused. Like all vacant property, these buildings and facilities are deteriorating in value.

Why should not the Federal Government pay from its Treasury a fair and just amount of money to compensate for this terrible loss to the school systems?

I made a speech on this floor on December 16 of last year on the HEW appropriations bill, in which I gave specific examples of the horrible effects of these court orders and HEW directives.

For example, I pointed out that the Federal district court had ordered the Carroll County School Board to accomplish the integration of its school system by closing the school at Blackhawk. This school was located in a colored community and had been attended by black students. The court ordered this school closed and its students bused to other sections of the county. The Carroll County School Board complied with this outrageous court order, and the Blackhawk School has been abandoned. To make this matter even worse, the taxpayers of Carroll County had just recently spent approximately $42,000 in the construction and equipping of a new cafeteria to serve the students and faculty of Blackhawk School. That cafeteria is now useless.

Incidentally, I am told that the colored citizens of that area are very upset about the closing of this school, because they feel that such action has destroyed their community. They are very much opposed to this.

As an example of the abandonment of a school building in a good-faith effort to comply with the integration orders of the Federal courts, I mentioned in my December 16 speech the situation at the Inverness High School in the Sunflower County School District, which is my home district.

In the 1968–69 school year, the Sunflower County School District was operating under a "freedom of choice" plan of desegregation. The operation of this plan resulted in some classroom mixing of the races.

During that school year approximately 300 white students and no colored students attended the Inverness High School. Despite its name, this school taught grades one through 12.

Prior to the opening of school in September 1969, the Federal court ordered the school district to assign students to the schools on the basis of tests to be administered to the students. The court ordered that the assignments be made on this basis for grades one through four, inclusive, for the present school year. As a result of the test plan, 24 colored students were assigned to attend the Inverness school this school year. Every one of the white students withdrew from the school, which has now been closed as an economy measure. The 24 colored students assigned to that school are being bused to other schools in the district.

These types of incidents are continuing to occur in the school districts of Mississippi. I am sorry to say that we can anticipate that such arbitrary and illegal misuse of Federal power can be expected to continue and increase in frequency.

Mr. President, there is no way to adequately compensate these school districts and the people who support them for the misuse of Federal power to close their cherished community institutions, the public schools. Nothing can blot from sight or memory the sorry spectacle of beautiful school buildings empty and abandoned. They are, indeed, monuments to the dreams of a great people, dreams shattered and destroyed by Federal oppression.

The least we can do is to pay a fair amount of money in partial compensation for this irreparable injury.

Mr. President, the purpose of the other bill being introduced by Senator ALLEN and myself is to assure that the private schools of Mississippi and the other Southern States receive the same and equal justice accorded the private schools throughout the other parts of the Nation.

S. 3335 would amend sections 501 and 170 of the Internal Revenue Code of 1954 to provide that tax exempt status under section 501 shall not be denied to a private school on account of the admission policies, requirements for admission, or composition of the student body or faculty of such school.

If a court of the United States enters a final judgment that the Constitution or laws of the United States prohibit the granting of exempt status to a private school on account of the admission policies, the requirements of admission, or the composition of the student body or faculty of such school, for the period during which such judgment is in effect, then no institution organized and operated exclusively for religious, charitable testing for public safety, literacy, or edu-

cational purposes, or for the prevention of cruelty to children or animals shall be exempt from taxation.

The bill would amend section 170 of the Internal Revenue Code of 1954, relating to charitable contributions, in a similar manner.

Mr. President, in my judgment, what is sauce for the goose is sauce for the gander. The necessity for the enactment of this legislation is a result of another encroachment by the Federal courts on the power of Congress to enact the law. I refer, of course, to the order for preliminary injunction entered by a three-judge Federal district court in the District of Columbia in the case styled Green against Kennedy.

The effect of this judicial atrocity is to enjoin the Secretary of the Treasury and the Commissioner of Internal Revenue from approving any pending or future application for tax-exempt status filed with the Internal Revenue Service by any private school located in the State of Mississippi and/or determining that contributions to any such school are deductible by the donors as a charitable contribution unless they first affirmatively determine that the applicant school is not a part of a system of private schools operated on a racially segregated basis.

This usurpation of legislative power by the Federal court is shocking.

Those who are interested in maintaining our precious system of separation of powers should join in support of this bill. Congress made its intent perfectly clear in sections 170 and 501 of the Internal Revenue Code. It provided that any religious, charitable, scientific, or educational institution should have tax-exempt status, and that contributions made to all such institutions should be tax deductible. The Federal court in the District of Columbia simply decided that it did not like the way Congress wrote the laws, and so it wrote an amendment to them which it enforces by judicial decree.

The primary purpose of each section is to restate the law exactly as it is, so that perhaps even Federal courts will be able to understand. We first seek to amend sections 170 and 501 to reiterate that all educational institutions shall be entitled to tax-exempt status and that contributions thereto will be deductible.

Our first goal is to achieve justice and equity.

If we fail in this, then the secondary purpose of these bills is to at least achieve equality with the private schools of the rest of the Nation. That is the purpose of the provisions which state that if a Federal court enters a final order that denies these private schools in Mississippi tax-exempt status, or denies tax-deductible status to contributions made these schools, then the right of all private schools in the United States, including religious schools to receive tax-exempt status, and for contributions thereto to be treated as tax deductible, will be denied.

The noted columnists James J. Kilpatrick and David Lawrence have written penetrating and perceptive articles about this terrible decision in the Green case.

I ask unanimous consent to have printed in the RECORD an article entitled "Congress Must Undo Private-Schools Ruling," written by James J. Kilpatrick and published in the Washington Evening Star of January 20, 1970, and an article entitled "A Startling Ruling For Mississippi," written by David Lawrence and published in the Commercial Appeal of January 20, 1970.

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

(See exhibits 1 and 2.)

Mr. EASTLAND. A reading of these articles will show the deep concern shared by thoughtful and constructive supporters of education.

I hope and trust that both of these bills will receive prompt and favorable consideration.

I ask unanmious consent that S. 3336 be referred to the Committee on the Judiciary.

The PRESIDING OFFICER. Without objection, the bills will be received and referred as requested.

The bills (S. 3335), to amend the Internal Revenue Code of 1954 with respect to the tax exempt status of, and the deductibility of contributions to, certain private schools, introduced by Mr. EASTLAND (for himself and Mr. ALLEN), was received, read twice by title, and referred to the Committee on Finance; and S. 3336, to compensate States and local educational agencies for the replacement cost of all public school buildings and facilities owned by them which have been or will be closed or abandoned by such agencies by reason of: First, any order issued by a court of the United States; second, compliance with any plan, guideline, regulation, recommendation or order of the Department of Health, Education, and Welfare; third, decisions arrived at by such State and local educational agencies in good faith efforts to comply with the decision of the U.S. Supreme Court requiring desegregation of public schools, introduced by Mr. EASTLAND (for himself and Mr. ALLEN), was received, read twice by its title, and referred to the Committee on the Judiciary (by unanimous consent).

EXHIBIT 1

[From the Evening Star, Jan. 20, 1970]

CONGRESS MUST UNDO PRIVATE-SCHOOLS RULING

The decision by three federal judges here in Washington, denying tax exemptions to certain private schools in Mississippi, comes as one more intolerable judicial usurpation of power. The action cannot be condoned; and it must be swiftly undone by the Congress.

The law could not be more clear. Under Section 501(c)(3) of the Tax Code, a nonprofit organization is exempt from federal taxes if it is organized and operated exclusively for religious, charitable, scientific, literary "or educational" purposes, provided only that it stays out of lobbying and politics. Roughly 50,000 such institutions have qualified formally for the cumulative list of exempt organizations maintained by the Internal Revenue Service.

These exempt organizations include institutions that are all black, all white, all Christian, and all Jew. Until the moment of this autocratic court decree, the act of Congress prevailed: It was necessary to ask only if the institution in question met the requirements of law. If so, it qualified automatically, and gifts to such institutions became deductible in computing one's income tax.

The effect of last week's injunction is to elevate the whims, caprices and obsessions of federal judges to a level never contemplated under our form of government. If a drastic change were to be made in the interpretation of Section 501(c)(3), such a change might first be the prerogative of the commissioner of Internal Revenue. No commissioner ever has sought such power. More precisely, such a change involves a profound question of legislative policy: It is the business of Congress. And in its recent comprehensive revisions of the Tax Code, Congress made no move whatever to limit tax exemptions to racially integrated institutions only.

Why did the three judges rule as they did? I do not challenge their sincerity, integrity or competence. Doubtless they felt they were following dutifully upon the obsessions of their masters, the Supreme Court of the United States. The high court repeatedly has commanded integration now, integration everywhere, integration without regard to law, common sense, or the Constitution.

Make no mistake: This profoundly complex question of public affairs has come fully under the sway of a judicial oligarchy. It might be possible, through ordinary political processes, to remove or to reverse a commissioner of Internal Revenue. It still is possible to elect a House and Senate that will insist upon a "Whitten amendment" positively to prohibit the busing of pupils and the closing of schools under the Civil Rights Act. But the judges are unreachable.

In a free country, it ought to be possible for parents in Mississippi, or anywhere else, to set up any kind of educational institutions they please, and to be entitled to the same privileges, immunities, and benefits of all other parents. If they choose to educate their children in factories, Sunday schools, private homes, or pup tents, subject merely to the general police powers of the state, this is—or was—their right.

No longer. Last week's decree was deliberately punitive, deliberately calculated to achieve a certain sociological end regarded by the judges as desirable. The decree, to repeat, is part of a pattern. In Atlanta, parents by the thousands have petitioned the judges for relief from arbitrary action. In Oklahoma City, a federal judge has threatened to jail a 14-year-old boy and his parents if the boy refuses to attend a certain integrated junior high. The high court itself, in royal disdain for practical problems of the real world, last week insisted on a Feb. 1 deadline for the integration of 300,000 children in five Deep South states.

It is just as Plato said. "The people always have some champion whom they set over them and nurse into greatness. . . . This and no other is the root from which a tyrant springs; when he first appears, he is a protector." So with the high court. An acquiescent people, having surrendered their liberties to the judges in what seemed a good cause, have watered the roots. We harvest tyranny now.

EXHIBIT 2

A STARTLING RULING FOR MISSISSIPPI

(By David Lawrence)

WASHINGTON.—Three federal judges here have just issued an injunction to deny tax exemptions in the future to any private school association in Mississippi which is devoted to the education of white children. This is a startling decision because it means that the federal judiciary may be deciding hereafter whether a nonprofit organization can retain a tax-exempt status when the contributions are used to support any cause which the judges may think pertains only to certain groups of citizens and not to others.

Even the National Association for the Ad-

vancement of Colored People, which was behind the suit to bar white private schools in Mississippi, may find itself confronted with suits to take away its tax-exempt privileges. For if an organization for "the advancement of white people" can be denied tax exemption, then discrimination on the part of the courts may be charged if the privilege is granted to an organization that is devoted to the advancement of the cause of colored people. There are, of course, some whites among the membership of the NAACP, but a white organization also could admit a few Negroes as an example of impartiality.

The churches, too, may find themselves in trouble about their tax exemptions. Most churches do not admit to membership anybody who doesn't accept their particular religious faith. This is widely known and recognized. If the latest ruling of a federal court is upheld by the Supreme Court, however, the judiciary would have a right at any time to take away a tax exemption from any nonprofit organization—whether it is a church institution or a school—if the funds are used to carry on educational or religious activities designed primarily for members of its own religion or nationality or race.

The ruling by the federal judges in Washington also declared that contributions to white private schools in Mississippi would not be approved as donations deductible on the individual's own income tax. Does this mean that a citizen might be denied a tax deduction for his contribution to a charitable or educational institution—which he deems useful to the community and which is nonprofit in every respect—just because somebody doesn't like the scope of the work done by such a nonprofit body and files suit?

It is well understood that state and city governments cannot use public money to support segregated private schools and that federal funds cannot be supplied to private schools which admit students of only one race. But the question being raised is whether private schools which are sponsored by a particular religion will also be involved in this controversy.

Many of the religious schools open their doors to persons of other faiths, but the fact remains that just a small percentage attend. There is no such thing as a balanced student body of all religious denominations in a church-related school. In other words, discrimination on the basis of religion apparently is permissible in supporting private schools, but discrimination on the basis of color is to be penalized.

Certainly there are numerous groups which espouse causes with which other citizens do not agree. Up to now, the rule has been that any nonprofit organization or association whose activities are educational, charitable or religious in nature is entitled to a tax exemption if its income exceeds its expenditures. But if the courts can interfere and decide whether such an organization is tied to one particular cause or group in the community, then there is a lot of trouble ahead for various social groups in the educational field.

Mr. ALLEN. Mr. President, I ask unanimous consent that I be permitted to proceed for 15 minutes.

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

Mr. ALLEN. Mr. President, I am proud to sponsor jointly with the able and distinguished Senator from Mississippi (Mr. EASTLAND) two bills, both of which are recommended by considerations of simple justice. The first bill provides for compensating State and local authorities for replacement cost of hundreds of schools which have been closed throughout the Nation primarily on the initiative of U.S. courts and Federal agencies. The second bill removes a court imposed, punitive, and discriminatory impediment placed on donations to private schools.

Mr. President, with reference to the first mentioned bill, conservative estimates indicate that school properties in Alabama valued in excess of $100 million have been closed or abandoned by orders of Federal courts.

We do not know the total value of similar properties lost to use of the people in other States. However, on the basis of tentative inquiries it is estimated that the depreciated value of such properties exceed $1 billion and that replacement cost will amount to much more.

One of the truly appalling aspects of this situation is that many of the school buildings ordered closed are relatively new and modern. They were built in the last decade which, in the South, has witnessed a phenomenal increase in appropriations for education and great strides in improving educational opportunities for all children regardless of race. These improvements were made possible only by reason of dedicated education leadership and loyal public support.

Many of these closed schools were paid for from proceeds of bond issues authorized by State legislatures. Others were constructed on local initiative. The people of separate communities voluntarily assumed increased ad valorem levies on their homes and farms in order to provide their children with better educational opportunities. Thus, the people are doubly burdened with State and local taxes to pay the cost of schools ordered abandoned by Federal authorities. Their children are ordered bused to schools in distant communities which are frequently overcrowded and inadequate while their own local schools lie idle, vacant, and deteriorating. Can it be imagined public support of education can be maintained under such circumstances?

Mr. President, while there remains some question concerning the total monetary value of properties involved, there is no question but that a grave injustice has been done. This injustice calls for redress. The bill that the Senator from Mississippi and I have introduced will provide that redress.

Both bills are quite simple. One provides that the United States shall compensate States and local education agencies in an amount equal to the replacement cost of all public school buildings and facilities owned by any such State or agency which have been or will be closed or abandoned by any such agency as a result of: First, any order issued by any court of the United States; second, compliance with any plan, guideline, regulation, recommendation, or order of the Department of Health, Education, and Welfare; or, third, actions taken by any such State or agency in good-faith efforts to comply with the decisions of the U.S. Supreme Court requiring desegregation of public schools.

Mr. President, no effort will be made at this time to present legal arguments in support of this bill. I think it sufficient to point out that if it can be said that the U.S. Constitution requires closing local public schools, it can be said, with more compelling reason, that the Constitution also requires compensation for financial losses incurred by reason of such closing. If the property were taken to make room for a Federal highway, compensation would be provided. Is there any valid reason public school properties taken by Federal Government from local school authorities pursuant to Federal programs and policies should not be compensated for?

Let me mention another reason why these local school authorities should be compensated for the loss of use of schools closed and abandoned on initiative.

It has been 15 years since the Supreme Court handed down its original decision declaring racially segregated schools unconstitutional. Every State in the United States which had school segregation laws repealed them or struck them from State constitutions. Most adopted "freedom of choice" plans for assignment of children on the basis of the first definitive judicial interpretation of the Supreme Court Brown decision. In this interpretive decision the district court said, in effect, that the Constitution forbade racial seggregation in schools but that it did not compel integration. That interpretation was made in one of the original cases on remand from the Supreme Court. The Supreme Court let that decision stand. It denied certiorari. State and local school authorities had a right to believe that "freedom of choice" as practiced throughout the United States was constitutionally permissible in the South.

Nevertheless, the Supreme Court has backtracked and confused the issues by continued use of undefined legal concepts in relation to the meaning of the Brown decision. Nobody knows precisely the meaning of such words and phrases as "segregation," "desegregation," "discrimination," "equal protection," "unitary school system," "system," "integration," "root and branch," and others. Sheer confusion reigns in U.S. district courts. Confusion compounded by the fact that the Supreme Court denies certiorari in cases decided on conflicting interpretations of the Supreme Court meaning of such terms.

There is no authoritative answer to simple questions like these: When is a school desegregated? What are the conditions of a unitary school system? These and many other questions are constantly raised by district judges and local school officials. Despite these unanswered questions, local school authorities are being compelled to close schools and bus children to achieve what a HEW official thinks the Supreme Court meant in the desegregation decision.

In some instances, Federal officials insist that Federal courts issue orders which local school boards are simply powerless to comply with.

For example, on December 30, 1969 a U.S. district court judge in a case involving Norfolk, Va., schools complained that the U.S. Attorney General had insisted on a plan to establish a "unitary school system" which contemplated closing 17 public schools and massive cross busing which in turn would require a capital investment of $4 million for new buses and $800,000 a year in increased

busing costs. The school board simply could not comply. The judge in this instance did not issue the order requested by the Attorney General but countless other judges in the South have done so. The fact is that the Attorney General of the United States and the Department of Health, Education, and Welfare continue to insist that the Supreme Court requires imposition of such plans and insists on implementation under the equity powers of district courts.

Mr. President, some of the things done today under equity powers of U.S. district courts are almost unbelievable. It is hard to realize that in the United States equity powers of district courts can be used to create "affirmative" duties of elected legislative bodies; that they can be used to subordinate the health, safety, morals, and welfare of children to arbitrary ratios; to effect sociological experimentations involving millions of schoolchildren; to issue orders impossible of implementation and to take property without compensation—all of this and more.

Mr. President, from the standpoint of powers in government, seldom in history has there been a more potent and dangerous concentration of powers than that represented by equity powers in the Federal court when distorted into a tool to effect revolutionary reforms, coupled with the use of mandatory injunctions, enforced under powers to punish for contempt by imposing confiscatory fines and imprisonment without benefit of trial by jury.

Obviously, the present bill to compensate local school authorities and the bill to preserve in the law the right to deduct from taxable income contributions made to certain nonprofit educational institutions will not remedy the chaos which has been inflicted upon the South.

It is our intention to press on every front until "freedom of choice" is just as lawful in the South as it is in every other section of the United States.

Mr. President, I wish it were possible to convey to all Senators a sense of the magnitude of these problems. I say as sincerely as I know how that the handwriting is on the wall and that no school system in the United States is going to escape the effects of the social theories now being expounded and implemented in school decisions from the South. To think of this as a sectional issue is to miss the point.

Let me mention one of the sociological theories which is being implemented by some U.S. district court judges. In a recent case, a Department of Health, Education and Welfare expert sociologist contended that the Supreme Court Brown decision required "integration" and not "desegregation" which the expert said was merely "mixing bodies." "Integration," on the other hand, means a balance of "social classes" in the schools, according to this professor and his interpretation of the meaning of the Brown decision.

If this social class mix theory prevails—and it is being pushed by Federal authorities—it will mean that children must be assigned to schools on the basis of computerized data on the incomes, education, employment, religion, and other personal information gathered on the parents of all children in a city or community. It will mean that children will be distributed according to the social status of their parents throughout every school in the community. Such a distribution according to plan can be accomplished not alone by bussing but also by regulating housing, job assignments, creation of school parks, and perhaps by a scheme of "population distribution" referred to by President Nixon in his Executive order creating the Rural Community Development Commission.

Mr. President, it is no secret that the Department of Health, Education, and Welfare is studying the feasibility of invoking equity powers of Federal courts to levy taxes to implement some of these far-reaching sociological experiments with our children. Authority for such a proposition is cited in one of the recent published studies by the Commission on Civil Rights on the general subject.

Is it coming to that? Taxation by injunction?

Mr. President, the Federal courts of this Nation are in a quagmire—the problem can no longer be ignored. The welfare of 43,353,567 schoolchildren is involved; billions of dollars in public funds are involved; public support of education is endangered. It is my earnest belief that the situation is so bad that the Senate should undertake an inquiry to determine what can be done to restore order and legality to the mess created by departures from the law of the Constitution.

It is my hope, Mr. President, that the Senate Judiciary Committee will accept the important responsibility and that it might unravel the confusion that exists in school decisions, and help resolve the conflict of authorities respecting the social theories advanced in district courts for implementation. I hope that the competence of so-called education experts employed by the Department of Health, Education, and Welfare to formulate school plans for submission to courts will be evaluated along with the justification of "windshield" inspections of school facilities as a basis for recommending abandonment of schools.

Someone must question the rationality of racial ratios or social class ratios as overriding criteria for the assignment of pupils and teachers.

I would hope that the committee would also examine the implications of a "dual Constitution" and question the novel and dangerous extension of equity powers of courts with particular reference to a proper power in Federal courts to levy taxes.

These are but a few of many aspects of a monumental problem that needs thorough review and evaluation by competent authorities.

It is my opinion that the Supreme Court needs help. I hope the committee will give the Court this needed help.

Mr. ERVIN. Mr. President, I ask unanimous consent that 5 additional minutes be extended to the distinguished Senator from Alabama so that he and I may engage in a colloquy on the very important subject he has discussed.

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

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that the courts are complicating, in a manner they do not understand themselves, one of the simplest declarations of the United States Constitution—namely, the equal protection clause of the 14th amendment?

Mr. ALLEN. Certainly I agree with the distinguished Senator from North Carolina, who has been a distinguished jurist and has served on the Supreme Court of the State of North Carolina on his analysis.

Mr. ERVIN. I ask the Senator from Alabama if the only constitutional provision by which the courts seek to justify their action in this field is the equal protection clause?

Mr. ALLEN. Yes, I agree.

Mr. ERVIN. Does not the equal protection clause merely say that no State shall deny to any person within its jurisdiction the equal protection of the laws?

Mr. ALLEN. Yes, that is what it says. That has been extended and enlarged upon by the Supreme Court.

Mr. ERVIN. And was that clause not inserted in the 14th amendment merely to prevent a State from having or applying a law in a different manner to one man or one group of men from the way in which it applies or is applied to another man or group of men, where the men or groups were in like circumstances?

Mr. ALLEN. That was certainly the original purpose of the clause in the amendment.

Mr. ERVIN. I ask the Senator from Alabama if, in plain and simple English, the equal protection clause does not require a State to do this and this only—namely, to treat in like manner all the persons within its jurisdiction who are in like circumstances?

Mr. ALLEN. Yes, sir. It does.

Mr. ERVIN. Nothing in this clause says anything about desegregation or unitary schools or nonracial schools.

Mr. ALLEN. Nothing whatever.

Mr. ERVIN. Does the Senator from Alabama understand what the Court means when it talks about a unitary school or nonracial school in a country in which all people belong to one race or another?

Mr. ALLEN. No, I do not know what they are talking about, especially since freedom of choice should be the rule. If anyone is permitted his free choice as to the school he wishes to attend, that certainly complies with all constitutional requirements, and that, it seems to me, should be the law of the land; and I would like to see that declared as public policy of the United States.

Mr. ERVIN. Can the Senator think of any way in which a State or a school board can comply more completely and more perfectly with the equal protection clause of the 14th amendment than by opening its schools to children of all races and allowing the children or the parents to select the school which the children can attend?

Mr. ALLEN. No, I cannot.

Mr. ERVIN. Would not that system, which is freedom of choice, treat every parent and every child of every race equally alike, under like conditions?

Mr. ALLEN. Yes. And I commend the distinguished Senator from North Carolina for introducing a freedom of choice bill which I believe and the distinguished Senator from North Carolina believes will even pass the review of the Supreme Court. The Senator from North Carolina has been kind enough to allow me to cosponsor this bill.

I hope that we will soon be able to get this bill up for a vote. I do not see why any Senator would object to allowing freedom of choice by parents and students.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The PRESIDING OFFICER. The hour of 1 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. S. 3246, to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

FAIR AND EQUITABLE TREATMENT FOR PUBLIC AND PRIVATE SCHOOLS IN THE SOUTH

Mr. ERVIN. I should like to ask the Senator from Alabama if there is a single word—yea, a single syllable—in the entire 14th amendment which authorizes the courts or Congress to place any limitation whatever upon the freedom of individuals?

Mr. ALLEN. Absolutely not.

Mr. ERVIN. Does not the entire 14th amendment apply only to State action?

Mr. ALLEN. Yes, sir.

Mr. ERVIN. I will ask the Senator from Alabama if the courts, pretending to interpret the equal-protection clause, have not robbed the parents of schoolchildren and the schoolchildren themselves in virtually every locality in the South of their freedom?

Mr. ALLEN. They certainly have.

Mr. ERVIN. I will ask the Senator if the Brown case did not lay down the proposition that it was unconstitutional to deny a child the right to attend the public schools solely upon the basis of his race?

Mr. ALLEN. Yes, sir.

Mr. ERVIN. Have not the Federal courts sitting in southern States denied children the right to attend their neighborhood schools because they want some children of their race to integrate schools elsewhere?

Mr. ALLEN. Yes, sir; they have been guilty of that.

Mr. ERVIN. I will ask the Senator if that is not a violation of the interpretation placed upon the equal protection clause by the Supreme Court itself in the Brown case?

Mr. ALLEN. Yes, sir. In my judgment, it is.

Mr. ERVIN. Is that not robbing little children of their freedoms?

Mr. ALLEN. It is.

Mr. ERVIN. There is nothing whatever, as the Senator from Alabama has agreed, in the 14th amendment which would authorize any Federal court in this land to deny any individual any freedom for integration purposes or anything else.

Mr. ALLEN. That is correct; yes, sir. I thank the Senator.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. ERVIN. Mr. President, I ask unanimous consent to proceed for an additional 3 minutes.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object—and I shall not object—I want to put Senators on notice that it is the intention of the leadership to tighten up on the application of rule VIII dealing with germaneness. I shall not object now and I ask unanimous consent that the Senator be allowed 5 additional minutes. I hope that the discussion on this nongermane subject may be brought to a close at the end of that 5 minutes, so that we might proceed with the pending business which already has been laid down.

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Carolina? The Chair hears none, and it is so ordered.

Mr. ERVIN. I thank the Senator from West Virginia.

I should like to ask the Senator from Alabama if he has not received, as has the Senator from North Carolina, hundreds of letters from the parents of schoolchildren protesting the way their children are being herded around like cattle, and shifted about like pawns in a chess game, in order to carry out the notions of some Federal judge concerning school integration?

Mr. ALLEN. Yes, indeed, I have. The number can be measured in the thousands rather than in the hundreds.

I should like to state to the distinguished Senator from North Carolina that the Federal takeover of the public school system in Alabama is the No. 1 issue in the State of Alabama. The people of our State are more concerned with the destruction of their school system by this Federal takeover than any other issue confronting our people today.

We resent it and resent it very deeply. We also resent the fact that a different rule is applied in the North, that the prohibitions and limitations or protections provided by the Whitten amendment to the 1968 HEW appropriation bill, under the policy of the Department of Health, Education, and Welfare are effective and applicable in the North, but the Secretary of the Department of Health, Education, and Welfare says that the people in the South do not have that protection because at one time, he says, we had a dual system of schools.

Well, every State, I assume, at one time, had a dual system, but he says that we do not have the protection of the Whitten amendment whereas the people of the North do. Nothing is done about segregation in the North, as has been pointed out by the distinguished Senator from Mississippi (Mr. STENNIS), whereas forced integration is required in the most discriminatory fashion in the South.

Mr. ERVIN. I should like to ask the Senator from Alabama if the Civil Rights Act of 1964 does not apply, according to its verbiage, to all areas of the United States, North, South, East, and West?

Mr. ALLEN. Yes, sir. It is supposed to do so.

Mr. ERVIN. I ask the Senator from Alabama if it does not say in as plain language as can be found in English that no court in the United States shall have authority to require the transportation of schoolchildren from one place to another in order to overcome a racial imbalance?

Mr. ALLEN. Yes, sir; but that has not prevented the Department of Health, Education, and Welfare from suggesting plans and enforcing plans doing just that, with the courts backing them up.

Mr. ERVIN. The Department of Health, Education, and Welfare takes the position that although the law applies to all areas of the country, it does not apply north of the Mason and Dixon line because they have de facto segregation as contradistinguished from the South's former legal segregation.

Mr. ALLEN. That is correct.

Mr. ERVIN. So the law was enacted to cover the whole country but the administrators of that law apply it only to one section of the country.

Mr. ALLEN. That is correct.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that if the Department of Health, Education, and Welfare, or the Federal courts, imposed upon parents and schoolchildren in the North the tyrannies which they are now imposing upon the parents and schoolchildren in the South, it would not take more than 24 hours to get a freedom of choice bill passed through the Senate and not much longer to get it passed through Congress?

Mr. ALLEN. That is correct, if these tyrannies and injustices should be applied in all areas of the country.

Mr. ERVIN. Justice Cardozo said:

> When we strike off one set of shackles, we should not fasten upon ourselves another.

I will ask the Senator from Alabama whether the Federal courts and the HEW are not trying to substitute for outlawed State school segregation, Federal coerced desegregation?

Mr. ALLEN. Yes, sir. That is their policy, apparently.

Mr. ERVIN. I thank the Senator from Alabama.

Mr. ALLEN. I thank the Senator from North Carolina for his fine remarks and the questions which have brought out some of the issues involved.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the senior Senator from North Carolina (Mr. ERVIN).

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. Presi-

dent, I ask unanimous consent the order for the quorum call be rescinded.

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

INTEREST ON INTEREST

Mr. GORE. Mr. President, I noted that in recent days Mr. Woodward Maurice Ritter, sometimes called Tex, an announced candidate for the Republican nomination for U.S. Senator in the State of Tennessee, has turned his attention to the problem of high interest rates. I welcome Mr. Ritter's concern about this problem, but he is singing out of tune. He is incorrect in his assertion that the high interest rate problem resulted from Democratic administration actions, at least partly.

Mr. President, the record clearly demonstrates where the responsibility lies for the current high interest rates on home mortgages that are depriving the working people of this country of an opportunity to buy the housing they need and are entitled to.

In the final year of the Eisenhower administration, the maximum legal FHA interest rate, according to figures supplied by HUD, was 5.75 percent. In his first year of office, President Kennedy held this figure level, and by his second year had reduced it to 5.25 percent, where it remained until 1965. The highest maximum legal FHA interest rate in the final year of the Johnson administration was 6.75 percent. Thus, over an 8-year period, there was an increase of 1 percent in the FHA interest rate, an average annual increase of about 0.12 percent.

But, Mr. President, the record shows that in just 1 year of a Republican administration, the FHA interest rate has gone from 6.75 percent to 8.5 percent, an increase of 1.75. Thus, in just 1 year, there has been an increase in the FHA interest rates of more than the total increase in interest rates that took place over 8 years of Democratic administrations. Put another way, in the first year of the Nixon administration, interest rates rose by almost 15 times the average annual increase that was experienced in FHA interest rates during the Kennedy-Johnson administrations.

Thus, when Mr. Ritter asserts that the high-interest-rate problem is "90 percent of Democratic origin" he is simply not supported by the record.

Mr. President, this incredible rise in interest rates during the first year of the Nixon administration has been accompanied by an equally sharp rise in the cost of living. The Department of Labor reports that the Consumer Price Index went from a closing figure of 123.7 in December 1968, to 129.3 as of September 1969, an increase of 5.6 in just 9 months. This is a cost-of-living increase of 4½ percent during the first 9 months of the Nixon administration compared to a 3.4 percent increase during the first 9 months of 1968.

Mr. President, this high-interest-rate policy of the Nixon administration, coupled with the rapid increase in the cost of living, has produced an intolerable burden for the working people of this country. The increase in interest rates on home mortgages has directly resulted from this administration's hands-off policy which has permitted banks to pile up huge profits at the expense of people who need loans, small business, and State and local governments. Mr. Ritter asserts that the administration has made some unpopular moves to slow the interest rate trend. Mr. President, this administration has not made any move to slow the interest rate trend. Congress just last month bestowed upon the President the broadest power ever granted a President of the United States to control interest rates. By the terms of Public Law 91–151, the President is empowered to institute either voluntary or mandatory credit controls, including maximum rates of interest. President Nixon has refused to use this authority, nor will he exert the moral authority of the Presidency to get his Wall Street banker cronies to reduce their profits by cutting back on their present exorbitant interest rates.

Mr. President, I am delighted that Mr. Ritter is concerned about the high-interest-rate problem. I am sure he appreciates the necessity, at least the desirability, of harmonizing public statements with the facts of record. I hope that many people get concerned about it—especially those in the administration.

Mr. President, a letter I received from a constituent today, referring to another gentleman about whom Mr. Ritter has expressed some concern, illustrates the problem:

> I have learned who the "silent majority" that Nixon and Brock appreciate—the bankers and home-loan people. We are trying to buy a home but these Republican interest rates have just about prevented us from doing so. Since I earn over $12,000 annually, it would seem that we could afford at least a modest home. If I can't afford a home with an annual income over $12,000 what hope do poor people have of ever becoming home owners.

Mr. President, I renew my plea that the President exert his moral and legal authority to roll back high interest rates so that the average American who wants to buy a home can once again do so at reasonable mortgage interest rates.

Mr. President, I ask unanimous consent that a United Press article be printed in the RECORD.

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

RITTER SNIPES AT GORE FROM ALASKA TOUR

ANCHORAGE, ALASKA, January 13.—Cowboy-singing star Tex Ritter took time out from a troop-entertaining tour here Monday to blame high interest rates on Democrats and criticize Sen. Albert Gore, his potential opponent in this year's Tennessee senatorial race.

"In my opinion, the interest rate problem is 90 per cent of Democratic origin," Ritter said. He said he was responding to a statement by Gore describing high interest rates as "Republican rates on borrowed money."

"Shortly after President Kennedy took office in 1961, the FHA mortgage yield was 5½ per cent," Ritter said. "By January of 1969 when President Nixon took office, the rate had skyrocketed to 7.07 per cent."

"Today the ceiling is 9.15 per cent and even though the Administration has had to make some unpopular moves, they have only been able to show the rocketing interest rate trend."

Ritter said Gore had planned a heavy campaign in East Tennessee.

"I'm happy that the senator is going to start paying extra attention to East Tennessee, but regret that it took an election campaign to change such long ingrained habits," Ritter said.

VIETNAM

Mr. FULBRIGHT. Mr. President, Dr. Margaret Mead is one of the Nation's foremost anthropologists and educators. Last year we had the interesting and worthwhile experience of having her as a witness at the hearings of the Committee on Foreign Relations on "Psychological Aspects of Foreign Policy."

Dr. Mead has written an article for the February issue of Redbook magazine entitled "A Reasonable View of Vietnam." The article is just that: a reasonable view. Urging all Americans to stop "arguing" about the Vietnam war in terms of "victory and defeat," Dr. Mead declares that such terms are inappropriate and contends that we have "confused defeat and error."

Mr. President, I ask unanimous consent that this concise and rational article by Dr. Mead be printed in the RECORD.

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

A REASONABLE VIEW OF VIETNAM

(By Margaret Mead)

For almost two years now, while the war still has dragged on, we have struggled to clarify our thinking about the American position in Vietnam. Doubt, anger, frustration, anguish and dismay have shaken us out of any optimism about the outcome. Drastic differences have cut across even the oldest and most firmly established loyalties and have distorted our view of every problem we have to face at home.

By now most Americans, however strongly they disagree, want to find a way out of this war that is unlike any other in which we have been involved in the past. Yet, though we realize the situation is unprecedented, we continue to argue about the outcome in the old vocabulary of victory and defeat.

As long as we appraise the outcome in these terms there is a grave danger that in the end we shall withdraw from our real responsibilities in the world into a bitter and divided isolation. I believe we have confused defeat and error. It may be more difficult to face up to error, but doing so can open the way to a new course of action.

Victory and defeat were not the terms of reference with which we entered the Vietnam situation. Now when so much has changed and so many conflicting interpretations and angry accusations have eluded our memory, it is hard to recall the past. At the end of World War II, Vietnam was already one of the focuses of trouble. Neither the final withdrawal of the French nor the provisions of the Geneva Conference in 1954 provided a basis for stability and growth in the war-torn, shattered area that became South Vietnam.

We came into Vietnam to bring aid, both economic aid and technical aid, in the ongoing guerrilla war against those who refused to accept the new and shaky government. At that time our immediate aim was related to our preoccupation with the Cold War we were determined to halt the ex-

pansion of Communism in Southeast Asia. That was what brought us to Vietnam.

But little as the American people knew about the country, they had another and deeper concern. We hoped that settlement of the conflict there—as in other countries that were breaking free of their colonial status—would help create conditions conducive to peace in the world. And it is this long-term aim—not to win a victory, but to improve the chances for peace—on which we can still build today.

Later, in attempting to force a military solution to the civil war in Vietnam and to cut off help for the guerrillas from the North, we were doing what a certain group of advisers around President Johnson thought we ought to do. The decision, which was not an inevitable one, was based on the belief that by taking over the direction and most of the fighting, we could quite rapidly and very effectively change a badly deteriorating situation into one in which a very small new country could be unified and, given massive economic assistance, could begin a new phase of development.

Events proved that the advice was wrong—tragically wrong. What we failed to understand was that the divisions within Vietnam were deep and old, long antedating the present conflict; the escalation from guerrilla fighting to a full-scale war fought with modern weapons only sharpened the differences already existing. In following that advice we committed enormous resources and an ever-growing number of men to a kind of struggle that we are now realizing can be neither won nor lost by force of arms and the continuing sacrifice of lives.

Some of those in responsible positions who advocated military intervention in 1965—men like former Presidential adviser McGeorge Bundy—have been courageous enough to admit that they were wrong; others—men like Clark Clifford, former Secretary of Defense, and General Matthew Ridgway—have admitted that their perceptions were altered by the course of events. Such men were not alone in their views in 1968, but they saw what the issues were from the inside.

It is clear that we are now working for disengagement. The question I am concerned with here is not what the American policy is or should be. It is, instead, how we should interpret withdrawal. For I believe consensus will be possible only when we discard the inappropriate idea of defeat and victory.

Although the definition of withdrawal as defeat is very common, there is little agreement among those who take this view. It is what the extreme right believe. But they see disengagement not as an admission that we were wrong, but as evidence that we were right and have been blocked and frustrated by forces outside our control. In the eyes of some, it has been our own unwillingness to commit still greater resources to send still larger numbers of men to Vietnam, to use still more powerful weapons, that is costing us victory. This is an untenable position that can result only in greater divisiveness at home and later some new attempt abroad to win a victory as a way of repairing our damaged sense of ourselves—at whatever cost to world peace.

At the other extreme are many liberals and those on the left who insist that Americans must he humble enough to admit defeat, to admit that we have lost a war. I think they are wrong. In their eyes, those who got us into the war in Vietnam stand accused as well as those who have kept us in the war. They deplore the massive destruction in Vietnam, but their attention is turned homeward, away from any real consideration of American responsibilities in the world, to problems unsolved in our own country. Their concern is for human problems. But in a country divided by bitterness and recrimination, it is entirely possible that precisely those people who most need help would be turned into scapegoats for anger and frustration.

Between these two extremes there are many—a great many—American men and women who are fully convinced that nothing can be gained by destroying what we set out to save and strengthen. The devastation of the Vietnamese cities and countryside, the disruption of life and the numberless casualties that they have seen and heard about nightly on television, as well as the damage to ourselves as we see ourselves as destroyers, all these things make a quick solution—even defeat—desirable. But the idea that the choice to disengage ourselves should be treated as defeat is in itself a paralyzing one.

One great difficulty we have in thinking the problem through is that in our preoccupation with Vietnam we have come to treat the situation as unique. We would do better to place our intervention in Vietnam within the context of American engagements in the world in the past 25 years. Some have been well advised and successful. We have not treated these as victories, but as evidence that we are using our great powers responsibly. Others have been grossly ill advised. From these we have learned, I think, about the legitimate uses of power.

Among our successful efforts we can list the Truman Doctrine, the Marshall Plan, the Berlin airlift and the many programs, of which the Peace Corps is only one, in which we have been constructively involved in efforts to move toward a peaceful world. Among those that have been ill advised we must list the U–2 espionage episode, the Bay of Pigs, the invasion of the Dominican Republic and, above all, the military escalation of our intervention in Vietnam.

Looking at the present situation within this larger context, we should be able to recognize—as we have in other situations—the fact that the war in Vietnam has been from the beginning a gross mistake.

Admission of error need not plunge Americans into an orgy of self-recrimination. The consequences of error cannot be treated as evidence of treachery or loss of faith in our country or some lessening of ourselves as a people. The choice to change our course should not paralyze our ability to do so. As an admission of error, it will not do so.

Errors we can deal with in terms of our pragmatic optimism. We made a mistake. We got into a situation that no one—administrators, legislators, military leaders or the American people—foresaw or wanted. Errors call for action. Once we have recognized an error for what it is, we can decide to cut our losses, get on the right track and go ahead from there.

But the recognition of an error does not wipe it out. And this is what we must face. It will not be easy—it is never easy—to accept the inescapable responsibility for irretrievable losses.

Taking a new course will not bring back to life the 40,000 young Americans who have died or make whole again the thousands who have been wounded. It will not restore devastated Vietnam. It will not compensate for the damage done to lives at home while we used our resources in this military adventure abroad. Children who have suffered from want, children to whom we promised a decent education and who have been deprived of it—all these, like the dead, have made irreparable sacrifices. Children grow up only once; they learn as children only once. Whatever they may accomplish later, their childhood cannot be changed.

We can mourn for all these losses, but that mourning will be meaningful only in the light of what we choose to do in the future. It will not help to add to the burden by continuing on a mistaken course in the name of those who have suffered already. And in the long run, the fact that we are able to extricate ourselves with integrity from a mistaken course may be more important to the world than the error.

It will be in the course that we now chart that the rightness of our decision will be seen. If we can learn from Vietnam that the day of "little" wars, no less than major wars, is past, carrying with them neither victory nor defeat, we can perhaps take the next step. We can recognize the fact that we are part of the whole world, not a separate entity, and that we can use our tremendous power only as part of a shared responsibility. It is not enough for us to act on behalf of others; success depends on our acting *with* them in ways that allow others also to use their strengths.

In the past we offered North Vietnam a share in some generous reconstruction that would follow the improbable settlement of our dispute. But because this has not been a war like other, earlier wars, such a gesture of magnanimity no longer will work. We shall have to make up for what has gone wrong not in Vietnam, where we have lost our power for good, but by what we do constructively, in economic and social co-operation, elsewhere in the world.

Our sense of loss at home bound in with our loss abroad I think can strengthen our feeling that we can set freely in one area only as we also do so in another. As we bend our efforts at home to care for our children, rebuild our cities, clean our polluted waters and improve the quality of living for Americans we can also commit ourselves to participate—not as a benefactor but as a co-equal—in the world's work of creating conditions in which all men can live the kinds of lives that make for peace.

It is significant that all our errors have been military and our successes have been economic and social. Around the world we see the tragic consequences of military intervention by other great powers. Those whom we—and others—seek to help by military means, direct or indirect, sink deeper into misery. Those we—and others—seek to help by economic and social means begin to flourish.

If we are not bemused by old talk about victory or defeat, the meaning will be clear. And we can move ahead in directions on which we can agree and for which we can take the responsibility.

THE INCREASED COST OF FOOD

Mr. YOUNG of North Dakota. Mr. President, of greatest concern to everyone today is inflation and the resultant increase in the cost of almost everything consumers need.

Increased costs of most food commodities are very difficult to understand and, in many cases, unjustified even in this inflationary period.

Mr. President, since food costs are often listed as leading the inflationary spiral, I thought it would be appropriate to place in the RECORD a very interesting and factual comparison made by Mr. Edward Dunn, of the North Dakota State University, of the great spread of prices the meat producer receives and the consumer eventually pays.

As is often the case, the farmer benefits the least in the increased price of his products to the consumer. Sometimes there will even be sharp increases in the cost of food commodities to the consumer with the farmer receiving little or no increase.

Mr. Dunn's comparisons of meat price costs at various levels are the kind of information I would think all consumers would be interested in.

Another example, at the present time bread is listed as having increased the most in cost during December—here in the city of Washington—by 9.6 percent. The price the farmers receive for wheat averages less than $1.25 a bushel throughout the United States. This is the lowest it has been in years. Yet the cost increase of bread leads in the price index for the consumer.

Mr. President, I ask unanimous consent to have inserted in the RECORD as a part of my remarks, an excellent article written by Mr. Edward Dunn and published in the Jamestown, N. Dak., Sun of January 15, 1970.

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

WHO'S GETTING THE BENEFIT OF HIGH U.S. BEEF PRICES

The past several months have found consumers paying more for beef than they have at any time since 1951. Higher beef prices have received nationwide attention, even housewife boycotts in some areas, and speculation as to which sector of the economy is benefitting most from the increased prices. Who is getting the profit—the cattleman, the feedlot operator, the meat packer, the wholesaler or the retailer?

According to Edward Dunn of the North Dakota State University agricultural economics department, an analysis of the meat price situation over the past several months reveals that the meat retailer is—at present—benefitting the most from high beef prices.

Choice carcass prices for beef in the United States reached a peak of 71.8 cents per pound in June of 1969, and then declined to 59.6 cents in September. Wholesale prices also declined from 77.6 cents to 66.7 cents, while retail prices declined from 102.1 to 99.2 cents during the same period. (September wholesale and retail prices are the most recent national figures available.)

These figures point out that the total decline in the price of choice beef at the retail level from June until September was only 2.9 cents, compared to drops of 12.2 and 10.9 cents at the dressed carcass and wholesale levels. The 12.2 cent decrease at the slaughter level represents a reduction four times that of the 2.9 cent decline at retail.

These figures suggest that changes in slaughter cattle and wholesale beef prices are not closely reflected in retail prices. Part of the reason for this is that retailers prefer not to alter their meat prices in response to day to day or week to week fluctuations in the live cattle and wholesale meat markets. Also, meat is not sold to customers on the same day—or even the same week—that animals are sold for slaughter, so a lag exists in the response of retail prices to slaughter cattle prices.

Retailers attempt to maintain at somewhat constant margin on the meat they purchase and resell. However, Dunn says, a comparison of national retail, wholesale and slaughter beef prices from 1965 to 1969 reveals that retailers appear to be more willing to increase retail prices during periods of rising wholesale prices than they are to decrease prices when the wholesale price is declining. So generally, the decrease in the spread between slaughter and retail prices during rising beef prices won't be as large as the increase in margin when the slaughter cattle price declines.

Price competition is considerably more competitive at the slaughter level than it is at the retail level. The lower degree of competition at retail and the tendency of retailers to stabilize prices means that beef prices will not fluctuate nearly as much at retail as compared to the slaughter level. Once retail prices have reached a certain level and consumers have become accustomed to paying the price, the lower level of price competition at the retail level will allow retail prices to remain relatively strong even though cattle prices have declined.

Although beef prices increased substantially during the first half of 1969, the increase in beef prices still has been much less than the average price increase of all goods and services purchased by consumers. Removing the effect of inflation on increased prices in the economy by the use of the Consumer Price Index shows that the retail price of choice beef increased by 24 per cent compared to a 28 per cent increase for the average of all goods and services since the 1957–59 base period. The cost of medical care alone increased by 45 per cent. Homeowner costs increased by 27 per cent, public transportation by 38 per cent and the average cost of all services, such as legal, utility and repairing fees, by 39 per cent.

Although prices of many goods and services increase each year, consumers appear to be much more sensitive to increases in meat prices than to increased prices of other goods and services. Just why this attitude prevails might be explained by the way disposable income is defined.

Technically, disposable income is the amount of income a person receives after taxes have been paid. Using this definition, American consumers spend less than 18 per cent of their disposable income for food, which is far less than in any other country in the world. Six per cent of disposable income goes for the purchase of meat.

The typical consumer, however, may not define disposable income this way. Instead, disposable income is viewed as that amount remaining after taxes and other regular monthly bills, such as car payments, house or rent payments, furniture payments, utility bills, insurance and other installment payments, have been made.

What is left in the family budget after these payments have been made represents income available for the purchase of food, clothing, entertainment and incidental items. Of this "disposable" income, food represents a substantial percentage. Meat represents the largest expenditure for a single food item. Therefore, a relatively small change in the price of beef becomes very noticeable in terms of its effect on the remaining disposable income. Rather than spending 6 per cent, the consumer may feel he is actually spending from 30 to 50 per cent of his disposable income on meat.

The pricing of beef cuts is difficult to understand, because the beef carcass loses its identity as it is broken down into retail cuts. Trim and byproducts are deducted from the initial weight, and then different cuts of meat are priced at different levels—a T-bone steak is priced higher than a chuck roast, for example. So it's almost impossible for someone at either the consumer or producer end to compare the price of retail cuts to the price received for the live animal.

THE NATION AWAKENS TO PERILS OF GENOCIDE

Mr. PROXMIRE. Mr. President, I have consistently urged Senate ratification of the Human Rights Conventions on Genocide, Forced Labor, and Political Rights for Women.

Recently there has been a ground swell of support from all types of American citizens in every part of the country expressing basic agreement with the principles of the human rights conventions. The American people are now loudly asking why we have not yet ratified these conventions.

I am greatly encouraged by the American people's growing interest in the human rights conventions. The American Bar Association's section on individual rights and responsibilities has issued a report to the ABA's house of delegates strongly supporting U.S. ratification of the genocide convention. And several weeks ago an editorial in the Milwaukee Journal entitled "The United States and Genocide" concluded:

There is nothing to fear in the Genocide Convention. It is minimum as far as our national policy is concerned. The ABA should change its stand and the Senate should follow suit.

I ask unanimous consent that this editorial from the Milwaukee Journal be printed in the RECORD.

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

THE UNITED STATES AND GENOCIDE

Back in 1948 the United Nations general assembly unanimously adopted a convention on the prevention and punishment of the crime of genocide. This defined genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."

It listed "acts" it had in mind—killing members of a group; causing bodily or mental harm to a group; inflicting on a group conditions of life calculated to bring on physical destruction; imposing birth prevention methods on a group; forcibly transferring children from one group to another.

President Truman sent the convention to the senate for ratification in 1949. The senate never acted—in part because the American Bar association opposed it on the ground that it "raises important fundamental questions but does not resolve them in a manner consistent with our form of government." Now the ABA's section of individual rights and responsibilities is asking the association to approve the convention at its February meeting.

The section explains that a major factor in earlier disapproval was fear of expanded use of treaties. However, thousands of treaties have been agreed to by this country and others in the past two decades. Another fear, the section says, is that some ABA members felt that through the treaty the government would try to enact civil rights legislation that might not be constitutional or might not be possible to get through congress. Events have choked off that argument—civil rights legislation and the scores of court decisions on civil rights have removed any doubts about federal policy or powers.

The genocide convention has been signed by 74 nations. The ABA section points out that "in practical political terms, not to sign . . . is to dissipate one's influence, and to supply fuel for those who characterize the United States as the great hypocrite."

There is nothing to fear in the genocide convention. It is minimum as as far as our national policy is concerned. The ABA should change its stand and the senate should follow suit.

POLLUTION OF THE SEAS—AN OIL SLICK IN THE GULF OF MEXICO

Mr. BOGGS. Mr. President, this morning the newspapers published articles about a new oil slick in the ocean—this one covering the beaches of Grand Isle, just off the coast of Louisiana in the Gulf of Mexico.

Officials of the Federal Water Pollution Control Administration say they have been unable to evaluate the seri-

ousness of the situation so far. However, in conjunction with State officials and the Coast Guard, they are moving men into the area to work on a cleanup program.

Tomorrow, House and Senate conferees again will meet to discuss H.R. 4148, the Water Quality Improvement Act. Its Senate counterpart was S. 7. This bill, especially the Senate version, contains provisions which would go far to require rapid cleanup to reduce the ill effects of oil spills.

This spill in Louisiana, about which little is yet known, is ample further evidence of the need for this legislation—if indeed further evidence is necessary. Last year's disastrous spill off Santa Barbara and the projection of the U.S. Geological Survey that we can expect in the future, one spill a year of Santa Barbara proportions were ample prior evidence.

Further, Mr. Glynn Mapes, in the Wall Street Journal of last November 25, offered a fine study of the oil spill problem. I ask unanimous consent that Mr. Mapes' thoughtful article be printed in the RECORD.

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

[From the Wall Street Journal, Nov. 25, 1969]

TROUBLED WATERS: POLLUTION OF THE SEAS, BEACHES BY OIL POSES MAJOR GLOBAL PROBLEM—MARINE LIFE AND RECREATION SUFFER; FOULING IS CAUSED BY TANKERS, WELLS, PLANTS—INDUSTRY PRESSES RESEARCH

(By Glynn Mapes)

Not long ago oceanographers aboard the research vessel Chain were collecting surface samples from a lonely expanse of the Atlantic south of Bermuda known as the Sargasso Sea. They had planned to study marine life inhabiting the great quantities of drifting seaweed found in the area.

Instead, the scientists made a disturbing discovery. Their nets quickly became fouled with oil and tar—thick sticky globs up to three inches in diameter. Day after day along a 630-mile stretch they cleaned the net with solvent only to see them gum up again a few hours later. Finally they abandoned the project in disgust because they were picking up three times as much oil as seaweed.

It wasn't an isolated incident. "Just in the past few years we're finding we can't sail anywhere in the Atlantic—even a thousand miles from land—without finding oil," says Howard Sanders, senior scientist at the Woods Hole Oceanographic Institution, which operates the Chain.

THREAT TO MARINE LIFE

As the vessel's unhappy voyage suggests, world-wide oil pollution—even diluted by the ocean's vastness—is nearing crisis proportions. Beach-goers in such widely scattered spots as the New Jersey shore, Bermuda, the Riviera and the Red Sea complain of gooey black lumps of jellied oil that frequently wash up on shore. Floating oil spills—almost always of unknown origin—each year kill many thousands of seabirds in North Atlantic and Mediterranean waters, according to surveys by conservationists. Indeed, scientists believe the growing quantity of oil dumped into the sea is threatening marine life of all sorts—and perhaps man as well. The oil industry itself is exhibiting mounting concern.

Where's all the oil coming from?

Ships that routinely discharge oil wastes at sea are the biggest offenders, pollution control experts agree. Tankers, for example, wash out their cargo tanks with salt water after each load. Not infrequently, the washings—along with a heavy residue of oil—are dumped into the ocean. Moreover, passenger liners and freighters often fill their empty fuel tanks with water for ballasting purposes. This highly contaminated mixture is always pumped overboard before the ships enter port to refuel. And vessels of all types normally discharge oily bilge sludges over the side.

Other major sources of unwanted oil include spills from manufacturing plants, refineries and oil terminals. In Boston Harbor alone, a spill of several tons of oil can be expected every three weeks, according to officials of the Massachusetts Division of Natural Resources. Seepage from offshore drilling rigs and spills from wrecks of oil barges and tankers also add to pollution levels.

A DAY-TO-DAY PROBLEM

In recent years, a few widely publicized disasters—like the grounding of the supertanker Torrey Canyon off Britain and the blowout of a well in the Santa Barbara Channel—have focused public attention on oil spills. Yet, damaging as these occasional catastrophes can be, they're only one part of a far larger problem, the experts say.

"It's the day-to-day stuff that's killing us—the chronic oil pollution that nobody cares about in the headlines," says Lieutenant Commander Paul Sova, a Coast Guard law enforcement officer in New York. Adds a biologist for the U.S. Fish and Wildlife Service: "A great deal of oil is washing ashore all along our coasts. What's its cumulative effect on our environment? That's what we ought to start worrying about."

Statistics on oil pollution are scarce. The Coast Guard lists 714 major oil spills in U.S. coastal waters last year, up from 371 in 1966. No one counts spills on a world-wide basis.

Things are expected to get worse. On one hand, world-wide offshore petroleum production is expanding at a rate of 10% a year—and presumably the inevitable minor spills and seepages will grow correspondingly. So far, major blowouts have been rare. But a Presidential panel set up after the Santa Barbara disaster recently warned that by 1980 the U.S. can expect a major pollution incident from offshore wells every year.

SUPERTANKERS PROLIFERATE

Ocean shipments of oil are also climbing rapidly. Capacity of the world's tanker fleet has doubled since 1960 and is continuing to grow. Many of the new vessels are supertankers. These behemoths, with capacities of 100,000 tons or more, will be hauling half of all marine shipments of oil by 1975, it's estimated. (The biggest supertanker afloat today carries 312,000 tons; by comparison, the Torrey Canyon's capacity was 117,000 tons.)

What's more, the imminent tapping of the vast North Slope oil fields in Alaska is adding greatly to pollution fears, especially among conservationists. Tankers will likely be hauling oil through treacherous icebound waters. Even small spills during transport or drilling operations would be especially damaging to the fragile Arctic environment, since oil tends to persist far longer in cold waters than in warm.

Talk of growing oil pollution is most unsettling to Kenneth Battles, co-owner of the Sea Crest Hotel, a resort in Falmouth, Mass., on Cape Cod. He has already had his fill of the stuff.

Sticky black globs of oil washed up on the Sea Crest's beach three separate times in August alone, Mr. Battles says. Disgruntled guests had to clean their feet with kerosene—and some cut their visits short. "We're sure the oil came from ships heading into Boston, but there's no way we can prove it," he says.

Topping off Falmouth's summer, a barge ran aground on a nearby shoal in mid-September, spewing diesel oil over the town's shoreline. The spill took a month to clean up (the Sea Crest used bulldozers to remove oil from its beach), and for several days Falmouth smelled like a refinery, Mr. Battles says. "The cape should be a refuge for the pollution problems of the city," he adds angrily. "Why drive all the way from New York to find the same damn thing here?"

The Falmouth spill also caused extensive mortality in some 24 species of fish and killed large numbers of crabs, lobsters and scallops, according to scientists who surveyed the scene.

But more disturbing were the subtle effects on the creatures that survived the spill. Weeks later divers from the Woods Hole laboratory found fish and crabs whose natural instincts were strangely altered. Flounder that appeared outwardly healthy allowed themselves to be handled by the swimmers; ordinarily they would have scooted away. Normally skittish fiddler crabs also seemed to have lost their escape reaction; most boldly held their ground as the divers approached.

Max Blumer, a noted organic chemist at Woods Hole, observes that many marine animals produce minute quantities of chemicals that perform functions essential to maintaining the cycle of life. These chemicals act as attractants during the mating process. They also aid predators in locating their prey and, conversely, give warning to potential victims that they're being stalked by predators. Oil—whether from a single big spill or a buildup of repeated small doses—may well upset these vital, chemically triggered processes, Mr. Blumer theorizes, and thus could have a disastrous effect on the survival of many species, including those that are commercially important.

AIR PATROLS

Dumping of oil in the sea may also be creating a new risk of cancer in man. Some crude oils contain compounds that tend to produce cancer in animals. (Researchers, for example, have already found a high incidence of cancerous tissue in certain types of fish taken from the oily waters of Los Angeles Harbor.) Fish and shellfish that are eaten by man can ingest these oils. Hence, Mr. Blumer and other scientists speculate that chronic oil pollution may be leading to accumulation of cancer-causing agents in human food.

Three years ago, alarmed over the growing amount of oil in coastal waters, the Coast Guard began a regular schedule of flights by helicopter and airplanes to search out oil slicks and report polluters. Pilots logged 2,000 hours in such patrols last year. The Coast Guard has jurisdiction over all vessels within the three-mile limit and some limited powers beyond that.

One problem faced by the patrols is that ships that deliberately discharge oil often do so at night or during periods of low visibility to avoid detection. To combat this, the Coast Guard is developing an electronic sensing device that will aid pilots in spotting oil slicks even in pitch darkness. If the slick is trailing behind a vessel, presumably the pilot could identify the ship and lodge charges against the owner or master.

Yet even in broad daylight, oil surveillance patrols aren't a cure-all—as is indicated by a recent Coast Guard helicopter flight over New York Harbor. During this 90-minute patrol, the pilot, Lt. (JG) Ray Wirth, and a reporter who occupied the co-pilot's seat easily spotted six different oil slicks drifting rainbow-hued in the bright sunlight. But, as it turned out, none of the sources of the pollution could be positively identified.

FRUSTRATING DUTY

In fact, Lt. Wirth didn't even report four of the slicks. To have done so would have been pointless since they were floating far from any conceivable source. (Had the slicks been

large enough to require cleanup, he would have radioed word to his home base.)

The two spills he did report were located near possible sources. One was floating alongside a Liberian-flag tanker moored at Bayonne, N.J. The other was located near a Lever Brothers Co. plant on the west side of the Hudson River. (A Lever Brothers spokesman said later that the plant, which makes detergents, soaps and Spry shortening, has occasionally had trouble with oil leaks but that there was no record of a spill that day. He theorized that the oil may have drifted downstream from some other source.)

However, by the time Coast Guard boats reached the scene of the two spills, the oil had drifted away. Hence, no charges were filed.

"It's very frustrating," the young Coast Guard pilot said after the flight. "There's oil all over, but we can't seem to do much about it."

Even when the Coast Guard has the evidence to take a suspected polluter to court, it isn't clear what Government agency should press the charge. The Interior Department's Federal Water Pollution Control Administration is the official pollution control agency, but its powers are limited by a 1924 law that gives it authority only over spills resulting from "gross negligence"—which is tough to prove. As a result, the Army Corps of Engineers has had to act under an 1899 law that prohibits the dumping of refuse into navigable waters.

Two bills currently before Congress—one in the House and one in the Senate—put considerably more teeth into water pollution laws. But shipping interests are bitterly opposing one feature of the Senate bill, the stronger of the two measures, which imposes unlimited liability upon shipowners for oil spills due to negligence. They contend it will be impossible to get marine insurance unless the liability has a fixed limit.

