H.R. 17677. A bill to amend the Federal Water Pollution Control Act, as amended; to the Committee on Public Works.

H.R. 17678. A bill to amend the Federal Water Pollution Control Act, as amended, to provide financial assistance for the construction of waste treatment facilities, and for other purposes; to the Committee on Public Works.

H.R. 17679. A bill to establish an Environmental Financing Authority to assist in the financing of waste treatment facilities, and for other purposes; to the Committee on Public Works.

By Mr. PATMAN (for himself and Mr. PODELL):

H.R. 17680. A bill to increase the availability of mortgage credit for the financing of urgently needed housing, and for other purposes; to the Committee on Banking and Currency.

By Mr. PERKINS:

H.R. 17681. A bill to extend for 5 additional years the authorization for programs under the Elementary and Secondary Education Act of 1965, and related programs; to the Committee on Education and Labor.

By Mr. POLLOCK:

H.R. 17682. A bill directing the Secretary of the Army to review certain reports concerning the improvement of waterborne commerce in the southcentral region of Alaska and to report to Congress thereon; to the Committee on Public Works.

H.R. 17683. A bill directing the Secretary of the Army to review certain reports concerning Cook Inlet and its tributaries in Alaska and to report to Congress thereon; to the Committee on Public Works.

By Mr. RODINO:

H.R. 17684. A bill to increase the availability of mortgage credit for the financing of urgently needed housing, and for other purposes; to the Committee on Banking and Currency.

By Mr. SCHERLE:

H.R. 17685. A bill for the relief of certain cities and towns in Iowa and the State of Iowa; to the Committee on the Judiciary.

By Mr. WOLFF (for himself, Mr. ADDABBO, Mr. DADDARIO, Mr. MOORHEAD, Mr. OTTINGER, Mr. PODELL, and Mr. RYAN):

H.R. 17686. A bill to prohibit the use of any nuclear weapon in Southeast Asia unless Congress first approves such use; to the Committee on Armed Services.

By Mr. CARTER:

H.J. Res. 1236. Joint resolution to authorize the President to designate the third Sunday in June of each year as Father's Day; to the Committee on Judiciary.

By Mr. HANLEY:

H. Con. Res. 619. Concurrent resolution expressing the sense of the Congress with respect to the establishment of a United Nations international supervisory force for the purpose of establishing a cease fire in Indochina to aid efforts toward a political solution of current hostilities; to the Committee on Foreign Affairs.

By Mr. FULTON of Pennsylvania (for himself, and Mr. JOHNSON of Pennsylvania):

H. Con. Res. 620. Concurrent resolution expressing the sense of Congress that the question of the maintenance of the neutrality and territorial integrity of Cambodia and the human rights of the Cambodian people be referred to the Security Council of the United Nations; to the Committee on Foreign Affairs.

By Mr. POLLOCK:

H. Con. Res. 621. Concurrent resolution expressing the sense of Congress regarding the conflict in Southeast Asia and the exercise of constitutional authority in matters affecting grave national decisions of war and peace; to the Committee on Rules.

By Mr. WILLIAM D. FORD:

H. Res. 1023. Resolution to stop funds for war in Cambodia, Laos, and to limit funds for war in Vietnam; to the Committee on Foreign Affairs.

By Mr. RIEGLE (for himself, Mr. FRIEDEL, and Mr. CHARLES H. WILSON):

H. Res. 1024. Resolution to set an expenditure limitation on the American military effort in Southeast Asia; to the Committee on Foreign Affairs.

By Mr. RIEGLE (for himself, Mr. FRASER, and Mr. MATSUNAGA):

H. Res. 1025. A resolution to set an expenditure limitation on the American military effort in Southeast Asia; to the Committee on Foreign Affairs.

By Mr. RYAN:

H. Res. 1026. A resolution to set an expenditure limitation on the American military effort in Southeast Asia; to the Committee on Foreign Affairs.

By Mr. SCHERLE:

H. Res. 1027. A resolution providing for the reference of the bill (H.R. 17685) to the Court of Claims; to the Committee on the Judiciary.

By Mr. WIDNALL:

H. Res. 1028. A resolution to set an expenditure limitation on the American military effort in Southeast Asia; 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. BURTON of California:

H.R. 17687. A bill for the relief of Mrs. Concepcion Garcia Balauro; to the Committee on the Judiciary.

By Mr. FULTON of Tennessee:

H.R. 17688. A bill for the relief of Richard W. Yantis; to the Committee on the Judiciary.

By Mr. JARMAN:

H.R. 17689. A bill for the relief of Lester H. Sherman; to the Committee on the Judiciary.

By Mr. PELLY:

H.R. 17690. A bill to authorize the Secretary of Commerce to sell the MV *Chestatee;* to the Committee on the Merchant Marine and Fisheries.

By Mr. THOMPSON of Georgia:

H.R. 17691. A bill for the relief of Mohammad Ghazi, doctor of medicine; to the Committee on the Judiciary.

## MEMORIALS

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

382. By the SPEAKER: A memorial of the Legislature of the State of California, relative to Federal participation in feasibility level studies for the Salton Sea; to the Committee on Appropriations.

383. Also, a memorial of the Legislature of the State of New York, relative to increasing the hourly minimum wage; to the Committee on Education and Labor.

384. Also, a memorial of the Legislature of the State of Florida, relative to American prisoners of war held captive by North Vietnam; to the Committee on Foreign Affairs.

385. Also, a memorial of the Legislature of the State of Hawaii, relative to U.S. activities in Laos; to the Committee on Foreign Affairs.

386. Also, a memorial of the Legislature of the State of Hawaii, relative to a proposed amendment to the Constitution of the United States to preserve the reciprocal immunities of tax exemption; to the Committee on the Judiciary.

387. Also, a memorial of the Legislature of the State of Alaska, relative to the imminent invasion of North Pacific salmon fisheries by South Korea; to the Committee on Merchant Marine and Fisheries.

## PETITIONS, ETC.

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

482. By Mr. BROWN of California. Petition of faculty, students, and staff of the University of California, Riverside, relative to American military policy in Southeast Asia; to the Committee on Foreign Affairs.

483. Also, petition of National Committee for Responsible Representation, Cornell University, Ithaca, N.Y., relative to conduct of the President and military policy in Southeast Asia; to the Committee on Judiciary.

484. By the SPEAKER: Petition of the Senate of the Academic Council of Stanford University, Stanford, Calif., relative to the war in Indochina; to the Committee on Foreign Affairs.

485. Also, petition of Henry Stoner, York, Pa., relative to declaring a National Day of Mourning; to the Committee on the Judiciary.

486. Also, petition of the City Commission, Fort Lauderdale, Fla., relative to designating Cape Kennedy as the operational base for the space shuttle system; to the Committee on Science and Astronautics.

# SENATE—*Monday, May 18, 1970*

The Senate met at 12 o'clock noon and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Our Father God, from whom all thoughts of truth and peace proceed, all the ways of our need lead us to Thee. We are grateful for this reverent pause amid the stresses and strains of our daily duties when we open our hearts and minds to the invasion of Thy spirit. Wilt Thou monitor our thoughts and actions this day. Make us instruments for doing Thy will, overruling our fallible judgments and using our best efforts for the shaping of a new world. Give us the vision, the wisdom, and the courage that will make for both justice and lasting peace, through Him in whose will is our peace. Amen.

## DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore of the Senate.

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., May 18, 1970.*

*To the Senate:*

Being temporarily absent from the Senate, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
*President pro tempore.*

Mr. ALLEN thereupon took the chair as Acting President pro tempore.

## MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on May 12, 1970, the President had approved and signed the following acts:

S. 1193. An act to authorize the Secretary of the Interior to prevent termination of oil and gas leases in cases where there is a nominal deficiency in the rental payment, and to authorize him to reinstate under some conditions oil and gas leases terminated by operation of law for failure to pay rental timely; and

S. 3544. An act to amend the Arms Control and Disarmament Act in order to extend the authorization for appropriations.

## EXECUTIVE MESSAGES REFERRED

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

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

## REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of May 15, 1970, Mr. MAGNUSON, from the Committee on Commerce, reported favorably, with amendments, on May 18, 1970, the bill (S. 3074) to provide minimum standards for guarantees covering consumer products which have electrical, mechanical, or thermal components, and for other purposes, and submitted a report (No. 91-876) thereon, together with the individual views of the Senator from New Hampshire (Mr. COTTON), which report was printed.

## THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, May 15, 1970, be dispensed with.

The ACTING 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 ACTING 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 that statements in relation to the transaction of routine morning business be limited to 3 minutes.

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

## ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock a.m., tomorrow.

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

## ORDER FOR RECOGNITION OF SENATOR JAVITS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the prayer tomorrow, the distinguished Senator from New York (Mr. JAVITS) be recognized for not to exceed 40 minutes.

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

## ORDER FOR RECOGNITION OF SENATOR TALMADGE TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent, following the speech of the distinguished Senator from New York (Mr. JAVITS), that the distinguished Senator from Georgia (Mr. TALMADGE) be recognized for not to exceed 30 minutes.

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

## ORDER FOR RECOGNITION OF SENATOR SYMINGTON TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, following the speech of the distinguished Senator from Georgia (Mr. TALMADGE), the distinguished Senator from Missouri (Mr. SYMINGTON) be recognized for not to exceed 1 hour.

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

## ORDER FOR RECOGNITION OF SENATOR PROXMIRE OF WISCONSIN AT CONCLUSION OF MORNING BUSINESS TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of morning business, the distinguished Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 30 minutes. I make this request because I understand the speech will be germane to the bill under discussion.

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

## EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination on the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nomination on the Executive Calendar will be stated.

## CALIFORNIA DEBRIS COMMISSION

The bill clerk read the nomination of Brig. Gen. Frank A. Camm, Corps of Engineers, U.S. Army, to be a member of the California Debris Commission.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

## LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

## MARINE CAPT. GERALD H. SAMPSON, USMCR, POSTHUMOUSLY AWARDED THE NAVY CROSS

Mr. SCOTT. Mr. President, I am advised by Brig. Gen. Fred Haynes, U.S. Marine Corps, that Marine Capt. Gerald H. Sampson, USMCR, has been posthumously awarded our Nation's second highest award for gallantry in combat action—the Navy Cross.

There is a shared, dear place in the hearts of all who are of good will for those who are lost in battle. Such men of courage have kept our country strong and free. Today, more than ever, I feel it is incumbent upon us to pay tribute to these brave men and, in particular, to Captain Sampson who now joins the ranks of America's heroes where his name and memory will remain forever.

As we extend our deep sympathy to his mother, Mrs. Celia A. Thomas of 639 Cemetery Street, Williamsport, Pa., I ask unanimous consent that the official citation describing the circumstances of Captain Sampson's award be printed in the RECORD.

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

THE SECRETARY OF THE NAVY,
*Washington.*

The President of the United States takes pride in presenting the Navy Cross posthumously to Captain Gerald H. Sampson, United States Marine Corps Reserve for service as set forth in the following citation:

For extraordinary heroism while serving as

Commanding Officer of Company B, First Battalion, Third Marines, Third Marine Division in connection with combat operations against the enemy in the Republic of Vietnam. In the early morning hours of 28 August 1969, Company B, occupying a night defensive position deep in hostile territory northwest of Cam Lo, was assaulted by a large North Vietnamese Army force employing automatic weapons and rocket-propelled grenades. In the initial onslaught, the second platoon commander was wounded and his sector of the perimeter was in grave danger of being breached by the enemy. With complete disregard for his own safety, Captain Sampson moved across the fire-swept terrain to the point of heaviest contact, rallied the beleaguered Marines, and began to direct their fire against the advancing North Vietnamese. During the fierce fire fight, he continually moved from one fighting position to another, instructing and encouraging his men and ensuring that the wounded received immediate treatment. While maneuvering across an exposed area on the foremost edge of the perimeter, Captain Sampson was mortally wounded by enemy fire. His unflagging determination and bold fighting spirit inspired his men to heroic efforts and were instrumental in turning a critical situation into an overwhelming Marine victory. By his leadership, extraordinary courage and selfless devotion to duty, Captain Sampson upheld the highest traditions of the Marine Corps and of the United States Naval Service.

For the President,

V. W. WARNER,
*Acting Secretary of the Navy.*

## ALL AMERICANS SHOULD EXPRESS THEMSELVES IN ACTIVE POLITICAL TERMS

Mr. AIKEN. Mr. President, since the Cambodian invasion, I have received thousands of letters, telegrams, and names on petitions as well as personal visits from several hundred young people.

While these efforts do carry an influence, the effect is small compared to what it would be if all of those who are concerned would express themselves in active political terms.

The decisions affecting the security and welfare of our people are largely the result not only of elections but also of caucuses and conventions.

In Vermont, and I believe in most States, party committees are elected and party policies adopted, not by the majority of the people but by the few who attend their local caucuses and the delegates selected by those few to attend the State conventions. In some instances, not over 2 percent of the eligible voters make the decisions which may mean life or death, affluence or poverty, for the great majority who do not attend.

I urge these young people—and older ones too—to qualify themselves as voting members of their party, and make sure that others they know do the same and, by all means, attend their party caucuses, elect good members to their local committees, and send proper delegates to the State conventions and insist upon policies which concern all the people.

It is also important that all qualified voters of every age are registered for both primary and regular elections, that absentee voters receive ballots, and to get everyone to the polls.

If all those who sign petitions or write letters to Members of Congress will pitch in and help do the work which presently is left to a few dedicated people of both parties, they will then have little cause for complaint—and our country will be the better for it.

## DEATH OF CLIFFORD HOPE

Mr. DOLE. Mr. President, it is with deep sorrow that I inform my colleagues of the death of a great American, the Honorable Clifford Hope.

Mr. Hope will be remembered by many Members of the House and Senate for his impressive legislative record in the field of agriculture during his 30 years as a Member of the House of Representatives. Mr. Hope was chairman of the House Committee on Agriculture in the 83d Congress.

Cliff, as he was affectionately known to hundreds of Kansans and citizens of other States, was responsible for landmark legislation in the areas of agriculture and conservation. He will long be remembered for his quiet, unassuming manner, and his tolerance for colleagues' opposing views.

His dedication to the economic betterment of farmers gained him the reputation of congressional champion of the small farmer.

Recognizing his knowledge of agriculture, President Eisenhower appointed him one of his chief campaign advisers on farm policy.

Cliff was largely responsible for the Soil Conservation Act of 1935 and the Farm Credit Act of 1953.

Since his retirement from Congress in 1956, Mr. Hope continued an active interest in agriculture, particularly in promotion of greater uses of wheat at home and abroad.

He had taken a leading role in community betterment projects and maintained his strong interest in the political affairs of our State and Nation.

I speak for all who knew this fine and good man when I say that his death is a tragic loss for our country, for he enriched the lives of so many of his countrymen.

Our heartfelt sympathy goes out to his children and grandchildren who survive him.

Mr. AIKEN. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. I am happy to yield to the Senator from Vermont.

Mr. AIKEN. I join the Senator from Kansas in expressing his testimonial for Clifford Hope.

It was my privilege to be chairman of the Senate Committee on Agriculture and Forestry at the time Clifford Hope was chairman of the House Agriculture Committee. We cooperated and collaborated on a good many pieces of worthwhile agricultural legislation.

Clifford Hope was always looking out for the interests of the farm people.

The debt the farmers of America owe to Clifford Hope will probably never be fully repaid.

Mr. MANSFIELD. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. I, too, wish to join in the remarks of the distinguished Senator from Kansas and the distinguished Senator from Vermont on the passing of Clifford Hope.

The distinguished minority leader is in the Chamber. Both of us had the privilege of serving with Clifford Hope in the House. He was a real gentleman. I mean that in the finest sense of the word.

He was an agriculturalist through and through. He was vitally concerned when it came to matters affecting the price of wheat primarily, and small grains incidentally.

Many of us on both sides of the aisle sought Cliff's advice and assistance. He contributed immensely to the agricultural segment of the economy.

Cliff Hope was a fine man and a gentleman. We shall miss him.

I join the distinguished Senator from Kansas in expressing my sympathy to his family.

Mr. DOLE. Mr. President, I thank the Senator.

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

Mr. DOLE. I yield.

Mr. SCOTT. Mr. President, I served with Cliff Hope in the House of Representatives. I knew him well.

I admired him. He was indeed a quiet man, who had the confidence of all his colleagues. He served as chairman of the Republican Conference at one time.

On one occasion some years ago, I went to Garden City, Kans., to a very large meeting to pay tribute to Cliff Hope's services to Kansas and to the Nation.

We admired him very much. I have had the pleasure of knowing members of his family as well. We do indeed all join in expressing our great sorrow at his passing and ask that our condolences be extended to members of the family.

## BRAZIL

Mr. KENNEDY. Mr. President, denial of dissent, abrogation of political rights, and the purging of the intellectual community have characterized repressive regimes throughout history. The recent purge of 10 respected scientists from the Oswaldo Cruz Institute in Rio de Janeiro is another indication of the path chosen by the Brazilian military government.

It is distressing to friends of the Brazilian people that Brazil's traditional spirit of accommodation and political civility has been discarded by its current leaders. Reports of official terrorism and torture are mixed with incidents of violence committed by opponents of the regime who are denied access to legitimate political channels.

The attached articles highlight the ugliest aspects of a regime that we continue to support both militarily and economically, a regime that mocks the democratic principles proclaimed in the Alliance for Progress.

Mr. President, the United States must reexamine our support of this regime and ask whether our actions, including our maintenance in Brazil of our largest Latin American military mission, can produce anything other than a deepening

dismay here at home at the gap between our policies and our ideals.

We now face a deep crisis in the spirit of the American people because of our support of an unpopular government in an unjust cause in Vietnam. Our unquestioning endorsement of a government that accepts torture of political prisoners can only exacerbate this crisis.

I ask unanimous consent to have printed in the RECORD the article by Colman McCarthy which appeared in the Washington Post, on May 4, 1970, and the article by Leonard Greenwood which appeared in the Washington Post on May 12, 1970.

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

THE BRAZILIAN CHURCH MAY BE CHRISTIAN AFTER ALL

(By Colman McCarthy)

No doubt exists any longer that the military men running Brazil are stylists in torture, violence and hounding. Too many reports from reliable witnesses have appeared in the North American and European press for anyone to think that the current oppression is merely a lapse in taste by Gen. Emilio Medici and his six-year-old government. The aim of the torture, backed by the same kind of secret police tactics used in Germany, Spain, Portugal and Italy in an earlier era and in Greece, Haiti, South Africa and Rhodesia today, is to keep the oppositon silent, afraid and in view.

The students, journalists, professors, labor organizers, social workers, priests and others who are among the potential targets of torture in Brazil have been put in a strained stance. Do they resist by fighting violence with counter-violence? Or do they hold out and work for the peaceful revolution that their country, crushed by poverty, disease and illiteracy, desperately needs?

Large numbers are now joining both groups. But many who go for the second do so because much of the leadership in the Catholic Church is both vocal and risk-taking in opposing the military dictators. "Surprisingly, "writes Prof. Ralph Della Cava of Queen's College, N.Y., in last week's Commonweal, "the Brazilian Catholic Church, once a mainstay of the status quo, has emerged for a variety of reasons as the only national institution that remains capable of defending the principles of freedom, justice and social change in the face of government repression."

The church in Brazil, as elsewhere in Latin America, has long been a sleeping partner of the rich and the military. Officially, it passed out the sacraments and rites, a coin-machine operation from which blessings dropped like candies on which the poor were meant to suck for comfort, not thirst for change. Unofficially, it was the chaplain church, blessing the landowners who virtually enslaved the poor by forcing many of them to live on less than $350 a year. The self-cowed clergy dared not defy the army or the rich, fearing economic pressures on religious hospitals, schools and parishes.

A few years ago, from northeast Brazil, a small, slim man with a strong clear mind spoke out quickly to become a Martin Luther King figure to the Brazilian social movement. Since then, Archbishop Helder Camara has been rattling the generals, exposing the rich, but perhaps most important, making it clear to the poor that they have a right to something better and there is a way to get it. Last October 2, the centennial of Gandhi, Camara outlined the theme of his movement called Action, Justice and Peace. "Many Latin American governments, perhaps without realizing and without caring, are preparing an explosion worse than the nuclear bombs, worse than the H-bomb: it is the M-bomb, the bomb of misery. (This explosion) is prepared by those who cower before the powerful and the privileged and make a show of elaborate reforms and ways to execute them, but who afterward leave the situation as it is to see if it won't take care of itself."

In calling for non-violent, structural reforms in Brazil, Camara is labeled a Communist by the right, a standard dismissal of anyone who fights a little too hard for the poor. From the far left, Camara gets it also, because he insists on non-violence. He is firm about the latter, not just from his pacifism, but also practicality. "If there was a movement of violence here, Brazil would be crushed immediately, either by the United States . . . or by the USSR. To change one for the other of those two powers would all be the same, as neither of the two serve for Brazilians."

Lumping together America and Russia is not Camara's exclusive idea. In October 1968, the moderate newspaper, *Jornal do Brazil*, expressed what observers say is a widespread sentiment: "Russians and North Americans proceed as if they were invaders from Mars. They are of another race, another civilization. This planet is a colony which they exploit shamelessly and whose inhabitants—us—as the inferior beings that we are, can continue dying of hunger in our sun-baked and noisy craters."

Gen. Medici and his terrorists know better than to jail, torture or otherwise silence Camara. He is too well known internationally and too revered locally. But the government moves in on less prominent clergy. Last December, a military court indicted the bishop of Volta Redonda on charges of "subversion." Fifteen of his priests were also brought up on charges. Their trial, like the bishop's is pending, with no date set. Other priests have been imprisoned and tortured, as well as many nuns and laymen. Forcefully, one bishop, Joao Costa, recently denounced the government's treatment of political prisoners: The latter "have been violently beaten and tortured. I am making this denunciation so that there shall be eliminated once and for all from all investigations, those procedures which dishonor all those who practice them and render the process of justice suspect."

All of this puts the Vatican on the spot. It has 245 bishops in what is the world's most Catholic country—at least nominally Catholic, which means making Mass perhaps twice a year. The Pope, who has received a report called "Terror and Torture in Brazil," knows he cannot play it safe much longer—or as Pius XII did during Hitler's Germany, play it silent! The Vatican naturally supports non-violent reform. But preached from across an ocean, this stance risks becoming an accomplice to the current economic and political structures that also do violence—not by bullets or thumbscrews, perhaps, but by keeping the poor in their poverty through unjust laws or by letting greedy land-owners continue to hoard the land. Many in the Third World are beginning to believe that this kind of violence is infinitely more criminal than the war games played by Che-style guerrillas.

The Brazilian generals, like the Greek colonels, are touchy about their image in the United States and work hard to keep it polished; this is where the massive foreign aid and private investment capital comes from, with bad days to come were the well to run dry.

But the U.S. should be less of a worry to the Brazilian government than the Church. American businessmen will not likely pull back their money and investments so long as the generals say they are devoted to "stopping communism." The Church—or at least that part of it exemplified by Helder Camara and a growing number of bishops and thousands of clergy and laymen—sees through the big talk about anti-communism. That is not the real battle. "When will we be able to show everybody," said Camara last fall, "that the number one problem is not the clash between East and West, but between North and South—that is, between the developed world and the underdeveloped world? When will we be able to help everybody understand that *misery* is the enslaver, the assassin par excellence and that it is the war against misery which should be the number one and only war upon which we must focus our energy and resources?"

Camara doesn't know the answer to his questions. But he does know his country seethes with the poor and the hungry who demand answers soon. Christianity, which has solved the problems of the next world, seems ready, at least in Brazil, to begin solving some of the problems of this world.

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NEW BRAZIL PURGE HITS 10 SCIENTISTS

(By Leonard Greenwood)

RIO DE JANEIRO—Brazil's small scientific community is reeling from its second political purge in a year.

Ten scientists, including several known internationally, have been fired from the Oswaldo Cruz Institute here and stripped of their political rights.

A government spokesman said the decision had been made by President Emilio Garrastazu Medici after "careful investigation" has shown the scientists to be "agents of subversion and enemies of the regime."

The withdrawal of their political rights makes it virtually impossible for them to continue scientific work in Brazil. Anyone who loses his rights is forbidden to work for any government-supported organization and there are almost no private laboratories.

Less than a year ago, between 60 and 70 scientists were fired from research, technical and teaching posts and some also lost their political rights.

In Brazil, which has a scientific community of only about 5,000 in a population of 94 million, the effects of last year's purge was psychologically staggering.

"People were just beginning to settle down again after that when this latest blow fell," one Brazilian scientist said "All the old fears have been awakened again. People are saying there are more lists. God knows who'll be next."

The director of the Cruz Institute, Guilherme Lacorte, is reluctant to discuss the case, which he describes as "one of those things tha+ happens." He says only that the departure of the 10 men need not affect the working of the institute.

The victims, who are in an extremely vulnerable situation with accusations of subversion hanging over them, refuse to meet reporters.

The men were reported to be carrying out work on many diseases. The institute, founded at the beginning of the century, has made important contributions to world medicine, especially in the field of yellow fever.

Brazilian scientists say it is difficult to see how any of them could be accused of subversion. None was working on a job even remotely connected with national security.

As is the case with most of Brazil's scientific community, all 10 are known to have liberal ideas about society. "You'd have to stretch imagination a long way to see them as Communists," one eminent Brazilian scientist said.

Other scientists ridicule Lacorte's statement. They say the 10 men were key figures in a small team of high-level researchers at Cruz. Without them, they add, some departments, including physiology and entymology, may have to close, the scientific standing of the institute will be damaged and Brazilian research in certain fields will be retarded.

## THE NOMINATION OF TWO WOMEN GENERALS

Mr. STENNIS. Mr. President, I wish to express my gratification in the fact that on Friday afternoon, the President of the United States nominated for promotion to brigadier general two women who are members of the Army's professional officer corps.

They are Col. Elizabeth P. Hoisington, director of the Women's Army Corps, and Col. Anna Mae Hays, Chief of the Army Nurse Corps. These two fine ladies, when confirmed and appointed, will be the first two women generals in the history of our country.

Mr. President, these nominations are well deserved recognition of professional competence and ability in positions of great responsibility and trust. They constitute not only a tribute to the abilities of the individuals concerned but to womankind as a whole. I think our citizens can take great pride in the fine record of the feminine components of the Armed Forces of our country. I am glad to see this pride manifested in these two nominations.

Both Colonel Hoisington and Colonel Hays have served in the Army since 1942. Colonel Hoisington served in Europe in World War II. Colonel Hays served in the China-Burma-India Theater in that war and in Korea and Japan during the Korean war. She represents the finest of examples of those admirable women who serve so faithfully as nurses to our wounded and sick. Both ladies hold well-earned decorations for their service in war and in peace.

Mr. President, I wish to congratulate these two ladies on their nomination, and to commend the Army for providing to their women members the opportunity to attain preeminent positions in their chosen professions. I am sure my colleagues will share my pleasure and pride in having the opportunity to confirm the nominations of these two fine officers.

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

Mr. STENNIS. I yield.

Mr. GOLDWATER. Mr. President, not only is Colonel Hoisington one of the first women generals, but her brother served as a major general of the U.S. Air Force. So, for the first time we have a brother and sister team wearing stars.

I think this was a very fine choice.

Mr. STENNIS. Mr. President, I am sure that the brother is a very fine officer also. But this lady deserves commendation for her nomination.

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

Mr. STENNIS. I yield.

Mr. DOLE. Mr. President, I join the Senator in paying tribute to these two fine Army officers.

President Nixon has nominated two women Army officers to the rank of brigadier general. They are the first two women to be nominated to general, and I am proud to say that one, Col. Elizabeth P. Hoisington, Director of the Women's Army Corps, is a native of the State of Kansas.

I wish to extend congratulations to Colonel Hoisington on behalf of all Kansans. She has compiled a noteworthy record in the WAC's to date, and I am sure she will continue to bring honor and distinction to herself and the corps in her new rank.

I ask unanimous consent that an article from the May 15 Topeka Daily Capital describing Colonel Hoisington's promotion be printed in the RECORD at this point.

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

KANSAS WOMAN WILL BE GENERAL

WASHINGTON.—The Kansas-born director of the Women's Army Corps was nominated for promotion to the temporary rank of brigadier general Friday.

Col. Elizabeth P. Hoisington, 51, was born in Newton and later lived at Leavenworth, was nominated along with Col. Anna Mae Hays, 50, chief of the Army Nurse Corps, by President Nixon. They will become the first two women in the history of the U.S. armed forces to wear a star.

Col. Hoisington is the granddaughter of the late Col. Perry M. Hoisington who is known as the "father of the Kansas National Guard." Her father, the late Col. Gregory Hoisington, was also an Army officer.

After attending Immaculata High School in Leavenworth, Col. Hoisington was graduated from the College of Notre Dame of Maryland. She enlisted in the Army in 1942 and became director of the WAC in August 1966.

Her military career has included assignments in Europe and the Far East.

As director of the WAC, Col. Hoisington is principal adviser to the secretary of the Army and the chief of staff on all matters pertaining to some 10,000 members of the corps.

Col. Hays, born in Buffalo N.Y., also entered the Army in World War II, first serving in 1942 as an operating-room nurse. She became chief of the Army Nurse Corps in September 1967.

Neither of the women colonels said they regarded their promotion as a stroke for womankind.

"We've always gotten our due from the Army," said Col. Hoisington, who described herself as "an Army brat." Her father was a colonel and her three brothers all went to West Point.

"The Army is my first love," she said.

The WAC chief wears, among other decorations, the French Croix de Guerre with Silver Star, the Legion of Merit and the Bronze Star. She is single. Her official address is Santa Barbara, Calif.

Col. Hays, a widow, served in India during World War II.

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## TRIBUTE TO COMMAND SGT. MAJ. JAMES H. PALMER

Mr. STENNIS. Mr. President, I rise to honor and pay tribute to a brave and dedicated soldier from my home county of Kemper who has laid down his life for his country.

Command Sgt. Maj. James H. Palmer was a professional in every respect. He was a credit to the uniform he wore and, after more than 20 years of honorable and distinguished service to his country, he had risen to the very pinnacle of his chosen profession. He was a true patriot who believed strongly in the virtues upon which the greatness of this Nation is based. I am honored to have been a friend of the Palmer family, his forebears, who are respected and esteemed citizens.

On April 27, 1970, Sergeant Palmer made the supreme sacrifice when the helicopter in which he was riding was shot down by enemy gunfire. He was recently buried in the red hills of Kemper County where he was born.

An outstanding reporter and columnist, Mr. John Perkins, of the Meridian Star, has written a moving tribute to Sergeant Palmer, his love of his country, and his dedication to freedom and liberty. It tells the story better than I can and I ask unanimous consent that it be printed in the RECORD at this point.

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

SGT. J. H. PALMER COMES HOME TO KEMPER'S RED HILLS

(By John Perkins)

They buried James H. Palmer in the red hills of Kemper County . . . 8,000 miles from where he was killed fighting for his beloved country and the freedom for which it stands.

James H. Palmer was a command sergeant major in the United States Army, just about the top grade an enlisted man can achieve. He had a distinguished service record dating back over the past two decades.

But more important, James H. Palmer was a symbol of what this country stands for and believes in, at least what a majority stand for and believe in during these troubled times at home and abroad.

JAMES PALMER DIDN'T

James H. Palmer didn't run to Canada to dodge the draft.

He didn't curse the men in uniform, or deface the American Flag or advocate theories which would undermine the system of government or the society which has existed in the United States for nearly 200 years.

James H. Palmer didn't march with a mob in the street, throw rocks at National Guardsmen, live in the hippie underworld, abandon his family to the welfare roles or demand a "guaranteed annual income."

James H. Palmer didn't make national headlines or prime time on television—he wasn't making the type "news" the New York editors and broadcast executives want this day and time.

No, James H. Palmer did his duty as a soldier—and it cost him his life April 27 when the helicopter he was riding was shot down in action in South Vietnam.

JAMES PALMER DIED

He died so you and I can continue to enjoy the freedoms which have been traditional in this country.

He also died so a college coed can enjoy the right to scream "pig" at National Guardsmen and not be gunned down as the Russians have done protesting rebels in Hungary and Czechoslovakia.

He died so a "welfare rights" mob can agitate without fear of being dispatched to a slave labor camp, as in Siberia.

He died so his family, and yours and mine, can live in freedom and not be herded into a commune such as those forcibly instituted in Red China.

He died so the millions of us back here at home can continue to be free Americans, free to prosper in the greatest, richest society in the history of the world.

His country didn't forget Sgt. Palmer, even if he didn't make headlines in Washington or New York City.

Sen. John Stennis, chairman of the Armed Forces Committee and a fellow Kemper Countian and friend of the Palmer family, wrote a sympathetic letter to the sergeant's widow and expressed his regrets at hearing of Palmer's untimely death in the Vietnam war.

MILITARY HONORS

The military which Sgt. Palmer served so well sent an honor guard and buried him with full military honors at the family plat in the cemetery in the Preston community. The family and friends were there at the funeral, held on a bright, warm Spring day as the pines gently rustled in the breeze sweeping across the East Mississippi hill country.

James H. Palmer's final resting place was in those red hills which he grew up in as a boy, working and playing in a simple rural setting.

Men such as James H. Palmer have made the supreme sacrifice for their country.

All of us might ask ourselves one question, as we ponder the events of the times. "What have I done for my country today?"

## AFFIRMATION FOR EDUCATION

Mr. DOLE. Mr. President, from the headlines the American people might be led to believe that college students are unanimously devoted to upheaval, strikes, and denunciation of the institutions of higher education and government.

I am pleased and proud to say that such is not the case. I have never believed it to be true, and from my contact with young people across the country, I know it is not true. The vast majority of young people are in college to obtain educations which will enable them to contribute to their own and the Nation's well-being in the years ahead. To their credit, they are highly concerned with events in the world outside their campuses, but chiefly they are interested in making the most of their educational opportunities.

A significant manifestation of this mainstream student attitude was to be found in the rally conducted May 15 by students of my alma mater, Washburn University, in Topeka, Kans.

Nearly 4,000 people attended the "affirmation for education" demonstration at the university's football stadium. The event made front page headlines in the Topeka Daily Capital, but, as most occurrences of this sort, it received scant national attention.

So my colleagues will have an opportunity to know of this positive and affirmative action by these Kansas students, I ask unanimous consent that the news story from the May 16 Topeka Daily Capital be printed in the RECORD.

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

STUDENTS EXPRESS THANKS FOR SCHOOL OPPORTUNITIES

A group of Washburn University students said their own "thank you" to taxpayers, parents and school officials Friday.

Dr. John W. Henderson, WU president, estimated that 3,750 adults and students attended the hour-long "Affirmation for Education" rally in Moore Bowl.

The rally was the brainchild of Bill Martin, a WU senior, who urged each person attending "to spread the word for a a constructive education. We're doing more good today in an hour than all the destructive processes across the country can do in a year."

One of the speakers, Marcus Kerr Almeida, a WU student from Brazil, said attending school at Washburn was the realization of a childhood dream to come to the United States.

He was given an emotional standing ovation when he told the crowd he "cried today of sadness because a minority of ugly Americans is trying to destroy our education system—the basic of our American greatness."

Almeida said the American educational system "is not perfect, but it is also true that it is the very best in the world. Minorities have a better chance for an education in America than have middle-class majorities anywhere else in the world."

BEAUTIFUL AMERICANS

With respect to his own education, Almeida said, "Thanks to you beautiful Americans, wherever you may be."

Other student speakers were junior Ron Hein and freshman Brad Boyd.

Hein noted that the youth of today are concerned.

"The easy way would be to let adults worry about the problems," he said. "But we have to make our views known."

PEACEFUL DISSENT

He added that peaceful dissent is the only way persons under 21 have of making their views known. He urged adults to work with college students, "not against them, in finding answers to today's problems."

Boyd drew a favorable reaction from the throng when he said, "Radicals scream freedom, but they deprive the majority of constructive education."

The freshman from Meade said, "We used the channels that exist to get this rally today. I'd like to thank the taxpayers, my parents and the educators at Washburn for making it possible for me to get a college education."

DOCKING ASSISTANT

John Ivan, administrative assistant to Gov. Robert Docking, appeared on behalf of the governor, who was already committed to attend an all-schools day in McPherson.

Ivan read a message in which Docking said the rally "reaffirmed our confidence in young people."

The message continued, "And perhaps by this expression of confidence in our state and nation they will persuade students and others across the nation to abandon those who would rather destroy than to build. As a people, we have taken one important step here today—a step away from division and a step toward unification."

HARMAN MESSAGE

Rick Harman, Fairway, a candidate for the Republican nomination for governor, was also in McPherson Friday. He sent the following message to Martin:

"I salute you on your project of college appreciation day. This attitude of young people toward education is highly significant and will be warmly received by all Kansans.

"I urge you to carry this kind of mature citizenship into involvement in the political process of Kansas. In this election year I welcome it in my own campaign. Getting down to business in education as well as in government is the goal of all Kansas. Congratulations."

NOT FOR BURNING

One group of about a dozen students carried a large sign which read, "Us New Yorkers Says: 'College is for learning, not for burning'."

A few hecklers were in the stands and there were several shouts during the rally, but the proceedings were mostly orderly and well-received.

Henderson, in response to remarks by Martin at the rally's start, said, "Many times persons have told me, 'I wouldn't have your job for a million dollars.' But we say it's not the money we're concerned about. It's the 98 per cent of our students who have the desire to get an education.

"Some," he continued, "should stop short of destroying something they really never had a thing to do with building."

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

Mr. DOLE. I yield.

Mr. MANSFIELD. Mr. President, I too, want to commend the students from Washburn College in Topeka, Kans., for making their views known and doing it in the manner in which they did.

I must say, however, in all candor, that the matter came to my attention, not from the newspapers, but through the CBS–TV show hosted by Roger Mudd, I believe, last Saturday.

Through that network television show the matter received a broad nationwide impact. I believe the program devoted at least 5 minutes, and perhaps more time to the subject.

I was very pleased that this was done because there are always two sides or more to every question. Each should be accorded consideration.

I rise at this time not only to join the Senator in his remarks, but also to say that on the basis of my having viewed the network TV program calling attention to this demonstration it must be said that it was given great recognition on a nationwide basis. Such recognition, I think, was well deserved.

Mr. DOLE. Mr. President, I thank the majority leader.

I am aware of the excellent coverage it had on the CBS. It was a well-deserved tribute to the students and to Kansas.

## ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar Orders Nos. 870 and 872 be considered at this time and that the question of germaneness not apply to these two bills.

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

## TRUST TERRITORY OF THE PACIFIC ISLANDS

The Senate proceeded to consider the bill (S. 3479) to amend section 2 of the act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands, which had been reported from the Committee on Interior and Insular Affairs with an amendment, to strike out all after the enacting clause and insert:

"That section 2 of the Act of June 30, 1954 (68 Stat. 330), as amended, is further amended to read as follows:

"SEC. 2. There are hereby authorized to be appropriated not to exceed $50,000,000 for fiscal year 1970, and $60,000,000 for each of the fiscal years 1971 and 1972, to remain available until expended, to carry out the provisions of this Act and to provide for a program of necessary capital improvements and public works related to health, education, utilities, highways, transportation facilities, communications, and public buildings: *Provided*, That except for funds appropriated for the activities of the Peace Corps no funds appropriated by any Act shall be used for administration of the Trust Territory of the Pacific Islands except as may be specifically authorized by law."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, 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. 91–867), 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. 3479, introduced by Senators Jackson and Allott as a result of an executive communication, is to authorize increased appropriations for the Trust Territory of the Pacific Islands for civil works and administrative programs. The bill, as amended, increases the present appropriation authorization of $50 million for fiscal year 1971 to $60 million for each of the fiscal years 1971 and 1972.

BACKGROUND

The islands which form the trust territory lie in three major archipelagoes to the north of the Equator in the western Pacific. The land area totals less than 700 square miles, but it is scattered over almost 3 million square miles of open ocean. About 97 of the more than 2,000 islands are inhabited; they range from low-lying coral atolls to high islands of volcanic origin. The Marianas Islands, which stretch to the north of Guam, and the western Caroline Islands, are typically high islands, although coral atolls, such as Ulithi, do occur. The eastern Caroline Islands are similarly a mixture of high islands and coral atolls. The Marshalls are entirely low coral atolls, usually a loose string of narrow sandy islands surrounding a lagoon.

These islands were governed between World War I and World War II by the Japanese as a League of Nations mandate. Converted into military bases by the Japanese, they were captured by allied forces during World War II and placed under Navy military government. Japanese colonists and military personnel were returned to their homeland after the war and in July 1947 the United States placed the former mandate under the newly established United Nations trusteeship system. In recognition of the defense value of these islands, the provisions of the United Nations Charter relating to strategic areas were brought into play, and the trusteeship agreement was concluded between the United States and the Security Council. Under the trusteeship agreement, the United States has undertaken to promote the educational, social, political, and economic development of the people of the territory.

Administrative responsibility was first vested by the President in the Navy but was transferred to the Secretary of the Interior on July 1, 1951. In 1952, administrative responsibility for the northern Mariana Islands was reassigned to the Navy, and the dual administration continued until July 1, 1962. On that date the Marianas were returned to Interior supervision, and the headquarters of the trust territory government were moved to Saipan as provisional capital of the territory.

U.S. authority is vested in a High Commissioner, who is appointed by the President, by and with the advice and consent of the Senate. The High Commissioner's legislative authority was granted to the Congress of Micronesia on the day of its first session in 1965, but the High Commissioner retains veto power over measures passed by the Congress of Micronesia.

Six administrative districts, which roughly conform to geographic and ethnic divisions, have been established and have formed basic elements in American administration of the area.

During the period of July 1, 1951, through the end of fiscal year 1970, more than $250 million has been appropriated to the Department of the Interior for administration of the area, including capital improvements. (This total is exclusive of funds appropriated to the Navy for the northern Mariana Islands during the years 1953–62.) For fiscal years 1952 through 1962 the annual appropriation ranged from $4,271,000 to a high of $6,304,000 in fiscal year 1962. These funds were within the $7.5 million authorization approved in 1954, and provided minimal basic services to a people who were largely on a subsistence economy.

Enactment of Public Law 87–541 in 1962 increased the Federal appropriation authorization for the trust territory from $7.5 to $15 million for fiscal year 1963 and $17.5 million thereafter. The funds which have been appropriated and expended under this authorization made possible an appreciable start toward bringing the physical facilities and the level of services to a minimum standard acceptable in an American community.

Enactment of Public Law 90–16 in 1967 further increased authorization for the territory from $17.5 to $25 million for fiscal year 1967 and to $35 million for fiscal years 1968 and 1969. The act of October 21, 1968 (Public Law 90–617) resulted in additional increases to $50 million for fiscal years 1970 and 1971. Unfortunately, it has not been possible to obtain all of the funds authorized in recent years and therefore an enormous amount still remains to be accomplished if the United States is to fully discharge the responsibilities it has assumed in the Pacific.

NEED

The United States under the strategic trusteeship agreement with the Security Council of the United Nations has undertaken to promote the economic, educational, social, and political advancement of the people of the Trust Territory of the Pacific Islands.

Since 1947, increasing authorizations and appropriations for the trust territory have brought about some changes and progress.

In the field of economic development of the trust territory there has been little if any progress since 1947. The principal commodities are copra, fish, and vegetables. Though small manufacturing has developed in boats, furniture, handicrafts, starch and soapmaking, the economy is still primarily one of subsistence farming and fishing. Tourism is becoming a more important industry each year.

Although increased appropriations for the trust territory in recent years have enabled important and significant progress to be made in administration and capital improvements, much remains to be done. The committee recognizes that additional funds must be made available to develop public health and education facilities, and the infrastructure of roads, harbors, water supplies, etc., without which the local economy cannot readily expand, and attract private investment. The development of these basic facilities and services has been greatly complicated by factors such as the geographic dispersion of the inhabited islands, which means an uneconomic duplication of facilities for the population; the small total land area of the islands, the high birth rate, the large proportion of children in the population, and the low level of economic and social development. Past appropriations, in the face of steadily rising administrative costs, have not encouraged development of the full potential of the islands.

The committee, recognizing these great developmental needs, feels that increased appropriations for a 2-year program of capital improvements are vital if Micronesia is to rise above a low level of subsistence and take its place in a modern world. The money authorized to be appropriated by S. 3479 would bolster health, education, water, power, and sewage services; provide better air, ground, and water transportation; modernize and extend radio and telephone communications; and carry out a needed land reform program. At the same time, the higher level of economic development produced by these improvements would enable the territory to pay for a much greater portion of its financial needs.

AMENDMENT

The committee recommends that the present $50 million ceiling on annual appropriations be increased to $60 million for fiscal year 1971, and that a $60 million authorization be set for fiscal 1972. The open end authorization for succeeding years through fiscal 1975 has been deleted. In the 92d Congress consideration will be given to further authorizations based upon needs then demonstrable.

COSTS

The committee recommends that the current $50 million authorization be increased to $60 million for fiscal year 1971, an increase of $10 million. For fiscal year 1972, the $60 million level would continue.

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## CONFEDERATED TRIBES OF WEAS, PIANKASHAWS, PEORIAS, AND KASKASKIAS

The Senate proceeded to consider the bill (S. 885) to authorize the preparation of a roll of persons whose lineal ancestors were members of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, merged under the treaty of May 30, 1854 (10 Stat. 1082), and to provide for the disposition of funds appropriated to pay a judgment in Indian Claims Commission docket No. 314, amended, and for other purposes which had been reported from the Committee on Interior and Insular Affairs with amendments, on page 2, after line 16, strike out:

SEC. 2. The Secretary shall withdraw the funds on deposit in the United States Treasury of the credit of the Peoria Tribe on behalf of the Wea Nation that were appropriated by the Act of May 13, 1966 (80 Stat. 141, 150), in satisfaction of a judgment that was obtained by the Peoria Tribe on behalf of the Wea Nation, in Indian Claims Commission Docket Numbered 314, amended, together with the interest accrued thereon, after payment of attorneys' fees and expenses and all other expenses, and to distribute such funds in equal shares to those persons whose names appear on the roll prepared pursuant to section 1 of this Act.

And, in lieu thereof, insert:

SEC. 2. After the deduction of attorneys' fees and expenses and the administrative costs involved in the preparation of the roll and the distribution of the individual shares, the remaining funds on deposit in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea Nation that were appropriated by the Acts of May 13, 1966 (80 Stat. 141, 150), and June 19, 1968 (82 Stat. 239), in satisfaction of judgments that were obtained by the Peoria Tribe on behalf of the Wea Nation in Indian Claims Commission dockets numbered 314, amended, and 314–E, respectively, and the funds to the credit of the Peoria Tribe of Oklahoma on behalf of the Wea, Piankashaw, Peoria, and Kaskaskia Nations that were appropriated by the Act of July 22, 1969 (83 Stat. 49, 62), in satisfaction of a judgment in docket numbered 65, shall be disposed of in the following manner: The Secretary shall pay $3,000 of such funds to the Peoria Tribe of Oklahoma for improvement and maintenance of the Peoria Indian Cemetery located approximately ten miles northeast of Miami, Oklahoma, and shall distribute the balance of such funds.

On page 4, line 7, after the word "procedures," insert "including the establishment of trusts,"; in line 9, after the word

"such", strike out "persons, including the establishment of trusts." and insert "persons."; in line 16, after the word "numbered", strike out "65,"; in the same line, after the letter "C,", insert the word "and"; in the same line after the letter "D,", strike out "and E,"; in line 18, after the word "expenses", strike out "and all other expenses," and insert "and all costs incident to bringing the roll current as provided in this section and distributing the shares,"; in line 25, after the word "Act," insert "but on or prior to and living on the date the funds are appropriated,"; on page 5, line 2, after the word "of", strike out "deceased enrollees." and insert "enrollees who died between the effective date of this Act and the date the funds are appropriated."; after line 4, strike out:

SEC. 5. All costs incurred by the Secretary in the preparation of the roll and in the distribution of payment of shares shall be paid by appropriate withdrawals from the judgment fund. Any costs incurred by the Secretary in connection with the distribution of future awards shall be paid by appropriate withdrawals from such judgment funds.

At the beginning of line 11, change the section number from "6" to "5"; and at the beginning of line 14, change the section number from "7" to "6"; so as to make the bill read:

S. 885

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (1) they were born on or prior to and were living on the date of this Act; (2) their names or the name of a lineal ancestor from whom they claim eligibility appears on (a) the final roll of the Peoria Tribe of Indians of Oklahoma, pursuant to the Act of August 2, 1956 (70 Stat. 937), or (b) the January 1, 1937, census of the Peoria Tribe, or (c) the 1920 census of the Peoria Tribe, or (d) the Indian or Citizen Class lists pursuant to the Treaty of February 23, 1867 (15 Stat. 520), or (e) the Schedule of Persons or Families composing the United Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, annexed to the Treaty of May 30, 1854.

(b) Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner and within the time limits prescribed for that purpose by the Secretary of the Interior. The determination of the Secretary regarding the eligibility of an applicant shall be final.

SEC. 2. After the deduction of attorneys' fees and expenses and the administrative costs involved in the preparation of the roll and the distribution of the individual shares, the remaining funds on deposit in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea Nation that were appropriated by the Acts of May 13, 1966 (80 Stat. 141, 150), and June 19, 1968 (82 Stat. 239), in satisfaction of judgments that were obtained by the Peoria Tribe on behalf of the Wea Nation in Indian Claims Commission dockets numbered 314, amended, and 314–E, respectively, and the funds to the credit of the Peoria Tribe of Oklahoma on behalf of the Wea, Piankashaw, Peoria, and Kaskaskia Nations that were appropriated by the Act of July 22, 1969 (83 Stat. 49, 62), in satisfaction of a judgment in docket numbered 65, shall be disposed of in the following manner: The Secretary shall pay $3,000 of such funds to the Peoria Tribe of Oklahoma for improvement and maintenance of the Peoria Indian Cemetery located approximately ten miles northeast of Miami, Oklahoma, and shall distribute the balance of such funds.

SEC. 3. (a) Except as provided in subsection (b) of this section, the Secretary shall distribute a share payable to a living enrollee and the Secretary shall distribute a per capita share of a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will adequately protect the best interest of such persons.

SEC. 4. Funds that may hereafter be deposited in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea, Kaskaskia, Piankashaw, or Peoria Nation, to pay any judgment arising out of proceedings presently pending before the Indian Claims Commission in dockets numbered 99, 289, 313, 314–A, B, C, and D, and 338 and the interest accrued thereon, after payment of attorneys' fees and expenses, and all costs incident to bringing the roll current as provided in this section and distributing the shares, shall be distributed on a per capita basis in accordance with section 3 of this Act to persons whose names appear on the roll prepared under section 1, after the roll has been brought current to the date the funds are appropriated by adding names of persons to the roll who were born after the date of this Act, but on or prior to and living on the date the funds are appropriated, and by deleting names of enrollees who died between the effective date of this Act and the date the funds are appropriated.

SEC. 5. The funds distributed under the provisions of this Act shall not be subject to Federal or State income taxes.

SEC. 6. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended, so as to read: "To authorize the preparation of a roll of persons whose lineal ancestors were members of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, merged under the Treaty of May 30, 1854 (10 Stat. 1082), and to provide for the disposition of funds appropriated to pay a judgment in Indian Claims Commission dockets No. 314, amended 314–E, and 65, and for other purposes."

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–870), explaining the purposes of the measure.

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

PURPOSE

As introduced by Senator Harris, S. 885 would have disposed of $819,000 in judgment funds recovered in 1966. Funds to cover two additional awards by the Indian Claims Commission have been recently appropriated and they would be included in this legislation as amended. The three awards total $2,049,273.

Recently, the Claims Commission rendered favorable judgment in two other Peoria cases, in dockets 314–C and 99, in the sum of $3,620,150. Should the funds to cover these awards be appropriated before this legislation is finally enacted, the Department of the Interior recommends that disposition of these funds be provided for in S. 885.

NEED

Under a provision carried in each annual appropriations act for the Department of the Interior, funds awarded to Indian tribes may not be distributed until specifically authorized by the Congress, S. 885 would give such authorization.

The Department of the Interior has determined the beneficiacies of the awards in dockets 314, amended, 314–E, and 65 and any subsequent awards, to be the lineal descendants of members of the Confederated Tribes merged under the 1854 treaty, and not simply the members of the Peoria Tribe of Indians of Oklahoma.

The bill authorizes the preparation of a roll of all those living on the date the bill becomes law and for a per capita distribution of the funds. There is no estimate as to the total number who will be eligible to share in the judgments.

S. 885, as amended, would also authorize the disposition of any subsequent awards in the same manner. The roll will be brought current to the date the funds to cover an award are appropriated. Six claims are still pending.

The Peoria Tribe has requested that $3,000 reserved for the Peoria Indian Cemetery. Federal trust relationship over the affairs of the Peorias was terminated effective August 2, 1959, which accounts for the per capita distribution of these awards and the lack of any program planning.

AMENDMENTS

The Department of the Interior has recommended a number of amendments to S. 885 in order that the legislation will cover all present and future awards made to these Indians. Several technical amendments were also adopted by the committee.

COST

No additional expenditure of Federal funds will result from the enactment of S. 885. The total estimated administrative costs, which are to be paid out of judgment funds, will be about $55,000. Of this amount $30,000 will be necessary in preparing the base payment roll and distributing the per capita shares. To bring the base roll current in connection with future awards, under section 4 of the bill, it is anticipated that the eight pending dockets will be settled periodically at five different times, and the cost of each updating of the roll and distribution of shares will be about $5,000.

## THE ATTITUDE OF COLLEGE STUDENTS

Mr. GRIFFIN. Mr. President, I listened with interest to the very appropriate remarks of the Senator from Kansas (Mr. DOLE) concerning the views and conduct of some college students, I wish to call attention to an open letter to 100 U.S. Senators, which appeared this morning in the Washington Post—a letter from college and university students expressing support for President Nixon's recent courageous decision to clean out enemy sanctuaries near the Cambodian border.

The open letter indicates that there are students—and I believe there are many students—who do support President Nixon and his determined efforts to extricate our Nation from the war in Southeast Asia on an honorable basis.

I ask unanimous consent that the open letter to which I have referred be printed in the RECORD.

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

AN OPEN LETTER TO 100 SENATORS

GENTLEMEN: Over the coming days the Senate of the United States will be passing on two legislative amendments which may be fateful for the future of our country, for the wider cause of freedom, and for the peace of the world.

We take the liberty of addressing this letter to you because as students and young citizens, we are profoundly concerned over the crisis through which our country is passing. It is a crisis which has an internal component and an external component, and the two are clearly interrelated.

Like the students who have come to visit your offices, by the hundreds and by the thousands, over the past two weeks, we fear that we may lose our country if we fail to pay adequate attention to certain pressing national priorities. But we do not share their well-intentioned isolationism, their apparent belief that they can build a beautiful America even if the rest of the world crumbles around them.

Unlike them, we fear that we can also lose our country—and lose the peace of the world in the process—if we fail in our obligations as the free world's greatest power. Indeed, so strained and delicate is the balance in the field of world affairs that single blunder by our country may be enough to open the way to catastrophe.

We believe that the Senate's passage of the Church-Cooper Amendment and/or of the McGovern-Hatfield Amendment would constitute precisely such a blunder.

The protesters who have come to Washington have argued that the Senate *must* pass the Church-Cooper Amendment and the Hatfield Amendment because the great majority of our students and the Majority of the American people support them. We think that the premise on which this contention is based is false.

A Gallup Poll taken immediately after the President's speech, showed that two-thirds of those who took a stand supported the President's action in Cambodia. That the President's action is not without important support is also evidenced from the fact that AFL–CIO President George Meany and other leading trade-unionists have also supported the President.

As for the many campus demonstrations and the large number of students who have come to Washington, we note (1) that some 2000 out of 2400 colleges have not taken part in the current protest movement (2) that strike votes were defeated in a number of colleges and carried only by slender majorities in other colleges, and (3) that substantially more than half of our young people do not go to college and have not been affected by the campus ferment. But even if the protesters were ten times as numerous and ten times as passionate in the advocacy of their cause, this by itself would not constitute a guarantee that they were right. Public opinion can be wrong. Indeed, there have been many occasions in the history of our country and in the history of other countries when courageous leaders have had to stand up against what appeared to be an overwhelming tide of public opinion.

The supreme example of such courage in the history of our own country was provided by *President Abraham Lincoln* in the latter part of the Civil War. By the middle of 1863 there was growing agitation against the war . . . The people were weary and tired of the inconclusive bloodshed . . . There were violent anti-draft riots in New York, in which scores were shot down . . . Increasingly vicious attacks on the President began to appear in the press . . . Salmon P. Chase resigned from the Lincoln cabinet and struck up an anti-Lincoln alliance which included congressmen, businessmen, officers and the distinguished editor of the New York Tribune, Horace Greeley . . . In August 1864, the Democratic National Convention adopted a resolution which read: "After four years of failure to restore the Union by the experiment of war . . . justice, humanity, liberty and the public welfare demand that immediate efforts be made for a cessation of hostilities." . . . Lincoln himself was convinced that his administration would not be reelected. But he persevered in his course because he was convinced of its correctness.

In modern times Winston Churchill provided us with a sublime example of the kind of courage that is willing to swim full against the tide of public opinion. Despite the rise of Hitler, public opinion in Great Britain was predominantly pacifist and, at a later stage pro-appeasement. The spirit of the British campus was reflected in the so-called peace pledge, under which the members of the Oxford Union, by an overwhelming majority, voted to "never again bear arms for King and County." As Churchill commented: ". . . In Germany, in Russia, in Italy and Japan, the idea of a decadent Britain took deep root and swayed many calculations. Little did the boys who passed the resolution dream that they were destined quite soon to conquer or fall gloriously in the ensuing war, and prove themselves the finest generation ever bred in Britain. Less excuse can be found for their elders, who had no chance of self-repudiation in action."

When Chamberlain returned from Munich with the shameful agreement he had signed with Hitler, there was no question that he had the support of the overwhelming majority of the British people—perhaps more than 90 percent of the people. The verdict of history is now in on the conflict between the Churchillian handful and the tide of British public opinion in the period preceding World War II.

In *Profiles in Courage*, our martyred President, John F. Kennedy, told the stories of a number of American Senators and American Presidents who displayed exemplary fortitude in standing up against misled majorities in Congress or against a misled public opinion, John F. Kennedy had this kind of courage himself, and he had it in abundance.

About the situation and the commitment which the Senate will be discussing over the coming days, President Kennedy had this to say in July of 1963: ". . . To withdraw from that effort (the defense of South Vietnam) would mean a collapse not only in South Vietnam, but Southeast Asia, so we are going to stay there."

This was not an isolated statement, but one in a series of many similar statements, remarkable for their consistency and continuity, going back to 1956.

If President Kennedy were alive today, there can be little question about where he would stand on the Church-Cooper Resolution, or on the McGovern-Hatfield Resolution.

Gentlemen of the Senate! We are young people, but we know enough about the history of appeasement and about the nature of Nazi and Communist totalitarianism, to be convinced that these two amendments, if they were ever approved by the United States Congress, would spell disaster both at home and abroad—not in decades to come, but in the next few years—perhaps in the immediate future.

*For these two amendments are not a formula for peace; they are—we will mince no words about it—a formula for betrayal and capitulation, and for a neo-isolationism so rigid and so blind that it makes the "Fortress America" isolationism of the thirties look like the most radical internationalism in comparison.*

The Church-Cooper Amendment not only demands that we get out of Cambodia by July 1; if rigidly interpreted, it would prevent the Administration from giving a single M16 rifle, or even a captured AK47 rifle, to the Cambodian government with which to defend itself against the North Vietnamese Communist aggression. In the eyes of the world it will be interpreted as saying that, so far as the United States Senate is concerned, the Communists can take over wherever they wish in Asia, and we will not lift a finger to assist their victims.

The McGovern-Hatfield Amendment would compound the mischief done by the Cooper-Church Amendment. By calling for the termination of all military activity in Vietnam by the end of 1970 and the withdrawal of all American forces by the end of June 30, 1971, it sets up a timetable whose excessive tempo and absolute rigidity constitute a virtual guarantee of a Communist takeover—not merely in Vietnam but throughout Southeast Asia.

In less than a year's time, the President has withdrawn 115,000 combat forces; and he has pledged the withdrawal of another 150,000 American soldiers over the next 12-month period. While ambitious, the President's timetable gives the South Vietnamese government the time it needs to take over the burden of defense in an organized manner; and it gives Southeast Asia a precious breathing space in which to organize its defenses against the further encroachment of Communist imperialism. *It is a timetable which, if Congress does not undercut it, can bring peace with freedom for Southeast Asia and peace with honor for the United States.*

The debate to date in the Senate has distressed us and made us apprehensive. We know that Senators are weary of the war, as the American people are, and that they would like to see it terminated as soon as possible. But we cannot help wondering whether those Senators who support these two amendments out of a sincere desire for peace realize that *the manner in which we withdraw from Vietnam is all-important*—that, if we withdraw with honor, we withdraw with credibility, whereas if we withdraw in humiliation and defeat there will be nothing left of our credibility.

More than one authority has made the point that it is American credibility that preserves the peace of the world. For if a time ever arrives when our allies and friends feel that they no longer trust us, and when our enemies have come to regard us as a paralyzed giant or a paper tiger, World War III would become a serious possibility. Perhaps the first point of testing would be the Middle East, where the Soviets might react to an American defeat in Southeast Asia by intervening openly to crush Israel and impose its empire throughout the Arab lands, all the way from the Indian Ocean to Gibraltar.

We also wonder, whether the Senators who support the amendments truly believe that a withdrawal in defeat from Vietnam would usher in a new era of domestic tranquility? We wonder whether they are not, at least, worried that the President might be right when he warned that such a humiliation, would produce a far more dangerous polarization in our society than the one we confront today.

Perhaps it would be better if the President had acted in greater consultation with Congress. Perhaps it would be better if there were a clearer delineation of the powers of the President and the role of Congress in the field of foreign affairs. But are the Senators who sponsor the pending amendments not at least concerned that their proposal seriously undercuts the President's authority as Commander-in-Chief at a critical juncture; that it creates a spectacle of division that can only delight and embolden our enemies; that if they push their contest with the President

to its logical conclusion, they will stand responsible before history for the shattering defeat which is bound to result, and for all the tragic consequences that will flow from it?

We appeal to those Senators who have supported the President's program for withdrawal with honor from Vietnam to stand fast against the pressures—yes, and outright intimidation—that will be brought to bear on them.

We appeal to those Senators who have supported the pending amendments to reassess the relative risks of the President's course as against the course of surrender and humiliation.

We cannot at this point begin to match the massive and lavishly financed lobby which has been visiting Senate offices on a non-stop basis. The groups of the undersigned, and of other concerned young people from all parts of the country will be visiting your offices over the coming days. We hope that they will get the same respectful treatment that you have accorded to those who came before us.

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

Mr. GRIFFIN. I yield.

Mr. DOLE. Mr. President, as the Senator from Michigan indicated, opinion is changing with respect to Cambodia and it is my guess that as the debate unfolds this week, next week, and the next week, or later if necessary, there will be a further shift in public opinion by the young, as mentioned by the Senator from Michigan, but also by all Americans who give President Nixon credit for the job he is doing in Vietnam in his effort to extricate us.

Mr. GRIFFIN. Mr. President, I wish further to call attention to an article in the edition of Newsweek magazine which appeared on the newsstands today, an article focusing attention on the latest Gallup poll. The article reflects that, in response to the question, "How satisfied are you with the way Richard Nixon is handling his job as President?", 30 percent of the people polled replied that they are "very satisfied," and 35 percent indicated they are "fairly satisfied." Accordingly, 65 percent indicate approval of the way he is handling his job as President.

In response to the question, "Do you approve or disapprove of President Nixon's decision to send American troops to Cambodia?" 50 percent indicated approval, 39 percent disapproved, and 11 percent had no opinion.

Mr. President, I ask unanimous consent that the Newsweek article to which I have referred be printed in the RECORD.

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

A NEWSWEEK POLL: MR. NIXON HOLDS UP

Even after the Cambodian invasion and the killings at Kent State University, the "silent majority" appears to be alive and well in Richard Nixon's corner. A NEWSWEEK Poll conducted by The Gallup Organization last week suggests that—despite the recent intense criticism of the President by college students and academic leaders and by liberal politicians and commentators—Mr. Nixon's standing with the electorate remains undamaged. The poll indicates that Americans find Mr. Nixon's conduct of the Presidency "satisfactory" by better than 2 to 1, that 50 per cent favor the Cambodian operation and 39 per cent oppose it, that a strikingly large majority is far more willing to blame student demonstrators than National Guardsmen for the deaths of four students at Kent State, and that Vice President Spiro Agnew's rhetoric about dissenters still enjoys the approval of a silent plurality if not a majority.

To get swift results, the survey was conducted by telephone on May 13 and 14 and covered a scientifically selected national sampling of 517 persons.*

Although the poll gave the President majority approval of his decision to send U.S. troops into Cambodia, the favorable rating was by no means as high as some opinion experts have come to expect after dramatic strokes of U.S. military power, when Americans have a tendency to rally around the President. Following the air raids on North Vietnam that President Johnson ordered in 1965, for example, public approval (as measured by Louis Harris) soared to 83 per cent. And 69 per cent (polled by Oliver Quayle) favored the entry of U.S. troops into the Dominican Republic.

Women were far more dovish than men on the Cambodian issue. They opposed the President's action, 49 to 37 per cent, while men supported it, 63 to 30. Women also tended to be distinctly less enthusiastic about the Vice President's speeches on dissent: in a near even split (37 to 35 per cent), they approved the Veep's line, whereas men applauded him by a margin of more than 2 to 1. Young people, too, were predictably more skeptical of the Administration than their elders, but even in the 21–34 age bracket, 55 per cent gave the President a favorable rating and 49 per cent approved of Cambodia. And if youth was by no means arrayed entirely on the left, neither were blue-collar workers all to the right: those without a high-school education came down hard against Mr. Nixon's Cambodian policy. A hefty 56 per cent opposed it, and only 26 per cent approved.

The question on the Kent State killings produced an unusually high number of "no opinions," suggesting that the no-opinion column might harbor some people with qualms about the guard's behavior who were reluctant to say so outright. It also seems likely that some of those polled were suspending judgment about who was most to blame until the conflicting accounts of the shooting could be cleared up. But even if all those with no opinion were added to those who pinned major responsibility on the National Guard, a surprisingly strong majority of each group—by age, sex, education and political party—put the main blame on the protesters.