POLLUTION ON THE HIGH SEAS

There's also a move afoot to strengthen an existing international convention designed to limit oil pollution on the high seas. Currently, the convention allows ships to discharge oil wastes when more than 100 miles from land. Proposed amendments, which require ratification by member nations, would prohibit dumping of oil anywhere in amounts greater than 15 gallons per nautical mile. However, it's widely recognized that enforcing the convention is practically an impossible task.

For its part, the oil industry is earmarking considerable sums of research money to come up with better ways to clean up oil spills. The American Petroleum Institute, an industry trade group, has encouraged the formation of "harbor cooperatives" in more than 50 U.S. ports. These are volunteer groups of oil industry concerns that pool resources, purchase equipment and establish contingency plans for the quick recovery of spills in their harbors.

In addition, oil company-owned tanker fleets and the larger independent tanker operators a few years ago voluntarily adopted a new method of washing cargo tanks that's designed to keep much of the oil residue on board. It works like this: The contaminated tank washings are transferred to a slop tank instead of being pumped overboard. Then, when most of the oil has floated to the top after 36 hours or so, the relatively clean salt water is pumped over the side. The sludge that remains is consolidated with the next cargo.

Had this new method, known as the "load-on-top" technique, not been adopted, tank washings would add at least 2.1 million tons of petroleum to the sea each year, Shell Oil estimates. But the method has gained wide acceptance and, in fact, has cut that potential pollution by 80%, Shell maintains.

Others aren't so sure. Rear Adm. Roderick Y. Edwards, chief of the Coast Guard's office of public and international affairs, agrees the load-on-top technique has made an "appreciable contribution" to reducing pollution. But he doubts it's 80% effective.

KEEPING TO OLD WAYS

For one thing, Adm. Edwards says, heavy weather often prevents the oil residue from separating from the seawater. Also, tankers that don't carry the same type of cargo each trip usually can't save residues from one cargo without contaminating the next one. Finally, he says, masters of many small, independently operated tankers continue to pump the oily washings overboard simply because the load-on-top technique is too time-consuming and bothersome. "A lot of people are still doing anything they can get away with," he adds.

Oil companies and chemical makers are marketing a variety of detergents that destroy the cohesiveness of oil, thinning it into tiny particles that can be more easily disposed of by bacteria and other natural forces. Increasingly, however, the value of these chemicals is being challenged.

For example, it's widely agreed that the two million gallons of detergents sprayed on the Torrey Canyon spill killed far more marine life than did the oil itself. Since then, "nontoxic" detergents have been developed. But some scientists contend that even these supposedly harmless chemicals are quite dangerous. Since they're designed to disperse the oil into the sea—and hence get it off the surface—the chemicals in effect force-feed the toxic oil to marine animals that might not otherwise be affected, it's believed.

Relatively small amounts of chemicals were applied to the Santa Barbara spill. When the slick eluded booms and other mechanical devices designed to contain it at sea, it was decided to let the oil float ashore, where it could be scooped up by bulldozers and absorbed with straw. This devastated the beaches for months and it cut deeply into the area's tourist business. But, according to researchers who are studying the spill, the strategy worked. The high mortality of marine life that occurred in the Torrey Canyon spill was avoided—with the exception of seabirds which died in large numbers.

THE NEED FOR A NEW AIR TRAFFIC CONTROL SYSTEM

Mr. CANNON. Mr. President, I doubt if many people realize how truly important our air transportation systems are to the Nation today. Ten years ago, of all intercity travel by common carriers—airlines, trains, and buses—only 39 percent was by air. Last year, this figure had jumped to 73 percent. This year it will be even higher. At trip distances beyond 1,000 miles, even the ubiquitous automobile gives way to the airplane as the dominant mode of travel.

The deep significance of these figures is clear. The earth's surface ceased being the only avenue for travel when man made his powered flight in 1903. However, 40 years of aeronautical development passed before the art of flight could seriously challenge surface travel. This challenge, weak though it was, gained strength rapidly. Now, in the past decade, we have seen surface travel between our cities subordinated to the aerial thoroughfares. It is this fact we must remember when we act to preserve the avenues of transportation with which we hold our Nation together.

As they become more important, our airways become more crowded, entirely too crowded. We learned from our highways that the growth of a system and its health are not synonymous. There are limiting factors in any system. Whenever the effort to correct the limitations of a system are disproportionately smaller than its growth, the system decays. If you have planted a healthy seedling permanently in a tomato can, you have limited its ultimate size. The vigor of its development merely determines the time it has before its own growth begins to choke it to death.

We have seen the consequences of this immutable formula on our roads and highways for many years. We know that a thousand of us who are living now will die catastrophically within the next 6 days—the inexorable payment of the gambling odds to use our dominating system of surface travel.

As we look toward the increasing use of the airways, we must not let our airspace become the second great arena in which we gamble with fate in the macabre sport of vehicular roulette.

Let me review for you some of the problems of today's airways. The midair collision last September which resulted in the death of 83 people is part of a pattern of increase in frequency of such tragedies. During the past two and a half years, over half of the deaths on commercial airlines resulted from midair collisions. The FAA study of near collisions in 1968 showed some 4,500 dangerous near-misses occurred during that year. Of these near-miss reports, approximately one-third came from airline pilots. Traffic is expected to increase by a factor of three in the next decade. If nothing is done, it can be accurately predicted that the resultant collision situations can be expected to increase tenfold. Fortunately, steps are being taken to reverse this trend. They will be effective in maintaining a safe system, but it will be at the expense of increasing restrictions to general aviation and higher costs.

A second critical problem of our airways is the delay that results from congestion of the airports and the air traffic control system. It is not uncommon for people who fly regularly to experience delays of hours to takeoff or land. The airlines and the FAA have recently estimated the direct operating cost to the scheduled airlines industries which are attributable to terminal delays. The rate of growth of this loss is alarming. From $60 million in 1966, it has grown to $75 million in 1967, and to over $100 million in 1968. One airline alone estimated that flight delays caused primarily by air traffic control or airport deficiencies were responsible for additional direct operating costs to it of at least $24 million in 1968. These numbers do not include costs incurred by the traveling public and special passenger services—such as hotel accommodations, meals, transportation, and telephone calls. The loss of confidence in air travel resulting from the unreliable service has not been measured, but it must be quite significant. If the system is not fundamentally overhauled, the prospects for the next decade are very grim.

More facilities—runways, terminals, and baggage handling devices—are

planned. Improved air traffic control must be simultaneously implemented or the growth of the aviation industry will be increasingly stifled.

Using my earlier analogy, we must put the seedling in a larger container if we wish its growth to continue.

Finally, it must be recognized that the cost of the current air traffic control system is skyrocketing.

Today's aircraft control is primarily manual, even though we are in a computer age. This can be contrasted with modern passenger railroads of the world. In the face of enormously less complex traffic and much lower speeds, nonetheless, they are controlled by automatic techniques. The FAA's National Airspace System—NAS—will begin applying modern computer and display technology to the air traffic control system. Thus, NAS will provide part of the foundation of a new system.

The sensors or "eyes" of the present system consist of many independent subsystems for aircraft surveillance—radars—and aircraft navigation—most of which are based on technology two decades old. Communications between controller and aircraft is by voice. The system operates in a patchwork fashion as the result of piecemeal adjustments made as traffic has increased. The situation is so bad today that for the next several years we must continue to patch, paint, tinker, and refurbish even though the cost of doing so is very high. What is crystal clear, however, is that this archaic system must be replaced and that soon we must begin to plan and implement the use of our new technologies, so that a completely integrated system can begin to emerge in the mid-1970's.

How soon is soon? How much confidence do we have in our ability to predict traffic growth?

Reviews of recent studies such as the report on air traffic control from the National Academy of Engineering and the report from the DOT Air Traffic Control Advisory Committee are in agreement that we must immediately take all necessary measures to increase the safety and the capacity of the air space in the vicinity of major airports as well as the acceptance rate of these airports.

Recommendations for steps beyond this first effort are reasonably comprehensive but somewhat uncertain as to when each step set forth in the sequence of advancing development might be needed. This uncertainty is understandable. Forecasts have always been the achilles heel for aeronautical planners. Mr. Charles W. Harper of NASA dramatically illustrated the frightening inadequacy of our forecasting capability in aeronautics in recent congressional testimony. He pointed to the large number of major studies in aeronautics which have been conducted over the past two decades. In brief, he showed that forecasts made only 10 years ago did not anticipate that our aerial transportation system would reach its present size for many years yet to come. It is a disturbing fact that our forecasts generally see the future as only a slightly enlarged version of the present.

The forecasts which have proven to be the least useful are in this group. These forecasts assume that a technology will continue to evolve as an entity independent of the changes in the operating envioronment. They fail to recognize that the society which supports a technology must also be served by it. This process of natural selection dictates that, of the many paths open to technology, those which lead to ways of serving the future environment while remaining compatible with it, are the paths to survival.

In our hopes for an adequate air traffic control system we see the development plans being subjected to the torture, compromise and possible deadlock stemming from sharp variations in views of what type of aircraft must be controlled and how much traffic there will be.

Mr. Clifton von Kann, vice president of the Air Transport Association, recently testified that a study of land availability had convinced his organization that the prospect of new airports suitable for today's aircraft was bleak. Also, he felt that substantial improvement in ground access to all commercial air carrier airports could not be anticipated. His conclusion was that adequate aerial service could be sustained only by the introduction of V/STOL systems. He noted that these systems would provide the needed reduction in traffic, aerial and surface, now saturating the hub airports. He believes that V/STOL systems will appear and will experience fast growth, not as a competitive option for existing systems but as an irrevocable consequence of forces which are already clear and rapidly shaping our environment.

I do not know whether or not Mr. von Kann is right, but it is clear that a substantial increase in the use of V/STOL aircraft would add greatly to the pressures for an improved air traffic control system.

So, we find ourselves today facing increasing demands on our airways system, and uncertainties regarding future growth. There is one point, however, upon which there is virtually unanimous agreement: the current air traffic control system is rapidly becoming obsolete and we must develop a new and more efficient system if we are not to stifle the growth of this important transportation system.

Well, where do we stand? What should we expect a new system to do? What kind of equipment will a new system need? Are the technologies available to build this equipment?

I think the answer to this last question is an unqualified "yes." All of the experts I have talked to agree that our present levels of satellite and computer technologies are ready for the design and development of a modern air traffic control system. In fact, some of our satellite technology is so advanced that we can envision operational systems where the navigational errors are measured in feet, not miles. It is now possible to know positions of moving vehicles so accurately that these new systems can be utilized for collision avoidance as well as navigation and traffic control, thus offering a possible solution to one of the most urgent problems in air travel today.

While increased air traffic will undoubtedly require new airports, and additional runways at existing airports, the new air traffic control system, as a result of precise scheduling and control, will improve the efficiency of each runway and permit much more optimum use of today's airport real estate. This will reduce the need for continued encroachment on adjoining real estate and reduce the number of new airports required.

The traffic flow in the commercial airways and in congested areas near a major airport can then be greatly increased by better use of air space. The delays associated with traffic flow which now plague the system can be virtually eliminated with a resultant improvement in passenger convenience and confidence. Commercial jet traffic will be better controlled into narrower lanes and will not have to stack up around airports. This will also somewhat reduce the total number of people exposed to the problems of jet noise.

With the new system, precise position and altitude of all aircraft will be known at all times. Should an aircraft experience trouble and be forced down, its location will be known and search parties can be accurately directed to the spot regardless of weather conditions.

The present workload of controllers can be greatly eased. With the new system, much of the work will be done automatically. The controller will remain the manager of the system but will have the mundane aspects of his workload reduced by the automatic system. I am not forecasting a major layoff of controllers. They will still be the system managers as the airlines continue their healthy growth, although the number of controllers need not increase in direct proportion to the total number of airborne aircraft. What will occur is that the controller will be assisted by the automatic system, the possibility of human error will be greatly reduced, and the controller will no longer find himself in constant fear that collision is imminent. The incidence of stomach ulcers and other nervous disorders among controllers will no doubt be greatly reduced.

Passenger comfort will be further enhanced by better communication of weather and clear air turbulence data to the aircraft. This will permit ready alteration of flight plans. Aircraft will also be able to communicate important aircraft status parameters in real time to any chosen ground station regardless of location. It will also permit prediction of spare equipment requirements on the ground prior to the aircraft landing which will improve scheduling of maintenance.

The use of new technology permits a significant reduction in the rate of increase of air traffic control costs related to numbers of traffic controllers, hardware acquisition, and operation and maintenance.

Well, what is the hold up? What do we have to do to get started? The need is obvious, the technology is ready, and while bringing a new system into operation will be costly, I believe the alternatives will be costlier in terms of money, safety, and convenience. What is lacking, of course, is a clearcut statement of policy and leadership by the Federal Government. Unfortunately, the problem

is compounded by the numerous organizations and voices associated and logically concerned with air traffic control. These include the airlines, the Departments of Transportation and Defense, the FCC, general aviation, the NASA, AOPA, ALPA, aerospace and avionics manufacturers, to name a few. When one considers the use of satellites for navigation, other agencies such as the Departments of Interior and Commerce, the Coast Guard, and the Maritime Commission are involved. Since satellite systems are inherently global, it is also obvious that complications of international cooperation and negotiation would arise.

Two analogous situations come to mind and help shed some light on the necessary approach, specifically the ballistic missile gap of the fifties and Apollo mission of this decade. In both cases, a national program was implemented. In both cases an excellent melding of government and industry teams was thus effected. In this case, the dollars required are much less, which simplifies the problem. The number of interests involved is, however, much greater which complicates the problem.

But first of all, and most important, what is needed is a national policy. How do we get it?

Perhaps a backward glance to the beginning of the Apollo program would be helpful here. In early 1961, President John Kennedy, concerned about the pace of the space program, asked the National Aeronautics and Space Council to study the matter and make recommendations to him. This resulted in a memorable speech to a joint session of Congress on May 25, 1961, in which, among other things, he urged the Congress to accept the challenge of sending Americans to the moon and returning them safely within this decade. We know how that turned out.

Perhaps the time has again arrived when the President can turn to the National Aeronautics and Space Council for consideration and recommendation in this critical area of air traffic control. A positive statement of national policy by President Nixon, with appropriate requests to the Congress, would enable us to go forward in the design and development of the new system.

I would like to add a closing remark about the need for a new air traffic control system. We know that a nation is a dynamic, living entity, and its transportation systems are exactly analogous to the circulatory system of the human body. When we act to protect our Nation's circulatory system we do more than protect our welfare. We insure our continued existence.

ABSENCE FROM SENATE TO ATTEND THE SIXTH MEETING OF THE AMERICAN COUNCIL ON GERMANY

Mr. GURNEY. Mr. President, I wish to have the official RECORD show that I missed the Senate sessions on Thursday, January 22, 1970, Friday, January 23, 1970, and Saturday, January 24, 1970, because I was attending the sixth meeting of the American Council on Germany, in Germany, as an official guest of the German Government. As the RECORD reflects, if present, I would have voted in favor of S. 30, the Organized Crime Control Act, and in favor of the Tydings amendment—amendment No. 443—and I would have opposed amendments 444, 447, and 450.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE APPROPRIATIONS

Mr. HATFIELD. Mr. President, a letter I have received from 250 Pacific University students is an eloquent plea for Congress to vote to override a veto of the appropriation bill for the Department of Health, Education, and Welfare.

If the President's veto is sustained, Oregon students will be forced to drop out of school because there is not enough money available in the President's budget. The colleges have in many cases gone out on a limb and made commitments for loans and grants—based on past Federal prodding to do so.

The President should be listening to these Oregon students instead of to the men with the green eyeshades and narrow vision in the Budget Bureau.

Congress cut a total of $7.6 billion from the President's 1970 budget. We cut $5.6 billion from the military budget and $2 billion from other bureaus. We added $2 billion. Of this $1.1 billion was for education.

Spending for education is not inflationary as the President claims. It is an investment in our young people and in the future of this country. Spending $70 billion for the military, much of it in military hardware, is nonproductive. These tanks, planes, and guns become rusting, obsolescent hulks.

Investment in the young is productive and is vitally necessary if we are to preserve the internal strength of the country.

I urge the President not to veto the bill.

I ask unanimous consent that the letter and the entire list of signatures be printed in the RECORD.

There being no objection, the letter and list of signatures were ordered to be printed in the RECORD, as follows:

ASSOCIATED STUDENTS OF PACIFIC UNIVERSITY,

January 20, 1970.

Hon. MARK O. HATFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HATFIELD: The status of the appropriation bill for the Department of Health, Education and Welfare is of great concern to us as college students.

At the present time all of us who have signed this letter are receiving benefits from one or more of the following programs: National Defense Student Loan Program, Educational Opportunity Grants, College Work-Study funds, Health Professions Scholarships or Loans.

If we are to continue our education and if other young men and women are to have this opportunity, it is imperative that additional funds be appropriated *now.*

Due to the urgency of expressing ourselves on this issue we have taken this form of communicating our concern to you rather than through individual letters.

The following signatures are forwarded to you with the hope that the recommendations of Congress will be carried through in relation to appropriations for these vital programs:

Ceasar McDowell, Steve Kellough, Jim Eberle, Peter J. Wolfe, Craig A. Smith, David Johnston, Syl Jaime, Eva Rivas, Gail Turek, Jennie Easton, Mrs. John Dawson Long III, Susan Stewart.

Roger, C. Bond, Ronald C. Bell, Wesley A. Bell, Timothy G. Davis, Steve Dastrude, Nancy Airhart, Howard Story, John Bryant, John Demske, Erick L. Nelson, Denne D. Aquino, Judith F. Wilmer, Paulette Biel.

James Goertz, Phillip Maner, Jack Zarybnisky, Kenny Johnson, Richard Rue, Richard Ravolli, Timothy S. Omstrad, Helene Allan, Ronald Killough, Tilda Kirk, Danell Mapston, Robert H. Kivle.

Terry H. Sanderson, Kevin White, Dick Danick, Gene O. Teigen, Linda Mattson, Marilyn Makie, Mike Olin, Boyd Walker, Clifford D. Brown, Ed C. Baer, G. F. Copeland.

Phyllis Weiler, Suzan Sorbel, Chuck Steifbold, Chuck Young, Bell J. Angela Jr., Jim Westendorf, Cathie Reynolds, Nancy E. Weber, Donna Johnsen, Brenda Foster, Steve Hefer, Mike Kinnon.

Robert E. Rulifson, William C. Fouste, Patricia Michiloff, Jan Williams, Patrick Antof, Lencis C. Cana, Jr., Gerald R. Bowers, James Nelcamura, A. McKillof, Clinton W. Hyde, Gregory Lazan.

Bonnie Daniels, Dory C. Wells, Mary Ann Jones, Dollyann Dudis, Theodore M. Miller, Randy H. Pinkerton, Barbara Jo Glover, Jan Crockwell, Karen Lahd, Carol Wong, Mark A. Coleman.

Paul J. Diederich, William J. Nowtingham, Steve Olin, Neil A. Folosca, Michael Sloane, Donald P. Osborne, Robert M. Vandobleed, Michael F. Ignowski, Hans C. Gehring.

Clark B. Blackwood, Lois Burchut, Kim Bailey, Keith Lawrence, Michelle Hud, Arthur A. Dibrow, Michael D. Moore, Steven C. A. Simmons, Carolyn Hamlet, Margaret Wong, Susan Binam, Michele Ivanti.

Carolyn Niimi, Ken Beosh, Glen Isaacson, Graig Battrick, Greg Zurburgg, Shiela Fox, Eddie Shur, Wayne M. Marteney, Clarence Nathaniel, Richard S. Kemper, Bobby J. Harris, Danny K. Sheldon, Glenn M. Rogers.

Ken Richard, Jerry Jones, Tim Hutslar, Dennis J. Artmore, Kenne Clay, James W. Stout, Pam Aronson, Bert Forster, Dean Grey, Deborah Neal.

Carol A. Swanson, Mike Madioico, Karen Phillips, Steven R. Sim, Nick A. Gitts, Douglas K. Okabayasho, James Milton McCrum, Ted R. Luther, Paul T. Wilson, Michael J. Moore, Denis R. Williams, Jesse J. Hamston, Pamelon Collins, Roger M. Allyn.

Dick Robins, Kent M. Archibald, Francine Schmidt, Reginald A. Cuffee, Irwin W. Shaffer, Kathern C. McAlister.

Calvin L. Downey, Barbara Koller, Dorothy Long, Tressie Smith.

Michael R. Ben, Betty Lau, Nancy Meade, Linda Mottey, Thomas Robinson, Ray Sexton, Fredy Pery, Rube Tomlin, Linda Young, Priscilla Featherston, Valorie King, LuEllen Chittim, Randy Loop.

Karen Dryle, Deborah Mann, Stanley Attins, Larry A. Lund, Dennis Pitkin, Philip I. Korten, Patricia DeLane Calhoun, Alma King, Lynne Coleman, John P. O'Connor, Gerald E. McGuire.

Tyrone Thomas, Sharon Ancker, Alan L. Kingston, Gordon Jarman, David B. Smith, Charles D. Knight, Stanley B. Black, David L. Gallagher, Harland

Flahahaslie, Ricky Rorsean, Raymond G. Maus, John Cluff, Carrine Gruber.

Carol Hirtzel, Leon S. Meade, Ed Butzlaff, Mike G. McGrath, Joseph A. Thoreau, Thomas F. Billars, Elwin W. Schutt, Kristine Harris, Roberta Lauree Nichols, David J. Williams, Mark A. Zeigler.

Dennis Fee, Jerry Hanson, Ruth Goringe, Lonnie Sisso, Terry R. Johnson, Michael D. Buhr, Gail A. Murray, Opal Chanceler, Steven M. Wallace.

Wayne Mahoney, Marsha Sowell, Mary R. Garrison, Zenda Ellis, Deborah Jarrell, Joseph R. Bell, Mary Lou Whetenpaugh, Paul A. Ward, Michael Groai.

Mark Louis Kane, Otice N. Clements, John E. Palmer, Ralph A. Schauss, Steve D. Pomerantz, Donna D. Maxey, Gary Maurer, John F. Voorhie.

Webb Richard, Curtis C. Cyr, Richard Mashek, Scott Watters, W. S. Muncey, Bill Walters, Renae Wyland, Styshen Ellis, Pat Hughes, Bonnie Ball.

Flor Luchlyn Platas, Brian Edwin George, Stan Payton, Donna Dickey, Ted Farr, Dean Bones, Maurin Oliphant, Morley Cooper.

Nancy Agusar, Patti Butterfield, Brenda Manley, Jerry Jolly, Kathy Brown, Carmen Gayters, Duane Gasdecker.

We appreciate the time which you have taken in reading this letter and hope that something can be done to assist in this matter. Many of us are of voting age and the remainder will become eligible within the next couple of years. As young men and women we are concerned about our nation and we do plan to express our views at the ballot box.

Sincerely,

LYNN COON,
President.

NOMINATION OF JEROME H. HOLLAND TO BE AMBASSADOR TO SWEDEN

Mr. BOGGS. Mr. President, last Friday, President Richard M. Nixon sent to the Senate the nomination of Dr. Jerome H. Holland of Hampton, Va., to serve as Ambassador to Sweden.

Dr. Holland served as president of Delaware State College from 1953 until 1960, when he assumed the presidency of the Hampton Institute in Virginia. He earned the respect of all Delawareans during his tenure at Delaware State College; and as can be seen from an editorial in the Wilmington, Del., Morning News of January 15, time has not diminished the high esteem in which he is held.

I strongly and enthusiastically endorse the nomination of Dr. Jerome H. Holland as Ambassador to Sweden and ask unanimous consent that the editorial be printed in the RECORD.

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

JEROME HOLLAND TO STOCKHOLM

The considerable talents and infectious good cheer of Jerome H. Holland stand to make him a good ambassador to Sweden—which needs better relations with the U.S., and vice versa. Delawareans who knew Dr. Holland, while he was president of Delaware State College (1953–1960) and have followed his presidency of Hampton Institute during the past decade, have marked him as a leader of his race and a prophet entitled to respect for his uncompromising views on the family of man.

At Delaware State he took hold of a moribund, poorly run little super high school and transformed it (with the support of the trustees) in seven years into an accredited degree-granting college. At Hampton he has done more than reverse its decline and spur its endowment to $32 million. Last spring he weathered a storm of militant students who based a demand for his resignation on his rocklike stand in support of "the national goals of an integrated society."

In Sweden the Nixon Administration's problems include that country's providing asylum for U.S. military deserters, plus a widespread fashion for denouncing United States involvement in Vietnam. Some of the bitterness comes from the Swedes' viewing non-whites of the Orient as being oppressed by the white leadership of the most powerful nation of the Western world. As an American Negro with strong convictions about the human race's need to stick together, Dr. Holland has special qualification for filling the U.S. ambassadorial chair at Stockholm that has been vacant for nearly a year.

In this connection it is worth noting that Dr. Holland's newly-appointed colleague in the U.S. Embassy at Oslo, Norway, Philip K. Crowe—also well-known in Delaware and the Eastern Shore—last served as ambassador to the Union of South Africa where the government was aware that he had no use for the injustices and cruelties of "apartheid" as practiced there. If the two men have never met, Scandinavia seems a good place for them to get acquainted for the good of the United States and the nations of their accreditation.

PLIGHT OF BIAFRAN PEOPLE

Mr. RIBICOFF. Mr. President, in my concern for the plight of the Biafran people, who are still in need of emergency relief, I wrote to Secretary General U Thant a letter dated January 23, 1970.

I ask unanimous consent that this letter be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., January 23, 1970.

His Excellency U THANT,
Secretary General of the United Nations,
United Nations Plaza,
New York, N.Y.

DEAR MR. SECRETARY GENERAL: I am deeply distressed by the existing relief situation in Nigeria. As a sponsor for the Food for Biafra Relief Committee, I was appalled by the plight of starving men, women, and children during the course of the conflict.

I am equally concerned with their plight now.

Although the Nigerian government has just requested 40,000 tons of food per month from the United States government, the main problem lies in the distribution of those supplies. It will make no difference to the starving war victims how much food is stockpiled in Nigeria, if that food is never received.

News reports have indicated that food distribution is "hopelessly inadequate" in Biafra. It has been estimated that there are at least 1.5 million people in the enclave area who need food supplies immediately. Yet we have no information whether the Nigerian government has made any deliveries into the enclave area. The trucks and jeeps presently being used for transport of supplies are incapable of meeting the urgency of that need.

After the surrrender of Biafra to Nigeria, the Nigerian government promised full emergency relief measures for the Biafran war victims. At the same time, the Nigerian government also insisted that it would not accept the assistance of nations and foreign agencies that aided Biafra during the war.

In barring the assistance of such relief agencies as Joint Church Aid, Caritas, Canairelief, and the Nordaic Red Cross, the Nigerian government is barring the help of the very people who could make this relief program a more organized and efficient operation. It is these relief personnel who are familiar with management of food centers and the best means of transporting goods to the population. It is they, and not the Nigerian government or army, who have been most familiar during the past 30 months with the Biafran population.

The dimensions of this relief program are too vast for one nation to manage alone. It is time for the world community to do everything it can to insure the proper and immediate distribution of food supplies to the Biafran war victims.

We cannot afford to send supplies and then sit by while human lives are being wasted.

This is no time for the Nigerian government to put political grudges above the preservation of human life. This is no time for the Nigerian government to be more concerned with whose label is on the package, or whose hands are giving out the supplies, than with the immediate distribution of these supplies.

The relief effort could be greatly speeded up if the Nigerian government were to allow more personnel assistance and were to use helicopters and aircraft to move supplies into the enclave and bush areas.

Mr. Secretary General, I urge you to internationalize the relief effort and organize an international relief team under the auspices of the United Nations or whatever label the Nigerian government would agree to. The relief team should assist the Nigerian government in every capacity in its distribution of food supplies to the war victims.

Let us hope that there can be an end to the futile waste of human life.

Sincerely,

ABE RIBICOFF.

MILITARY JUSTICE

Mr. GOODELL. Mr. President, there is growing evidence that military justice contains little justice.

I would like to alert this body to an article by Robert Sherrill entitled "Justice, Military Style," appearing in the February 1970 issue of Playboy magazine. This article documents the most shocking conditions—and the most appalling treatment of prisoners—in our military prisons.

It also describes a frightening degree of indifference for the basic rights of servicemen on the part of many of the officers responsible for the administration of the military justice system.

American citizens do not lose their basic constitutional and human rights when they don a uniform. The sort of abuses described in Mr. Sherrill's article must be stopped, and they must be stopped now.

Mr. President, this article should be carefully read by all of us. I therefore ask unanimous consent that it be reprinted in the RECORD.

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

[From Playboy magazine, February 1970]

JUSTICE, MILITARY STYLE

(By Robert Sherrill)

Dachau, Germany, is best known as the locale where thousands of Jews were tortured, killed and burned by their Nazi cap-

tors. Some of these Nazis futilely pleaded at the post-War Nuremberg trials that they had done their evil not from wicked hearts but because they had been ordered to do so.

The United States military forces now maintain a prison near the former extermination camp, and it was there in August 1968 that Sergeant Wesley A. Williams, acting on orders from his superiors, severely beat five GI prisoners with a rubber hose wrapped in green tape. The stockade commander, Major William B. Moore, later told a court-martial that the victims were "known troublemakers" transferred from another prison, and he justified the beatings with the argument that they were good preventive discipline. "Give them a welcoming party—but don't leave any marks," Sergeant Williams says he was told, and he did just that, bludgeoning the five men and then kicking them as they lay on the floor, trying to protect themselves. Although the sergeant admitted all this, his explanation that he was "only following orders" satisfied the military tribunal, which acquitted him of any wrongdoing.

That is the kind of Cotton Mather trick—the victor proving his perfection by repeating with impunity the mischief of the vanquished—that the military mind would enjoy. Yet, of course, it raises other thoughts that the responsible civilian, desiring to be proud of his Government, will want to reject. The historical parallels—of officially sanctioned brutality and of military justice rigged to protect a corrupt system—are too unpleasantly obvious to accept without further evidence.

There is no shortage of places to seek the evidence. The Pentagon supervises in this country and overseas 138 Army, Air Force, Navy and Marine brigs and stockades with an overflow population of 15,000 prisoners. To what extent do these prisons harbor the incident Dachauism of the 1940s? It is a fairly important question, seeing as how there are 26,820,000 veterans in this country and another 3,800,000 Servicemen; if they, by their experiences, develop a tolerance for unconstitutional trial procedures and for unconstitutional punishment, it means that the minds of one seventh of our population will already have been to some extent polluted by militarism.

The Army is quite frank about its mission to condition not only the bodies but the minds of those under its control. In the pamphlet "The Fort Knox Experiment," for example, the Army touts its methods for "developing the 'whole' man . . . in contrast to just exposing them to information," and says: "The Army today is the only organization in America equipped to conduct this kind of efficient training of our citizenry. The Armed Services have an extraordinary opportunity, since they control the time and attention of the trainees 24 hours a day, seven days in the week." To gather clues to what is going on in the almost 90,000 courts-martial that take place each year, and to what is happening in the military prisons where many of these defendants wind up. I interviewed GIs, officers, honorably discharged vets and deserters from coast to coast. The file of random reports runs over: of the homosexual at the Navy brig on Treasure Island, San Francisco, who was forced to suck on a flashlight for the amusement of his Marine guards; of the Army brass at Fort Riley, Kansas, who panicked when they discovered one of their soldiers was only 12 years old and "hid" him for three months in solitary confinement; of the inmate at the Great Lakes Naval Training Center brig whom guards punished by wrapping his throat in a wet towel, clamping a bucket over his head and making him smoke cigarettes thereunder until he passed out; of the several Servicemen at Fort Dix, New Jersey, who were sprayed with water and then pushed outside, naked, for varying lengths of time in the winter (one of them for three hours); of Fort Dix soldiers seeking conscientious-objector discharges who were imprisoned "for their protection" in a special cell with known homosexuals; of the several sailors and Marines who, according to the reports from different bases, were made to do such strenuous exercise right after eating that they vomited, after which the guards pushed their faces in it or they were made to roll in it or (in two instances reported) they were made to eat it; of the inmate at the Fort Leonard Wood, Missouri, stockade who was covered with gray paint and required to stand at attention until the paint dried on his skin.

But before a random compilation, perhaps it would be fairer to back up and take a long look at an "average" prison. The Presido stockade has been much in the news lately, because that was where 27 prisoners sat down in a circle and refused to get up until they had read a list of their complaints about wretched living conditions and the threat of death from guards. They were tried as mutineers and some are now in Fort Leavenworth, Kansas. Senator Charles Goodell, of New York, who demanded an investigation of stockade conditions, was told by Pentagon officials that "some stockades are better than the Presido, some are worse," which must mean that it is average.

At the time of the Presido sit-down, there were 125 prisoners in space meant to hold 88. There was one toilet for about every 35 prisoners, because not all of the toilets had lids and some were stopped up and unusable (and half the time, there was no toilet paper). On the day of the sit-down, the stockade—always short of supplies—had food for 110 prisoners, 15 short of the prison population. Prisoners had to buy their own soap; and if a prisoner ran out of soap in the middle of the week, he couldn't have another bar until the next week; if he lost his toothbrush at the first of the month, he couldn't get another until the following month. Prisoners in segregation cells were sometimes not permitted to bathe or brush their teeth for a week. The barracks were so crowded that prisoners lying on the top bunks could touch the ceiling. Recreation was one movie a week, chosen by the chaplain. The prison library, which closed at four p.m., before the men came back from work, was in the basement and accessible only by climbing over garbage cans; the books were ancient ones, mostly on mysticism and military history. Families could visit prisoners, but it was against the rules for a father to hold his baby. But the worst feature was the lack of cleanliness and the smell of human waste. The toilets were constantly clogged, backing up into the shower rooms, the floors of which commonly were two or three inches under water; human feces' floated in the water, so it was best sometimes to take a shower while wearing boots. And, a result of these conditions, there were rats.

An official Presidio press release claims that "prisoners live a more comfortable life than the regular soldier who performs his duties properly." Yet there were 52 suicide attempts in the stockade last year. Colonel Harry J. Lee, provost marshal for the Sixth Army, says, "There have been no suicides nor has there been a bona fide suicide attempt at the stockade in the memory of personnel now serving at the facility since at least June 1966." The Army does not call them suicide attempts; it calls them "gestures." Private Roy Pulley, one of the protesters, tells of how a gesture struck him: "I was lying on my side on the bunk, reading, one night, and this guy across the room was sitting on his bunk. He tied something around his arm to make the veins swell up so he could cut them better. And when he cut them, the blood flew about 20 feet—hit me right in the back of the neck." A total of six gestures were made by Ricky Lee Dodd, who cut his wrists when he was imprisoned in solitary and was taken to the hospital, where the wrists were sewn up and bandaged. He was returned to the stockade; this time, he removed the gauze from his wrists and hanged himself. When he arrived back at the hospital, he was pronounced dead but was revived. After an earlier attempt at suicide, a guard had handed him a razor blade with the encouragement, "If you want to try again, here we go." (After one of his suicide attempts, a guard had squirted him with urine from a water pistol.) Other gestures made by the sit-down defendants were: 12 cuttings of wrists, arms and chest; two cuttings of throat; eight dosings of lye; detergent, oven cleaner, shampoo, metal polish and something identified only as poison. Altogether, there were 33 suicide attempts among 21 of the mutiny defendants. The men who ran the Presidio paid little attention to these gestures, because, as Lieutenant Colonel John Ford, Presidio provost general, put it, they felt the men were "just trying to get medical discharges."

Since the sit-down protest, the Army has spent more than $80,000 fixing up the stockade building—which was constructed two generations ago as a bank and still uses some of the original wiring for the burglar alarm. Many of the plumbing and heating and other physical ailments have been corrected. It is still no show place; Presidio officials refused to allow me to inspect the building and also refused to permit a representative from Senator Goodell's office to drop in unexpectedly. Presidio officials did organize a special one-day tour for the press, but the prisoners were not permitted to be interviewed and were, in fact, removed from the stockade and lodged elsewhere before the press got there. Officials admitted they "spruced up" the place for the press. The validity of the prisoners' protests of shabby facilities can be seen in the fact that since the sit-down, the stockade has been supplied with an intercom system, a new recreation area outside, perimeter lighting, a new boiler, a new medical-treatment room, new locks (the old ones could be opened with a comb, according to guards), ten more chairs in the mess hall, two new stoves in the kitchen, a new soap dispenser in the kitchen and a fire sprinkler system. The guard strength has been increased threefold, the cooks and kitchen help have been increased twofold, and the prison population has been cut one third.

Actually, however, the physical-environmental problems were never responsible for the prisoners' hellish existence. Their troubles came from the men who ran the prison: Captain Robert Lamont, 25 years old, was in charge. He had never had any training in confinement work and was easily swayed by bad suggestions both from noncoms serving under him and from his immediate superiors. Apparently holding a great deal of sway over Lamont was his top sergeant, Thomas Woodring, who had previously worked as a guard in civilian jails and for ten years as a Los Angeles policeman and a sheriff's deputy. Prisoners have given sworn testimony that Woodring and Lamont tried to talk the Negro inmates into beating up whites. Other affidavits tell of Woodring's delight in the bottle. The closest he came to denying this was to say, "To my knowledge, no complaints have been made about me drinking on duty." Woodring's aide, Sergeant Miguel Angel Morales, did the best he could for his boss, testifying, "I have heard of him working intoxicated, but I have never seen it. I never heard that he gets mean when he gets drunk." If Woodring sometimes came to work high, he apparently wasn't the only one. The prisoners say the guards were frequent users of LSD, pot or liquor. They say Sergeant Morales had his own special technique for instilling fear in new prisoners; he would tell the new comers, "Im so tough I shot a Vietnamese woman in the belly, just like that, pow!" (In court, he said that this kill-

ing "was just a lot of ———.") The armed guards who went out on work details with the prisoners—all of whom were minimum-security prisoners and, according to regulations, should not have been guarded with guns—were untrained in the use of shotguns, but they loved to play with them and point them at the prisoners and threaten to "blow your ——— heads off." Not long before the sit-down, one of the guards had accidentally discharged a shotgun and had blown a hole in the roof of a wooden building next to the stockade just as the prisoners were falling in for work. Army regulations require that stockade guards be specially trained for confinement work, but only one guard at the Presidio had had instruction. One guard had reportedly been transferred to the Presidio from another base when his commanding officer became uneasy after the lad, a Jew, began dreaming that he was a Nazi.

Every stockade has its isolation cells (although some of the stockades are so crowded these days that two or three men will share "isolation"). Even at the main Army prison in Leavenworth, which military men present as the model prison, the isolation cell is called a hole—for good reason. It is a room 5 feet wide by 10 feet long by 15 feet high, illuminated by one low-watt light bulb. The sanitary facility is a hole in the floor. The Presidio has five such cells, two painted black until just before the press was given a tour of the stockade in 1969 (at which time they were painted gray and Presidio officials pretended they had never been black) and three painted white. Estimates of the dimensions of these boxes—as they are called—vary somewhat, the prisoners claiming that they are 4½ feet wide, 8 feet high and 5½ feet (black boxes) or 6 feet (white boxes) long. The Army claims that the boxes are 5 feet wide, 8 feet high and 6 feet long. But even if the Army's measurements are accurate, they fall below the minimum dimensions required by the Army's own regulations (6 feet wide, 8 feet high and 8 feet long).

The isolation cells have no toilets; to relieve oneself, one must persuade a guard to give escort, and frequently the guards prefer to ignore these requests. The white cells have no furniture but a bunk; the black cells have no furniture at all. The tops of the five cells are covered with a wire screen. One light above this screen throws a feeble communal glow over the five cells, inadequate for reading the Bible, which is the only reading material permitted.

The isolation cells are frequently used to store psychotic prisoners; prisoners who attempt suicide are always sent to the box. One of the crazy inmates best remembered by former guards was a young man nicknamed Penis because he sat around in his islotion cell all day, moaning, "I want my penis; I want my penis." He played with himself, urinated on the floor and rolled in it, defecated on the floor and then smeared the excrement in his hair and over his face. He also used feces for writing and finger painting on the walls and floor. Some of the guards would tease him by climbing onto the mesh roof over his cell while he was sleeping and jumping up and down and screaming to awaken him. He spent two weeks in solitary this way before they carried him off to the psycho ward at the hospital. The self-applied business with feces and urine is quite common among mentally unbalanced prisoners who are forced to spend any length of time in solitary; prisoners tell of several others who did the same thing, including one boy who tried to hang himself, was cut down and sent briefly to the hospital and then returned to the box, where he doused himself in excrement for a week before the doctor thought it was time to send him to the psycho ward.

Stephen Rowland, one of the protesters, perhaps one of the best educated of the lot, since he had done some premed work at the University of Missouri before getting into the Army, added this information to the history of the stockade:

"A man went into an epileptic fit and the guards kicked him. On at least three occasions, men cut their wrists and were put in the box overnight without treatment. I was inducing vomiting in a suicidal prisoner who had ingested poison one night when the sergeant, apparently drunk, came up and forcibly interfered with my work. On two other occasions, I found guards trying their best to help a poison-ingestion case but doing the wrong things—they don't know what to do, even when they intend no harm. In one of these instances, the turnkey delayed calling the ambulance for at least ten minutes after being informed that the prisoner had ingested chrome polish. The prisoner was in a semicomatose state and in obvious need of immediate medical attention. A suicidal prisoner, after attempting to take his life, is usually taken to the hospital, revived, stitched or bandaged and immediately returned to the stockade and put in the box—definitely not the place for a mentally disturbed person."

On February 26, 1968, a soldier named Herman L. Jones was taken to solitary confinement. He was (witnesses say) hysterical, screaming that he was supposed to go to the hospital. Jones had kidney and prostate trouble. In his words, "My testes hurt and I dripped." But the guards had grown tired of releasing him from the barracks prison room to go to the toilet; so they put him in solitary and gave him a can and a roll of toilet paper. In his hysteria, and anger, Jones threw the can and toilet paper outside, tore his clothes and urinated on the floor several times. Guards hosed out the cell, hosed Jones down also, opened the windows (February can be very chilly on the San Francisco waterfront) and he was left without clothes and without bedding.

On February 27, the stockade doctor came and, without asking Jones how he was, wrote OK on Jones's clipboard and left. A soldier confined in the solitary box next to Jones picks up the account:

"Later on that day, the guards came in and took all of us except Jones out of segregation to the TV room. On the way out, Sergeant Porter came in [to Jones's box] with three husky men. We were permitted to smoke, talk and watch TV. In general, the guards were surprisingly and unusually nice to us. We could hear Jones yelling and screaming. When we were put back in our boxes, Jones was sitting in a strait jacket in a different box. His lip was puffed up and his forehead and eyes were bruised. Jones later told me that the guards had rubbed his face in his own excrement. We were then made to clean up Jones' mess."

What happened after the other segregated prisoners were taken from their boxes to watch television is told by Jones:

"Several of the guards spit in my face. Other guards grabbed me by the leg, tripped me. A guard got a rag off the floor, dipped it in urine and feces and rubbed it in my face and hair. I was so mad I was crying. I told Sergeant Porter he should have killed me, and he said he could arrange that, too. Then I was taken out of the box and put back on the other side. Sergeant Porter said something was going to happen to me and nobody would know. I was scared and wanted to commit suicide, so I ate paint off the wall. A guard saw me eating the paint. Then I was put in a strait jacket and taken to Letterman General Hospital. I saw a woman doctor there. While in the hospital, I was in irons. At the hospital, while my stomach was being pumped, a big guard was twisting my leg irons and laughing."

After the "mutiny," prisoners (especially those involved in the sit-down) were treated even more harshly. Attorneys for the defendants sent five affidavits to Sixth Army Commanding Lieutenant General Stanley R. Larson, relating the new harassments, including beatings and slappings, but they got no response. Apparently, the treatment given some of the defendants lodged at the Marine-run prison on Treasure Island was worse. Private Lawrence Zaino, 20, of Toledo, Ohio, cracked under it. At the end of one trial day, when he saw the MPs approaching to return him to Treasure Island, he began shaking and mumbling, "It's true what I said about the brig, but they don't believe me. I'm sorry for what I did, but they don't believe me, but it's true." And just as the guards got to him, he tried to lift a chair to hit them, but he was shaking so hard he couldn't. It was so obvious he had flipped that the military judge ordered him immediately to the psychiatric ward at Letterman; and that's the last anybody heard of him for three months, after which he emerged just long enough for a trial at which his lawyer, to protect him from further mental strain, offered no defense, so that the trial could be ended immediately.

The worst postprotest beating at the Presidio was sworn to by Roy Pulley, who said that Sergeant Woodring (weight about 210) ordered him (weight about 145) into a back room. Pulley's affidavit reads:

"He followed me in and closed the door. Then Sergeant Brown stood outside, blocking the door and peeking in, while Sergeant Woodring proceeded to push me around the room. I grabbed him by the tie and shoulder and tried to hold him off. Sergeant Woodring was pushing and swearing at me all the time, attempting to provoke me into fighting back. Eventually, he knocked me down and sat on my stomach, pinning my right arm with his knee. He grabbed my fingers and slowly and methodically, he twisted my fingers until one of them was broken. He twisted for at least a full minute while raving at me. In the meantime, I was crying and screaming for help and asking him to stop. . . . This afternoon, after my return from the hospital, I was shoved in the black box. While there, Captain Lamont, the C.O., told me that if I thought they had used force today, I had not seen anything yet."

Later, Pulley was transferred to solitary confinement on Treasure Island. Doubtless these prisoners sometimes exaggerate, but there's no denying that Pulley's hand still shows the mangling of some fight.

Again, this kind of treatment is not limited to the Presidio. Daryl Amthor, 21, of Rockport, Missouri (who, when I interviewed him, was hiding out in the Peace House in Pasadena, California), had been A.W.O.L. 31 times, had been put in five stockades—at Fort Leonard Wood, Fort Riley, Fort Sill, Fort Ord and the Presidio—and had escaped a total of seven times from three of these places; he came away with these memories of his two months in the Fort Ord prison (where more than 500 prisoners are kept in quarters intended to hold 200):

"I was thrown in the box for having contraband—a cigarette lighter. The first day I was there, five guards came into my cell and started beating me and trying to get me to swing back, but if I would have swung back, I would have been killed. So I hung onto my belt and just let them do their thing. The next day, one of the guards brought me a pair of boots, size seven, and ordered me to wear them and break them in for him. I couldn't even get them on. I wear a size-nine boot. When I told him this, he came in the cell with two other guards and proceeded to beat me up again, so I let them. I was in the box for 14 days and was beat up five days straight, three times a day. After five days, another prisoner was brought in. He had refused to do physical training, because of his heart. He had a profile [a medical record showing heart trouble], but this didn't really seem to matter to the guards. After doing some exercises, he wouldn't do any

more and he told the guards to beat on him if they wanted to, and they did the same thing to him a few days they had done to me, until he finally wound up in the hospital. One time, this other fellow was beat up by a civilian that used to be a guard at the stockade but got discharged and just happened to be on hand because he was there to visit and take another look at the stockade. I really do believe these guards are insane. They actually try to find a reason to beat people up and, of course, they only pick on the ones they know won't strike back—prisoners that are the nonviolent type, such as me. I once saw a prisoner sitting down, reading a Bible, when in walks a guard, takes the Bible out of the prisoner's hand and throws it down and then asks, "Do you believe in this ———?" The prisoner says yes, he does, and the guard beat him up. These things go on all the time. The prisoners go to the C.O. and the C.O. laughs. One prisoner who was beaten wrote to his Congressman and his Congressman wrote back, saying he was going to do something about it. The prisoner took this letter to his court-martial and he was discharged right then, I guess because the Army didn't want any publicity about it."

In the spring of 1969, about 300 prisoners at the Fort Ord, California, stockade went on a sit-down protest against the brutalities of the guards, the bad living conditions and short rations—and they made the protest despite the fact that they knew they could be charged with mutiny; in fact, they made their protest while the mutiny trials of 14 men from the Presidio were being held at Fort Ord.

A minor rebellion occurred at the Fort Dix stockade in June 1969, during which the prisoners burned mattresses and broke up furniture to call attention to conditions. Word came out through the soldier grapevine that the explosion was touched off when the inmates were made to stand in formation three hours through the sweltering part of the day, after which they stood in line three hours for dinner, only to find that there weren't enough water bowls for half of the men. (One of the many reasons inmates call the Fort Dix prison the Pound is that they drink from bowls.) The grapevine later reported that, as a result of the violence, 19 prisoners had been kept in solitary confinement for three weeks; one man was reported held without food for three days.

There have also been riotous protests against conditions at the Marine brig at Da Nang, South Vietnam, and at the Army stockade in Long Binh, 12 miles north of Saigon. At Da Nang, prisoners burned down a cell block; but at Long Binh, they went further—burning down buildings covering an area the size of a city block. The infamous Long Binh Jail (dubbed L. B. J. by Vietnam veterans) seems to have had a riot at just about every turn of the moon, the most famous uprising occurring in 1968, when several hundred black GIs took over a section of the stockade area; a month later, a handful of them reportedly were still holding out against MPs in one part of the prison.

Like most stockades, L. B. J. is usually packed 75 percent above its regulation maximum capacity. I discussed conditions with several men who had spent time in L. B. J., and most of their stories jibe with that of a black private, first class (who cannot be identified, since he is still in the Army), who told me:

"We got one meal a day, usually, and that was canned rations. They would punch a hole in the cans about a week before they gave us the food, so it would be dried up. That was part of the punishment. I got beat about twice a day for a month. Everyone knew why I was there [he refused to fight anymore after taking part in a sortie in which, he says, about 3000 of the enemy were killed]. I was in minimum security for two weeks, and then they stuck me in maximum security for three months, because they heard me telling the other fellows why I wouldn't pick up a rifle and why they shouldn't. They have about 30 maximum-security holes. You sleep on dirt floors. You can't see out, but they have a hole where they can see in on you. It's total dark, day and night. If you were lucky enough to have a guard who had a heart, he'd take you out for a crap. Otherwise, you crapped in the hole. The room was about five by eight. One black GI, who raised a fist salute, was accused of trying to incite a riot and about ten guys jumped on him, stomped him, kicked him. About 60 percent of the prisoners are black. Racial tension couldn't have been higher. Fights every day. The blacks had one barracks and the whites couldn't go in there. If they did, we'd beat them. The Vietnamese people would give us marijuana and all kinds of stuff. If you had a stockade armband on, they'd do anything for you. We'd go to the fence and they would throw us over bundles of grass. It was really great. The guards used the drugs, too. I'd smoke with some of the guards, but they'd turn right around and beat me the next day, anyway."

One experiences the peculiar flavor of life at the Long Binh stockade from the moment he steps through its gates. One young ex-sergeant, Robert Lucas, better known in recent months as the GI coordinator of the Vietnam Moratorium, recalls having to escort a black soldier to L. B. J.; the prisoner had *not* been convicted of any crime; he had only been charged with having been A.W.O.L. This, says Lucas, was the way they processed his prisoner:

"When we got there, they put the black fellow inside a large cage just inside the gate. They took his belt, cap and shoelaces. He was then taken from the cage to the incoming building. I explained that he was a pre-trial prisoner, that he wasn't hostile. But they treated him just as though he had committed first-degree murder. They stripped him, made him bend over, so they could inspect his butt to see if he was hiding anything; they checked his groin, looked in his mouth for contraband. This was just done to humiliate him; they knew any serious smuggling around a prison is done by the Vietnamese workers. There were three clerks watching. One of the clerks grins at him and says, "Sit down and I'll give you my first haircut." So he shaved him bald. Then they led the prisoner to a military shipping box—a steel box about six feet high, about seven feet deep, about five feet across—it's usually used for shipping heavy things like typewriters or ammunition. That's where he stayed his first night in L. B. J. He had a bucket to ——— in and some water to drink. He was in that steel crate from four o'clock that afternoon to seven the next morning. That's standard procedure."

Garret Gianninoto, of New York City, an ex-GI who spent three months in the Da Nang brig, gives this report on its solitary-confinement cells (in which he spent eight days):

"The cells were six by eight feet. The only furniture was a square box covering one half of a 25-gallon drum—this was your toilet. The drum was taken out once a day and the stuff was burned. Some fellows who have been in other prisons' solitary-confinement cells complain because they didn't have any place to go to the toilet, but I would rather not have had. Those toilets got pretty awful when the temperature inside the cells got up to 130 degrees. And you had to sit on the toilet all day. That was an order. You couldn't sit or lie on the floor. One bulb hung over the wire mesh that was the ceiling, and this was what you had to read by, but the only things you were permitted to read were the Bible and the brig rules. We didn't have a Bible, so I read the brig rules several dozen times. The food was lettuce and rice and, in the morning, two boxes of Kellogg's corn flakes and water. Stuff like that, and in the food it was commonplace to find slugs and flies and weevils."

Gianninoto said he had seen no physical brutality.

Most of the men in the Da Nang and Long Binh prisons, as is true of most military jails, are guilty of being A.W.O.L. only. But many GIs in Vietnam look upon A.W.O.L. not as a crime but as a way of life. Some GIs claim that there are 10,000 to 12,000 A.W.O.L. Servicemen in the Saigon area on any given day or night. Since the military insists on treating them as criminals, it is the A.W.O.L.s who crowd the stockades to explosive capacity.

The military's disciplinary style is evident everywhere from Da Nang to Fort Bragg, North Carolina; and although details are often suppressed for a while, eventually they get out. More than three months after a riot took place at Fort Bragg, when 238 inmates seized the stockade in the summer of 1968 and held it for three days, Andy Stapp, head of the American Servicemen's Union, was able to learn details of the incident that provoked the riot and printed them in the A.S.U.'s newspaper, *The Bond*. Stapp tells it like this:

"A certain Private Johnson, a black prisoner, was beginning his 78th day in solitary confinement on that morning of July 23. Johnson faced almost 20 years' imprisonment, because he had dared to fight back when the commandant of the prison, a major, had spit in his face and taunted him. For this he was charged with assault on a superior officer and put in solitary for close to three months. And three months is a hell of a long time to sit in a room 7 feet by 11 feet.

"Well, it seems that on this particular day, Johnson had just about had it with that little room; and after he had been taken to use the latrine, he asked permission to stay out in the hallway for a while to get some exercise. When the guards tried to hustle him back into the rathole, he physically resisted, knocking the MPs down and climbing to the top of the prison bars. The major, a real sadist, ordered him blasted off by a fire hose. The impact from these hoses will rip the bark off a tree at 100 yards; and when they turned it on the desperate prisoner, he was immediately knocked to the ground, the force of the water breaking his fingers.

"The guards then rushed in and spread-eagled Johnson on the floor. After they had got him securely pinned down (which wasn't hard for them to do, considering his dazed condition), a lifer E–6 [a career enlisted man], his fist wrapped in a pistol belt, began to methodically beat in Johnson's teeth.

"And that's where their little game ended. Because about six other prisoners who had been watching this horror from behind a fence on the other side of the compound went right over that fence and rushed the bastards who were mauling Johnson. And behind them came several dozen other prisoners, for by now the fence had been completely torn down."

After that, one thing led to another.

James Niles, who worked six months as a processing clerk at the Fort Hood, Texas, stockade, says that right after riots at Hood in 1968, "they segregated the black prisoners in the old mental ward, which is now a jail annex, and piped it for CS ['pepper'] gas, and a guard told me they turned it on a couple of times."

The Army is quite genteel in these matters, however, compared with the Marine Corps, which supplied more horror tales than any other Service. An ex-Marine, who is now studying to enter the Episcopal ministry, said he had witnessed Marines forced to strip to the waist and roll in fresh feces. In fact, the threat of Marine Corps treatment is sometimes used to keep Army dissidents in line; sometimes, Marine guards from Treas-

ure Island go over to the Presidio to show the Army guards how to do it. Marine guards have special techniques. One day, a Presidio prisoner called an Army guard Uncle Tom; a few hours later, three Marine guards showed up and took over for the occasion. As another prisoner related in a sworn statement: "You could hear screams from the man all over the stockade. Later he said he had been held by two Marines while the other grabbed and twisted his testicles and then hit him several times in the stomach." He told also of the occasion when six guards went into the box to get Private Richard Gentile, a veteran of 12 months in Vietnam, who was in the stockade because he had marched in a peace parade: "A guard held up leg irons and said, 'If you don't come out, I'll beat your head in with these.' The door to solitary was open and five guards jumped Gentile and after he was handcuffed and put into leg irons, he was beaten until he was bloody and almost unconscious. Then four of the guards carried him to a truck and sent him to Treasure Island. After this happened, a sergeant said, 'I'm not a violent person, but if your name comes up to go to Treasure Island and you resist and it takes ten of us to one of you, we'll beat the ——— out of you and then send you to Treasure Island, where the Marines can really take care of you.'" (It was treatment of this sort that prompted Gentile to make two "gestures": He drank a can of chrome polish and he slit his arm from the wrist to the elbow, which required 44 stiches to close.) One U.S. Senator received information from a sailor who had spent time at Treasure Island that he had witnessed guards pick up another prisoner in battering-ram style and run him headfirst into a heavy wooden door.

Father Alban Rosen, a Catholic priest at Mission San Luis Rey near Oceanside, California, who has done volunteer chaplain work on Marine bases, said this Camp Pendleton nearly had a Presidio-type mutiny in April 1969, when a group of about 40 prisoners in the brig came out of the building and saw a prisoner hanging from the Cyclone fence, spread-eagled. His feet were off the ground. A guard had made him stand on a stool while he was handcuffed to the fence; then the stool was kicked away. He was screaming. The men sat down and said they would stay there until something was done for the man. A cooler-headed officer than was at the Presidio during its "mutiny" persuaded them to move along. The guard was found to have a long history of psychological troubles; but, as Father Alban said, "Nobody wants to work at the brig, so they get that kind of guard."

The Pendleton brig is a converted World War Two prisoner-of-war camp, with a capacity of 400 men; there are reportedly 900 in the brig now.

Father Alban said that the official brig chaplain told him of seeing men forced to run in a circle until they fell from exhaustion, at which point "the guard would just go over and kick them until they got up and started trotting again. This stuff goes on all day. The guards get pleasure from it." The brig physician told Father Alban of sick men whom the guards would not allow to sleep. "The guard will come along and throw cold water in on the guy if he catches him sleeping."

One of the episodes related by the priest was about a kid in maximum security, who apparently had psychotic problems, "and the kid was screaming all the time and driving the guards crazy, so they taped up his whole face except for his nose. They left a hole for his nose. The only problem was, the kid had sinus and bronchial trouble. That night, he had a real bad attack; but since he was taped up, he couldn't say anything. All he could do was keep banging his head against the door. They had to hospitalize the kid."

The handcuffed crucifixion of the prisoner was verified by Dr. Larry McNamee, who was the brig physician for a year at Pendleton until he left the Service in July 1969. He said he had heard of several prisoners' being manacled to the fence, feet off the ground, but he could vouch personally for only the one prisoner, whose wrists he had treated. It was from Dr. McNamee that Father Alban learned of the boy with the taped face. In fact, Dr. McNamee had an encyclopedia of horrors to tell: about the time a guard had kicked and smashed the cast on a prisoner's broken arm; about a dozen or so prisoners who had come to him from time to time for treatment of broken noses, black-and-blue scrota (having been kicked in the groin by guards) and back pains from being kicked or stomped by guards. Dr. McNamee related:

"One day I saw two or three guys who said they were clubbed—the guards has some kind of wooden thing with tape around it and the men were banged with this club. They had bruises all over their chests and backs. I brought this up to the C.O., who had an investigation, like always. The guards denied everything, of course, but we found their club, exactly the way these prisoners described it. One of the guys who was responsible for this was seen by a psychiatrist and deemed to be sadistic and should not be working in a correctional facility. But he continued to work there until he was discharged from the Service. None of the guards are screened."

Dr. McNamee told about the "icebox," a special punishment facility of six cages set on a concrete slab in the open. The cages were outfitted with canvas flaps that were closed during the sunny days to parboil the prisoners and raised at night so they would freeze. He said that 53 percent of the prisoners who needed treatment in special clinics or surgery at the base hospital were never taken, because there were no guards to escort them, "although there always seemed to be enough guards to escort prisoners to cut the commandant's lawn." Of the drugs he prescribed for prisoners, only 15 percent ever reached them. Sometimes, prisoners would be held for up to eight hours in the "bull pen," which had neither toilets nor water fountains. Many times, prisoners with 102-degree and 103-degree temperatures whom he had ordered to bed rest would be kept at work, instead.

A former guard at Camp Pendleton told of how some of his colleagues, who felt that one prisoner wasn't clean enough, scrubbed the inmate's back with a street-cleaning brush until he was bleeding so much he had to be taken to the hospital.

When these conditions were revealed by Dr. McNamee, the Marine Corps hurriedly decided that the icebox and the bull pen were no longer in use; at least that's what they told inquiring reporters. But the inmates still felt that something was oppressive, apparently, because within hours after Pendleton officials announced that they had put an end to the more brutal aspects of their penal care, about 200 enraged prisoners drove their guards into a hut and pelted it with stones. One thing the officials do not pretend has been closed is the maximum-security building. It still thrives—all 48 dungeons. The interior of this building is in virtual darkness, so few are the bulbs. Prisoners are required to sit on the cement floor up to 20 hours each day. Exercise is limited to ten minutes. There are two toilets and two washbasins for the 48 men.

Recalcitrant prisoners—and these are average prisoners, not those in maximum security—are sometimes taken to a room of mirrors and made to stand naked, looking at themselves, while different-colored lights are spun through the room (the longest period heard of for this was a 21-day stretch). This is supposed to make the prisoner crack. If he refuses to stand up and look at himself, he is spread-eagled on the floor, naked, and guards drop bullet casings onto the floor next to his ears—ping, ping, ping, ping—all day.

Jack Eugene Lunsford, 20, who was a guard in a correctional-custody platoon at the Marine Corps Recruit Depot in San Diego until he couldn't take it any longer and deserted, described one of the techniques: "They have this hook on the wall, seven feet or so off the floor. The hook sticks out about four inches and is as big around as your thumb. If a prisoner doesn't cooperate, they'll put him in a strait jacket that has a ring in the back and they'll hang this ring on the hook in the wall. It's painful and a lot of the cats pass out." Another trick, he said, was to "put a cat in a strait jacket and alternately throw hot and cold water in his face. Puts you in a state of shock." Terry Chambers, 19, a former Marine, who is now a deserter and was interviewed in a Whittier, California, church sanctuary, said that when he was a prisoner in the Marine correctional-custody platoon, "They hung me between two bunk beds, hung me by my thumbs and toes to the top posts of the beds. I still don't have feeling in my thumbs."