NIXON AS PRESIDENT

How satisfied are you with the way Richard Nixon is handling his job as President?*

| | Percent |
|---|---|
| Very satisfied | 30 |
| Fairly satisfied | 35 |
| Not too satisfied | 18 |
| Not at all satisfied | 13 |

* undecided not shown

U.S. TROOPS IN CAMBODIA

Do you approve or disapprove of President Nixon's decision to send American troops to Cambodia?

| | Percent |
|---|---|
| Approve | 50 |
| Disapprove | 39 |
| No opinion | 11 |

*Telephone surveys, it should be noted, contain a slight built-in bias—about two percentage points, in this case—in favor of Republicans, since non-telephone households are necessarily omitted from the sample and these tend to be low-income and Democratic.

WHO'S TO BLAME AT KENT

Who do you think was primarily responsible for the deaths of four students at Kent State University?

| | Percent |
|---|---|
| The National Guard | 11 |
| Demonstrating students | 58 |
| No opinion | 31 |

AGNEW'S STAND

Do you approve or disapprove of Agnew's stand on dissenters and student protesters?

| | Percent |
|---|---|
| Approve | 46 |
| Disapprove | 30 |
| No opinion | 24 |

## POPULATION CONTROL

Mr. GOLDWATER. Mr. President, on February 24, 1970, the distinguished junior Senator from Oregon (Mr. PACKWOOD) introduced S. 3502, which is directed at the control of population in this country. I have long been interested in this subject. I think it is a must in our immediate future.

Mr. President, because the bill makes so much sense and because yesterday on "Meet the Press" the Senator from Oregon did such an outstanding job explaining the bill, I ask unanimous consent that an article entitled, "Focus: Senator ROBERT PACKWOOD," published in BioScience, volume 20, No. 8, be printed in the RECORD.

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

FOCUS: SENATOR ROBERT PACKWOOD

The youngest member of the Senate, Robert Packwood of Oregon, was elected to his first term in November 1968. His rise to national prominence was insured by unseating four-term incumbent, Wayne Morse. Senator Morse was a well-known congressional "watchdog" who had seniority on two powerful Senate committees: Foreign Relations, and Labor and Public Welfare. The junior Senator from Oregon, counter to expected conduct from newly elected legislators, had wasted little time in making his presence felt. He has introduced seven bills and two resolutions, in addition to co-sponsoring over 100 bills and 26 resolutions. Among the bills he co-sponsored were the eight environmental bills proposed by the White House and introduced by Minority Leader Hugh Scott last February. His concern for the environment extends to the population crisis which is facing our country. In an effort to take direct action to reduce the birth rate, Senator Packwood recently introduced legislation which allows a maximum of three children to be declared as tax exemptions. He also introduced legislation which would make abortion in the District of Columbia legal.

TAX INCENTIVES FOR SMALLER FAMILIES

In an interview with AIBS, Packwood stated: "The population crisis is here now and it affects every area of life: filth in the cities, inadequate housing, overcrowded schools, pollution in the air and water, and the decimation of recreational areas. . . . Let's not kid ourselves, something dramatic must be done if we are to stem this tide of pollution which has reached epidemic proportions, and one way to start dealing with the problem is by slowing the population growth rate."

As an incentive to limit family size, Senator Packwood introduced legislation that would allow a maximum of three children to be declared as personal tax exemptions. He said that he was taking this step in an effort

to ease the strain on an overtaxed environment. The proposal, S. 3502, introduced on 24 February, would become law in 1973 and provide that the first child in a family would qualify as a $1,000 exemption, the second child as a $750 exemption, and the third child as a $500 exemption. The legislation would affect only those children born on or after 1 January 1973. A family already having three or more children would receive the regular allowance of $750 for each child. In effect, the family with less than three children eligible for the $1000 first-child exemption would receive an annual $250 credit.

When asked what the chances for passage of this proposed legislation were, he candidly anticipated considerable initial opposition. "In its present form, it would take from between 4 to 5 years to pass both houses. Loss of revenue appears to be the primary block." He elaborated that he had received information from the Internal Revenue Service that passage of his bill would require a projected loss of $1 billion for fiscal '74 and $50 million in fiscal '75. Equalization would not occur until 1993.

The philosophy of tax incentives was the subject of strong controversy during the 1969 Senate tax reform debates. Although the House had approved a rate reduction favoring small families, the Senate passed an amendment raising personal exemptions which cut needed revenue and encouraged large families. Loss of revenue is easily understood, Senate politics is not.

Tax reform became a major, chiefly liberal Democratic issue almost overnight just before President Nixon took office 20 January 1969 when retiring Treasury Secretary Joseph W. Barr told members of Congress they were facing a "taxpayers' revolt." Popular feeling was triggered by the unpopular surtax and Barr's revelation that many high-income persons avoided taxes to a great extent—some completely—by taking advantage of tax preferences or "loopholes" in existing law.

Chairman Wilbur D. Mills (D-Ark) of the Ways and Means Committee began hearings on 18 February on reform proposal developed under the Johnson administration. President Nixon on 21 April sent his own reform proposals to Congress: they were largely based on proposals and studies left behind by the outgoing administration. These formed the nucleus of the bill which passed the House on 7 August.

Under Chairman Russell B. Long (D-La), the Senate Finance Committee at first sought to avoid action on tax reform when the bill reached the Senate. But the Senate Democratic leadership made reform an issue and threatened to hold up extension of the surtax, urgently needed to sustain government revenues during the second half of 1969, which was actually allowed to expire 30 June 1969. Long's committee held hearings and rewrote the House bill, passed by the Senate with many amendments on 11 December.

One of the hardest fought amendments concerned increasing personal exemptions. During the Senate hearings, it was driven home by administration spokesmen that if exemptions were increased, it would not only seriously cut revenue but encourage larger families at a time when we must do everything possible to reduce our population growth rate. Not only is our increasing population growth rate causing a crisis in terms of environmental degradation but the financial costs of supporting our increasing population is rapidly approaching the trillion dollar mark. Although there was every reason not to increase personal exemptions, the Senate did just that. A Senate floor amendment, introduced by Senator Albert Gore (D-Tenn), had increased the exemption to $700 in 1970 and $800 in 1971. The House bill contained tax rate reductions that would have discouraged larger families, but no exemption increase. In a compromise with the House, the Senate agreed to increase personal exemptions from $600 to $650 in mid-1970, $700 for 1972, and $750 for 1973 and subsequent years.

Why the increase? Politics won out over budgetary and environmental needs. In 1968, the Republicans gained five seats in the Senate and the average age of the new Republican Senators was far younger (47) than those they replaced (66). This meant that not only did Democrats loose seats but they also lost invaluable committee seniority, thus reducing their real power. There is no question why Senator Gore pushed for increased exemptions. He is presently engaged in an uphill struggle to retain his seat since his views are considerably more liberal than those of the electorate in Tennessee. He is given only a slightly better than even chance to win a fourth term by the *Congressional Quarterly;* therefore, he needed the political capital to give himself an advantage. Increasing tax exemptions was too good to pass up when the opportunity presented itself last fall.

It is not difficult to foresee the problem facing the Packwood bill, especially in light of the fact that it has been referred to the Senate Finance Committee chaired by Russell Long, a staunch conservative, and requires a 180 degree turn from existing Senate opinion on personal exemptions.

Knowing the political realities involved, Senator Packwood stated that he intended to introduce a new bill within the next few weeks that would alleviate some of the objections to S-3502 and, in some areas, strengthen it. First, the exemptions would be $750 for the first two children and none for successive children. Second, there would be no limitations for adopted children or multiple births as a result of the first two terms of pregnancy.

"Many Senators and Congressmen have given me verbal support," Packwood commented, "but cannot see their way clear to vote favorably on my bill, either because they face re-election or they come from districts or states whose electorate is heavily Roman Catholic or politically very conservative. Frankly, many of us on Capitol Hill are going to have to make some very important personal political decisions about population control. We cannot deny that the crisis exists and the direction we are headed toward if we do not limit our growth rate. It is not the kind of issue that can be cogently argued from different points of view as the ABM or the Haynsworth nomination, nor can it be evaded for very long. The question that concerns me the most is can we act quickly enough with strong enough controls?" The Governing Board of the American Institute of Biological Sciences took unprecedented action by endorsing Senator Packwood's efforts to control population growth. The Senator remarked that this was the first support that he had received from a national organization representing biologists and expressed the need for such support from interested scientific organizations.

LEGALIZING ABORTION LAWS

In addition to his tax bill, Senator Packwood has introduced legislation that would legalize abortion in the District of Columbia. If the woman is married and living with her husband, the bill will require the consent of her husband before the abortion is performed. If the woman is unmarried and under the age of 18, the consent of the woman's parent or legal guardian is required. An abortion also will be permitted without the husband's consent if the pregnancy resulted from rape, or if the pregnancy is endangering the woman's life or health. The legislation stipulates that an abortion must be performed by a licensed physician.

"The tenor of the times dictates that Congress must provide leadership in the field of unwanted pregnancies by accepting the responsibility for the welfare of the citizens of Washington, D.C.," Packwood said. "If I could have my way, similar legislation would be enacted in each of the 50 states. But since that is state prerogative, Congress can only exercise responsibility and provide leadership by setting an example through enactment of this legislation."

The Senator was far more optimistic about legalized abortion that he was about tax limitations, but he warned that we should not be too quick to abandon our concern where states have had existing abortion laws declared unlawful on the basis of "ambiguity or vagueness." Where this has happened, it would be relatively simple for state legislatures to reintroduce similar legislation better able to withstand the scrutiny of the courts. He pointed to Wisconsin where the abortion law was held unconstitutional because it violated the 9th amendment. This amendment states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

According to the Wisconsin court, any law that denies abortion is in effect denying the right of a woman to decide whether or not she must carry a pregnancy to full term. The decision cannot be imposed upon her by the state. If this decision is upheld by the United States Supreme Court, then all anti-abortion laws would be wiped off the books with no chance that state legislatures could reintroduce such legislation.

Our interview with Senator Packwood was a definite departure from the norm. He addressed himself directly to the problem of overpopulation and abortion without the usual "qualifying" remarks or generalizations. There is no question that he stands firmly in support of legislation that will effectively help solve environmental problems, not just study them, as evidenced by those bills he has introduced and co-sponsored. His candor is not to be confused with political naivete, as one might think, considering his newness to Capitol Hill. In 1962, he was elected to the Oregon Legislature, heading the entire ticket of Republicans and Democrats. In 1963, Packwood and Howell Appling, Oregon Secretary of State, joined forces in organizing a campaign to unseat the Democratic-controlled state legislature. They were successful in supporting 10 Republican candidates—seven were elected. In 1966, the Appling-Packwood plan saw 10 of 11 Republicans elected which turned the Oregon House of Representatives over to the Republican Party.

Not willing to wait out the apprenticeship usually imposed on new legislators by the senior members of the Senate, Robert Packwood sees a clearly defined role in tackling problems which require immediate attention, particularly when others are not willing to do so. Although such radical departures from "tradition" are not new in the House of Representatives, they are in the Senate. Packwood is one of a group of activist young senators, Republican and Democrat, but he still faces the inimical force of committee chairmen, appointed according to seniority, who still retain the power.

## TOO MANY GENERALS

Mr. WILLIAMS of Delaware. Mr. President, an editorial published in the Evening Journal of Wilmington, Del., on May 14, 1970, calls attention to the confusion that could exist by making generals of the 535 Members of Congress and they point out the impracticalities of giving stars to all these generals.

Mr. President, I ask unanimous consent that the editorial entitled "Too Many Generals," be printed in the RECORD.

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

TOO MANY GENERALS

The U.S. Senate is about to begin debate on an amendment to a foreign military sales bill, restricting the use of funds for any future American military operations in Cambodia—an amendment that has some dangerous possibilities.

The restriction, which would prevent the President from sending U.S. ground and naval forces into Cambodia without congressional approval, would have no direct effect on the present Cambodian expedition, except that its adoption would be a congressional repudiation of that action. The effect would be on any potential, future Cambodian campaigns and, by implication, on any foreign military operation the President might attempt.

The State Department argues against the restriction on the grounds that it restricts the President's constitutional powers to make and carry out foreign policy, and as commander-in-chief of the armed forces. Proponents of the restriction say that it reasserts the constitutional power of the Congress to make war.

Neither constitutional argument stands very strong. Since the earliest times of the Republic, American military and naval forces have been sent abroad dozens of times, without congressional authorization, to protect American lives, American property or American interests. Former Secretary of State Dean Acheson (in "Present at the Creation") points out that Congress has never "declared war" in the aggressive sense, but rather has confirmed the fact "that a state of war exists" between the United States and some foreign power and responded to it.

On the other hand, there can be no denying the power of Congress over military spending (or any government spending), or the use of that power if a majority believes this is the expression of popular will.

This is not a question of power, either presidential or congressional. It is a question of wisdom and prudence.

While Mr. Nixon's wisdom and prudence in deciding to invade Cambodia can be questioned, it is also highly questionable that tactical or even strategic policy in an Asiatic military operation can be set by a committee of Congress or by Congress itself. The restrictions proposed in the Cooper-Church amendment attempt to do exactly that.

The congressional action would be all the more inappropriate because it is devious. It is unlikely that even the Senate Foreign Relations Committee expects Mr. Nixon to undertake another Cambodian expedition. The amendment it cleared Monday is really intended as a rebuke to the President for the current operation in Southeast Asia. But, in making the rebuke in this roundabout manner, the committee would set Congress up as the maker of military policy in advance.

Congress has the right, perhaps even the duty, to express its views and to reflect the views of the people. Why not, then, just do so, by a debate on a "sense of Congress" resolution or some similiar device? If the majority is opposed to the Cambodian initiative, let's see such a vote. That would at least avoid the confusion of rebuking a presidential decision by passing out 535 sets of general's stars to the members of Congress.

## THE SNAKE RIVER

Mr. PACKWOOD. Mr. President, on the Oregon-Idaho border is a river called the Snake River. The gorge this river creates is the deepest in the world. At the moment a discussion is going on over the merits of constructing a dam on the river to generate electric power and to create a reservoir for recreational use behind the dam. I have consistently taken a position in opposition to building this dam, so the river will remain in a free-flowing state.

Mr. President, I ask unanimous consent to have printed in the RECORD a news release from the Oregon State Game Commission which shows the amount of recreational use there is of the area now.

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

HELLS CANYON RECEIVES HEAVY RECREATIONAL USE

(By Milt Guymon)

Almost unknown a decade ago except by a hardy group of outdoorsmen, Hells Canyon of the Snake River has been discovered by recreationists in the past few years, with increasing numbers of hunters, fishermen, sightseers, and others pouring into this wild and almost primitive gorge to view and enjoy its wonders.

The area of recognition is the last remaining free-flowing section of the historic middle Snake, about 80 miles of surging wild river from Hells Canyon Dam near Homestead, Oregon on the south and almost to Lewiston, Idaho on the north. The Hells Canyon portion of this stretch of river forms the Oregon-Idaho border in the deepest rock-walled gorge on the North American continent.

A major factor in this increased recognition has been the development of high-powered jet boats capable of running the river, where previously access was limited to long and arduous trail trips over the mountains or over questionable roads that dead-ended at river's edge.

A recreational use study conducted cooperatively by the Oregon Game Commission and the Idaho Fish and Game Department shows that in 1969 recreationists spent over 50,100 man-days in Hells Canyon either hunting or fishing or enjoying other miscellaneous recreational activities. Washington and Idaho are conducting a similar study in that area of free-flowing Snake that forms their border but recreational use figures are not available at this time.

The Oregon-Idaho report points out that the use figure is a minimum estimate of recreational use in Hells Canyon and includes only the boat trips on the Snake, cars and hikers along the lower ten miles of the Imnaha River, and the hikers going downriver from Hells Canyon Dam. Those who entered on foot or horseback through the Seven Devils Mountains in Idaho or the Snake River Divide in Oregon are not included.

Because the sampling was confined to the river, the total use of the Hells Canyon area is considerably greater than the boat-use study shows. As an example of additional use, Oregon big game hunters in 1968 spent 48,360 man-days hunting for deer and elk in the Chesnimnus and Snake River game management units, hunting units which include the Hells Canyon area of the Snake River. From this figure it is estimated that a minimum of 15,000 man-days was spent by deer and elk hunters in the Hells Canyon portions of these two units, with the bulk of the hunting taking place in the Snake River Unit.

The cooperative study by the two states in 1969 was accomplished with the use of a boat counter at the Oregon-Washington border, a boat checking station at Cache Creek, interviews of outdoorsmen encountered in the lower Imnaha and Dug Bar areas, and interviews and car checks at Hells Canyon Dam. The Forest Service maintained a car counter on the Pittsburgh Landing road.

Recreation use of Hells Canyon ran heavily to anglers, with hunting second in importance. Sightseeing, rock-hounding, boating, camping, and miscellaneous outdoor activities rounded out the total use figure.

Interviews at the Cache Creek checking station revealed an excellent sport fishery for anglers coming upriver by boat. Anglers checked said they fished about 20,680 hours to take 1,322 steelhead, 23 chinook salmon, 410 rainbow trout, 7,495 small mouth bass, 297 channel catfish, and 427 black crappie.

Anglers checked on the Snake River below Hells Canyon Dam revealed that they spent 332 hours of fishing per mile of river, compared with only 30 hours per mile on Hells Canyon Reservoir and 53 hours per mile on Oxbow Reservoir. The figures indicate angling intensity on the Snake River compared with that on the two reservoirs.

About 65 percent of the anglers interviewed said they preferred steelhead, salmon, and sturgeon angling—game fish species threatened by further Snake River hydroelectric developments.

Hells Canyon of the Snake is probably the wildest unspoiled area remaining in Oregon. It boasts spectacular scenery, surging rapids that require powerful boats and expert boatmen, and superb hunting and fishing. Except for three dead-end access roads, the canyon proper is reached only by boat or trail.

Mr. PACKWOOD. Mr. President, I also ask unanimous consent to have printed in the RECORD a memorandum from Bernard Goldhammer of the Bonneville Power Administration entitled "Power Needs of the Pacific Northwest in the 1970's." In the memorandum Mr. Goldhammer indicates no new dams are needed on the Columbia River in the next decade.

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

U.S. DEPARTMENT OF THE INTERIOR,
BONNEVILLE POWER ADMINISTRATION,
*Portland, Oreg., October 24, 1969.*

To: Don Hodel.
From: B. Goldhammer.
Subject: Power needs of the Pacific Northwest in the 1970's.

Oregon, Washington, and those parts of Idaho and Montana served by the Bonneville Power Administration will require nearly 14,500,000 kilowatts of additional power capacity during the 1970's. The 109 publicly-owned, investor-owned, and cooperative-owned utilities and the Bonneville Power Administration have developed a hydro-thermal program to meet these power needs.

Through the 1970's 7,500,000 kilowatts of steam generated power is planned. The first steam-generation plant, the 1,400,000 kilowatt coal-fired plant at Centralia, Washington, is already under construction. Equipment has been ordered for the second plant—the 1,100,000 kilowatt Trojan plant to be build by Portland General Electric Co. near Rainier, Oregon.

In addition to the 7,500,000 kilowatts of thermal generation, 7,000,000 kilowatts of hydro power capacity is needed to meet the projected loads. The hydro can be supplied by completing dams such as Libby, Little Goose, and Lower Granite already under construction and by adding generation at existing dams such as Grand Coulee, The Dalles, John Day, and the second powerhouse at Bonneville Dam. No new dams need to be constructed to meet the projected load growth in the 1970's.

BERNARD GOLDHAMMER.

## JOHN GRAVES

Mr. KENNEDY. Mr. President, earlier today I had an opportunity to attend the

funeral services of Mr. John Graves, who was assistant secretary for the majority in the Senate. He died last Thursday evening of a heart attack, although he was only 33 years of age.

John had performed distinguished service for the Senate for 12 years, having risen from the position of elevator operator to his responsible position as assistant secretary for the majority while at the same time pursuing a college education. He had a good knowledge of Senate procedures and was most helpful to many Members of the Senate. He carried out his responsibilties in a very creditable way.

I am sure I speak for all Members of the Senate in expressing sympathy to his wife Karen, his son and daughter, his parents and friends.

## THE CAMBODIAN SANCTUARY OPERATION

Mr. GRIFFIN. Mr. President, recently there has been furnished on a daily basis and printed in the RECORD the results of the Cambodian sanctuary operation in terms of captured enemy equipment, weapons, ammunition, rice, and other supplies.

Mr. President, I ask unanimous consent that a summary of the results as of 8 a.m. this morning, May 18, 1970, comparing it on a 24-hour-change basis, be printed in the RECORD.

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

Terminated operations:*

| | |
|---|---|
| Enemy KIA | 1,468 |
| POW's | 270 |
| Individual weapons | 1,290 |
| Crew served weapons | 184 |
| Small arms ammunition | 92,620 |
| Grenades | 349 |
| Mines | 161 |
| Mortar rounds | 683 |
| Large rocket rounds | 365 |
| Smaller rocket rounds | 2,405 |
| Recoilless rifle rounds | 515 |
| Bunkers destroyed | 355 |
| Rice (lbs.) | 382,000 |
| Vehicles | 3 |

*Operation Rock Crusher IV and Operation Tia Chop

| Total operations | Amount | 24 hour change |
|---|---|---|
| Individual weapons | 9,109 | +455 |
| Crew served weapons | 1,233 | +77 |
| Bunkers/structures destroyed | 4,651 | +322 |
| Machinegun rounds | 7,812,464 | +569,600 |
| Rifle rounds | 3,690,276 | +1,683,272 |
| Total small arms ammunition (rounds) | 11,502,740 | +2,152,872 |
| Grenades | 6,922 | +1,672 |
| Mines | 1,865 | +394 |
| Antiaircraft rounds | 159,047 | +24,268 |
| Mortar rounds | 38,879 | +23,961 |
| Large rocket rounds | 843 | −33 |
| Smaller rocket rounds | 14,920 | +774 |
| Recoilless rifle rounds | 14,296 | +4,684 |
| Rice (pounds) | 6,610,000 | +346,000 |
| Man months | 145,420 | +7,612 |
| Vehicles | 211 | −4 |
| Boats | 40 | (1) |
| Generators | 36 | |
| Radios | 142 | |
| Enemy KIA | 6,495 | +309 |
| POW's (includes detainees) | 1,576 | +13 |

[1] Unchanged.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

## THE CAMBODIAN INCURSION

Mr. PERCY. Mr. President, last Thursday I introduced a sense-of-the-Senate resolution with respect to the warmaking powers of the President and Congress. It was proposed as a sense-of-the-Senate resolution.

Since that time, in talking with a number of Senators who have expressed an interest in the resolution and in cosponsoring it, the suggestion has been that I give consideration to reintroducing it either as a concurrent resolution or as a joint resolution.

I wish to place on notice those Senators who are considering cosponsorship that that possibility is being reviewed now, and that I would value the judgment of my colleagues in that respect.

## FAMILIES OF POW'S FACE BLEAK EXISTENCE

Mr. PERCY. Mr. President, for the past 5 years there has been in this country a small, brave band of women and children who daily face a bleak future with courage and determination. They are the families of the 1,500 Americans being held prisoner by the North Vietnamese.

These people, women and young children for the most part, live under a constant cloud of uncertainty and doubt which would break many others. Literally, many of the women do not know day by day whether they are wives or widows. The children are aware only vaguely that one time they had a father; but they do not know now.

The reason for this uncertainty, this doubt, this cloud, is the brutal callousness of the Communist leadership of North Vietnam, which has adopted as a national policy the deliberate disregard of the Geneva Conventions on War Prisoners.

Under the Geneva agreements the captors of prisoners of war are required, as a bare minimum of humane treatment, to inform the government of those captured. They are also required to allow at least limited communications between the captives and their families.

For the most part the Communists have not notified the U.S. Government of the capture of the men we have listed as missing in action. They have refused steadfastly to permit an exchange of mail with the prisoners' families.

Many members of this small, dedicated group of woman have, at their own expense, attempted to get information about their husbands from the Communists themselves. They have traveled to Paris and to other neutral capitals to talk Communist diplomats.

At every point they have been turned away coldly and with total lack of courtesy or consideration. In fact, several times it has been suggested to these women that they could perhaps get the information they seek if they would take an active role against their own Government.

Mr. President, as Senators we cannot force the Communists to change their ways. However, we can do several things to help these women and their children.

First, we can let them know individually and as a group that their tragic plight is not going without notice.

Second, as officials of the Government we can take an active role in making certain that this brutal Communist defiance of humanitarian behavior is broadcast at every opportunity to the world. Thus we can perhaps help mold world opinion in opposition to the course the Communists have adopted.

Finally, we can make certain that every means is employed by the U.S. Government to bring all the pressure it is possible to bring on the Communists to force them to change this destructive and dehumanizing pattern of action.

We must continue to act every day and in every way possible to bring to a satisfactory conclusion this terrible episode in our history.

## ADDITIONAL LEGAL SCHOLARS SUPPORT STATUTE LOWERING VOTING AGE TO 18

Mr. KENNEDY. Mr. President, recently the President circulated a handful of 11 letters, most of which were specifically solicited from legal scholars, opposing the constitutionality of the Senate's percent action in lowering the voting age to 18 by statute.

In light of these letters, and the long delay in further action on the pending statute after it passed the Senate, several points are worth emphasizing:

First, the letters circulated by the President contain not a single new argument on the constitutional issue. Each of the points made in the letters was made in the course of the hearings held before two different Senate subcommittees. Each of the points was made later in the Senate floor debate. Indeed, the author of one of the letters—Dean Louis Pollak of Yale Law School—testified at length before Senator BAYH'S Subcommittee on Constitutional Amendments, and raised each of his objections at that time.

As has been pointed out repeatedly in the past, the Senate had full and ample opportunity to consider each of these arguments, but the Senate found them wanting. By the overwhelming vote of 64 to 17, we accepted the view:

First, that the denial of the vote to 18-year-olds was invidious discrimination under the Equal Protection Clause of the 14th amendment;

Second, that section 5 of the amendment gave Congress the power to lower the voting age by statute; and

Third, that Congress was therefore not required to follow the arduous route of constitutional amendment to achieve its goal.

Second, it should be unmistakably clear by now that the constitutionality

of the Senate's action in lowering the voting age by statute is strongly supported by legal authority of the first rank. To be candid, many congressional leaders with whom I talked at the outset said the eloquent support of Prof. Paul Freund, the most renowned constitutional authority in America, was all that was required to convince them that, even though objections would inevitably be raised, eminently respectable constitutional arguments completely justified the Senate's action. In addition, the constitutionality of the statute had the strong support of Prof. Archibald Cox, who served with distinction for 5 years as Solicitor General of the United States under President Kennedy and President Johnson. As Solicitor General, Professor Cox was the Nation's principal legal officer in litigation before the Supreme Court. Indeed, he was one of the most distinguished Solicitors General the Nation has ever had.

Now, the President has marshaled a group of legal scholars who support his position opposing the constitutionality of the statute. Although we do not know the actual number of scholars involved, we are told that they represent the view of the "great majority" of the scholars canvassed by the President.

Obviously, the constitutional issue cannot be resolved simply by counting academic heads. Shortly after I testified on the issue before the Senate Subcommittee on Constitutional Amendments last March, I circulated a copy of my testimony to every professor of constitutional law in America, as listed in the current "Directory of Law Teachers in Law Schools in the United States."

In recent weeks, I have received a significant number of replies—25. By far, the majority of the replies—18—support the constitutionality of lowering the voting age by statute. Only seven replies, five of which were from various authors of the 11 letters circulated by the President, opposed the constitutionality of the statute.

I believe that, as a whole, the replies I have received are strong new support from the academic legal community for the Senate's action on the voting age statute. Today, I am placing all the letters I have received, both pro and con, in the CONGRESSIONAL RECORD. I hope that all who are concerned with the issue will take the time to work their way through this correspondence. I am confident that those who do so will come away, as I have, not only with a higher level of understanding of the 14th amendment and Supreme Court precedents like the Morgan case, but also with the convincing impression that each and every objection to the Senate statute has been satisfactorily answered.

Third, an important aspect of the views of Professor Freund and Professor Cox is that, unlike all the other scholars, their views were not reached under the gun of the present debate, or in response to a call from my office, or in response to a call from the White House. Professor Freund first stated his view in 1968. Professor Cox first stated his view as long ago as 1966, only a few months after the Morgan case itself was decided, in a long and scholarly legal article in the Harvard Law Review, in which he recognized the important constitutional implications of the case.

Thus, the views of these two eminent legal scholars were reached separately and independently years ago in the thoughtful, imaginative, and unpressured atmosphere of one of the Nation's great law schools.

Fourth, in light of the President's obvious purpose in circulating the letters from the constitutional scholars who oppose the statute, some of the letters are surprisingly hedged in their conclusions. Indeed, one letter—by Prof. Herbert Wechsler of Columbia Law School—actually seems to imply that the statute would be upheld, albeit by a closely divided vote of the Supreme Court. Therefore, Professor Wechsler prefers to rest his objections to the statute on political grounds, rather than on constitutional grounds. Obviously, however, this sort of political judgment is one preeminently for us in Congress to make.

Fifth, neither the President nor any of the group of constitutional scholars he cites has ever satisfactorily resolved the inconsistency in the administration's own legal position. Two of the principal provisions in the pending voting rights bill were sponsored and strongly supported by the administration. One of these provisions proposes to abolish State literacy requirements for voting. The other proposes to reduce State residence requirements for voting. Time and again, in justifying the constitutionality of these changes by statute, the administration has relied on the Morgan case, and has used essentially the same constitutional arguments that the Senate used to justify the constitutionality of the provision changing State age requirements for voting. The administration cannot have it both ways. If it is constitutional to change literacy and residence requirements by statute, then it is also constitutional to change age requirements for voting.

Sixth, in the last analysis, it is we in Congress, not the professors in the law schools, who have the responsibility to decide the constitutional issue when we vote on this legislation. Of course, we know that the issue cannot be finally resolved until it is decided by the Supreme Court. Nevertheless, we in Congress have the obligation to cast our vote in light of our own constitutional power and responsibility, and our own best judgment as to the validity of the pending legislation.

There are many historical precedents for our action. For present purposes, it is sufficient to note that if Congress had failed to make this sort of determination and exercise this sort of responsibility with respect to President Roosevelt's New Deal legislation in the 1930's, the Nation would never have had a New Deal or any of the great social reforms of that period. Similarly, if Congress had failed to exercise its own constitutional responsibility in the 1960's, we would never have had a Civil Rights Act of 1964, or a Voting Rights Act of 1965, or a Fair Housing Act of 1968.

Yet at the time the original New Deal legislation and most of these great civil rights acts were passed, there were no Supreme Court precedents comparable in strength to the Morgan case to support them. There was far less constitutional justification for that legislation than we have today to justify the statute lowering the voting age. Yet, in these other areas, Congress went ahead, and passed this urgently needed legislation out of its own sense of constitutional power and responsibility. Essentially without exception, the constitutionality of each and every one of those great legislative actions was later vindicated completely by the Supreme Court. We in Congress today can do not less.

Indeed, the President's posture in the present legal controversy has a triple irony. It is ironic that at the very time the President is urging us to ignore deep constitutional doubts and vote for repressive crime legislation in areas like preventive detention and no-knock searches, he is also urging us to respect constitutional doubts and vote against America's youth. It is ironic that he asks us to enact a statute charging literacy and residence requirements for voting, but to reject a statute changing age requirements, even though the constitutional basis of all three statutes is the same. And, it is ironic that a President—who campaigned for his high office in large part on his view of a strict constructionist as one who would give Congress greater leeway to write laws, and who would be "very conservative in overthrowing a law passed by the elected representatives of the people at the State or Federal level"—now seeks to deprive us, the elected representatives, of the leeway he once professed.

Seventh, contrary to the suggestion of the President, it is clear that a judicial test of the voting age provision can be carried out promptly. There are many Supreme Court precedents demonstrating the speed with which the Court can act, especially in sensitive areas like the right to vote. Indeed, as I have indicated in the past, there is very good reason to believe that, if the statute is enacted soon, a final Supreme Court decision on its validity can be handed down even before January 1, 1971, the date the statute actually goes into effect.

In closing, I reaffirm my belief that lowering the voting age to 18 is the single most effective step we can take today to bring our youth into the mainstream of the political processes and institutions of America. In recent days in Washington, we have seen the enormous energy and passionate commitment of our youth, their dedication to a better America, the intense desire of the overwhelming majority of our young people to work constructively within the system.

At the very least, I think, we can agree that they have earned the right to vote. We cannot allow ourselves to be deluded by any false optimism as to the possibility of accomplishing our goal by constitutional amendment. All previous efforts in Congress to pass such an amendment have met with uniform frustration for 30 years. The pending voting rights bill is our only real chance of achieving this reform, and it is time for Congress to act.

Mr. President, I ask unanimous consent that the letters I have received be printed in the RECORD at this point.

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

LETTERS FROM LEGAL SCHOLARS SUPPORTING THE CONSTITUTIONALITY OF THE STATUTE LOWERING THE VOTING AGE TO 18

CALIFORNIA

UNIVERSITY OF CALIFORNIA,
LOS ANGELES,
SCHOOL OF LAW,
*Los Angeles, Calif., April 28, 1970.*

Sen. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: In response to your inquiry, I am in complete agreement with your position as to the constitutionality of the Voting Rights bill, enabling 18-year-olds to vote in all elections, Federal, State, and local. By reason of *Katzenbach* v. *Morgan* it is clear that Sec. 5 of the Fourteenth Amendment authorizes Congress to enact the Voting Rights bill. One hesitates to conclude that any current issue of constitutional law is settled beyond debate, but in my judgment the *Morgan* case forecloses any viable argument against the validity of this proposed legislation.