It would be a mistake, however, to concentrate on the stockades and brigs and assume that they are an accident or an aberration of military justice. They are, in fact, a very logical extension of the Uniform Code of Military Justice and the legal process that constitutes trial in the Armed Forces. One must understand the purpose of military justice. It is not related to protecting the innocent. The comforting old saw "Better a hundred guilty escape than one innocent man be punished unjustly" has no place in the military, not even as a myth. The most accurate and honest description of its single purpose was given by Major General Reginald C. Harmon, for 12 years Judge Advocate General of the Air Force, until his retirement in 1960, who told the Senate Subcommittee on Constitutional Rights that "the principal asset of the military justice system" is "the swift and certain punishment of the guilty man."

Depending on the measure of guilt, military courts are for debasing a man or for destroying part of his life and reputation. As Senator Sam Ervin, chairman of the Constitutional Rights subcommittee, put it, "The primary purpose of the administration of justice in the military Services is to enforce discipline, plus getting rid of people who think they are not capable of contributing to the defense of the country as they should." Unlike civilian courts—to which one can go to seek protection of property or protection of civil rights and civil liberties—military courts have no constructive or positive purpose. One may enter them only as a defendant, never as a plaintiff. One can emerge from them only in a poorer position; even to win is to lose, for the procedure goes on one's record and, to the military mind, to have been charged at all makes one forever suspect.

The more heavy-handed and arbitrary the action of the military court, the more convinced is the Army that it will instill fear in the minds of its personnel and thereby lay the foundation for a stronger discipline. Illogical and cruel punishment may be offensive constitutionally, but the Army considers it extremely valuable in spooking the troops into line. As long as a soldier can assure himself, I have the *right* to act within constitutional limits, he is a potential troublemaker. The less assurance a soldier has of any practical rights, the more likely will he be to shrink from action beyond that authorized by command.

Although the trials arising from the Presidio demonstration were disastrous from a public-relations viewpoint, many in the Army looked upon them as highly successful

(though it is impossible to measure unborn troubles) in promoting servility; all the ingredients for illogical and inhumane punishment were there.

Three of the Presidio defendants have I.Q.s in the 60s, which is just above the level of a moron. Nearly half the defendants have less than a normal I.Q. Though in the Army two years, two hadn't the talent to finish basic training. One of the defendants is insane and was known to be insane before he joined the Army. Fifteen of the 27 were appraised as unfit for service by the Army's own psychiatrists.

The civilian backgrounds of the defendants tell a great deal about whom the Army considers best to make disciplinary examples of. Alan Rupert, for example. Before he was 16 year old, his mother had been married and divorced 12 times and had had many men friends during her career as an alcoholic barmaid. In an exchange during the court-martial, the Army illustrated how it tries to dehumanize defendants. Although the psychiatrist on the witness stand tried repeatedly to avoid saying it in front of Alan, he was finally forced by the prosecuting attorney to spell out what was quite apparent from the evidence and need not have been said—that the boy's mother was a whore. The men passed through the house so rapidly that Alan never knew who his father was. Always looked upon as excess baggage, at the age of 13, Alan was—without a word of explanation from his mother or from his temporary stepfather—dropped off at a ranch to work for a year. He joined the Army to escape and immediately found that the Army was not the best refuge. Within two weeks, he had been accused of having been A.W.O.L. (a matter of mistaken identity) and manhandled by a sergeant for leaving his trousers on the floor (again, mistaken identity). That was all of the Army he wanted. Before he got into the Presido mess, he had been A.W.O.L. four times and had escaped from stockades twice; and just a month before the "mutiny," an Army psychiatrist had said he was unfit for service and should be discharged. Only because the Army failed to act on this recommendation did Alan wind up charged with mutiny.

Even more outlandish is the treatment of Larry Lee Sales. He was burglarizing homes before he was out of the first grade; he dropped out in the ninth grade on the advice of the school psychologist, who told him he was hopeless. He shot up a home with a 12-gauge shotgun when he was 16, by which age he was thoroughly familiar with every available narcotic and with every use of his body, including posing for homosexual photographers. Sharp instruments had also played a part in his development, as when he attempted to stab his father with a knife, tried to stab a friend with a pair of scissors and tried to kill himself by cutting his wrists. All of this before he joined the Army. He didn't join out of patriotism. He joined because he had just got out of the Modesto State Hospital; he went into the Army as an alternative to being committed to an insane asylum, talking the doctor into the idea that if he couldn't make it in the Army, the Army could care for him better than the state asylum.

Of course, he couldn't make it. After *one day* of basic training—"My nerves were about to blow," he says—he went A.W.O.L. and awakened a couple of weeks later in a hospital after such an overdose of codeine that the nurse couldn't find his pulse. Civilian officials tried to have him put back in Modesto State Hospital, but Larry Lee's father talked them into letting him contact the Army again, because "the Army could take better care of him." So he phoned Fort Lewis, Fort Lewis phoned the Presidio and the Presidio sent an ambulance to fetch Larry Lee. The Presidio psychiatrist looked him over and said, "My God, you're insane—what are you doing in the Army?"

The Army personnel in San Francisco told him they were going to send him back to Fort Lewis for his discharge, because the Presidio just wasn't giving discharges. So they packed him off to the Presidio's Special Processing Department, which is a sort of loose holding company, to wait for his convoy the next day to Fort Lewis. When he got to S.P.D., it was late in the afternoon and the specialist there, who didn't want to be bothered making out the papers, told Larry Lee, "I'm going to stick you in the stockade overnight and you'll get picked up in the morning. Then I won't have to make out the papers. They can do it up there."

Well, it was October one when Larry Lee entered the Presidio stockade. He waited around. He kept telling everyone he was getting out the next day. The other prisoners told him, "Don't count on it; some of us have been here three or four months, waiting to get out."

Two weeks later, because the commanding officer was so incompetent that he couldn't get an insane man out of the stockade, Larry Lee was facing mutiny charges. Unfair, of course, but it showed the ranks that the Army wouldn't excuse back talk from *anybody*, not even a madman.

Almost as useful, but in a different way, was the participation of Nesrey Sood, who was a good soldier when he was sober, but wasn't sober often enough, being addicted to cheap wine. When he was drunk, he had the habit of telling noncoms and officers, "I ought to push your face in," and sometimes trying it. After sentencing him to a couple of long terms in an Alaskan stockade, the Army decided that it and Sood were incompatible. He was given traveling orders to pick up his discharge at Fort Lewis.

Part of Sood's troubles, however, were domestic. His wife was too gregarious and he was worried about his children. So instead of pausing at Fort Lewis, to pick up his discharge, which was waiting, he went straight on to Oakland, to see if his children were being treated right. He was picked up for being A.W.O.L. and put into the Presidio stockade and, though practically speaking no longer a soldier, wound up sentenced to 15 years for mutiny, which was later reduced to two years. And, just to rub it in, a letter from the Oakland juvenile department, telling Sood of a hearing on the custody of his children, was withheld from him by stockade officials for eight days—two days past the date of the hearing.

Why would the Army go out of its way to destroy these pathetic waifs? The victory seems so slight and the overkill so enormous. The answer is a fairly human one, not a bureaucratic one. The Soods and Sales of the Army are not the direct victims of an inflexible list of regulations handed down by Big Army, by the Pentagon Army, but of the very arbitrary emotions of Outpost Army—the hairy, aging human beings who run things in the field and whose insecurities in a civilian-dominated world are hidden beneath the uniforms of colonels and generals.

The choas and the often ridiculous inconsistencies of military justice are largely the fault of a tradition by which a commandant is allowed to run his own outfit with all the autonomy of a medieval fiefdom. Face and pride, so precious to the military, would otherwise be damaged. Pentagon officials said that they will go to almost any lengths to avoid interfering with the generals who run the bases and will reverse their injustices only when adverse public opinion mounts to dangerous levels. As a result, one finds a general's trivial jealousies, grudges and personal political biases often dictating the conduct of courts under his command, as well as dictating, of course, who appears before them as defendants.

Captain Howard Levy is a New Yorker who, long before he refused to teach medicine to Vietnam-bound Green Berets, offended the military-tuned citizenry near his South Carolina base by helping Negroes in voter-registration drives and who offended his fellow officers on the base by refusing to join the officers' club. Given an indiscreet tongue, which he had, it was almost inevitable that he wound up defending himself against serious charges. It was just as inevitable that Lance Corporal William Harvey and Private George Daniels were packed off to military prison to serve terms of six and ten years respectively, for no crime greater than asking to talk with their commanding officer about the justice of black men being sent to Vietnam; they had made the mistake of irritating the Marine brass at a time when their base, Pendleton, was described by a Pentagon official as an "extraordinarily dangerous" place, because of the unrest of the troops. The commandant was irritated by Black Muslims, and Harvey and Daniels happened to be of that religion.

And one need not be surprised that Private, First Class Bruce Petersen was sentenced to eight years in prison for possessing marijuana (enough, the cops said, to mildly taint the lint in his pocket), when the ordinary sentence for possession is six months. Petersen was editor of the underground newspaper at Fort Hood, Texas, that had embarrassed and enraged the commandant for months, printing news of disturbances on the base that the brass wanted to keep quiet and that the local civilian newspaper did, indeed, suppress. Petersen had to go.

The same injustice descended on the Presidio through a confluence of persons and activities that irritated the hell out of the local brass—the most irritating influences being: the peacenik and hippie community of San Francisco, which, the Army believed, was ruining many of its soldiers; the San Francisco press; and Terence Kayo Hallinan, attorney.

The Presidio brass hated the peaceniks and the hippies so much, in fact, that there were secret discussions of moving the confinement facilities away from San Francisco. The suggestion was put to the Sixth Army commanding general by Colonel Robert McMahon, infantry commander, in a memo last year in which he wrote:

"The primary reason for this request is to prevent further unfavorable criticism of the Army caused by indifferent, irresponsible, ineffective soldiers awaiting disposition at Presidio of San Francisco. This problem is acute because the Presidio is located in the San Francisco area, where the press is particularly inclined to give headline attention to sensational stories involving the Army. . . . The easy access from the city of San Francisco . . . not only permits but encourages the two-way contact of troublemaker elements in the Service with the press and other organizations that thrive on sensationalism. . . . The Haight-Ashbury District acts as a magnet for fugitives and contributes to the general problem. . . . A contributing cause to the recent adverse publicity has been the group of attorneys to whom many S.P.D. personnel have turned for representation. These lawyers have employed techniques bordering on the unethical in order to achieve discharges for their clients. Soldiers have been advised to go A.W.O.L. or remain out of military control until they are dropped from the rolls of their organizations, and then surrender at the Presidio, so they will be processed here in the atmosphere hostile to the Army."

From Colonel McMahon's tone, it is plain that the Presidio commanding cadre felt at war with these outside influences. And of the attorneys who specialized in helping GIs, none was so hated as Terence Hallinan, one of five sons of the attorney Vincent Hallinan, who was the Presidential candidate

of the Progressive Party in 1952 and who is equally well known for his court fights on behalf of Harry Bridges, the West Coast longshoremen's czar. To say that the Hallinans are left-wingers is putting it mildly. One of the Hallinan boys is working for the Communist Party in New York. Terence has recruited and organized for such groups as the DuBois Clubs. And to say that they are tough is also an understatement. Each of the five brothers was an intramural boxing champ at the University of California; Terence was the best, making national runner-up as a college light heavy. But his forte was street fighting. By the time he received his law degree, he had beaten up so many people out of the ring that the state bar association didn't want to license him and only after losing a two-year court battle did it do so. No sooner had Terence become a lawyer than he was fighting the Army, and he won one case by actually climbing aboard an Army bus that was taking his client to a Vietnam-bound plane, pulling him off the bus and shoving some MPs around en route to freedom. Some Army brass claim that Terence Hallinan once sneaked into the stockade disguised as a priest, in order to give advice to some of the prisoners. I asked Hallinan if he had done this and he sort of side-stepped the question. In any event, Terence Hallinan was hated by the Presidio hierarchy.

Thus, when the 27 Presidio prisoners sat down on the grass to vent their unhappiness, the generals and colonels did not view this as an action potentially destructive to the Army; they viewed it as a convenient problem they could respond to in such a way as to get back at peacenik civilians, the press and Hallinan. Two days before the sit-down, there had been a GIs and veterans' march for peace in San Francisco; and although everybody at the Presidio was restricted on that day, so that they could not participate, nevertheless, many GIs were in the march and Outpost Army was furious. In the 48 hours before the sit-down, it was rumored around the base that the prisoners were about to pull something "to attract the press," which also infuriated the officers; and when, at the sit-down itself, the prisoners began screaming, "We want Hallinan! We want Hallinan! We want the press! We want the press!" the sit-downers became secondary antagonists. The colonels and generals were out to get those other forces that, by beguiling their GIs, had fouled the disciplinary nest.

Is this just speculation? I don't think so. Sergeant Steven Craig Black, who took video films of the demonstration, just as he had taken video films of the GIs and veterans' march two days earlier, revealed that when he showed both films to a group of eight top officers from the base, "someone at the meeting said that the reason for the demonstration was to support the GIs and vets' march and someone else said that it was to protest the killing of a prisoner. I didn't hear anyone say that one reason for the demonstration was to avoid doing something they were going to be ordered to do."

So much for the notion that the Army honestly looked upon it as a mutiny. It was a minor part of a much bigger grudge.

For months, the morale of the Presidio stockade had been in a tail spin. As Private Patrick Wright recalls those early autumn days of 1968, "It was a crazy house—people cutting on themselves—everybody yelling—being jumped on all the time—guards telling me. 'I'm going to break your arm'—human excrement all over the latrine floor—guards shorting us on food."

Among the prisoners was Private Richard Bunch, 19, a little fellow (five feet, four inches, 120 pounds) who was enough to give any barracks the heebie jeebies. He talked to himself all day, and every night was riddled with his screams and moans and his mindless jabber about being a warlock and being able to walk through walls and kill people with a glance. Sometimes, he tried his powers by walking into a wall. He shouldn't have been in the prison, of course; he had gone A.W.O.L. and, after blowing his mind for months on LSD, had returned to his home in Ohio. His mother saw at once that Richard had flipped, but the Army told her in writing that it would give him treatment. Instead, he was sent to the stockade.

On October 11, 1968, Bunch committed suicide by teasing the shotgun guard, standing about five paces away, into shooting him. "What would you do if I ran?" Bunch had asked.

"You'll have to run to find out," the guard had replied.

"Well, be sure to shoot me in the head," Bunch begged, as he went walking, then skipping, then trotting down the Presidio road. The guard fired. Bunch was hit with what one California Congressman described as "not number-seven shot, which we use for pheasant, or number-six shot, which we use for duck, but number-four shot, which can down a 30-pound goose, a Canadian honker, with one pellet"; and although Army regulations require that a guard fire only as a last resort and then aim for the legs, this blast hit Bunch in the heart, lungs, spleen and kidney and left a hole in his back the size of a grapefruit. The Army later explained that something was wrong with the gun and that it discharged higher than aimed. After shooting Bunch, the guard whirled around and pointed the gun at another prisoner and yelled, "Hit the ground, hit the ground, or I'll shoot you, too."

Another guard nearby was reported to have told the killer guard, "I wish I'd done it, so I could have got a transfer closer to home." (Army practice is to transfer a killer guard immediately.)

The guard was not court-martialed and the slaying was ruled justified.

Bunch's death threw the stockade into bedlam, with people weeping, shaking things, refusing to eat and periodically exploding with shouts. Windows were broken. There was talk of murdering a guard in retaliation, or burning down the stockade.

The day after Bunch's slaying, the stockade commandant, Captain Lamont, summoned the prisoners and read to them the mutiny article from the Uniform Code of Military Justice. It wasn't really his idea; he did not have that much knowledge of the U.C.M.J. Lieutenant Colonel Ford, his commanding officer, knowing Lamont had begun to lose control of his stockade, had asked, "Have you ever considered reading the mutiny article?" And to Lamont, a suggestion from a superior was equivalent to an order.

Having read the article, he did nothing else to quiet the men. The Bunch memorial service didn't impress the prisoners, one of whom later recalled, "The officers just sat around, laughing." Two prisoners who showed up with black arm bands (homemade with shoe polish) were ordered to remove them.

On Sunday night (October 13), a few of the prisoners—nobody can now remember how many were at the planning session—decided that the next morning, at the 7:30 formation, they would pull a sit-down demonstration and, when Lamont showed up, read their list of grievances. Heading the list were demands that there would be no more shotgun guards and that all guards would have to take psychiatric examinations.

Lamont knew what was up. At 5:30 A.M., a guard had phoned to tell him the men had planned a demonstration for two hours hence. And *then* what did he do to cool tempers? "I went back to sleep," he testified. "I considered that standard procedure."

At the 7:30 sick call, the prisoners broke ranks and sat down: 28 of them, then 27, as one wandered away. There had been talk of 90 or 100 joining, but in the showdown, most stayed in ranks.

When Captain Lamont approached the sit-downers, however, the grievance plan began to fall apart. He would not listen to their list of demands but, instead, began reading from the U.C.M.J. manual. Frustrated, they began singing and shrieking to drown him out, so Lamont retired to a loud-speaker in an M.P. sedan outside the stockade yard and again began to read the mutiny article. Now he also ordered them to get up and return to their barracks.

Later, under oath, he admitted that when he first approached the group, he had not ordered them to return to their barracks. Up to that point, then, they had not disobeyed an order, much less mutinied. Mutiny, the Army says, is conspiracy with "the intent to override authority." Unless orders are given, authority cannot be overridden. And if they could not hear the order when it was finally given, could it be said that they *intended* to override authority? Captain Lamont also admitted under oath that the loud-speaker he was using was troubled by feedback. Other witnesses testified to both static and feedback. And Dr. Vincent Salmon, a senior research scientist at the Stanford University Research Institute, who is one of the nation's foremost experts on sound, as well as a noted inventor of loud-speaker systems, testified that if the men were singing with just average volume, they could not have understood the order, even if they had heard the captain. Were they singing that loud? Lamont testified that the pitch of their voices was "screaming. They got very, very loud."

And now we come to perhaps the most Dostoievskyan justice of the day. One of the men in the protesting circle was Private Edward Yost, holder of the Purple Heart and the Combat Infantryman's badge for service in Vietnam, where he had performed with exemplary courage on 19 forays into the Mekong Delta before being put out of the war by a booby-trap explosion that cost him *much of the hearing in one ear and some of the hearing in the other.* If the 26 other soldiers were unable to make out the words of Captain Lamont's order, Yost was having trouble even making out the words of the songs and shouts of the men right by his side. He couldn't have been sure Captain Lamont was making a sound, even if he had been facing him—and he was sitting with his back to the captain.

What was Yost doing in the circle? Not protesting the war, as the prosecution later implied. In fact, few of the men were protesting the war. Especially not Yost. He was happy to have served in Vietnam and said he would serve there again. He was in the stockade not because he had gone A.W.O.L. from disagreement with the Army as an organization but because when he had returned from Vietnam with his injuries, his pay records had not followed; and his former wife was threatening him for lack of support—no trivial matter in California. So, just because he felt it wasn't helping to lie around the hospital, he had gone A.W.O.L. and got a job to make some money while waiting for the Army to clear up his pay records. He disliked peaceniks. He disliked people who tried to undercut the Army. He had joined the group simply because a buddy he had known from civilian days broke ranks, said to him, "Come on, let's go," and in his almost-deaf and puzzled way, he had gone.

All this came out in his trial, of course. And after he had been sentenced to nine months in prison and a bad-conduct discharge, his military attorney asked several members of the jury if they had not believed what the acoustical experts had said about the noise

and about Yost's hearing. Oh, sure, they said, they believed them—but Yost was guilty, that's all.

Viewed from the Army's side, its system of justice works beautifully. More than 95 percent of all courts-martial result in convictions, and convictions are rather final. There were 89,649 courts-martial of all kinds in 1968 and only 121 cases were accepted by the Court of Military Appeals—which means that 0.13 percent of the men convicted got a full review.

The military has worked out the routine in such a way that some of the constitutional safeguards seems to be in force and yet actually aren't. The Army gives the defendant an attorney and then won't let him work. In some cases, the defendant may have both a military attorney and a civilian attorney. But civilian attorneys who do their work too vigorously may find themselves threatened. David Lowe, a civilian attorney in the Presidio cases, was warned that if he didn't stay in line, the military authorities were prepared to have him reprimanded by his state bar. ("I encouraged them to go right ahead," Lowe recalls, "I said, swell, because then we'd have some hearings they'd *really* be interested in.") To use another case, that of Captain Levy, the Brooklyn dermatologist who went to prison for refusing to teach medicine to Green Berets: His attorney, Charles Morgan, Jr., of the A.C.L.U., one of the best lawyers in the South, was ridiculed by the military judge, who in open court suggested that Morgan might be too incompetent to complete the case. Hallinan, the most flamboyant and aggressive of the civilian attorneys in the Presidio affair, was told that the Army was gathering evidence in an effort to have him charged with fomenting the mutiny.

Military defense attorneys who do their jobs with gusto have even more trouble. One of them, Captain Emmit Yeary, was twice threatened with court-martial, once for "speaking to the press" and once for spending too much time on the case. Captain Brandon Sullivan, another of the outstanding defense attorneys, ended his courtroom fights with an immediate assignment to Vietnam, which was rescinded as a "mistake" only when press denunciations of the assignment apparently caused too much embarrassment for the Army.

As for the rules by which military trials are conducted, they would be very entertaining if they did not result in nearly 90,000 cases of dubious justice every year. There is no bail, no indictment by grand jury, no trial by peers, no impartial judge; in short, no due process—all supposedly guaranteed by the Constitution. The defense attorneys have no subpoena power, little freedom of cross-examination, no power to call military witnesses. In the trial of Captain Levy, the colonel who pressed charges against him admitted under oath that he had no intention of doing so originally but had changed his mind and had decided to try to send Levy to prison "after reading what they had on him in a G–2 investigation." The investigation by the Army's Intelligence unit was the heart of the entire case—but the Army refused to allow Levy's lawyers to read it.

Defense attorneys must make their requests for witnesses *through the prosecution*, and if the prosecution doesn't think the witnesses should be called, they aren't. The attorney for Private Yost wanted to call two noted psychologists at his own expense, but the prosecution turned him down. The Army also refused to take verbatim transcripts of the preliminary hearings, saying it could not afford to hire secretaries and that the base had no available tape recorders. The press gets even shorter shrift. The Pentagon refused to make any of its trial records available to me, but I was able to obtain them elsewhere.

In a civilian court, a juror will be knocked off the jury if the defense attorney can show that he is biased against his client. Not so in a military court. The military judge has nothing to say about it; the question of a prospective juror's bias is left up to a vote of *the other members of the jury.*

A stunning example of what this can mean merged at the trial of the first of the Presidio defendants. The military defense counsel, Captain Sullivan, was subjecting one of the prospective jurors, an Army colonel, to what Sullivan considered to be some routine questions:

SULLIVAN. Colonel, do you believe in the right to demonstrate?

COLONEL. No.

SULLIVAN. Maybe you didn't understand my question. Let's forget about the Army for a moment. Do you believe that civilians have the right to express their views in peaceful demonstrations in support of or in opposition to an official policy?

COLONEL. No.

MILITARY JUDGE (*interrupting*). Colonel, you know the Constitution provides that right.

COLONEL. I don't care.

SULLIVAN. OK, we'll challenge him for bias.

The jury of colonels voted down Sullivan's challenge and accepted their brother colonel as unbiased and fit to serve.

There was really nothing unusual in this experience. The Army makes no pretense of supplying objective jurors. In another of the Presidio trials, these were the notable responses from three representative members of the jury as they were being selected:

Lieutenant Colonel Frank C. Marshall said that parades and demonstrations against the war in Vietnam "annoyed" him, but he wouldn't let that prevent him from giving a fair decision to somebody charged with anti-war demonstrating. Lieutenant Colonel Thomas H. Brennan said he felt the reports in the press that called it a mutiny were accurate—but he hadn't formed any opinion about the case. Colonel Harold E. Curry, who is in the R.O.T.C. Division of the Sixth Army, complained that there are "incidents that occur on campuses throughout this Army area almost on a daily basis" with "an adverse effect" on his R.O.T.C., but he didn't feel it prejudiced him against sit-downers and protesters. And he said he didn't have anything against the A.C.L.U., although he had found in his experience with them that A.C.L.U. attorneys are "misinformed, in a frequency of the cases I got involved in."

Lieutenant Colonel Everett F. Whitney gave the most incredible response. Although the mutiny arrests brought about the most explosive publicity in the President's history, he said he had read only the headlines mentioning the mutiny and that these had not interested him enough to make him read further. And—so he claimed—nobody who worked in his office at the base was much interested, either.

Q. You say you heard it [discussed] perhaps in office talk. Can you recall what you heard in the office talk, if you recall?

WHITNEY. Yes. "Have you seen the morning paper?" "Yes, I seen [*sic*] the morning paper." And some person would mention, "Well, I seen [*sic*] they had trouble up in the stockade"—but not anything in detail.

Whitney also had a low opinion of demonstrations, although he stopped short of calling them criminal.

Q. How do you feel about demonstration and protest?

WHITNEY. I'm wondering who's paying these people who can afford this time to go out and do it. . . .

Q. Do you feel that a protest is ever a legal means of expressing a grievance?

WHITNEY. I can only presume it is. I would have to say that I feel that a protest is *not necessarily an illegal* [italics mine] means of expressing a grievance. That would be the best answer I could give you on that one.

Much of the defense's argument would, of course, rest on the fact that the stockade was run in an oppressive, sloppy, perverse way and that, therefore, the group of protesters had valid complaints to make, even if they chose the wrong way to make them. But the defense could hope for little attention from Whitney, who had been an inspector general from 1964 to 1966, visiting prisoners in stockades and listening to thousands of similar complaints.

Q. During this two-year period, did you have the opportunity to check on the complaints or grievances of people who were residing in the stockades as prisoners?

WHITNEY. Yes.

Q. Did you find that any of those complaints were justified?

WHITNEY. Yes, I'm sure there must have been some. In fact, I know—I recall one.

Why didn't defense attorney Paul Halvonik challenge these colonels and try to have them tossed off the jury? "I didn't make any challenges for cause," he explains, "because it's insane to do it. I never challenge for cause in a military trial. All it does is set the other jurors against you. They take it as an insult to a fellow officer."

In any court-martial where the pride of the brass is at stake, or where the brass feels the need to make an example of the defendant, the defense attorney is always dead. There were grotesque examples of this in the trial of Captain Howard Levy, perhaps the most headlined victim of military injustice, who went to prison after being convicted of saying things that fomented "disloyalty and disaffection" and for refusing to train Special Forces troops who were going to Vietnam, he was convinced, to commit war crimes.

Several quite revealing rulings were made by Colonel Earl V. Brown, the trial judge in that case, who was also, at that time, the chief legal officer of the Army (he has since found what may be better use of his talents, as a professor of engineering). In the first place, he ruled that the truth of Captain Levy's statements about the war was irrelevant. Secondly, he refused to let Captain Levy's counsel ask witnesses to define disloyalty and disaffection. "All right," Morgan said to the judge, "would you please define disloyalty for us?" "Later," said the judge. Morgan pressed on: "Could I have a meaning from the court what disaffection is?" Again, the judge said he would provide a definition later. When the later time arrived, the judge did give definitions, but he added, "I am not satisfied with them myself."

Now, it may seem odd that Levy was convicted of sayings that may have been true but whose truth was irrelevant and of saying things that fomented reactions that the judge himself could not define; but the character of that trial took on even weirder shapes than these. For Levy was also accused and convicted of "conduct unbecoming an officer and gentleman," under Article 133 of the Uniform Code of Military Justice; and one will better understand military justice if he analyzes the judge's explanation to the jury of what constitutes a violation: "Any officer who is convicted of conduct unbecoming an officer and gentleman violates this article."

In the face of the verbatim transcript of the trial itself, the Army would be hard put to dispute attorney Morgan's historical summation of the case: "The problem with Levy was, he was tried and convicted of crimes that don't exist. Like witchcraft and heresy. That's exactly what he was tried for. We went through a lot of years in this country with everybody thinking witchcraft and heresy were not things to be tried for, but that's what he was tried for, that's what he was convicted of and that's what he's serving a sentence for."

Corruption cannot be removed from military jurisprudence until sycophancy is removed from the military system—which

means that corruption is permanent. The commanding officer handpicks the jury from members of his command who are subject to his promotion and control and who, naturally, want to please him. Usually, they are career officers or career enlisted men (who make the toughest jurors), who know that the general wouldn't have called the court-martial in the first place unless he thought the defendant was guilty; this was especially true in the Presidio case, where the investigating officer had ruled that the mutiny charge, "an offense which has its roots in the harsh admiralty laws of previous centuries, is an over-reaction by the Army," but was overruled by the commanding general. The general's lawyer (the staff judge advocate) appoints both the prosecuting attorney and the military defense; the general's attorney draws up the charges and he reviews the verdict; and finally, the general decides whether or not to approve what the court-martial has done.

Not even the American Legion, usually looked upon as an apologist for the military, can stomach the inequities that are pressed down upon military justice at the whim of the generals and colonels and admirals. A special Legion committee that studied the Uniform Code of Military Justice concluded bleakly that "many of the evils and irregularities which have arisen in the American system—both past and present—probably have their origin in the system itself, and no amount of patching and mending of the present system can entirely eliminate command control and influence." Meaning that the Legion sees no way to keep the generals from rigging their own courts. And why, asks the Legion, should every court be convened *ad hoc*, for every individual case? Why not a permanent military court—unlinked to any particular command—as was found "even in Germany before the coming of Hitler"?

Some, agreeing with the Legion on the probable futility of trying to correct the military-court procedure from inside, would take away most of the military's jurisdiction. Those who have come to this conclusion range from responsible public advocates such as Charles Morgan to U.S. Senators such as George McGovern.

Says Morgan:

"There's just no point of having any sort of trials conducted within the military. The military is incapable of understanding the Constitution. Several things are going to have to happen if we're going to have a decent Army in the future. First of all, there's absolutely no need to have Army physicians. You can get physicians for the Army who don't have to run around in khaki green, saluting. Let the Army hire civilian doctors. Secondly, you don't need chaplains in the Army. Let the various churches pay for them and send them to accompany the Army, if they want to. And the third thing is, the Army should be made to give up its lawyers and its courts. The handling of folks who've got good sense is a great problem, and the Army doesn't know how. People with good sense expect to be covered by the Bill of Rights, and Army justice doesn't permit this. There's absolutely no argument against giving Army personnel the protection of civilian juries."

Senator McGovern agrees, with only a slight qualification:

"I think it would be a good idea to put the *serious* legal and criminal questions in the hands of the civilians. It seems to me that the civilian supremacy over the military would be protected by having serious charges handled in civilian courts. The processes of justice are more dependable when handled on the civilian side. The right to freedom of speech is poorly protected by the military. Much as it galls me that they have the wrong ideas, I do not believe generals should be muzzled. But I also believe privates who want to meet in groups on the base and denounce the Vietnam war should be able to speak their minds under the same protection. Either on or off the base, they should have the right to march in peace parades. They should not find themselves confronting courts-martial for these activities. The Bill of Rights should extend to the military."

Perhaps the very best argument for taking the process of justice away from the military is that the officers are often so obtuse that they really don't know what their critics are getting at when they talk about constitutional rights. For instance, when they prepared to fly Captain Levy from Fort Jackson to begin his three-year term at Leavenworth, it was one of those early, chilly, odd Army hours that provoke strange conversations. Levy was standing by the plane as it warmed up, and some of his friends were there to see him off and a colonel who had escorted him to the plane was there; suddenly, the colonel interrupted the others' goodbyes to say quite earnestly, "Captain, I want you to know I'm in the Army really to defend the rights of all, and while I disagree with what you said, I'll defend to my death your right to speak." It was hopeless, and Levy, knowing this better than anyone, responded amiably, "Well ———."

WHAT IS HAPPENING TO OUR ECONOMY?

Mr. CURTIS. Mr. President, it is possible for those of us who must carry the responsibility of the Federal Government to be so involved with details that we lose the proper perspective of the overall picture. This is true in the current battle to establish a responsible financial policy for the Government of the United States, to prevent ruinous inflation, and to relieve the resulting hardship that comes from the ever-increasing cost of living.

As Members of Congress, our attention is directed to the problems that arise in a particular situation when the budget is reduced. Our attention is often focused upon the inconvenience and disappointment that prevails when earnest efforts are put forth to reduce deficit spending. We are prone to become discouraged and question the course of action. We are apt to ask: "Is the course being followed wise and sound? Are present policies in the interest of the great rank and file of our American people?"

Mr. President, I submitted a letter that I had received, which dealt with these grave financial questions, to an individual in Nebraska who was eminently qualified to discuss the questions. I found the answer received from my Nebraska friend so logical, so informative, and so helpful that I want to share it with the Senate and with all others who read the CONGRESSIONAL RECORD. Mr. President, I ask unanimous consent that the pertinent parts of the letter, dated January 22, 1970, be printed in the RECORD.

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

It would be possible to write several volumes on the subject of inflation and government fiscal and monetary policy. Everyone has an opinion on these matters and you can find some school of economists who support any point of view that you wish to embrace.

I find myself in substantial disagreement with some of the statements made by Mr. ———. Our extremely dangerous inflation stems directly from the misguided policies of the Kennedy-Johnson administrations. Mr. Kennedy was gullible enough to believe that you can fine tune the economy. Mr. Johnson committed the colossal blunder of assuming that the country could have both guns and butter without raising taxes and still maintain a stable dollar.

The escalation of the war in Vietnam, beginning about 1965, occurred at a time when the economy was in anything but a state of lassitude. There was little unused capacity, either in the labor force or in the industrial plant, to provide significant additional output. Johnson's refusal, until much too late, to seek additional taxes to defray the cost of the Vietnam war, plunged the Federal budget into deep deficit. During most of the Johnson administration the monetary policy pursued by the Federal Reserve resembled the action of a yo-yo.

My sympathy was and is with the Federal Reserve Board, which was called upon to maintain some semblance of stability which was made impossible by the government's fiscal policy and the political and economic abuse that was heaped on the Board as when its critics asserted in 1966 that it was precipitating a depression by its policy of tight money. In the fall of that year the Fed changed course, precipitously pumped too much money into the economy, and this combined with Federal deficits further stimulated inflation. The irresponsible record has imbued consumer and businessman alike with the expectation that inflation will continue indefinitely.

The country is not convinced that the Federal government has the will, or the ability, to undertake or continue the stringent measures that will bring stability of prices and eventually disabuse people of their inflationary expectations. Thus, the labor unions have been able to assert and enforce outrageous increases in wages and fringe benefits that have no relevance to productivity increases. Thus, businessmen continue high levels of capital expenditure fearing that improvement of plants and equipment will cost substantially more in the future. Thus, also, there is enormous pressure for extravagant increases in social benefits.

The policies of the Nixon administration, in attempting to achieve a budget surplus and to encourage the Federal Reserve's tight money program, are sound. If persisted in long enough the inflationary expectations of the people will be disabused. The economy has already slowed down, but prices continue to rise because not enough businessmen and consumers are convinced that the administration and Congress will persist in an anti-inflation program long enough to make it effective.

Like ———, Mr. ——— seems to embrace the fallacious notion that the high price of money is responsible for inflation, whereas the contrary is the case. It is undoubtedly true that the program of dampening the economy, the insistence on a budget surplus and tight money, has slowed the economy and will engender some unemployment. The housing industry is a notable victim of the present situation. These disagreeable facets of the fight to contain inflation are, however, necessary concomitants to the recovery process from the economic binge of the last five years. As any drunk will tell you, you don't come off of a spree without having a hangover. The more vigorously and quickly that the Nixon program can be enforced, the shorter the hangover.

There has been a great deal of talk about the imposition of direct controls on prices, wages and credit as people become impatient for the indirect monetary and fiscal controls to get the job done. A surprisingly large segment of the business community is beginning to favor such direct controls because they see the success of organized labor in extorting inordinate wage demands which cannot be passed on in their entirety to the

consumer in the form of higher prices. The result, of course, is a profit squeeze. The administration hopes to avoid direct intervention in wage negotiations, pricing and the making available of credit hoping that as profits shrink, as buyers react to higher prices, and as borrowing is discouraged by high interest charges, businessmen will resist wage increases and defer capital spending.

Personally, I oppose direct controls because I think they treat of the symptoms rather than striking at the root of the disease. They cannot be enforced equitably and evenly in so complex an economy as ours. They breed on each other, one control engendering further controls, with the ultimate being a totally regimented economy. More than this, I fear that direct controls would be totally regimented economy. More than this, I fear that direct controls would be totally unacceptable to most of our people. We are not in the type of war time economy in which the public would accept such controls as was the case during World War II. Direct controls would tend to make crooks of people as they seek to evade them.

The prospect is not a pretty one and, frankly, I am apprehensive. The alternative to success of the Nixon program of a budget surplus and continued tight money is the classical cycle of enormous boom and profound bust. Should that eventuate on a scale approaching severe depression, the socialists would take over the country.

In addition to supporting a budget surplus and monetary restraint, I believe that the Nixon administration should initiate a vigorous "jawbone" program admonishing labor, business and the consumer to save more, spend less, resist price increases; and to recognize that wage demands in excess of productivity strike at the vital national interests of the country. Human nature being what it is, I recognize that such a program would probably enjoy limited success, but it could and should reinforce fiscal and monetary measures and alert the country to the determination of the Nixon administration to hold the line in the inflation fight at all costs.

The most dismaying aspect, Carl, in the whole situation has been the irresponsibility of the majority in Congress which has worked at cross purposes to the administration. It is a sad commentary on the level of statesmanship which puts seeming personal or political purpose above the welfare of the country.

CONTINUED SOIL CONSERVATION PROGRESS

Mr. McINTYRE. Mr. President, during the past decade, Americans have come to the stark realization that our Nation's great wealth of natural resources is limited. We have realized that there are no more resources over the next horizon, our supplies are limited by what we have—and what we can use intelligently.

This realization was brought home first, and most sharply, by our critical shortage of clean water. Never has it been so imperative that we recognize that the use of our water resources must be planned and organized to insure that our supply is never again limited by neglect.

As too many Americans have slumbered over the years in their hazy acceptance of the old-fashioned idea that water was a plentiful resource, there have been those who have striven to provide planning and management of this precious resource. The Soil Conservation Service of the U.S. Department of Agriculture is foremost among these.

Despite lethargic public opinion, despite the knowledge that their efforts were often taken for granted, the Soil Conservation Service has patiently and efficiently undertaken the task of planning the use and distribution of our most precious natural resource, our clean water.

That they have been successful is attested to by the fact that many cities and towns throughout the Nation have long-range projects and plans underway to insure that they have adequate supplies of water now and in the future. The poignancy of this accomplishment is demonstrated by the fact that much of our Nation's water supply is polluted. Cities and towns throughout the Nation are facing a crisis because they failed to plan for the future.

But due to the efforts of the Soil Conservation Service, there are also many communities that have the wherewithal to solve their problems. The watershed and regional planning activities of the Service will provide us with a basis to work from in our efforts to solve our problem of water shortages, pollution control, and flood control.

I wish to commend the Soil Conservation Service for its efforts. This is long overdue. I would also like to add a very personal note of appreciation for the New Hampshire State conservationist, Mr. A. C. "Bob" Addison. His efforts and those of his staff have been an outstanding benefit to the State in its endeavor to develop and manage its water resources

I ask unanimous consent that a report entitled "New Hampshire Watershed Progress Report," be printed in the RECORD. It is an example of the accurate planning that the Soil Conservation Service has consistently made available to the State of New Hampshire.

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

NEW HAMPSHIRE WATERSHED REPORT

(By A. C. Addison)

FOREWORD

Water has always played a key role in New Hampshire's development. Granite State pioneers knew its value and settled near dependable water sources.

Today, water is even more important to our growing communities. And, for many, it is still an unharnessed, wasted resource.

These water management problems are further complicated by pyramiding demands from modern industry, recreation seekers, and home luxuries as population pressure continues to mount. As community reserves of good clean water reach critically low levels, water rationing, factory shut-downs, health and fire hazards soon affect living conditions and local economy.

Unlike our forefathers, we have the means to combat these water problems. Your state and Federal governments are working together to help local communities overcome expensive flood menaces and water shortages and to make better use of water resources. Under the Watershed Protection and Flood Prevention Act (Public Law 566), the U.S. Department of Agriculture's Soil Conservation Service provides technical planning and cost-sharing assistance to responsible local groups. Many other agencies at various government levels add their specialized aid to the program.

This status report has been prepared to give you a brief explanation about the watershed program in New Hampshire. It tells about the multi-benefit aspects of the projects, how local people can obtain help, and the progress which some New Hampshire communities have made toward attaining the benefits from this unique local-state-Federal effort.

AUTHORIZATION

The Watershed Protection and Flood Prevention Act (Public Law 566) was enacted by Congress in 1954. The Act authorizes the Secretary of Agriculture to give technical and financial help to local organizations in planning and carrying out watershed projects. Since the inception of this legislation, Congress has broadened the scope of the law with several amendments.

The watershed projects are for (1) flood prevention; (2) agricultural water management; (3) recreation; (4) municipal and industrial water supply; and (5) fish and wildlife development. The program is administered by the Soil Conservation Service.

Today, multi-benefits from water management are the prime objectives of the program. Local sponsoring organizations are strongly encouraged to consider storage for all possible beneficial uses.

HOW YOU CAN GET WATERSHED HELP

Under PL 566 any group or person can make the initial move in launching a project. A logical place to make the first formal contact is the local Conservation District, headquartered at county seats throughout New Hampshire. Through them, information and assistance in applying for watershed aid is provided. Guidance is also available from other offices of nearly all agencies involved in resource development.

ELIGIBLE LOCAL SPONSORING ORGANIZATIONS

In New Hampshire, eligible local sponsoring organizations include any state or local agency having authority, under state law, to carry out, maintain and operate watershed works of improvement. Sponsors include Conservation Districts, New Hampshire Water Resources Board and usually towns and cities in which projects are located. The Planning Division of the Department of Resources and Economic Development has been instrumental in getting projects under way.

Successful watershed projects require close cooperation and teamwork among a number of local, state and Federal agencies. Under Public Law 566, each project is a local undertaking with Federal help—not a Federal project with local help.

PROJECTS COMPLETED

Ash Swamp, Tannery, White, and Black Brooks Watershed

Location

The Watershed lies almost entirely within the borders of the City of Keene, New Hampshire. It outlets into the Ashuelot River.

Size

12,800 acres.

Sponsors

City of Keene, New Hampshire, Cheshire County Conservation District.

Problems

Poor drainage and flooding conditions restricted the growing of agricultural crops. Wet basements and reduced effectiveness of city storm sewers were also problems.

Remedial Measures

Major works of improvement include 10.3 miles of channel. The installation of land treatment measures were also an integral part of the project.

Benefits

Increased crop yields, reduced sediment damage and increased value of municipal property have resulted from the project.

Status

The project was approved for operations in 1957 and completed in 1963.

Oliverian Brook Watershed

Location

The Watershed is located in the northwestern part of Grafton County within the towns of Benton, Haverhill and Warren.

Size

9,860 acres.

Sponsors

Grafton County Conservation District, New Hampshire Water Resources Board.

Problems

Floods have caused severe damage to agricultural land, highway and bridges.

Remedial Measures

Works of improvement include one floodwater retarding structure and 3.1 miles of channel improvement. Land treatment practices on open and forested lands were installed.

Benefits

The project provides flood protection to State Highway 25 and to agricultural lands making it possible to put these lands to a more intensive use. A U.S. Forest Service campground just below the dam accommodates about a dozen campsites and is used intensively from early spring to late fall.

Status

The project was approved for operations in 1959 and completed in 1963.

Baker River Watershed

Location

The Baker River is located in Grafton County and outlets into the Pemigewasset River at Plymouth, New Hampshire.

Size

136,900 acres.

Sponsors

Grafton County Conservation District, New Hampshire Water Resources Board, New Hampshire Department of Resources and Economic Development, New Hampshire Fish and Game Department, Town of Plymouth, New Hampshire.

Problems

Major problems are floodwater damage to crop and pastureland, roads and bridges, commercial establishments, residences and several manufacturing plants.

Remedial Measures

The project includes land treatment, 14 floodwater retarding structures of which six are multiple purpose for recreation, and fish spawning reefs for lake trout in Stinson Lake.

Status

The project was approved for operations in 1964. Two floodwater retarding structures and one multiple purpose floodwater retarding and recreation structure have been completed. The fish spawning reefs have also been installed. Progress is being made on the land treatment measures planned in the project.

PROJECTS UNDER CONSTRUCTION

Souhegan River Watershed

Location

The Souhegan River lies in Hillsborough County, New Hampshire, and Middlesex and Worcester Counties, Massachusetts. It outlets into the Merrimack River.

Size

109,440 acres of which 103,808 are located in Hillsborough County.

Sponsors

Hillsborough County Conservation District, Middlesex County Conservation District, Town of Milford, New Hampshire, Town of Greenville, New Hampshire, New Hampshire Water Resources Board.

Problems

Major floods have caused severe damage to industrial and residential areas. Agricultural lands have been subject to frequent flooding. Municipal water supply demands have been outrunning the capacity of existing facilities.

Remedial Measures

The project includes land treatment measures and 13 floodwater retarding structures, of which one is multiple purpose floodwater retarding and municipal water supply for the town of Greenville.

Status

Nine of the structures have been constructed including the multiple purpose site. The original plan was approved for operations in 1961 and a supplemental plan was approved in 1966. Local sponsors have asked that another supplement to the plan be made to add a fish and wildlife development and incorporate special features in one of the sites to provide for future water supply to the town of Milford.

Dead River Watershed

Location

The Dead River is located in southcentral Coos County and drains into the Androscoggin River at Berlin, New Hampshire.

Size

10,350 acres.

Sponsors

Coos County Conservation District, City of Berlin, New Hampshire, New Hampshire Water Resources Board.

Problems

The principal floodwater damages are to roads and bridges and urban areas in the City of Berlin.

Remedial Measures

The plan calls for the acceleration of forest land treatment measures, the construction of one multiple purpose floodwater retarding and recreation structure with basic recreation facilities, and channel improvement. This project is being closely coordinated with the Urban Renewal project in the City of Berlin.

Status

The project was approved for operations in 1966. A contract for the construction of the dam was awarded in February 1969, and is presently under construction.

Cold River-Old Course Saco Watershed

Location

The Watershed is located in Carroll and Coos Counties, New Hampshire, and Oxford County, Maine.

Size

47,080 acres of which 26,240 are in New Hampshire.

Sponsors

Carroll County Conservation District, Oxford County Soil and Water Conservation District, New Hampshire Water Resources Board, Town of Stowe, Maine.

Problems

Several thousand acres of agricultural lands, roads and bridges have been subject to frequent flooding.

Remedial Measures

Structural measures planned include 4 floodwater retarding structures, 2 multiple purpose floodwater retarding and recreation structures, and 23,500 feet of channel improvement. 10,500 acres of open and forested lands are to receive land treatment practices.

Status

The project was approved for operation in 1967. One multiple purpose recreation site on National Forest lands in New Hampshire and a single purpose flood prevention site in Maine are currently under construction.

PROJECTS BEING PLANNED

Sugar River Watershed

Location

The Sugar River Watershed includes a large part of Sullivan County and parts of Merrimack and Grafton Counties. It outlets into the Connecticut River.

Size

176,000 acres.

Sponsors

Towns of Croydon, Goshen, Grantham, Lempster, and Newport, New Hampshire, City of Claremont, New Hampshire, Sullivan and Merrimack County Conservation Districts, New Hampshire Water Resources Board.

Problems

The major problems are floodwater damages to agicultural land, roads and bridges, residential and commercial property, a shortage of water with public access for recreational use, and erosion and sediment resulting from change in land use.

Remedial Measures

The plan provides for accelerating land treatment measures for better land use on 164,000 acres and the construction of ten floodwater retarding structures. Six of these structures include water resource improvements for recreation and will provide nearly 1,200 acres of surface water.

Status

The informal field review and public hearing were held on August 14, 1969. The Work Plan Agreement was signed by the local sponsors and the plan transmitted to Washington in September 1969.

Indian Brook Watershed

Location

Indian Brook is located in Coos County, and outlets into the Connecticut River at Lancaster, New Hampshire.

Size

1,420 acres.

Sponsors

Cos County Conservation District, town of Lancaster, New Hampshire, New Hampshire Water Resources Board.

Problems

Floodwater and drainage are the major problems.

Remedial Measures

One multiple purpose floodwater retarding and recreation site and channel work are being considered.

Status

Authorized for planning in June 1967. The Work Plan is scheduled for completion in late 1969.

Bearcamp River

Location

The Bearcamp River is located in Carroll and Grafton Counties.

Size

96,830 acres.

Sponsors

Carroll County Conservation District, New Hampshire Water Resources Board.

Problems

Floodwater damages occur to agricultural lands, roads and bridges, residences and other developments along State Highways 16 and 25.

Remedial Measures

Plans have not been completely formulated for this project as yet.

Status

Reauthorization for planning was granted in March 1967. Field surveys have been completed on five sites.

Gale River Watershed

Location

The Gale River is located in northern Grafton County and is a tributary to the Ammonoosuc River.

Size

58,240 acres.

Sponsors

Grafton County Conservation District, Towns of Franconia, Bethlehem, Easton, and Sugar Hill, New Hampshire Water Resources Board.

Problems

Recurring floodwater damages to roads, bridges, and the village of Franconia, are the major problems.

Remedial Measures

Two floodwater retarding structures (one on the Gale River and the other on Ham Branch) are being evaluated with the possibility of including storage for recreation and water supply.

Status

Planning authorization was received in June 1965. Work Plan is scheduled for completion in 1970.

Mad River Watershed

Location

The Mad River is located in Grafton and Carroll Counties.

Size

40,676 acres.

Sponsors

Grafton County Conservation District, Carroll County Conservation District, Town of Campton, New Hampshire, Town of Thornton, New Hampshire, New Hampshire Water Resources Board.

Problems

Floodwater damages to urban property, roads, bridges, and bedload movement in the Mad River are the principal problems.

Remedial Measures

One multiple purpose floodwater retarding and recreation structure and 3,000 acres of land treatment are proposed.

Status

Planning authorization was granted in June 1965. The Beebe River portion was withdrawn from the application in January 1968. A draft of the work plan has been prepared. Signing of a work plan agreement by the sponsors is still pending.

UNSERVICED APPLICATIONS

Indian-Mascoma River Watershed

Location

The Watershed is located in Grafton County and is a tributary to the Connecticut River.

Size

85,500 acres.

Sponsors

Grafton County Conservation District, City of Lebanon, New Hampshire, Towns of Canaan, Orange, Hanover and Enfield, New Hampshire Water Resources Board.

Status

An application was received and approved by the State Conservation Committee in November 1964.

Blow-Me-Down Brook Watershed

Location

The Watershed is located in Sullivan County and is a tributary to the Connecticut River.

Size

18,100 acres.

Sponsors

Sullivan County Conservation District, Town of Cornish, New Hampshire, New Hampshire Water Resources Board.

Status

An application was received and approved by the State Conservation Committee in December 1965.

Silver Brook Watershed

Location

The Watershed is located in Merrimack County.

Size

1,840 acres.

Sponsors

Merrimack County Conservation District, Town of Warner, New Hampshire, Warner Village Fire District, New Hampshire Water Resources Board.

Status

An application was received and approved by the State Conservation Committee in July 1966.

Upper Ammonoosuc River Watershed

Location

The Watershed is located in Coos County and is a tributary to the Connecticut River.

Size

162,500 acres.

Sponsors

Coos County Conservation District, Towns of Stark, North Umberland, Stratford, and Dummer, New Hampshire Water Resources Board.

Status

An application was submitted by the sponsors in September 1969.

PROGRESS IN POLLUTION CONTROL

Mr. FANNIN. Mr. President, Arizona Public Service Co. has announced the purchase of air quality control equipment for several of its large capacity power generating equipment installations.

I ask unanimous consent that an announcement detailing this action be printed in the RECORD at the conclusion of my remarks.

This action, taken voluntarily, by one of the largest companies in Arizona typifies what I believe will ultimately prove to be the only successful course in controlling pollution in America. Concerned citizens as individuals and corporations will have to step forward and take the lead in order for this work to be accomplished.

This latest action follows in the wake of another APS announcement that they are now experimenting with conversion of their service vehicles to natural gas. This farsighted action will undoubtedly pay benefits as we enter an era of preventing pollution as well as reducing the hazards of the situation in which we presently find ourselves. I commend the Arizona Public Service Co. for its wisdom in moving ahead in this field and believe that many other companies and industrialists will follow the example.

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

APS ANNOUNCES PURCHASE OF POLLUTION CONTROL EQUIPMENT

Arizona Public Service Company announced today that it has placed orders for air quality control equipment for Units One, Two and Three at Four Corners Power Plant "which will meet or exceed standards being considered by New Mexico and thus meet our commitments to the people of the state," according to William P. Reilly, president of APS.

Reilly said his company has ordered Chemico wet scrubbers designed to operate at 99.2 per cent efficiency. Total cost of the equipment required to meet New Mexico standards is estimated at more than $7,000,000. The units are being purchased from Chemical Construction Corporation, New York City, New York.

"The manufacturers of the wet scrubber process assure us they can design new equipment for generating Units One, Two and Three which will replace the mechanical dust collectors on those units and which will control 99.2 per cent of the fly ash emission as required under the proposed New Mexico standards," Reilly declared.

"We're delighted to be able to make this announcement," said Reilly, "particularly because it indicates that advances in technology in the design of wet scrubber type of pollution control equipment have now reached the point where we can practically eliminate any smoke emission from these three units at our Four Corners Plant."

Reilly stated that the complexity of the manufacturing and installation processes will require approximately sixteen months for the installation of the units. Construction is expected to begin shortly with completion scheduled for early summer of 1971.

On Thursday, January 22, a pilot model of the scrubber equipment will be placed in operation at Four Corners. Test data from this pilot plant operation will be used to refine the design criteria for the operating units. It is expected that the pilot plant phase will require a week to ten days of operation to provide the needed information.

Reilly said this new system was selected "after several weeks of careful evaluation of various types of control equipment."

"We have investigated every feasible kind of control equipment, both in this country and abroad," said Reilly. "We sent company officers to inspect several different types of installations in the United States—and to Australia, Germany, Scotland and England."

"We wanted to see in action various types of control equipment on plants burning high-ash, low-sulfur coal such as we have at Four Corners," Reilly stated.

"We think the equipment we have chosen will provide the most effective solution to the fly ash problem at Four Corners, and it will be an important contribution to the air quality control effort in the State of New Mexico," Reilly stated.

THE NEED FOR PUBLIC BROADCASTING

Mr. TYDINGS. Mr. President, in light of the recent attention given to the uses and abuses of the broadcast media, I invite attention to an address by John W. Macy, Jr., president of the Corporation for Public Broadcasting, before the National Press Club on January 15. Mr. Macy, whom many Senators know as the able former Chairman of the Civil Service Commission, is currently providing leadership for noncommercial broadcasting.

In a speech to the National Press Club, Mr. Macy provided what he called "a positive answer to critics of television," namely, public television. This medium, which has only just begun to grow and flourish, offers some new answers to the old question of how citizens can become involved in the crucial issues of our day.

It holds much hope for helping to bridge the gap between the citizen and his government.

My home State of Maryland last year inaugurated its own system of public television with the beginning of broadcast by station WMPB–TV in Baltimore. In its first few months on the air, this station has already proven itself a valuable servant of the community. Before long, I am confident, the people of Maryland—and the Nation—will be hearing more about, and watching more of, public television.

I commend the attention of the Senate to Mr. Macy's illuminating speech on this important topic and ask unanimous consent that it be printed in the RECORD.

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

POSITIVE ANSWER TO CRITICS OF TELEVISION

(By John W. Macy, Jr.)

I am happy to be here today on this platform that has launched so many distinguished newsmakers. It is an honor that I sincerely appreciate. I must admit I approached this occasion with some trepidation. To talk about communications with a group of professional communicators is like offering a recipe to Julia Child or telling David Frye he's *not* the President. Then, too, communication can be a controversial topic these days. Another fellow talked about broadcasting not so long ago and caused quite a stir. Who would ever have thought that "instant analysis" would become a household phrase?

The United States at this early light of the 70s, *desperately needs* public television. Notice I used the phrase, "desperately *needs*." I chose it with care. I make it out of conviction.

It is ironic, I know, to stand in the most distinguished forum of communicators in the capital of the nation that leads the world in the technology of communication and make such a statement.

I feel that it is my duty to do so. I am convinced that the American people are now seeing and reading *more* about the state of their nation than ever before, and believe it *less*.

It is not a case of a "credibility gap" between the people and their government. It has become a veritable Grand Canyon of disbelief involving not only government figures at national and local levels, but the communicators who report on their actions and the spokesmen who advocate public causes. The depth of this gulf has been confirmed by recent public opinion polls. It was underlined just this week by the final report of the mass media study group of the National Commission on Causes and Prevention of Violence.

At the risk of over simplification, I believe this stems from a growing feeling on the part of a substantial number of people that all public affairs are being staged managed for them—that their elected officials are images to be marketed; that social issues are being orchestrated to produce the most potent impact on the media.

They assume that communications about public thoughts and deeds are designed and executed with the medium as the basic purpose. I sometimes sense that we are suffering from something the younger generation would call a "national hangup," revolving around the belief that television is only for entertainment and therefore everything we see on that ever present screen—whether a riot in Chicago or a confrontation at a local school board meeting—is designed only to catch the attention of the camera and has very little bearing on the true situation.

In this atmosphere, cries have been raised for greater objectivity from those who interpret and analyze the news. Very little attention has been given to the fact that the problem of choosing between the dramatic event and the more low-key occurrence is as old as journalism itself, and is built into the present system of television. There are some who claim that there is no such thing as "objectivity" in public affairs. I do not want to get into a wrangle over words, but I personally believe that there are such things as "fairness and balance" in the presentation of important issues and that we should seek to assure the perpetual existence of those conditions.

To my mind, television is the arena in which the spectrum of opinion should have the freedom of expression. It is in seeking to achieve this objective that public broadcasting has one of its greatest challenges and greatest opportunities.

Let me say right now, that none of this should be interpreted as criticism of the commercial networks or stations. By and large, they are doing—and doing very well indeed—what they must do under a system which measures survival and success in terms of mass audience ratings that respond more to the stimulus of entertainment and excitement than to information. Coverage of a moon shot or any other momentous event is appropriate and appealing under this system and even the most severe critic cannot deny the networks high marks for magnificent, understandable, and in depth coverage. But to expect them to provide sustained coverage of many sides of complicated public issues such as hunger, environmental destruction, or even a local school bond controversy; to expect them to provide air time for citizens to become involved in these controversies, is to expect too much.

Frankly, I am a little tired of the chronic and persistent negativism that fills so much of the conversation concerning television these days. I am not here today to develop that theme any further, but to offer a positive, upbeat alternative: public broadcasting. Because it is not fettered by the necessity of programming for the greatest possible audience all the time, public broadcasting should be the vehicle used to return to the concept that through rational debate and discussion reasonable men can work to solve public issues; the vehicle to give the citizen some opportunity to make his own judgments known on these issues.

In thinking through my ideas on these matters, I had no way of knowing that the report of the media study group of the Violence Commission would come to somewhat the same conclusion. In its report released Tuesday, the study group urged that between $40 and $50 million a year be provided the Corporation for news and public affairs; that public broadcasting focus on providing broadcasting services in this field which commercial broadcasting cannot perform.

I am not in disagreement with the Commission. Certainly I am heartened by the fact that a distinguished national group has stressed the vital need of public broadcasting in serving the American public.

The Corporation and all major elements in public broadcasting have been moving to provide this kind of interpretive, in depth reporting. But my major concerns today are the efforts that must be made to involve the citizen himself in the discussion and debate of issues that affect him.

Let me give you specific illustrations of how this can be achieved.

The only regular, live, non-news network television program today is "The Advocates," seen here in Washington on Channel 26 at 10 p.m. each Sunday. This program has adapted the classic debate to television. Two advocates take opposing sides on a vital issue which must be decided at any early date. They use film clips and live witnesses to try to make their case before a "decision-maker", a man who will have to vote "yea" or "nay" on that issue in his official capacity. But the basic purpose is to involve the citizen-viewers in the making of the decision. The opportunity is given to the studio audience to vote on the issue; the opportunity is given to viewers to cast their ballots by mail. They are urged to cease being spectators and voice their views on these issues of critical importance to them. The tally of these expressed views, and the results of polls taken especially for the program, are announced to the viewing audience as indicators of public opinion.

I happen to think that most of the Advocates programs not only help the viewers return to the idea of rational debate and of citizen participation, but are good television as well. There *is* excitement in the *reality* of our troubled times!

Even more relevant to my point, however, are the results of an experiment the Corporation undertook last month in conjunction with the White House Conference on Food, Nutrition, and Health.

National Educational Television produced two, hour-long specials on the problems of hunger and malnutrition in the country and capsulized what the Conference experts were saying about the solutions to those problems in Washington. In 12 cities, large and small, in all parts of the country, public television stations convened local "town meetings," a representative cross section of the people in their communities, to discuss the local implications of these problems. More importantly with the cooperation of the Conference staff, they were informed that what they had to say would be viewed by White House Conference staff members as one gauge of citizen reaction to the conference as an electronic feedback of public opinion.

You will be hearing more about this from the White House Conference staff in the weeks ahead, so I will forego details.

But for the thousands of people directly involved in the program and for the millions who saw the local productions, hunger and malnutrition can no longer be regarded as an abstract issue "stage managed" in Washington, by government, by commentators, by pressure groups or by anyone else. It was a problem to be met at home in the community. The people on the screen who complained about it had familiar addresses. The local and federal officials responsible to do something had familiar names. And now all have familiar faces!