With very best wishes.

Sincerely,

MELVILLE B. NIMMER,
*Professor of Law.*

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UNIVERSITY OF SOUTHERN CALIFORNIA,
LAW CENTER,
*University Park, Los Angeles, Calif., April 20, 1970.*

Sen EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: I received from your office a few weeks ago materials bearing upon the proposed legislation on lowering the voting age to 18. I think the proposal is an excellent idea and I encourage you and your staff to continue pursuing the matter. Please feel free to use my support in any way that may be helpful.

Sincerely yours,

CHRISTOPHER D. STONE,
*Professor of Law.*

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THE CENTER FOR THE STUDY OF DEMOCRATIC INSTITUTIONS/THE FUND FOR THE REPUBLIC, INC.,
*April 7, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: In response to your inquiry whether it is constitutionally permissible to lower the voting age to 18 by statute rather than by constitutional amendment, let me say, as a professor of constitutional law, that I concur completely with your analysis of the situation. *Katzenbach* v. *Morgan* authorizes Congress to act in the voting field under Section 5 of the Fourteenth Amendment. I support your action and wish you every success. I am, incidentally, on leave of absence from Catholic University Law School and am currently a visiting fellow here at the Center.

Sincerely yours,

JON M. VAN DYKE,
*Visiting Fellow.*

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UNIVERSITY OF SAN FRANCISCO,
*San Francisco, Calif., April 8, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18th concerning the voting rights bill sponsored by you and Senator Mansfield. I read with great interest your testimony before the Senate Sub-Committee on the question of the vote for 18 year olds. I agree heartily with your position. As a University professor who deals daily with the youth of our nation, I am convinced that they should be given the franchise. Many in the 18 to 21 year old group demonstrate more maturity and responsibility than citizens twice their age.

As a professor of Constitutional Law, I fully agree with your position that Congress may enact such legislation. In my opinion such a proposal could take effect without the necessity of a constitutional amendment.

I trust that the above information will be of assistance to you. Thank you for soliciting my comments.

Sincerely,

PETER J. DONNICI,
*Associate Professor.*

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IOWA

THE UNIVERSITY OF IOWA,
*Iowa City, Iowa, April 7, 1970.*

Senator EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: I was pleased to receive your letter of March 18 and a copy of your remarks, delivered to the Subcommittee on Constitutional Amendments, on the question of lowering the voting age to 18 by legislation rather than by constitutional amendment. Let me say, simply, that I join you in the judgment that the voting age should be lowered, and in the arguments you advance in favor of that judgment.

The constitutional question does seem rather easy after the decision in *Katzenbach* v. *Morgan*. Although you may overstate the position on page four where you say that it is only necessary for Congress to conclude "that the justifications in favor of extending the franchise outweigh the justifications for restricting [it]," your analysis of *Morgan* is otherwise without fault. The Court in that case was clearly encouraging Congress to draw upon the vast store of federal legislative power conferred by Section 5 of the fourteenth amendment, primarily for the purpose of insulating itself from the necessity of making controversial decisions turning on difficult legislative factual determinations. Lowering of the voting age is just such a decision.

Thus, an Act of Congress lowering the voting age to 18 would be impervious to attack unless the Court backtracks on *Morgan*, and I think it dare not do that. The act would be shielded to the presumption of constitutionality that traditionally attaches to Congressional enactments, and by the Supreme Court's indication that this presumption can be overcome only by a showing that there is no "perceivable" basis for a Congressional judgment either that withholding the franchise from individuals over 18 is a denial of equal protection or that extension of the franchise to individuals over 18 is necessary to insure that these individuals receive equal protection of the law. In view of the growing sophistication and awareness of young adults, the legal treatment and responsibilities of individuals over 18 in most matters, and the burden of the present war on this age group, I think it would be impossible to make this showing.

In sum, then, I conclude with you that Congressional legislation lowering the voting age to 18 would be constitutional under *Morgan*, despite the fact that the classification involved in that case had ethnic overtones which are historically more suspect than are age classifications. Certainly, the concurrence of Professors Cox and Freund in the conclusion is extremely persuasive support for your position.

Accelerating Supreme Court review of the legislation is advisable, both because of the disastrous consequences of a determination of unconstitutionality after an election and because of the uncertainties in predicting decisions in the future if President Nixon is given further opportunity to follow his present course in selecting Supreme Court Justices. In addition, careful consideration should probably be given to the danger that large numbers of students attending school away from home will be disenfranchised by state residency requirements.

If in the future I can be of assistance to you in any way, legal or political, please call on me.

Sincerely,

DAVID J. REBER,
*Assistant Professor of Law.*

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THE UNIVERSITY OF IOWA,
COLLEGE OF LAW,
*Iowa City, Iowa, April 27, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: The following is in response to your letter of March 18 asking for an opinion on the eighteen-year-old voting rights bill. It is my opinion that Congress has the legislative power under section five of the fourteenth amendment to change the voting age to eighteen in all federal, state, and local elections. A constitutional amendment is not needed; Congress can achieve this result by statute. Recent cases suggest that Congress can use at least two different theories to support a statute that would enfranchise eighteen-year-olds in federal, state, and local elections.

To some extent section five of the fourteenth amendment gives Congress the authority to define what constitutes a violation of equal protection of the laws. See *Katzenbach v. Morgan*, 384 U.S. 641 at 656 (1966). Congress could find that barring persons between the ages of eighteen and twenty-one years old from voting is an arbitrary and irrational discrimination against them, and, therefore, violates the equal protection clause of the fourteenth amendment. A legislative finding to this effect followed by a statute enfranchising all eighteen-year-olds would be presumed constitutional, and would probably be upheld by the courts on the grounds that a rational Congress could think such a discrimination is capricious. Eighteen-year-olds are currently liable for military service, are usually high school graduates, and by the standards of our contemporary society, are treated for most purposes as adults. Furthermore, they are sufficiently physically and mentally mature at that age, and have a sufficiently direct and immediate stake in most major governmental decisions, so that a reasonable Congressman could think that excluding them from the vote is an irrational act. Given these facts, and many others of which you are fully aware, such legislation as you have suggested should be deemed constitutional as a means of implementing the fourteenth amendment.

Another theory upon which the statute you suggest could be held constitutional depends upon a congressional finding that young adults between the ages of eighteen and twenty-one are in danger of being discriminated against by the larger society, or that they have in fact been discriminated against by the larger society, in a way that hurts their interests. Congress could find that enfranchising persons between the ages of eighteen and twenty-one would give them enhanced political power which would be helpful in assuring non-discriminatory and fair treatment for them from the larger society. With the right to vote, young adults would have the political power to eliminate any existing arbitrary governmental discrimination worked against them, and the political power to deter the creation of any such discriminations in the future. By analogy see *Katzenbach* v. *Morgan*, 384 U.S. 641 at 652–3 (1966).

For a good discussion of both of the above approaches I would recommend the Harvard

Law Review article by Professor Archibald Cox of the Harvard Law School dealing with the enforcement power of the fourtheenth amendment. The article may be found at 80 Harvard Law Review 91 (1966).

I think it is very important that any statute of Congress on this subject should have extensive findings of fact. These findings of fact will be most useful to a court seeking to uphold such a statute. In my opinion the Supreme Court of the United States should and would uphold the constitutionality of such a statute of Congress enfranchising eighteen-year-olds in all federal, state, and local elections as a necessary and proper means of enforcing the fourteenth amendment.

Yours truly,

ARTHUR EARL BONFIELD,
*Law School Foundation Professor.*

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KANSAS

THE UNIVERSITY OF KANSAS,
*Lawrence, Kans., April 1, 1970.*

Senator EDWARD M. KENNEDY,
*U.S. Senate, Washington, D.C.*

DEAR SENATOR KENNEDY: I am writing in reply to your letter of March 18, 1970 concerning the lowering of the voting age to 18.

I favor your bill but I really do not think I have anything to add to the constitutional arguments set forth on your Senate speech of March 5, 1970. Your arguments were very complete.

Very truly yours,

LAWRENCE R. VELVEL,
*Associate Professor of Law.*

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MASSACHUSETTS

LAW SCHOOL OF HARVARD UNIVERSITY,
*Cambridge, Mass., April 7, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senator,*
*Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you very much for your letter of March 18, and for the reprint of your speech of March 15 on the 18-year-old voting bill.

Your admirable reasoning, the Supreme Court's opinion in *Katzenbach* v. *Morgan,* and a little thought of my own on the matter, all convince me that national legislation lowering the voting-age to 18 is both desirable and constitutional.

In the first place I do not like the idea of a voting age which varies according to State boundaries. We Americans do not differ in maturity between Massachusetts and Rhode Island, or between Maine and California.

Surely the Fourteenth Amendment's Equal Protection Clause, and that Amendment's 5th Section, authorizing the Congress to legislate to achieve Equal Protection, together validate the 18-year-old national standard. If Congress decides that an average 18-year-old can understand the issues in a modern election, (which I do not at all doubt) I see no reason why the Supreme Court should hold that decision invalid.

Your letter in this morning's New York Times states the case admirably. I hope the bill goes through.

Sincerely yours,

ARTHUR E. SUTHERLAND.

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LAW SCHOOL OF HARVARD UNIVERSITY,
*Cambridge, Mass., April 8, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: I have received your letter enclosing your remarks sponsoring the amendment to the Voting Rights bill that would enable 18 year olds to vote.

I take it from your letter that you are more interested in my views on the constitutional law questions than on the merits of the proposal. In recent weeks I have read the statement of Mr. Archibald Cox supporting the constitutionality of the amendment and the letter of six constitutional lawyers on the Yale Law School faculty attacking the constitutionality of the amendment that appeared in the New York Times on April 5, 1970. I support the former and reject the latter.

The view that the Equal Protection Clause of the Fourteenth Amendment was intended primarily to limit state restrictions on ethnic minorities, which was strongly urged by many, including some Justices of the Supreme Court, in the period immediately following its adoption, is a relic of the 19th century. The Equal Protection Clause in recent years has been applied to many types of state legislation having no relation to ethnic minorities. Therefore, to argue, as the letter does, that the doctrine of Katzenbach v. Morgan should be continued in this way is to argue for a restriction that does not appear in the Court's statement of the doctrine, and more importantly, to suggest a limitation of at least one aspect of the Fourteenth Amendment by returning to a view that was rejected in the 19th century.

The "conclusive" reason for rejecting the applicability of Katzenbach v. Morgan that is given in the New York Times letter is the reference in § 2 of the Fourteenth Amendment to the age of twenty-one in connection with voting. More specifically § 2 requires reduction of the number of Representatives from a State when the right to vote "is denied to any of the male inhabitants of such State, being twenty-one years of age." I do not believe it is wise constitutional interpretation to find in a provision requiring reduction of representation when a State denies the vote to someone who is 21 a "conclusive reason" for saying that Congress may not, under § 5 of the Fourteenth Amendment, lower the voting age to 18. Section 2 of the Fourteenth Amendment is intended to penalize state disenfranchisement of voters, not to prohibit congressional enfranchisement of voters. The reference to the voting age of twenty-one is probably best understood as reflecting the then common voting age.

Thus I do not believe that § 2 of the Fourteenth Amendment restricts the application of the doctrine of Katzenbach v. Morgan as set out in Mr. Cox's statement and in your remarks as they appear in the Congressional Record for March 5, 1970.

Sincerely yours,

ANDREW L. KAUFMAN,
*Professor of Law.*

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BOSTON COLLEGE LAW SCHOOL,
*Brighton, Mass., April 10, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for sending me the excerpt from the Congressional Record of March 5 reporting your statement to the Judiciary Committee on the bill to reduce the minimum voting age.

I believe that, under the doctrine announced in *Katzenbach* v. *Morgan,* 384 U.S. 641, a finding by the Congress that exclusion of persons in certain age groups from the voting franchise constitutes, for specified reasons, an invidious and unreasonable discrimination against such persons would be accepted by the Supreme Court as an appropriate basis for Congressional legislation in enforcement of the Fourteenth Amendment to establish a minimum voting age.

I believed, and still believe, for a similar reason that it was unnecessary to resort to the process of constitutional amendment to eliminate the poll-tax requirement as a condition to the exercise of the voting privilege. Unfortunately, this was the method chosen for removal of that abuse when the Twenty-Fourth Amendment was adopted. I do not think that this should establish a precedent to establish the disability of Congress to do away with other evils in the voting process.

With due deference to my peers at Yale Law School whose letter to the editor of the New York Times on the subject you may have seen on April 5, 1970, I do not think that the reference to voters over 21 years of age contained in Section 2 of the Fourteenth Amendment is apposite. That clause prescribed a remedy for a specific type of discriminatory practice, and should not be taken to preclude legislative action under Section 5 dealing with other forms of electoral discrimination.

Sincerely,

JOHN D. O'REILLY, Jr.,
*Professor of Law.*

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NEW YORK

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, SCHOOL OF LAW,
*New York, N.Y., April 3, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18, 1970, and for the extract of the *Congressional Record* of March 5, 1970, setting forth your testimony on the proposal to lower the voting age to eighteen.

I am in complete agreement with your analysis of the constitutionality of lowering the voting age by statute. It seems to me that *Katzenbach* v *Morgan* is a remarkably close precedent, and that the case for constitutionality is extremely strong.

You may be interested in a letter which I wrote to the *New York Times* in June 1968, in which the same conclusion was set forth; I am enclosing a copy herewith. At around the same time I wrote to Senator Birch Bayh, as Chairman of the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, setting forth the same arguments at somewhat greater length.

Very truly yours,

ALBERT J. ROSENTHAL,

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[From the New York Times, June 9, 1968]

FOR NATIONWIDE VOTING AGE OF 18

To the Editor: Recent news items have indicated a growing conviction among many people, including the President, that the minimum voting age should be reduced on a nationwide basis to eighteen, but that there is a general assumption that this can be accomplished only by a constitutional amendment and therefore cannot happen quickly.

I should like to suggest that the same purpose could validly be accomplished by an ordinary act of Congress, pursuant to powers conferred upon Congress by the Fourteenth Amendment.

It will be recalled that until recently New York State conditioned the right to vote upon literacy in English. But in 1965 Congress provided, in effect, that no person who had completed sixth grade instruction in Spanish, in a school in Puerto Rico, could be denied the right to vote in any election in the United States because of his inability to read or write English. Faced with a clear conflict between the Federal and state laws on the subject, the Supreme Court in 1966, in the case of Katzenbach v. Morgan, upheld the Federal statute.

The striking factor in the Court's opinion was that it assumed that the New York statute might well have been a perfectly proper exercise of the state's power to regulate qualifications for voting.

Nevertheless, the Court held that Section 5 of the Fourteenth Amendment conferred upon Congress power similar to that found in the "necessary and proper" clause, and that pursuant to such power an otherwise valid state law might nonetheless be superseded by Congress if Congress could reasonably find that such supersession was appropriate in order to accomplish a purpose for which Congress was empowered to legislate.

ENHANCED POWER

In the Morgan case the Court noted that Congress might have concluded that the enhanced political power conferred would "be helpful in gaining nondiscriminatory treatment in public services, for the entire Puerto-Rican community."

It would seem that much the same kind of argument could be made with respect to reduction of the voting age. Congress could conclude, for example, that the interests of young people and their views on such subjects as, among others, Selective Service policies and laws pertaining to education, deserved greater attention in the political process. Thus the granting of the vote to them would similarly "be helpful in gaining nondiscriminatory treatment." There is a strong hint in Katzenbach v. Morgan that the Supreme Court would accept such an express or implicit determination on the part of Congress as a basis for upholding the statute.

Some young people seem alienated from society, rejecting all involvement. Others have turned to force rather than reasoned discourse for the redress of grievances. But we have also seen a remarkable outpouring of youthful idealism into legitimate political activities. Reduction of the voting age, while no panacea, would undoubtedly strengthen this trend. Congress has the apparent constitutional power to take this step, and should exercise it now.

ALBERT J. ROSENTHAL,
*Professor of Law.*

COLUMBIA UNIVERSITY, NEW YORK, *June 4, 1968.*

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NORTH CAROLINA

THE UNIVERSITY OF NORTH CAROLINA, SCHOOL OF LAW,
*Chapel Hill, N.C., April 7, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Belatedly I acknowledge with appreciation receipt of your letter and enclosure of March 18 respecting Congressional reduction of the voting age to eighteen. The Court's historic decision in *Katzenbach* v. *Morgan* does indeed lay basis for Congressional action with repect to voting rights never before within constitutional bounds. Indeed, in combination with *United States* v. *Guest*, it suggests a reach of Federal power in civil relations possibly the equal of the seemingly limitless extent of Federal power over matters economic. If this is its import, the end of federalism as a division of policy-making power between Congress and the States is at hand and the only brand of federalism remaining will be administrative federalism, viz. policy formulation by the Congress with partially localized administration thereof. Conceivably, the very ramifications of *Morgan* might lead to judicial hesitancy concerning the extension of its doctrine despite the analogy you stress between literacy test and voting age. Doubtless this would not happen with a Warren Court, but might with one less disposed to run a major holding out to its ultimate possibilities. On this analysis, the sooner the constitutional issue reaches the Supreme Court for decision the greater the likelihood of constitutionality.

The above constitutes a response to your request for my reaction as a professor of Constitutional Law. As a citizen, I am sympathetic to reduction in voting age.

With great respect, I remain,
Sincerely,

FRANK R. STRONG,
*Professor of Law.*

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OHIO

CHASE LAW SCHOOL,
*Cincinnati, Ohio, April 10, 1970.*

Sen. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: I have taken the liberty to reply to your letter of March 18 to Professor Grosse, who is no longer associated with Chase Law School. I am now attempting to enlighten the students on Constitutional Law. I have waited to reply to your letter until we entertained discussion of Katzenbach v. Morgan in class.

From the reading of the Congressional Record, which you enclosed, I gather your support for the amendment of the Voting Rights Act is based on the Morgan decision. I think this is certainly a valid interpretation of the case. The Supreme Court has recently attached great import to the enabling clause, § 5 of the Fourteenth Amendment. In order to sanction this lowering of the voting age, support must be found by this reading of the Fourteenth Amendment. By Justice Brennan's majority opinion, the Court seems to give Congress the legislative discretion with respect to the enabling clause that it earlier gave Congress with respect to economic regulation through the "necessary and proper clause". Whether it is a plenary power will remain to be seen. On the whole, I believe the legislation in question is certainly supportable by Morgan and the decision also in United States v. Guest. It will remain to be seen whether any change in the constituency of the Court will affect this interpretation.

From a personal viewpoint, I think the lowering of the voting age is imperative. The facts that you quote in the Congressional Record definitely shows the desirability of the legislation. I have been enfranchised only four years, as I am only 25 years old. Whether you decide that my age affects my constitutional judgment remains to be seen. I think to correct the evils in our society which touch our youth we need to afford the youth an opportunity to work within the system, rather than without it.

I most certainly appreciate the opportunity to be of some aid in your attempt to pass this legislation. If I may be of further help, please let me know.

Yours truly,

Prof. FREDERIC S. GRAY.

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PENNSYLVANIA

UNIVERSITY OF PENNSYLVANIA,
THE LAW SCHOOL,
*Philadelphia, Pa., May 1, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18, enclosing your testimony supporting legislation lowering the voting age to 18 in all elections.

I think your position on the constitutional question is the correct one. In my view, Congress has constitutional power, under Section 5 of the Fourteenth Amendment, to forbid States to deny the right to vote, on the ground of age, to persons who are older than eighteen. I agree, in the main, with the reasons which have been spelled out by Professor Cox in support of this view and which flow from the Supreme Court's decision in *Morgan* v. *Katzenbach*.

There is one respect in which I disagree with what you say in your testimony, although I agree with your result. While the difference between us may only be a verbal one, it may have a bearing on the constitutionality of any legislation which may be ultimately enacted. You say (p. 4) that "if Congress concludes that the justifications in favor of extending the franchise outweigh the justifications for restricting the franchise, then Congress has the power to change the law by statute and grant the vote to 18 year-olds." You repeat the thought later on p. 4 by saying that "if Congress weighs the various interests and determines that a reasonable basis exists for granting the franchise to 18 year-olds, a statute reducing the voting age to 18 could not be successfully challenged as unconstitutional."

I do not think that Section 5 of the Fourteenth Amendment, as interpreted by *Morgan*, permits Congress to make its judgment of what the minimum voting age should be binding on the States, even though its judgment be a reasonable one. Under the Constitution, it is the States—not Congress—which have the right to make the initial judgment about voting qualifications (at least where state elections are concerned and where the Constitution, as in Article I, Section 7, clause 1 and the Seventeenth Amendment, refers to state elections in determining those qualified to vote in federal elections). Congress does have the power, however, to determine that a State judgment about the minimum age is sufficiently unreasonable so as to violate the equal protection clause, and to forbid the States to enforce such a judgment. There is a difference between saying that a State judgment about voting age is *wrong*, in the sense that Congress would have reached a different judgment, and saying that the State judgment about voting age is so *unreasonable* as to be unconstitutionally unfair. I think that Congress has to say the latter in order to support legislation lowering the voting age.

Thus, although I believe that Congress has the power to set a minimum voting age of eighteen through statute, I think that this action must be based on the conclusion by Congress that a higher age would constitute a denial of equal protection, not merely on the conclusion by Congress that eighteen is a reasonable minimum age. *Katzenbach* v. *Morgan* suggests that kinds of findings Congress might make which would support its conclusion that an age higher than eighteen denies equal protection. It might be found, for example, that government is not equally responsive to the special interests of persons between eighteen and twenty-one because they lack the vote, and that, in view of the educational level of most eighteen year-olds, and their treatment as adults in many areas such as criminal law (the line between juvenile and adult offenders is often drawn at eighteen) and military obligation, a discrimination between eighteen and twenty-one year-olds appears invidious. At least the conclusory finding by Congress that denial of the vote to eighteen year-olds denies equal protection in view of these factors, should be incorporated into the legislation, as a preamble or otherwise, if that is possible. Such a finding would, I believe, maximize the chances of the legislation being upheld.

Sincerely,

PAUL BENDER.

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PUERTO RICO

SCHOOL OF LAW,
UNIVERSITY OF PUERTO RICO,
*Rio Piedras, P.R., April 3, 1970.*

Sen. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Yesterday I received your letter of March 18 and a copy of testimony you delivered before a Senate subcommittee on an amendment to the Voting Rights bill to enable 18 year olds to vote in all elections. I have read your testimony with great interest and have also reexamined all pertinent cases of the United States Supreme Court and law review articles. I am in complete agreement with the opinions expressed by Professor Cox and Professor Freund which are included in your testimony. I have nothing to add to their analysis. I am also in favor of granting the electoral franchise to 18 year olds.

I have examined the text of the amendment as found in 116 Congressional Record, Senate 5950 (March 4, 1970). I find that Section 302 applies to "any State or political subdivision" and that Section 304 provides that the term "State" includes the District of Columbia. It seems, therefore, that the amendment will not apply to elections in Puerto Rico, even though Puerto Ricans are American citizens and even

though a "federal" election (that of the Resident Commissioner) is held in Puerto Rico every four years.

As a matter of policy, I believe that we Puerto Ricans should decide whether 18 year olds should have the right to vote in local elections. As you probably know, a referendum on that question is to be held in Puerto Rico next November.

However, from a constitutional point of view it is very doubtful whether Congress can exclude American citizens living in Puerto Rico from a law which is designed to guarantee "American citizens" the due process and equal protection of the laws "guaranteed to them by the 14th Amendment of the Constitution." Federal due process applies to Puerto Rico, although it is not clear whether it stems from the 5th Amendment or the 14th Amendment. Colon-Rosich v. Puerto Rico, 256 F 2d. 393 (1958); Stagg v. Descartes, 244 F 2d. 578 (1957); Mora v. Mejias, 206 F 2d. 377 (1953). There is no doubt in my mind that federal equal protection also applies to the Commonwealth. See in general Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico, 56 Georgetown Law Journal 219 (1967).

With my warm regards.

Sincerely,

RAÚL SERRANO-GEYLS,
*Professor of Law.*

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TEXAS

TEXAS TECH UNIVERSITY,
*Lubbock, Tex., April 6, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18 and the opportunity to express my comments on the Voting Rights bill to enable 18 year olds to vote. I share your views that the minimum voting age should be lowered to 18 for all Federal, State and local elections and that Congress, under the Supreme Court's decision of Katzenbach v. Morgan, 86 S. Ct. 1717 (1966), has the constitutional power to act by statute to achieve this purpose.

In *Katzenbach v. Morgan* the Court first discussed the scope of judicial review of congressional power. The question initially presented was: "If Congress, under § 5 of the 14th Amendment enacted § 4(e) of the Voting Rights Act of 1965 that precluded the enforcement of the New York English literacy law, would the Court be required to find the New York law in violation of the equal protection clause of the 14th Amendment before it could find that Congress had the power to enact § 4(e) under § 5 of the 14th Amendment. The Court held that its task was not to determine whether the New York English literacy requirement as applied to deny the right to vote to a person who successfully completed the sixth grade in a Puerto Rican school violates the equal protection clause of the 14th Amendment. Instead, the question for the Court was whether § 4(e) was, as required by § 5 of the 14th Amendment, appropriate legislation to enforce the equal protection clause of the 14th Amendment.

By analogy, the scope of judicial review of congressional power as discussed in *Katzenbach v. Morgan* could be applied to the Voting Rights bill to enable 18 year olds to vote. The question presented would be: if Congress, under § 5 of the 14th Amendment, enacted a Voting Rights bill for 18 year olds that precluded the enforcement of the state laws establishing the voting age at 21, would the Court be required to find the state laws in violation of the equal protection clause of the 14th Amendment before it could find that Congress had the power to enact the 18 year olds Voting Rights bill under § 5 of the 14th Amendment. The Court, under *Katzenbach v. Morgan*, should hold that its task is not to determine whether the state requirements as applied to deny the right to vote to a person between 18 and 21 violate the equal protection clause of the 14th Amendment. Instead, the question for the Court would be whether the 18 year olds Voting Rights bill was, as required by § 5 of the 14th Amendment, appropriate legislation to enforce the equal protection clause of the 14th Amendment.

The significance of this shift in question is to limit judicial review of congressional power. This is not a new doctrine but can be traced back to at least the time of Holmes in his dissenting opinions in *Lochner v. New York* and *Coppage v. Kansas.*

Once the shift in question occurred in *Katzenbach* v. *Morgan,* the Court considered three questions in order to determine whether § 4(e) was appropriate legislation: (1) Whether § 4(e) was an enactment to enforce the equal protection clause (86 S. Ct. at 1724); (2) Whether § 4(e) was plainly adapted to further the aims of the equal protection clause (86 S. Ct. at 1724–26); and (3) Whether the constitutional remedies adopted in § 4(e) constituted means which were not prohibited by, but were consistent with the letter and spirit of the Constitution (86 S. Ct. at 1726–28).

By analogy, the Court should follow the *Katzenbach* v. *Morgan* analysis to determine whether the 18 year olds Voting Rights bill is appropriate legislation. First, the answer to whether the 18 year olds Voting Rights bill was an enactment to enforce the equal protection clause, could be based on the fact that the Voting Rights bill was a measure to secure for persons 18 to 21 nondiscriminatory treatment by government in the imposition of voting qualifications. Second, a two-fold answer to whether the Voting Rights bill was plainly adapted to further the aims of the equal protection clause could be given:

(a) The practical effect of the Voting Rights bill is to prohibit the states from denying the right to vote to large segments of its community. The Voting Rights bill enhances the political power of the 18 to 21 age group which will be helpful in gaining nondiscriminatory treatment in the community. The Voting Rights bill thereby enables the 18 to 21 minority better to obtain "perfect equality of civil rights and equal protection of the law."

(b) It is well within congressional authority to say that this need of the 18 to 21 minority for the vote warranted federal intrusion on any state interests served by the state age requirements. It was for Congress, as the branch that made the judgment, to assess and weigh the various conflicting considerations. It is not for the Court to review the congressional resolution of these factors. It is enough that the Court is able to perceive a basis on which the Congress might resolve the conflict as it did. There plainly was such a basis to support the Voting Rights bill. 116 Congressional Record (March 5, 1970).

Third, the answer to the question of whether the constitutional remedies adopted in the Voting Rights bill constituted means which were not prohibited by, but were consistent with the letter and spirit of the Constitution, is based only on whether it was permissible and not whether the age should be below 18. "A statute is not invalid under the Constitution because it might have gone further than it did."

Some notice should be paid to the dissenting opinion in Katzenbach v. Morgan, 86 S. Ct. 1731 (1966), by Mr. Justice Harlan and Mr. Justice Stewart. In their view congressional power is more limited than what appears in the Court's opinion. First, the Court must determine whether the condition with which Congress has sought to deal is in truth an infringement of the Constitution. If it is, the Court would next consider whether the statute is appropriate remedial legislation to cure an established violation of a constitutional command. The dissent then found that there was no legislative record supporting the alleged discrimination and therefore it could not find that the state enactment violated federal constitutional rights. Applying this to the Voting Rights bill to enable 18 year olds to vote, the question that the dissent would consider first is whether the state enactments that set the minimum voting age at 21, 20 (Hawaii) and 19 (Alaska), do in fact violate the equal protection clause of the 14th Amendment. This question would require an affirmative answer before the dissent would consider whether it was appropriate remedial legislation under § 5 of the 14th Amendment. Viewing the voting rights for 18 year olds in this light, the case becomes substantially more difficult.

Alhough I believe that under *Katzenbach v. Morgan* Congress would have the power to enact the Voting Rights bill to enable 18 year olds to vote and action should be taken in this direction, several other factors should be mentioned that could cause the Court to hold that Congress does not have the power. First, *Katzenbach v. Morgan* was a 7–2 decision. The dissenters were Mr. Justice Harlan and Mr. Justice Stewart. With the change in Court membership and a shift of one Justice, the vote could become 4–5. Second, *Katzenbach v. Morgan* was decided in 1966 in an era when civil rights were in vogue. It was a logical follow-up to *Heart of Atlanta Motel v. United States and Katzenbach v. McClung.* The Court may, by the time a test case comes before it, be in a different mood and thus distinguish *Katzenbach v. Morgan.* Third, *Katzenbach v. Morgan* was an open-ended decision which, like *McCulloch v. Marland,* would give Congress extensive power over the states. By distinguishing future cases, the Court could limit this power drastically.

Sincerely,

MARTIN A. FREY,
*Associate Professor of Law.*

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VIRGINIA

COLLEGE OF WILLIAM AND MARY,
MARSHALL-WYTHE SCHOOL OF LAW,
*Williamsburg, Va., March 26, 1970.*

Senator EDWARD M. KENNEDY,
*Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18, with reference to the proposed amendment to the Voting Rights Bill of 1970, lowering the voting age of 18 in all Federal, state and local elections.

I am emphatically in agreement with you that such a provision may be enacted by Congress without the need for a constitutional amendment, so far as Federal elections and primaries are concerned. Whether Congress may extend its authority over elections to state and local voting, especially where these are not held in conjunction with Federal elections, may well become a justiciable question before the courts. My personal sympathy would be with the view that the equal protection clause of the Fourteenth Amendment would be applicable, but there is reasonable doubt as to how the Court might rule. Inasmuch as there is manifestly a trend among the states toward lowering the voting age, I should have hoped that a Congressional enactment dealing solely with Federal elections would have encouraged a general movement in the same direction by the states, without the possibility of precipitating a judicial challenge to the legislation.

On the subject of the electorial franchise generally, may I take this opportunity to express my hope that the proposed amendment eliminating the Electoral College may be brought to the Senate floor and approved for submission to the people. Not only is the Electoral College an artificial device which never worked, except invidiously, but it is a glaring anachronism in the modern age of one-man, one-vote, and philosophi-

cally if not practically inconsistent with the concepts of national citizenship and equal protection in the Fourteenth Amendment.

Some of these ideas I have discussed in both volumes of my current book on *Court and Constitution in the 20th Century*. I hope you will have opportunity to examine the first volume, subtitled, *The Old Legality, 1889–1932*, which was published last year, as well as the second, *The New Legality, 1932–1968*, which will appear late this spring.

Respectfully,

WILLIAM F. SWINDLER,
*Professor of Law.*

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WISCONSIN

THE UNIVERSITY OF WISCONSIN,
LAW SCHOOL,
*Madison, Wis., April 1, 1970.*

Hon. EDWARD M. KENNEDY,
*Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18 concerning the amendment to the Voting Rights Bill which would lower the voting age to 18.

I agree that Section 5 of the 14th Amendment, as interpreted in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), supports the constitutionality of such a measure. I believe that there is a basis, which the Court can perceive, "upon which Congress might predicate a judgment that" denying the vote to citizens who have reached the age of 18 but not 21 is "an invidious discrimination in violation of the Equal Protection Clause."

Sincerely yours,

ABNER BRODIE,
*Professor of Law.*

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CALIFORNIA

CENTER FOR ADVANCED STUDY IN
THE BEHAVIORAL SCIENCES,
*Stanford, Calif., April 21, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate*
*Washington, D.C.*

MY DEAR SENATOR KENNEDY: I appreciate your inquiry regarding my views on the constitutionality of changing the voting age by statute. I have just written to the President on this matter, and I take the liberty of enclosing a copy of that letter to give you my conclusions regarding the constitutional propriety of the route you support.

I regret this rare occasion on which I am compelled to differ from your position.