Although the final reports on these "town meeting" sessions are not yet in, some of the lessons learned are germane to our discusions today. We learned that in many instances it is no longer possible to put opposing forces in one room with a camera and get a true picture of a community's problems. In this age of confrontation, the spokesmen of one extreme or another tend to dominate the discussion, while the people who wish to proceed with problem-solving respond by saying nothing or very little. In the presence of such heat, the man espousing moderation understandably would rather remain silent than face the possibility of appearing to be defensive or without care. In addition, those with the ultimate responsibility for decision and action will frequently have to soften their observations and therefore come through on the screen as less compelling personalities in contrast to their militant critics.

Confrontation sometimes makes for more exciting television, but it does not necessarily help communicate or lead to action. One of our stations, WJCT in Jacksonville, Florida, came up with a technique that was good television and yet provided the framework for problem-solving. The station used three locations for its "town meeting," and switched from one to the other, giving everyone a chance to speak in his own context. One meeting was held in an exclusive club where the cameras focused on the "power structure"—the state legislators, the businessmen, etc. Another meeting was held in

a center city community hall and the poor—black and white—were invited there. The third was in the studio and housed the "experts"—physicians, school lunch administrators, teachers, Department of Agriculture administrators, etc.

Each group saw and heard what the others were saying and had the opportunity to respond. Because of this, the moderates as well as those representing the more extreme positions did speak out and create a community dialogue that was of great benefit to the community. But this kind of an effort takes time to develop on the air—extremely valuable time for a commercial station.

There are other examples of televised discussion of critical issues. Public broadcasting stations throughout the country are allowing millions of viewers their first glimpse of state legislatures, city councils and school boards in action. They can see that the laws are not made in a vacuum; that the men and women responsible for making them must consider many factors before recording a vote.

I feel that this kind of service—one that can only be provided on a sustained basis by non-commercial broadcasting—is essential today. If the citizen cannot be made to feel that he is part of his government, if he cannot be made to feel that governmental actions are not arbitrary, or are not stage managed, the problems we are trying to solve will, indeed, become insurmountable.

At the Corporation for Public Broadcasting our mandate will be to do all we can do to encourage the independent public stations and regional networks to provide such a critical service on issues important to their community and the nation.

But what about our present audience? Who looks at public television, anyway? For too long, public television has been thought of as a communications medium for the highbrow. As one critic put it: "A poverty program for the over-educated."

The growing excitement you may have sensed in public broadcasting circles recently stems in large part from that audience. We now know it is larger and more representative of the American people than anyone thought possible.

Several months ago, the Corporation commissioned Louis Harris and Associates to do the first nationwide survey of public television's audiences. Harris found that public television was watched in one recent week by 24 million Americans—a finding that we consider very encouraging. Even more encouraging to us was the composition of this audience. We learned what we expected: that a majority of our audience (51 percent) has gone to college. But we also had the pleasant surprise of learning that a quarter of our audience has not even completed high school and that we have a greater share of the inner-city audience than anyone thought possible. We take this as a sign that we are achieving what we set out for: reaching with education, information, enlightenment and entertainment, the total man in as many men . . . and women . . . and children as possible.

The other cause for optimism are the programs now being telecast over public stations. "Sesame Street," rates raves from variety and the ratings as well as educators. This daily, hour-long program for pre-schoolers promises to herald a whole new way of education. It combines humor, attractive personalities (real and make believe), a fast pace and the rich meat of knowledge on the theory that learning can be fun. It has been described as a significant breakthrough to new territory in both education and entertainment of children on television.

You may ask: "If 'Seasame Street' is such a great entertainment bargain, why is it on public stations?" The answer is that the entire production by the Children's Television Workshop is designed to reach and educate an audience of 12 million pre-schoolers. In this sense it is a public service for what must be considered a small audience in commercial television terms.

A program that premiered in prime time this past Sunday night is another case in point. It was designed to attract one of the most difficult to reach audiences. The program, called simply "The Show," is for teenagers; and teenagers tested it in cities across and the nation. It is based on the premise that young people are intelligent and that they care. It has guest stars and the best musical groups with the modern sound, but the youngsters themselves are the real stars. It is their probing questions of the musicians and guests and their opinions that make the show tick.

In the frame work of needed programs designed for special rather than maximum audiences, is "Black Journal." This is a magazine format show which is the only regular national television series by and for American blacks. Starting next month, public television will launch a second national series—a variety show—called "Soul." We have just completed the first national run of "On Being Black," a unique ten-week series of original plays written, produced and starring blacks.

For lovers of the theater, public television has been carrying the BBC popular drama, "Forsyte Saga," acclaimed as perhaps the best television dramatic series ever produced. These public stations are the proud showcases for "NET Playhouse," the weekly series that won the Emmy for drama last year. Our cameras have taken audiences behind the scenes with Peggy Lee and Pablo Casals and on stage with Erich Leinsdorf and Arlo Guthrie. The new series, "NET Opera," is bringing modern musical dramas to American audiences for the first time.

I would be testing your patience—while exercising my enthusiasm—to continue this catalogue. Suffice it to say that when I survey the potential of public broadcasting, I agree with E. B. White when he told the Carnegie Commission on Educational Television several years ago:

"I think television should be the visual counterpart of the literary essay, should arouse our dreams, satisfy our hunger for beauty, take us on journeys, enable us to participate in events, present great drama and music, explore the sea and the sky and the woods and the hills. It should be our Lyceum, our Chautauqua, our Minsky's and our Camelot.

"It should restate and clarify the social dilemma and the political pickle."

We have not yet measured up to Mr. White's prescription. We are determined to do so. What's more, we are determined to fill the desperate need of the American people today to become involved in the examination and definition of the problems that beset them and the search for solutions.

With your help, we will succeed!

MANDATORY OIL IMPORT PROGRAM

Mr. HANSEN. Mr. President, I am extremely gratified that one of our leading financial publications, the Wall Street Journal, in its January 26, 1970, issue, has taken note of my efforts in behalf of retaining the mandatory oil import program.

I have had considerable say about oil import policy recently and will have more to say. One of the observations I made in regard to a statement by a New England Senator who has been in the forefront of efforts to increase oil imports and, thereby, reduce the price of oil products in that area, was that the New England Senator and others had also been staunch advocates of quota legislation intended to limit shoe and textile imports into the United States.

Imports of these items, the New England Senator said, should be controlled because workers in the important New England shoe and textile industries are being displaced by more cheaply produced foreign-made goods.

One of the main reasons for this differential in production and shipping costs is, of course, the difference is the wage levels of United States and foreign workers and the standards of living in the United States and the countries that produce these goods.

During the debate on an amendment to the Tax Reform Act which would have had the effect of limiting any import that had disrupted any American industry and displaced employees in that industry, the junior Senator from New Hampshire who so strongly advocates doing away with oil import quotas rose in support of quotas on shoes and textiles. "We cannot be the world's consumer anymore than we can be the world's policeman," he said, and I heartily agreed in supporting the amendment.

Nor can we continue to maintain the world's highest living and wage standards and at the same time accommodate substantial imports of shoes, textiles or oil produced at far below the U.S. cost.

Mr. President, I can understand the desire of my distinguished friend from New England to reduce the costs of those things his constituents need and must buy which are not produced in the Northeast. That would, according to some political points of view, be the best of all worlds.

But it is not realistic to believe in the long-range soundness of a policy which hurts highly important elements of the economy, puts many people out of good paying jobs, and lowers the overall purchasing power of our citizens all on the premise that a certain area might enjoy a temporarily depressed price on oil.

I hope my friends in the Northeast will join me in protecting jobs of all Americans. I hope they will reflect the considered concern for a prosperous industry which assures both a high standard of living and a degree of national security impossible if we were to become dependent upon foreign sources for a significant amount of our energy coming from oil and natural gas.

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

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

[From the Wall Street Journay, Jan. 26, 1970]

THE EDUCATION OF A SENATOR

Senator Clifford P. Hansen, a Wyoming Republican, is a relative newcomer to Congress, having served only since 1966. So perhaps that's why he still finds some legislative ways fairly strange.

The Senator recently expressed surprise that New Englanders don't think it inconsistent to seek an easing of oil import restraint at the same time that they push for curbs on imports of shoes and textiles. That, unfortunately, is simply the way things work in Congress.

New Englanders favor replacing the present oil import quotas with a tariff system. The tariffs, proposed by a Presidential task force, would still limit imports but would be scaled to produce somewhat lower domestic prices.

Since New England produces no oil and consumes a lot of it, its residents obviously

like the idea of lower prices. However, since they are substantial producers of shoes and textiles, the idea of heavy foreign competition in those areas is by no means so appealing.

In Senator Hansen's Wyoming, on the other hand, people produce a lot of oil and are substantial consumers of shoes and textiles. So their druthers, in regard to oil-shoe-textile import policy, are just about the opposite of those of New England.

Or, at any rate, that's what their elected representatives usually appear to think. Senator Hansen in time will find that few of his colleagues can often manage to put the national interest above the purely parochial.

MEDICARE AND MEDICAID OVERCHARGES AND ABUSE BY THE COOK COUNTY HOSPITAL IN CHICAGO

Mr. WILLIAMS of Delaware. Mr. President, early last year the Senate Finance Committee initiated an investigation into the escalating costs of the medicare and medicaid programs.

During the course of those hearings our attention was called to a glaring case of overcharges and abuse by the Cook County Hospital in Chicago.

It developed that this hospital had billed the medicare program for a total of about $3.5 million for physicians' services to medicare patients and that of this amount about $1.6 had been paid.

But the committee received several allegations that in many instances physicians had not rendered the services for which medicare was being billed. It appeared that in some cases the services were rendered by interns, and in several cases it appeared that no medical service had been rendered at all.

As the result of these allegations the Finance Committee on April 28, 1969, requested the General Accounting Office to conduct a full-scale investigation of the payments made to the Cook County Hospital and render a report to the committee.

During the Finance Committee hearings held on July 1 and 2, 1969, the auditors of the General Accounting Office confirmed that there had been overpayments under medicare in this hospital of over $1 million, and on September 3, 1969, the initial report from the General Accounting Office was received. In that report the Comptroller General pointed out that the Cook County Hospital had billed the medicare program for over $3.5 million, of which amount about $1.6 had actually been paid, and they further confirmed the allegations that many bills had been rendered for services which had not been performed by the doctors. There were several instances of duplicate payments, overpayments, and so forth.

About the same time the Social Security Administration finally got interested in these excessive charges and initiated a Department examination.

Both groups of auditors promptly arrived at the conclusion "that the physicians were not rendering patient care to the beneficiaries," and based upon this report on April 15, 1969, the carrier was officially instructed to suspend all further payments to the Cook County Hospital pending further examination of its finances.

The extent of these overpayments is emphasized by a sample check of 75 cases made by this audit team. In these 75 cases the Illinois Medical Services had initially allowed $14,861 on the basis of the claims filed under Form SSA–1490. After taking into account the deductable and coinsurance, the Illinois Medical Service had paid the Associated Physicians of the Cook County Hospital $10,727.16 for services rendered. Detailed examination of these 75 cases showed that of this $10,727.16 about $8,700 had been based on erroneous claims.

The Associated Physicians of the Cook County Hospital disputed this claim and presented additional documentation of these claims, but after further analysis by the Illinois Medical Service, on November 1969 it was determined that the actual overpament was $8,134.40 in the 75 sample cases.

The Social Security Administration, by applying statistical methods to the 75-case sample, then projected the amount of the overpayment for all cases in which payment had been made.

This projection produced an estimated overpayment to the Cook County Hospital which could be as high as $1,328,000, and the Associated Physicians of the hospital were informed of this overpayment and asked for repayment.

As of the date of the Government's claim for refund of the $1,328,000 in overpayments a total of $1.6 had already been made on the $3.5 million total claims filed. It was found that of this $1.6 million which had been paid about $488,000 had already been disbursed, leaving undistributed cash on hand by the association of about $1,120,000.

On September 15, 1969, the Social Security Administration notified the Associated Physicians of the Cook County Hospital that claims for refund were being filed by the department, and they were instructed to hold in abeyance this $1,120,000 pending settlement of the claims. They were instructed to disburse only what was actually needed for day-to-day operating expenses.

These instructions of September 1969 to hold this money in abeyance until Government claims had been settled were ignored, and it develops that by November 20, 1969, the assets had dwindled down to $700,000. A more recent report shows that they are now substantially lower.

There is no excuse for the Social Security Administration's having sat idle while these funds were beng liquidated.

This diminution of assets substantially lessens the chances of the Government's ever obtaining a refund to liquidate its claims of overpayment. A recent memo by Mr. Thomas M. Tierney, Director of the Bureau of Health Insurance, as addressed to Mr. Melvin Blumenthal, Assistant General Counsel, Department of Health, Education, and Welfare emphasizes this point and states:

> Unless some action is taken, there will be little likelihood that the Government will be able to recoup anything of a substantial nature from the Associated Physicians of the Cook County Hospital.

Mr. President, in my opinion these substantial overpayments could not have developed without some knowledge by the Washington office of the Social Security Administration. For at least a year they have known that the erroneous payments of over $1 million had been made to this hospital, yet during this past year no firm action has been taken by the Administration to protect the Government's interests; instead they have just sat back and watched the assets being dissipated. Someone should be held responsible for this laxity.

But that is only a part of the story There appears to be a clear case of fraud in some of these claims for payment under medicare.

For example, after the Finance Committee discovered that over a million dollars had been paid to this hospital in the name of physicians for services which they had not performed a further examination was made. The various doctors in whose names these erroneous claims had been filed were notified and asked for their comments.

Based on a sample check of replies being received it appears that in many cases the doctors are not to be blamed. Apparently someone has been forging the doctors' names to these claims and collecting the money without their knowledge.

For example, I quote from a series of letters wherein several of the doctors in whose names some of the claims were filed flatly deny having received any money; they emphatically state that they have neither served the patients nor have they signed any claims billing medicare for payments.

I quote first the letter signed by Dr. Theodore N. Zekman, in whose name nearly $37,000 in claims had been filed and paid by medicare:

JANUARY 12, 1970.

Mr. WALTER R. LIVINGSTON,
Assistant Vice President, Director of Professional Relations, Blue Cross Blue Shield, Chicago, Ill.

DEAR MR. LIVINGSTON: I acknowledge receipt of your letter of January 2, 1970, in which you enlose letter to Mr. William B. Sale, Administrator, The Associated Physicians of Cook County Hospital, 627 South Wood Street, Chicago, Illinois 60612.

I observe in your letter that you state the Medicare records indicate that the Associated Physicians of Cook County Hospital have submitted claims for payment in my name for services provided to Medicare beneficiaries. Until the receipt of your letter, I was unaware of the fact that this occurred.

I communicated with Mr. Sale and asked him if this was true and he said it was. I advised him that I did not participate dierctly or indirectly in the submission of any bills in my name. He assured me that I need have no concern.

I should like to go on record to advise you that these disclosures come as a complete surprise to me. I did not authorize anybody to submit such claims. Although I did authorize the Associated Physicians of Cook County to collect fees for services I rendered to Medicare patients, I certainly did not authorize the Associated Physicians or anyone else to use my name for billing for services I did not render, on which I was never consulted and which I did not supervise. It would appear that I never rendered any of the services for which the bills were sent to you for payment. To the best of my knowledge, I have not seen or treated any of the patients for which these bills were sent, nor did I perform or supervise any surgical procedures which might or could be the basis for such charges.

I would welcome the opportunity of discussing this matter further with you or any

other representative of any agency having jurisdiction over this matter.

I am sending a copy of this letter to Illinois Medical Service and to the regional offices of the Social Security Administration, Bureau of Health Insurance and the United States General Accounting.

Very truly yours,

THEODORE N. ZEKMAN, M.D.

THE UNIVERSITY OF CHICAGO,
DEPARTMENT OF SURGERY,
Chicago, Ill., January 6, 1970.

Mr. WALTER R. LIVINGSTON,
Assistant Vice President, Director of Professional Relations, Blue Cross Plan for Hospital Care, Government Contracts Division, Chicago, Ill.

DEAR MR. LIVINGSTON: I am responding to your letter of January 2, concerning claims which apparently have been made in my name for services reportedly provided by me to medicare beneficiaries hospitalized at Cook County Hospital.

I wish to point out that I am a full-time member of the staff at Billings Hospital and according to the statutes of the University of Chicago, which operates Billings Hospital as its teaching institution, I am not allowed to practice surgery outside of this institution on a fee-for-service basis. When I agreed to attend at Cook County Hospital for teaching purposes alone, I pointed this out to Dr. Freeark, who was at that time Chief of Surgery, and specifically requested that I not have any medical or financial responsibility for any patients on whom I would be consulting. This was agreed to by Dr. Freeark and copies of the correspondence are appended. I have no knowledge of any patient having ever been billed in my name and, if this was in fact done, it was without my knowledge and consent.

Sincerely yours,

RENE MENGUY, M.D.,
Professor and Chairman.

Mr. President, I ask unanimous consent that a series of letters from doctors in this regard be printed in the RECORD at this point.

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

CHICAGO, ILL.,
January 7, 1970.

Mr. WALTER R. LIVINGSTON,
Assistant Vice-President, Director of Proprofessional Relations, Medicare, Government Contracts Division, Chicago, Ill.

DEAR MR. LIVINGSTON: In answer to your letter of January 2, 1970, I would like you to know that I am not a member of The Associated Physicians of Cook County Hospital and at no time approved of this organization nor any of their methods in collecting from the Federal Government on Medicare or any other patients that are on Public Aid.

I have not done any surgery at Cook Hospital since January, 1967, so if my name appears on any forms in 1968 or 1969, you know very well that they have been forged.

Furthermore, any of the doctors who agreed to be members of The Associated Physicians of Cook County Hospital and signed over their rights for the medical care of the patients should be charged appropriately by the Internal Revenue for the amount of money that they received even though it was turned over to The Associated Physicians of Cook County Hospital. It was my feeling, and also that of some 125 other doctors on the attending staff, that if there was any fee to be collected it should be collected by the individual physicians who should make out the form accordingly.

I sincerely hope that you are refunded the monies that have been collected by this false represented group of physicians of Cook County Hospital and that the money be given to the hospital administration for proper use in improving the facilities of the hospital as has been done in New York City or the money should be given to the doctor who rendered the service and this should be added to his income and he should pay income tax accordingly.

Very truly yours,

GEORGE W. HOLMES, M.D.

CHICAGO, ILL.,
January 8, 1970.

Mr. WALTER R. LIVINGSTON,
Director of Professional Relations, Blue Cross-Blue Shield, Chicago, Ill.

DEAR MR. LIVINGSTON: I am in receipt of your letter of January 2 in which you state that "the Associated Physicians of Cook County Hospital have submitted claims for payment in my name for services provided to Medicare beneficiaries." I feel reasonably confident that this is an error. I hold an appointment as consultant to Cook County Hospital but I do not see patients there. I do not direct or supervise the care of any patients there and I would doubt that any claims in my name have been submitted. If any have been submitted I would appreciate further information regarding such claims.

Sincerely yours,

PAUL C. BUCY, M.D.

THE UNIVERSITY OF CHICAGO,
Chicago, Ill., January 6, 1970.

WALTER R. LIVINGSTON,
Assistant Vice President, Director of Professional Relations, Chicago, Ill.

DEAR MR. LIVINGSTON: I am in receipt of your letter of January 2, 1970, to me together with the copy of your letter to William B. Sale who is the Administrator of the Associated Physicians of Cook County Hospital. To the best of my knowledge I did not provide service for Medicare patients at the Cook County hospital during the time in question. In addition I have not signed any vouchers or statements indicating that such service was provided.

It was the understanding between the University of Chicago and the Cook County Hospital that those faculty members of the University of Chicago who participated in patient care at the Cook County Hospital did so on a basis of community service and were not to receive any remuneration for their efforts nor were their efforts to be a basis for remuneration to another party.

Thank you very much for the information contained in your January 2, 1970 letter.

Yours truly,

GEORGE E. BLOCK, M.D.,
Professor of Surgery.

HEKTOEN INSTITUTE,
Chicago, Ill., January 5, 1970.

Mr. WALTER R. LIVINGSTON,
Assistant Vice President, Director of Professional Relations, Blue Cross-Blue Shield, Chicago Ill.

DEAR MR. LIVINGSTON: Thank you for your letter of January 2, 1970.

If the Associated Physicians of Cook County Hospital have submitted claims in my name they had no right to, for the undersigned never signed an assignment of fees to the Association.

I wish to thank you for calling this matter to my attention.

Sincerely yours,

SAMUEL J. HOFFMAN, M.D.,
Director.

ORTHOPAEDIC PHYSICIANS AND SURGEONS,
January 7, 1970.

Mr. WALTER R. LIVINGSTON,
Assistant Vice President, Director of Professional Relations, Medicare, Chicago, Ill.

DEAR MR. LIVINGSTON: In regard to your letter of January 2, 1970, I would like to inform you that I have not been an active member of the APCCH since 1965. I have not performed any services or was not assigned to any ward or service at Cook County Hospital since that time. I am a member in name only; therefore, my name could not have been used, or at least it should not have been used on any Medicare patient forms at Cook County Hospital.

I, therefore, do not have any personal responsibility for insufficient funds in the APCCH.

Sincerely yours,

GEORGE G. MARKARIAN, M.D.

Mr. WILLIAMS of Delaware. Mr. President, based upon the letters from these doctors and the report of the Comptroller General, supported by the investigating staff of the Social Security Administration, there appears to be no doubt but that fraudulent claims totaling over $1 million have been filed and collected by a group in the Cook County Hospital in Chicago and that to support these fraudulent claims the names of doctors have been forged.

This is a clear case for the Department of Justice, and I am suggesting to the Social Security Administration that they take immediate steps to file this information with that Department.

In the meantime appropriate action should be taken to prevent any further diminution of the assets of the organization involved pending full settlement of the Government's claims.

In conclusion, it should be noted that this case involving the Cook County Hospital is not an isolated case of overpayments, and to emphasize this point I incorporate in the RECORD at this point a letter dated January 19, 1970, signed by Mr. Thomas M. Tierney, Director of the Bureau of Health Insurance, as addressed to Mr. Jay Constantine, staff member of the Senate Finance Committee, wherein Mr. Tierney points out that a similar situation may exist in other areas. In particular he mentions the Bellevue Hospital in New York City.

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

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., January 19, 1970.

Refer to HI:PS:D.

Mr. JAY CONSTANTINE,
Professional Staff Member, Committee on Finance, Washington, D.C.

DEAR MR. CONSTANTINE: This is in reference to my letter to you dated January 5, 1970, and your conversation with Mr. Levine of my office, concerning reimbursement of teaching physicians at Bellevue Hospital in New York City. As Mr. Levine indicated to you, the carrier, United Medical Service of New York, and representatives of the Social Security Administration have reviewed some of the medical records of Bellevue Hospital, and these records bear out the fact that patient care at the hospital is provided primarily through interns and residents. The amount of physician involvement in furnishing such care seemed to be about the same as we found in our review of medical records of Cook County Hospital. We also found that the bills for services furnished Medicare patients was not restricted to the the personal and identifiable services of the physician, but included the services furnished by residents and interns.

Although we do not have precise figures on the amount that has been overpaid to physicians in Bellevue Hospital, we believe,

on the basis of the standards and criteria we applied in determining the overpayment to the physicians at Cook County Hospital, that, percentagewise, the part B overpayment at Bellevue Hospital could be as much as the part B overpayment at the Cook County Hospital.

As indicated in the report attached to my letter of January 5, 1970, we are not at this time making part B payments to Bellevue Hospital. In addition, we have already taken steps to adjudicate a sample of past cases in which part B payments were made to the hospital with the objective of determining the amount overpaid and undertaking such action as may be necessary to recover the overpayment.

Sincerely yours,

THOMAS M. TIERNEY,
Director, Bureau of Health Insurance.

Mr. WILLIAMS of Delaware. Mr. President, I next ask unanimous consent to incorporate in the RECORD a short digest of the Comptroller General's report as submitted to the Senate Finance Committee on September 3, 1969.

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

[Digest]

COMPTROLLER GENERAL'S REPORT TO CHAIRMAN, COMMITTEE ON FINANCE, U.S. SENATE

(Medicare payments for services of supervisory and teaching physicians at Cook County Hospital, Chicago, Illinois, Social Security Administration, Department of Health, Education, and Welfare B–164031(4))

WHY THE REVIEW WAS MADE

In accordance with a request, dated April 28, 1969, from the Chairman, Committee on Finance, United States Senate, the General Accounting Office (GAO) reviewed selected Medicare payments for physicians' services made to the Associated Physicians of the Cook County Hospital (APCCH), Chicago, Illinois. The Chairman advised GAO that the Committee did not intend that GAO develop overall conclusions relating to any legal or policy questions which might arise during the review. The Committee has also requested GAO to limit the distribution of the report prior to its release by the Committee.

Medicare is administered by the Social Security Administration (SSA), Department of Health, Education, and Welfare (HEW). Illinois Medical Service (Blue Shield) has been operating under a contract with SSA to make payments of Medicare claims for physicians' services in several counties in Illinois, including Cook County.

In accordance with certain SSA regulations, issued in August 1967, payments under the supplementary medical insurance portion (part B) of the Medicare program could be made for the professional services rendered to Medicare patients by supervisory or teaching physicians in a hospital in cases where the physicians are the patients' attending physicians and provide personal and identifiable direction to interns and residents who are participating in the care of their patients.

FINDINGS AND CONCLUSIONS

From April 1968 to April 15, 1969, when, at the direction of SSA, Blue Shield suspended making payments of APCCH claims, APCCH had received about $1.6 million in payments under part B of the Medicare program for the services of attending physicians.

The GAO review of patient medical records of Cook County Hospital indicated that the professional services billed by APCCH and paid by Blue Shield had been furnished, in almost all cases, by residents and interns at the hospital and showed only limited involvement of the attending physicians in whose names the services had been billed.

The GAO review of the hospital medical records applicable to selected Medicare claims for attending physicians' services showed that:

For 60 of the 72 initial visits for which billings had been made, the medical records supporting the specific services billed disclosed no involvement of any attending physicians, although the SSA regulations provided that the attending physicians should review the patients' histories and physical examinations and personally examine the patients within reasonable periods after admission. (See p. 29.)

For 129 of 747 follow-up visits billed, no notations had been made by any physicians, including residents or interns, to indicate that physicians had seen the patients. For the remaining 618 visits, which were supported by physicians' notations, attending physicians had been identified as involved in providing the services for only 35 visits and residents and interns had been identified as providing the services for nearly all the remaining visits. (See p. 31.)

The medical records applicable to 38 consultations for which the Medicare program had been billed disclosed no involvement of the attending physicians in whose names the services had been billed. (See p. 34.)

Hospital records in nine of 18 cases involving charges for operating room surgery did not indicate that attending physicians had been present during the operations. (See p. 37.)

Hospital records in 31 of 39 cases involving charges for minor surgical procedures did not indicate that attending physicians had been specifically involved. (See p. 40.)

Officials of APCCH and Cook County Hospital advised GAO that generally the services were provided to the patients under the direction of attending physicians responsible for the patients care but that evidence of such direction was not incorporated into the patients' medical records.

RECOMMENDATIONS OR SUGGESTIONS

Although in April 1969 SSA issued new and more comprehensive guidelines which were intended to clarify and supplement the criteria for making payments for the services of supervisory or teaching physicians, GAO suggested that SSA inquire further into the propriety of the charges being allowed when the circumstances outlined above existed at hospitals.

AGENCY ACTIONS AND UNRESOLVED ISSUES

HEW pointed out that SSA, by letter dated April 9, 1969, had directed Blue Shield to suspend further payments to APCCH. HEW stated that it would inquire further into the specific circumstances described by GAO. (See p. 68.)

Mr. WILLIAMS of Delaware. Mr. President, the unanswered questions here are: First, Who forget these false medicare claims? Second, to whom and for what purpose has the money been diverted? And third, why was the Social Security Administration so late in taking action to protect the taxpayers' interests once these discrepencies were discovered and who in this Government agency was responsible for this laxity?

WE NEED PRESIDENTIAL LEADERSHIP FOR WAGE-PRICE GUIDELINES

Mr. PROXMIRE. Mr. President, the Consumer Price Index advanced by 6.1 percent last year. Thus, in a year when the administration proclaimed that it was fighting inflation, prices continued to rise at an exceedingly high rate.

The administration relied almost exclusively on tight money as a means of stopping inflation. It certainly proposed very little in the "fiscal" field where Congress intervened to cut back the President's requests by $5.6 billion. If the President had really tried, he would have proposed large cuts last year in military spending, a reduction in space spending, and a slowdown in highway construction and public works. Furthermore, his advocacy of the SST directly contradicts the rhetoric of fighting inflation.

In addition to failure in the fiscal policy field, there has been failure elsewhere too. The major area where much more could have been done and should have been done is in leadership from the White House against large wage and price increases. I am not talking about controls; I am talking about guidelines. These are important because the industries involved, in most cases, are far from competitive in the classical sense. Prices are "administered," or there are only two or three firms so that "jawboning" can work.

It did work in the past. In 1968, those industries subjected to White House jawboning had price rises of only 1 percent compared with almost 3 percent elsewhere.

But in 1969, without "jawboning," the same group had a price rise of 6 percent while others moved up only 3.5 percent.

On Sunday, Hobart Rowen, in the Washington Post, wrote about this issue in some depth, quoting Arthur Okun, formerly of the Council of Economic Advisers, and the work of Gardiner Means and Adolph Berle, among others. I ask unanimous consent that Mr. Rowen's article be printed in the RECORD.

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

[From the Washington Post, Jan. 25, 1970]

ALL WON'T BE SOLVED BY BALANCED BUDGET

(By Hobart Rowen)

This time, President Nixon came down hard on the problem of inflation; a year ago (and this is admitted privately in high administration councils) the problem was vastly underestimated.

For a while, it may be recalled, the President wasn't sure that the income tax surcharge needed to be extended. And it wasn't until early March, 1969, that the administration understood the extend of the business investment boom.

But now, says the President, he can think of no action more important than "for the Congress to join this administration in the battle to stop the rise in the cost of living."

The pity of it, however, is that the President seems just as determined this year as he was last to give labor and management a free hand to get whatever the traffic will bear in wages and prices.

We may—hopefully—learn more from the Economic Report due to go to Congress shortly. But the President's entire anti-inflation program is based on the classic Republican belief that all will be solved by balancing the budget.

Excessive federal expenditures, uncompensated by a sensible tax policy, have doubtless contributed to inflation. But the federal government has been running a surplus for more than a year, in company with a monetary policy so tight that interest rates are the highest in more than 100 years.

Still, prices move up. Even as the economy failed to show real growth in the fourth quarter, the consumer price index was rising

at a faster rate than when Mr. Nixon took over.

There is always a lag, we have been assured, between the imposition of a policy of restraint and actual results in terms of lesser rates of inflation. But the time has dragged on, and some administration insiders confess that there should have been results long ago.

Last year's rate of inflation—6.1 per cent of the consumer index—cannot be sustained. Yet, even the most optimistic administration men warn that there cannot be much progress this year.

Many business leaders would be willing to gamble on a temporary resort to wage and price controls, along the lines recently suggested by former Treasury Under Secretary Robert V. Roosa. This was openly espoused last week by many builders and moneymarket men at the National Association of Home Builders convention in Houston. Even more of them urge selective controls on credit by the Federal Reserve.

But the President seems determined to rely on expenditure control—and on that alone.

Perhaps the most significant phrase in the speech was this: "It is time to quit putting good money into bad programs; otherwise, we will end up with bad money and bad programs."

This reflects the urging of Arthur F. Burns that more attention be paid to "zero-base budgeting"—the requirement that an agency justify each year the case for its entire appropriation, not just the increase over a previous year's.

No doubt, this is sound doctrine. It could lead to elimination of much bureaucratic federal waste. But it isn't likely to do much about 1970's inflation.

The President properly assigns a good share of the blame for inflation to his Democratic predecessors. But he is stuck with his own record for 1969—and not the least of administration failures has been its own inability to limit expenditures, as it promised to do.

Beyond that, however, Mr. Nixon refuses to recognize that in the absence of any pressures from the White House on what Arthur Okun calls "responsive" industries, prices shoot up higher than they otherwise would.

There is more than just politics in this charge. Okun, who was Lyndon Johnson's Economic Council chairman, recently revealed that LBJ's jawboning was far more extensive than publicly reported. And it paid off.

In 1968, for example, those industries that were pressured to minimize their price hikes boosted prices an average of 1 per cent, while all other commodities on the industrial wholesale commodity index (including those that rejected LBJ's urgings) rose 2.9 per cent.

But last year, after Mr. Nixon made it clear that jawboning was out, the "responsive" group rose 6 per cent, while all others moved up 3.5 per cent. (See table below.)

Okun's data makes clear that there is a wide area of price discretion in some segments of American industry. This has been amply documented over the years by Gardiner Means and Adolph Berle; and in a recent study of 1969, Means suggests that a realistic inflation-control policy must deal directly with corporations and unions who have a unique power to generate a part of the inflation.

For example, can the administration continue to ignore the spectacle of sharply rising steel prices at a time when steel production, if not actually down, is barely stable?

If the President's anti-inflation program for 1970 is nothing more than contained in the State of the Union message, 1970 is likely to be just as troubled a year as 1969. It could, in fact, be worse: at least, in 1969, there was no recession.

CHANGES IN PRICES OF SELECTED COMMODITIES—1969 COMPARED WITH PRIOR PERIODS

	Relative importance (percent)[1]	Annual rate, percent change[2]					
		1969	1966–68	1968	1967	1966	1961–65
Selected petroleum products:							
Gasoline	2.772	3.5	−0.6	−0.9	−3.6	2.8	−0.9
Crude	.843	4.8	1.0	.7	.9	1.2	−.1
Middle distillate	1.053	3.7	2.0	−1.3	5.9	1.6	.4
Sulfur products:							
Sulfur	.014	−33.3	18.1	7.7	39.3	9.8	1.6
Sulfuric acid	.085	0	9.9	3.7	21.0	6.0	1.7
Tires and tubes	1.221	2.2	3.0	1.7	4.2	3.1	−.2
Paperboard	.669	5.0	−1.8	−2.8	−3.3	.7	−.1
Glass containers	.375	5.3	3.3	9.1	0	1.1	.6
Cigarettes	.890	6.6	3.6	1.6	5.0	4.2	.8
Newsprint, standard	.426	3.3	2.2	0	2.1	4.6	−.3
Photographic supplies	.346	3.4	2.2	2.0	5.1	−.5	.8
Passenger cars	5.818	1.9	1.2	1.2	1.9	.3	−.7
Tin cans	.301	2.7	2.3	3.0	4.1	0	2.3
Laundry equipment	.242	1.2	1.7	2.4	2.8	−0.1	−1.3
Selected steel products:							
Finished	4.247	6.8	1.6	2.2	1.3	1.3	.4
Semifinished	.272	5.7	1.4	.3	2.9	1.0	.3
Selected nonferrous metals:							
Aluminum ingot	.143	8.7	1.7	3.0	2.0	0	−1.2
Aluminum ingot, alloyed	.058	7.2	2.5	4.6	1.9	1.0	
Aluminum shapes	.660	6.7	1.2	2.4	1.1	.2	−2.5
Copper wirebar	.386	24.3	5.3	10.2	5.9	0	3.7
Copper and brass shapes	.743	27.9	4.1	−4.2	5.7	11.5	3.6
Wire and cable	.809	22.2	1.7	−3.8	2.3	7.0	−3.5
Listed items	22.463	6.0	1.7	1.0	1.9	2.1	.1
All other (nonlisted industrials)	77.537	3.5	2.3	2.9	1.9	2.3	.5
All industrials	100.0	4.0	2.2	2.5	1.9	2.2	.4

[1] Fraction of industrial wholesale price index in December 1968 accounted for by commodity.
[2] Year figure represents change during year—e.g., 1969 is period from December 1968 to December 1969. 1966–68 is thus December 1965 to December 1968.

Note: Extra inflation?—The above table, compiled by Dr. Arthur M. Okun, shows components of the wholesale price index he believes responded to the administration pressure from 1966 to 1969. He concludes that somewhere between ½ and 1 percent of extra inflation in the wholesale index can be attributed to President Nixon's announced intention not to attempt to influence price and wage actions.

LIMITATION OF STRATEGIC ARMS

Mr. BYRD of West Virginia. Mr. President, the Senator from Alaska (Mr. GRAVEL) is necessarily absent from the Senate today. I ask unanimous consent that a statement which he had planned to make, along with an article published in the Scientific American magazine, be printed at this point in the RECORD.

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

STATEMENT BY SENATOR GRAVEL

The January, 1970, issue of Scientific American contains a closely-reasoned and challenging article by two of the leading U.S. authorities in the field of arms control and disarmament, Professor G. W. Rathjens of Massachusetts Institute of Technology and Professor G. B. Kistiakowsky of Harvard University. Their article, entitled "The Limitation of Strategic Arms," provides one of the best arguments I have seen for giving first priority in the forthcoming SALT talks with the Soviet Union to a ban on MIRV testing and deployment and a freeze on further ABM development.

I made a similar plea in my speech in the Senate on January 20, entitled "SALT—The Case for An In-Place Halt." I share the view that only through a comprehensive initial agreement to freeze the strategic balance between the United States and the Soviet Union at the current level of rough parity can we begin to halt the expensive, dangerous, and futile arms race in which we are now engaged.

In my speech I did not stress the budgetary impact of such an agreement, although it would be immense. The Scientific American article presents what I believe are realistic projections for the next decade, which show that the annual savings in our strategic-forces budget of a halt in MIRV and ABM development would be roughly $1 billion in fiscal 1971, from $6–10 billion by fiscal 1975, and as much as $11–15 billion or more by fiscal 1979. All these figures are stated in constant-value 1969 dollars.

I scarcely need to overemphasize the tremendous opportunities for progress in such fields as education, urban development, and enhancement of our environment that such a redirection of resources could mean.

[From Scientific American magazine, January 1970]

THE LIMITATION OF STRATEGIC ARMS

(By G. W. Rathjens and G. B. Kistiakowsky)

The preliminary phase of the strategic-arms-limitation talks ("SALT") between the U.S. and the U.S.S.R. was conducted in a convivial atmosphere and with a refreshing lack of familiar rhetoric. The road ahead for the negotiations nonetheless remains a steep and slippery one. The fact that the talks were delayed for as long as they were by both sides is not an encouraging sign. The initial unwillingness of the Russian leadership to negotiate because of the American involvement in Vietnam and the subsequent unwillingness of the American leadership to negotiate because of the Russian intervention in Czechoslovakia both reflect a failure to perceive the extraordinary and possibly fleeting nature of the opportunity presented at this particular juncture in the arms race and a failure to recognize that the strategic-arms confrontation can and should be largely decoupled from other sources of conflict between the two superpowers. More recent delays, first by the U.S. and then by the U.S.S.R. reinforce the view that on both sides there

has been a fundamental failure in the ordering of priorities—a failure to recognize that the dangers to national security associated with arms-control agreements can be far less than those inherent in the ongoing arms race.

As the substantive phase of the arms talks is about to begin, it is still not obvious that policy-making circles of the two superpowers have consonant views about such basic questions as what objectives strategic forces serve, what relative roles offensive and defensive strategic forces play and what the desired effects of limitations on such forces are. If it should develop that there is no agreement on these points, it may not be possible to negotiate any meaningful limitation on strategic forces.

This article is written in the hope that by stimulating discussion of these questions the differences between the two powers may become more clearly understood and in time narrowed. Even if the talks fail to produce significant agreement, a better grasp of the issues involved will be in the ultimate interest of everyone.

A number of recent developments make the prospects for successful negotiations seem to be more favorable now than they might have been some years ago. Advances in the strategic reconnaissance capabilities of the superpowers (chiefly in the area of surveillance by artificial satellites) are steadily reducing the need for intrusive inspection to establish the degree of compliance with possible future agreements. Thus the thorny issue of verification may be less of a barrier to agreed arms limitation than it has been in the past. In addition the rapid growth of Russian offensive-missile forces has effectively erased a disparity with the U.S. that existed in the past, thereby making an arms-limitation agreement a more realistic possibility. Finally, there is the growing popular realization—at least in the U.S. and presumably also in the U.S.S.R.—that each side already has an enormous "overkill" capacity with respect to the other, and that further escalation in strategic-force levels would entail tremendous costs and new dangers at a time when both countries are confronted with a host of other pressing demands on their resources.

Although these developments would seem to favor successful negotiations, they are possibly outweighed by developments on the other side of the ledger. The most troublesome items are two emerging technical capabilities: multiple independently targeted reentry vericles (MIRV's) and anti-ballistic-missile (ABM) defenses. It is frequently argued that the development and deployment of either (or particularly both) of these systems by one superpower could lead to a situation in which a decision to attempt a preemptive attack against the other's strategic forces might be considered rational. Indeed, some strategic planners contend that the threat is so great that offsetting actions must be started even before it is clear whether or not the adversary intends to acquire either a MIRV or an ABM capability. It is our belief that such arguments are largely fallacious and are made without real appreciation of the fact that a thermonuclear war between the superpowers, considering the vulnerability of the two societies, is a totally irrational policy choice. No combination of tactics and weapons, offensive and defensive, could provide either power with sufficient assurance that at least a small fraction of its adversary's weapons would not be successfully delivered, thus inflicting in retaliation damage that would be clearly unacceptable.

We are confronted here, however, with a paradox that will haunt the rest of this discussion. Unilateral decisions regarding the development and procurement of strategic-weapons systems, and hence planning for arms-control negotiations, have been and will continue to be greatly influence by a fundamentally simpleminded, although often exceedingly refined, form of military analysis. This approach, sometimes characterized as "worst-case analysis," invariably ascribes to one's adversary not only capabilities that one would not count on for one's own forces but also inputes to him a willingness to take risks that would seem insane if imputed to one's own political leadership. Thus, the U.S. will react to Russian MIRV and ABM programs, and vice versa, whether or not national security demands it. Even if the reaction is totally irrational, it nonetheless becomes as much a part of reality as if the decision were genuinely required to preserve a stable strategic balance. We reluctantly accept the fact that in both the U.S. and the U.S.S.R. policy will be influenced excessively by those military planners and their civilian allies who persist in behaving as if a thermonuclear war could be "won," and in asserting that responsible political leaders on the other side may initiate it on that assumption.

The development of a strategic nuclear capability by lesser powers, particularly China, seems also destined to complicate efforts to curtail the strategic-arms race between the superpowers. Here there are essentially two problems. First, what was said earlier about the unacceptability of nuclear war between the superpowers may be less applicable to conflicts between emerging nuclear powers, because their political leadership will be less knowledgeable about the effects of nuclear warfare and because the nuclear stockpiles involved will, at least initially, not be large enough to ensure the destruction of entire societies Thus, with proliferation, the probability of thermonuclear war is likely to increase, and the superpowers will have a real basis for concern about their becoming involved. Second, a phenomenon not unlike the much discussed action-reaction effects of ABM defenses and MIRV's is likely to come into play. Nuclear proliferation may complicate Russian-American efforts to curtail the strategic-arms race even more than the objective facts warrant, as each superpower overreacts not only to the development of new centers of nuclear power but also to the other's reaction to them.

In fact, the rising threat of nuclear proliferation is already increasing the pressure in the U.S. (and probably in the U.S.S.R.) to develop defenses that might be effective at least for a few years against emergent nuclear powers. The enthusiasts talk about neutralizing completely the effects of such developments; the realists propose measures aimed at reducing the damage that might be inflicted in the unlikely event of a nuclear attack by a smaller power. Unfortunately the capabilities that might prove effective, for instance an ABM system adequate to cope with first-generation Chinese missiles, would probably lead the other superpower to expand or qualitatively improve its strategic forces.

The other major considerations that will have a bearing on the prospects for SALT are domestic. As the failure of American policy in Southeast Asia and its implications become apparent, it seems likely that there will be a sharp reaction in an important segment of American society, with the polarization of attitudes proceeding even further than it has in the past year or two. It will be a difficult time for arms-control negotiations. Indeed, the strategic-arms-limitation talks are likely to be a divisive factor in the same way that the recent debate on the Safeguard ABM system was.

The situation in the U.S.S.R., although less clear, seems no more promising. The controversy between China and the U.S.S.R. might lead one to expect that accommodation and cooperation with the West would be increasingly attractive to the Russian leadership. But that controversy, like the recent Russian difficulties in eastern Europe, is also likely to be a factor in reinforcing the trend toward orthodoxy and conservatism within the U.S.S.R., which is hardly a favorable augury for an arms-control agreement.

Thus for SALT to be successful will require not only that the two governments be sincere in approaching the talks but also that they be prepared to display leadership and steadfastness of purpose in dealing with domestic opposition. On both sides there will have to be a rejection of many of the premises on which military policy has been at least partially based for two decades, for example the importance of "superiority" in strategic strength, the concept of "winning" a thermonuclear war, and the view that one can build meaningful defenses against a thermonuclear attack. The leadership in each nation will be confronted with arguments about the great risks inherent in various kinds of agreement—barely feasible (or at least not provably unfeasible) developments that might be taken advantage of by an adversary. Such arguments will undoubtedly resemble those to which the Kennedy Administration had to respond, when in connection with the nuclear-test-ban treaty it was asserted that the U.S.S.R. might conduct nuclear tests behind the moon or behind the sun to our great disadvantage. If agreement is to be reached, such arguments will have to be judged for what they are: nightmares of people who have focused so narrowly on such problems that they simply lack the perspective for weighing the risks of agreement against the risks implicit in continuing the arms race without any agreed constraints.

In the case of the U.S. the President will have a special problem and a formidable challenge, perhaps the greatest faced by any American leader since President Wilson's effort at the end of World War I to gain acceptance for his views regarding the Treaty of Versailles and the League of Nations. Although most Americans, including probably a majority of those who supported President Nixon in his campaign for the Presidency would support him in his efforts to reach an arms-control agreement, almost certainly the conservative wing of the President's political supporters will counsel him to exercise extreme caution in approaching SALT. In so doing this latter group will give unwarranted weight to the technical and military risks that might be involved in any agreement under consideration. It is equally certain that the military will attempt to influence him with similar arguments, both through its direct channels and through its Congressional allies.

It is inconceivable that any meaningful agreement can be reached if the views of these groups should prevail. They need not, of course. Exercising broader judgment, the President can reject such advice and, as suggested above, draw on very substantial nationwide support for an agreement. Should he choose to do so, he will be in a better position to make his decision politically acceptable than would have been the case for any of his recent predecessors, or for that matter for his opponent in the last election. There is almost certainly a sizable segment of the American body politic that could accept a decision by President Nixon to conclude a very far-reaching agreement as a result of SALT that would not accept a similar position were it offered by, say, a liberal Democratic president.

President Nixon's prospects for such an achievement will be enhanced if the SALT negotiators make substantial progress in the next few months. With momentum established as a result of some limited agreement, and with the prospects of broader agreements before them, both the American and the Russian leadership might well make the judgment that it would be worthwhile

to expend the political capital that might be required to effect broader agreements. If, on the other hand, the talks bog down in procedural discussions or in defense of obviously non-negotiable positions, the political leadership in both the U.S. and the U.S.S.R. will be in a weakened position in dealing with those who are most skeptical and fearful of an agreement. Thus the importance of early limited agreement in connection with SALT cannot be overestimated.

In what areas might such limited agreement be immediately feasible? In order to answer this question we must first examine some of the technical realities of the present strategic balance. We believe that for the foreseeable future technological considerations will continue to make nuclear offensive forces dominant over nuclear defensive forces. In other words, we assert that, as has been the case since the initial deployment of thermonuclear weapons. It will be easier to destroy a technologically advanced society than to defend one. What can and should be done both in structuring strategic forces in the absence of agreement and in agreeing to limitations is critically dependent on whether or not this judgment is correct. There is some dispute about its correctness in the U.S. For example, some assert that with recent developments in ABM technology it may be possible to offset the effects of an incremental expenditure on offensive capabilities by a similar or even lesser expenditure on defenses. Nonetheless, we share the prevailing view that defense of population, at least against a determined adversary with comparable resources, is essentially hopeless.

To facilitate discussion we shall now define two terms that have come to be applied to strategic forces and to their uses. By "damage limitation" we mean the prevention of damage to industry and population in a nulcear war or the reduction of such damage to below the levels that might be expected without the use of certain damage-limiting measures or systems. Antiaircraft or ABM defenses of cities would be categorized as being damage-limiting systems. The use of civil defense measures such as population shelters or evacuation of threatened cities would be regarded as damage-limiting measures. So would be attempts to limit the adversary's ability to inflict damage by preemptively attacking any component of his offensive strategic 2 forces. By "assured destruction" we mean the destruction with high confidence of the adversary's society. Measures to achieve such destruction, or systems that might be used for the purpose, would be characterized as assured-destruction measures or systems. They include the use of offensive missiles and bombers against civilian targets, as distinguished from strictly military targets.

With these definitions we recast our earlier statement about the relative roles of offensive and defensive strategic weapons to assert: *In the superpower confrontation any attempt to build significant damage-limiting capabilities can be offset by changes in the adversary's assured-destruction capabilities.* To take a specific example, attempt to limit and reduce the damage to American society by deploying ABM defenses (including appropriate civil defense measures) can be offset by qualitative and quantitative improvements in the adversary's offensive capabilities at a cost to him certainly no greater than the cost of the damage-limiting measures taken. What is more, we believe that by and large such responses will occur, in spite of the fact that realistic security considerations do not necessarily require a response. Even a very large-scale and technically sophisticated American ABM system could not be counted on to prevent totally unacceptable destruction in the U.S. by a Russian attack—even by an attack launched in retaliation after the Russian forces had already been preemptively struck. Such an American ABM system would in no way make our strategic forces more useful as political instruments, and hence no Russian response would really be required to preserve the effectiveness of the U.S.S.R.'s assured-destruction forces. Because of fear, conservatism and uncertainty, however, it seems a foregone conclusion that a fully compensating buildup in Russian strength would follow.

There may, of course, be circumstances in which damage-limiting efforts will be effective. Each of the superpowers would temporarily be able to maintain a strategic posture that might greatly limit the damage to it in a conflict with a lesser nuclear power such as China. This will be particularly true if a preemptive, or "counterforce," attack against the lesser power's strategic nuclear forces is not excluded.

Moreover, if a nuclear exchange between the two superpowers should ever occur, parts of the strategic forces in being at that time probably would be used for active defense or in attacks on the strategic forces of the opponent. Thus they would be used in a damage-limiting role. Their effect would not be great, however, simply because the overkill capacity of each superpower's assured-destruction capabilities is so enormous. Both superpowers almost certainly now have the ability to destroy at least half of the adversary's population and three-quarters of his industrial capacity in spite of any damage-limiting measures that might be undertaken by the other. This situation has come about as a result of two factors. A strategic doctrine has developed, at least in the U.S., that has called for the maintenance of a very great assured-destruction capability under all conceivable circumstances. The doctrine has been one that could be easily implemented simply because thermonuclear weapons and strategic delivery systems are cheap in terms of the damage they can inflict on civilian targets.

This tremendous buildup of offensive forces means that the effectiveness of the last weapons used in destroying another society (in fact, the effectiveness of something like the last 90 percent of all weapons used) would be relatively small, since those already expended would have left so little to destroy. The amount of life and property saved by damage-limiting efforts would be dwarfed by the amount destroyed by weapons whose delivery could not be prevented.

We believe this situation will not change significantly in the near future. Any realistic approach to limitations on strategic armaments in the near future must almost certainly be in the context of the maintenance of very great assured-destruction capabilities. Agreements that would embody quite different strategic balances might result if any of several changes were to occur: technological breakthroughs that would lead to the dominance of the defense over the offense, the development of a high degree of trust between the U.S. and the U.S.S.R., the willingness of both nations to accept intrusive inspection, or an increased appreciation that strategic forces designed to inflict much lower damage levels would also serve effectively as a deterrent. We do not see any of these changes as short-term possibilities.

Because the assured-destruction, or damage-inflicting, capabilities of the two superpowers are so large and so varied, the present strategic balance is remarkably insensitive to either qualitative or quantitative changes in strategic forces. Even major changes in force levels, including the neutralization of entire systems (for example all bomber aircraft), would not be likely to have major effects on the damage levels one would expect each of the superpowers to suffer in a nuclear war. Worldwide radioactive fallout might be reduced significantly, but as far as the superpowers are concerned, cross-targeting with other systems would ensure that all major population and industrial centers would continue to be in jeopardy. When considered in the framework of the virtually certain collapse of an entire society, changes of a few percent in fatalities, which is all one might expect with foreseeable changes in strategic-force levels, are not likely to affect political decisions. Although it may have been correct some years ago to characterize the balance of terror as a "delicate" one, it is not so today, nor is it likely to be so in the foreseeable future. It will not be easily upset. Opponents of the Safeguard ABM decision have argued with some effect (although obviously not with complete success) that the U.S. deterrent was most unlikely to be in jeopardy at any time in the near future simply because of its diversity and because of the improbability of the U.S.S.R.'s being able to develop damage-limiting capabilities and tactics that would effectively neutralize all the deterrent's components.

We have argued so far that one general premise on whose acceptances a successful SALT outcome depends is that the offense will continue to dominate the defense for the foreseeable future. A second technical generalization that may be equally important is: *The uncertainty about the effectiveness of damage-limiting capabilities will be considerably greater than about assured-destruction capabilities.* This statement can be supported by a number of arguments. First, the characteristics of the target against which assured-destruction capabilities would be used (population and industry) will be known with some precision and will change only slowly with time. On the other hand, the characteristics of the systems (and the environment) against which damage-limiting capabilities must operate (adversary's warheads, delivery vehicles and launch facilities) will be generally less well known and more susceptible to rapid variation, both in quality and in number, at the option of the adversary. Second, some of the damage-limiting systems (such as ABM defenses, antiaircraft defenses and under some circumstances antisubmarine warfare, or ASW, systems) must function at the time chosen by the adversary for his offensive, whereas for assured destruction there is a much bigger "time window" during which performance will be acceptable. The effectiveness of submarine-launched missiles in destroying cities will not depend much on the instant of launch. Third, damage limitation generally will involve the use of more intimately completed systems (for example the radars, computers and missiles of an ABM system), inviting the possibility of "catastrophic" technical failures. All these factors tend to make the advance estimates of the effectiveness of assured destruction systems far more reliable than estimates of damage-limiting systems.

The inherent uncertainty in effectiveness that characterizes the performance of damage-limiting systems has been of profound importance in the Russian-American strategic-arms race. Each side has reacted to the development, or even the possible development, by the other of damage-limiting capabilities by greatly strengthening its offensive forces—to the point of overreaction because of the conservative assumption that the adversary's damage-limiting forces will be far more effective than they are in fact likely to be. For example, the uncertainty about the possible deployment and effectiveness of a large-scale Russian ABM defense has provided the primary rationale for the U.S. decision to introduce MIRV's into both land-based and sea-based missile forces, the net effect being a severalfold increase in the number of warheads these forces will be able to deliver. Barring unforeseeable technical developments, we must expect that the great uncertainty that characterizes the performance of damage-limiting systems will continue, and we must base our approach to SALT on that assumption.

If one accepts the judgments we have made about the relative effectiveness of defense and offense, about the insensitivity of assured-destruction capability to changes in force levels and about the uncertainty that characterizes damage-limiting efforts, one is led to some possibly useful generalizations about the forthcoming substantive phase of SALT.

First, the level of damage that each of the superpowers can inflict on the other is not likely to be altered significantly in the near future. Measures that might possibly be agreed on could change the level of damage that each side could inflict on the other by at most a few percent. Therefore the problem of the reduction in damage in the event of war should probably be given low priority as a short-term negotiation objective. More realistic objectives of the negotiations could be to lower the level of tension between the superpowers and so reduce the probability of nuclear war.

Second, apart from possible worldwide fallout effects and domestic political considerations, neither side need be much concerned about the possibility of modest, or even substantial, expansions in the strategic offensive forces of the other side, nor about precise limitations on those forces, as long as the other side does not have a damage-limiting capability. Because of the large overkill capacities discussed above, even large increases in strategic forces will have little military effect.

Third, measures to constrain the introduction or improvement of damage-limiting systems, particularly those whose performance is expected to be highly uncertain, merit high priority. The introduction or improvement of damage-limiting capabilities by either side is likely to result, as we have noted, in an excessive reaction by the other. Because of the insensitivity of the strategic balance to modest changes in force levels, a move toward the development of a narrowly circumscribed damage-limiting capability by one side could in principle be tolerated without undue concern by the other. Such a move might be perceived, however, as an indicator of the adversary's intent to develop an across-the-board damage-limiting capability. (Witness Secretary of Defense Laird's public reaction to a possible Soviet SS–9 MIRV capability.) This, coupled with the fact that a development of damage-limiting capabilities can be offset rather quickly and cheaply, virtually ensures a reaction. The overall effect of such an action-reaction cycle on the ability of each side to inflict damage on the other is likely to be small, but the expenditures of both sides on strategic armaments are likely to be much increased, as will be the tensions between them.

Fourth, owing to the large uncertainty that characterizes the effectiveness of damage-limiting systems and tactics, the two superpowers will face a very troublesome dilemma if, on the one hand, they try to develop effective damage-limiting capabilities with respect to emerging nuclear powers and, on the other, they attempt to limit the strategic-arms race between themselves. With a few exceptions, such as a deployment of Russian intermediate-range ballistic missiles (IRBM's) in Siberia, the measures that could have long-term effectiveness against a third country's nuclear strength would appear to the other superpower to foreshadow an erosion in its own assured-destruction, or deterrent, capability. This creates an authentic problem of conflicting desires. We would hope that in efforts to deal with this problem the usefulness of damage-limiting capabilities with respect to the lesser nuclear powers would not be overrated. Although such damage-limiting capabilities probably would be effective in reducing damage in the event that a lesser power attempted a nuclear attack against one of the superpowers, we question whether either superpower would ever be willing to take action against a lesser power on the assumption that damage-limiting efforts would be 100 percent effective, that is, on the assumption that "damage denial" with respect to a lesser power could be achieved. Considering one's inability to have high confidence in the effectiveness of damage-limiting measures, and considering the effects of even a single thermonuclear weapon on a large American or Russian city, we doubt that efforts to develop damage-limiting capabilities with respect to the smaller powers would materially increase the options the superpowers would have available for dealing with these powers.

With this background in mind one would be in a good position to evaluate the relative desirability of limiting various strategic systems if each were unambiguously useful only for damage limitation or assured destruction. Unfortunately many existing or prospective strategic systems may play several roles, a factor that greatly complicates the problem.

Of all the ambiguous developments now under way none is more troublesome than MIRV. The development of a MIRV capability may facilitate the maintenance of an assured-destruction capability by providing high assurance that ABM defenses of industry and population can be penetrated. Given sufficient accuracy, reliability and yield, however, MIRV's may also make it possible for a small number of missiles to destroy a larger number of fixed offensive facilities, even if they are "hardened" against the effects of nuclear weapons.

Although the effectiveness of a given missile force in a damage-limiting preemptive attack against an adversary's intercontinental ballistic missile (ICBM) force might be much increased through the use of such MIRV's, is does not necessarily follow that the deployment of the MIRV's would make such a strike more likely. As we have noted in the context of a confrontation between superpowers such an attack would surely be irrational, no matter how severe the crisis, simply because no responsible political leader could ever have high confidence in the effectiveness of the attack and in the effectiveness of the other damage-limiting measures that would be required to keep the damage from a retaliatory response down to acceptable levels. Although MIRV's are not likely to have much actual effect on the willingness or ability of nations to use strategic nuclear forces to attain political objectives, we must accept the fact that arms policies will, to a substantial degree, be based on the assumption that they might be so used.

Beyond that, there is the problem of the impact of MIRV's on events if a crisis should ever escalate to the point where limited numbers of nuclear weapons will have been employed by the superpowers against each other. At some point in the process of escalation it is likely that one or both powers would initiate counterforce attacks against the other's remaining offensive forces. Such an attack would probably come earlier if one or both sides had counterforce-effective MIRV's than if neither did.

Because of what we regard as unwarranted, but nevertheless real, concern about MIRV's being used in a preemptive counterforce attack, and because of more legitimate concern that once a thermonuclear exchange has begun MIRV's may make further escalation more likely, MIRV development may well have a critical impact on the outcome of SALT, and for that matter on the force levels of the two sides independent of the talks. It is generally, although not universally, accepted that the tests of MIRV's have not yet gone far enough for one to have confidence that their reliability and accuracy would be sufficient to assure their effectiveness in a counterforce role against hardened ICBM's. On the other hand, the MIRV principle is now demonstrated, and the expectation is common that with perhaps the second generation of such systems, if not with the first, MIRV's will be effective as counterforce weapons.

If no constraints are put on the development of MIRV's, it is likely that each superpower will go ahead with such development and (in the case of the U.S. at least) an early deployment program. This will be regarded as particularly urgent if ABM deployment continues, or even if there continues to be evidence of significant research and development that might later lead to ABM deployment. Assuming that MIRV programs do continue, each superpower will perceive in the other's deployment a possible threat to its fixed-base ICBM's and will react to counter that threat. The U.S. has already begun to do so in deciding to go ahead with an active ABM defense of Minuteman sites; the Safeguard program. Acceleration in the U.S.S.R.'s missile-launching submarine program and a possible mobile-ICBM program are plausible reactions to the U.S. MIRV programs.

We anticipate that in the absence of agreements the technological race will go much further. It seems likely that the arguments to "do something" about the vulnerability of fixed ICBM's will increase in tempo and will carry the day in both the U.S. and the U.S.S.R. Superhardening alone will be perceived to be a losing game, considering how easily any moves in that direction could be offset by further improvements in missile accuracy. A defense of the Safeguard type will probably also be judged to be a losing proposition. A very heavy defense with components specifically optimized for the defense of hardened ICBM's might be one response. There is likely to be even further reliance on mobile systems; missile-launching submarines, new strategic bombers and, in the case of the U.S.S.R., probably mobile ICBM's. It is conceivable that fixed ICBM's may be given up altogether, although the arguments we have advanced against the acceptability of attacking them preemptively would still be valid.

It is also likely in the absence of agreements that one or the other of the superpowers will deploy ABM systems that will provide more extensive and effective defense of population and industry than either the present Russian defenses around Moscow or the projected Phase II of Safeguard. Defense against a Chinese missile capability may be the rationale, but it is to be expected that the other superpower will respond to any such deployment both by emulation and by increasing its strategic offensive capabilities.

Whereas the strategic-forces budget of the U.S. now amounts to about $9 billion per year (excluding some rather large items for nuclear warheads, research and development, command and control, communications and intelligence actvities), outlays for strategic systems could well double by the mid-1970's. Continuing large expenditures on strategic systems are probably also to be expected in the U.S.S.R.

As we have stated, there appears to be no basis for expecting SALT to lead to significant reductions in the assured-destruction capabilities of the superpowers. Therefore other objectives must command our attention. The most important objective is of course to reduce the probability that a thermonuclear exchange will ever take place.

The major factors affecting that probability are likely not to be simply technical but to be largely political. They involve the degree of tension that will exist between the superpowers based on international political considerations, on domestic politics in each country and in an important sense on the strategic-arms race itself. We believe that in contrast to some previous eras, when the motivations for continuing arms races were

largely political and economic conflicts, the strategic-arms race now has a life of its own. For instance, the strategic-weapons programs of the other than on the levels of tension between the two countries. If this race can be attenuated, it would have a number of effects that would result in a diminution of tensions and hence in a reduction in the risk of war. That is perhaps the major reason for the urgency of a serious SALT effort. Keeping budgets for strategic forces at low levels is desirable in its own right in that significant resources, both financial and intellectual, will be freed for more constructive purposes. More important, in the U.S. lower military budgets will diminish the role of what President Eisenhower termed the military-industrial complex: those who have a propensity for, and in some cases obviously a vested interest in, the acquisition of more armaments and in exciting and maintaining an often unwarranted attitude of alarm and suspicion regarding an adversary's intentions. Lower military budgets in the U.S.S.R. would almost certainly have a similar desirable effect.

A poorly designed agreement could of course prove to be a vehicle for increasing suspicion and tension. Venturing into the realm of unprovable value judgments, however, we assert that it is not beyond the wit of man to design agreements that would result in there being less objective cause for concern than if the strategic-arms race continues unabated. In general, it would seem that any understanding that slowed the rate of development and change of strategic systems would have an effect in the right direction.

Beyond affecting the probability of a nuclear exchange's beginning, one would like to see strategic forces structured so that there would be at least some possibility that, if an exchange started, it would not have to run its course. A necessary but of course not sufficient condition for this is that there be no particular advantage to be gained from precipitate launch of more nuclear weapons after a few have been dispatched. By this criterion vulnerable ICBM's would seem to be the quintessence of undesirability. If both sides have them, each will recognize that if they are withheld, they may be destroyed.

Whether or not MIRV development and deployment will be controlled may not be a question for the SALT negotiators to consider, because of the inability of one side or the other to decide in a timely fashion the position it wishes to take on the issue. The rate of MIRV development is so rapid that the question may thus be settled before the substantive phase of the talks is well advanced. If such development is still in doubt, however, either because the talks get to such substantive issues very quickly or because of a moratorium on MIRV testing, MIRV limitation should be an issue of the highest priority.

The arguments for preventing deployment of MIRV's advanced enough to be effective counterforce weapons are persuasive. They have been made at great length elsewhere (for example in public hearings before committees of the Senate and the House of Representatives). We simply summarize here by pointing out that if MIRV deployment is prevented, it may be possible to freeze the strategic balance at something approximating its present level. Most of the incentive to defend hardened ICBM's or to replace them with mobile systems will have been reduced, if not eliminated.

The arguments for continuing MIRV testing and then deployment because MIRV's may someday be required to penetrate an adversary's ABM defenses are not convincing. There is little doubt that currently designed U.S. MIRV's could be deployed on a time scale short compared with that required for deployment of any significant Russian ABM defenses. Accordingly there is no need for any MIRV deployment pending firm evidence that the U.S.S.R. is beginning the construction of such defenses. And there is no need for further research and development tests unless a counterforce capability is intended. For similar reasons the U.S.S.R. should also abstain from further multiple-warhead tests and deployment, which it can do at no great risk to its security.

Essential to the survival of an agreement not to test MIRV's would be a prohibition of large-scale ABM deployment. If ABM systems were deployed, the pressures to deploy MIRV's and to test them frequently in order to maintain confidence in their reliability would be overwhelming. Furthermore, there would undoubtedly be great domestic pressures to develop and test more sophisticated penetration aids. Under such circumstances neither side could have any confidence that the other was not developing counterforce-effective MIRV's. An ABM freeze would be a logically required companion measure to any agreement prohibiting MIRV's.

Assuming that ABM deployment and MIRV testing are both frozen, the other important component of a strategic-arms-limitation agreement would be an understanding to maintain something like parity in ICBM-force levels by freezing these levels or preferably reducing them, and if necessary permitting replacement of fixed-base ICBM's by mobile systems whose levels could be verified by unilateral means. In the absence of such a measure there would be the possibility of one side's gaining such a superiority in missile strength that, with improved accuracies and even without MIRV's, would enable it to knock out a large fraction of its adversary's forces by delivering a counterforce attack against them. The reasons for concern about such a possibility have been identified above: the probability of arms-race escalation and the reduction in whatever small chance there may be of a nuclear exchange's being terminated short of running its suicidal course.

If the development of MIRV's that are perceived by the adversary to have counterforce capability cannot be prevented (and we are pessimatic about preventing it), the relative importance of some of the measures discussed above will be changed materially. A prohibition on large-scale ABM deployment would still be desirable, but it would be less important; it would not in this case prevent the MIRV genie from escaping the bottle. Moreover, continuing development and deployment of MIRV's would make a large-scale ABM defense unattractive simply on cost-effectiveness grounds.

A provision permitting the replacement of fixed ICBM's by mobile systems would seem virtually unavoidable because of concern about the vulnerability of the ICBM's to counterforce attack. Indeed, in the interest of stabilizing arms at low levels, and to minimize concern about damage-limiting strikes, agreements could probably include measures that would enhance the viability of mobile systems. An area of agreement that would seem to merit most serious consideration would be prohibition on certain improvements in antisubmarine-warfare capabilities. Actually the possibility breakthroughs in antisubmarine warfare is extremely remote. It is probable that through noise reduction, extension of missile range and other techniques the gap between ASW capability and the capability of the missile-launching submarine to escape detection and destruction will widen rather than narrow. Yet it seems likely from recent debate in the U.S. that the present American leadership, and presumably the leadership of the U.S.S.R. as well, would be reluctant to rely solely on a missile-launching submarine force for deterrence, given the possibilty of further ASW development by its adversary. Constraints on ASW such as a limitation on the number of hunter-killer submarines would increase the acceptability to both sides of relying more heavily on missile-launching submarines for deterrence.

Similar arguments might be made for limitations on or curtailment of air defense. Such moves would seem less realistic on three counts. First, compliance with limitations on air-defense capabilities could probably not be verified with unilateral procedures as well as could limitations on ASW systems, or for that matter on ABM systems. Intelligence on short-range antiaircraft systems is likely to be poorer than on hunter-killer submarines, specialized ASW aircraft or large-sized components of ABM systems. Second, the overlap between tactical and strategic antiaircraft capabilities is considerable, and neither superpower is likely to be willing to greatly reduce tactical antiaircraft capabilities in the context of SALT. ASW capabilities (except for destroyers) would, on the other hand, have little role other than attack against an adversary's missile-launching submarines. This is far truer now than it was a few years ago because the realization is more widespread that a major war involving large antishipping campaigns is extremely unlikely. Third, neither the U.S. nor the U.S.S.R. is likely to have enough confidence in bombers to rely much on them in a missile age even if air defenses are constrained, whereas both superpowers obviously are prepared to rely heavily on submarine-launched missiles.

Finally, if counterforce-effective MIRV's were a reality, and if as a consequence both sides were to place reliance very largely on mobile systems, additional offensive weapons on one side could not be used effectively to limit the other side's ability to retaliate. Considering this fact and the fact that since strategic-force levels are already at least an order of magnitude larger than is rationally required for deterrence, there would be little incentive for either side to acquire additional offensive capabilities. Also in this situation it would hardly matter if either side were to introduce new assured-destruction systems such as, for example, small mobile ICBM's that could not be easily counted.

Even this incomplete discussion shows that the strategic balance between the superpowers is likely to be very different depending on whether or not MIRV development and ABM deployment are allowed to continue. Both possibilities will have a serious impact on future strategic postures, but with respect to ABM deployment nothing much is going to happen overnight. Dealing with the issue of MIRV development, although perhaps no more important, is far more urgent. That is why it is the watershed issue for SALT. If counterforce-effective MIRV's (and large-scale ABM deployment) can be stopped, the present strategic balance of force levels may endure for some time. If such MIRV's are deployed, the balance will unavoidably change in qualitative ways. How large an escalation in the arms race will result will depend on whether agreement to constrain or cut back other strategic systems could still be negotiated.

We have attempted here to present an objective analysis of the prospects for various agreements to limit strategic armaments. In so doing we are aware that many of our readers will be dismayed that our discussion has been in the context of each superpower's preserving the capability of destroying the other. This has been so not because we ourselves favor the continuing retention of huge stocks of thermonuclear weapons but because we have tried to be realistic. The distrust that exists between the U.S. and the U.S.S.R. will induce both to preserve the capability of destroying the other; such a capability, as we have noted, is unfortunately easier to attain than an effective defense of one's own society, whether or not there are agreements on strategic armaments. Both superpowers will

preserve this capability because they see it as the only effective deterrent to the war that neither wants or could win.

The most that can reasonably be expected of the forthcoming talks is a move toward a strategic balance where (1) uncertainties about the adversary are reduced and with them some of the tensions; (2) each side can inflict a level of damage on the other sufficient to destroy its society but neither feels a need to maintain a great overkill capability as a hedge against possible damage-limiting efforts by the other; (3) there will be an improved chance that a thermonuclear exchange, should one begin, would be terminated short of running its course, and (4) the levels of expenditure on strategic armaments are lower, so that larger fractions of the resources available to each society can be used for more constructive endeavors.

We believe that the realization of these objectives would be a tremendous accomplishment and one that is possible without the solution of the deep-seated political problems of the Russian-American confrontation. To go further will require dealing with those problems. We do not believe, however, that the superpowers can afford to delay attacking the strategic-arms race while trying to solve political differences. Regrettably the situation with respect to technical developments (MIRV's, ABM defenses and nuclear proliferation), and quite possibly with respect to domestic politics as well, will probably make strategic-arms-limitation negotiations less likely to be successful several years hence than now. Time is of the essence, and we write with a feeling of urgency. Although our tone is pessimistic, we do not despair. We are convinced that latent public support for an agreement could be exploited by effective political leadership on both sides to reverse the trends we have lived with for two decades.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The Senate resumed the consideration of the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant simulant, and hallucinogenic drug laws, and for other purposes.

Mr. ERVIN. Mr. President, I rise to support the amendment offered by the distinguished Senator from Indiana (Mr. BAYH), the distinguished Senator from North Dakota (Mr. BURDICK), the distinguished Senator from Kentucky (Mr. COOK), the distinguished Senator from Mississippi (Mr. EASTLAND), the distinguished Senator from Hawaii (Mr. FONG), the distinguished Senator from Michigan (Mr. HART), the distinguished Senator from Massachusetts (Mr. KENNEDY), the distinguished Senator from Maryland (Mr. MATHIAS), and myself to strike from the bill a provision which is totally inconsistent with a free society and which would be, if enacted into law, giant step in the conversion of our free society into a police state.

This provision is subsection b of section 702 of the pending bill. It appears on pages 72 and 73 and reads as follows:

> Any officer authorized to execute a search warrant relating to offenses involving controlled dangerous substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States Magistrate issuing the warrant is satisfied that there is probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice: *Provided*, That any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Mr. President, when we pray the Lord's Prayer, we make this petition to the Almighty, "Lead us not into temptation." I think that this petition impliedly commands us not to lead others into temptation. And yet we have a Senate bill that will lead the law enforcement officers who are engaged in the enforcement of narcotics law, marihuana laws, and other dangerous substance laws to make false affidavits in order to obtain search warrants which would enable them to enter the private homes of American citizens like thieves in the night without notice and without warning.

If it were not such a tragic proposal, it would indeed be comical, because it says among other things that the officer is to be authorized to conceal from the occupants of the house his presence there, his purpose there, and the fact that he has a search warrant at all.

How in heaven's name can any officer make an affidavit which would justify a U.S. magistrate issuing a no-knock warrant that he is satisfied there is probable cause to proceed and if notice is given that danger to the life or limb of the officer or another may result?

Is that not an absurdity, that an officer while miles away with the magistrate can obtain a warrant because his life is in danger, when the occupant in the house does not even know he is there, does not even know he has a search warrant, and does not even know he is about to enter the house.

That is an absurdity.

There is another provision in section 702(b) that allows entry without notice if the magistrate is satisfied that there is probable cause to believe that if notice is given, the property they are seeking may be easily and quickly destroyed.

In heaven's name, why would a man having in his house some property, some narcotics, or some marihuana cigarettes undertake to destroy that property if he does not know an officer is coming there to search his premises?

The more I read this provision, the more I become convinced that archibald the cockroach about whom Don Marquis wrote, sized up people correctly.

This cockroach lived in an inhabited house, and when the occupants of the house retired for the night, he would go into the study and write out his observations on people by getting on top of the typewriter and diving on the keys.

On one occasion, he wrote the following:

> Man is past comprehending. The head of this house came home this afternoon. He had seen a ravenous wolf seize a little lamb. He killed the wolf, and carried the little lamb tenderly home in his bosom. When he arrived home, he slew the little lamb and cooked it and ate it. Having had a good supper, he sat down to meditate on the universe. And he got to thinking about the cruelty of wolves and lambs, and he got to weeping.

We have here a provision saying that the owners of a house would have no knowledge of the presence of the officer, and yet, the officer who is miles away at the time can secure a warrant to break in without notice if he swears to a magistrate that he is afraid that if he, the officer whose presence will be concealed, knocks, the occupant will destroy the evidence. That is about on a par with what archibald the cockroach wrote on the occasion I mentioned.

One of the strangest things is why the representatives of a free society are always trying to convert that free society by legislation into a police state. That is precisely what is being attempted on this occasion. My associates and I are attempting to save one of the basic freedoms of the American people, the right not to be disturbed in their homes by an unreasonable search and an unreasonable seizure.

One of the latest books on constitutional law is entitled "Commentary on the Constitution of the United States," written by Bernard Schwartz. He has something to say with respect to this right in volume I, dealing with the sanctity and privacy of the person. I read from page 179:

> At the very core of the Fourth Amendment, the highest Court tells us, "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."[69]
>
> The Constitution, in thus safeguarding the sanctity of the home from unlawful governmental intrusion, ensures to the person a privileged sanctuary within which he can live his own life, sheltered from public supervision and scrutiny—a place where he can enjoy what William Faulkner has called that "last vestige of privacy without which man cannot be an individual."[70] So long as such oaises of privacy exist, there is still room for exercise of that individuality that distinguishes not only our species, but each of us from the other.[71] "A man can still control a small part of his environment, his house; he can retreat thence from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution.

This right of privacy goes back a long way in our law. We are told that it is necessary for us to emasculate this right of privacy and that it is necessary for us to thwart the purpose of the fourth amendment because narcotics and marihuana are easily destroyed.

I have always found that my heart is attuned to the eloquence of one of the greatest statesmen of England, William Pitt. I think of what he had to say when I hear the argument that it is necessary for us to pervert and prostitute the right of a man to occupy his home as his castle in order to enforce laws against the marihuana or dangerous substances or narcotics.

In a speech in the House of Commons on November 18, 1783, William Pitt had this to say in respect to an argument that something of this kind should be done because it was necessary. Here is what he said:

> Necessity is the plea for every infringement of human liberty. It is the argument of tyrants. It is the creed of slaves.

One of the dangerous things about a proposal of this nature arise out of the fact that it is made by sincere men. It is proposed by men who want to enforce the law, and they get so zealous in their efforts to enforce the law that they would emulate the example set by Samson in his blindness and destroy the pillars upon which the temple of justice itself rests.

This right for which I fight and for which my cosponsors fight in proposing this amendment goes back a long way. I wish to make some references to a decision of the Supreme Court in *Miller* v. *United States*, reported in 357 U.S. 301. While this was not a search case, it was an arrest case and it discusses the law on this subject after setting forth that both the Government and the petitioner agreed that the validity of the entry to execute the arrest warrant must be tested by criteria identical with those embodied in 18 U.S. Code 3109, which deals with entry and executing a search warrant.

I shall read the statute because it is the statute which has governed the manner in which search warrants are to be executed in all cases since virtually the creation of our Republic. It states:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

This bill would make an exception to that rule for marihuana cases, narcotic cases, and dangerous substance cases. It would dispense, under certain circumstances, with the requirement that the officer give notice of his presence, and of his authority, and of his purpose.

One of the latest books on the subject of constitutional law is entitled "The American Constitution," written by Professor C. Herman Pritchett, of the University of Chicago. The book lays down this fundamental rule on page 106:

> Whether armed with a warrant or not, officers cannot break down the door to effect a lawful arrest and the seizure of incriminating evidence unless they are refused admission after giving clear notice of their authority and purpose.

As I stated Saturday, subsection (b) of section 702 of this bill, in its ultimate analysis, undertakes to make it lawful for law enforcement officers in these particular cases to enter the private homes of American citizens in exactly the same way in which burglars enter those homes.

If we are to have law enforcement in this country, we must have respect for our laws and we must have respect for the manner in which those charged with enforcing those laws act. It would do nothing to promote the cause of law enforcement in the narcotics field or the marihuana field or the field of dangerous substances for the Congress of the United States to authorize law enforcement officers to emulate and follow the example set by burglars who break into people's houses without notice and without informing them of their purpose.

Under 702(b), a search warrant would have to set out the grounds for the belief that the marihuana or the narcotics or the dangerous substances may be destroyed if they knock on the door and let the occupant of the building ascertain their presence and their purpose. Those warrants are obtained from U.S. magistrates, and the Constitution itself requires that they be supported by an oath or affirmation showing probable cause for their necessity.

As the fourth amendment declares,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Under that provision, it is necessary for somebody to make an affirmation, setting out facts that show probable cause to believe that if the officer knocks and announces to the occupants of the house his presence, his purpose, and his authority, the narcotics or marihuana or other dangerous substances might be destroyed.

The officer gets that search warrant from a U.S. magistrate who is, in many cases, long distances from the house to be searched. How in heaven's name can an officer who goes to a U.S. magistrate 1 mile, 10 miles, or 50 miles from the location of the house to be searched know that, after he gets the search warrant and goes to that house, if he knocks and informs the occupants of the house of his presence and his purpose and his authority, that the occupants of the house will destroy the material designated in the act?

That requires an officer to have a prophetic power. It tempts him to make a false affidavit. Law enforcement officers are fallible men. If the Department of Justice in this case yields to the temptation that we destroy one of the landmarks of the law which makes us a free society instead of a police state, then we can reasonably assume that some officers of the law will yield to the temptation to make an affidavit setting forth facts which they could not possibly know to be true unless they have power surpassing that of the prophets of old.

Another thing: This would leave in existence a statute, section 3109 of title 18, governing this matter of announcement in all areas of our national life with respect to every officer wishing to make a search of a house, except those who could get, form an obliging U.S. commissioner, a warrant to search for marihuana or narcotics or dangerous substances. If he has that kind of warrant, he does not have to honor the purpose for which the fourth amendment was actually written—that is, the right to protect the people against unreasonable searches and seizures. He may be looking for something, or may be just running a dragnet, but he can get a warrant under this proposed statute by making an affidavit in which he engages in a prophecy. Regardless of what he is searching for, he can go there and conceal the fact that he has a warrant, conceal his person, conceal his authority, and break into a man's house.

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

Mr. ERVIN. I yield.

Mr. STEVENS. As a former U.S. attorney, I want to commend the Senator from North Carolina for the amendment he has offered and for the explanation he has placed in the RECORD in support of the position which his amendment recommends.

It seems to me the provision the Senator has pointed out is a most pernicious attempt to do away with some of the most basic individual rights that Americans have, in a rush to try to stop the flood of narcotics. My State has a flood of narcotics right now. But I am sure we would rue the day we did this. I know the people of Alaska, as well as the rest of the American people, would realize that to emasculate the Constitution in order to attempt to meet the narcotics problem would be wrong.

In my humble opinion as a lawyer, the section is unconstitutional, anyway, but I appreciate the opportunity to join the Senator in voting for the amendment, and I want to commend him for proposing the ending amendment.

Mr. ERVIN. I thank the Senator for his observations, which are exceedingly wise. Of course, the argument for this provision is made that without it some people will go unwhipped of justice for violating the marihuana or narcotics or dangerous substances laws; but Mr. Justice Jackson answered that argument, it seems to me in a superb manner, when he said:

> We meet in this case, as in many, the appeal to necessity. It is said that if such arrests and searches cannot be made, law enforcement will be more difficult and uncertain. But the forefathers, after consulting the lessons of history, designed our Constitution to place obstacles in the way of a too permeating police surveillance which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment.

The right which this amendment seeks to preserve and protect is of great antiquity.

In the Miller case, to which I referred earlier, Justice Brennan had this to say, and I quote from page 1337:

> From earliest days, the common law drastically limited the authority of law officers to break the door of a house *[357 US 307] *to effect an arrest. Such action invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle. As early as the 13th Year-book of Edward IV (1461–1483), at folio 9, there is a recorded holding that it was unlawful for the sheriff to break the doors of a man's house to arrest him in a civil suit in debt or trespass, for the arrest was then only for the private interest of a party. Remarks attributed to William Pitt, Earl of Chatham, on the occasion of debate in Parliament on the searches incident to the enforcement of an excise on cider, eloquently expressed the principle:
>
> "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!"

Yet this bill proposes to authorize an officer of the law to cross the threshold of any home in the United States, if he is willing to make an affidavit that, by reason of his prophetic power, he can foresee that if he knocks at the door and acquaints the occupants of the house with his presence, purpose, and authority, they may dispose of some kind of a narcotic substance, some marihuana substance, or some other dangerous substance.

Justice Brennan discussed further the circumstances governing the breaking of doors. He says:

> Whatever the circumstances under which breaking a door to arrest for felony might be lawful however, the breaking was unlawful where the officer failed first to state his authority and purpose for demanding admission. The requirement was pronounced in 1603 in Semayne's Case, 5 Coke 91, 11 ERC 629, 77 Eng Reprint 194: "In all cases where the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he can not enter. *But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors . . .*" (Emphasis supplied.)

With all due respect to everyone concerned, I would say that it is astounding to have the Department of Justice, in a country which is supposed to be a free society, advocate, in the Year of our Lord 1967, that a rule which had reached full fruition in England as early as 1603 ought to be nullified, and that a man's home should no longer be regarded his his castle.

I now direct the attention of the Senate to the opinion of Justice Brennan in the case of Ker against the State of California, reported in 374 U.S. at page 23, which is the fullest discussion of this subject.

This was a case in which the court split 4 to 1 to 4, and there is really no great discrepancy in what they had to say about the law, but the interpretation placed upon the facts by Justice Clark, in the opinion in which four of the Justices concurred, caused those four to invoke rules of law which had no application to the facts existing.

Justice Clark took the position that the search in this case was made by California officers pursuant to a lawful arrest, which I submit the facts are far from showing. He intimates that the occupants of the house were expecting officers, which was an absurdity, because the facts show that the husband was reading his newspaper, and that they had left some marihuana in plain view, and were not attempting to destroy it or anything else.

Mr. Justice Brennan points out that there are only three exceptions to the rule that an officer, in executing a search warrant, must give notice of his presence, his purpose, and his authority. All of the judges, or at least eight of them, recognized that the due process clause of the 14th amendment has made the fourth amendment applicable to the States. Justice Harlan disagreed with that view, because he does not entertain the incorporation doctrine. He said they would be governed only by the due process clause of the 14th amendment.

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

Mr. ERVIN. I yield.

Mr. DODD. I hesitate to interrupt the distinguished Senator, but I think we can both agree that the Ker case says that the no-knock situation which was involved in that case was constitutional. I understand the Senator is arguing the facts, but the decision of the Supreme Court was that that was a constitutional entrance.

Mr. ERVIN. Oh, yes, but they were to reach a majority decision to this effect only because Justice Harlan said that the fourth amendment did not apply to the States. Now, Justice Brennan said that, as applied to that case, the entrance was unconstitutional and was a violation of the fourth amendment. He says this——

Mr. DODD. Was that the dissenting view or the majority view?

Mr. ERVIN. It is hard to tell which is the majority.

Mr. DODD. That is right. But it certainly was not the opinion of the Court.

Mr. ERVIN. No, it is not the opinion of the Court. There were four Judges, a minority, who concurred in the judgment of the Court.

Mr. DODD. I know. I know what it is.

Mr. ERVIN. Those judges assumed facts which were not disclosed by the evidence and which the evidence refuted.

Mr. DODD. I understand. I know the case.

Mr. ERVIN. Justice Harlan concurred in the majority view, on the ground that he did not think that the due process clause of the 14th amendment made the fourth amendment applicable to the States, and that therefore the situation was governed by the due process clause of the 14th amendment, and that the entrance in this case was reasonable, as he saw it, under that clause of the Constitution.

Mr. DODD. For our purposes today, I think I am correct that the circumstances were that the police officers conducted the search; there was no judicial officer involved. My understanding of that case is that it was the judgment of the Court that this was not an unconstitutional search and seizure.

Mr. ERVIN. The judgment of the Court—the five Justices—had nothing to do with any provision like this statute. They held that the entry without prior notice was an incident to a lawful arrest.

Mr. DODD. I know the facts of that case well.

Mr. ERVIN. And that therefore they were not concerned about this proposition. There is no question that a search incident to a lawful arrest is valid. But they assumed that the facts showed a lawful arrest under the fourth amendment and Justice Harlan assumed that the facts, under California law, showed a reasonable search. So the majority reached the same conclusion on two different grounds.

Now this is what Justice Brennan said the fourth amendment provides in respect to a search in the Ker case:

> For even on the premise that there was probable cause by federal standards for the arrest of George Ker, the arrests of these petitioners were nevertheless illegal, because the unannounced intrusion of the arresting officers into their apartment violated the Fourth Amendment. Since the arrests were illegal, Mapp vs. Ohio requires the exclusion of evidence which was the product of the search incident to those arrests.

So Justice Brennan and three of his associates, just like Professor Pritchett in his book on the American Constitution, laid down the rule that under the fourth amendment it is unconstitutional to break and enter a dwelling house without the officer giving notice of his presence and his purpose and his authority, except in three cases. Brennan continues:

> Even if probable cause exists for the arrest of a person within, the Fourth Amendment is violated by an unannounced police intrusion into a private home with or without an arrest warrant—except in three cases.

The first case is this, and I read from page 47:

> Where the persons within already know of the officers' authority and purpose.

Of course, there is no necessity for giving notice of the officer's presence and the officer's purpose to search the house if the occupants of the house already know it. That is the first exception. The proposal which the amendment seeks to strike does not come within that exception, because it comes in the exception where a man is going to conceal his purpose and his presence and enter the house like a burglar, without advanced notice.

The second exception to the rule requiring in all cases that the officer announce his purpose and presence is this:

> Where the officers are justified in the belief that persons within are in imminent peril of bodily harm.

This amendment does not deal with that.

The third exception Brennan listed in which the officer does not have to knock is this:

> Where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted.

Justice Brennan points out that these rules, which go back hundreds and hundreds of years, have a twofold purpose. First, they are to protect the people in the right to occupy their dwellings without unreasonable searches and seizures. The second purpose is to make the occupation of the law officers less hazardous. Justice Brennan says that when an officer attempts to break into a house without announcing his purpose, presence, and authority, the occupants have a right to assume that it is someone attempting to make an unlawful entry, and they have a right to resist the unlawful entry to the utmost, even to the point of killing the officer who attempts to enter without notice.

I read from page 746 of the Ker case:

> It was firmly established long before the adoption of the Bill of Rights that the fundamental liberty of the individual includes protection against unannounced police

entries. "[T]he Fourth Amendment did but embody a principle of English liberty, a principle old, yet newly won, that finds another expression in the maxim 'every man's home is his castle.' "

As I have stated, Justice Brennan discusses these three exceptions, and he gives one of the practical reasons for the rule requiring the officer to announce his presence and his purpose. He says that the officer is in danger of being killed if he attempts to enter without it, and he says that the purpose is not only to protect the citizen in the enjoyment of his home, but also to minimize the hazard which the law enforcement officer undergoes when he attempts to enter without knocking.

Justice Brennan says:

Similarly, rigid restrictions upon unannounced entries are essential if the 4th Amendment's prohibition against invasion of the security and privacy of the home is to have any meaning.

In discussing the first exception—that is, when the occupants of the house are already aware of the officer's presence and purpose, he says this on page 54:

I have found no English decisions which clearly recognizes any exception to the requirement that the police first give notice of their authority and purpose before forcibly entering a home. Exceptions were early sanctioned in American cases, e.g., Read v. Case, 4th Conn. 166, but these were rigidly and narrowly confined to situations not within the reason and spirit of the general requirement. Specifically, exceptional circumstances had been thought to exist only when, as one element, the facts surrounding the particular entry support a finding that those within actually knew or must have known of the officer's presence and purpose to seek the admission.

On pages 55 and 56 he says:

Two reasons rooted in the Constitution clearly compel the courts to refuse to recognize exceptions in other situations when there is no showing that those within were or had been made aware of the officers' presence. The first is that any exception not requiring a showing of such awareness necessarily implies a rejection of the inviolable presumption of innocence.

Further, on page 58:

Second, the requirement of awareness also serves to minimize the hazards of the officers' dangerous calling. We expressly recognized in Miller v. United States, supra (357 U.S. at 313, note 12), that compliance with the federal notice statute "is also a safeguard for the police themselves who might be mistaken for prowlers and be shot down by a fearful householder." [12] Indeed, one of the principal objectives of the English requirement of announcement of authority and purpose was to protect the arresting officers from being shot as trespassers, ". . . for if no previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost." Launock v. Brown, 2 B & Ald 592, 594, 106 Eng Rep 482, 483 (1819).

These compelling considerations underlie the constitutional barrier against recognition of exceptions not predicated on knowledge or awareness of the officers' presence.

Mr. President, then Justice Brennan discusses the question of the contention made here that the act is justified because it is easy to destroy narcotics, marihuana, or other dangerous substances covered by the bill. He discusses this case:

Our duty then is only to decide whether the officers' testimony—that in their general experience narcotics suspects destroy evidence when forewarned of the officers' presence—satisfies the constitutional test for application of the exception.

That is exactly what this provision in the bill which we seek to strike undertakes to do.

(Continuing reading from the case:)

Manifestly we should hold that such testimony does not satisfy the constitutional test. The subjective judgment of the police officers cannot constitutionally be a substitute for what has always been considered a necessarily objective inquiry,[16] namely, whether circumstances exist in the *particular* case which allow an unannounced police entry.

This same question, whether the mere fact that narcotics, marihuana, or other dangerous substances covered by the bill will justify permitting an officer to break and enter a building without giving notice of his presence and purpose, was considered by the Supreme Court of California in the case of the People against Gastelo, a case reported in 63 California Reports, at page 10.

In holding that the entry there without announcement of the officer's presence or purpose was unconstitutional, the court had this to say on that specific subject:

Under the fourth amendment, a specific showing must always be made to justify any kind of police action tending to disturb the security of the people in their homes. Unannounced forcible entry is in itself a serious disturbance of that security and cannot be justified on a blanket thesis. Otherwise the constitutional test of reasonableness would turn only on practical expediency, and the amendment's primary safeguard—the requirement of particularity—would be lost. Just as the police must have sufficiently particular reason to enter at all, so must they have some particular reason to enter in the manner chosen (*supra*, 67 Calif. 2d, 588–589, 432 P. 2d 708).

These are the arguments in these cases on this point which completely negate the proposition that because narcotics, marihuana, or other dangerous substances covered by this bill may have been easily destroyed, this justifies disobedience to the constitutional requirement that an officer must announce his presence, actually, he not only must announce his presence but announce his purpose to the owner of the house, and his authority under a search warrant for so doing.

Section 702(b) says that a policeman can break into the house, that he can sneak into the house, that he can enter the house just like a burglar; but it says, after he once gets in there, as soon as possible, he will tell them that he is an officer and that he has a warrant.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 83 to the bill (H.R. 13111) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1970, and for other purposes.

The message also announced that the House insisted upon its amendments to the amendments of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance and special training allowance paid to eligible veterans and persons under such chapters, disagreed to by the Senate, and agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. TEAGUE of Texas, Mr. DORN, Mr. HALEY, Mr. BARING, Mr. BROWN of California, Mr. TEAGUE of California, Mr. AYRES, Mr. ADAIR, and Mr. SAYLOR were reported managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the bill (H.R. 13111) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1970, and for other purposes, and it was signed by the Vice President.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The Senate continued with the consideration of the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

The PRESIDING OFFICER. The Senator from North Carolina may proceed.

Mr. ERVIN. Mr. President, I thank the Chair.

This provision of the statute which requires that after the officer has emulated the actions of a burglar and broken into a house without notice, concealing the fact that he has a search warrant, that he then must tell the owner of the house who he is, reminds me of the little ditty which goes like this:

I oft have heard of Lidford Law wherein the morn they hang and draw and sit in judgment after.

In other words, Mr. President, the officer is not to announce his purpose under the statute. He can break into the house like a burglar. He is given the pious requirement, after he has done the damage, after he has violated a man's castle, and after he has flouted the Constitution, that he must tell the owner of the house he is an officer of the law and that was the reason he broke into the house, in the example of a burglar.

Mr. President, the right to privacy in one's home is a precious right. Anyone who is familiar with the history of the United States remembers the great fight which James Otis of Massachusetts made in the courts there against the issuance of general search warrants and

writs of assistance. We know that the American colonists, when they came here, claimed they had the same rights as any Englishman; but then they were subject to acts of the British Parliament which allowed exceptions—such as this act would allow—without notice or announcement of purpose or presence. They applied to the courts in the 13 Colonies through the Crown's attorneys for search warrants, somewhat akin to this provision in 702(b).

Even though eight out of nine Colonies refused to issue such warrants, this matter became one of the causes of the American Revolution, that is, Americans should not be tyrannized by officers of the law searching their homes under circumstances such as 702(b) would authorize.

It was for this reason that men died on the green at Lexington, that men died at Bunker Hill, that men died at Kings Mountain and in front of the Guilford Courthouse. It was the reason that prompted George Washington to kneel in the snow at Valley Forge to pray for the success of American arms so that Americans would be free from any kind of tyranny which allowed officers of the law, at their whim and caprice, to enter people's houses without knocking, or without announcing their presence or their persons.

I trust that I will be pardoned for a personal allusion at this point.

My father practiced law at the North Carolina bar for 65 years. I had the privilege of being his junior partner for 15 of those years. He taught me many things, but he taught me, above everything else, to love liberty and to loathe tyranny.

When he invoked one of the great landmarks of the law in behalf of a client, he had the capacity to rise to heights of eloquence.

His voice has been stilled in the tongueless silence of the dreamless dust for more than a quarter of a century, yet, at this moment, within the ken of my memory, I can hear him now, as he stood on one occasion before a North Carolina jury and quoted a passage from one of the great poets of history, I speak of Rudyard Kipling's "The Old Issue," whose theme is the unceasing battle between a government which always seeks to expand and multiply its tyrannical powers and the people who struggle to preserve some protection against governmental oppression.

I want to read a passage from this book because it tells us of this unceasing struggle between a government which always thirsts for more and more and more tyrannical power over the people and the people who have to struggle against great odds for the basic fundamental protection against tyrannical power that they have wrung from the hands of government.

If I had my way, I would require every public official to memorize these words:

All we have of freedom, all we use or know—
This our fathers bought for us long and long ago.

Ancient Right unnoticed as the breath we draw—
Leave to live by no man's leave, underneath the Law—
Lance and torch and tumult, steel and grey-goose wing,
Wrenched it, inch and ell and all, slowly from the King.

Till our fathers 'stablished, after bloody years,
How our King is one with us, first among his peers.

So they bought us freedom—not at little cost—
Wherefore must we watch the King, lest our gain be lost.

This is one of the great freedoms our forefathers purchased for us in their struggle with England in the war of the American Revolution which they undertook to preserve when they put the fourth amendment into the Constitution.

When I am called upon to take my stand upon governmental tyranny on the one hand and the freedom of individuals on the other, I shall stand for the last-named as long as God gives me a heart to love America.

I am going to try to preserve this freedom which was purchased for us not at little cost.

I yield the floor.

Mr. DODD. Mr. President, I compliment the Senator from North Carolina for that speech. I wish I could agree with it. Last Saturday I thought I might. But the more I have studied the situation, the more I have become convinced that this section of S. 3246 is not an invasion of our constitutional rights and that it really should remain in the bill.

I did have grave misgivings about that section. I knew that in effect we had already passed a similar section in the District of Columbia bill, except that there was a restriction that the warrant must be served in the daylight hours and that the entry must be made in the daytime. We did that only last December.

But this question of police invasion of our homes is a question which greatly concerns every Member of the Senate. Before I proceed on the constitutionality of this section, let me say that I greatly admire the Senator from North Carolina for his knowledge of constitutional law. But before I explain my own view on it, I think this matter of Ker against California should be clarified. I am certain my understanding of that case is correct.

California case law permits police officers to enter a building to make an arrest where evidence might be quickly and easily destroyed.

In the Ker case, after Ker and another narcotics pusher were followed by the police who saw them in a transaction which looked like the exchange of marihuana, the police went to Ker's apartment having obtained a passkey from the building superintendent. The police entered Ker's apartment without announcing their presence and without a warrant of any kind. In their plain view in the kitchen, they found three bricks of marihuana.

The Supreme Court of the United States in that case upheld the California courts in their determination of the validity of the arrest and search. So, in that case the U.S. Supreme Court held that it was not an unreasonable search under the fourth or 14th amendment since California law had recognized the exception to the announcement rule. Furthermore, under the circumstances present in the case, the ease with which the evidence might have been destroyed and the fact that the suspect might have know that he was being followed, contributed to their support of the method used by the California police in the Ker case.

In addition, the court stated that:

Suspects have no constitutional right to destroy evidence in order to frustrate an arrest.

That case has not been overruled by the Supreme Court. As a matter of fact, had there been such a ruling by the Supreme Court, none of us on the Judiciary Committee would have included this section in the bill. All the lawyers on the Judiciary Committee would have known, of course, that there had been a clear striking down of these sections, and we would not have included section 702(b) in the bill.

First of all, I want to point out that the no-knock provisions embodied in S. 3246 are essential in combating the dramatic increase of drug addiction and drug traffic in this country.

Predictably, immediate reaction will be expressed on the part of some people to this legislation. That is understandable. It is because of their fear that the provision is unconstitutional and is an invasion of our basic constitutional rights.

That fear is understandable. That is the first reaction many people get, until they look carefuly at the law and at legal history and at this section.

For over 200 years, we have developed the ground rules for the protection of the American home and household which severely restrict Federal and State authorities from trespassing in our homes, particularly in cases of crimes against property.

Reflection, however, shows that narcotic violations differ substantially from the ordinary property crimes. Indeed, seizures of narcotics pose problems for the police unlike any other situation of which I am aware. Unless officers are endangered, there is no reason in most cases of larceny or possession of stolen property, that a search by the police should not be preceded by a knock on the door, a warning of what is about to take place.

The only exception, I would say, occurs when the police really feel their lives are endangered. In the theft of television sets, washing machines, radios, cases of liquor, and similar pieces of property; such property is not so easily hidden or disposed of as to require particular haste on the part of the police. In contrast, narcotics supplies are easily destroyed. The professional traffickers in narcotics make special efforts to place their supplies in places where they can be readily disposed of if officers suddenly appear. Everyone who is involved in law enforcement knows that to be true. Thus, narcotics and dangerous drugs are usually kept near commodes or sinks where they can be instantly flushed down the drain. Even a small amount of heroin is extremely valuable in the illegal market. A million dollars worth of that substance can be easily flushed

down the drain or thrown out of the window while the police officer knocks at the door and ceremoniously announces, "Open up. We have a warrant to search the premises."

Instant action by law enforcement officers is the essence of success in these cases. There is no reason to feel that police are going to go on a rampage of search-and-seizure missions, casually invading the privacy of innocent American homes under the pretense that they are suspected of harboring illegal narcotics. A police officer, particularly a member of the Bureau of Narcotics, cannot engage in these searches at his own whim, as has been indicated here. The police officer cannot decide he is going to burst into a home. Under this section, he has to go before a magistrate or a judge and establish that there is good reason to believe these dangerous drugs or narcotics are on the premises. He has to do it with some particularity as the Attorney General in testimony before the Juvenile Delinquency Subcommittee pointed out. He has to establish to the satisfaction of that magistrate that that material is in a certain place and to get permission to enter without knocking and announcing, he has to show there is an imminent danger of the destruction of evidence.

Mr. McGOVERN. Mr. President, will the Senator yield briefly for a unanimous-consent request?

Mr. DODD. I yield.

SENATE RESOLUTION 323—SUBMISSION OF A RESOLUTION EXTENDING THE SELECT COMMITTEE ON NUTRITION AND HUMAN NEEDS

Mr. McGOVERN. Mr. President, I ask unanimous consent that, notwithstanding rule VIII, I be permitted to submit a resolution.

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

Mr. McGOVERN. Mr. President, I submit to the desk a resolution authorizing expenditures and continuing the Select Committee on Nutrition and Human Needs.

Mr. President, in order to expedite consideration of the resolution, I have conferred with the chairman and ranking minority member of the Committee on Labor and Public Welfare. With their approval and without establishing a precedent under the procedures of the Senate, I ask unanimous consent that the resolution be referred directly to the Committee on Rules and Administration.

Mr. HRUSKA. Mr. President, reserving the right to object, may I ask the Senator from South Dakota whether the leadership on the other side of the aisle has been informed of this procedure?

Mr. McGOVERN. I assure the Senator it has been.

Mr. HRUSKA. It is my understanding from conversation with the Senator that the ranking member of the committee has been informed.

Mr. McGOVERN. The Senator is correct.

Mr. HRUSKA. And that he reported to the Senator from South Dakota that he consulted with the minority leader on this subject.

Mr. McGOVERN. The Senator is correct.

Mr. HRUSKA. I thank the Senator.

The PRESIDING OFFICER. The resolution will be received and referred to the Committee on Rules and Administration.

The resolution (S. Res. 323) was referred to the Committee on Rules and Administration (by unanimous consent), as follows:

S. RES. 323

Resolved, That the Select Committee on Nutrition and Human Needs, established by S. Res. 281, Ninetieth Congress, agreed to on July 30, 1968, as amended and supplemented, is hereby extended through January 31, 1971.

SEC. 2. It shall be the duty of such committee to examine, investigate, and make a complete study of any and all matters pertaining to the lack of food, medical assistance, and other related necessities of life and health including, but not limited to, such matters as (a) the extent and cause of hunger and malnutrition in the United States, including educational, health, welfare, and other matters related to malnutrition, (b) the failure of food programs to reach many citizens who lack adequate quantity or quality of food, (c) the means by which this Nation can bring an adequate supply of nutritious food and other related necessities to every American, (d) the divisions of responsibility and authority within Congress and the executive branch, including appropriate procedures for congressional consideration and oversight of coordinated programs to assure that every resident of the United States has adequate food, medical assistance, and other basic related necessities of life and health; and (e) the degree of additional Federal action desirable in these areas.

SEC. 3. For the purposes of this resolution the committee, from February 1, 1970, to January 31, 1971, inclusive, is authorized: (1) to make such expenditures as it deems advisable; (2) to employ, upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided*, That the minority is authorized to select one person for appointment and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than $2,700 than the highest gross rate paid to any other employee; (3) to subpena witnesses and documents; (4) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government; (5) contract with private organizational and individual consultants; (6) interview employees of the Federal, State, and local governments and other individuals; and (7) take depositions and other testimony.

SEC. 4. The expenses of the committee, which shall not exceed $246,000 from February 1, 1970, through January 31, 1971, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The Senate resumed the consideration of the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

Mr. DODD. Mr. President, this section would not do what it might appear to some people to do. It is not a matter of a police officer deciding he wants to break in somebody's door, or break in the window, or go in and arrest someone. He has to go before a magistrate or a judge and establish the facts as I set forth a few moments ago.

There is an additional provision in the section requiring that a neutral judge or magistrate must make a specific finding that this material, the contraband drugs, is there and that there is real reason for believing that the evidence, the drugs, will be destroyed.

This is a restrictive section of the law as it is written. Before notice of authority and purpose can be dispensed with, the judge or magistrate issuing the warrant has to be satisfied that there is probable cause that these grounds exist. I believe our magistrates and judges will take this matter very seriously. The judge must specifically find that there is probable cause to believe that either destruction of the evidence or injury to the officers will result if notice of authority and purpose is given.

Probable cause requires more than mere generalities; it requires, as all lawyers know, specific facts. A no-knock warrant under this provision in the bill could not be issued solely because most drug traffickers keep their supply of drugs in a place where they can be easily disposed of. Much more than that is required: Information regarding the actual location of the drugs, the type and quantity, and the propensity of the person in whose possession it is to be violent would have to be shown to the judge when the warrant is applied for.

This is a point that must be made clear in the RECORD. In the circumstances in which we find ourselves at this hour in this country, with a dreadful social problem on our hands out of which criminals and racketeers are making a fortune, making people addicts to some of the most dreadful drugs known, I say that the Constitution was never intended to protect them to the extraordinary extent whereby they could destroy the evidence and go scot free and continue to make more addicts and more millions of dollars in this country. I do not understand the courts to have interpreted the Constitution that way.

Senators have referred to the fact that we have long considered this constitutional protection as a very serious protection. I join Senators in saying this has been a seriously considered matter as it should be, and it goes back a long way. However, I point out that in my State of Connecticut we have allowed no-knock provisions since 1822.

Other States have had similar provisions or similar understandings of the law. It has been recognized, for example, that force could be used when the entry was made to seize specific goods. It was recognized as early as 1822 in my State that if notice was then the requirement, there were cases where it would not apply. One of these was clearly enunciated by the Connecticut court in Read against Case which held that the imminent danger of life eliminated the need for notice. This is more than 100 years ago; it is 150 years ago. We have had a reputation in Connecticut of being

the Constitution State, and we do not treat the Constitution lightly.

All we are saying is that where there is imminent danger to the life of an enforcement officer, and he satisfies a judge beyond any doubt that these dreadful narcotics are in a certain place and in the possession of these people and that he knows if they get the least chance they will destroy the evidence, that the judge can say under those circumstances, as is the case in Connecticut, where there is imminent danger to life, the authorities have a right to break in.

The framers of the Constitution did not intend to make it easy for criminals to kill law enforcement officers. And, if we are to keep this great Constitution a living thing with full meaning, we have to understand that circumstances such as confront us in this awful, illicit, illegal, and unmoral drug traffic are different from what confronted the people a couple of hundred years ago.

I do not think we are doing violence to the Constitution when we make these special arrangements at this hour, and I think the courts agree. I cannot see how anyone can say otherwise.

I wanted to point out, because I think it is important to do so, that this situation is not as unusual as it would appear to be. The U.S. Supreme Court has upheld judicial supervision of the kind that is included in this bill on at least three occasions. The first case was back in 1948. That was McDonald against the United States. There have been two other cases since that time.

I believe there is sufficient reason to believe that the precautions built into the formal provisions of the proposed no-knock clause will remove the possibility of any undesirable or illegal consequences. I know that is the view of the Attorney General. It is also the view of the Deputy Attorney General, which is contained in a memorandum sent up to us in December of 1969, which supports the constitutionality of the no-knock provision.

It is highly improbable that the no-knock provision, once it is part of the Federal law on narcotics, will be abused for all sorts of fanciful reasons. If I thought for a minute that this provision would result in the smashing in of the doors or windows of my house, or anyone else's, I would not be here defending it; and I think that interpretation is stretching the situation beyond all reality.

I can say here that my record on civil rights and fundamental constitutional rights is just about 1,000 percent. I have spent a good part of my life in pursuit of a better civil rights situation in this country—all civil rights, all constitutional rights. I am not one to suddenly rise here and do an about face on this issue. I tell you I do not think there will be these abuses.

There are some very cogent reasons why one can say they will not occur. The law abiding citizen, the man who does not engage in the narcotics trade, will not find his front door broken down, or his back door, either, by squads of law enforcement officers engaged in a fishing expedition, which some will have this body believe will be the case.

Even where narcotics are involved, the no-knock provision will apply only for the most compelling reasons. Judicial safeguards and judicial supervision will militate for this restraint. This view is supported by the statistical evidence we have from States that have statutory no-knock provisions.

To hear this argument, you would think that this approach was being discussed on the floor of the Senate for the first time and that we had never heard of it before. Three States have on their lawbooks, in the form of statutes, such a provision, and several others have no-knock provisions of another kind.

For example, between June and December 1968, the New York State Police obtained 14 no-knock warrants under the applicable State law. They used only 12 of them. At the same time, there were 1,847 narcotic cases made by State police. They had the law. They could have used those warrants. But they used the warrants only 12 times out of 1,847 cases. In every one of those cases the use of such warrants were used only when absolutely necessary to protect the evidence from destruction. That is how the police of New York State have used their own no-knock law.

How can we tell how officers will behave in the future? One of the ways is to examine how they behaved in the past; that is, how they behaved in New York, with that law on the New York statutes. That is a small percentage of the total cases in New York—only 12 out of 1,847—a ratio of about 1 in 150. The New York State authorities tell me that if it had not been for the use of the no-knock statute they could never have prosecuted those 12 cases.

New York City itself has found it has had to use the no-knock warrants in an increasing number of cases to prevent the destruction of evidence in narcotics cases. I am told that in the Bronx almost every warrant in narcotics cases has required the no-knock warrant. The use of the no-knock warrant is growing in that city because of its infestation with narcotic pushers. There were 900 heroin deaths in New York City last year, most of them teenagers and young people. I ask, Are not these pushers depriving them of their constitutional rights?

North Dakota has a no-knock statute, and in that State 29 narcotics violations were reported in the period between January 1 and December 19, 1969. But they used the no-knock warrant only three times in that period. In 1968 they did not use it at all, although they made 32 arrests.

The point I would make is that in North Dakota, where there is a statute allowing just what we are seeking in this bill, there has been no kicking in of the doors of the houses of innocent people. No innocent citizens of North Dakota are being victimized by the brutal police that some would have us believe are going to suddenly break in everybody's house. North Dakota has had that law for some time.

So that is the experience where such a law has been on a State's statute books. I am confident, from what I know, that the same discretion will be used by Federal officers that these State officers have used.

To finish on the State situation, I shall make clear in the RECORD that 29 States allow no-knock searches and seizures, either through express statutes in three States, or by judicial application of the common-law principle that where evidence is likely to be destroyed, such as in narcotics cases, no-knock entries are allowed.

Three States already have no-knock provisions in their State laws: Utah, New York, and North Dakota. Five others have modified no-knock statutes: Alabama, Mississippi, Missouri, Montana, and Nebraska. Twenty-one States, including my own State of Connecticut, follow the common law no-knock rule.

However, 21 other States have statutory provisions identical to the Federal law, under which a Bureau of Narcotics and Dangerous Drugs agent may force entry, but must first announce his authority and be refused admission.

So, on balance, Mr. President, it seems to me that the no-knock provision of the Federal law will not only be useful in the battle against crime, but also stand the test of the courts, much the same as the State statutes have done.

In a way, Mr. President, I think that this proposed statute involves somewhat of a gamble on our part; but it is a gamble which is vital to the health of our children. If we win this gamble, as I am sure we will, I tell you it will go a long way toward reducing the awful trade in these narcotics, this awful traffic which takes such a heavy toll among our young people. But it is a gamble, we as a nation must take, to weed out the traffickers in these dreadful drugs.

The Senator from North Carolina, in his very moving statement, said repeatedly, wisely and well, that a man's home is indeed his castle. That is what we all consider our homes. But as early as 1822, exceptions were made to the general rule, and they, too, became part of the common law.

The exception adopted in 29 jurisdictions was that an officer might need not announce his presence if there was a chance that the evidence would be destroyed, or that he was in danger of bodily harm.

This is something I think we should all remember; and most of all, I think we should remember as we make our decisions about this proposal that this is not something suddenly pulled on us, so to speak, or a new idea just thought up by the members of the Committee on the Judiciary. This is not a new, abrupt, and startling invasion of our constitutional rights. This provision has its roots away back, hundreds of years ago, in the common law. That should be remembered.

I shall now read for the RECORD the list of those States approving no-knock in some form in this country right now. They are Alaska, Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Maryland, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah,

Vermont, Washington, and West Virginia.

This gives some idea of how long this manner of proceeding, so to speak, has been recognized, lest there be any doubt that is of long standing, and lest anyone think that it is something new, which, of course it is not at all.

I ask that the memorandum I referred to dated December 11, 1969, from the Department of Justice be printed at this point in the RECORD.

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

DEPARTMENT OF JUSTICE MEMORANDUM,
DECEMBER 11, 1969

To: Richard G. Kleindienst, Deputy Attorney General; Attention: Herbert E. Hoffman.

From: Thomas E. Kauper, Acting Assistant Attorney General, Office of Legal Counsel.

Subject: Constitutionality of the no-knock provisions in the Controlled Dangerous Substances Act of 1969.

This is in response to your request for the views of this Office as to the constitutionality of section 702 of the proposed Controlled Dangerous Substances Act of 1969.

Section 702 would permit an officer executing a warrant relating to controlled dangerous substances to enter without giving notice of his authority and purpose if so authorized in the warrant. The warrant could authorize such entry on a finding of probable cause to believe the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result from announcement.

General "no-knock" provisions, not limited to narcotics, have been previously considered by this Office and we have expressed the view that they are constitutional in concept even though constitutional challenge as to their application to specific fact situations is likely. See memoranda to the Criminal Division on H.R. 8652, 90th Cong., dated May 25, 1967 and on S. 2051 and H.R. 11267, 90th Cong., dated July 27, 1967, and memorandum to your Office on Leg. Prog. 418, dated Feb. 19, 1968. This Department proposed legislation authorizing "no-knock" entry, with or without a warrant, in the District of Columbia Court Reorganization bill and such legislation was passed by the Senate on December 5, 1969 (secs. 107 to 109, S. 2869).

Our conclusion that "no-knock" legislation even broader than section 702 is constitutional was based on the decision in *Ker* v. *California*, 374 U.S. 23 (1963). That case upheld unannounced entry and seizure of narcotics without a warrant primarily on the basis of the officer's need to prevent destruction of the evidence. The judgment of the exigency of the circumstances was that of the police officers, not an independent judicial officer and yet the court upheld the search as coming within one of the permissible exceptions of the announcement of authority and purpose requirements. Among the objections of the four dissenters was reliance on the subjective judgment of the police officers.

While decided by a closely divided court six years ago, *Ker* has not been overruled or limited with respect to unannounced entry in subsequent cases. In *La Peluso* v. *California*, 385 U.S. 829 (1966), the Supreme Court refused to reconsider it. *Sabbath* v. *United States*, 391 U.S. 585 (1968), while holding unannounced entry by federal officers invalid on the basis of 18 U.S.C. 3109, did not disturb the constitutional holding in *Ker*. (See fn. 8, 391 U.S. at 591).

In a somewhat related area, the Court has very recently recognized the valid governmental interest in preventing harm to the officer or destruction or concealment of evidence. *Chimel* v. *California*, 395 U.S. 752 (1969), involved the permissible scope of searches incident to the execution of an arrest warrant. It held that such "contemporaneous searches" must be limited to the person of the arrested individual and the immediate area under his control. The holding is premised on the concept that warrantless searches are permissible under the Fourth Amendment only for certain limited purposes. As in unannounced entry cases, one of these purposes is the prevention of the destruction of evidence. (See 395 U.S. at 763.)

Ker is still controlling law with respect to the constitutionality of unannounced entry and is, in our opinion, reinforced by the rationale of *Chimel*. On the basis of *Ker*, it is our view that section 702 is constitutional.

Mr. McCLELLAN. Mr. President, will the Senator yield at some convenient point?

Mr. DODD. I am happy to yield now.

Mr. McCLELLAN. I wanted to ask the Senator one or two questions, primarily in order to establish what we call the legislative history.

I should like to ask the distinguished floor manager of the bill several questions on the meaning of section 702(b), which deals with the so-called no-knock warrant. As I read the committee report—Senate Report No. 91-613 at 31, 1969—this provision is solely permissive in nature. It requires the officer to do nothing. Like the authority to obtain an arrest warrant, however, the provision affords the law enforcement officer the opportunity to obtain a prior judicial determination of his justification for exercising particular authority, here, no-knock authority.

Mr. DODD. Yes. I answer the Senator by saying that it is permissive.

Mr. McCLELLAN. Then it does permit, but does not require, prior to the exercise of such authority, judicial review?

Mr. DODD. Under this section, yes.

Mr. McCLELLAN. That is what I am asking.

Mr. DODD. Yes. Under this section, the officer seeking a no-knock warrant may get judicial review.

Mr. McCLELLAN. It leaves untouched, however, the officer's general authority under an arrest without a warrant—I am talking about the authority he already has——

Mr. DODD. Yes.

Mr. McCLELLAN. It leaves untouched the officer's general authority to arrest without a warrant, to arrest under an arrest warrant, or to execute a search warrant not containing a no-knock clause, under proper circumstances, and to enter, in each case, without an announcement?

Mr. DODD. Yes, it certainly does.

Mr. McCLELLAN. It leaves untouched, as I interpret it—and this point is the point I wished to clear up—the general Federal common law, noted in *Sabbath* v. *United States*, 391 U.S. 585 (1968), and the provisions of 18 U.S.C., section 3109, and all the traditional common law authority and exceptions remain as they are today, is that correct?

Mr. DODD. Yes, the Senator is absolutely correct.

Mr. McCLELLAN. So if we interpret section 702 in line with the questions I have asked and the Senator's response thereto, we will be giving it the interpretation that is intended, from the Senator's viewpoint, as the prime sponsor of the bill?

Mr. DODD. I answer the Senator by saying that is precisely right.

Mr. McCLELLAN. I thought that history on this point should be made. We are dealing here in a most delicate area, as we all recognize.

Mr. DODD. Yes.

Mr. McCLELLAN. And there is no intent to try to cover up or evade the real issue. So, in the event this provision is retained in the bill and enacted, I felt that the record should be completely clear and unambiguous with respect to the proper interpretation of the section—is it mandatory or is it optional?—as I have asked the Senator and as I have elicited his response.

Mr. DODD. I am glad that the Senator asked because it does clear up any doubt about the questions which he poses.

Mr. McCLELLAN. I think last Saturday I advised the Senator that I may also have an amendment or two to offer to the bill. I spoke specifically of one amendment then. Not having been present in the Chamber all the time, I assume from the discussion that the amendment of the distinguished Senator from North Carolina (Mr. ERVIN) is now the pending matter before the Senate, with respect to this section 702.

Mr. DODD. It is.

Mr. McCLELLAN. I shall defer offering my amendments until later. In the meantime, I suggested the other day that the Senator have his staff review these amendments and give us some indication about them, and I think that has been done. I think the staffs have worked on them. In due course and at the proper time, after the disposition of the pending amendment, I shall be glad to offer those amendments that I think will strengthen the bill and which I think will enhance its qualities and not detract from it.

Mr. DODD. I thank the Senator. I am able to say to him that the committee staff has gone over the amendments that the Senator intends to offer, and I believe we will accept them. I believe they should be accepted.

Mr. McCLELLAN. We will have them in due time. I only wanted to interrupt for the other purpose and to interrogate the Senator on another subject at this time.

I thank the Senator very much for yielding to me.

Mr. DODD. Mr. President, I feel that I should cover specifically two or three points raised by the distinguished Senator from North Carolina, and I should like to make some observations about them.

First, I do not think that the law enforcement officers who go through the procedures of getting a warrant from a magistrate or a judge can be said to be like thieves in the night, in any sense. I do not know of any thief who goes before a judge and gets permission to break into a man's house and steal his property. So this is not really so.

The question was asked, "How can any magistrate issue such a no-knock warrant? How will he know?" He will know

the way every judge knows before he issues a warrant of this kind. It goes on every day in this country.

The judge will make a decision based on the evidence offered by the officers who seek the warrant. He does not have any other way of knowing. That is how judges always learn from those who seek these warrants and this authority.

The question was also asked, "How can an officer know that the occupant won't let him in to seize the material? How can he know that?" That was asked by the Senator from North Carolina. It was said that the officer would have to have the vision of the prophets.

Perhaps I can help a little here. I am not a prophet, but I know that it is possible for law enforcement officers to know that Mr. X has a criminal record as long as my arm for violation of the narcotics law, that he has a criminal record for assault and battery and murder, that he has a record of conviction for shooting police officers, and that, therefore, it is a reasonable proposition to say that he is likely to do the same thing again. He is not about to open the door to another policeman and say, "I'm glad to see you, Officer Jones. Come right in. Here is all your evidence. I am a good citizen. It is true I have a kilo of heroin and some marihuana and other dangerous drugs. Come right in and take what you want."

Of course, that is not the situation. How do you know? You know by police intelligence work; that is how you know. When it is good enough and substantial enough, you go before a judge in chambers and say, "Look, Judge. Two of us have worked on this case for a year. We have pictures. We know what they're saying; we know what they're up to." Sometimes the officers can even say, "We saw them carry this heroin in there yesterday. It's in the top bureau drawer in that bedroom. But, just as sure as can be, your honor, if we knock on that door and say we're Federal officers, they're going to pour that evidence down the toilet before we can get in with our warrant."

They will get more later in another place and make addicts out of more decent Americans, and that is what this provision is intended to stop. That is how they know. That is how it always has been known.