Sincerely yours,

GERALD GUNTHER,
*Professor of Law, Stanford University, School of Law (on leave).*

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CENTER FOR ADVANCED STUDY
IN THE BEHAVIORAL SCIENCES,
*Stanford, Calif., April 20, 1970.*

The PRESIDENT,
*The White House,*
*Washington, D.C.*

MY DEAR MR. PRESIDENT: I am a professor of constitutional law and the author of a casebook on constitutional law widely used in American law schools. I am glad to submit a brief statement of my views regarding the proposed legislation to extend the vote to 18-year olds in all elections, national and state.

I support that extension of the suffrage as a matter of policy. I believe, however, that constitutional amendment, not congressional legislation, is the proper route to attain that desirable objective under our constitutional scheme.

I appreciate that arguments in support of the constitutionality of such legislation can be fashioned on the basis of Section 5 of the 14th Amendment as interpreted in Katzenbach v. Morgan, and I recognize that the Supreme Court might well sustain the constitutionality if the bill were enacted. This is not the end of the matter, of course: under our system, Congress and the President have an obligation to exercise a conscientious independent judgment on constitutional questions, especially on questions such as this that are not foreclosed by repeated and firm Supreme Court rulings. (See, for example, the careful discussion of the proper role of the political departments on constitutional issues in D. G. Morgan, "Congress and the Constitution" (1966).)

My main reasons for doubting the constitutional propriety of the proposal stem from my understanding of the appropriate role of Court and Congress in defining the scope of 14th Amendment rights. Section 5 gives Congress the power to "enforce" rights "by appropriate legislation," to be sure; but the primary role in articulating the content of the "rights" to be enforced belongs to the Court, not Congress, I believe. Congress may make fact findings and express its views to help inform the Court's ultimate constitutional judgment, of course. But to give to Congress a far-reaching autonomous authority to redefine the content of equal protection and due process (binding on the Court so long as a minimal rationality test is satisfied) would mark a radical and undesirable departure from our constitution traditions.

The Court's result in the Morgan case is understandable in view of the context of that case. But to press all of the language of that case to its maximum extent as a basis for legislation would be unsound for a number of reasons. To me, the most important objection is that it would open the door to congressional overturning of Court decisions in a number of areas—criminal procedure is an example that comes readily to mind. Most scholars would agree, I believe, that the unpersuasive footnote in the Morgan opinion is not a tenable, principled safeguard against the invocation of the Section 5 power to curtail constitutional safeguards. (Some of the implications of a broad, nearly autonomous congressional power to control the scope of 14th Amendment rights via Section 5 are explored in R. A. Burt, "Miranda and Title II: A Morganatic Marriage," 1969 Supreme Court Review 81, as well as in Mr. Justice Harlan's thoughtful dissenting opinion in the Morgan case itself.)

Reliance on legislation would be especially inappropriate with respect to age qualifications on voting in state elections—an area traditionally reserved to state control, an area not subject to charges of discrimination against discrete minorities that would justify national intervention. In an area such as this, constitutional amendment is surely the route which would prove least damaging to our constitutional structure. I must add that many of my constitutional doubts regarding legislation regarding age qualifications are also applicable to a provision in the Administration's own voting proposals: the elimination of literacy tests in all elections (quite independent of the background of racial discrimination that provided a legitimate basis for the literacy test provisions in the 1965 Voting Rights Act sustained in South Carolina v. Katzenbach). I accordingly hope that the political branches of our government will exercise their judgment to assure that the proper constitutional methods are followed in achieving the desirable goal of extending the vote.

Respectfully yours,

GERALD GUNTHER,
*Professor of Law, Stanford University School of Law (on leave).*

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CONNECTICUT

YALE LAW SCHOOL,
*New Haven, Conn., April 3, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for your letter of March 18, asking for my views on the 18-year old voting bill.

I am sorry to have to say that I consider this bill definitely and clearly unconstitutional. To me, Section 2 of the Fourteenth Amendment, by implication, as near inevitable as any ever is in law, establishes that it is a fixed assumption of our Constitution that the States may, if they see fit, set the age of 21 years as the minimum for voting. I would hate to have to live without all the constitutional assumptions which have less firm basis than this one has in Section 2.

Holding this opinion, I am deeply concerned as to the position in which the Supreme Court will be put if this legislation passes. It seems to me that the Court will have either to uphold a statute against which very strong—to me, absolutely conclusive—constitutional objection exists, or bear the wrath of millions of young people.

The undesirability of the Court's being put in the latter position is clear enough. If, on the other hand, the act should be upheld, then I see hardly any rational limit on what the Court must later uphold, if it is to act with consistency.

I am really worried about the Court's being tendered this alternative; that is my reason for writing so frankly.

With all best wishes,

Very sincerely,

CHARLES L. BLACK, JR.,
*Luce Professor Jurisprudence.*

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YALE LAW SCHOOL,
*New Haven, Conn., April 7, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: I appreciate your soliciting my views on the constitutionality of lowering the voting age to eighteen by statute. You may have seen a letter in last Sunday's New York Times, of which I was one of the signers, expressing the view that such a course of action would probably be unconstitutional, and that the issue was too important to run the risk of judicial invalidation.

The point is, obviously, arguable. Your testimony, which constitutes the best defense of the constitutionality of the statutory course of acion I have seen, makes a number of telling points, and the Supreme Court might very well accept the argument. The fundamental difficulty I have is with the statement of the controlling test at the top of page four, indicating that it is for Congress to weigh the pros and cons of a vote for eighteen-year-olds, and for the Court to defer unless it can label the balance struck by Congress irrational. This is, of course, the test to be applied to ordinary legislation; I therefore cannot see how it could also be the test for legislation which declares unconstitutional a state practice. I know, as you indicate, the Morgan case contains language which supports the assimilation of the two tests, but I doubt that the Court would—and think it ought not—take that language seriously in the instant case, particularly in view of what seems to me the unanswerable implication of section 2 of the Fourteenth Amendment that the age of 21 constitutes a permissible cut-off.

I know that as a lawyer you will understand why I feel it necessary to take this position despite my agreement that the voting age should be lowered. The proposed statute would put the Court in an undesirable squeeze between a politically popular position and what I think is the implication of the Constitution. And a legitimation of the law in the face of such a strong constitutional objection would carry, I fear, dangerous precedential potential—psychologically, if not indeed on the merits—for other sorts of legislation I know you would disapprove as strongly as I.

Very truly yours,

JOHN HART ELY.

ILLINOIS

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
*April 13, 1970.*

Sen. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for the reprinting of your testimony on the age requirements in the Voting Rights Bill. I am happy to respond to your request for an opinion, but I regret that the opinion does not accord with your own.

It seems clear to me that the power to determine the qualifications for voters in both state and federal elections is, under the specific terms of the Constitution, rested in the States. Certainly this power is limited by the Equal Protection Clause ban on improper classification and invidious distinctions. And clearly Congress has the right to eliminate such discrimination, as stated in *Katzenbach* v. *Morgan*. But I find it impossible to concur in the view that a line drawn on the basis of age between those who have attained twenty-one years and those younger is such an invalid discrimination. Certainly, if it is, the line between those who reach the age of eighteen and those who are younger is equally invidious.

I agree that the vote could and should be given to eighteen-year olds by the States. But I think that the perversion of the Constitution to accomplish this end is too high a price. One of the major problems from which this nation suffers is a spreading disdain for law, spreading from both the right and the left toward the center. Abuse of the Constitution to attain even desirable ends can only succor those who would replace law and constitutionalism with fiat and force.

I would hope that those who have taken the road of expediency in this matter by seeking to avoid constitutional requirements will recognize what they are doing soon enough to prevent the passage of the statute.

With all good wishes,
Sincerely yours,

PHILIP B. KURLAND.

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MASSACHUSETTS

NORTHEASTERN UNIVERSITY
SCHOOL OF LAW,
*Boston, Mass., April 2, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate, Senate Office Building, Washington, D.C.*

DEAR SENATOR KENNEDY: Thank you for sending a copy of the testimony which you delivered before a Senate subcommittee concerning a proposed amendment to the Voting Rights bill.

Some of us who share your interest in extending the vote to persons 18 years old believe that there is a serious problem concerning the means by which this can be accomplished. Any professor of constitutional law—indeed, any competent lawyer in general practice—could develop a brief supporting the proposition that your proposed amendment will be fully efficacious and wholly within the constitutional powers of the Congress. On the other hand, it would be equally possible to support the contrary position.

The fact that the constitutional issues underlying your proposal have not been clearly adjudicated so that one can say with certainty which side of the controversy will prevail should not cause one to hesitate to go forward if it were not for the serious practical complications which might ensue if one miscalculated how the Supreme Court would ultimately decide the issue. I therefore consider that it would be preferable for the amendment to be limited to granting voting rights to 18-year olds only when voting for the House and Senate. In this way, all of the constitutional arguments in support of your proposal would be buttressed by the availability of Article I section 4. The young voters thus made eligible would have some part in the political process during time necessary to adopt a constitutional amendment to secure this right for all elections. As a matter of practical politics, their participation in Congressional elections might increase their leverage in working for the full recognition of their role in the political process.

The temptation to push ahead and attempt to deal with all elections by ordinary legislation must be particularly tempting when one contemplates the awkward problem the Supreme Court would face if it were to invalidate a whole set of elections. I feel deeply that Congress ought not to force new constitutional interpretations by subjecting the Court to avoidable dilemmas. As a matter of fact, it seems to me quite improper to read the fourteenth amendment as permitting the proposed legislation. While section 2 of the fourteenth amendment does not address itself specifically to this problem, it seems to carry a clear implication that a denial of voting rights to persons younger than 21 does not offend any of the guarantees provided by that amendment. I therefore urge that any legislation on this matter be done under Article I and, therefore, be limited to the election of Congressmen and Senators.

In any event, your proposal serves the national interest by enhancing the pressure on both the Federal government and State governments to give adequate recognition to the proper role of teen-age citizens.

Sincerely,

THOMAS J. O'TOOLE,
*Dean.*

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MICHIGAN

THE UNIVERSITY OF MICHIGAN,
LAW SCHOOL,
*Ann Arbor, Mich., April 23, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: In a letter received from you several weeks ago in which you enclosed a copy of the testimony which you had delivered before a Senate subcommittee on the question of the constitutional power of Congress to change voting age by statute, you indicated an interest in whatever comments I might have on the constitutional question. While this is not a direct response to that letter, it will serve the same purpose since I am enclosing herewith for your information and interest a copy of my letter dated April 20, 1970, addressed to Mr. Leonard Garment of the President's White House staff in which I discuss the constitutional issues raised by the proposed legislation to reduce the voting age to 18. As you can see from my letter I feel that this proposal does raise some very serious and substantial constitutional issues.

I remain,
Sincerely yours,

PAUL G. KAUPER.

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APRIL 20, 1970.

The Honorable RICHARD M. NIXON,
*President of the United States,*
*The White House,*
*Washington, D.C.*

Attention: Mr. Leonard Garment.

DEAR MR. PRESIDENT: This letter is in response to Mr. Garment's inquiry respecting my views on the constitutionality of proposed federal legislation which would establish a universal age limitation on voting in the United States and fix the age at 18 years.

This proposal has momentous consequences. If enacted it would be a bold and unprecedented intrusion upon the acknowledged power of the states to fix voting qualifications and would raise what I regard as very serious and substantial constitutional questions.

Under the Constitution it is clear that the basic power to prescribe qualifications for voting is reserved to the states. Art. I Sec. 2, respecting the election of Representatives to the Congress and the Seventeenth Amendment respecting the election of Senators recognize that the qualifications for voting are governed by state law. Moreover, the Constitution gives Congress no power, express or implied, over the general subject of voting qualifications. Congress is given the power under Art. I, Sec. 4, to regulate the times, places and manner of holding election of Senators and Representatives. But this power, construed in conjunction with Art. I, Sec. 2, gives no authority to prescribe qualifications. If then the question raised by the proposed federal legislation to reduce the voting age to eighteen were governed solely by the body of the Constitution, the proposed legislation would clearly be beyond Congressional power and this regardless of whether it was universal in its scope or limited to voting from Congressmen, Senators and Presidential electors.

Amendments to the Constitution while not abridging the basic power of the states to fix qualifications have curtailed the freedom of the state to classify in fixing qualifications and thereby to limit the voting right. The Fifteenth Amendment prohibits a denial of the right to vote on the ground of race, color or previous condition of servitude. The Seventeenth Amendment similarly prohibits denial of voting rights on the basis of sex. The Twenty-fourth Amendment prohibits the denial of the right to vote for President, Vice President, Senators and Congressmen because of failure to pay a poll tax. Apart from these specific restrictions on the power of the state to prescribe classifications in defining voters' qualifications, the equal protection clause of the Fourteenth Amendment operates to prohibit other arbitrary limitations on the right to vote. Thus in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), the Supreme Court held that a state requirement of paying the poll tax as a condition of voting resulted in an arbitrary discrimination which violated this clause.

Admittedly the fixing of an age limit falls within the basic power of the states to prescribe qualifications for voting and none of the restrictions on the power to classify for voting purposes achieved by constitutional amendment as mentioned above affect the voting age requirement. Nor is it conceivable that the Supreme Court would declare an age requirement fixed by state law whether at age 21, 20, 19 or 18 as an arbitrary requirement violating the equal protection clause. This leaves for consideration then the question whether Congress has a legislative power to intrude into the states' power to fix an age limit qualification.

The only possible source claimed for such power is the authority granted to Congress under the 5th section of the Fourteenth Amendment to enforce this Amendment's restrictions and more particularly to enforce the equal protection clause. May Congress by legislative act fixing the voting age limit at 18 thereby in effect declare that a higher age limit prescribed by state law is an arbitrary classification which violates the equal protection clause?

In examining this question we may first consider the Supreme Court's decision in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), where the Court upheld the provisions of the 1965 Voting Rights Act which prohibited the use of literacy tests in states where their use was found to achieve racial discrimination in voting in violation of the Fifteenth Amendment. Congress has the power to enforce the Fifteenth Amendment and Congress here was using its power to deal with practices which it found violated this Amendment. Since the Congress here was using its power to enforce a specific constitutional restriction and since the Supreme

Court had already recognized that state use of literacy tests as a means of racial discrimination in voting was invalid, the case has no real bearing on the power of Congress to define permissible voting qualifications under its power to enforce the equal protection clause of the Fourteenth Amendment.

The companion case of *Katzenbach v. Morgan*, 384 U.S. 641 (1966), does go to the question under consideration. Here the Court upheld the feature of the 1965 Voting Rights Act which provides that no person who has successfully completed the sixth primary grade in a public school or in a private school accredited by the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English. This provision was designed to invalidate New York's English literacy test in so far as it resulted in the denial of the voting right to the very substantial body of New York City residents who had migrated there from Puerto Rico. The Court upheld this Congressional intrusion into the state's power to prescribe voting qualifications on the basis of the power to enforce the equal protection clause of the Fourteenth Amendment.

This case for the first time recognized that the Congressional power to enforce the equal protection clause includes a power to define the substance of equal protection by declaring a particular classification established by state law to be invalid and substituting in its place a classification fixed by Congress. The Supreme Court has made it abundantly clear that the equal protection clause forbids arbitrary or unreasonable classifications and that whether a state classification constitutes an unlawful discrimination is appropriately a matter for judicial determination. On its face *Morgan* appears to say that Congress has an independent substantial power to pass on classifications and to condemn a state classification which Congress finds unreasonable or arbitrary even though the Court itself would not have found a violation of the equal protection clause.

Given this literal interpretation *Morgan* opens up a wide power in Congress to review and to invalidate classifications established by state laws by finding that such intrusions into state power are necessary to assure the equal protection of the laws. The wide implications of such an interpretation are noted in the dissenting opinion of Mr. Justice Harlan, joined by Mr. Justice Stewart. Applied to the problem at hand, *Morgan* as so construed would be authority for Congress to fix a universal age limit for voting in the United States on the theory that any higher age limit than that fixed by Congress is a denial of equal protection.

The question then is whether *Morgan* established such a broad principle and whether it is subject to any limitations which would be relevant to the question of Congressional power to establish a universal voting age requirement at the expense of the historically established state power to prescribe voting qualifications. The majority opinion in *Morgan* said that the power given by Congress to enforce by appropriate legislation the Fourteenth Amendment's provision paralleled the power given to Congress in the body of the Constitution to pass all laws necessary and proper to carry into execution the powers delegated under the Constitution. Borrowing language from Chief Justice Marshall's opinion in *McCullough v. Maryland*, 4 Wheat. 316, in expliciating the necessary and proper clause, the Court said that the question then was whether the legislation enacted by Congress banning the use of the New York literacy test to disqualify Puerto Ricans from voting was plainly adapted to the end of enforcing the equal protection clause and whether it was not prohibited but was consistent with "the letter and spirit of the constitution." Applying these standards, the Court said that the Congressional enactment could readily be seen as "plainly adapted" to further the aim of the equal protection clause to secure for the Puerto Rican community residing in New York non-discriminatory treatment by the government—both in the imposition of voting qualifications and the provisions or administration of governmental service, thereby enabling the Puerto Rican minority better to obtain "perfect equality of civil rights and the equal protection of the laws." The Court said that it was well within Congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal instrusion upon any state interests served by the English literacy requirement, that it was not for the Court to review the congressional resolution of the various conflicting interests entering into the question and that it was enough that the Court was able to perceive a basis upon which Congress might resolve the conflict as it did.

The Court further said that the legislation could be justified as legislation aimed at the elimination of an invidious discrimination in establishing voter qualifications. On this question the Court said that Congress might well have questioned whether the New York literary requirement actually served the state interest claimed for it and could also have concluded that as a means of furthering the goal of an intelligent exercise of the franchise, an ability to read or understand Spanish was as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radios and television programs are available to inform them of election issues and governmental affairs.

It remains to determine whether the Court's holding in *Morgan* and the reasoning employed by the Court apply equally well to uphold Congressional intrusion into states' power to prescribe voting qualifications by fixing an age limit. It should be noted at the outset that Congress determined that an English literacy requirement constituted an improper voting qualification for Puerto Ricans living in New York City since it had the effect of disenfranchising a substantial body of citizens and since in the judgment of Congress the requirement of having completed six grades of school in Puerto Rico, although in another language, was adequate to establish the literacy required for intelligent voting in New York City. This in itself suggests an important difference between outlawing an English literacy requirement as a qualification for voting and outlawing state voting age requirements by fixing a uniform federal standard. Indeed, in *Cardona* v. *Power*, 384 U.S. 672 (1966), although the majority did not find it necessary to pass on the question, two justices expressed the view that the New York literacy requirement was applied to Puerto Ricans in New York City as an arbitrary limitation on the voting right apart from any federal legislation on the subject. But in fixing a federal age requirement at age eighteen Congress recognizes that an age requirement is in itself a proper qualification for voting. The real question then is whether Congress while recognizing that an age requirement is valid may choose to say that any voting age requirement above the age of eighteen years constitutes an invidious discrimination against the class of persons between the age of 18 and a higher age which may be fixed by a state's law.

The purpose of an age limit is to assure sufficient maturity in exercising the voting right. May Congress say that a state has no rational basis for fixing a 21 year age limit as the standard for voting maturity? Obviously, there is room for choice in this matter. Most states continue to adhere to the twenty-one year limit. A few have reduced the limit to a lower age. It may be assumed that fixing the age limit anywhere from 18 to 21 is reasonable so far as any judicial interpretation of the equal protection clause is concerned. Since the basic power to fix voting qualifications is in the states and not in Congress the question raised by the proposed Congressional legislation is not whether it is reasonable and appropriate for Congress to fix the voting age limit at 18 but whether it is appropriate for Congress to declare that any age limit higher than 18 is an invidious discrimination, i.e. whether it results in an arbitrary classification. Or to put the matter in another way does Congress have a basis for saying that a 19, 20 or 21 year age limit as may be imposed by state law does not have a rational relation to the question of whether a person is sufficiently mature to take part in the voting process?

In answering this question two considerations may be noted. The fixing of a voting age limit involves a legislative choice within a limited range, and it remains to be demonstrated that Congress because of studies it has made and investigations it has conducted has a better informed basis than the states for determining when citizens are old enough to vote. This is not a matter of determination by objective criteria. Secondly, and much more important, states have been fixing age limits for voting ever since the Constitution was adopted and even before, and until recently twenty-one years of age has been the general standard. This has never been questioned. It is fantastic to suggest that when the States ratified the Fourteenth Amendment in 1868, they thereby understood that they were thereby giving Congress the authority, in the name of equal protection enforcement, to displace their own power to fix voting age limits or to declare that any voting age limit above 18 constituted an unconstitutional discrimination. Indeed, the Fourteenth Amendment itself affirms the validity of the twenty-one year age limit as a qualification for voting. Section 2 of this Amendment, dealing with Congressional apportionment and designed to reduce the representation in Congress of states which deny voting rights to blacks speaks of denial of the right to vote "to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States. . . ." It is not to be supposed that the Fourteenth Amendment suffers from an inner contradiction and that the equal protection clause was intended as a source of power in Congress to outlaw a state voting age qualification explicitly sanctioned by this Amendment. It requires an extraordinary latitude in the construction of Congressional power to contend that Congress may brand as arbitrary and invidious a voting age standard acknowledged as legitimate by the text of the Constitution. Indeed, to use Chief Justice Marshall's language, quoted in the *Morgan* case, a federal statute, denying to states the power to prescribe a twenty-one year age limit is not consistent with the letter of the Constitution.

In summary, there are very substantial differences between the English literacy test problem presented in *Morgan* and the voting age problem. In its legislation at issue in *Morgan*, Congress was directing its attention to a voting qualification, namely, the English literacy test, which has had a limited history in this country, which Congress found to be an unwarranted discrimination against a discrete ethnic group, and which for all practical purposes was limited in its operation to one state in the country. Moreover, Congress has a special federal concern with protection of Puerto Ricans against discrimination in view of the historic relationship between the United States and Puerto

Rico, and the Congressional policies which have encouraged migration from Puerto Rico to the United States. Also it is not clear that the Supreme Court would not have invalidated the New York literacy test required as to Puerto Ricans even without the federal statute as an invidious discrimination violating the equal voting clause had it proceeded to face this question in the *Cardona* case. The voting age question, on the other hand, presents no factor of this kind. On the contrary, state voting age limits have a long unbroken history, they deal with a qualification which does not enter into the sensitive area of race, nationality, ethnic affiliations or economic status, they present no distinctive aspects related to matters of federal authority and concern and, indeed, the authority of the state to fix an age limit is confirmed in the very language of Section 2 of the Fourteenth Amendment. Here the factors are so heavily weighted in favor of the state power and the basis for Congressional intrusion into this area is so tenuous, that I cannot regard *Morgan* as determinative of the constitutional issue raised by this proposed legislation.

*Morgan* as literally construed opens up vast potentials of expanded Congressional power in the name of enforcement of the equal protection clause to intrude upon state legislative power and to substitute for it legislation which Congress deems more desirable. Virtually every state statute embodies a series of classifications. Take, for instance, a state income tax law. Such a law is full of classifications relating to such matters as rates, exemptions, etc. If Congress may at will invalidate classifications it finds unsatisfactory or undesirable by stamping them as arbitrary, and in turn to substitute its own notion of suitable policy, the way is open for Congress to assume the role of super-legislature for the states. It could then prescribe the permissible classifications in a state income tax and thereby in effect rewrite the state's law.

*Morgan* requires further critical study and examination by the Court before its implications can be fully determined. The fact that two justices dissented and the intervening change in Court personnel indicate the likelihood of such a critical reexamination. But apart from this, the question of the power of Congress to prescribe a universal voting age limit involves consideration totally different from the question presented in *Morgan*. For the Court to uphold this proposed legislation would require a considerable stretch of the judicial tolerance of Congressional legislation manifest in *Morgan*.

In summary then it is my opinion that substantial grounds support the conclusion that the proposed Congressional legislation fixing a universal voting age limit of 18 years is unconstitutional on its face as an intrusion by Congress into an area of admitted state authority. The holding and the opinion in *Morgan* do not furnish either compelling or even persuasive support for this legislation. Indeed, the legislation fliest in the very face of the constitutional text. Certainly, at the very least the proposed legislation raises very serious and substantial constitutional questions not foreclosed by the *Morgan* decision.

If Congress is satisfied that it is desirable national policy to establish a universal voting age limit of eighteen years, the way is open to achieve this result through the process of constitutional amendment. It seems to me far preferable for Congress to deal with the matter in this way rather than enact legislation which raises serious constitutional issues and would engender all the uncertainty and confusion arising from constitutionally suspect legislation.

I remain,

Respectfully yours,

PAUL G. KAUPER.

PENNSYLVANIA

UNIVERSITY OF PENNSYLVANIA,
*Philadelphia, Pa., April 9, 1970.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR KENNEDY: Your letter of March 18th and the enclosure anent the voting age reached me a few days ago.

I do not agree that Congress has authority to establish an eighteen-year voting age for all elections—Federal, State and local. The equal protection argument, tied to the implementation clause of the Fourteenth Amendment, is quite attenuated. It is totally unhistorical and proceeds on some vague notion that the spirit of equal protection is violated by a higher voting age. As some of my Yale confreres have noted, moreover, Section 2 of the Fourteenth Amendment, which was ignored by the majority in the one-man, one-vote cases, provides a sanction for denial or abridgement of the right to vote of males over twenty-one years of age. Surely, this must be read with Section 1 of the Amendment for present purposes. For me, it destroys the equal protection argument.

Sincerely,

JEFFERSON B. FORDHAM.

## 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 (H.R. 780) to authorize the Secretary of the Interior to construct, operate, and maintain the Merlin division, Rogue River Basin project, Oregon, and for other purposes, and it was signed by the Acting President pro tempore (Mr. ALLEN).

## COMMUNICATION FROM THE PRESIDENT—PROPOSED SUPPLEMENTAL APPROPRIATIONS FOR THE DISTRICT OF COLUMBIA, FISCAL YEAR 1970 (S. DOC. NO. 91–82)

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate a communication from the President of the United States, transmitting proposed supplemental appropriations for the District of Columbia for the fiscal year 1970 (with an accompanying paper); to the Committee on Appropriations and ordered to be printed.

## PETITION

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate a concurrent resolution of the Legislature of the State of New York, which was referred to the Committee on Labor and Public Welfare, as follows:

RESOLUTION No. 177

Concurrent resolution memorializing Congress to amend the Federal Fair Labor Standards Act to increase to one dollar and eighty-five cents the hourly minimum wage

Whereas, It is a matter of the most serious concern to the Legislature of the State of New York that many thousands of citizens of this State are paid only the minimum wage of one dollar and sixty cents per hour, an amount which is insufficient to maintain an adequate standard of living; and

Whereas, The steady increase in the cost of living since the last minimum wage adjustment makes it necessary to increase the basic rate now if the State is to continue to meet its responsibilities to its working men and women; and

Whereas, It is the desire of the Legislature to amend the appropriate provisions of New York's Labor Law to increase the minimum hourly wage of persons covered thereby to one dollar and eighty-five cents; and

Whereas, It is imperative that the Federal Fair Labor Standards Act be promptly amended to increase the hourly minimum wage rate thereunder to one dollar eighty-five cents per hour in order that wage-earners throughout the country be adequately protected so that they may maintain an adequate standard of living; now, therefore, be it

Resolved (if the Senate concur), That the Congress of the United States be, and it hereby is, respectfully requested with all convenient speed to amend the Fair Labor Standards Act by increasing to one dollar and eighty-five cents the hourly minimum wage thereby prescribed; and be it further

Resolved (if the Senate concur), That copies of this resolution be transmitted to the Secretary of the Senate and Clerk of the House of Representatives of the Congress of the United States, and to each member thereof from the State of New York, and that the latter be urged to devote themselves to the task of accomplishing the purpose of this resolution.

By order of the Assembly,

DONALD A. CAMPBELL,
*Clerk.*

Concurred in, without amendment, by order of the Senate.

ALBERT J. ABRAMS,
*Secretary.*

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JORDAN of North Carolina, from the Committee on Public Works, without amendment:

S. 3594. A bill to authorize the acquisition of certain property in square 724 in the District of Columbia for the purpose of extension of the site of the additional office building for the United States Senate or for the purpose of addition to the United States Capitol Grounds (Rept. No. 91–877).

By Mr. EASTLAND from the Committee on the Judiciary, with amendments:

H.R. 4204. An act to amend section 6 of the War Claims Act of 1948 to include prisoners of war captured during the Vietnam conflict (Rept. No. 91–878).

## EXECUTIVE REPORT OF A COMMITTEE

As in executive session, the following favorable report of nominations were submitted:

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare:

Horton Guyford Stever, of Pennsylvania, Herbert E. Carter, of Illinois, Robert Alan Charpie, of Massachusetts, Lloyd Miller Cooke, of Illinois, Robert Henry Dicke, of New Jersey, David Murray Gates, of Missouri, Robert W. Heyns, of California, Frank Press, of Massachusetts, and Frederick P. Thieme, of Colorado, to be members of the National Science Board, National Science Foundation.

## BILLS INTRODUCED

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

By Mr. BYRD of Virginia:

S. 3847. A bill for the relief of Tasia Tsaroucha; to the Committee on the Judiciary.

By Mr. YARBOROUGH (for himself and Mr. TOWER):

S. 3848. A bill to provide additional assistance to the State of Texas for the reconstruction of areas damaged by tornadoes occurring on April 17 and 18 and May 11, 1970; to the Committee on Public Works.

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

By Mr. MURPHY:

S. 3849. A bill to amend section 8e of the Agricultural Marketing Agreement Act of 1937 so as to make the provisions of such section, relating to restrictions on imported commodities, applicable to strawberries; to the Committee on Agriculture and Forestry.

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

## S. 3848—INTRODUCTION OF A BILL TO PROVIDE EMERGENCY RELIEF FOR 11 TEXAS COUNTIES AFFECTED BY THE LUBBOCK AND PLAINVIEW TORNADOES

Mr. YARBOROUGH. Mr. President, I introduce for myself and Senator TOWER, for appropriate reference, a bill which would provide specific emergency relief to the areas devastated by the Lubbock tornado of May 11, 1970, and the Plainview tornadoes of April 17 and 18, 1970.

My bill, which would provide special emergency disaster relief, is patterned on the bill S. 2853, introduced by Senators EASTLAND, STENNIS, LONG, ELLENDER, RANDOLPH, BYRD of West Virginia, BYRD of Virginia, SPONG, ALLEN, and SPARKMAN, for assistance to the victims of Hurricane Camille and the Omnibus Disaster Assistance Act, S. 3619. My bill's principal features are:

First, authorization to the SBA to cancel up to $5,000 of any loan made under the disaster loan program for repairing and rebuilding damaged homes;

Second, authorization to the Farmers Home Administration to cancel up to $5,000 of a loan for the purpose of rebuilding or repairing agricultural property;

Third, special temporary housing provisions which would provide up to 12 months of relief; and

Fourth, authorization to the Secretary of Commerce to make direct grants of money to the cities and political subdivisions in the affected areas in amounts equal to tax or bond obligations outstanding at the time of the tornado which now cannot be met because of the disaster; and

Sections 4(b) (1) and (2) of my bill are directed at assisting the Mexican Americans and other low-income citizens of Lubbock in retaining their homes by authorizing the SBA to make loans to refinance any mortgage and other liens on these people's property and for payment of the installments on obligations of contracts of sales, and leases. To qualify for these loans, all that would be necessary is that the individual be in financial difficulty as a result of the disaster. No application for this relief would be denied because of insufficient proof unless the SBA made written fact findings that the cause of the individual's financial difficulty was not related to the tornadoes. These provisions will help these people to retain their homes and preserve their community.

The tornado which struck the city of Lubbock on May 11, 1970, at 9:45 p.m. was of tremendous force. This prosperous agricultural and commercial center had less than 2 minutes warning of the approach of this tornado. The tornado touched ground and destroyed an area approximately 8 miles in length and 1 or 2 miles in width. Heavy damage was suffered in the central business district, in the airport area, and in some residential subdivisions. There are no words that can accurately describe the devastation that was done to this city.

According to present estimates, there are 23 known dead and approximately 10,000 people homeless as a result of this storm in Lubbock, Tex. The number of injured has reached approximately 500 with more being reported daily. Unofficial estimates report the following with regard to property damage: dwellings destroyed, 460; dwellings with major damage, 489; dwellings with minor damage, 764; trailers destroyed, 80; trailers with minor damages, 30; and small businesses destroyed, 250.

These tragic statistics continue to rise as more damage is reported. It is estimated that at least 10 percent of the city's tax base has been destroyed.

I have just returned from a tour of the devastation in Lubbock, and I am sad to report it is one of the worst natural disasters that I have ever seen. The problems confronting the people of the area cry out for fast and effective remedies. Local, State, and Federal authorities are on the scene and are doing what they can within the limitation of the law. Unfortunately, our present disaster laws do not afford the means to do all that should be done in natural disasters of this magnitude.

From my visit, I discovered that the most difficult problem in the hours after the tornado struck was communication. Local authorities did the best that they could to try to obtain relief for the people in the devastated areas of this city. Unfortunately because of lack of communication, it is reported that some injured people were unable to find hospitals and clinics that could treat them. The local authorities supported by State and Federal representatives are working hard to treat the injured and the sick. However, confusion still exists and reports as late as Thursday indicate that some people are having difficulty in obtaining medical treatment. These problems are not the fault of the officials and health specialists that are working in this area. They are doing all they can under very limited and trying circumstances. The source of the problem is lack of effective emergency disaster legislation which would bring emergency teams into an area quickly to establish communication and transportation systems which would get people to treatment centers.