Mr. President, one could talk a great deal about this matter and about this particular amendment. I do not want to burden the Senate any longer with my own views on it, except to say what I said previously. I came to this conclusion over the weekend, and I think it is the right one.

I am sorry to find myself in disagreement with the Senator from North Carolina, who knows I respect him greatly as a lawyer, and I understand his views. Let me say to him that I am very sensitive about his views in the field of constitutional law. I am glad he is among us to give voice to them. They need to be expressed. These things need to be said. Other things need to be said, too, about the situation which confronts us.

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

Mr. DODD. I yield.

Mr. MAGNUSON. I ask this question only for information.

Is possession of narcotics per se a violation of Federal law?

Mr. DODD. Yes.

Mr. MAGNUSON. Of any type?

Mr. DODD. Narcotics, yes, without lawful authority to possess them.

Mr. MAGNUSON. Let us take marihuana, for example.

Mr. DODD. Possession is unlawful.

Mr. MAGNUSON. Suppose it was grown in the State.

Mr. DODD. It does not make any difference where it was grown. If one does not have legal permission—such as working on it in a laboratory—it is illegal to possess it.

Mr. MAGNUSON. Of course, I suppose that most States have their laws against it, too.

Mr. DODD. Yes.

Mr. MAGNUSON. If there is a question of violation involving possession, the State often does the prosecuting instead of the Federal authorities.

Mr. DODD. Yes. In the vast majority of cases it is a State matter.

Mr. MAGNUSON. Obviously, the other drugs, the other types of drugs, must be involved in interstate commerce.

Mr. DODD. Yes.

Mr. MAGNUSON. They have to be. But sometimes the other thing is not necessarily involved in interstate commerce.

Mr. DODD. No.

Mr. MAGNUSON. And it still would technically be a violation of the Federal law?

Mr. DODD. Yes; it would.

I thank the Senator for his inquiry. I hope I have given him the information he seeks.

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

Mr. DODD. I yield.

Mr. ERVIN. Does not the Senator from Connecticut know that prior to 1961, when the Supreme Court of the United States handed down the decision in Mapp against Ohio, it was held that the fourth amendment did not apply to States?

Mr. DODD. I will take the Senator's word for it.

Mr. ERVIN. Well, that is the fact. As a consequence, the validity of the State laws that the Senator from Connecticut has mentioned has not been passed on.

Mr. DODD. I did not say they had. But no question ever has been raised about them, either, even since that case.

Mr. ERVIN. The Senator mentioned the fact that in the District bill they had a no-knock provision.

Mr. DODD. In the District of Columbia crime bill.

Mr. ERVIN. Yes. It is quite a different provision from this one, is it not?

Mr. DODD. In two respects it is different.

Mr. ERVIN. This bill provides for a no-knock provision, if the U.S. magistrate is satisfied that there is probable cause to believe that if notice is given, the property might be destroyed.

Mr. DODD. Yes.

Mr. ERVIN. The District bill provides that a no-knock provision is not applicable at all until the officer goes to execute the warrant, and then it says that no notice need be given if at the time of execution the officer executing the warrant has probable cause to believe that the property sought may be, and if such notice is given will be, easily and quickly destroyed and disposed of. In other words, one says they might possibly destroy and another says that they will destroy. Does not the Senator think that is quite different?

Mr. DODD. Yes, but I do not think that is as clear as the Senator thinks it is. In this bill, the provision is that the officer goes to get the warrant and he sets up proof, if he has it, to establish the fact that he must be able to get in without the usual notice because those who are there, or in possession of the evidence which he wishes to seek, will destroy that evidence.

Mr. ERVIN. I would like to ask——

Mr. DODD. That is stronger than the District of Columbia bill.

Mr. ERVIN. One says "may" and one says "will." One deals with the possibility, and one deals with the probability.

Mr. DODD. Let me answer that by saying that a law enforcement officer is better off, and society is better off, if he be required to prove positively, before a judge, to the satisfaction of that judge, that this contraband is there and that it will be destroyed, in the thinking of a reasonable man.

Mr. ERVIN. How can an officer who goes to a U.S. marshal and applies for a no-knock warrant possibly know that if he knocks at the door the man may destroy the evidence? How can he possibly know that future event?

Mr. DODD. I can tell the Senator.

Mr. ERVIN. Yes. How can the Senator?

Mr. DODD. I have never been a narcotics agent, but I have worked with a good many of them, and I have known a good many of them. I have prosecuted a good many of those cases in this field in particular. I know that they have informants. As a matter of fact, they must have them. These informants very often have been right in that place on more than one occasion, and they have seen exactly what goes on. They know the people. They know where the narcotics are. They can tell a narcotics agent in the greatest detail where the narcotics are on those premises. That is why I said that the agent usually will say to the judge, "It is in this room. It is in the upper right-hand door of that dresser." I have had that experience in Federal courts in prosecuting narcotics cases. That is how they know.

Mr. ERVIN. How can a man know something that has not happened? In other words, what the Senator is talking about is that because some do that, therefore it is assumed that all do. The officer will swear to something he does not know the facts about just on surmise or out of his general experience. Then the matter will be reviewed by the court, but will lead to suppression in 995 cases out of a thousand. The judge will have to hold that the no-knock warrant was illegally issued and will have to exclude the evidence.

Mr. DODD. I do not know how to debate this with the Senator. The Senator is talking about something that has not happened. I do not know of any such cases. How do we know that will happen?

Mr. ERVIN. We are both talking about something that has not happened.

Mr. DODD. I am talking about something that has happened in my experience in the field of narcotics prosecution. The Senator asks me: How will that agent know that the narcotics is in this house at that particular time, that there are narcotics in the illegal possession of this man? I told the Senator that the information is obtained by informants.

Mr. ERVIN. That is not the question. My question was: How will he know he will destroy it?

Mr. DODD. I will tell the Senator why. Very often they have informants who have heard these people talk. They say, "Well, if they come in here, we will throw it down the toilet. Don't worry. We will get rid of it fast." They know what to do. They have done it on many occasions.

Mr. ERVIN. The informant will not be present in court to testify.

Mr. DODD. He may not be, and he may be. The judge can inquire as deeply into the case as he wants to.

Mr. ERVIN. Let me ask the Senator another question—I hope I did not misunderstand what the Senator said—but I understood the Senator from Connecticut to say that the fourth amendment was not drawn for the benefit of people who violated narcotics laws or marihuana laws, or dangerous substance laws.

Mr. DODD. I did not mean to confuse the Senator. I meant this, that I do not think that this great constitutional protection was intended—I am sure the Senator will agree it was never intended—to specifically protect criminals in the narcotics traffic. Certainly the Constitution was intended to protect them as everyone else against illegal enforcement of the law. But, it was not intended to help anyone break the law with impunity.

Mr. ERVIN. As a matter of fact, does not the Senator from Connecticut know that the fourth amendment was drawn to protect all the people regardless of whether they were guilty or innocent?

Mr. DODD. Yes. I certainly agree to that.

Mr. ERVIN. Does not the Senator from Connecticut know that virtually every case based upon the validity of search and seizure under the fourth amendment has been a case where forbidden material was found in their possession?

Mr. DODD. Illegal things have been done. This is not suggested here.

Mr. ERVIN. Innocent people are not able to make a motion to suppress. In other words, guilty people will get the benefit of the amendment.

Mr. DODD. Suppression takes place when the judge agrees that there is something illegal being done. In this bill, nothing illegal is suggested. I do not think any provision of the Constitution was intended to make it impossible just to do legal things to get dope peddlers.

Mr. ERVIN. Certainly, the fourth amendment was passed to protect all the people, whether guilty or innocent, against unreasonable search or seizure.

Mr. DODD. I am very well aware of that, Senator, but I do not agree that this amendment intends to allow unreasonable search and seizure.

Mr. ERVIN. The no-knock provision absolutely invalidates the fourth amendment, makes it worthless—not even worth the paper it is written on.

Mr. DODD. Is that a question?

Mr. ERVIN. No; it is an assertion.

Mr. DODD. I do not believe it does any such thing, as the Senator must know. I do not think it will. Let me say to the Senator that this has not been the experience of the State of New York or, so far as I know, the States of North Dakota or Utah where they have had this authority. That means something.

I know that there is always the danger of abuse of authority. I am sensitive to that. That is why I said that I feel we all owe a debt of thanks to the Senator from North Carolina for discussing this subject as he has.

I am not impatient about it. It is good for us to be reminded of the importance of our constitutional protections, and we should be thinking about them all the time.

But, I truly believe, Senator, that we are all right here. I have said to the Senator, in private conversations as well as publicly on the floor of the Senate that, first, I was deeply distressed and deeply troubled about this matter, but I feel better now, after more research and more work on my part.

Let me tell the Senator, in mentioning the private and public conversations we had, how much we all respect his knowledge in this field of constitutional law. Believe me, I do.

Mr. President, may I ask the Senator from Nebraska (Mr. HRUSKA) do we have any idea of how late we will sit today?

Mr. BYRD of West Virginia. In response to the Senator's question, it is the hope of the leadership that we might be able to arrive at some agreement concerning time on this particular amendment. I would hope, after a little while, that the Senator from North Carolina, the Senator from Connecticut, and the Senator from Michigan, and others, might be willing to come to some agreement as to time on this particular amendment, following which I think we shall be able to move rather rapidly.

Mr. DODD. If the Senator will bear with me just a moment, did we reach any agreement? Can we agree on time on this amendment?

Mr. HRUSKA. I thought it was going to be left pretty much, after another speech or two, that we would get together and——

Mr. DODD. That is right.

Mr. HRUSKA. Ask for a unanimous-consent agreement.

Mr. DODD. I concur.

Mr. ERVIN. I do not know whether there are enough Senators in this Chamber at this moment but, Mr. President, I should like to ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. DODD. Mr. President, will the Senator yield to me one moment so that I might ask a question of the Senator from North Carolina? The Senator from Nebraska might also be interested in this.

Mr. HRUSKA. Mr. President, I ask unanimous consent that I may yield briefly to the Senator from Connecticut without losing my right to the floor.

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

Mr. DODD. Mr. President, the Senator from North Carolina pointed out that the District of Columbia bill, as we passed it here in December, uses the word "will" rather than "may." I ask if we change section 702(b) to read, "there is probable cause to believe that if such notice were to be given the property sought in the case will be easily and quickly destroyed or disposed of," whether that will satisfy the Senator?

Mr. ERVIN. No, sir. I would not be satisfied with any amendment which attempted to convert the United States from a free society into a police state.

Mr. HRUSKA. Mr. President, I ask unanimous consent that I may yield for the purpose of a brief comment to the junior Senator from California without losing my right to the floor.

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

Mr. CRANSTON. Mr. President, I thank the Senator.

I simply want to say that it was a great pleasure to be sitting in the chair during a considerable portion of the debate on the pending amendment of the Senator from North Carolina.

I have great respect for the very hard work the diligent Senator from Connecticut has done on the bill and on this vitally important problem of drug abuse in America which is causing so much havoc and concern to young and old in the country.

I rise to support the amendment of the Senator from North Carolina whose courage and independence and integrity and understanding of our Constitution is so very great, as has been demonstrated on this issue and on so many other issues.

It is difficult to take a position of leadership, as he has, in offering an amendment that relates not only to drugs, but also to law and order and to justice in the United States. Yet he has taken that leadership.

I wish that every citizen in my State had been privileged to hear his remarks. I wish that every citizen of the North, East, and West, and not only the South, had been able to hear his remarks.

There are many citizens in my part of the country who have a sort of stereotype view of the way that Senators from the South do their work in the Senate and in the Halls of Congress generally.

They would not have those views if they had been privileged to listen to the Senator from North Carolina and others who go to work on the great constitutional questions with the courage the Senator from North Carolina has demonstrated on this issue.

I thank the Senator. It is a great pleasure to join with him in this effort.

Mr. ERVIN. Mr. President, I thank the distinguished Senator from California from the bottom of my heart for his gracious remarks.

I pay tribute to the distinguished Senator from Connecticut. I have had the privilege of sitting beside the Senator from Connecticut for 10 years or more on the Judiciary Committee.

I know of no more dedicated or pa-

triotic citizen than the Senator from Connecticut.

While he and I find ourselves in disagreement on this amendment, I think he deserves the thanks of the American people for the great work he has done in an effort to bring an end to drug abuse and also in many other fields.

Mr. HRUSKA. Mr. President, I ask unanimous consent that I be permitted to yield 2 minutes to the distinguished Senator from Michigan without losing my right to the floor.

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

Mr. HART. Mr. President, this is one of the occasions when a Senator resists the temptation to make a speech. I had intended to speak at some length in support of the pending amendment.

I listened on Saturday and today to part of the argument made by our able colleague, the distinguished senior Senator from North Carolina (Mr. ERVIN).

I would be uncomfortable undertaking to imply that I could advance further the understanding of the Senate with respect to the basic issues that are involved, after listening to the Senator from North Carolina.

I think the picture has been made very clear. What is always difficult in attempting to alter by floor amendment a bill coming from the Judiciary Committee has been made easy in light of his explanation.

Mr. President, it began when he drafted separate views last fall. These are found beginning on page 156 of the committee report.

I was grateful that I could join with him in those views. But I want to make it very clear that they were drafted by him and reflect his very discerning understanding not only of the current jurisdiction, but also of the conditions under which our Constitution came into being.

I hope very much that the Senate, understanding as it does now that a majority of the members of the Committee on the Judiciary support the amendment, understands that the circumstances that attended our action on the bill in the committee were such that regrettably—and no one is responsible for it—we were unable to give the Senate as a whole our judgment. By and large our judgment was at that time and is now that this change in the bill is desirable from a policy standpoint and is mandatory in a constitutional sense.

Mr. President, rather than extend my remarks further, I simply thank the Senator from North Carolina for making clear in a fashion that I doubt I could, the aspects of the bill which I think, if we fail to heed his caution, may come back and haunt us.

This in no wise changes the opinion I expressed on Saturday and repeat now with respect to the Senator from Connecticut. He has done tremendous work on the pending bill. But I believe that support of this amendment would improve further a bill that represents a monument to the Senator from Connecticut.

Mr. ERVIN. Mr. President, I thank the distinguished Senator for his gracious remarks.

Mr. HRUSKA. Mr. President, I ask unanimous consent that I may yield briefly to the Senator from Massachusetts without losing my right to the floor.

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

Mr. KENNEDY. Mr. President, I thank the distinguished Senator. I, too, want to echo the sentiments which have been expressed so well by the distinguished Senator from California and the distinguished Senator from Michigan commending our good friend, the Senator from North Carolina, for the efforts he has made on what I think is one of the really important amendments to the legislation now pending before the Senate.

The Senator from North Carolina has often addressed himself to fundamental questions of civil liberties and human freedom. And I believe he is exercising for all Members of the Senate and all citizens of the country great leadership in this area once again.

The Senator has outlined his reasons for the amendment.

There is a very legitimate need to reach the traffic in narcotics and see that justice is done to those who engage in that heinous trade.

Yet, the Senator is not prepared to sacrifice one of our basic liberties—our right of privacy, particularly in our own home.

I think all of us are impressed by the argument that since the fundamental right of privacy is at stake, we must have a statute that is drawn sufficiently narrowly to meet constitutional requirements. I feel the Senator from North Carolina has performed an important service in questioning whether the statute as presently drafted, which he seeks to amend, is so drawn narrowly enough. This is a matter of great concern. And we must consider seriously the suggestions and points made by the distinguished Senator from North Carolina.

I do wish to add, as I did last Friday, my commendation of the Senator from Connecticut for what he has been attempting to do in the difficult area of drug control. It is a complex task to deal meaningfully with drug addiction and drug traffic while at the same time protecting our fundamental constitutional rights. By offering his amendment, the distinguished Senator from North Carolina has attempted to strike the proper balance. I rise to commend him.

Mr. HRUSKA. Mr. President, I rise to oppose the amendment of the Senator from North Carolina. This amendment seeks to delete section 702(b) from the pending bill. This section establishes the procedures which will be applicable to the execution of search warrants. Mr. President, I ask unanimous consent to have section 702(b) of the bill printed in the RECORD at this point.

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

SEARCH WARRANTS

* * * * *

(b) Any officer authorized to execute a search warrant relating to offenses involving controlled dangerous substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States Magistrate issuing the warrant is satisfied that there is probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice: *Provided*, That any officer acting under such warrant shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Mr. HRUSKA. Mr. President, I would like to make clear at the very outset something which I think should be carefully noted by every Member of this body. Section 702(b) does not create any new law. It does not enlarge the scope of searches and seizures. In fact, it restricts and limits present law by providing in statute form a clear, stable, and understandable expression of congressional policy on this point within the terms, meaning, and construction of the Constitution.

It should be noted that section 702(b) is limited in scope. It is limited to controlled dangerous substances as the subject of a search warrant. It is limited to offenses with a penalty of more than 1 year. The procedure that is prescribed in section 702(b) does not exist at present either in statute or in case law. First of all, there must be an application for a regular search warrant that must be made to the judge, magistrate, of the U.S. court.

If the warrant is to contain a direction that the law-enforcement officer may enter the premises named and described in the warrant without announcement, there must be a showing to the satisfaction of the court that such a direction is in order. There must be a showing to the satisfaction of the court that there is probable cause that the property sought in the case may be easily and quickly destroyed or disposed of, or, secondly, that there would be danger to the life or limb to the officer or another unless the special warrant is granted.

When that showing is made, and only then, will the court put into the warrant a direction that the law-enforcement officer may enter the premises without an announcement.

There is a third requirement of section 702(b), and that is that as soon as practicable after entering, the officer must identify himself and give reasons and authority for his appearance on the premises.

Opponents of section 702(b) purport to speak on behalf of the citizenry at large. They say, "We do not want them subjected to unreasonable search and seizure under the fourth amendment." Such proponents refer to an invasion of the right of privacy and imply and sometimes state that the language in section 720(b) would lead to a police state and hence the amendment should be stricken.

Mr. President, the language of the amendment would not enlarge any law now on the books. Again, I say it seeks to impose limitations and restrictions which do not now exist. If this amendment prevails and if this section is stricken there will be a larger scope and there will be fewer restrictions upon the law enforcement officials to execute their search warrants than would be possible

under section 702(b). I say that it is to the detriment of the law abiding citizenry at large if section 702(b) is stricken and deleted; but having it retained it would confer on the citizenry at large added protection against unannounced entry by law officials than now obtains.

Mr. President, during the course of this presentation I hope to demonstrate that searches envisioned under section 702(b) are not unreasonable searches and seizures under the fourth amendment. We will cite cases and statutes, State and Federal, to sustain that proposition. Second, we hope to demonstrate that it is not an invasion of the right of privacy of our citizens. If any such right exists at all, no such right is found in the fourth amendment. The purpose of the fourth amendment is the safety of the citizen and not privacy.

Third, we shall demonstrate in this presentation that this section is a recognition of the need for an important law enforcement tool, all within the law and within the Constitution.

The first proposition is this: A section 702(b) warrant is not an unreasonable search and seizure. Mr. President, the fourth amendment does not prohibit search and seizure. It only requires that a search and seizure not be unreasonable and that is where the whole difficulty must be focused. Is the search unreasonable? If it is, it is in violation of the fourth amendment; if it is not, it is valid and the evidence seized pursuant to the warrant will be preserved and the action of the law enforcement official held legal and constitutional.

The Supreme Court often and recently held that in executing a search warrant, announcement must be made before entry. That is the general rule. However, this general rule is subject to exception. It has been subject to exceptions ever since there was created the maxim, "A man's home is his castle." I say that because at the same time that the maxim "A man's home is his castle," was created another maxim that was simultaneously, in a historical sense, declared, and it is still the law of English jurisprudence. That maxim is, "The King's keys open all doors." The keys of the king must be able to open all doors. That is the element that is so often forgotten or so seldom mentioned when the first maxim is mentioned. It is true that a man's home is his castle. However, it is not his castle to deny entrance thereto by officers of the law in an absolute sense. The Bill of Rights provides that there may be searches and seizures of a man's castle. They must not be unreasonable. If they are not unreasonable, a warrant permits the key to be used to open the door of that man's castle.

There are some clearly defined requirements in section 702(b). One of them is that the evidence may be readily destructible or disposable. Another is that if there is danger to life or limb of the officer executing the warrant the so-called no-knock warrant may issue.

I would like to point out that most statutes, whether they are Federal or State, provide expressly for the requirement of an announcement before a writ or search warrant is executed. Some of these statutes list the exceptions to the rule. However, even where the statute does not list those exceptions, court decisions have held that such exceptions are inherent in such statutory language.

Such language is to be found in section 3109, title 18, United States Code.

I ask unanimous consent that that section of the Code be printed at this point in the RECORD.

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

TITLE 18 U.S.C. SECTION 3109

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

Mr. HRUSKA. It also appears in section 1531 of the California Penal Code. I ask unanimous consent that the text of that statute be printed in the RECORD at this point.

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

The officer may break open any outer door or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if after notice of his authority and purpose, he is refused admittance.

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

Mr. HRUSKA. I yield.

Mr. ERVIN. The Senator does not maintain that there are any exceptions in Federal statutes even though they are not expressed; does he? There is no Federal common law.

Mr. HRUSKA. There is no Federal common law; that is correct.

Mr. ERVIN. Therefore, there is no law authorizing any exceptions to the statute in section 3109 unless it is expressly set out in an act of Congress. In other words, I agree with the Senator from Nebraska if he is talking about exceptions in common law with regard to State laws, but I do not agree with him if he encompasses any such exceptions in the Federal law.

Mr. HRUSKA. With all due deference to the Senator from North Carolina and his high position as perhaps the leading exponent of the law in this body, I point to the Sabbath case, decided in 1968, in which the court pointed out the implicit exceptions under section 3109 of the Federal Code. So there is that principle.

I point out also the case of Ker against California in 1963, and the Miller case in 1958, as well as the Sabbath case in 1968, where the language of the statute does not mention these exceptions. The court will place them in there, as implicitly being within the meaning of the statute and that they do not have to be expressed in the statute.

Mr. ERVIN. The only thing I will say on that point is that in the Sabbath case, the exceptions appearing in a footnote were obiter dictum by Justice Thurgood Marshall, and therefore do not have the force of law. The Sabbath case held that the search in that case was illegal under the fourth amendment.

Mr. HRUSKA. It may not be binding, but it is the closest thing to an expression by the court.

Mr. ERVIN. If the Senator will pardon me, the footnote by Justice Thurgood Marshall states:

Exceptions to any possible constitutional rule relating to announcement and entry have been recognized (see Ker v. California supra et 47) and there is little reason why those limited exceptions might not also apply to Section 3109 since they existed at common law, of which the statute is a codification.

The only citation given is the Ker case, which deals with the California State law, where the common law also prevails; but the suggestion of Justice Marshall in a footnote that an act of Congress is an embodiment of common law and, therefore, the common law is applicable is unsound, because there is no common law in the Federal law.

There are some applications of the common law in the District of Columbia because that law was taken directly from the State of Maryland, where the common law prevailed. But Justice Marshall is unsound in inferring that the principles of common law can be engrafted onto Federal statutes, because there is no Federal common law.

Mr. HRUSKA. It is well settled in Federal jurisprudence that there is no common law. A court does, however, have an opportunity to interpret statutory language. In doing so, the court looks at the derivation of the statute and the law pertaining to it to determine legislative intention. In the case of the California law and title 18, section 3109, United States Code, both are merely a codification of the common law rules applying to announcement and entry. Exceptions exist to this rule in the common law. Thus, I am sure it is a question of statutory interpretation. The Senator has made clear his statement, and what I have said on the citations and quotations will speak for themselves.

With regard to the Miller and the Ker cases, in neither of these cases was any warrant issued. The entry in each of those cases by law enforcement officers was without warrant or without any announcement by the officers before they entered the premises. Yet the Supreme Court held that when they entered the door of the Ker apartment without knocking and seized a brick of marijuana which was on the kitchen table, from which Mrs. Ker was just emerging it was not unreasonable. When the officers walked in Mr. Ker was sitting in the living room, reading a newspaper. There was an entry into that apartment by a key which was construed by the Supreme Court as breaking into the apartment. Under those circumstances the seizing of the evidence was held not to be unreasonable, but legal and valid and constitutional.

How does that differ from our situation in section 702(b) of this bill? In section 702(b) of this bill the officers would have to have a warrant. They would have to make a showing to a judge or to a magistrate of a U.S. court that there was probable cause to believe that if any such notice were to be given, the evidence sought in the case might be easily or quickly destroyed or disposed of, or there would be danger to the life or limb of the

officer or some other person. The judge, if satisfied by the showing, would inscribe on the search warrant the idea that entry could be made without announcement—a much stronger case than was approved in either the Miller or the Ker case.

That is what we are doing. We are restricting and limiting the operation of the law as it has been approved in the decisions to which I have referred.

So the impact of the repeal of section 702(b) would be in accord with Federal case law and with the construction of the statutes will continue in its present state of development and its present state of holding.

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

Mr. HRUSKA. I yield to the Senator from North Carolina.

Mr. ERVIN. I wish to call to the Senator's attention that the Miller case does not hold that. In fact, the Miller case concludes with this statement:

> The petitioner could not be lawfully arrested in his home by officers breaking in without first giving him notice of their authority and purpose. Because the petitioner did not receive that notice before the officers broke the door to invade his home, the arrest was unlawful, and the evidence seized should have been suppressed.

Mr. HRUSKA. Well, it certainly would not be unlawful under our proposed procedure, because the law enforcement officer would be required to go before a judge or a magistrate and say, "Your Honor, we have this evidence and these observations have led us to believe that certain evidence necessary in a case involving the violation of our drug laws is in certain premises. We have cause to believe that if notice is given in advance, when we enter, that evidence will be destroyed," or somebody will get shot. Upon that showing, the warrant is issued with those endorsements on it. Now there will be the added protection of the judgment or finding by judge or magistrate, before the fact occurs.

I say that section 702(b) sees to it that there is a more effective and more salutary protection of the constitutional rights and the guarantee of a man's safety in his home than the present system allows.

Mr. GRIFFIN. Mr. President, will the Senator yield to me?

Mr. HRUSKA. I yield to the Senator from Michigan.

Mr. GRIFFIN. I should like to comment very briefly on the point made by the distinguished Senator from North Carolina, who is an outstanding constitutional lawyer. He, as I understand the Miller case, was correct as to the fact that the Court, in that case, found no notice prior to entry and that, accordingly, they held that the entry was not lawful.

But it is my understanding that the Court's holding was not based upon the Constitution, it was based upon an interpretation of the existing Federal statute—18 U.S.C. § 3109.

Is that not the correct interpretation of the Miller case?

Mr. ERVIN. The Miller case was put upon the grounds of the supervisory function of the Supreme Court over the District of Columbia. They did not put it upon constitutional grounds.

Mr. GRIFFIN. That was my understanding. It was not based upon the Constitution, but upon an interpretation of the statute.

Mr. ERVIN. Four of the judges in the Ker case approved the Miller case as being proper constitutional law also. But the Miller case itself was not placed upon constitutional grounds, so the Senator from Michigan is correct.

Mr. GRIFFIN. It is my strong belief that the Miller case points up the necessity for the adoption of section 702(b) which would be deleted by the Senator's amendment. That is my opinion, although I thoroughly respect the view of the distinguished Senator from North Carolina.

Mr. HRUSKA. Mr. President, again I say that section 702 will be a statement of congressional policy and congressional decision that we will have a statute to which law-enforcement officers, judges, and magistrates may turn, in order to assure that there will be clearness, certainty, stability, and understandability, and protection for the actions of law-enforcement officers in venturing forth to break into a man's home, if they have to; to use the king's keys if they have to, under the circumstances that prevail. It seems to me that it would be preferable to refer the point to the court in advance of the issuance of the warrant, rather than to leave it to the fashion in which it is treated now.

This is of vital importance to the vast and overwhelming number of the law-abiding citizens of the United States and it will serve to reassure them that there will be no capricious, arbitrary, or ruthless action which could deprive them of their constitutional rights within their dwellings. At the same time, Mr. President, it will vest law-enforcement officers with a highly necessary tool in a big and crucial battle. A tool to be used, however, under strict court supervision in restricted areas, and in a responsible fashion.

This principle is not new, Mr. President. In 1968, a year and a half ago, Congress enacted into law the omnibus crime control bill, title III of which includes a provision that, under strict court supervision, electronic surveillance may be used for the purpose of securing evidence.

That provision was considered to be an urgently necessary and highly vital tool for law-enforcement purposes. And, Mr. President, it is now working.

The President who signed the bill immediately issued an order that the Department of Justice could not use electronic surveillance. The Attorney General who was in office at the time executed an order forbidding any of his district attorneys from using electronic surveillance. But that is not the case under the present administartion. We already have very concrete and heartening proof of the success of the use of the electronic surveillance method. The situation in New Jersey, with its virtually wholesale demonstration of corruption in high places, would never have been brought to light, nor would it have been successfully dealt with from the standpoint of prosecution, without electronic surveillance.

Here in the District of Columbia, with the help of electronic surveillance, there was uncovered a dope ring in which at least two prominent members of the Mafia were found to be active. This was possible only because of the use of electronic surveillance. Under strict court supervision, the officers of the law were able to use electronic surveillance, and got the necessary evidence to expose the situation and to lay a foundation for successful prosecution. More recently, in the gambling cases that centered around Arizona, that same thing was true.

So the principle for which we argue in section 702(b) is of the highest and utmost concern for the protection of constitutional rights of the citizenry at large. Certainly this is an approach that is highly analogous to that electronic surveillance situation, and it is just as urgently needed, because all of us know that in the traffic in dangerous drugs and dangerous substances, organized crime particularly finds one of its favorite ways of making money, by the illicit and illegal sale of these materials.

Drug abuse constitutes one of the biggest sources of crime on the streets, because, in order for the addicts to satisfy their voracious appetites for these drugs and substances, they go out and rob and burglarize, they extort money, and engage in the other forms of crime with which the Nation is so plagued.

It seems to me that under these conditions, where there is a constitutionally recognized exception to the announcement rule, a properly drafted amendment to section 3109 reflecting the exception for potential destruction of evidence should pass constitutional muster.

Although other exceptions might survive judicial scrutiny as well. The scope of section 702(b) has been kept narrow. It is limited. We do not want to cure all the ills in the world all at once. There might come a time when we would want to do that, and I would want every much to canvass the necessity in other areas; but it is a case here of an area where the evidence is easily disposed of. It is a case where people dealing in this type of traffic would be prone, and in fact they would be eager, to endanger the life of the man who is executing the search warrant. I believe that the case has been very well made for the passage of this bill with section 702(b) in it.

One thing is sure, Mr. President: The constant growth in the drug traffic is resulting in a demand for more effective law enforcement. This demand will in turn encourage a corresponding growth in the law; or, if not a growth, at least a clarification or refinement of existing standards by way of exceptions to the rule of announcement. I say let us do it in a way in which the rights of the citizens will be protected to the maximum. This bill, in my judgment, satisfies that requirement and will be useful in connection with the situation at hand. The pending amendment should be defeated. Section 702(b) of the bill should remain intact.

Many great tributes have been paid this afternoon to the Senator from North Carolina, and I should like to express

similar sentiment. This is one of the rare occasions when the Senator from North Carolina and the Senator from Nebraska have parted company. We do so in good spirit—both of us with sincerity, both of us possessed of the conviction that we are absolutely right.

I honor the Senator from North Carolina for his great learning and his scholarship in the field of law. But I also know that a practical situation faces us. An evolution of the law has been occurring and is occurring. The question of what is reasonable in the field of searches and seizures has been in litigation for 100 years. There has been a constantly shifting and constantly unclarified position, and a positon in which the waters have geen muddied for a long time. It behooves us, at this juncture of our national history, to go into the proposition and canvass the possibility and the probability and the greatest likelihood of proposing an amendment to section 3109 which, in effect, will meet constitutional standards. This amendment to section 3109 will serve two notable purposes: first, the protections that must be accorded to the citizenry at large will be stabilized and made more understandable; and second, law-enforcement officials will be given the tool they so sorely need if we are going to strike at one of the most vexing and disastrous aspects of the battle against illicit drug traffic and the crime that emanates therefrom.

It is for these reasons that I urge that the amendment be defeated and that section 702(h) remain in the bill as it was written.

I yield the floor.

Mr. ERVIN. I thank the distinguished Senator from Nebraska for the complimentary remark he made concerning me. I agree that ordinarily he and I entertain the same sound notions on most legal questions, and I regret that he has fallen a little from grace on this particular occasion.

Mr. HRUSKA. It will long be debated which of the two Senators has fallen from grace, but others will judge that.

Mr. DODD. I wish to compliment the Senator from Nebraska on his statement concerning this bill. He did it with his usual erudition. Whenever he speaks, it always seems to me that the subject matter is more clear. It certainly is to me. I think that in this instance, as in other matters, he has made a great contribution to the clearing up of the drug situation in this country. I thank him personally, and I think I can thank him on behalf of a vast number of people in this country.

Mr. HRUSKA. The Senator from Connecticut was present at almost all the extensive hearings on this bill. It was not my privilege to be present that frequently. I often sat beside him when all these matters were thoroughly laid out by the witnesses. Without his persistence and without his ability to develop the evidence and testimony as it was brought forward, we would not be able to make the case we make here today; and I pay him great respect and tribute for his contribution in this regard.

Mr. DODD. I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DOLE in the chair). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am about to propound a unanimous-consent request.

I ask unanimous consent that the time on the pending amendment, and all amendments thereto, be limited to 45 minutes, with the time to be equally divided between the able Senator from Connecticut (Mr. DODD) and the able minority leader, whomever he may designate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. HRUSKA. Mr. President, I yield 15 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 15 minutes.

Mr. GRIFFIN. Mr. President, I would like to join in the tributes which have been paid to the distinguished Senator from North Carolina (Mr. ERVIN), who is recognized by every Senator on both sides of the aisle as a most distinguished scholar and student of the Constitution. I certainly wish to indicate my high respect and high regard for his views. They are not to be taken lightly. When he makes an argument, he makes it most effectively. It is most uncomfortable for this Senator to be on the other side of this particular issue.

However, I feel strongly that not only would it be constitutional for the Senate to adopt the language which the Senator from North Carolina would strike, but also that it would be public policy to do so.

We start from the proposition and the realization that the Constitution does not protect citizens against all searches and seizures. We are protected and have the right of privacy under the fourth amendment from unreasonable searches and seizures.

Even from the days of common law, it has been recognized that while a law officer has a general obligation to knock at the door and announce his presence and purpose, there are circumstances under which that requirement was waived.

The question before the Senate today is whether the language in section 702(b) first, is constitutional, and second, whether it would be good public policy to adopt the language.

The distinguished Senator from North Carolina has focused upon the the Ker case. To be sure, four Justices in that case—a minority—took the point of view which has been argued by the Senator from North Carolina. But it is equally of more importance to note that a majority of the court found in that particular case that under the circumstances of the case, the questioned search and seizure was lawful.

Mr. ERVIN. Will the Senator from Michigan yield at that point?

Mr. GRIFFIN. I yield.

Mr. ERVIN. There were three other justices, in addition to Justice Brennan, who said that the fourth amendment did not have anything to do with this because the fourth amendment does not apply to the States. Thus, we have an equally balanced court with eight agreeing that the fourth amendment does apply and one of them saying it does not. The only way you can get the majority is to count the one who said the fourth amendment did not apply at all.

Mr. GRIFFIN. If we would accept the view of the Senator from North Carolina, for purposes of argument, that the Ker decision does not adequately clarify the constitutional dimensions of this problem then I would suggest that we might look at another case.

I invite attention to the case of *People* v. *De Lago*, 16 N.Y. 2d 289 (1965), cert. denied, 383 U.S. 963 (1966). This case was decided on the basis of the interpretation of a provision in the New York Code of Criminal Procedure.

That provision of section 799 of the New York Code of Criminal Procedure, provides:

> Section 799. The Officer may break open an outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant, (a) if, after notice of his authority and purpose, he be refused admittance, or (b) without notice of his authority and purpose, if the judge, justice or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice or magistrate may so direct only upon proof under oath, to his satisfaction, *that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result*, if such notice were to be given. As amended L. 1964, c. 85, eff. July 1, 1964.

The statute before the Court of Appeals of New York, in that particular case, I suggest, was similar to and in fact went further than the language the Senate is considering in section 702(b).

The Court of Appeals of New York was faced with the argument that the search and seizure in this case was unconstitutional under the fourth amendment to the Constitution, which generally requires an announcement by police officers of their purpose and authority before breaking into an individual's home.

In this case, officers had obtained a search warrant after satisfying the magistrate under the New York statute that there was reason to believe that certain gambling evidence would be destroyed if notice were given. Accordingly, they entered without notice, the arrest was made, and conviction was had.

In their opinion, the New York Court of Appeals stated in part that—

> The search warrant is attacked upon the further ground that the Fourth Amendment to the United States Constitution requires an announcement by police officers of their purpose and authority before breaking into an individual's home (Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746), and that the warrant is, threfore, void for dispensing with the need for such notification.

Section 799 of the Code of Criminal Procedure, as amended by chapter 85 of the Laws of 1964, authorizes an officer to break open an outer or inner door or window, or any part of a building "without notice of his authority and purpose, if the judge * * * issuing the warrant has inserted a direction therein that the office executing it shall not be required to give such notice."

* * * * *

Although the need for notification as a general constitutional requirement was reaffirmed in Ker v. State of California, 374 U.S. 23, 83 S.Ct. 1623, 10 L Ed. 2d 726, which is the leading case upon the subject, the Supreme Court upheld the lawfulness of a search (even without a warrant) where police officers entered quietly and without announcement in order to prevent the destruction of contraband.

* * * * *

The Supreme Court examined whether, notwithstanding its legality under State law, the method of entering Ker's home offended Federal constitutional standards of reasonableness.

In this case, the court noted further that—

It was represented to the court by affidavit that gambling materials were likely to be found at this location, and in issuing the warrant the court could take judicial notice that contraband of that nature is easily secreted or destroyed if persons unlawfully in the possession thereof are notified in advance that the premises are about to be searched.

The court of appeals, after it considered the constitutional change, found unanimously that the search and seizure under the New York statute was constitutional.

Application was made to the U.S. Supreme Court for certiorari, and it was denied in 1966, following the Ker decision—383 U.S. 963.

It is obvious that the argument which the distinguished Senator from North Carolina is making was before the Supreme Court in the De Lago case. The Supreme Courts refusal to consider that case impliedly, at least, supports the decision of the Court of Appeals of the State of New York as to the meaning, scope, and impact of the Ker decision.

I think it should be very clear that those who are supporting this language to the pending bill are by no means trying to unreasonably deprive or infringe upon the right of privacy.

In legislation heretofore passed. The Congress authorized making application to a judge for the instituting of electronic surveillance or wiretapping.

As we know, in a wiretap situation, the person whose conversations are being monitored does not know or usually find out that the conversation is being monitored.

If we are talking about the right of privacy, it would seem to me there would be far more objection to the provisions authorizing a court supervised and controlled wiretap than there would be to the pending provision.

Beyond that, it is very difficult for me to understand how the Senate which adopted the District of Columbia crime bill very recently containing a much broader so-called no-knock provision in it, can now object to a more limited no-knock provision as is included in the pending bill. As we know the no-knock provision in the District of Columbia crime bill was not limited to narcotics or drugs. It applied to anything that might be destroyed or easily disposed of.

The pending bill was very carefully drafted and restricted to the very serious problem of drug abuse which confounds and perplexes the American people as well as the law enforcement officers who are trying to do something about it.

It is necessary to strike a balance between the right of privacy and the ability to enforce the law. In this situation, I believe we ought to clarify the law so as to enable Federal officers with respect to dangerous drugs to take advantage of the common law exceptions to entry without notice provided such officers can persuade a Federal judge or magistrate of the correctness of their claim to such entry in a given case.

I believe the pending amendment, which I realize is offered by the Senator from North Carolina with deep conviction, should in the public interest be rejected.

A reading of the Supreme Court decisions indicates to me that, constitutionally, Congress could go further than it purports to go in the pending bill.

The committee has been rather careful in delineating and providing protection for the rights of our citizens against unauthorized intrusions.

The pending bill requires that there be a search warrant obtained. An officer is not allowed to make a decision to enter without notice. He must persuade a judge or magistrate of the need for such entry.

The officer cannot make his case at the door of a home—he must make his case before the court.

Mr. President, a law officer must present his case and indicate the grounds and the reasons why he thinks it is necessary to enter the premises without giving notice.

If the magistrate is satisfied that the situation meets the test of the statute, then he will issue the search warrant, which must specifically authorize such entry.

This is the only way entry without notice would be permitted by the bill.

Mr. President, I ask unanimous consent to have the entire opinion in People against DeLago, which I referred to earlier, printed in the RECORD.

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, *v.* ANTHONY DE LAGO, APPELLANT

Court of Appeals of New York, Dec. 30, 1965.

Certiorari Denied March 28, 1966. (See 86 S. Ct. 1235.)

Defendant was convicted in the Westchester County Court, John H. Galloway, Jr., J., on his plea of guilty, of bookmaking and possession of policy slips. That court denied motion to suppress as evidence certain property seized by police during search of defendant's apartment pursuant to search warrant and defendant appealed. The Appellate Term of the Supreme Court in the Second Judicial Department affirmed judgment and appeal was taken by permission of Associate Judge of Court of Appeals. The Court of Appeals, Van Voorhis, Jr., held that where it was represented to court by affidavit that gambling materials were likely to be found at location sought to be searched, it was reasonable to include in search warrant provision that executing peace officer was not required to give notice of his authority and purpose prior to executing order, even though there was nothing in affidavit to show specifically how or where those gambling materials would likely be destroyed or removed.

Judgment and order affirmed.

1. Searches and Seizures ⟸3(8).

Where defendant occupied one apartment in four-apartment structure, warrant commanding search of structure located at address of that apartment building was sufficiently ambiguous to justify looking to caption of warrant for clarification. U.S.C.A. Const. Amend. 4.

2. Searches and Seizures ⟸3(8).

Where defendant occupied one apartment in four-apartment structure and caption of search warrant commanding search of structure located at address of that apartment building limited search to described apartment which was the living unit occupied by defendant, warrant was not constitutionally deficient on basis that it did not particularly describe place to be searched. U.S.C.A. Const. Amend. 4.

3. Searches and Seizures ⟸7(1).

Fourth Amendment is not violated by an unannounced police intrusion, with or without an arrest warrant, where those within, made aware of presence of someone outside, are then engaged in activity which justifies belief that an escape or destruction of evidence is being attempted. U.S.C.A. Const. Amend. 4.

4. Searches and Seizures ⟸3(2)

Validity of search warrant is determined as of time of its issuance. U.S.C.A. Const. Amend. 4.

5. Criminal Law ⟸304(1).

Court could take judicial notice that gambling materials are easily secreted or destroyed if persons unlawfully in possession thereof are notified in advance that premises are about to be searched. U.S.C.A. Const. Amend. 4.

6. Gaming ⟸60.

Where it was represented to court by affidavit that gambling materials were likely to be found at location sought to be searched, it was reasonable to include in search warrant a provision that executing peace officer was not required to give notice of his authority and purpose prior to executing order, even though there was nothing in affidavit to show specifically how or where those gambling materials would likely be destroyed or removed. Const. art. 1, § 12; U.S.C.A. Const. Amends 4, 14; Code Cr. Proc. § 789.

7. Gaming ⟸60.

Even though affidavit stating that gambling materials were likely to be found at described location did not state specifically how or where those gambling materials would likely be destroyed or removed, likelihood that they would be destroyed or removed was an inference of fact which judge signing warrant might permissibly draw. Code Cr. Proc. § 799; U.S.C.A. Const. Amend. 4.

8. Searches and Seizures ⟸7(5).

Section of Code of Criminal Procedure authorizing inclusion in search warrant of provision authorizing officers to break open an outer or inner door or window or any part of building without notice of his authority and purpose if judge issuing warrant has inserted direction that officer executing it shall not be required to give such notice complies with Fourth Amendment to Constitution of United States Code Cr.Proc. § 799; U.S.C.A. Const. Amend. 4.

MICHAEL J. WINTER, BROOKLYN, FOR APPELLANT; LEONARD RUBENFELD, DIST. ATTY. (JAMES J. DUGGAN, TUCKAHOE, OF COUNSEL), FOR RESPONDENT; VAN VOORHIS, JUDGE

[1, 2] Appellant occupied one apartment in a four-apartment structure known as 2 and 3 Abendroth Place, Port Chester, New York. Policy slips and other gambling para-

phernalia were found in his apartment in a search thereof by the police made pursuant to a warrant commanding the search of "the structure, located at premises 2 and 3 Abendroth Place, Port Chester, New York, believed to be the framed [sic] dwelling occupied by one Anthony De Lago". We regard this phraseology as sufficiently ambiguous to justify looking to the caption of the warrant for clarification (People v. Martell, 16 N.Y. 2d 245, 264 N.Y.S.2d 913, 212 N.E.2d 433; Squadrito v. Griebsch, 1 N.Y.2d 471, 475, 154 N.Y.S.2d 37, 40, 136 N.E.2d 504, 506). The caption limits the search to the area described in the application for the warrant, namely, "The first floor apartment at 2 Abendroth Place, Port Chester," which was the living unit occupied by Anthony De Lago, the appellant herein. This was enough to sustain the warrant against the attack made upon it under People v. Rainey, 14 N.Y.2d 35, 248 N.Y.S.2d 33, 197 N.E.2d 527, that it was constitutionally deficient for "not 'particularly describing the place to be searched'" (N.Y. Const., art. I, § 12; U.S. Const., 4th Amdt.).

The search warrant is attacked upon the further ground that the Fourth Amendment to the United States Constitution requires an announcement by police officers of their purpose and authority before breaking into an individual's home (Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746), and that the warrant is, therefore, void for dispensing with the need for such notification.

Section 799 of the Code of Criminal Procedure, as amended by chapter 85 of the Laws of 1964, authorizes an officer to break open an outer or inner door or window, of any part of a building "without notice of his authority and purpose, if the judge * * * issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice." That section continues by stating that the Judge may so direct "only upon proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, * * * if such notice were to be given."

Boyd v. United States (supra), Accarino v. United States, 85 U.S.App.D.C. 394, 179 F.2d 456, 465, and other cases are cited in support of appellant's contention.

Although the need for notification as a general constitutional requirement was reaffirmed in Ker. v. State of California, 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726, which is the leading case upon the subject, the Supreme Court upheld the lawfulness of a search (even without a warrant) where police officers entered quietly and without announcement in order to prevent the destruction of contraband adding (pp. 37–38, 83 S. Ct. pp. 1631, 1632): "The California District Court of Appeal * * * held that the circumstances here came within a judicial exception which had been engrafted upon the statute by a series of decisions, see e.g., People v. Ruiz, 146 Cal.App. 2d 630, 304 P2d 175 (1956); People v. Maddox, 46 Cal.2d 301, 294 P.2d 6, cert. denied, 352 U.S. 858, 77 S.Ct. 81, 1 L.Ed.2d 65 (1956), and that the noncompliance was therefore lawful."

[3] The Supreme Court examined whether, notwithstanding its legality under State law, the method of entering Ker's home offended Federal constitutional standards of reasonableness. The court found no violation, even assuming that the officers' entry by use of a key was the legal equivalent of a "break". The California case of People v. Maddox, 46 Cal.2d 301, 306, 294 P.2d 6, was followed to the effect that the Fourth Amendment is not violated by an unannounced police intrusion, with or without an arrest warrant, where those within, made aware of the presence of someone outside, are then engaged in activity which justifies the belief that an escape or the destruction of evidence is being attempted.

[4, 5] Although the validity of a warrant is determined as of the time of its issuance (People v. Rainey, supra), in this instance it was represented to the court by affidavit that gambling materials were likely to be found at this location, and in issuing the warrant the court could take judicial notice that contraband of that nature is easily secreted or destroyed if persons unlawfully in the possession thereof are notified in advance that the premises are about to be searched.

[6–8] For this reason we consider that it was reasonable to include in this search warrant the provision under attack that "Sufficient proof having been given under oath that the gambling and other paraphernalia sought may easily and quickly be destroyed and disposed of, the executing peace officer is not required to give notice of his authority and purpose prior to executing this order." Even though there is nothing in the affidavit to show specifically how or where these gambling materials would be likely to be destroyed or removed, the likelihood that they would be was an inference of fact which the Judge signing the warrant might draw. The portion of section 799 of the Code of Criminal Procedure authorizing the inclusion of this provision in the search warrant is held to comply with the Fourth Amendment to the Constitution of the United States.

The judgment of conviction and the order denying the motion to suppress should be affirmed.

Desmond, C. J., and Dye, Fuld, Burke, Scileppi and Bergan, JJ., concur.

Judgment and order affirmed.

Mr. GRIFFIN. Mr. President, at this point I send to the desk an amendment which I offer as a substitute for the pending amendment and ask that it be stated.

The PRESIDING OFFICER. No amendment is in order until all time has expired, except by unanimous consent.

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GRIFFIN. It was my understanding that the agreement related to the pending amendment and amendments thereto.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRIFFIN. Mr. President, I shall offer the amendment at the expiration of the time, and I will take some time now to explain my proposal.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the amendment to the amendment may be offered at this time.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment will be stated.

The bill clerk proceeded to state the amendment.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

Delete subsection (b) of section 702 and insert therefor on page 72, line 20, the following:

"(b) Any officer authorized to execute a search warrant relating to offenses involving controlled dangerous substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States Magistrate issuing the warrant is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving is such notice will immediately endanger the life or safety of the executing officer or another person, and has included in the warrent a direction that the officer executing it shall not be required to give such notice: *Provided*, That any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises."

Mr. GRIFFIN. Mr. President, the language of my amendment is the same as the language in the bill except that I propose to adopt the precise language that was approved by the Senate in the District of Columbia crime bill concerning the tests applied by the court in approving entry without notice.

Section 702(b) of the bill under my amendment would include "if the judge or United States Magistrate issuing the warrant is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, (or) (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person."

I recognize that the Senator from North Carolina, when inquiry was made by the Senator from Connecticut as to whether or not a change in this wording would affect his position, said it would not.

I realize that in offering the amendment, but I want to make it clear that to the extent that the District of Columbia crime bill language resolved constitutional questions, and it did, this amendment seeks to incorporate and adopt the precise language of that bill on this point.

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

Mr. GRIFFIN. I yield to the Senator from Connecticut.

Mr. DODD. I see the chairman of the District of Columbia Committee in the Chamber. Perhaps he could help us on this point. Is this provision a substantial difference?

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Maryland?

Mr. GRIFFIN. I yield.

Mr. TYDINGS. Before responding to the question of the Senator from Connecticut, I wish to state that in my judgment the substitution of the word "will" for the word "may" is extremely important.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

Mr. DODD. Mr. President, I yield the Senator such time as he needs on the amendment.

Mr. TYDINGS. Because this issue is a matter of considerable importance, I wish to study the remainder of the language of S. 2869, which is the District of Columbia crime bill. I might add that the no-knock provision in S. 2869 was perfected by my committee before it was passed by the Senate.

At that time we gave a great deal of thought to the matter. We were very concerned with the original language of the Department of Justice for fear it was unconstitutional under Sabbath against United States, particularly footnote 4, which refers to Justice Brennan's opinion in Ker against California.

The key language in our proposal was the substitution of the word "will" for the word "may."

I would like an opportunity to study for a few minutes the remainder of the appropriate language which is found in section 108 of S. 2869 to see whether there are additional points which should be added to the amendment.

Mr. GRIFFIN. I would like to call to the attention of the Senator from Maryland that in the bill now before the Senate, I believe we have much more protection, if I may say so very respectfully, than was in the District of Columbia crime bill.

In this case, first of all, the bill is limited to dangerous drugs and does not apply beyond that where the District of Columbia crime bill did. Furthermore, the pending bill also provides that—

Provided, That any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

It is my impression that that language was not in the District of Columbia crime bill.

Mr. TYDINGS. The Senator is correct. In all probability I may reach the determination that this is an amendment which should be supported, but I would like the opportunity to reflect upon it for a few moments.

Mr. GRIFFIN. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report issued by the Senator from Maryland (Mr. TYDINGS) in connection with S. 2869, the District of Columbia crime bill.

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

Sections 107, 108, and 109 technically relate to the issuance of search warrants, and the application for such warrants, and the execution thereof, respectively. Substantively, however the sections overlap. In the aggregate, they have the following effect (1) of instituting a new standard for the issuance of warrants for nighttime execution; (2) of codifying those exigent circumstances under which an officer may dispense with the customary requirement of giving notice of his authority and purpose prior to the execution of a search warrant, and establishing a statutory bias in favor of obtaining, where practicable, prior court assessment of said exigent circumstances (by way of application for "no knock" warrants); and (3) of codifying certain exceptions, approved by existing case law and arising as a matter of functional necessity, to the general and constitutional rule whereby authority to seize property in the execution of a search warrant is limited to those items specified in the warrant.

Under sections 107 and 108 of S. 2869 as reported, a judicial officer must ordinarily direct that a search warrant be executed during the hours of daylight. However, the warrant may authorize otherwise—for example, that the warrant be executed at any, or some particular, time including during the hours of nighttime—if the judicial officer finds that the warrant cannot successfully, and safely, be executed during the daylight hours or hours other than those for which the application for execution authority is made. By approving said general rule and exceptions, the Senate District Committee seeks to balance competing legislative policies—first, the policy generally disfavoring nighttime executions, nighttime intrusions, more characteristic of a "police state" lacking in the respect for due process and the right of privacy dictated by the U.S. Constitution and history, and, secondly, the policy favoring effective law enforcement for the preservation of the prerequisite of an ordered society, and favoring the sure administration or rendering of criminal justice.

The new, recommended standard for authorizing the nighttime execution of search warrants—tantamount to a requirement that such execution be reasonably unavoidable—replaces an existing test whereby if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time" including during the nighttime, the so-called "positivity test." It is the view of the Senate District Committee that, while the "positivity" standard is intended to reflect an aversion to nighttime intrusions, nevertheless, an officer executing a search warrant may frequently be "positive" as to the whereabouts of the property being sought and at the same time be reasonably capable of executing the warrant with success during the preferred daylight hours. Conversely, a warrant lawfully executed—upon a minimum of probable cause—may not admit of daytime execution; the affiant may not be in fact "positive" as to the whereabouts of the property seized; and yet under the existing test such lack of "positivity" would serve as an effective bar to execution of the fully lawful warrant. In the committee's view, authorization for the less favored manner of execution logically should depend not upon the state of the executing officer's knowledge, but rather upon the feasibility of avoiding the less favored course.

The District Committee is advised that, from a practical standpoint, the required averment of positivity is frequently reduced to mere formulaic recitation. Under the provisions of sections 107 and 108, by way of contrast, the judicial officer issuing the warrant is invited to effect more active, meaningful supervision, as he renders the more logical and precise statutory determinations. (The committee is advised also that the provisions under discussion are patterned upon secs. 365.30(2) and 365.35(3)(b) of the proposed New York criminal procedure law (1968) and conform in substance to existing section 801 of the New York Code of Criminal Procedure.)

Under sections 107, 108, and 109 of S. 2869 as reported, an officer executing a search warrant must ordinarily give notice of his authority and purpose prior to entering upon premises to be searched. (See the comparable statute under existing law, sec. 3109 of title 18, United States Code.) U.S. Supreme Court in the case of *Ker* v. *California*, 374 U.S. 23 (1963), suggested, however, that the fourth amendment of the Constitution (in the *Ker* case, as "incorporated" for application to the States by the due process clause of the 14th amendment) is not violated, the search is not unreasonable, if pursuant to the law of the jurisdiction in question, an officer is authorized to dispense with the giving of notice under certain narrowly defined, exigent circumstances. Sections 107, 108, and 109 grant such authority as the law of the jurisdiction of the District of Columbia; and, in addition, manifest a legislative policy favoring the prior application by such officers for further court authority, to be expressed in the warrant, for dispensing with the notice requirement.

The latter policy approved by the Senate District Committee is that expressed, by way of dicta, in the case of *Trupiano* v. *United States*, 334 U.S. 699, 705 (1947), where the Court alludes to "the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities. * * * In their understandable zeal to ferret out crime * * * officers are less likely to possess the detachment and neutrality with which * * * constitutional rights * * * must be viewed."

In other words, it is made clearly the law of the District of Columbia, on the one hand, that police officers may under certain conditions and on their own initiative, effect entry upon premises without notice. Effective law enforcement locally demands as much. Nevertheless, it is likewise intended, under sections 107, 108, and 109, that, when the applicant is aware, at the time of the request for the warrant, of compelling reasons for dispensing with notice of authority and purpose, he must state those reasons to the judicial officer who is to issue the warrant; and, in the absence of authorization then from said judicial officer for dispensing with the requirement of prior notice, those compelling reasons without more are not to be deemed by the executing officer alone to be adequate exigent circumstances.

The precise language of sections 108 and 109 defining those exigent circumstances which justify dispensing with notice is largely derived from the *Ker* case itself. Of the eight Justices who sought to apply the requirments of the fourth amendment to the California criminal proceeding, four determined that the facts of the *Ker* case made out a violation of those requirements, while four, ruling as the majority, found no such violation. (Mr. Justice Harlan voted to affirm the judgment below, but applied not the requirements of the fourth amendment—which would be applicable in the District of Columbia outright—but rather a more flexible requirement of fundamental fairness embodied in the 14th amendment.) The District Committee in revising sections 108 and 109 was inclined in consequence to read the *Ker* case narrowly, with a view toward forestalling constitutional attack.

The California rule which the Court approved is stated as follows, 374 U.S. at 40: "'[C]compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose.'" The facts of the *Ker* case, moreover, were such that "Ker's furtive conduct in eluding them [, the officers,] shortly before the arrest was ground for the belief that he might well have been expecting the police." Mindful that the California rule refers to frustration which would result—or, in the absence of hindsight, which the officer believes would result—sections 108 and 109 posit the standard of probable cause to believe that the property will be destroyed; that is, would be destroyed were notice to be given. (The additional requirement of belief that the property "may" be destroyed requires belief simply that the property is destroyable.) Mindful that the California rule refers to peril which would be increased—or, in the absence of hindsight, which the officer believes would be increased—and furthermore in light of the fact that the officers in *Ker* had good grounds to believe that Ker was awaiting them, sections 108 and 109 posit the further standard of probable cause to believe that the officer (or some other person) will be endangered; that is, would be endangered if notice were to be given. (The additional reference to immediate danger simply restates in narrow terms the scenario approved in *Ker;* the officers had grounds to believe that, were notice to be given, the peril would thereupon increase; the reference is clearly not to peril occuring at some more distant juncture, but to peril at the relevant juncture, the time of the intrusion.

Also in this regard, it was suggested that the standard be one of (A) probable cause (B) to believe that the property (C) *may* be destroyed (or that some person (C) may be endangered). The District Committee opted to substitute (A) probable cause (B) to believe that the property (C) *will* be destroyed (or that some person (C) *will* be endangered), as conforming more closely to the *Ker* case as described above—including its holding, dicta, facts, and case law background—and in order to avoid a seeming unintended further pyramiding of uncertainties ((C) upon (A) and (B). That is to say, the committee was fearful lest it be argued that (A) probable cause for (B) belief as to (C) a possibility (indicated by the further "*may*") constitutes, with the three levels of uncertainty (A), (B), and (C)), in fact no reasonable grounds at all.

Mr. GRIFFIN. I yield to the Senator from Connecticut.

Mr. DODD. Mr. President, I wish to say I think this is a good amendment, and I think that it will be of help in the bill. I had hoped such an amendment would overcome the objections of the Senator from North Carolina when I suggested it a few moments ago. However, if there are other Senators who are troubled about the use of the word "may" I think this amendment is an improvement, and I am happy to accept it. I compliment the Senator from Michigan for having offered the amendment.

Mr. GRIFFIN. I thank the Senator for those kind remarks.

There is a further reason why I believe the amendment should be adopted. After all, the District of Columbia is governed by the Federal Government. Federal agents and officers are attempting to adhere to the applicable law. It seems to me if we are going to give Federal agents similar authority outside the District of Columbia, to the extent possible, the Congress should use the same language and provide the same tests to avoid any possible confusion.

Mr. DODD. That is another reason to accept it.

Mr. ERVIN. There are certainly differences between the amendment of the Senator from Michigan and the provision in the District of Columbia law.

Mr. DODD. The Senator is correct, but that is not at issue here. I am talking about the amendment of the Senator from Michigan.

Mr. ERVIN. Do I understand that the Senator from Connecticut believes that the provision in the District law should be identical with any provision in the present bill?

Mr. DODD. I think everyone would agree if they were exactly alike in all respects. This will not happen. But in this respect we can conform and make this provision like the District of Columbia bill, and we should do it. Because we cannot do all of it is not a reason for not doing some of it.

Mr. ERVIN. I still have not made my point.

Mr. GRIFFIN. Mr. President, I have the floor, but I am glad to yield to the Senator from North Carolina.

Mr. ERVIN. I was making the point that the amendment offered by the distinguished Senator from Michigan and the provision in the District of Columbia crime bill are quite different.

Mr. GRIFFIN. Let me answer by saying the provisions are not identical in all respects, but they are identical insofar as this crucial test is concerned around which the constitutional argument has been raised. So far as some of the other language which goes to making application for the warrant is concerned, I must concede, without rewriting the entire bill, we could not have had identical language. But for that matter, we would not want identical language because we are here only dealing with drugs, and we are not seeking to go beyond that.

So far as the argument of the Senator from North Carolina relating to constitutionality of the provision is concerned, we have identical language to deal with in my proposal and the District of Columbia crime bill.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I have said and I repeat that I am happy to accept the amendment of the Senator from Michigan.

Mr. ERVIN. I object because there has been an order entered for a rollcall vote on my amendment.

Mr. DODD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DODD. Mr. President, am I not entitled to accept the amendment? I think I am entitled to say I am willing to take it. Is that right?

The PRESIDING OFFICER. The Senator is correct, but the Senate must accept it. It would be in order to ask unanimous consent that the language be modified to include the amendment.

Mr. ERVIN. Can that be done after a rollcall vote has been ordered on my amendment?

The PRESIDING OFFICER. The yeas and nays have no effect on what is voted on.

Mr. DODD. Then, I do ask unanimous consent to that effect.

Mr. ERVIN. I object.

The PRESIDING OFFICER. As the Chair understands it, if the Senator did accept the modification, the vote would still come on the amendment to strike.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, with the understanding that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceed to call the roll.

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

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

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. GRIFFIN. A vote on the amendment offered by the junior Senator from Michigan would come before the vote on the amendment offered by the Senator from North Carolina. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. GRIFFIN. I ask for the yeas and nays on my amendment.

Mr. ERVIN. Mr. President, before the Senator requests the yeas and nays, I would like to ask a parliamentary inquiry.

Mr. GRIFFIN. I defer to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina will state his parliamentary inquiry.

Mr. ERVIN. Mr. President, I want to pose this parliamentary inquiry: If the distinguished Senator from Connecticut modifies his amendment to conform to the amendment proposed by the Senator from Michigan, would the amendment offered by me and my eight cosponsors still be in order?

The PRESIDING OFFICER. If it were modified and treated as original text, it would still be in order.

Mr. ERVIN. I would suggest that the Senator from Connecticut ask unanimous consent that his amendment, being modified in the manner suggested by the Senator from Michigan, be considered as original text.

Mr. GRIFFIN. Mr. President, I think I would prefer the regular procedure in this case and accordingly, I ask for the yeas and nays on my amendment.

Mr. ERVIN. Mr. President, I would like to ask a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ERVIN. Does the time limitation apply to the Senator from Michigan?

The PRESIDING OFFICER. That is correct. The agreement is on the amendment and all amendments thereto. Who yields time?

Mr. ERVIN. Mr. President, I have another parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from North Carolina wish to make a parliamentary inquiry?

Mr. ERVIN. Yes. My parliamentary inquiry is this: In the event the amendment of the Senator from Michigan is adopted, would it be in order for me to move to strike out his provision?

The PRESIDING OFFICER. Not that identical language. The Senator from North Carolina would need to make a substantial change, but he could not strike out only that identical language.

Mr. ERVIN. Well, I would hope I would not be left without remedy.

The PRESIDING OFFICER. The Senator from North Carolina cannot move to strike the identical language in the event it is adopted.

Mr. ERVIN. My amendment would be to strike out all subsection (b) of section 702. Why would not that apply?

The PRESIDING OFFICER. Because if the Senate agrees to this amendment, the Senate will have put in what the Senator from North Carolina proposes to strike out, and a motion to strike and insert takes precedence.

Who yields time?

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I am prepared to yield back my time so we can get to a vote.

Mr. GRIFFIN. Mr. President, I desire to yield some time to the distinguished Senator from Maryland (Mr. TYDINGS). Is 3 minutes sufficient?

Mr. TYDINGS. Will the Senator yield to me 5 minutes?

Mr. GRIFFIN. I yield 5 minutes to the Senator from Maryland.

Mr. ERVIN. Mr. President, I want to make another parliamentary inquiry. Am I being put in the fix that the Senator from Connecticut controls the time on one side and the Senator from Michigan controls the time on the other side, so that I have no time?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time in opposition be allocated to the Senator from North Carolina.

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

Mr. ERVIN. Mr. President, how much is the time in opposition?

The PRESIDING OFFICER. The Senator from North Carolina has 4 minutes.

Mr. ERVIN. Mr. President, with all due respect, I think this is an unfair parliamentary situation.

Mr. GRIFFIN. Mr. President, I yield 2 minutes to the Senator from Maryland (Mr. TYDINGS).

Mr. TYDINGS. Mr. President, I am delighted that the Senator from Michigan is offering this amendment. I intend to support the amendment of the Senator from Michigan. His amendment, in my judgment, makes the provision fit within the language of Justice Brennan's opinion in Ker against California.

I was prepared to support the motion of the Senator from North Carolina to strike, because section 702 on page 72 of S. 3246, especially the use of the word "may," is unconstitutional, just as it similarly was unconstitutional in the District of Columbia crime bill which we received from the Department of Justice. The District of Columbia Committee studied it a great deal, and decided it could be made constitutional by amendment of the language originally submitted, just as the Senator from Michigan has done here, and changing the pertinent word from "may" to "will."

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. TYDINGS. Mr. President, I ask unanimous consent that I may have 3 additional minutes.

Mr. MANSFIELD. Mr. President, the time is limited.

The PRESIDING OFFICER. The time is limited.

Does the Senator from Connecticut yield time?

Mr. DODD. No, Mr. President. We have only 2 minutes remaining. I want to give all the time I can to any Senator who requests it, but I would like to have some time to answer the very persuasive Senator from North Carolina.

The PRESIDING OFFICER. The Senator from Maryland has no time remaining. The Senator from Michigan has 2 minutes remaining. The Senator from North Carolina has 4 minutes remaining.

Who yields time?

Mr. GRIFFIN. Mr. President, I yield the Senator from Maryland 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. TYDINGS. Mr. President, the reason we amended the District of Columbia general crime law to read "will" instead of "may" was that the case law, including Sabbath against the United States, requires, under the fourth amendment, that the executing officer of the warrant have a probable cause to believe that if notice is given, the evidence will, or at the very least, would be destroyed.

The fourth amendment requires that the executing officer have knowledge of particular facts, not just a general impression, to justify breaking and entering without notice. To substitute the word "will" for the word "may," in my judgment, makes the provision constitutional, and therefore I support it.

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, how does the time stand?

The PRESIDING OFFICER. The Senator from North Carolina has 4 minutes remaining. The Senator from Michigan has less than 1 minute.

Mr. MANSFIELD. Mr. President, I should like to have the attention of the Senate. I am about to propound a unanimous-consent request, because of an unusual circumstance which has developed.

UNANIMOUS-CONSENT AGREEMENT

I ask unanimous consent that at the conclusion of the 1½ hours allocated to the distinguished senior Senator from Louisiana (Mr. ELLENDER) tomorrow—that would be at 12 o'clock—there be a period for the transaction of routine morning business of not to exceed 30 minutes; at that time, a motion will be made by the distinguished Senator from North Carolina (Mr. ERVIN), I believe in the form of modifying language or an amendment, and I ask unanimous consent that the vote on the pending amendment or the amendment thereto not take place tonight, but that there be a time limitation thereon between the hours of 12:30 and 1 o'clock tomorrow, and that at 1 o'clock the vote be taken.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, and I shall not object, do I understand that a further amendment of some kind will be offered by the Senator from North Carolina?

Mr. MANSFIELD. Yes.

Mr. GRIFFIN. How much time will be permitted for debate on such an amendment?

Mr. MANSFIELD. The time to be equally divided between the Senator from North Carolina and the Senator from Connecticut, or whomever they may designate.

Mr. ERVIN. Mr. President, I believe that first the question would arise on the amendment of the Senator from Michigan. If the amendment of the Senator from Michigan is defeated, then my original amendment would be in order to correct the situation; but if the amendment of the Senator from Michigan is agreed to, I would have to offer another amendment to preserve my position.

Mr. GRIFFIN. That is what I am seeking to determine. It would be my understanding of the rules that another amendment by the Senator from North Carolina at this time would not be in order, because it would be an amendment in the third degree.

Mr. ERVIN. Is this correct, Mr. President?

The PRESIDING OFFICER. The Chair advises the Senate that an amendment of the Senator from North Carolina to perfect would be in order. In other words, the language is subject to a perfecting amendment before we vote on the amendment of the Senator from Michigan, at this time.

Mr. GRIFFIN. Would the Chair repeat its ruling.

The PRESIDING OFFICER. The language proposed to be stricken is open to a perfecting amendment at this time.

Mr. PASTORE. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. PASTORE. Then, as I understand it, there will be no further votes tonight?

Mr. MANSFIELD. If the request is agreed to, that is correct.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Montana? The Chair hears none, and it is so ordered.

The unanimous-consent agreement was subsequently reduced to writing, as follows:

Ordered, That further debate on the amendment by the Senator from Michigan (Mr. GRIFFIN), numbered 457 to S. 3246, Controlled Dangerous Substances Act of 1969, be limited to 30 minutes, to be equally divided and controlled by the Senator from Connecticut (Mr. DODD), or designee, and the Senator from North Carolina (Mr. ERVIN), with the vote beginning at one o'clock p.m.

Mr. HRUSKA. What is the time for voting, at 1 o'clock, on the Griffin amendment?

Mr. MANSFIELD. On the Griffin amendent, that is correct.

SENATE JOINT RESOLUTION 171—INTRODUCTION OF A JOINT RESOLUTION AUTHORIZING APPROPRIATIONS FOR THE PAYMENT BY THE UNITED STATES OF ITS SHARE OF EXPENSES OF THE PAN AMERICAN RAILWAYS CONGRESS ASSOCIATION

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a joint resolution to authorize appropriations for the payment by the United States of its share of the expenses of the Pan American Railways Congress Association.

The joint resolution has been requested by the Acting Assistant Secretary of State for Congressional Relations and I am introducing it in order that there may be a specific resolution to which Members of the Senate and the

public may direct their attention and comments.

I reserve my right to support or oppose this resolution, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the joint resolution be printed in the RECORD at this point, together with the letter from the Acting Assistant Secretary of State dated December 12, 1969, plus the memorandum of the proposed draft amendment.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred; and, without objection the joint resolution and the other material will be printed in the RECORD.

The joint resolution (S.J. Res. 171), to amend the joint resolution authorizing appropriations for the payment by the United States of its share of the expenses of the Pan American Railways Congress Association, introduced by Mr. FULBRIGHT (by request), was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 80–794, Eightieth Congress, approved June 28, 1948, is amended by striking out "$5,000" and inserting in lieu thereof "$15,000" in Section 2(a).

The material furnished by Mr. FULBRIGHT follows:

DEPARTMENT OF STATE,
Washington, D.C., Dec. 12, 1969.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I submit a proposed draft amendment to the Joint Resolution providing for membership and participation by the United States in the Pan American Railways Congress Association.

S.J. Res. 177 of the Eightieth Congress, enacted as PL 80–794 (22 U.S.C. 280j and 280k) authorized an appropriation of $5,000 annually in connection with United States participation in the Association. There has been no increase in the United States quota to the Association in the twenty-one years of United States participation.

Last year, the Congress of the Association provisionally raised the members' quotas for the first time since the United States has been a member. The United States quota would be raised from $5,000 to $15,000 annually; other member government quotas would be raised accordingly, so that the United States quota would remain at approximately 42 percent of the total of all member governments' quotas.

The proposed legislation would authorize the proposed increase in the United States quota from $5,000 to $15,000 annually. The United States has not voted for the proposed increase and does not plan to do so until and unless Congress authorizes the increase. However, the Department believes that the proposed increase is necessary for the proper functioning of the Association and considers that the work of the Association is beneficial to United States interests.

The Bureau of the Budget has advised the Department that from the standpoint of the Administration's program, there is no objection to the submission of this proposal to the Congress for its consideration.

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

MEMORANDUM TO ACCOMPANY PROPOSED AMENDMENT TO THE JOINT RESOLUTION PROVIDING FOR MEMBERSHIP OF THE UNITED STATES IN THE PAN AMERICAN RAILWAYS CONGRESS ASSOCIATION

The Pan American Railways Congress Association is an inter-American, mixed-membership (both governments and railroads) organization in which the United States Government participates by virtue of a 1948 Act of Congress. The Statutes for the forerunner organization were adopted at a railway congress in Buenos Aires in 1910 and membership was extended to North and Central America at the Fourth Pan American Railway Congress in 1941.

The bylaws of the Association provide that the governments shall contribute on the basis of $0.05 per kilometer of railroad line in operation subject to a minimum of $100 and a maximum of $5,000. The estimated Government quotas for FY 1969 amount to $11,914 of which the United States quota is $5,000 (42%) with the remainder being the quotas of the 15 other American States that are members. (Other Member States are Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, Guatemala, Mexico, Paraguay, Peru, Uruguay and Venezuela.)

The last Congress of the Association, which was held in Buenos Aires in November 1968, provisionally raised the Member States annual quotas, the first such increase in 21 years. The new quotas would be on the basis of $0.15 per kilometer of railroad line in operation subject to a maximum of $15,000. Thus the quota paid by the United States Government would still be only 42% of the assessed government quotas which is considerably less than the 66% the United States normally pays in most inter-American organizations.

The United States Government supports the request for a quota increase from $5,000 to $15,000 because: 1) this is the first such proposed increase in a 21-year period of inflation, 2) United States business interests, particularly in the railway equipment field, assert that participation promotes sales of United States products in Latin America, 3) the United States quota, at 42% of the total assessed government quotas, is below the 66% the United States pays generally in inter-American organizations and remains substantially unchanged, and 4) the Association is useful as an additional force for Hemispheric cooperation.

The Association promotes the development of railways in the Americas mainly through publications and periodic meetings. United States participation is conducted through a National Commission whose members are appointed by the President. The members include men of importance in the railway field as well as selected United States government officials. The Chairman has always been the President of the American Association of Railroads, currently Mr. Thomas M. Goodfellow.

The Department of Transportation has stated and the Department of State concurs in the view that the Association is serving a useful purpose. Both Departments consider that continued United States participation is worth the proposed increase in the annual United States quota from $5,000 to $15,000. The increase would be used to expand the exchange of information and publications among members of the Association as well as to cover the increased cost of salaries and operating expenses.

THE ATTITUDE OF THE NORTH VIETNAMESE

Mr. FULBRIGHT. Mr. President, Prof. Joseph W. Elder of the University of Wisconsin has written an article for the February issue of the Progressive magazine entitled "Vietnam: The Other Side Is Responding," which I believe warrants the attention of my colleagues in the Senate. There are many misconceptions about the attitude of the North Vietnamese, and for that reason I think Professor Elder's knowledge and insight into the matter is extremely timely. I ask unanimous consent that it be printed in the body of the RECORD as part of my remarks.

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

VIETNAM: THE OTHER SIDE IS RESPONDING

(By Joseph W. Elder)

During the past year the Vietnamese we are fighting offered President Nixon a handle which, if grasped, might provide the means to end the war. But so far he has apparently rejected—and possibly not even seriously explored—this opportunity for peace.

Meanwhile, thousands of Americans and Vietnamese have died, while U.S. spokesmen contend that the war goes on because the other side will not respond to any of our peace proposals and will make none of its own.

But the other side *has* responded, as I had a chance to observe first hand on two visits to Hanoi. However, this response, which I helped convey to the President's foreign policy advisers twice, has been ignored by the Administration.

I first visited Hanoi for one week last June on behalf of the American Friends Service Committee (AFSC) to discuss Quaker assistance to civilians in North Vietnam (AFSC was already assisting civilians in both Saigon-controlled and NLF-controlled portions of South Vietnam.) While in Hanoi, I conferred with North Vietnam's foreign minister, Nguyen Duy Trinh. During our conversation, I mentioned that I was part of an AFSC committee scheduled to meet with President Nixon's foreign policy advisers in July. "Are there particular points," I asked, "you would like me to stress on your behalf during the meeting?"

The foreign minister paused a moment. Then he said, "Tell President Nixon's advisers that if the United States is seriously interested in holding elections in South Vietnam, it should recognize the importance of the Provisional Revolutionary Government in South Vietnam."

I had first heard of the Provisional Revolutionary Government (PRG) when its formation was proclaimed only five days earlier at a Hanoi press conference. Facing a bank of lights and movie cameras, Nguyen Van Tien, the National Liberation Front (NLF) Party's representative to Hanoi, had announced that eighty-eight delegates and seventy-two guests, representing a range of anti-Thieu-Ky viewpoints, had met in a conference June 6–8 "somewhere in South Vietnam." The conference had been convened jointly by the NLF and the VNANDPF (the Vietnam Alliance of National, Democratic, and Peace Forces, an urban-based anti-Thieu-Ky party formed during the 1968 Tet offensive). From the June 6–8 conference emerged what was proclaimed to be a new government in South Vietnam—the Provisional Revolutionary Government of the Republic of South Vietnam, headed by the prime minister of an eleven-member cabinet.

The newly formed Provisional Revolutionary Government was a coalition of the NLF Party, the VNANDPF Party, the Vietnam People's Revolutionary Party (Communist), the Democratic Party (a nationalist party dating back to the 1930s), and representatives from trade unions and youth, professional, national minorities, armed forces, religious, women's, and other groups.

One of the Provisional Revolutionary Government's acts had been to endorse the NLF's ten-point proposal of May, 1969, for restoring peace in Vietnam. The PRG had

also retained the NLF's foreign policy (and flag) and elevated the NLF's chief negotiator in Paris, Madame Nguyen Thi Binh, to the post of foreign minister.

In the domestic arena, the PRG announced it was "prepared to enter into consultations with political forces representing various social sections and political tendencies in South Vietnam that stand for peace, independence, and neutrality . . . with a view to setting up a provisional coalition government. . . . The provisional coalition government will organize general elections in order to elect a Constituent Assembly, work out a democratic constitution . . . and form a coalition government symbolizing national concord and the broad unity of all social segments."

The Vietnamese at the Hanoi press conference I attended had been visibly excited, as were representatives of much of the non-Western world who were present. Within the next week, more than twenty nations had officially recognized the Provisional Revolutionary Government—including several non-Communist-bloc countries.

Foreign Minister Nguyen Duy Trinh of North Vietnam expanded his initial comment for my benefit. The month before, in May, 1969, both the NLF's ten-point proposal and President Nixon's eight-point proposal had called for elections in South Vietnam as a way of ending the war. Now Nguyen Duy Trinh focused on the differences between the two proposals.

"President Nixon's eight points allow Thieu, Ky, and their armies to remain in control during the elections. But Thieu and Ky jail those candidates who disagree with them. I'm afraid we know how 'free' the elections would be if they were held according to the Nixon formula," grimaced Nguyen Duy Trinh.

The foreign minister then turned to the NLF's ten points. The elections they called for would be run by a temporary coalition government. The PRG had already announced *it was not* that temporary coalition government. It was the government *preceding* the temporary coalition government. It was prepared to consult with other South Vietnamese political forces standing for "peace, independence, and neutrality" in *establishing* the temporary coalition government to organize the general elections. Once the elections had been held, the temporary government would dissolve, and the duly elected government would take over. This election plan paralleled a Buddhist South Vietnamese plan I had discussed in Paris with Thich Nat Hanh of the United Buddhist Church.

"President Nixon says he is looking for 'some sign from the other side' in response to his eight points," declared Nguyen Duy Trinh. "We have given him a sign. He has failed to see it."

The foreign minister then went on to elaborate how the PRG was a logical extension of the broadening opposition in South Vietnam to the Thieu-Ky government. The NLF was formally established December 20, 1960, as a coalition party that came to include non-Communist parties such as the Democratic Party, the Radical Socialist Party, the Patriotic and Democratic Journalists' Association, the Patriotic Buddhist Believers' Association, and the Cao Dai religious sect as well as the Communist People's Revolutionary Party. Numerically, the Communists comprised only a fraction of the NLF membership. Douglas Pike, for six years a U.S. Information Agency officer in Vietnam, estimates that in 1962 the Communist PRP formed only 35,000 of a total NLF membership of 300,000—less than one in eight.

In 1967 the South Vietnamese Catholic Bishops' statement against the war reflected official Catholic opposition to the policies of Thieu and Ky. Their statement was especially significant since the Catholic population in South Vietnam has traditionally been so strongly anti-Communist. In 1968, at the time of the Tet offensive, a new, broad-based party was formed: the Vietnam Alliance of National, Democratic, and Peace Forces. The party drew from city dwellers and intellectuals disaffected by the Thieu-Ky government and fearful of further imprisonments or harassments. When the Alliance Party was announced, a number of prominent South Vietnamese urban citizens dropped out of sight—only to surface later in sections of South Vietnam not controlled by Saigon.

Within this context, the newly established Provisional Revolutionary Government was a coalition of coalitions—with some Communist, but much more non-Communist, participation. "The PRG is now ready to form an even larger coalition with any South Vietnamese who want peace, independence, and neutrality," the foreign minister told me. "It is a significant next step toward an election, reconciliation among the South Vietnamese people, and an end to the war. Please try to make this clear to your nation's leaders."

Four days later, in Hong Kong, I reported my Hanoi discussion to two State Department officers in the U.S. Consulate. Their response was blunt: "The PRG is the same as the NFL. They've just shifted titles around and called themselves a government rather than a party."

In Saigon, eleven days later, I told Ambassador Ellsworth Bunker of the foreign minister's statement. He and his aide also maintained that the PRG was the same set of people as the NLF, with a few changes in titles. The ambassador was unhappy with the "intransigent" position the NLF and Hanoi were taking. "They have lost half a million dead during the war—half of those killed last year. And they are being killed at the same rate this year. They *must* be hurting. Why don't they negotiate more reasonably?" He said nothing more about the PRG.

Only in Paris did I find a positive response to Hanoi's message—from Philippe Devillers, one of France's leading Vietnam specialists (author of *Histoire du Viêt-Nam de 1940 à 1952* and co-author with Jean Lacouture of *La Fin d'une Guerre: Indochine 1954*). For years Devillers has maintained that the NLF is fundamentally an indigenous southern force driven into being by the oppression of Premier Ngo Dinh Diem and subsequent Saigon rulers.

"Because your country *still* accepts John Foster Dulles' image of world Communism," said Devillers, "it has failed to respond to the many non-Communist elements in the NLF and now the PRG. Take Huynh Tan Phat, the president of the Provisional Revolutionary Government. Phat is a Saigon architect by profession. His basic political affiliation is with the Democratic Party, of which he is general secretary.

"Phat was forced underground in 1958," Devillers continued, "when President Ngo Dinh Diem began suppressing opposition parties. Retaining his position in the Democratic Party, Phat joined the NLF coalition when it was formed in 1960, and he has served on the NLF Central Committee. Phat's economic strategy differs in important ways from that in North Vietnam. He includes more room for competition and market economics. He is not for a hasty reunion of South and North Vietnam. At point he was even opposed to having any Northern troops come into the South. Since the establishment of the PRG, I have watched Phat's forces here in Paris. They have become increasingly influential in the South Vietnamese delegation."

Devillers went on to describe other men and women making up the eleven-member cabinet of the PRG. Almost all were middle-of-the-roaders. *The New York Times* correspondent in Hong Kong had thought he identified one member of the cabinet who had People's Revolutionary Party (Communist) connections—Tran Nam Trung, minister of defense. However, both the *Times* correspondent in Paris and *Le Monde* had stated that none of the leading members of the PRG was known to be a Communist.

At least three of the eleven cabinet members were from the recently formed VNANDPF Party: Nguyen Doa, vice-president; Dr. (Mme) Duong Quynh Hoa, minister of public health and social affairs; and Professor Nguyen Van Kiet, minister of education and youth. Ironically, Luu Huu Phuoc, minister of information and culture, is the composer of South Vietnam's national anthem; he was a prominent South Vietnamese musician before he was driven underground by the Saigon government.

Devillers also described the thirteen-member Advisory Council established as a consultative body for the PRG. If anything, the Advisory Council's representative spectrum was even wider than that of the PRG cabinet. The Council's president was lawyer Nguyen Huu Tho of the NLF. Lawyer Trinh Dinh Thao of the VNANDPF was vice-president; during the Japanese occupation in 1945, Trinh Dinh Thao had acted as minister of justice. Other members of the Advisory Council included Superior Bonze Thich Don Hau, leader of the militant Buddhists in Hue; Pham Ngoc Hung of the Patriotic Catholics of South Vietnam; Huynh Van Tri of the Hoa Hao Buddhists; Ibih Aleo of the Movement for the Autonomy of the Nationalities in the High Plateaux; Huynh Cuong of the Khmer Nationals; and Professor (Mme) Nguyen Dinh Chi of the Saigon-Cholon Revolutionary Committee.

"Within the present context of South Vietnam, the PRG is a moderate—even conciliatory—group with which your side could work to end the war," Devillers told me. "Furthermore, the establishment of the PRG means that the Communist world—including Hanoi—has accepted the existence of a separate 'Republic of South Vietnam.' More than twenty countries, including the Soviet Union and China, have formally recognized the PRG.

"Both now and in the immediate future," Devillers added, "there is no question of North Vietnam annexing or incorporating South Vietnam. Hanoi's formal acceptance of the PRG suggests it is not in any rush to reunite the two sections of Vietnam. The PRG itself is opposed to immediate reunification. It has stated the reunification of Vietnam will be achieved step by step, by peaceful means, through agreement between the two zones. Both governments are committed to reunification, but both are willing to work out the details over time. Americans should not underestimate how important *this* development is."

Devillers then went on to outline his own suggestions on how to end the war in Vietnam. They included:

A clear statement of U.S. intentions to withdraw all its troops from Vietnam (withdrawal would not have to be precipitous, but the intent and a clearly outlined withdrawal timetable would be necessary).

A *de facto* cease-fire along with the phased withdrawal of U.S. troops.

The establishment of a broadly based coalition government in which all sides had confidence.

Elections throughout South Vietnam supervised by the coalition government, with the simultaneous stepping down of Thieu and Ky and their replacement by the elected government.

"The establishment of the Provisional Revolutionary Government is the first step toward this solution," concluded Devillers.

Back in Washington, in July, our Quaker committee met with President Nixon's foreign policy advisers. I described my conversation with the foreign minister in Hanoi, stressing his concern that the United States take seriously the establishment of the Pro-

visional Revolutionary Government in South Vietnam. I mentioned that the Foreign minister felt the PRG was a conciliatory step toward the middle—a step which, if matched by the United States, would speed election day in South Vietnam.

The advisers listened like professors to a seminar report—critical, interested, searching for flaws. When I had finished, one of them wrote for several moments on the yellow pad beside him, commenting that this was something they would have to look into. It was not the enthusiastic response of Philippe Devillers. But neither was it the swift rejection by the State Department officials I conferred with in Hong Kong and Saigon.

My work for the American Friends Service Committee took me to Hanoi again in October, 1969, to deliver open-heart surgical supplies for civilians. For a second time I met Foreign Minister Nguyen Duy Trinh. I described to him the State Department's negative reactions in Hong Kong and Saigon and the noncommittal reaction in Washington to his request that the PRG be taken seriously. I concluded by saying I would probably see President Nixon's advisers again when I returned to the United States. In light of the response, did the foreign minister have any further points he would like me to stress?

Nguyen Duy Trinh repeated almost exactly what he had said four months earlier. He noted that apparently President Nixon was looking for a way to end the war without hurting America's prestige. The best way to do this would be to have general elections in all of South Vietnam. But the elections would have to be fair, he insisted. Thieu and Ky could not run a fair election. The best group to run such an election, he continued, would be a temporary coalition government composed of people acceptable to all factions. The PRG was the first step toward such a government. It would cooperate with any segment of the Saigon government—except Thieu and Ky. They could not be included because they represented a foreign power, the United States.

Nguyen Duy Trinh concluded: "Urge the White House to study the possibilities of a fair election in South Vietnam. Urge the White House also to recognize the significance of the Provisional Revolutionary Government for holding those elections."

Within a few days after my return to the United States, three of us from the Quaker committee met in Washington with a White House foreign policy aide. The aide opened the dialog. President Nixon, he said, has two approaches in Vietnam. The first—the preferable one—involves free elections in South Vietnam and the establishment of a broadly based government. "But this requires cooperation from the other side. And they have not budged an inch."

The second approach—less preferable but "better than no approach at all"—is the "Vietnamization" of the war and the gradual withdrawal of major segments of American troops.

The three of us on the Quaker committee observed that "Vietnamization" of the war was an unacceptable policy—morally and militarily. Morally, it made others do our killing. Militarily, it invited a catastrophe when some future attack, comparable to the 1968 Tet offensive, caught, say, 200,000 U.S. troops abandoned by unwilling Saigon armies—with the crisis demanding precipitous withdrawal or equally precipitous escalation.

"But 'Vietnamization' is the policy being forced on us," asserted the President's aide. "Hanoi and the NLF take any concession we give and never make any concessions in response."

One of my Quaker colleagues was quick to correct the record. On at least two occasions, he pointed out, the Hanoi government had reversed its position. Early in the war it had announced it would not talk until the United States agreed to unilateral troop withdrawals. Then it modified its position and announced it would not talk until the Americans stopped bombing unconditionally. Finally it modified its position still further and agreed to talk even with only a conditional halt to the bombing.

Then it was my turn. I stressed how ironical it was that although the creation of the Provisional Revolutionary Government *was* a response, Washington had failed to recognize its significance. Twice Hanoi's foreign minister had chosen it and the elections it could implement as *the* point he wanted me to stress to the White House.

The aide replied, "But they're requiring us to abandon Thieu and Ky as preconditions for the elections. This we just cannot do. Thieu and Ky are the only viable political force the United States has been able to build in South Vietnam."

I pointed out that the PRG had said Thieu and Ky could not *supervise* the elections. Whether or not they could run as candidates might be open to negotiation in Paris or anywhere else.

"Do you think they'd let them run?" asked the White House aide.

"I don't know, but I imagine it could be discussed," I replied.

"What about a ceasefire before the elections? Who would supervise it? And would all U.S. forces need to be out of Vietnam before the elections?"

"I'm not the one to ask," I replied. "These are the sorts of things our diplomats and their diplomats should be discussing in quiet corners in Paris, or in small committees in Geneva, or any place else where bargaining can be done away from the glare of publicity and the need for all sides to strike postures."

The aide raised a series of further questions—skeptical but probing. In the end, he promised to convey the substance of our conversation to the White House.

That was in October. On November 3, President Nixon delivered a major address on Vietnam. In it he repeated Lyndon Johnson's justification for the war in Vietnam—justifications that have since been repudiated by many of their original architects.

The President called on "the moral courage and stamina" of Americans, so that they would not allow the "last hopes for peace and freedom of millions of people to be suffocated by the force of totalitarianism"—words that ring hollow when one has seen the "peace and freedom" that exist in South Vietnam today. More than a score of newspapers have been silenced since May, 1968 (including the prominent English-language *Saigon Daily News*). Truong Dinh Dzu, who ran second, as a peace candidate, in the 1967 presidential elections, has been imprisoned as have scores of writers, publishers, university professors, lawyers, and doctors, hundreds of Buddhist monks, and thousands of ordinary citizens whose only "crime" might have been incurring the displeasure of Thieu or Ky or their local officials.

President Nixon presented no plan for ending the war in Vietnam through elections. Instead, he described his program for "Vietnamizing" the war.

What has happened to the elections President Nixon proposed in May? It is hard to believe that the Chief Executive does not realize the PRG really *is* willing to hold elections in South Vietnam. Is he afraid that if elections are held in South Vietnam, Thieu and Ky will be repudiated by the electorate, thereby ending "the only viable political force the United States has been able to build in South Vietnam"? Is he so concerned that Thieu and Ky remain in office that he has abandoned any thoughts of an election? If so, the price we are paying to support Thieu and Ky is—and will continue to be—too high.

An election was a key part of the 1954 Geneva Agreement designed to bring peace to Vietnam. An election helped end the struggle between Algeria and France in 1962. An election could help resolve the war in South Vietnam today. The "other side" has offered a handle to President Nixon which he could use to end the war. The handle is the Provisional Revolutionary Government and the possibility of a broadly based election. The White House cannot truthfully continue to say it is waiting for the other side to respond. The other side *has* responded. Now it is our turn.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The Senate resumed the consideration of the bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

Mr. THURMOND. Mr. President, in his state of the Union message, President Nixon made the point most eloquently that Americans of the past decade seem to have more, but were enjoying it less. Unparalleled prosperity has been accompanied by an unexplained rise in tension, division, and general unhappiness. Certainly one of the problems which has contributed heavily to discontent in the midst of prosperity has been the persistent increase in crime, and particularly, the increase in abuse of the use of drugs. Since 1960 the arrests for narcotic and marihuana abusers has increased 322 percent, This is a statistic which is certainly shocking and it takes on more tragic overtones when we consider the fact that many young people of high school and college age are not only experimenting with marihuana and hard narcotics but are in many cases habitual users of these substances.

A recent survey by the National Institute of Mental Health indicated that as many as 50 percent of the students in many high schools have used marihuana and statistics show that the use of marihuana by college students is on the upswing. Young people who start off simply seeking kicks and thrills easily drift into the clutches of strong, habit-forming drugs which destroy the individual's use to himself and society.

Mr. President, let us examine for a moment the serious problem posed by drug abuse, and its relationship to the overall problem of crime. Last Friday, this body passed S. 30, the Organized Crime Control Act of 1969. This bill represented the administration's effort to attack and defeat organized criminal activity, particularly the Mafia or Cosa Nostra. This organization of professional criminals is heavily involved in the sale and distribution of illegal drugs in America. Strong enforcement of that act will definitey help deal with the problem of drug abuse.

Now we are considering S. 3246, the Controlled Dangerous Substances Act, which is the administration's proposal to combat the serious drug problem in our Nation. The drug problem is part of the organized crime problem, and also a significant part of the crime in the streets problem. Although we do not have accurate figures to indicate the serious-

ness and magnitude of the drug traffic, it has been reported that the annual cost of addiction in terms of stolen property alone may be well over a billion dollars. The drug addict, in order to supply his habit, which may run between $15 and $50 a day, and in some cases as high as $100 a day, must turn to stealing, prostitution, or dope peddling in order to gain money to supply his needs. The increase in muggings, armed robbery, and breaking and entering can be attributed in part to the increase in drug addiction.

Mr. President, there is a great proliferation of legitimately produced drugs in America at this time. As an example, there are approximately 8 billion amphetamine pills produced in the United States each year. It has been estimated that 50 percent of these pills, 4 billion of them, are diverted from legitimate to illegitimate uses. Access to drugs, narcotics, stimulants, and depressants of all kinds is all too easy and tight controls are necessary if the availability of these substances is to be limited.

The greater the availability of drugs, the greater the chance more and more people will become users, and the problem will become even more serious. The proposed legislation is really a form of preventive medicine. If we can tightly control the supply, we can limit the availability of drugs and thereby prevent addiction. Then we can concentrate more of our resources on the treatment of those who are already addicted.

Mr. President, let us remember in our consideration of this legislation the fact that drug abuse is not limited to marihuana, heroin, or LSD; it also involves many drugs which are available through prescriptions that fall in the general categories of stimulants and depressants.

The main thrust of the proposed legislation is to control drug abuse and to curtail both the legitimate and illegitimate traffic in drugs. Regulation is necessary to control the drug abuse problem and the traffic of drugs at the State, National, and international levels. This bill is designed to provide this necessary regulation and control.

This bill accomplishes this through proper control of legitimate drug manufacturing; through realistic criminal penalties for misuse of drugs; through severe penalties for those who professionally promote drug abuse and addiction, and through additional weapons for law enforcement personnel in dealing with the drug law violators.

Mr. President, let us review the scope of the coverage of this measure. Title I states the need for better regulation and control of what is defined as "controlled dangerous substances." These controlled dangerous substances are drugs which Congress or the Attorney General feel should be listed as dangerous because they have a high potential for abuse and should be subject to control and regulation.

In the declaration of findings set forth in this legislation, Congress finds that although many of the drugs regulated by this bill are necessary to maintain the health of the American public, when these drugs are misdirected and misused they could cause serious danger to the population. The bill defines the classes or categories of substances to be covered. It also defines the term "addict" to mean:

> Any individual who habitually uses any narcotic drug as defined in this Act so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction.

Mr. President, title II of the bill vests the authority for the control of the substances enumerated in this bill with the Attorney General of the United States. He is required to seek advice from the Secretary of Health, Education, and Welfare and from the Scientific Advisory Committee as to whether or not substances should be added, deleted or rescheduled in the various schedules which are provided for in the bill. Schedule I contains those substances which have the highest potential for abuse. In order to place a drug on schedule I the Attorney General must find that it has: First, a high potential for abuse; second, no accepted medical use in the United States; and third, a lack of accepted safety for use under medical supervision.

Listed in this schedule are such substances as LSD, marihuana, heroin, and various morphines. Substances listed in schedule I cannot be administratively moved to schedule III or IV without congressional authority.

Under schedule II are substances for which the Attorney General finds:

First, a high potential abuse; second, currently accepted uses in the United States or currently accepted medical use with severe restrictions; and third, that abuse may lead to severe psychic or physical dependence. This schedule is where we find opium, cocoa leaves, opium poppy, and poppy straw, among others.

In schedule III, substances will be listed if the Attorney General finds: First, potential abuse that is less than that for substances listed in schedules I and II; second, well documented and approved medical use in the United States; and third, that abuse may lead to moderate or low physical dependence or high psychological dependence.

Schedule III includes drugs which have a stimulant or depressant effect on the central nervous system.

Schedule IV lists substances which the Attorney General finds have: First, a low potential for abuse relative to substances listed in schedule III; and second, current accepted medical use in the United States; and third, physical dependence and psychological dependence liability relative to the type of substances listed in schedule III. In schedule IV are found compounds and mixtures of small amounts of drugs along with some nonnarcotic ingredients which are medicinally valuable preparations.

Mr. President, this scheduling system creates a logical order for classifying drugs, all of which have potential for abuse, some more dangerous than others. The more dangerous a drug, the higher it is on the schedule. This system achieves one of the main objectives of the bill, which is to create a coordinate system of drug control and regulations.

Title III concerns the regulation of the manufacture, distribution, and dispensing of various substances which are listed in the schedule as "Controlled Dangerous Substances." It appears that a number of drugs which are legally manufactured are diverted into illegal traffic. In order that this may be controlled and ultimately stopped, title III was designed to require that people engaged in the manufacture, distribution, or dispensing of drugs that are on the controlled schedule lists be required to register with the Attorney General

Mr. President, this provision requires that accurate reports and records of production and warehousing be kept and maintained, and it provides for the marking of containers which contain dangerous substances and for the establishment of production quotas for schedule I and II drugs. This title is designed to help regulate the manufacture, distribution, and dispensing of dangerous drugs that must be controlled and is one of the most important titles in the bill.

Title IV restricts the importation and exportation of dangerous substances into and out of the United States. This title allows the Attorney General to permit the importation of controlled dangerous substances under two circumstances: First, when the importation is necessary for medical, scientific, or other legitimate purposes, or during an emergency, where our domestic supplies are in danger of being depleted; or, second, if it is found that competition among the domestic manufacturers is inadequate to maintain adequate supplies for this country.

This title will help in controlling the import and export of drugs into and out of the United States and aid in the control of the availability of these substances.

In title V we find the provisions dealing with offenses and penalties. This title eliminates mandatory minimum penalties for all narcotic and marihuana violations except for a class of professional criminals who are involved in distribution, sale, and importation of controlled dangerous substances on a major scale.

Mr. President, let us talk about the professional criminal for just a moment. The "professional criminal" is defined in this title as:

> A person over 21 years of age who has played a substantial role in the continuing criminal enterprise in concert with at least 5 other persons and occupied a position of organizer, a supervisory position or other position of management.

Such a person can also be considered a professional criminal if he plays quite a substantial role in a continuing criminal enterprise and has, or has had in his own name or under his control, substantial income or resources not demonstrated to have been derived from lawful activity or interest.

Mr. President, it is not unusual to find individuals in the drug traffic who have great sums of money who cannot explain how they obtained the money and who are in concert with other indi-

viduals in the securing and distribution of these dangerous substances. This language is designed to bring the full force of the law upon those people who are in the business of trafficking in illegal drugs. The professional criminal is subject to mandatory sentence of 5 years to life and a fine of $50,000. For a second offense, the professional criminal is subject to a mandatory 10-year-to-life sentence and a fine of $100,000. In any case where an individual is found guilty of being a professional criminal, his sentence cannot be suspended, probation cannot be granted and parole is not allowed. These high penalties should prove to be a strong deterrent.

Mr. President, S. 3246 provides that all classes of drug offenders other than professional criminals are subject to penalties without minimum mandatory sentences. People who violate the provisions of a title relating to schedules I or II of this bill are subject to sentences of up to 12 years and a fine of not more than $25,000, or both. A special parole of at least 3 years is required. These persons are eligible for probation, and any sentence imposed upon them may be suspended by the court. Those individuals who may be involved in traffic of nonnarcotics listed in schedules I and II, which includes marihuana, and traffic of substances listed in schedule III are subject to a sentence of up to 5 years imprisonment and a fine of not more than $15,000, or both. A special parole time of at least 2 years is provided for and probation and suspension of sentence may be afforded such people. Violators of the provisions of a title relating to substances listed on schedule IV could receive a fine of up to $5,000, a sentence of up to 1 year, or both. Second offenders in any of these categories are subject to twice the penalty provided for in the first offense.

Mr. President, these provisions are certainly flexible and provide great leeway for the courts to fit the punishment to the crime. I understand that one of the problems in enforcing the present laws concerning narcotics and drugs such as marihuana, is that courts are hesitant to impose severe penalties upon people for relatively minor offenses and therefore have been releasing them rather than convicting and sentencing them. I believe that the language of this provision will provide for punishment that fits the crime and that the courts will then do their duty and aid in stopping this drug traffic.

Possession of controlled dangerous substances is an area which must also be dealt with, and is the concern of title V. Possession for one's own use will be treated as a misdemeanor, and could be punished by imprisonment of up to 1 year and a fine of not more than $5,000, or both. A person who is guilty of second offense of possession for his own use will be subject to penalties up to twice as severe.

Those convicted of possession on a first offense may receive a conditional discharge of proceedings against them and upon fulfillment of whatever terms the court might impose, their record could be erased by court order.

Mr. President, this proviso has been included in the bill to take care of the situation where a young person who experiments with marihuana is arrested. The court could take the young person under its wing, counsel with him, and upon being satisfied that the person was not going to continue using marihuana, it could clean his record.

Mr. President, this title also provides for penalties for illegal importation and illegal distribution, misrepresentation, counterfeiting, or use of communication facilities in carrying out any of these violations.

Title VI, Mr. President, allows the Attorney General to establish and enforce rules, regulations, and procedures which may help in carrying out the provision of this bill. He may cooperate with local and State and Federal agencies in carrying out his responsibilties. The Attorney General is authorized to hold hearings and issue subpenas as part of his enforcement authority. Any decision he makes is subject to judicial review.

Title VII of this legislation provides greater power for the Bureau of Narcotics and Dangerous Drugs. These powers are necessary for the enforcement of this act and include the right to obtain search warrants which allow entry without notice prior to an officer's entering the premises. This is the so-called "no-knock" provision which law enforcement officials feel is necessary when one is combating narcotics. It is an easy matter to dispose of the drugs. The criminal can simply wash them down the drain or flush them down the toilet. If any warning is given prior to entry, then great difficulty arises in obtaining evidence before it is disposed of. This specific provision of title VII that provides for the "no-knock search warrant" is section 702, subsection b. A proviso has been added to this subsection which reads as follows:

> That any officer acting under search warrant shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Mr. President, this language provides that any individual who is subject to search and seizure under a "no-knock" warrant will be notified as soon as is feasible after the officers enter the premises who they are, what they are doing there and what their authority is to be on the premises. This provision will allow an officer to go about his duty in seizing evidence against criminals without getting into a technical violation of the constitutional rights of the offender.

Mr. President, even though we have spent a great deal of time and effort in formulating this legislation to control dangerous substances such as marihuana, we actually know little about marihuana. Even the experts are in conflict as to its nature and potential for harm. Since the use of marihuana has become a phenomenon in present day American society, we should learn as much as possible about its nature.

Therefore, title VIII provides for the establishment of a committee of experts to study all aspects of marihuana and its use. The Attorney General and the Secretary of HEW are authorized to appoint this committee, and it shall conduct an extensive examination into the medical and social aspects of its use. This study must be completed within 2 years, at which time a report shall be made to the President and to Congress.

Mr. President, this legislation is in keeping with the nature of the seriousness of the evil which we wish to combat. Only through legislation which allows tight control of drugs and other substances which may be potentially harmful can we give our law-enforcement officers an opportunity to identify, seek out, and bring to justice those who are involved in making their living from the proliferation of these injurious goods.

Mr. President, I support this legislation, for I feel that through its provisions we will be able to eradicate the serious drug problem in our Nation. A society whose youth seek escape from the world's responsibilities through drugs, or whose poor seek escape from the misery of poverty through drugs, or whose suburbanites seek escape from the monotony of daily responsibilities is not a great society. It is a sick society. Let us pass this bill, and bring an end to drug abuse in this Nation before the problem becomes more serious than the admittedly severe problem we have today.

Mr. DODD. Mr. President, I want to thank Senator THURMOND for his excellent statement in support of this legislation. He has been a valuable member of the Subcommittee on Juvenile Delinquency and I am grateful for his help in moving this bill through the Judiciary Committee and onto the Senate floor.

Mr. BYRD of West Virginia. Mr. President, the Controlled Dangerous Substances Act of 1969 could go a long way toward stunting the growth of drug abuse in the United States—a problem so widespread that it has touched the lives of nearly half of our high school and college students.

The bill before the Senate—S. 3246—is the most comprehensive narcotic drug law ever to come before Congress. It is also the most realistic piece of legislation ever proposed to combat this national problem.

Under section 509, the bill deals with continuing criminal enterprises, defining a professional criminal as "a person over 21 years of age who has played a substantial role in a continuing criminal enterprise in concert with at least five other persons and occupied a position of organizer, or other positions of management."

This professional criminal provision increases to life imprisonment the maximum penalty for the first offense of the drug pusher—with no chance for a suspended sentence, probation, or parole. On page 27 of the Judiciary Committee report, it states that:

> Upon a finding of guilty and before imposition of sentence, the court shall set a hearing date to determine whether the person has been involved in the continuing criminal enterprise . . . If the court in fact finds that the convicted person has been involved substantially in a continuing criminal enterprise, then the court shall sentence him to a term of imprisonment for life, or

for not less than 5 years, a fine of $50,000, and forfeiture of any profits and interests acquired or maintained in violation of the act.

Mr. President, the bill realistically aims at cutting off the source of drugs—of removing permanently from society one of the lowest forms of criminal life. At the same time, the bill returns to local judges the discretion to separate the professional criminal from the more innocent student violator. Too often under our present laws, students guilty of simple possession of marihuana or narcotics have been sentenced with the same severity as hardened criminals—and, conversely, there have been instances where professional criminals benefited from the relative leniency sometimes afforded to young lawbreakers.

Under S. 3246, professional criminals would find that narcotic trafficking is no longer a profitable enterprise; and, at the same time, young offenders would discover that our courts are sincerely interested in rehabilitation—not just punishment. For example, under section 501(c)(4), the bill deals with distribution of "a small amount of marihuana for no remuneration or insignificant remuneration not involving a profit." Such transactions would no longer be considered a drug trafficking offense, and, according to the committee report, would "cover the type of situation where a college student makes a quasi-donative transfer of one or two marihuana cigarettes and receives 50 cents or a dollar to cover the cost of the marihuana."

Mr. President, the bill also strives to shed new light on the entire problem of drug abuse in America. It would establish a panel to fully investigate marihuana, the most popular dangerous substance found on our Nation's campuses. And it would reclassify all known drugs, including several new barbiturates and amphetamines that have heretofore escaped legal sanctions.

Marihuana is of particular concern to all who are engaged in the fight against drug abuse in the United States. Surveys conducted by the National Institute of Mental Health show that, in some areas, over 50 percent of the high school students have experimented with the dangerous substance. Nationally, according to the NIMH, a conservative estimate is that over 37 percent of all the students in the United States—junior high school, senior high school, and college—have smoked marihuana. And those figures are rising every year. The committee report on S. 3246 states:

A student sample in a university showed that in 1967, 21 percent of these students had previous experience with marihuana. The same sample in 1968 revealed that 57 percent had now tried marihuana.

Obviously, Mr. President, we need to know all there is to know about a dangerous substance that has made such significant inroads into the everyday lives of our young citizens. There are about 100,000 known narcotic addicts currently in America—and over 80 percent of them began by smoking marihuana. We must establish if there is any connection—either psychological or physical—between the smoking of marihuana and addiction to narcotic drugs. The panel established by S. 3246 could supply us with the answers to some of the most important questions of the day concerning this subject.

Mr. President, this piece of legislation is strong enough to permanently handcuff habitual criminals, discerning enough to save many of our youths from a life of crime, and comprehensive enough to provide us with the most thorough knowledge of dangerous substances in our history. The passage of S. 3246 is sorely needed, Mr. President, so that we can begin now to turn the rising tide of drug abuse in the United States—drug abuse that is eating away at the moral fiber of our Nation. We must go after the drug pushers who seek to make money by destroying the young.

Mr. DOLE. Mr. President, the use and abuse of drugs received widespread public attention in the 1960's. As our knowledge of drugs increased so did our recognition of the potentials for their wise and innovative application. We also became aware of the dangers and uncertainties arising when drugs are carelessly and immoderately employed.

There has been a dramatic rise in narcotics law violations in the past decade. Arrests for 1968 were four times greater than in 1960, and 1968 arrests were up 68 percent over 1967. The principal factor contributing to these statistics was the use of marihuana, but stimulants, depressants, and other hallucinogens were illicitly used with increasing frequency.

Along with increased use, illegal traffic in drugs has taken on new dimensions at both national and international levels. The impact on State and local. As well as Federal, enforcement agencies has been considerable, taxing their already strained facilities and personnel. Operation Intercept provided ample illustration that domestic measures cannot be implemented without consideration for their effects upon our relations with other countries.

The need is clear for decisive and enlightened new approaches to drugs, their regulation, use, and implications for America in the 1970's.

S. 3246, the Controlled Dangerous Substances Act of 1969, is an intelligent response to the problems exposed in recent years, and it contains responsible initiatives toward evolving concepts found in law enforcement, medical and social sciences, and administrative procedures.

In the area of criminal penalties for drug abuse the bill takes a flexible approach in recognition of recently developed attitudes toward penology and rehabilitation. Minimum sentences are generally eliminated to make most effective use of judicial discretion and wisdom where youthful and unhardened offenders are involved. But strict and severe penalties are imposed in cases of professional criminals and those who prey upon our young people.

New classification procedures are established to create a more systematic and coordinated means of drug control and regulation. Other administrative and enforcement provisions are directed toward the same goal.

One other aspect of the bill deserves special mention. Title VIII establishes a blue-ribbon committee to study marihuana. Phenomenally increased marihuana use in recent years has not been accompanied by a comparable increase in our understanding of the drug. Many social, medical, and legal problems can be traced to this deficiency. An authoritative, comprehensive, and unemotional investigation of marihuana is a matter of high national importance, for we can only begin to deal effectively with this drug when we have a fundamental grasp of all its potentials for good and for ill.

S. 3246 is not the entire answer to the problems and promise of drugs in America, but it provides a sound regulatory and law-enforcement basis for dealing with a matter of significant human concern.

Other developments must be pursued in the fields of uniform State laws and international conventions, but we can provide valuable leadership by enacting this bill and establish the Federal Government as an enlightened example for our States and other members of the community of nations.

RECOVERY OF ATTORNEY'S FEES FOR RECOVERY OF DAMAGES SUSTAINED IN TRANSPORTATION OF PROPERTY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily, and that the Senate proceed to the consideration of Calendar No. 624, S. 1653.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read, as follows:

S. 1653, to amend the Interstate Commerce Act, with respect to recovery of a reasonable attorney's fee in case of successful maintenance of an action for recovery of damages sustained in transportation of property.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment, on page 1, line 6, after the word "further," strike out "That if the plaintiff shall finally prevail in any action, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the suit:"." and, in lieu thereof, insert: "That the court, in its discretion, may allow a reasonable attorney's fee to the plaintiff in any successful action, to be taxed and collected as part of the suit, but no such fees shall be allowed to the plaintiff except upon a showing that the plaintiff has filed a claim with the carrier or carriers against whom the action has been brought, and that such claim has not been paid within ninety days after receipt of the claim by the carrier or its agent." "; so as to make the bill read:

S. 1653

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 11 of section 20 of the Interstate Commerce Act (40 U.S.C., sec. 20, par. 11) is amended by inserting at the end of the fifth proviso and immediately before the sixth proviso the following: *"And provided*

further, That the court, in its discretion, may allow a reasonable attorney's fee to the plaintiff in any successful action, to be taxed and collected as part of the suit, but no such fees shall be allowed to the plaintiff except upon a showing that the plaintiff has filed a claim with the carrier or carriers against whom the action has been brought, and that such claim has not been paid within ninety days after receipt of the claim by the carrier or its agent."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–631), explaining the purposes of the measure.

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

PURPOSE

The purpose of S. 1653 is to put the shipping public, especially small shippers, householders, and travelers in a more equal bargaining position with carriers in settlement negotiations for recovery of damages sustained in the transportation of property. S. 1653 would accomplish this purpose by permitting a successful plaintiff to recover his attorney's fees if he allowed the carrier a reasonable period of time to settle the claim.

BACKGROUND AND NEED FOR LEGISLATION

S. 1653 would assist the small shipper, and indeed any shipper with a small claim, be he a householder moving his treasured possessions, or a small grain shipper, in obtaining fair treatment from carriers in the handling of loss or damage claims arising from the transportation of property.

At present, a shipper seeking to collect a small loss or damage claim from a carrier may be precluded from recovering a just claim because of the high cost of legal fees and court charges if he must bring suit to collect.

The Interstate Commerce Commission has no power to assist small shippers by settling individual loss and damage claims between shippers and carriers. Thus, in the absence of a voluntary settlement, a shipper's only recourse is a civil action in either a State or Federal court. This avenue of relief is of little avail to a shipper with a small claim. If he employs an attorney and sues on his claim, his recovery may be less than his attorney's fees. If he chooses not to sue, he is faced with writing off the uncollected portion of his claim.

To overcome this economic imbalance favoring the carrier and prejudicing the consumer and shipper with a small claim, S. 1653 provides that if a carrier refuses to voluntarily settle a reasonable claim, he may face the economic penalty of paying a plaintiff's attorney's fees.

There is ample precedent for permitting the recovery of attorney's fees by a prevailing plaintiff. Sections 8 and 16(2) of the Interstate Commerce Act, 49 U.S.C. 8, 16(2), now permit the recovery of a reasonable attorney's fee by a successful plaintiff in certain kinds of actions arising under part I of the act. The same section which S. 1653 amends was amended by this committee in 1948 as to transportation damage suits between carriers to provide for the recovery of: "the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property."

There is precedent for S. 1653 in other legislation enacted by the Congress and the various State legislatures providing for recovery of attorney's fees in cases involving property damaged in transportation, and in antitrust and monopoly court proceedings.

The committee is convinced that there is a need for the passage of S. 1653 to insure that shippers realize justice in the handling of her transportation loss and damage claims.

The testimony indicated that S. 1653 is needed, in particular, to assist shippers of perishables in collecting their delay claims against certain eastern railroads. Western shippers of perishables depend on orderly railroad schedules in the marketing of their fruits and vegetables. Recent developments, however, are producing a deterioration of railroad schedules for the movement of perishables. This deterioration not only works to the disadvantage of the shippers, but also it could decrease the quality of fruits and vegetables in our Nation's markets, and since the consumer ultimately pays the cost of spoiled perishables due to in-transit delay, could eventually increase the price of perishable foods.

For many years the American railroads, including the eastern carriers, maintained so-called guaranteed schedules from various producing areas in the Southwest and West to the principal produce markets. Claims for delay to shipments of fresh fruits and vegetables were paid on the basis of a guaranteed schedule. Some railroads published their guaranteed schedules and others, while not publishing the schedules, paid claims on the basis of schedules quoted in their solicitations of traffic.

The committee was advised that on April 30, 1964, the eastern railroads served notice that effective June 1, 1964, they "will not guarantee delivery of perishable freight at destinations to meet previously agreed cutoff times for the various markets located on our system." This meant to perishable shippers that the eastern railroads planned to avoid the financial responsibility or burden for their failure to maintain the schedules they previously gave to these shippers.

After this 1964 action by the eastern lines, representatives of the fruit and vegetable industry met with the eastern carriers on a number of occasions, but all to no avail. Since then, the committee was advised service and delivery performance has deteriorated on western perishables moving to eastern markets, particularly those located east of Buffalo, N.Y.

Shippers of perishable fruits and vegetables desire a reliable schedule for orderly marketing rather than lawsuits to collect damages caused by in-transit delay due to a railroad's failure to carry out a scheduled delivery. The testimony presented to the committee indicated that apparently certain eastern railroads are more interested in forestalling damage claims than in maintaining or improving their present scheduules for fruit and vegetable transportation. The eastern lines continue to remain adamant in their position that they will not guarantee schedules and that they will not pay damage delay claims unless negligence on the part of the carrier is proven.

These claim policies of the eastern railroads fall hardest upon the small shipper. In the case of a small perishable shipper, or even a large perishable shipper with a small claim, the amount involved in most cases is not sufficient to justify the litigation of his individual claim because of the costs of attorney fees. Except in unusual circumstances, the shipper or receiver rarely has knowledge of what occurs to a particular shipment in transit. Therefore, he would find it difficult, if not impossible, to prove that the carrier was negligent. With the average claim for delay on a carload shipment of fresh fruits and vegetables amounting to between $150 and $300, it is evident that the expense of proving a valid claim in court could outweigh the amount of the recovery.

S. 1653 is strongly supported by the United Fresh Fruit & Vegetable Association, a national trade association of nearly 2,600 members residing in nearly all of the States, who are engaged in growing, packing, shipping, and distributing fresh fruits and vegetables, as well as providing goods and services to that industry, and, in the aggregate, handling approximately 75 percent of the Nation's tonnage of fresh fruits and vegetables. This association's traffic manager testified that his members believe the passage of S. 1653 will have a salutary effect on the claim departments of the carriers, and will stimulate the carriers' efforts to seek an amicable settlement of claims that otherwise would be litigated. S. 1653 is also strongly supported by the International Apple Association, whose members produce, handle, sell, buy and/or distribute in excess of 75 percent of the U.S. commercial apple and winter pear crops, as well as a fairly substantial tonnage of Florida citrus, market fresh. The executive vice president of this association testified that S. 1653 will provide an economic stimulus to the carriers to do a better job, and thereby enhance the possibility of orderly marketing of perishables. He further testified that passage of S. 1653 would be of material benefit to the thousands of small businessmen in his industry in collecting their legal delay claims—claims which he indicated are now being arbitrarily and practically automatically rejected regardless of the length of the delay involved.

The testimony indicated that S. 1653 is also needed to assist grain shippers in collecting their property damage claims against certain eastern railroads. Grain, feed, and grain products collectively constitute one of the largest commodities shipped in the United States. Losses in the shipment of grain can occur for any number of reasons including defects in the freight cars, theft, pilferage, leaking paper grain doors, etc. When a freight car is weighed at origin and again at destination the amount of the loss can be determined by a comparison of the weights. And, if the shipper or receiver submits a claim based on the difference in weights, the carrier may offer a settlement. If the carrier refuses to offer a settlement on this basis, however, the shipper's only recourse is to file suit in which his attorney's fees may equal or exceed his recovery. Testimony was presented to the committee that the carriers are aware of the disadvantageous situation of the shipper with a small claim and many offers of settlement are reduced accordingly.

The grain shippers situation was aggravated when on April 1, 1966, the Traffic Executives Association of the Eastern Railroads adopted a new policy regarding claims on "clear record" cars. A clear record car is a freight car on which the railroads involved can find no basis in their records of the car movement, or car inspections to explain why the weight at destination is less than the weight at origin.

According to the testimony, the eastern carriers new policy was to arbitrarily reduce claim settlement offers on clear record cars under differing conditions by 50, 75 or 100 percent. If a grain shipper has "official weights" at both origin and destination, the eastern carriers maximum settlement offer is only 50 percent of the grain loss shown. An "official weight" means that the weighing is under the supervision of recognized agencies, such as boards of trade, chambers of commerce and other designated authorities as provided in the governing tariffs. If a grain shipper has one official and one unofficial weight, the maximum settlement offer is reduced to only 25 percent. And, if the grain shipper has two unofficial weights on a clear record car, the eastern railroads decline the claim in its entirety.

S. 1653 is strongly supported by the Grain

and Feed Dealers National Association, representing every segment of the industry from the smallest country elevator to the largest grain and feed complexes, including processors. Thirty-five of the affiliated State and regional associations, representing some 15,000 grain and feed firms, specifically endorsed the testimony of the second vice president of the Grain and Feed Dealers National Association in support of S. 1653. The testimony presented by this association indicated that this April 1, 1966, claims policy on clear record cars has accentuated the need for enactment of S. 1653, and that the small country elevator or small receiver who is on one railroad line which is his only practical mode of transportation is particularly harmed by this new policy. Such a small businessman is in an unbalanced bargaining position, and if he sues for losses his attorney's fees will likely exceed the recovery on his claim. A larger shipper, on the other hand, is in a better position because he can ship by those lines or those modes which give him good service and fair treatment.

The Grain and Feed Dealers National Association believes S. 1653 will encourage compromise and the settlement of meritorious claims in an equitable manner by putting each side in an equal bargaining position.

The American Feed Manufacturers Association, also presented testimony in support of S. 1653 to aid grain and feed shippers in obtaining just settlement of their claims.

Testimony to the committee also indicated that shippers of all types of goods have difficulty in collecting claims, and therefore, support enactment of S. 1653.

The National Industrial Traffic League, an organization of small, medium, and large shippers located throughout the United States, and in addition of associations of shippers, boards of trade, and other entities of similar nature presented testimony in support of S. 1653. The league representative pointed out that this was a critical subject for shippers of freight via interstate common carrier by rail or motor carrier. With respect to smaller shippers and shipments of modest value, particularly, a very major temptation is presented to the carriers to feel that they have excessive leverage because a shipper who brings a court suit has to recognize that the amount of the attorney's fees might exceed the amount of the recovery.

The American Retail Federation submitted a statement advising that enactment of S. 1653 would be of immense benefit to the thousands of small shippers in the retail field who are under an extreme handicap in dealing with the carriers—particularly the motor carriers—on claim problems of such amounts that they are now subjected to legal procedures, the only recourse, because of cost.