One of the most tragic features of this terrible picture of destruction is the devastation of the Guadalupe section of Lubbock. This area is the historic Mexican-American barrio of the city of Lubbock, which is the home of the majority of the Mexican-American citizens of this city.

The majority of these people are in lower income or poverty brackets and many of them cannot speak English. The tornado took no pity on these people and destroyed a large portion of their community. Because of the language difficulties, these people were probably the most confused and bewildered of any group in Lubbock.

I wish to commend the splendid efforts of the American Red Cross, the Seventh Day Adventists, stuednts from Texas Technological University, and other religious and civic groups which have moved into the Guadalupe area and are feeding and clothing these people. Their work has been excellent, and they deserve the highest praise.

The principal problem that the people of this area now face is housing. Many of their homes have been partially or completely destroyed and they are forced to live in churches, with neighbors, and in the city's coliseum. It is imperative that the Federal Housing Administration move quickly to settle these people into temporary housing which is available in the area. Temporary housing, however, is not the solution to the problem. It is present Public Law 91–79, which was only a temporary remedy. These people must have Federal assistance in rebuilding and repairing their homes. The present law is not sufficient to meet the needs created by a disaster of this nature. The present Public Law 91–79, which was passed after Hurricane Camille, allows only $1,800 on SBA loan to repair and rebuild a home to be canceled. This amount is totally unrealistic in view of the cost of home repairs today. Furthermore this bill fails to provide for loans to people for the purpose of making their house payments or paying their rent while they are unemployed or in financial difficulty as a result of this disaster.

The most recent amendments to the natural disaster relief law, contained in Public Law 91–79, which were passed after the Hurricane Camille disaster, are not broad enough to provide the relief that is needed as a result of these disasters. New laws must be enacted to fill and expand this gap. Presently pending before the Public Works Committee is S. 3619, the Omnibus Disaster Assistance Act. This bill which was introduced by Senator BAYH and which I am cosponsoring, would greatly improve our capability to deal with disasters of the magnitude of Hurricane Camille and the Lubbock and Plainview tornadoes. I support this measure fully and urge Congress to act quickly on it.

So that my colleagues may have the benefit of the news report on the Lubbock tornado, I ask unanimous consent that newspaper stories from the Washington Post, Wednesday, May 13, 1970, entitled "Lubbock Left 'A Dead City' by Tornado"; the New York Times, Wednesday, May 13, 1970, entitled "Lubbock Tornado Kills 20, Destroys Buildings and Derails a Train"; and the Washington Evening Star, Tuesday, May 12, 1970, entitled "Texas Tornado Toll Placed at 19

to 26" be printed at this point in the RECORD.

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

[From the Washington Post, May 13, 1970]

LUBBOCK LEFT "A DEAD CITY" BY TORNADO

LUBBOCK, TEX., May 12—A nighttime tornado that struck again and again along an eight-mile path of death and destruction in this west Texas town, left 20 dead, as many as 1,200 injured and another 10,000 homeless today.

"Lubbock at this time is a dead city," said Mayor Jim Granberry, elected only three weeks ago. "The destruction is so extensive it defies the imagination."

The twister tore large chunks of concrete and marble from the 21-story Great Plains Life building and a huge gash was ripped through the bricks about halfway up. Police feared for a time it would topple or collapse.

A bus was smashed broadside into another building. Entire rows of warehouses became twisted masses of metal.

The First National Bank Building "looked like somebody had been shooting at it with cannon," an observer said.

Larry Teaver, aide to Gov. Preston Smith, told his office: "I've never seen anything with the force equal to this thing . . . One place a boxcar was blown through a grain storage elevator . . . Through the area known as Little Mexico there were about 600 homes, mostly of wood construction, and that is almost flat now, just piles of rubble . . . There's got to be more dead found . . . there are so many homeless, thousands and thousands."

Looting began before the winds died, said one policeman, and 300 National Guardsmen and 45 highway patrol units moved in quickly to patrol and direct traffic away from the city.

The flimsy homes of Little Mexico were not the only ones to suffer extreme damage. Half a dozen homes in the $200,000 class were demolished with their debris scattered over the greens and fairways of the nearby Lubbock Country Club.

More than 100 airplanes at the city airport were damaged or destroyed and two motels on the road to the airport were wiped out.

The Texas Insurance Advisory Association and preliminary surveys at the scene indicated at least $100 million in property damage. The Small Business Administration declared Lubbock, a city of 170,000, a disaster area.

It was the worst tornado in Texas since a twister reeled out of a thunderstorm in 1953 and killed 114 persons at Waco on the same date—May 11.

Lt. Gov. Ben Barnes, serving as acting governor in the absence of Smith, who was vacationing in Switzerland, toured the city today with other officials shortly after dawn.

The lieutenant governor inspected the city from a helicopter and said the area of damage was a mile wide and 8 miles long. Four hundred blocks suffered some destruction, with 100 blocks severely hit, he reported.

The dead included one family—Kenneth and Mary Jean Medlin and their two children, Alan Ray, 5, and Dusty, 18 months. Their home was destroyed.

Smiley Wilson Junior High School was turned into a morgue. Bodies were put in rubber bags, tagged and numbered, and lined up in the school gymnasium.

A large, round clock in the gymnasium stood silent and still with its two black hands at 9:27—the time the tornado struck Monday night.

Methodist Hospital kept track of the injured until the figure reached 302, then nurses ran out of medical forms. But they went on treating cuts, bruises and broken bones.

The downtown area was demolished. Fourth Street—a main thoroughfare lined with shops and plants—was stripped to the foundation. Not a building was left standing.

As one survivor described it:

"I told my mother it was a train coming and then my mother said it was not a train—it was the wind. We put the table over the head of the kids and then they (debris) hit me in the back and then I didn't see for a little while. It was real dark and then my babies started crying."

Oliva Gonzalez and her nine children fled to safety in a nearby storm cellar. The tornado demolished her house.

At Texas Tech, all light poles on the east side of Jones Stadium were blown down and there was doubt whether the stadium could be used for the Coaches All-America college football game on June 27.

Dr. Grover E. Murray, Texas Tech president, opened two large dormitories that had been closed for summer vacation to those left homeless.

Texans also gave shelter to the homeless at Amarillo, Big Spring, Midland, Odessa and smaller towns nearby.

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[From the Washington Evening Star, May 12, 1970]

TEXAS TORNADO TOLL PLACED AT 19 TO 26

LUBBOCK, TEX.—A tornado so powerful it ripped chunks of concrete from buildings has turned this city of 170,000 into a disaster area, with death estimates today ranging from 19 to 26.

State authorities counted 19 bodies, while newspaper and radio surveys reached a total of 26. Texas Safety Department officers said some dead may still be under debris.

Authorities said 300 or more suffered injuries when the tornado struck just before 10 o'clock last night. Property damage was estimated in the millions.

"There is no doubt in anybody's mind around here," said a veteran newsman, "that it is one of the biggest and most prolonged tornadoes ever to strike Texas."

AREA IS SEALED OFF

All persons except rescue workers were kept out of the downtown area. The National Guard called out 300 men, including a medical unit. The State Safety Department sent 45 units. The Red Cross dispatched six disaster teams with 10 mobile vans.

Cars lay flattened to within two or three feet of the pavement. A bus was slammed broadside into a building. The ground floor of the Lubbock Avalanche-Journal was awash from a cloudburst which came with the twister.

The width of the destruction was the greatest from any tornado observers could remember.

The storm left a path of destruction eight miles long.

It was several hours after the tornado struck before state and city police could find time to begin searching the wreckage.

STORE FRONTS BLOWN OUT

Damage centered in the downtown area, where virtually all store fronts were blown out and a policeman said, "Looting started before the wind died down." Police patrolled the streets to curb further thefts.

Beverly Williams, a housewife, said her first warning of the tornado came when "I heard a tremendous whomp." She and a neighbor piled mattresses on top of themselves and waited out the storm.

Mrs. Williams said, "A neighbor woman kept yelling 'Oh, God, we're going to die!' and I just tried to calm her down. I was scared, but I never thought I was going to die."

After a brief lull, she said the wind began kicking up again.

"This time we climbed into the bathtub, but the second tornado never came."

A. W. Voight, executive director of the American Red Cross in Lubbock, said, "Official reports are virtually nonexistent.

"We have no estimate of the number of homes or buildings destroyed because our efforts have been aimed at rescue and relief work.

"We have one shelter open and we have people going into our municipal coliseum."

The twister tore concrete chunks off skyscrapers and whipped broken glass through the streets, causing many injuries.

Electrical power went out. Southwestern Bell Telephone Co. rushed 300 men into the area to restore service on 35,000 telephones.

Mayor James Granberry described the damage as "massive, just massive."

Hospitals were quickly jammed with the injured and two of the city's largest had to turn patients away after filling corridors with beds and cots for those who arrived earlier.

Near 19,000-student Texas Technological College two apartment buildings were shattered. Injured, many bleeding from facial wounds, lined the streets waiting for help. A big brick wall at the college blew down, demolishing a number of parked cars.

Damage was heavy and injuries numerous in the Mexican-American section of the city, where buildings generally were of flimsy construction.

"We are trying to set up some sort of evacuation system for the injured," Granberry said. "I guess we'll try to get them into Midland-Odessa area to the south and Amarillo to the north."

The wind tore great sections of concrete siding from the 15-story First National Bank building and the Pioneer Natural Gas building in the downtown section, leaving both virtually windowless.

Also damaged heavily was the Lubbock Avalanche-Journal plant.

Jay Harris, managing editor of the newspaper, said a second story wall of a major addition just completed at the Avalanche-Journal building was blown away—"destroyed in seconds."

"I heard it coming," Harris said, "I was talking on another matter to the AP in New York. The noise came in a rising crescendo and reached such a pitch that you could hear nothing else.

"Then all the lights went out.

"Winds along each side of the funnel and following it were clocked at more than 100 miles per hour.

"It looks like somebody has been shooting at the First National building with cannons."

Braniff International said it had canceled flights into the Lubbock airport because the control tower was destroyed.

The Smiley Elementary School was turned into a temporary morgue.

Several city water pumping stations were knocked out and during the early morning hours officials declared a water emergency, advising that it be used only for drinking and cooking.

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[From the New York Times, May 13, 1970]

LUBBOCK TORNADO KILLS 20, DESTROYS BUILDING AND DERAILS A TRAIN

(By Martin Waldron)

LUBBOCK, TEX., May 12.—The storm that devastated much of downtown Lubbock on the South Texas plains last night was so powerful that it blew a freight train off its track and left a 21-story downtown office building gashed, its supports weakened.

The tornado was more than a mile wide and had hurricane force winds extending three miles to the east.

Officials said that 20 persons died and more than 300 were seriously injured by the storm that dipped down into the center of town and rumbled across the north side, smashing homes, stores, motels, automobiles—everything in its path.

At the airport, north of town, scores of privately owned planes were twisted together and destroyed by the wind, estimated un-

officially at more than 200 miles an hour. The airport was closed to traffic and the field tower was destroyed.

"I have been covering tornadoes in this area for 30 years," said Jay Harris, the executive editor of The Lubbock Avalanche-Journal. "I've never seen anything like this."

NEWSPAPER DAMAGED

Mr. Harris was in his office when the tornado hit at 9:47 P.M. The newspaper building was in the storm's path and was badly damaged, a portion of it falling onto a truck in which a driver was taking a nap.

"The tornado lasted several minutes, and the wind after it blew at hurricane force for five to 10 minutes," Mr. Harris said. "I walked from one side of the building to the other and watched the debris flying through the air."

The editor noted an eerie addition to the thunder and lightning that accompanied the tornado. "In this lot across the street, an automobile dealer has a bunch of new Fords, and the lightning caused a short circuit in the cars and their lights began to blink off and on and their horns started blowing in all that wind," Mr. Harris said.

The storm pelted the area with golf-ball-sized hail and several inches of rain.

Lieut. Gov. Ben Barnes, who flew to Lubbock to direct emergency rescue operations, estimated the damage at $25-million to $30-million. But State Senator H. J. Blanchard, who was bruised when a chair hit him in the back at the Lubbock Club on the 14th floor of the First National Bank Building, said that there was at least $100-million in damages.

Marble veneer on the outside of the bank building was peeled away by the wind, as were bricks on the outside of the 21-story Great Plains Life Building, Lubbock's tallest structure. The Great Plains building and the Pioneer Hotel across the street were evacuated and declared to be too dangerous for occupation.

Some officials expressed concern that the Great Plains building, which was bowed on one side by the wind, might collapse. Windows and walls on the southwest corner were blown away.

National Guardsmen and state highway patrolmen joined the local police in guarding the downtown area. There were reports of minor looting.

The damage to Lubbock was so extensive that many spectators could not believe that only 20 persons were killed.

"I couldn't believe what I saw," said Representative George H. Mahon, chairman of the House Appropriations Committee. Mr. Mahon, who lives in Lubbock, flew from Washington to survey damage and to lend his influence to get President Nixon to declare the vicinity a major disaster area so that it would qualify for low-cost Government loans.

COMPARED TO BOMBED CITY

Senator John G. Tower, who compared the downtown section of Lubbock to a Japanese city he had seen bombed after World War II, said that he could not believe the death toll was no higher than it was. He said that the sheets of tin and other metal, that were flung as far as a mile by the howling wind could easily have decapitated a person.

The death and injury toll was held down because many of the 170,000 residents of Lubbock took shelter in storm cellars.

"I didn't know there was a tornado," said Mrs. Katheren Chaney, whose modest frame home was in the path of the storm near the airport. "I guess the good Lord was with me, because something told me to go to the cellar."

She said she gathered her eight children together and took refuge. Her husband, a truck driver, was not at home.

Mrs. Chaney said the storm, which caused heavy damage to the airport facilities as it passed her house, sounded like "a bunch of freight trains."

The tornado formed out of thunderstorms that began building late in the afternoon along a wind sheer line between masses of air flowing from the southeast and the southwest.

BEGAN BUILDING UP

"It was hot and pretty yesterday afternoon," said a Lubbock Patrolman, Mitch Blount. "But it began building up in the late afternoon and about seven o'clock it began thundering and lightning."

By nine o'clock, the clouds, lit from behind by the setting sun, glowed green and blue-black.

"At first there was hail, and then came this wind and then came the water," said Patrolman Blount. "It was a regular cloudburst. It was a lake here in the downtown section."

Patrolman Blount said that the Santa Fe freight train blown off the tracks by the wind had a crew of "eight or ten," all of whom were injured.

On Highway 87, north of Lubbock, a row of motels were splintered by the tornado that stayed on the ground about six miles.

The second floor of the new Ramada Inn was blown away and 20 cars and one truck in the parking lot were destroyed. Patrolmen moved mattresses and furniture from the highway this morning to open it to traffic.

Block after block of shanties in the Mexican-American section of Lubbock were leveled.

"I honest-to-God don't know why hundreds of them weren't killed," a woman said, staring out over the debris where dazed men and women were poking through rubble. Officials said only four persons were killed in the Mexican-American section where hundreds of families were left homeless.

A half dozen agencies set up refugee shelters to take care of the homeless.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that the bill I have introduced today be printed at this point in the RECORD.

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

The bill (S. 3848) to provide additional assistance to the State of Texas for the reconstruction of areas damaged by tornadoes occurring on April 17 and 18 and May 11, 1970, introduced by Mr. YARBOROUGH (for himself and Mr. TOWER), was received, read twice by its title, referred to the Committee on Public Works, and ordered to be printed in the RECORD, as follows:

S. 3848

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress hereby recognizes that the State of Texas suffered extensive property loss and damage as a result of tornadoes occurring on April 17 and 18 and May 11, 1970, including loss and damage from wind and flooding caused by such tornadoes, and that there is a need for special measures designed to aid these States in their efforts to reconstruct highways and public works projects, and to otherwise rehabilitate these devastated areas.

SEC. 2. (a) As used in this Act, the term "major disaster" means a major disaster as determined by the President pursuant to the Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", approved September 30, 1950, as amended (42 U.S.C. 1855–1855g).

(b) The provisions of this Act shall apply only to those areas of the State of Texas covered by the President's proclamation of May 13, 1970, that a major disaster resulted from the tornadoes which struck certain areas within the State of Texas on April 17 and 18, and May 11, 1970.

SEC. 3. Notwithstanding any other provision of law, trailers provided as temporary housing for persons whose dwellings were destroyed by such tornadoes, including, but not limited to, destruction by flood, high waters, wind-driven waters, and high wind, under section 3(d) of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" as amended (42 U.S.C. 1855b), may be sold directly to the persons who are the occupants thereof at prices that are fair and equitable.

SEC. 4. (a) In the administration of the disaster loan program under section 7(b)(1) of the Small Business Act, as amended (15 U.S.C. 636(b)(1)), the Small Business Administration, in the case of loans to assist persons suffering property loss or damage in the State of Texas as the result of such tornadoes, and to the extent such loss is not compensated for by insurance or otherwise, shall—

(1) on that part of the Federal share of any such loan in excess of $500 and, (A) cancel up to $5,000 of the loan, and (B) waive interest due on the loan in a total amount of not more than $5,000 over a period of not to exceed four years;

(2) make such loans without regard to any limitation on the maximum amount of the Small Business Administration's share or guaranteed percentage of any disaster loan established by regulation or otherwise; and

(3) in the administration of the disaster loan program under section 7(b) of the Small Business Act, as amended, the Administrator if he determines that such action is necessary to avoid severe financial hardship may in the case of the total destruction or major property damage of a home or business concern refinance any mortgage or other liens outstanding against the destroyed or damaged property if such refinancing is for the repair, rehabilitation, or replacement of property damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, without regard to whether (A) the required financial assistance is otherwise available from private sources, or (B) such person has personal or business assets which could be used to alleviate the loss or damage sustained.

(b) (1) In the administration of the disaster loan program under section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)), the Small Business Administration, if necessary to prevent the dispossession or eviction of any person from his residence as a result of the foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, oral or written, of the property which is such person's residence, and if such foreclosure, cancellation, or termination is related to circumstances arising out of the effects of such tornadoes, shall make such loans for the refinancing of such mortgages or liens and for the payment of installments on such contracts and leases, under the terms and conditions set forth in such section of the Small Business Act as modified by subsection (a) of this section.

(2) No application for a loan under this subsection which states that such loan is made necessary by circumstances arising out of the effects of such tornadoes shall be denied for insufficiency of proof of such statement unless the Small Business Administration finds, and sets forth its findings in

writing, that such loan is made necessary by circumstances not related to the effects of such tornadoes.

(c) In the administration of the disaster loan program under sections 7(b)(1) and 7(f) of the Small Business Act, as amended (15 U.S.C. 636(b)(1) and (f)) the Small Business Administration may accept applications from, and make loans to, a privately owned school which suffered damage from such tornadoes, on the same terms and conditions as are applicable under such section to a privately owned college or university.

(d) No application for a loan under section 7(b)(2) of the Small Business Act, as amended (15 U.S.C. 636(b)(2))—

(1) filed with the Small Business Administration by a small business concern which has suffered substantial economic injury and is located in an area in which there was suffered property loss or damage in the State of Texas as the result of such tornadoes; and

(2) stating that such injury was the result of such tornadoes;

shall be denied for insufficiency of proof that such injury was the result of such tornadoes; unless the Small Business Administration finds, and sets forth its findings in writing, that such injury resulted from causes other than such tornadoes.

SEC. 7. In the administration of the emergency loan program under subtitle C of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1961–67), in the case of property loss or damage in the State of Texas resulting from such tornadoes, or uninsurable crop loss due to such tornadoes, the Secretary of Agriculture shall, to the extent such loss or damage is not compensated for by insurance or otherwise, that part of any loan in excess of $500, (1) cancel up to $5,000 of the loan, and (2) waive interest due on the loan in a total amount of not more than $5,000 over a period not to exceed four years.

SEC. 8. (a) In the administration of the disaster loan program under section 7(b) of the Small Business Act, any application for a loan thereunder may be granted, if such loan is for the repair, rehabilitation, or replacement of property damaged or destroyed as the result of a major disaster, without regard to whether the required financial assistance is otherwise available from private sources.

(b) In the administration of subtitle III of the Consolidated Farmers Home Administration Act of 1961, relating to emergency loans, any application for a loan thereunder may be granted, if such loan is for the repair, rehabilitation, or replacement of property damaged or destroyed as the result of a major disaster, without regard to whether the Secretary of Agriculture finds that the required financial assistance can be met by private, cooperative, or other responsible sources (including loans the Secretary of Agriculture is authorized to make or insure under any other provision of law).

SEC. 5 (a) The Director of the Office of Emergency Preparedness is authorized—

(1) upon application, to make payments to any person in reimbursement of expenses not otherwise compensated, which were incurred by such person in the removal of debris deposited on privately owned lands as the result of such tornadoes; and

(2) to provide by contract for the removal, at the request of the landowner, of debris deposited on privately owned lands as the result of such tornadoes.

(b) In the awarding of contracts under this section, preference shall be given to those persons who reside or do business primarily in the locality in which the debris is to be removed. If time is of the essence competitive bidding may be waived by the Office of Emergency Preparedness.

(c) As used in this section, the term "person" includes an individual, corporation, association, firm, organization, or local public body.

SEC. 6. Upon application by any political subdivision of the State of Texas, the Secretary of Commerce is authorized to make direct grants of money to such political subdivision in amounts equal to the tax or bond obligations outstanding at the time of such tornadoes, upon a showing, to the satisfaction of the Secretary of Commerce, that such obligations cannot be met due to damage or destruction, resulting from such tornadoes, of the revenue sources for meeting such obligations.

SEC. 7. (a) The President is authorized to provide dwelling accommodations for any individual or family whenever he determines—

(1) that such individual or family occupied a house (as an owner or tenant) which was destroyed, or damaged to such an extent that it is uninhabitable, as the result of such tornadoes; and

(2) that such action is necessary to avoid severe hardship on the part of such individual or family; and

(3) that such owner or tenant cannot otherwise provide suitable dwelling accommodations for himself and/or his family.

(b) Such dwelling accommodations, including mobile homes, as may be necessary to meet the need, shall be provided through acquisition, acquisition and rehabilitation, or lease. Dwelling accommodations in such housing shall be made available to any such individual or family for such period as may be necessary to enable the individual or family to find other decent, safe, and sanitary housing which is within his or its ability to finance. Rentals shall be established for such accommodations, under such rules and regulations as the President may prescribe and shall take into consideration the financial ability of the occupant. In cases of financial hardship, rentals may be comprised or adjusted for a period not to exceed twelve months, but in no case shall any such individual or family be required to incur a monthly housing expense (including any fixed expense relating to the amortization of debt owing on a house destroyed or damaged in a disaster) which is in excess of 25 per centum of the individual's or family's monthly income.

(c) In the performance of, and with respect to, the powers and duties conferred upon him by this section, the President may—

(1) prescribe such rules and regulations as he deems necessary to carry out the purposes of this section;

(2) exercise such powers and duties either directly or through such Federal agency or agencies as he may designate;

(3) sell or exchange at public or private sale, or lease, any real property acquired or constructed under this section;

(4) obtain insurance against loss in connection with any such real property;

(5) enter into agreements to pay annual sums in lieu of taxes to the State of Texas or any local taxing authority thereof with respect to any such real property; and

(6) include in any contract or instrument made pursuant to this section, such conditions and provisions as he deems necessary to assure that the purposes of this section will be achieved.

SEC. 8. (a) If the President determines that, as a result of such tornadoes, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture coupon allotments to such households pursuant to provisions of the Food Stamp Act of 1964 or as said Act may be amended and to make surplus commodities available pursuant to the provisions of section 3 of Public Law 875 of the Eighty-first Congress.

(b) The President is authorized to continue through the Secretary of Agriculture to make such coupon allotments and surplus commodities available to such households so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households to which assistance is made available under this section.

(c) Nothing in this section shall be constructed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 except as it relates to a Presidential determination regarding availability of food stamps under the provisions of this Act.

SEC. 9. The President is authorized to provide to individuals unemployed as a result of such tornadoes such assistance as he deems appropriate while they are unemployed. No individual who is receiving unemployment compensation or the proceeds of private income protection insurance shall be eligible for such assistance. Such assistance as the President shall provide shall not exceed the amount and the duration of payments under the unemployment compensation program of the State of Texas.

SEC. 10. The President is authorized to make grants to the State of Texas or any political subdivision thereof for the purpose of lake clearance in cases where, as a result of such tornadoes, any lake has been contaminated by debris which has created conditions hazardous to health and safety.

SEC. 11. This Act shall not be in effect after January 1, 1971, except with respect to payment of expenditures for obligations and commitments entered into under this Act on or before such date.

SEC. 12. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

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## S. 3849—INTRODUCTION OF A BILL TO AMEND THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

Mr. MURPHY. Mr. President, I introduce a bill to amend the Agricultural Marketing Act of 1937 to permit the inclusion of imported strawberries under any marketing order regulating strawberry grade, size, quality, and maturity.

Strawberries grown in California now are subject to a marketing order under a California State law. This order proscribes certain standards for size and quality and, naturally, compliance with these standards increases the farmer's cost of production. Under the State statute, these standards cannot be imposed upon imported strawberries. As a result, lower quality imports selling at a lesser price are depressing the market in California. For example, the 1970 season opening price for domestic strawberries was $4.50 per 12-pint crate while lower quality imported strawberries were selling for $2.50 per 12-pint crate. In 1969, imports were 1,779 carload equivalents. This year, imports to date were in excess of 2,000 carload equivalents and heavier importation is anticipated for 1971. As a result, I am introducing this amendment that will not prohibit importation of strawberries, but only require that those imported are of equal grade, size, quality, and maturity as those marketed under marketing orders adopted pursuant to the Agricultural Marketing Act of 1937. This amendment will protect the consumer's right to expect a high-quality product, while at the same time allowing for competition for the consumer's dollar.

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

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

The bill (S. 3849) to amend section 8e of the Agricultural Marketing Agreement Act of 1937 so as to make the provisions of such section, relating to restrictions on imported commodities applicable to strawberries, introduced by Mr. MURPHY, was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

S. 3849

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first sentence of section 8e of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is amended by inserting "strawberries," immediately before "tomatoes".

## SENATE CONCURRENT RESOLUTION 67—SUBMISSION OF A CONCURRENT RESOLUTION TO PROVIDE FOR THE DESIGNATION OF NATIONAL HALIBUT WEEK

Mr. BYRD of West Virginia (for Mr. MAGNUSON) submitted a concurrent resolution (S. Con. Res. 67) to provide for the designation of National Halibut Week, which was referred to the Committee on the Judiciary.

(The remarks of Mr. BYRD of West Virginia when he submitted the concurrent resolution appear later in the RECORD under the appropriate heading.)

## SENATE RESOLUTION 410—SUBMISSION OF A RESOLUTION EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO REDUCED AIR FARES FOR YOUTHS

Mr. STEVENS. Mr. President, several weeks ago I wrote to student body presidents all over Alaska asking for their comments about airline youth standby fares. The Civil Aeronautics Board is presently considering whether or not airlines will be permitted to continue discount fares for young people between 12 and 22 years of age. I wish to bring to the attention of my colleagues a positive, constructive example of American youth, in this case the youth of Alaska, effectively participating in an issue of vital concern to them.

My purpose for bringing this matter before the Senate is twofold. First, it is a bona fide issue of significant importance to youth. Second, by our cognizance of the matter we may illustrate to the young people of our Nation that they can be heard—they can accomplish their objectives—and their presence can be felt by us in Government through their exercise of legitimate procedure for redress.

Briefly, the background on this matter is that a circuit court of appeals ordered the Civil Aeronautics Board to consider a bus company's petition that youth discount rates are "unjustly discriminatory." The case was remanded to a board examiner who decided in favor of the petitioner. Upon review, the Board tentatively determined that discount rates for youth are not unjustly discriminatory and remanded the case back to the Examiner for further consideration and accumulation of evidence on other matters.

Since then, the Youth Standby Fares and other discount rates have been incorporated into the overall Domestic Passenger-Fare Investigation — Civil Aeronautics Board Docket 21866. As part of the overall investigation, the Civil Aeronautics Board will conduct hearings in June that will determine whether or not airlines may continue Youth Standby Fares.

Response from students in high school and college has been overwhelming. They have discussed the matters among themselves, with teachers and parents and have written letters to the CAB expressing their views. Many students have written to me and their letters have been answered and forwarded to the Board to be made part of the official record on this matter. In addition, the Senate Commerce Committee has received a substantial amount of mail supporting S. 1179. This bill, which I had the opportunity of cosponsoring with the senior Senator of Illinois (Senator PERCY), would provide a legislative basis for airlines to adopt youth discount rates if they desire. It would extend the privilege to military personnel, elderly people, and those who have physical handicaps.

Mr. President, youth standby fares normally represent about a 50-percent savings on airline tickets for young people between 12 and 22. Justification of this policy is best stated by the students themselves. Of course, there are too many letters to quote from each one, but I would like to share with my colleagues just a few of the insights these young people have provided me in this matter.

Mark Bear, a student of East Anchorage High School, points out that:

> Due to Alaska's unique position, the education of Alaskan students would suffer. Alaska does not have the different education facilities that are offered in the Lower 48. This losing of Student Standby Fares would make the cost of education to Alaskan students soar.

Linda Olsen, from Anchorage, plans to attend Pacific Lutheran University in Tacoma, Wash., next year. She offers the following thought:

> I would think that out of three students it would be better to have three flying student standby than one student flying full fare and two empty seats.

Sandy Huffnagle of West High School in Anchorage agrees and says:

> That empty seat on the airplane might as well seat a student at half fare than no one at all.

Here is what young Alaskan Macey Jo Winn says about the importance of youth standby fares:

> If these rates are taken away we will not be able to self-educate, we'll become the product of "Well, I heard" or "Well, I read"! Not, "Well, I know"! We are the ones who are going to run the world. Do you want the "I heard" or the "I read" to do it?

Peggy Webb noted that students who live in the lower 48 can drive or take a bus home for vacations or emergencies, but Alaskans must rely on air transportation. Speaking of the added expense of a full fare airline ticket, Miss Webb says:

> This money could mean a month of meals to a college student.

Thomas Briggs will be attending college 3,000 miles away from his home in Alaska. He writes of the discount fares:

> If they are abolished, I won't see my family again for at least five years. The effect on my family will be bad. The effect on my college performance will be bad.

Another Alaskan, Clark Silcox, says:

> To many, a lower travel fare means the opportunity to consider other colleges or universities outside the realm of the state boundary.

Jeffries Nickerson, writing from Klawock, Alaska, to the Senate Commerce Committee on S. 1179, notes students' expenses for books, lunch, clothes, and transportation. He writes:

> They have these expenses but only three months to get a job in which to earn hardly enough money for these expenses.

Janna Cooley from Anchorage wrote to tell us that only Youth Standby rates enabled her to participate in swimming meets in Fairbanks, Seattle, and Hawaii.

Denise Bousely of Metlakatla, Alaska, came to Washington, D.C., this year to attend the Presidential Classroom for Young Americans. Denise says of the student fare:

> If I did not go Standby, our town, which sponsored me, would not have been capable of sending me.

Finally, we have a plea from Chris Maas of Anchorage who wrote to ask:

> Please think before changing the student fares.

Mr. President, hundreds of young people have made known their views on this matter by letters and petitions to the Civil Aeronautics Board, the Senate Commerce Committee, my office and, I am sure, many other Senate offices. I am proud of these young people. They are activists in an issue of national significance.

The means they have chosen to accomplish their end are the logical and legitimate means our system provides. It is important that we respond by more than mere acknowledgment.

As the Civil Aeronautics Board convenes its hearings on Youth Standby Fares June 10, this body has the opportunity to support our young people by expressing itself on this matter. I am today submitting a resolution and ask that it be printed in the RECORD immediately following my remarks.

The PRESIDING OFFICER (Mr. DOLE). The resolution will be received and appropriately referred; and, without objection, the resolution will be printed in the RECORD.

The resolution was referred to the Committee on Commerce, as follows:

S. RES. 410

*Resolved*, That it is the sense of the Senate that the regulations of the Civil Aeronautics Board authorizing air carriers to grant reduced air fares to youths are consistent with the purposes and provisions of the Federal Aviation Act of 1958.

## ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 409

Mr. PERCY. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Montana (Mr. MANSFIELD) be added as a cosponsor of Senate Resolution 409, expressing the sense of the Senate regarding the combat use of U.S. Armed Forces as an instrumentality of foreign policy.

The PRESIDING OFFICER (Mr. DOLE). Without objection, it is so ordered.

## OFFICE OF EDUCATION APPROPRIATIONS BILL, 1971—AMENDMENTS

AMENDMENT NO. 632

Mr. KENNEDY submitted amendments, intended to be proposed by him, to the bill (H.R. 16916) making appropriations for the Office of Education for the fiscal year ending June 30, 1971, and for other purposes, which were ordered to lie on the table and to be printed.

## JURISDICTION FOR THE U.S. DISTRICT COURT FOR THE DISTRICT OF ALASKA TO HEAR AND DETERMINE THE CLAIM OF THE STATE OF ALASKA FOR A REFUND OF A SUM PAID TO THE UNITED STATES FOR FIREFIGHTING SERVICES—AMENDMENT

AMENDMENT NO. 633

Mr. STEVENS submitted an amendment, intended to be proposed by him, to the bill (S. 3258) to confer jurisdiction on the U.S. District Court for the District of Alaska to hear and determine the claim of the State of Alaska for a refund of a sum paid to the United States for firefighting services, which was referred to the Committee on the Judiciary and ordered to be printed.