The American Farm Bureau Federation, the Society of American Florists and Ornamental Horticulturists, the National Wool Growers Association, the National Council of Farmer Cooperatives, the American National Cattlemen's Association, the National Grange, The Corn Refiners Association, the Western States Meatpackers Association, the National Independent Meat Packers Association, the Institute of Scrap Iron and Steel, Inc., U.S. Brewers Association, Inc., the Growers and Shippers League of Florida, and a number of individual shippers and shipper representatives also submitted testimony or statements in favor of S. 1655. In addition, the committee received numerous letters for the record from shipper organizations, and individual shippers in support of S. 1653.

Enactment of S. 1653 would also assist the consumer when he ships his goods or travels by bus or rail. Unlike the large commercial shipper, the average householder with a claim against a moving company, or a passenger on a bus or rail line whose baggage is damaged does not belong to a large national organization or have the ability to appear in person at committee hearing to testify on the need for passage of S. 1653. The householder or traveler is probably unaware of the existence of S. 1653. But the shipping public needs to be put in a more equal bargaining position with the carriers just as much as does the smaller commercial shipper. The files of the committee are replete with letters from householders and travelers complaining of carriers unsatisfactory treatment of their claims. The letters often recite the difficulties experienced by the householder or traveler to even get an acknowledgement of the filing of his claim. After the claim is accepted, the letters relate that the carriers finally make an inadequate settlement offer many months or even years later. The committee is of the opinion that these letters from the public indicate that a few carriers are taking advantage of their unequal bargaining position to offer less than a just settlement to the shipping public on their small claims. The provision in S. 1653 for recovery of a reasonable attorney's fees is expected will provide an economic incentive to the carriers to fairly handle claims of both commercial and public shippers.

The American Trial Lawyers Association advised that small shippers with small claims will be enormously assisted in obtaining fair treatment. Unless there is practical, economic access to courts, small claims are valueless. The association further indicated that there is no difficulty with the word "reasonable," referring to the fee allowed, since the courts have for decades dealt with this in many contexts; and that S. 1653 does not present great potential for abuse as there are always methods of controlling abuses and the court in its discretion would not allow a fee if the plaintiff was abusing his privilege. The American Bar Association stated that since words similar to "reasonable" are used in a number of statutes and since it is a common practice for judges to determine and assess "reasonable" fees they would not anticipate any problem in this area.

HEARINGS

Public hearings were held before the Surface Transportation Subcommittee on S. 1653 on June 10, 1969.

In addition to the testimony in support of S. 1653 discussed above, the committee also received testimony in opposition to S. 1653 presented by witnesses on behalf of the National Association of Motor Bus Owners, American Trucking Associations and Association of American Railroads. The president of the National Association of Motor Bus Owners testified that it was neither necessary nor appropriate to provide attorney's fees to shippers or travelers in their baggage and express claims suits against carriers, and urged that the bus industry be exempted from S. 1653. He also testified that if the committee determined to enact legislation such as S. 1653, the bill should be amended either by exempting the bus industry or by reporting it with safeguarding amendments so that the economic impact on the bus industry would not be substantial.

The general counsel of the American Trucking Associations testified in opposition to S. 1653 insofar as it applied to motor carriers on the grounds that the testimony offered before the committee, and the purpose of the bill as he viewed it was limited to shipper dissatifaction with the claim-handling practices of rail carriers and the household goods moving industry. He also testified that there was no reason to justify imposing the burden of paying a plaintiff's attorney's fee upon the motor carrier industry, particularly in suits brought by large shippers such as the United States, the largest shipper of all, against small motor carriers, but if the committee were to so act, the legislation should be amended to provide that any prevailing party should recover his attorney's fees—be he shipper or carrier. He further testified that amendment of the proposed legislation, by providing a 90-day cooling-off period prior to the suit, would probably help meet part of the problem of the motor carrier.

The general solicitor of the Association of American Railroads testified in opposition to S. 1653 for the reason that it would not be appropriate or the exercise of sound legislative judgment for the Congress to create a special exception to the general rule that plaintiffs may not recover their attorney's fees in the case of litigation involving controversies between shippers and carriers as to the carrier's liability for freight loss or damage. He also testified that the law of freight claims already heavily weighs the scale against carriers, and that enactment of S. 1653 would encourage litigation by spawning "claims sharks" who would encourage and multiply the litigation of claims. He further testified that there is no real congressional precedent for S. 1653 because there is neither anything so special about the circumstances of this litigation nor the nature of the legal rights and duties involved as to warrant special treatment of the plaintiff in freight loss and damage suits.

COMMITTEE AMENDMENT

The Surface Transportation Subcommittee considered S. 1653 in executive session on June 18, 1969, ordered the bill favorably reported to the full committee without amendment.

S. 1653 as reported by the full committee with amendments provides that the court, in its discretion, may allow a reasonable attorney's fee subject to a 90-day cooling-off amendment.

While there was some shipper opposition to changing the text of the bill from the original language providing that the plaintiff *shall* be allowed a reasonable attorney's fee, to the reported version providing that the court in its discretion may allow a reasonable attorney's fee, the committee believes that it would be wise to permit the court in cases in which the court determines that abuses such as those feared by the carriers in fact are occurring to hold that no such attorney fee should be awarded. Thus, a "claims shark" situation, such as referred to by the witness for the railroads, could be eliminated by the court in its discretion denying an attorney's fee to the plaintiff even if he prevailed. Further, the committee agrees with the position expressed by certain shippers that the term "reasonable" in the language of the original bill could have permitted a court to decide in a particular case that *no* attorney's fee was justified to a prevailing plaintiff. This is not a new departure, and could safeguard against any possible "claims sharks," while at the same time permitting the shipper to ordinarily recover his reasonable attorney's fees.

The limitation on the court's discretion to allow a reasonable attorney's fee to the plaintiff in S. 1653 as reported is that no such fees shall be allowed to the plaintiff except upon a showing that the plaintiff has filed a claim with the carrier or carriers against whom the action has been brought, and that such claim has not been paid within 90 days after receipt of the claim by its carrier or its agent. This limitation was proposed by the Chairman of the Interstate Commerce Commission and was supported by the Department of Transportation in its comments on this bill, and was not opposed by either shippers or carriers. The committee believes that this 90-day cooling-off period will have a salutary effect in promoting settlements, and discouraging hasty filing of suits.

DEPARTMENT AND AGENCY SUPPORT FOR S. 1653

The Department of Agriculture recommended enactment of S. 1653 and advised it would permit grain and fresh fruit and vegetable shippers to seek redress through the courts for losses sustained in the transpor-

tation of property. This avenue of relief is effectively barred in many instances because reasonable attorney's fees may not be recovered by successful plaintiffs at the present time and such fees often equal or exceed the amount of an individual shipper's claim. It would provide an incentive for the carriers to improve their services in the handling of fresh fruit and vegetable shipments.

The Department of Transportation also recommended enactment of S. 1653. In its August 27, 1963 letter the Department upon further reflection and in an effort to achieve a reasonable accord in this area indicated that only the 90-day cooling-off period amendment was considered desirable.

The Deputy Attorney General advised the committee that on balance he believed the public interest would be served by enactment of S. 1653.

The Comptroller General advised the committee that enactment of S. 1653 would be equitable and in harmony with other provisions of the Interstate Commerce Act and court decisions permitting an attorney's fee in other kinds of actions.

The Interstate Commerce Commission advised the committee that it supported the basic objectives of S. 1653. The Commission noted that although it has no jurisdiction to settle disputed loss and damage claims, many of these matters are brought to its attention in its day-to-day work in sufficient number for members of the Commission to appreciate the fact that prompt settlement of loss and damage claims is a serious matter to the shipper, particularly in the case of relatively small claims. The Commission recommended an amendment to S. 1653, which the committee adopted, to the effect that no attorney's fee should be awarded unless the plaintiff shows that a claim was in the possession of the carrier for a period of 90 days and had not been paid.

COSTS

The committee does not believe that enactment of this bill will result in any additional costs to the Government.

Mr. MANSFIELD. Mr. President, I move that the motion by which the bill was passed be reconsidered.

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

The motion to lay on the table was agreed to.

THE WOMEN LAWYERS CENTENNIAL

Mr. MILLER. Mr. President, the first woman to be admitted to a State bar association was an Iowan, Arabella Babb Mansfield, of Mount Pleasant. This was on June 15, 1869, 100 years ago.

In those 100 years, women have made great contributions in the field of law. What was done to focus public attention on these contributions is set out in an article appearing in the January issue of the American Bar Association Journal. I ask unanimous consent that the article, entitled "The Women Lawyers Centennial," by Marjorie M. Childs, referee of the juvenile court for the city and county of San Francisco, be printed in the RECORD.

The PRESIDING OFFICER (Mr. MUSKIE in the chair). Without objection, it is so ordered.

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

THE WOMEN LAWYERS CENTENNIAL

(By Marjorie M. Childs)

(On June 15, 1869, Arabella Babb Mansfield of Mount Pleasant, Iowa, became the first woman to be admitted to a state Bar. Conscious that many of the goals of the dedicated women who fought for women's rights during the last half of the nineteenth century have not yet been fulfilled, the National Association of Women Lawyers, in concert with other women's organizations, determined to mark the centennial of Mrs. Mansfield's achievement by focusing public attention on the contributions of women to American society.)

What we obtain too cheaply, we esteem too lightly; it is dearness only that gives everything its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed if so celestial an article as freedom should not be highly rated.[1]—THOMAS PAINE.

The year 1869 was significant in the history of American women. It was in that year that women first won the right to vote—in the Wyoming Territory and in the Mormon territory. It was in that year that the first two women's clubs were founded—Sorosis in New York and the New England Women's Club in Boston—in that year the second national labor union (Typographers) admitted women to membership (the first was the Cigar-makers in 1867).[2] 1869 was the year in which two women matriculated at St. Louis Law School (now Washington University Law School), the first law school in the country to admit women. And it was in that year, on June 15, that Arabella Babb Mansfield of Mount Pleasant, Iowa, became the first woman to be admitted to a state Bar.[3]

In 1966 members of the National Association of Women Lawyers decided that appropriate celebrations would be held in 1969 to mark the centennial of Mrs. Mansfield's singular achievement.[4] The mood of serious American women lawyers in 1966, as indeed in 1969, was one of quick awareness that many of the goals undertaken by dedicated, educated women in the last half of the nineteenth century were still unrealized. They were also appreciative of the fact that their legal education and professional experience endow them with the necessary tools to tackle the unfulfilled tasks that lie ahead for all Americans and should place them in positions of responsibility and trust in every community in the United States. N.A.W.L. members were willing to face the grim reality that this untapped human resource is being ignored in many sections of the country.

They decided, however, that the over-all objective of the one-hundredth anniversary celebrations would be to focus public attention on the valuable contributions that not only women lawyers but all women have made and are making to the betterment of American society. To realize this objective, the N.A.W.L. sought and obtained the cooperation and support of all major women's organizations. Prominent among these groups was the National Federation of Business and Professional Women's Clubs, which coincidentally celebrated its fiftieth anniversary and highlighted the fact that in 1919 a San Francisco woman lawyer, Gail Laughlin, was its first national president.[5] Other important women's groups that granted official recognition to the Women Lawyers Centennial included Zonta, Soroptimist, Altrusa, Quota and the American Association of University Women. Additionally, the Girl Scouts of the U.S.A. called attention to the Women Lawyers Centennial in their literature, emphasizing the participation of women lawyers over the years in the work of the Girl Scouts organization and suggesting legal carrers for the organization's youth. State and local bar associations participated in centennial programs and issued resolutions honoring their women members and highlighting their present and past achievements. Various law schools and legal periodicals gave prominent coverage to the centennial.[6]

Footnotes at end of article.

The American Bar Association gave formal recognition to the one hundredth anniversary at its 1969 Annual Meeting in Dallas, and the three major legal sororities—Kappa Beta Pi, Phi Delta Delta and Iota Tau Tau—programed fitting tributes in co-operation with N.A.W.L. members.

Initial planning contemplated the following goals:

(a) The issuance by the United States Post Office Department of a centennial commemorative stamp;

(b) Appropriate programs of national significance in Iowa, Dallas and Washington, D.C.; and

(c) State and local planning by women lawyers throughout the United States of suitable public ceremonies to meet the over-all objective of the one hundredth anniversary year.

A PROMISE FROM THE POST OFFICE

The failure to secure a commemorative stamp during 1969 was a disappointment to N.A.W.L. members, although some promise has been given to include Belle Babb Mansfield in the 1970 series covering the women's suffrage movement. In all fairness to the Post Office Department, however, we were competing against overwhelming odds: Not only was this "women lawyers year", but also the one hundredth anniversary of American football, professional baseball and Gandhi's birth. Moreover, 1969 was the 150th anniversary of the *Dartmouth College* case, the year of the Apollo 11 mission and the moon walk and the year in which both Eisenhower and W. C. Handy died—and all these events were memorialized by new stamps.

However, unexpected benefits were the direct result of the stamp application. It was necessary preliminarily to present to the postal authorities a fully documented report concerning Mrs. Mansfield and to establish her claim as America's first female lawyer. The usual sources for historical research proved limited and revealed the dearth of available published material. Inquiries to the Iowa Supreme Court led to the county clerk's office in Mount Pleasant, Iowa, and eventually to Iowa Wesleyan College, Arabella's alma mater.

Professor Louis A. Haselmayer, chairman of the English department at Iowa Wesleyan and the college historian, received the N.A.W.L.'s communication and was interested enough to complete the necessary research and to write the first definitive biography of Belle Babb Mansfield.[7]

IN HONOR OF WOMEN LAWYERS

With the consent of the then college president, Franklin Littell, and of Ernest Hayes, chairman of the board of trustees, plans were made to devote the entire June commencement program at Iowa Wesleyan to its distinguished alumna and all women lawyers in the United States. The N.A.W.L.'s 1968–1969 president, Ruth Gentry Talley, was the commencement day speaker, and honorary doctorates were awarded to her and to two outstanding American women jurists, Judge Sarah T. Hughes of Texas and Judge Constance Baker Motley of New York. The college bestowed further honors on women lawyers in presenting James A. Harlan Awards to Mrs. W. Stevenson Glanton of Des Moines, Iowa, and to Marjorie M. Childs of San Francisco, California. The Harlan Award bears the name of a former president of Iowa Wesleyan and is granted in recognition of high achievement and public service. (Mr. Harlan's other claim to fame is his daughter's marriage to Robert Todd Lincoln.)

A regional meeting of the N.A.W.L. was called to coincide with the college commencement program and was held in nearby Burlington, Iowa. The guest speaker was a great-nephew of Belle Mansfield, Irving T. Babb, a distinguished lawyer from Milwaukee, Wisconsin. He and other descendants of the honoree, all of whom have maintained close ties with the college over the years,

were gathered in Mount Pleasant for the centennial. At the college alumni banquet, the N.A.W.L.'s centennial chairman presented to President Littell a plaque commemorating the occasion.

A new college library was dedicated during the commencement week end, and one room has been set apart and designated as the Belle Babb Mansfield Room. Present college planning contemplates the inclusion in this room of the N.A.W.L. plaque and other suitable Mansfield memorabilia.

As a direct result of the Iowa centennial activities and the attempts of Iowa Wesleyan to cement further the ties that now bind it with the N.A.W.L., a generous fund has been made available by an anonymous donor to provide an annual scholarship of $1,000 to a deserving prelaw coed at Iowa Wesleyan. The college has obtained the consent of the five women honored at the June commencement to serve as a permanent advisory committee to assist in the selection of the scholarship recipients. The sixth committee member will be the president of the N.A.W.L., who will serve on a rotating basis. It is contemplated that the first Mansfield Scholarship will be awarded for the 1970 fall term at Mount Pleasant.

The seventieth annual meeting of the N.A.W.L., held in Dallas, gave further attention to the centennial. Particularly noteworthy was the banquet address by Justice Tom Clark (retired) urging the continued involvement of women lawyers at the national, state and local levels of government.

The further success of the centennial year was demonstrated on August 11, when Preston Smith, Governor of Texas, read his Mansfield proclamation at the opening session of the American Bar Association's House of Delegates. Additionally, in the American Bar Association's audio-visual review, "Prologue to the Seventies", four color slides covering the Iowa Wesleyan commencement and the N.A.W.L. participation were used to illustrate the valuable contributions of women lawyers to the legal profession.

The climax of women lawyers' achievements during the centennial year was the election in Dallas of the N.A.W.L.'s past president, Neva B. Talley, as Chairman of the Family Law Section of the American Bar Association. This important chairmanship was well earned by Miss Talley through long years of devoted service to the Section. The fact that her assumption of leadership coincided with the one hundredth anniversary celebrations was little short of a miracle.

On the local level, a series of significant centennial activities was planned and carried out by the Women's Bar of the District of Columbia. Arrangements were made for some thirty-seven N.A.W.L., members to be admitted as a group before the Supreme Court of the United States on October 6, the date of the opening of the fall term, with Chief Justice Warren E. Burger sitting for the first time. Other events included a luncheon with Chief Justice and Mrs. Burger, a tea at the White House with Mrs. Nixon, lunch in the Speaker's dining room at the Capitol, given by distinguished N.A.W.L. member Martha Griffiths (Democrat, Michigan) following a lively press conference, and a reception at the National Lawyers Club honoring women in public service.

Recognizing the achievements of women lawyers over the past 100 years and their contributions to an ordered society, the governors of several states and the mayors of important cities issued special proclamations. It was at this grass-roots level that the majority of American women lawyers were able to participate in the centennial activities and to make valuable contributions toward the achievement of the national objectives for this important year. In Arkansas, for example, the entire month of October was set aside for a series of programs honoring Belle Mansfield and American women lawyers.

The work product of these N.A.W.L. members—consisting of pictures, proclamations, resolutions and press items—was displayed at the N.A.W.L. meeting in Dallas and received much favorable attention during the American Bar Association meetings. The President of The Chicago Bar Association was so impressed by this exhibit that he has requested permission for a special showing in Chicago.

A QUESTION NOT TO BE ASKED

Judge Sarah T. Hughes was serious when she questioned the relevancy of women's bar associations today. At a Dallas luncheon, she asked N.A.W.L. members:

"Would it not be better to work with men? It would be harder to accomplish some of our goals, but wouldn't it be more worthwhile? When we did get somewhere, we would have gotten there together and not just be a group of women who did something."

This was a surprising remark to come from such a distinguished judge, N.A.W.L. member and past state and national president of the National Federation of Business and Professional Women's Clubs, and one who has been the acknowledged leader in the fight for equal rights for women.

Disagreement was voiced by many. Marguerite Rawalt of the District of Columbia Bar does see a continued need for separate organizations. Mrs. Rawalt serves as legal counsel for N.O.W. (the National Organization for Women) and has been engaged in litigation throughout the United States involving various cases under Title VII of the Civil Rights Act of 1964.[8] Mrs. Rawalt stated:

"I never thought I'd see the day when I'd picket the White House for women's rights, but I've come to that point. I recently marched with NOW in front of the presidential mansion carrying a sign reading: 'U.S. Constitution protects men only.' We've gotten to the place where women have to become militant to get anywhere."

Representative Griffiths, another distinguished N.A.W.L. member, stated that she had little confidence that the equal rights amendment, a constitutional amendment barring sex discrimination and having 158 signatures in the House, would be reported out of the Judiciary Committee. Mrs. Griffiths suggested that the N.A.W.L. develop a legal defense fund and fight each case to the highest level until state women's protective laws are overruled.[9] "All these laws have protected," she said, "were good jobs for men."

The majority opinion was best expressed by N.A.W.L. President Jettie Pierce Selvig: "When we finally attain true equality in the law and under the law, then and only then will the need for our organization cease to exist."

FOOTNOTES

[1] PAINE, THE AMERICAN CRISIS No. 1 (1776).

[2] COCHRAN & ANDREWS, CONCISE DICTIONARY OF AMERICAN HISTORY 1022–1024 (1962).

[3] Haselmayer, *Belle A. Mansfield*, WOMEN LAWYERS J., Vol. 55, No. 2, Spring, 1969, at 46.

[4] Childs, *South Pacific Regional Meeting of NAWL, San Diego, California, June 10, 1966*, WOMEN LAWYERS J., Vol. 52, No. 3, Summer, 1966, at 127.

[5] *Gail Laughlin: National First Leader for the National Federation*, NAT'L BUS. WOMAN, May, 1969, at 5, 14; June, 1969, at 4–5.

[6] See *Women and the Law*, CORNELL L. F., Spring, 1969; Seidenberg, *The Woman Lawyer*, CASE & COM., Vol. 74, No. 3, May–June, 1969, at 30–31, 34; McVeety, *Distaff Centenary*, HENNEPIN LAWYER, May, 1969, at 44; *The Ladies of Hastings*, HASTINGS ALUMNI, Vol. 14, No. 1, April, 1969.

[7] Haselmayer, *supra* note 3.

[8] See *Weeks* v. *Southern Bell Telephone & Telegraph Company*, 408 F. 2d 228 (5th Cir. 1969).

[9] Griffiths, *The Otulook for Legislation Affecting Women*, NAT'L BUS. WOMAN, Vol. 5, No. 9, October, 1969, at 9–10.

REMARKS OF HERBERT G. KLEIN BEFORE THE FEDERAL EDITORS ASSOCIATION

Mr. MILLER. Mr. President, I think it can be fairly said that the administration of President Nixon, throughout its first year, made a sincere and determined effort to improve communications between the Government and the American people.

One of the President's key personnel responsible for this closer Government-to-people relationship is Herbert G. Klein, Director of Communications for the executive branch.

In a recent speech before the Federal Editors Association, which is composed of press and public affairs officers, and editorial staff writers, in Government agencies and the Congress, Mr. Klein remarked:

I have great faith that we can be open, willing to have the facts examined directly by the public and be judged on that basis, and I think that this is the avenue on which we should always proceed.

Mr. Klein, through his office, has made and is making a significant contribution toward achieving the administration's goal of improving the information process of our Government. His remarks, made before an organization which itself is working to improve Government communications, highlight the administration's work during the past year, and I ask unanimous consent that his speech be printed in the RECORD.

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

REMARKS OF THE HONORABLE HERBERT G. KLEIN

What I would like to do today is look at the year-end period we are approaching and review briefly what I think some of the changes are that have taken place as we see them from the Executive branch, during the first 11 months of this Administration.

I remember one of the things George Wallace said during the campaign was that you could look at the major parties and there wasn't a dime's worth of difference between them. I would submit that in looking at the changes which have taken place, on the Hill and in the Administration, his view cannot be substantiated. Too often the tendency is to look at what has happened last week or last month and not try to look at what has happened between January and December. It's particularly a hazard here in Washington where we are all constantly reassessing what our problems are at the moment, and it's difficult to take the time to look over the total period as to where we ought to go. I would like today to cover that kind of period and make a judgment as to what the changes are that have been made and the areas in which we are doing as well.

First, if you look at the situation on the 20th of January, when Mr. Nixon became President, you will find it was the start of a very very difficult year. Overseas, we had a war going on in Vietnam, our NATO allies were breaking apart in Europe, and we had a near war in the Middle East. In this country, the major problem was rising inflation. The major issue or one of the major issues in the campaign was crime and the problems of crime in Washington, D.C. and across the nation. I can't come here today and say that these problems have been solved. They remain major problems today, but I do say that in each one of these areas, major progress has been made. This progress has resulted from the working cooperation between

the Executive Branch and the Legislative Branch, and when we look back in two or three years we will see that 1969 was indeed a very significant area in all of the particular areas of which I am talking.

Let's look at a couple of other areas and then go back to those issues. In the year in which we live, it's peoples constantly review the structure of government. It's a government which has changed many times over many administrations. It's a government which each time has to fit a particular administration or leadership on the hill. Certainly this has been an administration which has made changes within the structure of the executive branch itself by stressing two things. One is reform and the second has been better coordination between the various branches of the executive. We shortly will have a report from the Ash Committee which has been making a long-range study and perhaps the most significant study since the time of the Hoover Commission of how to reexamine, how to reorganize the Executive Branch of the Government.

In the meantime, I think the significant things which have occurred in this direction have been the formation of the various domestic councils which have done a great deal toward enabling this government to build greater cooperation between the various branches of government which so often have overlapping roles, as you all know. I refer, of course, to the formation of the Urban Affairs Council, most recently the Rural Affairs Council, the Council for Economic Affairs, and the Environmental Affairs Council. I think perhaps the one that will reach the greatest new significance looking into the new year, will be the Environmental Affairs Council, because in my opinion the quietest but most rapidly growing issue in the country today is major concern for what's happening in all aspects of the environment, ranging from pollution to conservation.

The formation of my own office—the Office of the Director of Communications was a new move toward getting at the problem of putting more facts out to the American people and doing a better job in public information. I believe all of you who represent departments of government have done an excellent job in working with us and I think we can look back with a great deal of pride as to what has been accomplished during this year. I also think we are only scratching the surface, and there are many, many areas in which we have to get greater improvement, greater ability to communicate with the American people.

One thing I might outline to you is the concept of my office. Ron Ziegler, the President's Press Secretary, handles the traditional duties of the Presidential Press Secretary. He is doing, in my opinion, one of the outstanding jobs that's been done by anyone in that office. His job is to report the day-by-day doings of the President, the programs which are being sent to the Hill, the major announcements of the President and in general to be with the President where he has to make available to the American public the information which pertains to immediate happenings.

In my office we try to look at both long-range and short-range programs of coordination. I work with the rest of the White House Staff in the formation of policy and in carrying it out after it has been announced by Mr. Ziegler. We work with all your departments in terms of how to do a better job of bringing facts to the American people. We are trying to explore new techniques as to how we can do a better job in a very complex age in regard to television, in publication, in getting background information to editors across the country.

It's my feeling, having come from the ranks of an editor, that all too often there is a tendency here to feel that what you know in Washington and New York is what they also know in Des Moines, and Chicago, and Los Angeles and San Diego.

The fact is, it just isn't true, because you are concentrating on other problems in those areas and the more information we can provide for those who have the job of communicating with the American people in all parts of the country, the more effective job we will do in carrying out the policies of an open government.

We have had a series of meetings with people on both the House and Senate side in terms of informational aspects. It is our hope that one of the things we can strengthen is the coordination between those of you who work on the Hill and those who are at the White House so that we again don't find the great gaps of information within the government.

By your membership in this organization and the goals, as I understand them, the Federal Editors Association makes a major contribution and one which I hope could be enlarged. I have not had the opportunity during this first year to study in detail the various newsletters, booklets and pamphlets you have published, but I have seen a great number of them and one of the things that strikes me on the positive side is that by having the contests you do in this organization, you stimulate quality and render a major service to government and to the American people. I might just say on the side I recognize that you have a problem in terms of fees and we are looking into it to see what help we might be able to give. I don't know whether it will work out or not, but we are interested in trying to help.

There has been talk about the recent speeches of the Vice President. I have made some comments over a period of years as an editor concerning the need for self-examination of the news industry. I also feel very strongly there is a major need on a continuing basis for self-examination of the information process of government. The function of my own office really is one of trying to see what we can do in following new patterns and developing new abilities to reach the American people with the facts. Perhaps if you look within your own departments, you may find it's too easy to assume that you are going to follow the same patterns.

For example, there are the annual reports you are required to get out. There are some new publications. But many others go way back beyond the time when many of you joined the government. I think this is the time to take a look at ourselves and see if we are doing the best we can with the money we have. Often I recognize your problem is a limitation of funds but perhaps we get more quality by eliminating some of the booklets we put out and doing a better job on some of the others so that we reach a real objective of genuinely presenting the facts about your department, the facts about your office to the American people.

Let me just conclude this particular part of my comments by saying this: We in government (and it's hard for me to get used to saying this after so long a time as a newspaperman) have both a major opportunity and a major challenge to examine how we approach this problem of bringing better information to the American public. If you want to look at it in terms of achievement, I think the fact that you rarely hear anymore about a credibility gap is certainly a commendation to the work which is being done from everyone from the lowest ranks on up to the President himself. It is the President who has set this policy of candor, the policy of an open government, one which I think has given us a leadership to move into the area of giving more facts to the American public.

On the other side, perhaps you have noted I have used the word "fact" in several parts of my remarks. I think at all times we must be aware of the danger in government which would, in its effort to do a better job of producing this or that, in any way tend toward propaganda or opinion which can't be borne out by actual fact. This is a challenge in your jobs in all that you do in publishing these booklets and other things. It is a challenge in my job to make certain in all we do we're talking truth. I would submit that if we can't survive in the jobs we are doing by presenting the American public with the facts, then we shouldn't be doing it here. I have great faith that we can be open, willing to have the facts examined directly by the public and be judged on that basis, and I think that this is the avenue on which we should always proceed.

I mentioned the word crime as we started and crime and the changes in the types of crime ought to be one of the major challenges to local state governments and the Federal Government in the year of 1970. I believe the crime package now before the Congress which has been submitted by the Attorney General is one which could do a great deal in cutting down the growing crime rate. I think we have the tools to do it. I would hope the Congress will act on it before the year is over so we can go forth with a program which will accomplish one of the major demands of the American people.

In terms of inflation, again I believe that here we have an all-out war underway which needs complete cooperation. The President's approach has been that government should act first and therefore we have had cuts in budget, we have had ceilings set by the Senate, we have made efforts to put the Federal Government's fiscal and monetary policies in order first. I believe this ought to be backed by the Congress now in terms of what money it might vote and what income it might cut or enlarge so that we are all working together to convince the American people and the world that this is the government which is serious in its efforts to take the hard lumps it must, and to make the efforts which are necessary to cut down the spiral of inflation.

I believe this year we have made major gains by setting our house in order. I believe it's possible now within the next year to see that the inflation spiral will stop gaining at the rate it has and we will be well on our way to a more stable economy throughout the country.

Finally, on the question of war and peace, and particularly Vietnam, again all of us are impatient, and rightfully so, to see the war come to an end. I think the debate which we have had, the dissent, the debate in Congress and other things serve a healthy purpose as long as they are kept as they have been within the bounds of order. I think we should always have the right to debate any of these issues. The very fact we are willing to debate indicates to the world we are a free country, a country which is willing to continually examine policies and is not afraid to be held up in this public spotlight. From our standpoint, as an Administration, we have been greatly encouraged by the growing voice of what we call the silent majority, a majority which gives the President in the latest poll 68% support of the American people.

But going beyond that, sometimes people ask "What have you done for us lately?" not "What major trends have taken place?" I think when you look back, the fact is that American men are now coming home from Vietnam. We have now a clear policy which we have announced as to our efforts for peace and our future goals. Our goals are such that we say we do not desire to retain men there beyond the time of when we can safely leave in an honorable way.

The goal which is announced in the Guam policy is to have the Asian nations do a

better and fuller job of defending themselves, perhaps backed by our weapons.

And then perhaps in a broader sense if you looked at the month of November, I think you will find that this may go down in history despite all the other things as the most significant month toward peace the world has seen in many, many years.

During the last two weeks, we have seen four major things: first, the President signing the non-proliferation treaty, joining in were West Germany and the Soviet Union. For many, many years people said this would be impossible but the fact that these major powers during this period joined in the signing of this treaty is certainly a major step toward peace.

We believe there is a great significance in the announcement by the United States of the use of poisonous gases and the use of bacteriological warfare. This also came within this period of time and it again is an example of high American standards, an example which we believe is a major step toward peace.

We recently had the Prime Minister of Japan in the United States, Prime Minister Sato. I believe the decision of the President to make an agreement for the release of Okinawa will do a great deal in building long-term goodwill between the United States and Japan. We have no more important ally in all of Asia than Japan and it is important that we go down the road together and certainly this decision to work together in terms of this particular base was a major step for peace.

Finally, we have started a series of meetings as you know with the Soviet Union in terms of arms limitations in Helsinki. We have gone into this with what I think is a good illustration of another style of the President and his Administration; that of having spent many, many months in preparation for this meeting.

It is the opinion of Henry Kissinger, who I think is doing an outstanding job of heading the National Security Council, that no country has gone into this type of discussion better prepared to seriously discuss all of the issues, discuss the systems involved, to know what the results would be in a very quick way, so that whatever progress is possible through serious talks with the Soviets, this Government is prepared to act in a way which is responsible, in a way which keeps in mind the particular role of the United States Government in seeking the security of the entire world.

Because of these careful preparations, the Soviets realized long before the talks started we were serious in our efforts to negotiate some ends to the arms race, I think this means a major step toward peace, a major move in a series of four which perhaps would be the most significant part of the entire year.

Finally, let me conclude with just these thoughts: when you are moving across the country by air, one of the things you sometimes wonder is, how do you communicate with the man who has a light on down below? You look out and see farmhouses, towns and big cities. How do you let these people know what really happens in the United States Government? What do they feel as to what's good and what's bad, as to what the issues are so that they can make their own judgments?

You have a major role in communicating with those people. I'd say also that all of us have a major challenge in finding out how do we do a better job of two-way communication. It's not enough to send out the facts, but we need to hear from these people and to understand them whether they be young or old, or whether they be in the midwest, the south, the west, or the east coast.

The challenge to learn these things is one which I regard as a serious part of my job. It's one which I would say is a very major part of the job that all of you can do to making a greater contribution toward a better government—a government which you can be proud of in every way.

I recently read and I conclude with this comment made by Neil Armstrong while he was here as a guest of honor of the U.S. Congress. He was talking about taking his two sons to the top of the Continental Divide to learn about nature, to see the deer and the elk. He said as they went up to the top, "In their enthusiasm for the view, they frequently stumbled over the rocky trail, but when they looked only to the footing they did not see the elk.

"To those of you who have advocated looking high, we owe our sincere gratitude to you for granting us the opportunity to see the grandest views of the Creator. To those of you who have been our honest critics, we also thank you for reminding us that we dare not forget to watch the trail."

The government needs critics, the government needs high goals. If we are to accomplish what I believe we can we need to always have our goals high and seek the things which are possible. We should never let our view stray from the trail we follow lest we stumble and not do the job we can.

WARS DO NOT FIX FOREIGN POLICY

Mr. MILLER. Mr. President, in the Outlook section of Sunday's Washington Post appears an excellent in-depth article by Robert E. Osgood entitled "Wars Do Not Fix Foreign Public Policy." Seldom have I found a writer who has detected the sophisticated, in advance attitudes and philosophies of our foreign policies as has Mr. Osgood.

I believe that it is an article which can provide a greater amount of understanding with respect to these various viewpoints concerning future foreign policy of the United States.

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

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

WARS DON'T FIX FOREIGN POLICY

(By Robert E. Osgood)

(NOTE.—Osgood is director of the Washington Center of Foreign Policy Research and professor of American foreign policy at the Johns Hopkins University School of Advanced International Studies, and is currently on leave to serve on the staff of the National Security Council. The following is excerpted with the permission of the publishers from "America & the World: From the Truman Doctrine to Vietnam," by Robert E. Osgood, Robert W. Tucker and others. Copyright © 1970, the Johns Hopkins Press, Baltimore, Md. 21218.)

What are America's vital interests and how should it use its power to support them? This is the fundamental foreign policy question facing the United States after two decades of the Cold War. It is a question that has arisen at other critical periods of America's international involvement—during the war the war for independence, the acquisition of an empire, in both of the world wars and as a result of the confrontation of Soviet expansionism after 1945.

The immediate circumstance that brings this recurrent question to the forefront is the war in Vietnam. America's painful, frustrating, morally unsatisfying involvement there would be sufficient in itself to warrant another reappraisal of foreign policy, but this war poses with special poignancy the fundamental question of American interests and power in the world.

It does so for three reasons: (1) because it occurs at a time when the United States has become the most powerful state in the world, with commitments and military preponderance in virtually every major area; (2) because the question is complicated by a diffuse and pervasive development: the erosion of familiar features of the Cold War that have shaped American policy in the last two decades, and (3) because the war in Vietnam coincides with domestic troubles that compete for attention and resources and draw heavily on the moral and political energy of the nation.

UNRELIABLE INDICATORS

The fundamental question of American interests and power is never posed or answered directly or in the abstract. It is posed implicitly in terms of a number of specific immediate issues and decisions; it is answered ambiguously, if at all, by a set of responses that emerge from the unpredictable interaction of external events and domestic politics, of general policies and particular decisions, of underlying premises and pragmatic judgments. Correspondingly, the explicit controversies about U.S. policy, however significant they may be as clues to the national mood, are not necessarily accurate indicators of national policy.

Decisive changes in American policy have usually followed American's wars but controversies evoked by the issues of intervention, fighting and peacemaking have seldom indicated the real nature of these changes. Nor has the general emotional reaction to America's wars provided much of a clue to postwar courses of action. The most recent case in point is the Korean war.

One could not have foreseen—from the controversy over the proper limits of the war, or from the prevailing postwar sentiment to avoid local wars in the future, or from the determination of the Eisenhower administration to deter such wars at a "bearable cost" by placing more reliance on "a great capacity to retaliate instantly, by means and at places of our choosing"—that the unexpected Korean war would lead to an equally unexpected extension of American commitments in Asia through new alliances, or that these commitments would lead to an even more frustrating local war in South Vietnam.

A GRIMMER REACTION

The war in Vietnam has been even more unpopular than the Korean war. Not only has it been relatively unsuccessful; it has also seemed less crucial to America's security. And it has been fought in behalf of a government that is no more attractive, yet much less effective, than Syngman Rhee's.

Although the war has been sustained and directed from the North, as in Korea, its revolutionary aspect has pervaded the decisive battlefield in the South. Accordingly, as a consequence of American artillery and aerial bombing in the South, it has been punctuated by the morally unedifying killing and uprooting of civilians in the very country that the United States is supposed to be defending, and the bombing in the North has been harder to portray as a legitimate defensive action against the aggressor.

Moreover, in contrast to the endorsement of the United Nations and the token participation of several allies in the Korean war, the war in Vietnam has been viewed with indifference or antipathy by many of America's most important allies and has been opposed by most other countries. Understandably, therefore, the aversion to the Vietnamese war has been uniquely intense and bitter.

But how significant is this aversion beyond its impact on the war in Vietnam? Does it foretell a basic change in American policy? What can one infer from the alleged lessons of this unpopular war about America's position in other parts of the world or even about the response to other possible local wars in Asia or elsewhere?

Here the most significant critics are not the pacifists, xenophobes or utopians who reject the involvement of the United States in the central stream of power politics. They are "realists" and "internationalists," like the proponents of the policy consensus that has been represented with great continuity over the last two decades by spokesmen of the American government.

They criticize the consensus not for trying to check Communist expansion, cultivate balances of power and foster a congenial international environment, but only for pursuing these ends with excessive antiaggression and anticommunist fervor, for lack of discrimination between vital and not-so-vital interests and for an imprudent commitment of American power to goals that exceed the nation's true interests as well as its effective power and will to use it.

They advocate not a radical change in America's basic policy orientation but a more selective use of American power, especially with respect to armed interventions, and a general reduction of the scale, if not the scope, of American commitments that impose demands on military and economic resources.

But what would their view mean in practice, even if it were the prevailing American outlook? The last 20 years of America's foreign relations show that the desire to limit American commitments, to define vital interests and apply American power selectively and to eschew the role of Pax Americana, is not in itself a significant determinant of American policy. From the outset of the Cold War, the proponents of the prevailing consensus have avowedly been no less eager than its critics to limit and reduce the involvement of American power in the world.

There is no reason to discount the sincerity of President Johnson's and Secretary Rusk's repeated plaintive insistence that "we are not the world's policeman." And yet one unanticipated crisis after another has involved the United States more extensively in commitments and interventions than was imagined beforehand, because at the time there seemed to be no less objectionable alternative consistent with American interests than to resist Communist aggression or the threat of aggression.

Every President in the Cold War has taken office in the hope of concentrating on domestic welfare (although John F. Kennedy was also determined to improve America's foreign power and prestige). Yet each has presided over a vast extension of American commitments and involvements.

The conflict between professed intentions to limit America's involvements and actual extensions of American involvements strikes some critics as nothing but the well-known hypocrisy of states grown arrogant with power, but the explanation runs deeper than that. It lies in a conflict between wish and reality, in a conception of American purposes and interests that cannot be sustained by the limited, relatively detached role the nation has desired, because unforeseen circumstances keep posing threats—or apparent threats—to those purposes and interests that apparently cannot be countered except by the commitment and use of American military power.

ASSESSING THE THREAT

But is the conception of American purposes and interests held by the critics of the Cold War consensus significantly different? Like the proponents of the consensus, the critics have come to accept a view of American vital interests that goes far beyond the physical security of American territory and identifies American security with balances of power and a modicum of international order against Communist expansion in other continents.

If there is a significant difference between their orientation toward international politics and that of the consensus—that is, a difference that might have substantial policy consequences—it lies in their assessment of the nature of the Communist threat to American security. Such an assessment, whether by critics or proponents of the consensus, has two related aspects: the conception of America's security interests and the perception of the Communist threat to these interests. Both may be changing.

The prevailing consensus has shown remarkable continuity in its analysis of the general threat of international communism to American interests. Since the onset of the Cold War, most Americans, until recently, have regarded it as axiomatic that the Soviet Union and Communist China are expansionist and that any extension of Communist control and influence over noncommunist countries—especially any extension by war, revolution or subversion—whether undertaken directly by them or by other Communist states, would constitute a threat to American security.

Although the direct, or even indirect, threat to American security of Communist incursions against Asian states—with the exception of Japan—is much more problematic than the threat of Soviet or Soviet-supported aggression in Europe, the United States has talked and acted as though such distinctions were of only minor significance. In effect, it has equated Communist aggression with a threat to American security and subordinated the precise assessment of the security value of countering any particular aggression to the general requirements of containment.

This was natural enough if one assumed—as Americans generally did assume until after the Korean war and the Sino-Soviet split in the late 1950s—that the Cold War was essentially a zero-sum contest between the two superpowers and that an aggression by any small Communist state would shift the world balance of power toward the Communist block. Moreover, there was no need to question this view of American security as long as America's efforts to counter aggression were successful at a tolerable cost

The critics of the consensus, however, maintain that the Communist world has long since ceased to be monolithic and is becoming more pluralistic all the time. This pluralism restrains the Soviet Union in Europe and weakens China—which is already beset with debilitating internal problems—in Asia. It means that revolutions and incursions by other Communist states do not necessarily strengthen Russia or China and may actually help containment, since nationalism, whether Communist or not, is the strongest antidote to Soviet and Chinese expansion.

It means that Soviet competition with the United States for political influence in the nonaligned areas will be accompanied by more and more occasions for Soviet-American cooperation to insulate and pacify local disputes because of parallel interests in keeping the competition within safe limits and blocking Chinese influence. Therefore, where American intervention can accomplish nothing constructive anyway—which is always true in civil wars arising from the collapse of political authority—the United States would be better advised to abstain so as not to deflect indigenous nationalism from its natural resistance to Soviet or Chinese imperialism.

COMMUNISTS OVERESTIMATED

The prevailing view of the Communist danger, the critics charge, overestimates the capacity of any Communist state or party to acquire or extend its domain by internal war or any other means. The power of North Vietnam, they contend, is unique.

Moreover, a Communist takeover in one place does not necessarily lead to a Communist takeover in another. Dominoes are not likely to fall together unless they are ready to fall separately. The prospect of takeover depends on local conditions, especially on the capacity or incapacity of governments to meet the basic needs of the people. Where the political elements of this capacity are lacking, there is little any outside power can do to bolster a country against revolutionary forces in any case.

In the increasingly pluralistic world, the critics contend, it is foolish for the government to continue to act as though international politics were polarized in a struggle between the Communist and the free world. In the real world, a gain for one Communist country is not necessarily a gain for another or a loss for the United States.

This revisionist analysis of threats to American security may not yet prevail, but it could prevail unless international developments were conspicuously to refute it. If this view becomes the core of a new consensus, the war in Vietnam will have acted as a catalyst which, by showing the excessive costs of containment in a peripheral war, has led the nation to question the vital nature of interests it had virtually taken for granted and, in doing so, has drastically downgraded the nation's view of its security imperatives, at least in Asia

Undoubtedly, detente with the Soviet Union and the increasing divergencies of interest among Communist states and parties are changing the American view of international reality and of the nature and intensity of the Communist threat in particular. Thus a gain for China or even North Vietnam is not automatically seen as a gain for the Soviet Union or a loss for the United States, and opportunities for limited cooperation with the Soviet Union occasionally appear attractive.

Moreover, notably in Africa, Americans are becoming accustomed to a great deal of disorder and Communist meddling without jumping to the conclusion that the balance of power or American security is jeopardized. To some extent, China emerges as a new focus for active containment; but, despite the long strand of American obsession with China, the Chinese do not yet—and may never—have the strength to pose the kind of threat to Asia that the Soviet Union could have posed to Western Europe. Also, Asia is simply not valued as highly on the scale of interests as Western Europe.

On the other hand, another interpretation of the current American orientation to international politics is worth considering; that the very expansion of American commitments and power has transformed America's conception of its vital interests and the meaning of its security. In this view, Americans, without foreseeing and still only dimly realizing the change of role that the determined pursuit of containment has brought about, have come to conceive of their international position in terms more analogous to an imperial (but nonimperialistic) role than to the rationale articulated by either the consensus or its critics.

Thus each extension of American power and commitments has enlarged America's conception of the specific national interests it must defend, since its interests tend to become coextensive with the area it has undertaken to protect from hostile incursions. A nation with far-flung commitments feels that even an intrinsically unimportant incursion may jeopardize the security of many countries that look to it to protect them, and that one successful incursion could cast doubt upon the nation's willingness or ability to withstand other incursions.

A MORAL OBLIGATION

So an imperial power's vital interests embrace all the outlying areas of commitment and become equivalent to the preservation of an international order and a distribution of power upon which order must depend. They are viewed with a mixture of resignation, resolution and pride, as a moral, not only a national obligation—an obligation

seldom appreciated by any but the immediate beneficiaries, if by them. Imperial interests, moreover, create a sense of continual insecurity, since the threats to order are legion and many are beyond the capacity of the imperial power to foresee or control.

For the United States, the holding of imperial power creates some emotional problems since, on the one hand, America's equalitarian idealism makes the exercise of hegemony distasteful, yet, on the other hand, this same idealism lends a missionary impetus to armed interventions which are the cause and consequence of its hegemonial position.

If the critics are partly right in asserting that missionary impulses have got the better of America's anti-imperial inhibitions, these impulses are not, however, a sufficient explanation for the persistent extension of American commitments or the difficulty Americans have found in satisfying their longing to escape the burdens of empire. In reality, not only the insecurity of holding great power but also the objective circumstances that prevent giving up power under hostile pressure with safety and honor make it as difficult for the United States to contract its commitments as it has been for traditional imperial powers to liquidate their empires.

Theoretically, the nation could simply decide, in accordance with the views of Walter Lippmann, that its primary interests—principally its territorial security and welfare—do not warrant the engagement of American forces on foreign soil except in extreme and quite unlikely circumstances in Western Europe and perhaps to prevent the spread of hostile power in the Caribbean. But having pursued a much more spacious conception of its interest, such as a retrenchment could entail a humiliating abdication of power and responsibility, leaving instability and turmoil in its wake, unless the most optimistic assumptions about the international environment should turn out to be true. No American President would want to take responsibility for risking this state of affairs.

MOLDED BY ENVIRONMENT

It would be a mistake, however, to draw any direct or absolute correlation between the basic conception of America's international position—whether conventional, revisionist or imperial—and the future of American policy. Whatever the prevailing conception of American vital interests may be or become, its actual impact on American policy will largely depend, as always, on the kinds of events and developments that shape America's international environment.

Indeed, the external environment probably shapes the nation's conception of its vital interests more than the other way around. One could not otherwise explain the transformation of America's international outlook since World War II.

Though changes in international politics during two decades have greatly complicated the environment of American policy, they have not nullified, but only modified, some of its determining political and structural elements. International changes have neither ended the Cold War nor created coherent new patterns of conflict and alignment.

The reasons for such continuity in a period of great and rapid change are varied. In some respects, the sheer intractability of the international environment accounts for it. (In the Third World War, for example, the failure of great expectations to materialize must be largely attributed simply to the unsusceptibility of local conditions to organization or influence by the superpowers and to the political and material incapacity of underdeveloped states to act on the central stage of world politics.)

But two historically unique factors of great importance can be singled out as positive forces for continuity. One is the extent to which the central international conflict and balance of power have been determined by two states because of the disparity between the magnitude and geographical extent of their power and the power of any other state or group of states. The other unique factor is the existence of nuclear weapons.

On the basis of the history of two decades, one might conclude that, as long as these basic continuities persist, the extent of American involvement in world politics is unlikely to diminish. The imperative of containment, together with the imperatives of America's imperial position, would override the incentives for retrenchment regardless of the nation's determination to avoid future Vietnams.

But the continuities in international politics since World War II are not permanent. There are many ways in which they could come to an end. Familiar elements of international politics could change fundamentally or disappear altogether if, for example, the Soviet Union became so conservative in the face of war dangers, fear of German revanchism and uncontrollable radical revolutionary forces; so preoccupied with the problems of adhesion in Eastern Europe or in the Soviet Union itself; so concerned with the problem of restraining China and so frustrated by political failures in the Third World as to abandon its search for levers of hegemony or influence beyond its existing regional domain. And one can also imagine a combination of internal problems and external frustrations restricting the United States to little more than a Western Hemispheric role.

International politics might be transformed if new active centers of power—for example, Japan or a Franco-German coalition—were to exert their weight in regional balances of power; if the superpowers became much more concerned with their parallel interests in checking China, damping down local conflicts in the Third World and containing nuclear proliferation than with their conflicting political and ideological aims; if China became so powerful that it was not only a regional but a global power, as a major weight against Russian power, seeking limited alignment with the United States or Japan.

There are some kinds of events that might also precipitate basic changes in the Cold War—and rather rapidly: a local armed conflict in the Third World leading to a major war involving Chinese or Soviet forces against American forces; a domestic upheaval or a radical change of regime in the Soviet Union or the United States; a severe economic dislocation in Europe or in one of the superpowers; Soviet attempts to repress forcibly the East European movement toward independence and liberalism; an expansionist or aggressively revisionist regime in West or East Germany.

ELEMENT OF SURPRISE

Few of these developments seem likely. To recognize their possibility simply reminds us of the element of surprise and the limits of foresight in international affairs. But the continuities of the Cold War might also change by erosion. Less spectacular changes in international politics may already be transforming the Cold War to such an extent as to render the chief concepts and strategies of postwar American policy obsolete, even though elements of continuity persist.

For we must remember that the familiar outlines of American postwar foreign policy were formed under circumstances in which the containment of communism for the sake of American security served as the great catalyzing motive and simplifying analysis for active participation in world politics. The gradual erosion of this motive and analysis in an increasingly complicated international environment could exert a no less fundamental impact on American policy than would dramatic transformations or sudden critical events.

Some Americans, sensing the erosion of incentives for an active foreign policy at the present level of global involvement and seeking a reduction of America's overseas burdens, yet fearing the consequences of America's retrenchment from its present global position, anxiously look forward to a change in the international environment that would enable the United States to limit its involvement without jeopardizing world order. They find this change in the emergence of major new centers of power that will supplement American power in preserving a modicum of order in the most critical areas of the world.

This idea is the latest revival of an old vision of multipolar order. From the beginning of the Cold War, given the objectives of American policy, the absence of other substantial poles of noncommunist power has necessitated the steady extension of American's foreign involvements. Therefore, not only the critics but also the proponents of the prevailing consensus on American foreign policy have looked forward to a world in which power would be diffused rather than concentrated. They have explicitly advocated and hopefully anticipated the devolution of responsibility from the United States to other centers of power pending the emergence of a universal security organization.

Yet the desire to see new centers of power emerge is strongly qualified by the natural propensity of a great power to keep the security of its realm under its own control so far as possible, and especially to keep control of its nuclear power, upon which that security depends. It is also qualified by America's apprehension about the spread of nuclear weapons. And this apprehension is a special manifestation of the more general American fear of a resurgence of national separatism, competitive arming and other disruptive features accompanying the historic system of power politics.

In concept, Americans have reconciled nationalism with the diffusion of power through the ideal of autonomous but interdependent and harmonious regional "collective security" organizations, which could temper nationalism while aggregating power. The ideal of a united Europe is especially favored in America's postwar visions. Yet the only noncommunist regional organizations that have played a significant role in the distribution of power have been organized under American preponderance. Perhaps, as some American and many European critics allege, America's ideal of regionalism sublimates the reality of its hegemony.

Be that as it may, a world of coherent regional organizations, whether as partners or powerful rivals, shows few signs of emerging at this stage of international politics. This is not the result of hegemonial American designs. It is the result of inherent obstacles to the development of autonomous regional poles of power.

These obstacles lie in many particular divergencies of interests within every group of interdependent states but also, more generally, in the political problem that roughly equal powers encounter in integrating or even coordinating defense policies; in the special obstacles to an equitable and mutually satisfactory sharing of the control of nuclear weapons (now virtually a prerequisite for creating a major power); in the postwar resurgence of parochial national spirit, and in the domestic opposition to the expenditures necessary to create armed forces independent of the United States.

If any new pole of military power, independent of American preponderance and capable of affecting regional balances of power, arises in the next decade, it will be a single sovereign state that already exists. Japan

seems like the only prospect. Yet the emergence of a thoroughly armed Japan, playing a major role in an Asian balance of power and moved by the kind of outward-looking nationalism that would have to be the precondition of such a status, would be no less disturbing than the burdens of American preponderance to the current advocates of multipolarity.

INTERNAL PREOCCUPATION

Meanwhile, the familiar outlines of the old order continue to grow more confusing, like a kaleidoscope that is somewhat out of focus. What further complicates the effort to foresee, let alone foster, some coherent future design is the present tendency of internal socioeconomic problems to lead toward introversion the states that have the greatest capacity to construct designs.

If some of the most advanced industrial states, including the United States and the Soviet Union, are going to be preoccupied with meeting politically mobilized consumer expectations, alleviating urban maladjustments and accommodating racial or relatively affluent and well-educated minorities which feel alienated from the prevailing establishments and the vast impersonal systems of government, business and education over which they preside, then international politics will be a much more amorphous phenomenon than in previous transitional periods of the modern state systems.

It is a question whether this nation, faced with a confusing and patternless international environment and preoccupied with internal problems, will continue to expend the energy it would have to expend just to maintain its existing commitments, let alone foster new systems of order and security. When the containment of communism is no longer a catalyzing purpose and there is no universal ideological adversary against which to mobilize moral sentiments would a sense of world role and responsibility, or a general feeling that American security and welfare depend on balances or power and a modicum or order in the world, suffice to sustain an active foreign policy?

Or would the United States, no longer finding any moral satisfaction in global power politics or feeling the lash of insecurity, liquidate its metaphorical empire and retire to an equally metaphorical fortress? In either case, what difference would it make for America's security or the quality of American life? The alternatives are overstated, but the questions are pertinent.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. MILLER. Mr. President, if there be no further business to come before the Senate, I move in accordance with the order of Saturday, January 24, 1970, that the Senate stand in adjournment until 10:30 tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 13 minutes p.m.) the Senate adjourned until Tuesday, January 27, 1970, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate January 26, 1970:

ASSISTANT SECRETARY OF TRANSPORTATION

Charles D. Baker, of Maryland, to be an Assistant Secretary of Transportation, vice Paul W. Cherington, resigned.

COMMISSION ON CIVIL RIGHTS

Manuel Ruiz, Jr., of California, to be a member of the Commission on Civil Rights, to which office he was appointed during the last recess of the Senate.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Allan Oakley Hunter, of California, to be president of the Federal National Mortgage Association, to which office he was appointed during the last recess of the Senate.

FOREIGN CLAIMS SETTLEMENT COMMISSION

Lyle S. Garlock, of Virginia, to be a member of the Foreign Claims Settlement Commission of the United States for a term of 3 years from October 22, 1969, vice Leonard v. B. Sutton, term expired.

DIPLOMATIC AND FOREIGN SERVICE

The following-named Foreign Service information officers for promotion in the Foreign Service to the classes indicated:

Foreign Service information officers of class 1:

Keith E. Adamson, of Nevada.
O. Rudolph Aggrey, of the District of Columbia.
David Nalle, of Maryland.
Michael Weyl, of the District of Columbia.

Foreign Service information officers of class 2:

Charles R. Beecham, of Florida.
James D. Conley, of Illinois.
Lyle D. Copmann, of Nebraska.
Richard H. Curtiss, of Virginia.
Carl E. Davis, of Florida.
Eugene J. Friedmann, of Ohio.
John L. Hedges, of Illinois.
David I. Hitchcock, of Connecticut.
Richard M. Key, of New Jersey.
Barrett M. Reed, of Rhode Island.
John W. Shirley, of Illinois.
Morton S. Smith, of Maryland.

Foreign Service information officers of class 3:

Edmund A. Bator, of the District of Columbia.
Edgar S. Borup, of Illinois.
Harry P. Britton, of California.
Michael D. Brown, of New York.
Francis A. Cooke, of New York.
A. Speight Cooper, of Georgia.
George T. Czuczka, of Virginia.
G. Michael Eisenstadt, of New York.
Jack B. Fawcett, of Colorado.
Ben F. Fordney, of Virginia.
Jerry L. Inman, of California.
Ivan T. Kiecka, of Illinois.
Charles J. Lahey, of Pennsylvania.
Milton Leavitt, of Massachusetts.
Charles M. Magee, of Florida.
Donald E. Mathes, of Missouri.
Robert L. M. Nevitt, of Pennsylvania.
Flemming E. Nyrop, of Virginia.
Michael T. F. Pistor, of New York.
William H. Pugh, of New Jersey.
Donald E. Reilly, of California.
Leonard I. Robock, of Ohio.
Vincent Rotundo, of New Jersey.
Miss Margaret V. Taylor, of California.
Vernon R. Telford, of Georgia.
Richard E. Undeland, of Nebraska.
Jaroslav J. Verner, of Maryland.
Robert C. Voth, of California.

Foreign Service information officers of class 4:

Miss Ruth Banonis, of Michigan.
Paul P. Blackburn, of Maryland.
John T. Burns, of Florida.
Thomas A. Calhoun, of California.
Miss Patricia E. Connor, of Washington.
Miss Joan L. Dickie, of New York.
Eli Flam, of Virginia.
James Flood, of Maryland.
Lawrence B. Flood, of California.
Charles T. Foo, of Florida.
C. M. Fry, of Missouri.
Alan L. Gilbert, of Ohio.
Myron L. Hoffmann, of Virginia.
Talbott W. Huey, of Maryland.
Irwin S. Kern, of the District of Columbia.
Robert E. Knopes, of Wisconsin.
Robert R. LaGamma, of New York.
John H. Melton, of Montana.
James L. Meyer, of California.
Robert S. Meyers, of California.
Merrill S. Miller, of California.
J. Richard Overturf, of the District of Columbia.
Peter J. Reuss, of Florida.
John F. Ritchotte, of Pennsylvania.
Sanders F. Rosenblum, of Michigan.
William A. Rugh, of New York.
Henry B. Ryan, of Illinois.
Fred M. Shaver II, of Colorado.
William Stephens, Jr., of Pennsylvania.
Conrad Stolzenbach, of Ohio.
V. Jordan Tanner, of California.
William F. Thompson, of Minnesota.
Alfred J. Waddell, of the District of Columbia.
David M. Wilson, of Massachusetts.
William M. Zavis, of Illinois.

Foreign Service information officers of class 5:

Paul B. Altemus, of New Jersey.
Peter J. Antico, of New York.
Miss Juliet C. Antunes, of New York.
John B. Barton, of South Carolina.
Michael P. Canning, of North Dakota.
Sherwood H. Demitz, of Michigan.
Bernard Engel, of Ohio.
Miss Nancy E. Fitch, of New York.
Edward D. Franco, of Colorado.
Robert Barry Fulton, of Pennsylvania.
Robert K. Geis, of Texas.
Richard J. Gilbert, of New York.
Miss Corinne A. Heditsian, of Rhode Island.
Christopher M. Henze, of California.
John H. Hudson, of Virginia.
Ronald L. Humphrey, of Washington.
Thomas F. Johnson, of New York.
Kenton W. Keith, of Missouri.
Duane L. King, of Washington.
Howard A. Lane, of Illinois.
Ernest H. Latham, Jr., of Massachusetts.
Alfred A. Laun III, of Wisconsin.
Harvey I. Leifert, of California.
Lewis R. Luchs, of Virginia.
Miss Clara Sigrid Maitrejean, of Arizona.
Jerome K. McDonough, of Maryland.
Robert L. Michael, of Ohio.
Robert P. Milton, of Georgia.
Miss Mary Rose Noberini, of New York.
Thomas E. O'Connor, of Ohio.
Jerry Lincoln Prillaman, of Virginia.
Peter L. Quasius, of Wisconsin.
Harlan F. Rosacker, of Nebraska.
Richard F. Ross, of Florida.
Richard C. Schoonover, of California.
Carl D. Schultz III, of the District of Columbia.
James H. Sease, of Michigan.
Donald F. Sheehan, of New York.
Terry B. Shroeder, of California.
Thomas E. E. Spooner, of Michigan.
Willis J. Sutter, of New Jersey.
Richard A. Virden, of Minnesota.
Phillips S. Waller, of California.
John G. Wilcox, of Michigan.
Murray B. Woldman, of Ohio.

Foreign Service information officers of class 6:

William J. A. Barnes, of Massachusetts.
Miss Frances D. Cook, of Florida.
Robert T. Coonrod, of New York.
Tabor E. Dunman, Jr., of Virginia.
Miss Cynthia J. Fraser, of Texas.
Miss Mary E. Gawronski, of New York.
Miss Gail J. Gulliksen, of Illinois.
L. Michael Haller, of Illinois.
Barry B. R. Jacobs, of Michigan.
George C. Kinzer, of California.
Terrence H. Kneebone, of Utah.
William U. Lawrence, of Michigan.
Michael K. Lewis, of the District of Columbia.
Gary R. Nank, of Ohio.
Robert J. Palmeri, of Massachusetts.
James C. Pollock, of Pennsylvania.
William H. Poole, of Massachusetts.
Miss Ellen L. Robbins, of Illinois.
Miss Edith E. Russo, of Virginia.
Andrew D. Schlessinger, of New York.
Stanley S. Shepard, of Colorado.
Lawrence M. Thomas, of Tennessee.
Harvey M. Wandler, of New York.