## ADDITIONAL STATEMENTS OF SENATORS

## FACT OR FANCY: THE DEPARTMENT OF JUSTICE PREVENTIVE DETENTION STUDY AND THE DEPARTMENT OF JUSTICE PREVENTIVE DETENTION BILL

Mr. ERVIN. Mr. President, the controversy over preventive detention during the past 2 years has been unique in one respect at least. While there have been repeated claims of a pressing need for preventive detention, there has not yet been any accurate assessment of that need, much less proof that a crisis exists which justifies such an extraordinary departure from constitutional principles as preventive detention.

Some of the claims made on behalf of preventive detention have stressed particularly shocking instances of crimes committed by individuals on bail. Each time these incidents have been reported, they have produced dismay and anger among judges, police, lawmakers, and the public at large. I confess that I, too, share the dismay and anger that these reports evoke. From time to time I have personally investigated the worst of these reports. Very often, more often than not, I have found that the actual facts of these incidents do not amount to a case for preventive detention. All too often, the individual charged had been free on bail for many months while no serious effort had been made to bring him to trial. Or, we find that the man had a previous record, and the prosecutor, had he known of this, could have asked for deterrent action perfectly consistent with existing law but short of preventive detention. We find that often the judge could have taken steps to prevent such recurring crime had he been requested to do so by the prosecutor, and had he employed some of the means now available under the law to control and supervise persons on bail.

These cases, all too often, demonstrate that faulty and inadequate information was available to the judge and prosecutor, that the trial court machinery was inadequate or had broken down, or that there was a failure to use the available tools of the law. These, and not the Bail Reform Act, were the real causes of the failure to prevent the outrage. Very often in these cases it develops that the accused was on probation or parole, that he had been charged with prior capital offenses, or that he had a long string of as yet untried crimes. If the law enforcement officials had known what they should be expected to know, had they employed the tools already given them, the shocking crime could have been prevented. These cases do not prove the case for preventive detention. They demonstrate the need for long-delayed reform and improvement of the criminal justice machinery.

Other claims on behalf of preventive detention are based upon general statements of rising crime rates, upon an alleged connection between the passage of the Bail Reform Act and increased crime, or upon other misleading statements designed to whip up public support but not well-calculated to enable an impartial observer to make an accurate judgment of the need for preventive detention.

Finally, the case for preventive detention has relied heavily on bald assertions of the amount of crime committed by persons on bail. References have been made to the experience of judges, police, and prosecutors who "know" that preventive detention is needed and justified. We are asked to take their expertise on faith, and not to bother too much with our own independent assessment.

I greatly respect the views of these experts on many matters in the field of law enforcement. I believe that in matters of this sort, their views should be given great weight. But we in the legislature have an obligation to make independent assessments of the need for new laws. We may not merely act at the request of others, and abdicate our responsibility for independent judgments, and certainly not when a law like preventive detention is proposed, a law which would be a repudiation of centuries of Anglo-American concepts of due process, and which is fraught with constitutional defects and opportunities for abuse.

The debate on preventive detention thus far has had to rely on totally inadequate information. At the constitutional rights hearings in January and February 1969, almost every witness both for and against preventive detention, acknowledged that adequate and reliable data on pretrial crime was lacking. Almost every group which has studied the problem of bail has stressed the need to get some reliable indication of the true state of affairs.

For example, the Judicial Council Committee to study the operation of the Bail Reform Act of the District of Columbia, the Hart committee, commissioned the Bureau of the Census to canvass the available information on the need for preventive detention. After this survey, the Bureau reported:

> A thread that runs through the reports, the debates, the public statements is simply that there are not enough data, or there are no data, or the data which exist are either incomplete, the wrong type of data, out of date, or inadequate for one reason or another.

The Hart committee itself said:

> Data which shows the precise extent of crime on bail is not available. Neither private research organizations nor government have undertaken the necessary work. No one has assembled the financial resources, the computerized analysis and the professional direction which are necessary for a comprehensive or fully adequate study.

When the Department of Justice first began to discuss its intention to submit a preventive detention bill, it recognized that it had a responsibility to Congress and the public to support its legislation with facts. Thus it was that in April 1969, the Department began steps to commission a study to gather facts in support of the bill it was drafting. The legislative work on the bill was easier to do than the gathering of supporting data, however. The bill was completed and submitted to Congress in July 1969, only 6 months after the Department began its work. The commissioning of the study took longer, and arrangements were not completed until August of last year.

Working through the Department's Law Enforcement Assistant Administration, the National Bureau of Standards of the Department of Commerce was selected to make a study of the Washington, D.C. courts with a view to assessing the need for preventive detention, isolating the critical facts which would be needed if such a program were authorized, and devising a method by which a reliable system of preventive detention could be implemented.

The facts which the Department of Justice sought are essential prerequisites for an accurate judgment of whether preventive detention is justified. The study also is necessary if a preventive detention system is to accomplish the goals assigned to it. Thus, even if a need for preventive detention can be

shown, it is still necessary to fashion the legislation to meet the problem of pretrial crime. More is required than merely a program of denying bail to every person arrested for a crime, and putting him in jail for the indefinite duration until the court gets around to trying him.

The Department's own proposal, S. 2600, acknowledges that preventive detention must be carefully fashioned to meet a special problem. The bill is based upon a series of untested assumptions about the amount and nature of pretrial crime, and the ability of judges and prosecutors to predict those defendants who are predisposed to crime while on pretrial release. For example, the bill defines certain special classes of offenses, and certain special types of defendants who will be subjected to pretrial detention proceedings. It utilizes a theory of predicting dangerous behavior based on certain facts about the individual and his background. It presumes a knowledge of the frequency of crime, the information about defendants available to the police, the prosecutors, and the judge. It makes other assumptions about the capacity of the courts to handle additional work, and the jails to accommodate additional defendants.

It is extraordinary that the Department should have first drafted a preventive detention bill, and then set out to analyze the problem. It would appear to me that the path of responsible legislating is first to assess the problem, and then to draw legislation to meet the true situation.

In proceeding as it did, the Department took a great many risks. First, there is the risk that the study it commissioned will demonstrate that preventive detention is not justifiable upon the facts. But there is the additional risk that even if preventive detention as a concept can be supported, it may be that it will have to be approached quite differently from the way Department proposes in S. 2600.

In my judgment, the Deartment of Justice study has demonstrated that S. 2600 fails on both accounts. To me, it demonstrates first that preventive detention cannot be supported on a fair reading of the facts. But it also demonstrates that were the Department's bill to be put into effect, it would not accomplish the goals assigned to it. The study shows that many of the assumptions upon which S. 2600 is based are either refuted by the facts, or that no facts exist upon which such assumptions can fairly be based.

The Department of Justice study is the only reliable information now available to us against which preventive detention, and the Department's specific proposal, S. 2600, can be tested. An examination of the study shows that there is a wide gap between the Department's assumptions and the facts developed by the Department's own research. For this reason, it is important to analyze this study, and to discuss its findings.

The Department of Justice study began in August, 1969. It was conducted by the National Bureau of Standards of the Department of Commerce, the U.S. Government's expert in technical and scientific analysis. The actual work was done by the Bureau's Technical Analysis Division. This was a nonpartisan operation insofar as the National Bureau of Standards was concerned. They were not concerned with advancing or hindering preventive detention. Their only concern was with doing an accurate, reliable, thorough and scientific job. As the report states:

> It was emphasized from the outset that the study should not try either to support or to counter the advisability of the notion of preventive detention, but rather should assemble any data existing within the Criminal Justice System which would have a bearing on the subject.

The study was conducted from August 1969, until late winter 1970. The initial report, due first in January, was thereafter delayed until March 31. For as yet not completely explained reasons, the actual release by the Department of Justice did not occur until April 8.

The Bureau of Standards selected four representative weeks in 1968 for its pilot study. The researchers obtained every piece of recorded information relating to the criminal cases in the courts during that time. Extraordinary efforts were made to determine the accuracy of the data collected. Completeness and accuracy were "key considerations" in the study.

The 4-week study produced 910 defendants on the rolls, and analysis disclosed 712 defendants actually charged during the period. Something more than half, 426, were released prior to trial. The study group gathered 50,000 items of information on these cases and used a computer to analyze the data.

The first analysis of the information gathered from this data was published a few weeks ago. In a few more weeks from now, a more completed analysis will be published. Still to come is a wealth of data showing how the Bail Reform Act of 1966 has worked, and how the proposed preventive detention bill might be expected to work.

While the first report is preliminary and tentative in nature, it still tells us quite a bit about the nature and amount of crime on bail. It shows persuasively that many of the assumptions upon which the Department has based its proposal are not borne out by the data.

Let us see how well the Department's assumptions stack up against the findings:

ASSUMPTION UNDERLYING THE DEPARTMENT OF JUSTICE BILL

The rate of pretrial dangerous and violent crime is very high, high enough to warrant preventive detention.

FINDING IN THE DEPARTMENT OF JUSTICE STUDY

Rearrests of so-called dangerous defendants are too low to justify a system of preventive detention.

The study's most valuable information about crime on bail may be its overall statistics. The National Bureau of Standards traced the subsequent arrest records of the 712 defendants falling in three categories, those arrested for all felonies, those arrested for so-called dangerous crimes, and those arrested for violent felonies. The latter two categories are artificial ones used by the Department of Justice in their preventive detention bill. They are catchall phrases for defined groups of crimes listed in the bill. Although the bill is not perfectly clear, I assume the definitions apply only to felonies, and do not include misdemeanor versions of these offenses.

Briefly, the dangerous category consists of robbery with use of force, burglary, rape, arson of property used for dwelling or business, and sale of drugs. Violent crimes consist of all types of robbery, burglary, rape, all types of arson and drug crimes—in other words, an expanded definition of the dangerous category—plus homicide, kidnaping, and assault with a dangerous weapon.

It should be noted that many of the offenses in these categories are capital, and under the law as it has existed from the founding of the country until now, and as preserved by the Bail Reform Act, defendants in capital cases have no right to bail and may be detained pending trial. Special preventive detention is not needed for such cases. The inclusion of these categories of cases, however, tends to overstate the problem of crime on bail when one looks at the study results to gauge the need for preventive detention. As appears often in the analysis of the Bureau, the study has erred on the side of overstating, rather than understating, the data in favor of preventive detention.

Looking first to all felony arrests, the study shows that the overall rearrest figure was 17 percent. That is, one in six persons arrested for a felony was rearrested for either a felony or a misdemeanor while on bail. As low as this figure is, however, it is by no means the most pertinent fact for the purposes of estimating the seriousness of crime on bail or the effect the preventive detention bill will have on such crime. When one looks at this 17-percent figure more closely, it turns out that only 7 percent can be attributed to a second felony arrest. The balance, more than half of the rearrests, represents misdemeanors, or is unknown. Thus, when considering serious offenses, using the felony-misdemeanor distinction, only one in 14 persons arrested for a felony and released on bail is rearrested for a subsequent felony.

The Department of Justice preventive detention bill does not, however, propose to subject all persons arrested for felonies to preventive detention. The bill is directed to the smaller arbitrary categories of dangerous and violent crimes as defined by the Department. When the Bureau analyzed the data according to the Department of Justice categories, it found equally interesting results.

In the violent crime category, the rearrest rate overall is 17 percent, or one in six. However, even this low recidivist rate overstates the case for the Department's preventive detention. Two-thirds of these rearrests are for nonviolent crimes, presumably misdemeanors and all felonies other than the defined violent kind. The percentage of persons arrested for violent crimes and released who are later arrested for subsequent violent offenses is only 5 percent, or only five persons in the group of 106 released on bail. In other words, for every 100 persons arrested for a violent crime and subjected to the jeopardy of imprisonment without bail, only five can be expected to be risks warranting detention.

A similar result is disclosed when the other major category, dangerous crimes, is examined. Here the overall rate for rearrests is somewhat higher, 25 percent. But by far the greater number of these subsequent arrests are for nondangerous crimes. For dangerous crimes, the rearrest rate is again 5 percent, or four of the 68 total released on bail.

It cannot be stressed too often that the figures in this study which are relevant to preventive detention must be those which conform to the assumptions and procedures underlying the actual bill before Congress. Even if there were shown a very high rearrest rate for all persons arrested, no matter what the charge, this would not be especially relevant to the evaluation of a bill which did not presume to authorize preventive detention for all these persons. The Department bill does not presume to authorize preventive detention for all persons arrested, whether on traffic offenses, misdemeanors, felonies, or what have you. The bill assumes that persons committing certain kinds of serious crimes have a high probability of committing subsequent crimes of similar kind and seriousness.

For these purposes, the 17-percent overall rearrest rate for felonies, even if considered high, is not pertinent. Nor, indeed, is the 7-percent felony rearrest rate pertinent, low as it is. The Department does not propose to detain all felony arrestees.

By the same token, the overall rearrest rates for violent crimes—17 percent—and for dangerous crimes—25 percent—is not pertinent. The Department does not justify its deprivation of liberty on the grounds that we must protect society against subsequent misdemeanors, or even subsequent felonies, whatever their type. The Department's justification for preventive detention is limited to preventing persons arrested for dangerous and violent crimes from committing additional alleged offenses of equal seriousness. Thus, the bill must be evaluated on the basis of the frequency of repeat crimes in these categories. As the study shows, the rate is 5 percent—five out of every 100. To pass the Department's bill means that 100 people stand the risk of deprivation of liberty in order to protect society against the five in their midst. It means that due process, fair trial, and pretrial liberty may be sacrificed for 95 in order to get the five. Viewed from the perspective of the Department's bill, and adopting all its procedures and policy as true, it still turns out that the Department is prepared to accept 19 wrong decisions in order to get the one.

The first assumption, that persons arrested for dangerous or violent crimes have a high propensity to be arrested for subsequent offenses of a serious nature, turns out to be wrong. The rate is very low, too low to justify preventive detention.

ASSUMPTION UNDERLYING THE DEPARTMENT OF JUSTICE BILL

Persons arrested for serious crimes must be detained because they have a prediliction to commit equally serious crimes if released.

FINDING IN THE DEPARTMENT OF JUSTICE STUDY

An arrest for a dangerous crime is no indication that the defendant will be rearrested for a similarly serious offense.

Another assumption of the Department's bill is that persons arrested for serious offenses who are charged with subsequent crimes will have a tendency to commit crimes equally as serious as the first. Put another way, a person charged with dangerous or violent crime who is "dangerous," is dangerous because he has an increased prediliction to commit additional dangerous or violent crimes. Inherent in the bill is the idea that an arrest for these crimes is a reliable indicator of a subsequent arrest for a similar offense.

The study gives us valuable insight into the nature of the offenses for which defendants are rearrested and shows that this assumption is not borne out. When the class of felony defendants who were rearrested while on bail was examined, it was discovered that they were arrested for misdemeanors about as often as for felonies. Significantly, the rates were low in both cases—7 percent. The study concluded that there is "striking evidence that defendant initially charged with a felony is about as likely to be rearrested for a felony as for a misdemeanor." As a matter of fact, the data shows that felony arrests are followed by misdemeanor arrests slightly more often than by a second felony arrest. Of the 53 cases in which a felony arrest was followed by a second arrest, in only 23 instances, less than half, was that second arrest for a felony.

The study figures suggest strongly that even were it possible to isolate those defendants who a judge might predict will possibly be rearrested during the bail period, there is no assurance that the second offense will be a serious one, or one which under any suggested plan of preventive detention would justify the extreme step of pretrial imprisonment.

Thus a second assumption, that persons arrested for serious felonies have a tendency to be arrested for an equally serious charge, is not substantiated by the study.

ASSUMPTION UNDERLYING THE DEPARTMENT OF JUSTICE BILL

Judges have enough experience and will have enough information at the preventive detention hearing to predict which defendants are likely to commit serious offenses if released.

FINDING IN THE DEPARTMENT OF JUSTICE STUDY

There is no reliable means by which these predictions can be made.

A fundamental assumption underlying the Department's bill is that judges have sufficient experience with the criminal population to be able to discover, with reasonable accuracy, which of the defendants who appear before them are likely to be dangerous and so should be detained. This is an asumption based on faith and, I believe, on blind faith.

Prediction of criminal behavior is an extremely difficult undertaking. It has not been marked with conspicuous success whenever it has been attempted. For instance, a celebrated experiment here in the District tested the assumption that judges can distinguish the dangerous from the nondangerous defendant. Two judges' performances under the Bail Reform Act were studied. One judge has the reputation of imposing strict bail conditions and releasing very few of those who appear before him. Many observers are of the opinion that the potential danger of a defendant is a prime consideration in his bail decisions.

His record was compared with that of another judge, whose reputation for leniency is equally as renowned as is the other's for strictness. The surprising result was that the strict judge had no better success in his predictions than the lenient judge.

Even though the strict judge B had more cases than the more lenient judge A, he released only half as many defendants on personal recognizance. All told, less than half the defendants appearing before the strict judge were released, as opposed to almost 80 percent before the lenient one. The survey showed that 9 percent of the persons released by the lenient judge were rearrested and 8 percent of those released by the strict judge were. The difference is only 1 percent—a 1-percent "reduction in pretrial crime" measured against the difference in pretrial release of 79.9 percent and 49 percent.

This experiment is a very rough test of the claim that judges can accurately spot the dangerous defendants and can reduce pretrial crime by predicting their future illegal conduct. A special goal of the Department of Justice study was to see if a scientific system could not be devised which would enable the courts to have a reliable means of predicting subsequent criminal behavior or, as the Department of Justice would phrase it, a means of predicting subsequent arrests and equating that with actual criminal behavior.

The study first surveyed past attempts at predictions. It said, however:

Prediction devices developed by others and described in Chapter III offer insight into the problems of prediction, but these devices offer little hope in the near future for a practical tool for the prediction.

It particularly cautioned against using predictions made under parole and probation systems and those used by bail agencies as a way of answering the problems inherent in prediction for preventive detention. In the case of parole and probation, much more information is available about the person, the offense, the individual's behavior, and the like. Further, guilt has already been determined by a trial and conviction. In the case of bail agency predictions, the important fact to keep in mind is that dangerousness is not the focus of the prediction. The prediction is one of possible flight, and the prediction determines the kind of conditions that will be imposed to prevent or deter flight.

In the case of predictions for the purposes of preventive detention, the information available to the judge is likely to be no more adequate, reliable, or complete than that available to the bail agency. On the other hand, the consequences of an error in prediction are

much worse—liberty is at stake; fairness of the trial is involved.

The Department's bill assumes that accurate predictions can be based upon an evaluation of information available to the judge on the offense charged, the evidence on hand, the individual's personal circumstances, such as family and community ties, financial condition, and employment, and his past criminal records. In large part these are the same factors which are now used to help guide the court in setting bail conditions. The factors employed in making bail decisions were developed after experience with a number of pilot bail projects in Washington, New York City, and elsewhere in the years before the Bail Reform Act was enacted. Their usefulness for the purpose of setting bail conditions was proven before the Bail Reform Act was passed. Experience with the act since then has substantiated their value for that purpose.

The usefulness of such indicators for predicting future criminal behavior is quite another thing, however. As the study itself makes clear:

Data collected in current pre-trial release programs appears to be inadequate for the type of in-depth studies needed to develop and validate a high quality prediction device. Even if an adequate past-data base could be secured, the present procedures for collecting information do not appear to be adequate. The information now being collected is intended to give some measure of the defendant's likelihood of appearing for trial. Assuming that the same factors are relevant to the defendant's likelihood of committing crime while on pre-trial release does not seem to be valid; such prediction may require quite different hypotheses on the identities and relative "weights" of the important factors. The one pretrial release program visited in this study which attempted to predict a defendant's "dangerousness" used subjective judgment, rather than statistical data, to reach a conclusion.

The researchers attempted to find possible leads to a prediction system using the evidence available from a search of the records it examined. They analyzed such factors as age, education, community ties, employment, skills, family ties and previous records. It should be emphasized that the researchers had the advantage of being able to check all the sources of information in these categories, that they had an opportunity to verify them, and that they had a considerable amount of time and technical assistance in making their analysis. None of this would be available to the judge making the preventive detention prediction. He is required to make a prediction of future crime within a few hours or days of the defendant's arrest. In all likelihood the judge will have little more to go on than the word of the prosecutor, and what incomplete and inaccurate records as can be gathered in a short period of time.

The study's analysis shows that the theory of prediction used in the Department's preventive detention bill provides no helpful guidance for developing a reliable method of prediction.

Considering the factors in order of their treatment the study shows:

First, persons arrested for more serious crimes tend to be younger than average, while those who are rearrested for serious crimes are older.

Second, there is no significant relationship between the amount of education and critical arrests, although those who were rearrested tended to have slightly less schooling.

Third, those who were rearrested were found to have lived longer in the city than those who were not, perhaps because they were also older.

Fourth, there was a low rate of employment among those rearrested for a dangerous crime. On the other hand, no conclusion could be made respecting the relationship of working skills and the occurrence of rearrests.

Fifth, no correlation was shown between rearrests and the closeness of family ties.

Sixth, no relationship could be detected between rearrests and prior criminal records.

When the report's section on predicting "danger to the community" is thoroughly analyzed it becomes clear that at the minimum, the factors listed in the Department's bill cannot be substantiated as reliable guides for actual use in a preventive detention procedure. Certainly, it is most significant to note that the key element in the Department's prediction mechanism—prior record—does not survive analysis.

The Bureau stated:

Differences in personal characteristics vary in their usefulness and significance. Taken singly, they do not appear to be outstanding predictors, but their actual value as predictors will require continued analysis and correlation.

Viewed very generously, the study demonstrates the need for considerably more work on theories of predicting crime. The report concluded:

Thus, we conclude that the development of an accurate predictive instrument must depend upon the acquisition of a sufficient data base and upon more adequate testing of the predictability of criminal behavior from specified factors. The information-related activities of the Criminal Justice System would require expansion, and the continuing cooperation of that system in further analyses would be prerequisite to progress in developing a reliable prediction mechanism.

In my opinion, the study demonstrates that the predictive theory employed by the Department in its legislation is not substantiated by the facts. In order to justify a system of preventive detention, the Department should have to shoulder a heavy burden of proof. The study shows that none of its assumptions about prediction survive that test.

The third assumption, the judges can accurately predict those who will be dangerous if released, turns out to be unsupported by the study's findings.

ASSUMPTION UNDERLYING THE DEPARTMENT OF JUSTICE BILL

The critical period in which pretrial crime must be stopped is the 60 days following release on bail. Those detained can be tried within a 60-day period.

FINDING IN THE DEPARTMENT OF JUSTICE STUDY

The critical period for rearrests is long after the first 60 days from release. The courts are incapable now of trying people within 60 days of release.

One of the most important questions to be answered in analyzing the usefulnes for preventive detention is the relationship of repeated arrests to the lengthy periods of time that occur between the initial arrest and the granting of bail and trial. The time period is important both from the point of the Department and from that of those who oppose preventive detention.

The Department's bill is predicated on assumptions: First, that the most critical period in which recidivism must be controlled is the first 60-day period following initial release, and second, that speedy trials, within 60 days of arrest, can be conducted for persons detained.

The timing of pretrial crime is also significant for those who, like myself, see preventive detention as not only unhelpful as a means of fighting crime, but also as a real hindrance to our efforts. It is our contention that speedy trial is the means by which this problem can and should be handled. If trials can be held within 60 days now for even a few defendants, as the Department presumes in its bill, we should try speedy trial first for these special categories. Then we can assess the need for preventive detention, if it should still exist. Preventive detention ignores, except on paper, the need for prompt trials. Worse than that, however, it also will make more difficult the accomplishments of this necessary reform.

One important fact should be kept in mind while considering the National Bureau of Standard's study and the light it sheds on these assumptions behind the Department's preventive detention bill. While the Department would have us believe that its bill authorizes preventive detention only for the first 60 days following arrest, it is by no means clear that this will be so in practice. The bill, it is true, authorizes preventive detention only for 60 days. However, if trial is not held at the end of that time, the defendant will not necessarily be released. At this point he will be returned for a new bail hearing under the modified procedures of the bill. While theoretically the detained defendant may be released at this point, as a practical matter it is doubtful how often, if at all, this will actually be the case.

It is hard to believe that any judge will release a man whom he has previously found to be so dangerous as to require preventive detention. The bill allows the judge to set bail conditions based upon suspected "danger to the community"—the same standard employed in the preventive detention hearing. While money bail may not be imposed on the grounds of "danger," it still may be imposed with respect to "flight," as is now the law. There may be a theoretical difference between imposing high money bail to deter "flight" but not for "danger." There is no difference in practice. Even now, under the Bail Reform Act, money bail is set on more than half the defendants charged with felonies. More than 30 percent of felony defendants are not released. Spokesmen for the Department's

bill have argued that preventive detention now exists sub rosa because judges impose high bail to deter dangerous offenders in the guise of deterring flight. It is disingenuous to argue that a formal system of 60-day preventive detention should be instituted to end this "extra-legal" form of preventive detention when the same bill would retain and actually encourage "extra-legal preventive detention" after the initial 60-day formal detention.

We can expect that money bail will be imposed after the 60-day period is up, and that it and other conditions will be set so as to assure, as a practical matter, the continuing imprisonment of the preventive detention defendant for however long it takes for him to come to trial. The Department's bill must be evaluated not on the basis of a "little bit" of imprisonment without trial, but as guilt by arrest, with an indeterminate sentence of up to 2 years.

The Department's bill, however, is presented as intending to authorize only a 60-day detention in the immediate post-arrest stage. The assumption, to repeat, is that this is the critical time to prevent additional offenses. Let us take the Department's bill at face value and look at the facts as developed by the Department of Justice study.

In order to measure the amount of pretrial crime as a function of time, the National Bureau of Standards' study developed what it called a Recidivist Index; that is, the number of arrests as a function of the total number of days all the defendants were free on bail. This total was termed "man-days of release."

The first finding which the study discloses is that persons arrested for felonies are free on bail for a much longer time than those arrested for misdemeanors. This is just the reverse of what we should be aiming for. Our goal should be the speedy trial of the more serious cases, and a resulting decrease in the amount of time that these defendants are free on bail between arrest and trial. Persons arrested for misdemeanors are presumably less dangerous. If we must tolerate delays in trial, it would be better to delay the less serious cases and speed up the trials of the felonies.

The next fact which emerges strikingly from the study is the period of time that occurs between the first arrest and release and a subsequent arrest for a serious crime. In making this calculation, the study examined those persons who were arrested and released, and who were then subsequently rearrested. It made various measurements, each based on the number of arrests calculated as a function of the number of defendants released and the total time in days they were free. The study found:

First, very few rearrests occurred within the first few months after release.

Second, if the frequency of second arrests is calculated from initial presentment by the grand jury the critical time segment is the fourth month for all felonies. This is especially true for the categories of dangerous and violent crimes.

Third, when we look from the trial date back in time toward the date of arrests or grand jury action, second arrests begin to appear only in the eighth month before trial.

The study further shows that more arrests are made in the period between 4½ and 8 months after release than in the period from initial release to 4½ months after. The critical period for those classified as "dangerous" is between 5 and 8 months.

These various findings are based on different tests to determine the frequency of bail arrests as a function of time. Taken together, the study confirms what most have assumed about the frequency of arrests of persons released on bail. The longer the delay between arrest and trial the greater the amount of crime. Frequency of crime is also higher when trial is delayed more than 4 months. Finally, the critical period when rearrests occur is definitely not in the first 60 days following arrest, which is what the Department's bill presumes. Rather, the need, if indeed one exists, is to prevent recidivism in the period beyond 2 months, and particularly beyond 4 months from release. If trials could be held within a 4-month period from arrest and release pretrial crime could be reduced substantially.

If the Department's bill were soundly based on a realistic evaluation of pretrial recidivism, then it would frankly admit either of two things. One, the Department would admit that it proposes preventive detention not only for the first 60 days when recidivism is lowest, but for the entire time between release and eventual trial, no matter how long that might be. Or, the Department could present a proposal for preventive detention which was designed to authorize preventive detention after 60 or 120 days from release, but not immediately after release. The first the Department does not dare admit to be asking for, even though I believe that will be the practical result of this legislation. The Department knows full well Congress would not even consider a bill which frankly and openly calls for permanent prevention detention. The second alternative—preventive detention after 4 months of release—is unworkable.

The figures on the timing of bail recidivism show that preventive detention is not an answer to pretrial crime. On the contrary, these facts again indicate that the answer to this problem lies in assuring speedy trial. The Department of Justice study vividly demonstrates that the highest rates of second arrest for dangerous categories occur after 140 days of trial delay. Overall, the rate is especially high after 280 days. We should no longer tolerate a system which cannot dispense justice in 140 days, much less the 280 days, or 9 months, that is the average here in Washington.

Thus, the fourth assumption, that the critical period for deterring recidivism is the first 60 days after arrest, is shown to be wrong.

ASSUMPTION UNDERLYING THE DEPARTMENT OF JUSTICE BILL

Among the serious crimes which should be prevented by preventive detention, robbery is the one in which the need is greatest.

FINDING IN THE DEPARTMENT OF JUSTICE STUDY

The study does not show a special need for preventive detention for robbery defendants.

Much of the rhetoric heard in favor of preventive detention makes reference to robbery cases. The robbery cases have been treated as a particularly serious class of crimes which are committed regularly by a small and fairly practiced part of the criminal community. Statements have been made that there are only a few hundred individuals who commit most of these crimes, that the police and judges know fairly well who they are, and that many of them are driven to repeated crimes because of the need to obtain money for drugs. Some of the more excited claims about the need for preventive detention for robbery defendants cite a supposed figure of 70 percent recidivism.

In contrast to this rhetoric, the Department of Justice study gives us some accurate and reliable information about robbery and burglary offenses.

First, it is possible to review the class of persons involved in crimes against property to see if they tend to be rearrested for the same offenses. The study disclosed 40 robbery arrests, 34 burglary arrests, and six larceny arrests in the felony classifications. Of the total of 80 defendants, there were only nine rearrests, five misdemeanors and four felonies. One rearrest was for another felony robbery, and a second was for another felony burglary. The other two were for stealing cars. Thus, of the 80 total in this class, only two were rearrested for crimes of a similar nature and severity. If stolen vehicle offenses are included, we get a total of 99 felony cases, five felony rearrests, and five misdemeanor rearrests.

Here again the study explodes another myth propounded in favor of preventive detention—the myth that robbery and burglary offenders tend to repeat these same crimes if released on bail. In fact, the two of 80 figure for repeat robbery and burglary felonies is so low as to show there is no probable relationship at all in this class of defendants.

The Department of Justice study made a special analysis of the 40 robbery cases because the proponents of preventive detention have laid such stress on this group. The entire sample of 910 defendants turned up only 40 persons facing charges of robbery, attempted robbery, or assault with intent to commit robbery. Of these, the police had prior records on only 17, suggesting at least that the claim of police familiarity with these individuals is open to considerable doubt. Six more had juvenile records. Twelve of the 17 had prior felony arrests, but only four were shown to have been convicted. The incompleteness of police records, upon which the Department's preventive detention bill rests heavily, indicates that actual prior records and convictions might be higher. Interestingly, not one of the 17 with a prior police record had been involved with narcotics.

Several interesting facts emerge from the study's close examination of the 40 robbery cases. First, 30 percent of the individuals were not released on bail at

all. Eight of these 12 were convicted. Of the 23 who were free on bail at least part of the time, 13 were convicted and a 14th fled. Thus, amongst robbery defendants, the conviction rate for those detained is 66⅔ percent. For those released, the rate dropped to 60 percent.

What is most shocking about the robbery cases is that the average time from grand jury presentment to trial was 200 days, or about 7 months. Despite the great hue and cry about the need to deal with robbery cases, the criminal court system still could not better a 200-day average. How the Department expects to make good on its 60-day speedy trial provision for those it would detain, I do not see. Especially shocking is the fact that of the four defendants held in jail because they would not make bail, and yet who were not convicted, the time in jail ran from 45 days to an outrageous 250 days.

The need for speedy trial can be illustrated not only by the great length of time defendants spend in jail before being found innocent, but also by the great amount of time defendants were left free before a trial which eventually found them guilty. Not one person free on bail and later convicted was tried in less than 100 days. Only three were tried in less than 150 days; five took between 200 and 300 days to try; three took between 300 and 400 to try, and one took 492 days to try. In each case, I repeat, the defendant was found guilty at trial. There is no excuse for a system which allows persons to remain out on bail for over 16 months before they are tried and convicted of robbery. Clearly, a special effort should be directed at speeding the trial of persons arrested for serious crimes such as robbery. The study figures show that even at the height of the public outrage over robberies the average time to trial was 7 months.

Another common claim made by proponents of preventive detention is that there is a special connection between drugs and robbery cases. The assertion is that persons arrested on drug charges, if released, will commit numerous subsequent crimes, especially robbery and burglary, and will go on to subsequent drug offenses. The reverse is also commonly believed—that most, or at least many acquisitive crimes have drugs as the cause. These beliefs are reflected in the provisions of the Department of Justice prevention detention bill dealing with addicts.

The study sheds interesting light on these assumptions. For example, an examination of all felony cases showed that there were no subsequent arrests for serious drug offenses. That is, out of 217 felony defendants released, not one was subsequently arrested on a felony drug charge. Only five were arrested on misdemeanor charges related to drugs. Among the 80 arrests for the felonies of robbery, burglary, and larceny, only two were rearrested on drug charges, both times as misdemeanors.

Examination of the subsequent crime patterns of persons initially arrested on serious drug charges discloses equally surprising facts. Of the persons arrested on felony drug charges, only two were subsequently charged with another felony. One of them was for robbery. Only three others were charged with misdemeanors, one of which was a larceny.

What these figures indicate is that in the category of drugs, the picture is spotty, there is no discernible pattern, and the frequency of rearrests on serious charges is extremely low. So far as the study shows, no case has been made to show a special relationship between robbery, burglary, and larceny and drug offenses. What the study does indicate is that the facile assumptions commonly made about the characteristics of robbery defendants and drug defendants may be like so many other assumptions made in the area of crime—they are not easily substantiated by objective analysis of the data.

In sum, we find from the study that yet another assumption, that robbery defendants are a class for which preventive detention is especially justified, finds no support in the study.

ASSUMPTION UNDERLYING THE DEPARTMENT OF JUSTICE BILL

The arrest of a person can be considered a sufficient indication of ultimate guilt for the purposes of preventive detention.

FINDING IN THE DEPARTMENT OF JUSTICE STUDY

An arrest for a dangerous crime is not the equivalent of guilt of a dangerous crime, in theory or in practice.

Thus far in the discussion of the study's findings, I have continually referred to "arrests" rather than to "convictions" as the basis for making judgments about the need for preventive detention. In the entire preventive detention controversy we have tended to equate arrest with conviction, accusation with guilt. Thus, when reference is made that 5 percent of persons committing dangerous crimes commit a second dangerous crime while on bail, the actual fact is that these are figures only for arrest. All that has been determined is that a policeman has concluded, and a magistrate has confirmed, that there was probable cause to arrest for a crime. All that we know is that 5 percent of persons charged with a dangerous crime and released on bail are thereafter charged with another such offense. We know nothing yet about actual guilt. We cannot yet say that 5 percent of persons who "commit" dangerous crimes, "commit" a second dangerous crime when released.

The Department's preventive detention bill equates arrest with conviction, and makes the deprivation of liberty turn not on a determination of guilt after a fair trial, but merely on the judgment of the policeman and the committing magistrate of probable guilt. This judgment is made before trial. The very concept of preventive detention is a repudiation of the time-honored principle that no man should be deprived of liberty without due process, that every man is presumed innocent until proven guilty.

We have learned after a long and difficult struggle for liberty that personal freedom is so precious the State should not be permitted to deprive a citizen of this freedom until it has been put to the most difficult tests of proof. The whole panpoly of trial procedure and defendant's rights, with which we sometimes grow impatient and call legal technicalities, was created after hundreds of years of experience with the uncertainties of discovering truth, of judging guilt and innocence. So, while the debate on preventive detention has centered around arrests, it is very instructive to examine the facts, and see with what justification we can equate accusation with guilt.

The Department of Justice study examined the cases it had to determine the frequency of actual convictions and to make some correlations between arrests on bail and actual convictions. First, the study found 128 cases in which rearrests were made of persons released on bail. It found that in 56 cases, or in less than half, the original arrest was for a felony. Of these 56, fully 15 did not result in conviction. In other words, in about 25 percent of the cases, the original felony arrest was not the equivalent of conviction. Furthermore, of the 41 convictions, 12 were for misdemeanors. In total, of the 56 original felony cases in which rearrests were made, only 23, or less than half resulted in a conviction for the same or some other serious charge.

The preventive detention proposal assumes that there is enough basis in an arrest for a serious offense to justify subjecting the defendant to the risk of imprisonment at the initial bail stage. Yet the study shows that half of the serious charges made ultimately will not be substantiated when trial is finally held.

The study also examined the ultimate disposition of the rearrest charges in these cases. The disposition of the rearrest cases is important because the prediction required by the judge is whether the individual will commit a dangerous crime if released. Of course, the rearrest of a defendant does not mean that he was in fact "dangerous." All it means, again, is that probable cause exists to believe that he committed a second offense. In an actual fact, it turned out only 38 of the rearrests were for felonies, out of a total of 128. Of these 38 felony rearrests, 17 or almost 50 percent did not result in convictions. Of the remaining, five were either still pending or could not be determined. Only 13 of the total 38, or 33 percent resulted in conviction for a felony. Thus, we have a situation in which the study found that only 50 percent of initial felony arrests resulted in felony convictions, and that only 33 percent of the felony rearrests resulted in felony convictions. When the initial arrest and rearrest cases were correlated, it turned out that of the 23 cases of arrest for two successive felonies, there were convictions of both charges in only four.

When the felony arrests and rearrests are examined more closely according to the definitions of dangerous and violent charges, more interesting conclusions emerge. Of the 56 cases in which two arrests were made, the first of which being a felony, 41 of those initial felony charges were "dangerous." Of these 41, 27 were eventually convicted, but only 17 of these were for the original or some

other "dangerous" crime, or a conviction rate of about 40 percent. Of the rearrests for a second felony, 19 were for a dangerous crime. Only five of these charges were sustained, or about 25 percent. Where two successive "dangerous" crimes are charged, it turns out that convictions on both were obtained in only about one-third of the cases, or six of 19 double arrests. Similar results were obtained when the definition of violent crime used in the Department's bill was applied to the data.

The goal of preventive detention is to protect society against the commission of dangerous crimes by persons arrested and otherwise eligible for bail. The Department's bill assumes that it is possible to predict accurately who amongst those arrested for dangerous crimes will be rearrested for a second dangerous crime. The study has shown first that in only 5 percent of all arrests for dangerous or violent crimes were second arrests made upon the same serious kinds of charges. It also informs us that in only 16 percent of the cases in which successive arrests are for felonies, are convictions obtained for both. It informs us that when the 5 percent of cases involving successive arrests for "dangerous" or "violent" crimes are considered, convictions are obtained in both in about one-third to one-quarter of the cases. That means that of every 200 people arrested for a dangerous or violent offense and released on bail, about 10 will later be rearrested for a second dangerous or violent crime. But only two or three of these 200 will eventually be convicted of two successive dangerous or violent crimes. And, it should always be remembered that the judge has no reliable means of selecting those two or three from the 200 who will appear before him in jeopardy of preventive detention.

Thus, another and very critical assumption—that arrest is the equivalent of guilt and so justifies preventive detention—is not proved by the facts.

CONCLUSION

This discussion of the Department of Justice study and the light it sheds on the Department's preventive detention bill has been necessarily summary. The entire report is over 200 pages long. I am mindful of the fact that the value of it for the purposes of evaluating preventive detention cannot be exhausted in one single discussion. The facts are too plentiful, the subject too complex, the qualifications and interpretations too many, for me to contend that a short speech is the last word on the study. I am also mindful of the warning contained in the report itself:

The reader is particularly cautioned against a casual use of the averages reported in this executive summary, since the richness of the narrative supporting material in the court records and the judgmental decisions of persons in the administration of justice require an interpretive summary to accompany each result. The reader is urged to probe deeply in the body of the report to assure proper interpretation and use of the numerical results presented here.

For illustration: One can deduce from statements 6, 7, and 8 in the above summary that if the "dangerous" criterion (as defined in this report) has been fully applied to the sample defendants, then 68 fewer releases and 17 fewer recidivists would have resulted. Thus, the total number of recidivists would have been reduced by one-third (47 decreased to 30), a significant reduction. Yet, because *recidivism* in this study denotes *rearrest* only—a released defendant as a suspect for a later crime—the above analysis does not provide direct information on the number of fewer crimes that would actually have been committed or fewer convictions resulted.

With this warning in mind, I believe that the Justice Department study seriously undermines the basis for the Department's preventive detention bill. In my opinion, the proposal is more than unconstitutional. It is based on unsupported theories of criminal behavior. It presumes a need for preventive detention which has not been shown to exist in any substantial amount. It claims an effectiveness for reducing crime which is asserted but unproved. It promises to make extremely difficult the achievement of those reforms which can help to improve criminal justice.

It is important that the Department of Justice and its supporters acknowledge the study and its findings, and meet the points raised against the bill squarely and honestly. The Department may deserve high marks for clever legislative maneuvering—it managed to get its preventive detention bill included in the District of Columbia crime bill before its study was released and without having to run the gamut of the normal legislative process. But the Department has a responsibility to be more than clever. It has a responsibility to the law, to the Congress, and to the people to defend this legislative proposal on its merits. Hearings will be held soon by the Constitutional Rights Subcommittee on S. 2600, the Department's national preventive detention bill. The Senate and the people of the country have a right to demand no enactment of preventive detention, whether nationally or for the District of Columbia, until the Department defends its bill on the merits.

## SALARIES OF MANAGEMENT-OFFICE EMPLOYEES OF SENATE RESTAURANT

Mr. ALLEN. Mr. President, under the Federal Salary Act of 1970, the President pro tempore of the Senate is authorized and directed to issue certain directives in implementation of the salary comparability policy set forth in the law.

I ask unanimous consent that a directive affecting the salaries of management-office employees of the Senate restaurant, dated April 27, 1970, and certain related correspondence, be printed in the RECORD.

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

ARCHITECT OF THE CAPITOL,
*Washington, D.C., April 27, 1970.*

Hon. RICHARD B. RUSSELL,
*President pro tempore,*
*U.S. Senate,*
*Washington, D.C.*

DEAR MR. PRESIDENT: As you are aware, pursuant to Public Law 87–82, approved July 6, 1961, the Architect of the Capitol operates the Senate Restaurants as an Agent of the United States Senate. The Comptroller General of the United States has recognized that employees of the Senate Restaurants are employees of the Senate (rather than employees of the Office of the Architect of the Capitol).

Accordingly, it is necessary and proper for you, as President Pro Tempore of the Senate, to issue an order implementing the salary increases authorized by section 3(a) of the Federal Employees Salary Act of 1970 for management-office employees of the Senate Restaurants.

These increases are the same as those authorized for other Senate employees by section 1(a)(1) of your Order which appeared in the Congressional Record of April 15, 1970.

The enclosed order covers 22 management-office employees of the restaurants. It does not cover restaurant foodworkers who are employed and compensated under a different wage system (a wageboard system).

An appropriate order, which I recommend, is enclosed for your consideration and approval.

With best regards, I am

Sincerely yours,

MARIO E. CAMPIOLI,
*Acting Architect of the Capitol.*

I concur:

JAMES B. ALLEN,
*Chairman, Subcommittee on the Restaurants, Committee on Rules and Administration, U.S. Senate.*

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ARCHITECT OF THE CAPITOL,
*Washington, D.C., May 12, 1970.*

Hon. JAMES B. ALLEN,
*Chairman, Subcommittee on the Restaurant, Committee on Rules and Administration, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I am enclosing, herewith, copy of order dated April 27, 1970, issued by the President Pro Tempore of the Senate upon my recommendation and with your concurrence, providing for an increase in the compensation of management-office employees of the Senate Restaurants in accordance with Section 3(a) of the Federal Employees Salary Act of 1970.

I would appreciate your having this document inserted in the Congressional Record in order that it might be a matter of record.

Sincerely yours,

MARIO E. CAMPIOLI,
*Acting Architect of the Capitol.*

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ORDER PROVIDING FOR INCREASE IN COMPENSATION OF MANAGEMENT—OFFICE EMPLOYEES OF THE SENATE RESTAURANTS

By virtue of the authority vested in me by Section 3(a) of the Federal Employees Salary Act of 1970 (84 Stat. 196; Public Law 91–231), it is hereby

Ordered, That (a) effective retroactively to December 28, 1969, subject to Section 5 of the Federal Employees Salary Act of 1970 (84 Stat. 197; Public Law 91–231), the annual rate of gross compensation of each management-office employees of the Senate Restaurants (such employees having been recognized by the Comptroller General of the United States as employees of the United States Senate) subject to Section 214 of the Federal Salary Act of 1967 (81 Stat. 635–638; Public Law 90–206) whose compensation was increased by Section 214(a) of the Federal Salary Act of 1967 (81 Stat. 635; Public Law 90–206) and the Orders of the President pro tempore of the Senate of June 29, 1968, and June 26, 1969, issued pursuant to Section 212 of the Federal Salary Act of 1967 (81 Stat. 634; Public Law 90–206), is hereby increased by 6 percent; and

That (b) for the purpose of arriving at the "annual rate of gross compensation" on which the increase of 6 percent is to be applied, (these employees being compensated on a weekly, rather than an annual basis), the weekly gross rates of compensation shall be converted for the purpose of this Order, to appropriate annual gross rates.

Pursuant to Section 9(a) of the Federal Employees Salary Act of 1970 (84 Stat. 198; Public Law 91-231), the provisions of this Order shall become effective retroactively to December 28, 1969.

RICHARD B. RUSSELL,
*President pro tempore,*
*U.S. Senate.*

APRIL 27, 1970.

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## WALTER REUTHER—ADDRESS BY SENATOR KENNEDY

Mr. KENNEDY. Mr. President, it was my honor last Thursday to address the 21st annual Albert Lasker medical journalism awards luncheon in New York. This responsibility fell to me when the original speaker, my friend Walter Reuther, died in an airplane crash in Michigan. I took a great part of the period allotted for my remarks to pay tribute to Mr. Reuther's unexcelled talents and his contributions to American labor and American society.

I ask unanimous consent that my remarks be printed in the RECORD.

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

ADDRESS BY SENATOR EDWARD M. KENNEDY AT THE 21ST ANNUAL ALBERT LASKER MEDICAL FOUNDATION AWARDS CEREMONY, NEW YORK CITY

It is a sad and melancholy occasion that brings me here. The sudden and tragic death of my friend Walter Reuther has robbed the nation of one of our greatest leaders.

We could ill afford to lose him. Never before in my memory has there been such a crisis of confidence in our national leaders, such deep division among our people, such a prolonged loss of our sense of national purpose.

Abroad, we have the nightmare of Cambodia and its mad label of "Operation Total Victory." The Middle East moves to the brink of war. Hundreds of millions of human beings in Africa and Latin America struggle to survive the ancient evils of tyranny, poverty, ignorance, and disease.

At home, our universities are on strike. War and death come to the campus. A Cabinet officer complains, and the Administration asks him to sit tight, because the crisis, they say, will blow over.

The ugly face of racism stalks the land. White America mourns its dead at Kent State, and the nation is moved to massive protest. Black America remembers Orangeburg, and asks, Why not before? Drug traffic moves from the ghetto to the suburb. White America is aroused and black America asks, Why not before?

Our cities decay. Our environment is defiled. Our schools don't teach. Our doctors don't heal. Our economy is in turmoil as prices rise and unemployment soars.

All our institutions are under attack, and justifiably so, because they have committed the greatest sin of public life, the loss of responsiveness to the people. The storm over the Supreme Court has become a storm over the President. Many feel that the stand we are beginning this week in the Senate is the only way out of Asia abroad, the only way out of our constitutional crisis at home.

Now, another giant leader has been taken from us, a man who knew our people well, a man who could guide us along the path we sought. Time and again, he demonstrated the priceless qualities of judgment and leadership that seem all too rare in public life at this crucial moment in our history.

Today, I know, Walter Reuther was to have told us of his plan for better health care in America, but we would have seen far more, The room would have been filled with all the eloquence and passionate commitment that made him respected and admired by generations of Americans. We would have seen the Reuther we knew, challenging America again, as he had so often in the past, to live up to its promise of equality and social justice for all our citizens.

More than others, Walter Reuther had a vision of a better America, and he dedicated his life to the quest. His vision began with the worker. The slogans of his battles captured the imagination of us all—"too old to work and too young to die," "wage increases without price increases," "let's take a look at the books."

His career was marked by more than a quarter century of magnificent achievement at the bargaining table and throughout the labor movement. As much as any other single person, he wrote American labor history in the era since World War II.

He was the ardent foe of communism and corruption in the labor unions. His achievements are legendary. The guaranteed annual wage, the cost of living escalator, the supplemental unemployment benefit, the profit-sharing plan—these are but a small part of the rich legacy he left to his union and to every American working man.

His vision began with the worker, but it did not end there. It was broad enough to embrace our whole society. He reached out to us all, rich and poor, black and white, skilled and unskilled. "We believe there are no white answers or black answers," he said—"only American answers." He sponsored Martin Luther King's March on Washington in 1963. He was there in Delano when Cesar Chavez began the upward struggle for the grape workers. He was in the forefront of the peace movement, and the movement for better programs for the poor, better health for our people, better housing for the cities, a better environment for our children, and equal opportunity and racial justice for every citizen.

Now, he is gone. But the strength of his commitment will sustain us as we carry on his work. The tragedy of this death is compounded by our knowledge that his life was cut short at its prime, when he was on the threshold of achieving one of his greatest social goals, a national health insurance program to bring adequate health care to every American.

From cruel personal experience, he know the ordeal of prolonged hospitalization. He was not a recent convert to the cause of better health. For more than three decades, he was one of the most powerful advocates of health care as a matter of right. He worked to fulfill that right at the bargaining table in Detroit, and in the halls of Congress in Washington. For a generation, he was one of the most articulate and effective voices of the health consumer in America.

Just as Mary Lasker and her outstanding foundation have done so much to educate Americans and to catalyze the new awareness of our health needs, so Walter Reuther's career is marked by a long line of distinguished achievements in the field of health care. Just as the great physicist, Lord Rutherford, when asked how he always happened to be riding the crest of the wave of modern physics, is said to have replied, "I made the wave, didn't I," so Walter Reuther made the wave of the health revolution that is cresting now in America.

It is entirely appropriate, therefore, at this Lasker Awards Luncheon, to recall Walter Reuther's brilliant accomplishments in the field of medical care.

To the five million members of the United Auto Workers family, he brought a generation of imaginative health care and health insurance programs that have influenced the entire nation. He vigorously supported the principle of consumer participation in Blue Cross and Blue Shield. His Community Health Association in Detroit was a far-reaching program of comprehensive pre-paid group practice.

For the Auto Workers, he negotiated the nation's first out-of-hospital benefit program for psychiatric care. After its initiation, the President of the American Psychiatric Association called it a great step toward the goal of making adequate psychiatric care available to every citizen. He negotiated the first national program of pre-natal and post-natal care under basic health insurance, and the program became a model for similar coverage elsewhere. Long before Medicare, he helped secure skilled nursing home care as a right for members of his union of all ages. Most recently, in 1969, he established a major prepayment program for prescription drugs.

To the nation as a whole, Walter Reuther brought a long and distinguished career of public service to the cause of better health for our people. In the 1940's he served on President Truman's Commission on the Health Needs of the Nation. In the 1960's, he was one of the most enthusiastic and effective supporters of President Kennedy's medicare program. As President of the Citizen's Crusade Against Poverty, he helped to develop the devastating report "Hunger, U.S.A." demonstrated the presence of malnutrition in America, and revealed the plight of millions of our citizens starving in the midst of affluence.

In 1968, he embarked on what has now tragically become his last great health crusade. By creating the Committee of One Hundred and assembling its fine technical staff, he gave the movement for national health insurance a new clarity and political visibility that it had never had before. In all his major endeavors, Walter Reuther was consistently ahead of his time, and never was his foresight more clearly demonstrated than in his eloquent advocacy of national health insurance. Long before others saw the defects of Medicare and Medicaid, he realized what has now become the standard truism of health reform—that a dollar ticket is not enough to bring us into the mainstream of modern medicine. He saw that we cannot simply pour more money into the existing system of health care. He saw that we must bring fundamental change to the organization and delivery of health care as well. Most important of all—and this, I think, was the true genius of his insight—he realized that the financing mechanism of national health insurance might well be the only available key to comprehensive health reform, since it offered the only real hope of building incentives strong enough to change the system.

At the founding of our American republic, Thomas Paine declared, echoing the words of the ancient Greeks, "Give us a lever and we shall move the world." Walter Reuther's view was, give us the lever of national health insurance, and together we shall move the medical world and achieve the reforms that are so desperately needed.

You who receive the Lasker Awards today share Walter Reuther's vision of the gulf in our society between the promise of health research and the performance of health delivery. As Mr. Bylinsky and Miss Randal, Mr. Kleinerman and Mr. Cooper have so well reported, we have great talent for discoveries in medical science, but we have not yet found the talent and the will to put them into practice.

We know, and Reuther was among the first to tell us, that health care in the United States is the fastest growing failing business in America—a $70 billion industry that fails to meet the needs of our people. Nowhere is the impact of the inflation that grips our economy more obvious than in the rising cost of medical care and health insurance.

The private health insurance industry, which oragnized labor and men like Reuther helped create and support, has failed us. It provides sickness insurance, not health

insurance; acute care, not preventive care. It gives partial benefits, not comprehensive benefits. It fails to control costs. It fails to control quality. It ignores the poor and the medically indigent. In 1969, in spite of the fact that health insurance was a giant $12 billion industry, fully 40% of the bills for personal health expenditures in America were paid by direct payments from patients.

Far too often, the catastrophe of serious illness is accompanied by the very real fear of financial ruin. Health insurance coverage in America today is more loophole than protection. Hundreds of insurance carriers compete with each other in providing thousands of different types of benefits. Yet, in 1968, of the 180 million Americans under 65:

13% had no hospital insurance.

20% had no surgical insurance.

34% had no in-patient medical expense insurance.

50% had no out-patient X-ray and laboratory insurance.

57% had no insurance for doctors' office visits or home visits.

97% had no routine dental care insurance.

In spite of the fact that our vaunted research and technology is unequalled by any other nation in the history of the world, America is an also-ran in the delivery of health care to our people. In areas like infant mortality, maternal mortality, life expectancy, and death rate for middle-aged citizens, America lags far behind almost every nation in Western Europe.

At the same time, the billions of dollars we pour into our inadequate health system are more than is spent by any other nation in the world, either in absolute terms or as a percent of gross national product. In light of this dismal record, one thing is certain. In America today, no one is getting full value for his health dollar.

The answer is clear. We cannot go on subsidizing the present waste, patching the existing system beyond any hope of repair. We must begin the long journey toward real reform, toward revolutionizing the system, toward comprehensive change in the organization and delivery of health care in America.

I share Walter Reuther's belief that the way out of our health crisis today is the establishment of a program of comprehensive national health insurance, capable of bringing the same amount and high quality of health care to every man, woman and child in America.

As a member of Reuther's Committee of One Hundred for National Health Insurance, Mary Lasker and I and many others had the honor and privilege of working with him to achieve that goal. Today, he was to have told us the broad results and new directions that have emerged from his two-year labor of love for the health of us all. He was to have told us the essence of his program to end our health care crisis. You would have heard new proposals to conserve and develop health manpower; to weed out waste and reduce costs; to assure a higher quality of care; to promote greater consumer participation in health affairs; and to reorganize the health delivery system through the development of primary health care and group practice programs. Equally important, he would have told you that all his proposals, taken together, would cost us no more than our present annual outlays for personal health services.

Today, however, is not the occasion to elaborate his program. What we can do is to pledge ourselves to fulfill his quest. In the days to come, when the Reuther proposal for national health insurance is put forward in detail, I believe it will become the single most important, imaginative and far-sighted legislation introduced in the 91st Congress, whether in health or any other area. In the years to come, when Congress finally responds to the demand of the American people for better health, the legislation we enact for national health insurance will be a living memorial to Walter Reuther. More than any other, he is responsible for its present public momentum. Strange as it seems, future historians of America may well record that in the United States of the Nineteen Sixties, it was Walter Reuther who first saw that the time had come to bring American medicine into the twentieth century.

To be so cruelly deprived of his extraordinary talent, especially now when this aspect of his work was nearing fruition, is a heavy loss to all of us concerned with the quality of health care in America.

More than this, his tragic death is a loss to all of us concerned with the quality of our American society. No man's work is ever finished. If today we see further, if today we see more clearly the need of America for peace, for better health, for better education, for better cities, it is because we stand on the shoulders of giants like Walter Reuther. We who live will carry on his work. We will rededicate ourselves to his ideals, and to the ideals of the other great leaders we have lost. We can succeed, but only if we make this commitment our commitment, his dream our dream.

In closing I would like to honor Walter Reuther with a brief tribute, by reading from the passage near the end of "Pilgrim's Progress," which tells of the death of Valiant:

"Then, he said, I am going to my Father's; and though with great difficulty I am not hither, yet now I do not regret me of all the trouble I have been at to arrive where I am. My sword I give to him that shall succeed me in my pilgrimage, and my courage and skill to him that can get it. My marks and scars I carry with me, to be a witness for me, and I have fought his battle who now will be my rewarder.

"When the day that he must go hence was come, many accompanied him to the river side, into which as he went he said, 'Death, where is thy sting?' and as he went down deeper, he said, 'Grave, where is thy victory?' So he passed over, and all the trumpets sounded for him on the other side."

## TVA'S 37TH ANNIVERSARY

Mr. SPARKMAN. Mr. President, today we celebrate a memorable anniversary in our national life.

Almost two score years ago Congress brought into being a bold, new concept relating to the natural resources of the Nation. I refer to the Tennessee Valley Authority program, which became law 37 years ago on May 18, 1933.

I do not need to remind Senators that the TVA has been good for the U.S.A. The record speaks for itself.

The TVA was one of the great reforms of the early New Deal. While the Wagner Labor Relations Act and collective bargaining were a magna charta for the working man of that day, TVA was a magna charta for the consumer and the farmer, long oppressed by the high cost of electricity—and, I may add, the lack of electricity in many cases.

Its famous "yardstick" principle set in motion a wave of electric power rate reductions felt all over America, not just in the Tennessee Valley. TVA also triggered new flood control and erosion control projects throughout the land, projects which harnessed our rivers and made our farmlands bloom as never before.

Nowhere in the world had such a vast, multipurpose undertaking—for electric power, flood control, navigation and erosion control—ever been attempted before, and none has been so fabulously successful. The results are everywhere apparent in our economy and a shining symbol to the rest of the world.

The Tennessee Valley Authority helped America to help itself, to pull itself together after a disastrous depression. It was championed by leaders in all walks of life, but the principal sponsors in Congress, the men who spearheaded enactment, were Senator George Norris of Nebraska and former Senator Lister Hill of Alabama, then a Member of the House of Representatives.

I recall how Norris and Hill went to the White House for a conference with President Franklin Roosevelt before the TVA legislation was introduced in Congress.

Roosevelt was completely sold on the idea. He insisted that the multipurpose program should be administered by an agency that was strongly independent.

"What will we call it?" he asked, leaning back in his chair. Suddenly he said, "I know. We'll call it an authority—the Tennessee Valley Authority."

Hill and Norris agreed, and that is how the TVA got its name.

It had some difficult times in its early days, for not all of our citizens supported the program at first and saw it as the Nation, and the world, look upon it today. It was fought bitterly by the big private utilities, which envisioned TVA as a dangerous competitor.

There were loud protests that private utilities had to pay taxes, while the TVA, as a Federal agency, was untaxed—and that this constituted an unfair subsidy by the Federal Government. Lawsuits and injunctions multiplied and seriously threatened the sale of TVA electric power until the U.S. Supreme Court upheld the constitutionality of power sales from Wilson Dam in the landmark Ashwander case decision in 1936.

In the years since, the major power companies not only have learned to coexist with TVA, but to join hands with it in the volume distribution of electric power at lower rates. The TVA now serves as a backup for private electric systems from Oklahoma to the Atlantic seaboard. To help prevent blackouts this summer, it plans to sell 720,000 kilowatts of power to hard-pressed utilities east of the Mississippi River.

However, the TVA power system itself is somewhat hard-pressed at the moment, due to the shortage of coal. The average coal supply for the entire TVA system usually runs from 60 to 90 days, but it is now down to 30 days' supply.

Although the TVA Act emphasized the public aspects of electricity and recognized it as an important tool in the development of our resources, TVA power projects were required to be self-supporting and self-liquidating. In other words, the power program pays its own way.

From 1933 through fiscal year 1969, TVA power revenues amounted to a total of $5.1 billion. The accumulated net income of the power program in this period,

after deduction of all expenses, totaled over $1 billion. The TVA has returned almost $700 million of this to the U.S. Treasury. It paid back $68.1 million in fiscal year 1969, and will return an estimated $72.6 million in the current fiscal year of 1970 and an estimated $80 million in fiscal 1971.

State and local governments also have received considerable payments from the TVA and its power distributors in lieu of taxes, including $37.4 million in 1969.

But much of the power earnings have been reinvested in new construction in the Tennessee Valley. As a result, the Federal Government is the sole proprietor of an electric system which services over 2 million consumers and has a net worth of about $2 billion.

Other TVA programs besides electric power—such as flood control, navigation, reforestation, and so on—are financed largely at public expense for the public benefit, in the same way that other Federal agencies provide similar services for all of us with taxpayer money.

The TVA fertilizer development program, which makes an outstanding contribution to American agriculture, and to the private fertilizer manufacturing industry, partly pays its own way from the sale of fertilizer.

TVA also has a fine record in antipollution and recreational endeavors. Land Between the Lakes, a TVA showplace for outdoor recreation and conservation education in Kentucky and Tennessee, is one of the top vacation spots in mid-America. Over 1 million people from all over America visited this scenic area in 1969 to camp, fish, boat, hunt, hike, and study nature.

Despite these many services, the appropriation request for the entire TVA for nonpower purposes in the next fiscal year is only about $50 million. This is considerably less than the TVA annually pays back to the Federal treasury in power revenues. It also represents about 25 cents for every $1,000 in the total Federal budget.

The transformation the TVA has wrought in the Tennessee Valley itself—once a desolate and neglected area—has been fantastic. Fertile farms and prosperous businesses abound. More than 1 million acres of land have been reforested. The valley is almost completely self-sufficient, so that young people no longer must emigrate to find employment.

Industrial growth in the valley area, served by TVA power, continued its upward spiral in the last decade. A record 618 new industrial plants and plant expansions were announced in the valley in 1968. Annual electric bills for all-electric homes there range from $168 to $221, or from 29 percent to 46 percent less than the national average of about $311 a year.

TVA has developed the Tennessee River and its tributaries to a degree without parallel anywhere in the world for navigation, flood control, hydroelectric power generation, and other related uses. Tennessee River traffic totaled almost 23 million tons and over 2.6 billion-ton-miles in fiscal 1969, more than 10 times the traffic in 1945.

The savings in flood damage that has been averted since the TVA's first flood control project went into operation in 1936 totals over $350 million. Its water control system helps prevent floods in the lower Ohio and Mississippi Rivers as well as in the Tennessee basin, thus protecting large areas outside the Tennessee Valley.

It has stimulated interregional commerce through a 9,000-mile inland waterway system touching 20 States.

TVA development of new fertilizers, with the cooperation of land grant universities, has been a boon both for American farmers and those in food-deficient countries. Focal point of this activity is the National Fertilizer Development Center at Muscle Shoals, Ala., the world's foremost installation for researching and developing new fertlizers.

Some critics have claimed that Federal money has been poured into the TVA region, far more than other parts of the Nation. Nothing could be further from the truth. If you take the period from 1934 to 1965, total Federal expenditures amounted to $11,907 per capita in the Nation as a whole. In the Tennessee Valley, in the same period, Federal expenditures for all purposes amounted to $6,982 per capita, or only 59 percent of the national average. And TVA funds accounted for only one-tenth of this.

Yes, the TVA has been good for the U.S.A. But, more than that, it is the greatest and most profitable investment ever made by a nation in the natural resources God has given us, which, if wisely used, will bring security, health and happiness to all of us.

## WALTER P. REUTHER

Mr. PACKWOOD. Mr. President, a man who stood out among men is dead at the age of 62. Walter P. Reuther, president of the United Auto Workers, died May 9 in a plane crash. Mr. Reuther was truly a giant in the American labor movement. He was a man who felt strongly about the cause of freedom and about the cause of the common man. He rose from a humble beginning to become president of the Nation's largest industrial union. He was a man with vision, constantly seeking social changes which would result in a better and more fulfilling life for human beings.

I ask unanimous consent that an article published in the Washington Evening Star of May 11 be printed in the RECORD.

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

REUTHER SPENT HIS LIFE FURTHERING A CAUSE

(By William J. Eaton)

Union negotiators in the 1967 contract talks with General Motors grew tense during a recess in the final hours of bargaining.

Only Walter P. Reuther, president of the United Auto Workers, appeared serene, scrawling notes on more than a dozen pages of yellow foolscap.

"Are you writing a press release?" asked an anxious aide.

"No," Reuther replied. "GM is going to agree to what we want. Don't worry about that. I'm writing a plan to rebuild the slums of America, using the people who live in them to do the work."

That vignette captures the spirit of Walter Philip Reuther, an authentic American radical who fought his way to the top of a powerful labor union, then used his power in the interests of social justice.

PRIORITY TO RANK AND FILE

His first priority was securing wages and benefits for the rank-and-file, but he never performed simply as a bread-and-butter unionist.

Reuther's vision led to breakthroughs such as a guaranteed annual wage for the assembly line worker and company-paid pensions for those who were "too old to work and too young to die," a slogan he coined in the 1950 battle for retirement pay.

Reuther's conscience also kept him in the forefront of drives for racial equality, aid to the poor, nuclear disarmament, improved medical care, better housing and a cleaner environment.

His leadership within the labor movement routed Communist elements from his own union and later helped expel Red-led unions from the CIO.

SYMBOL OF UNION VIRTUE

Personally and financially, he became a symbol of trade union virtue. The UAW was rarely tarnished by corruption.

Reuther's politics, originally Socialist, became Democratic in the 1936 re-election campaign of New Deal President Franklin D. Roosevelt.

Unhappy with Harry S. Truman, he briefly supported presidential boomlets for Dwight D. Eisenhower and/or Justice William O. Douglas in 1942, but returned to his adopted party and remained there for the rest of his life.

Reuther made enemies. At the outset of his labor career, he was beaten by Ford Motor Co. thugs in the notorious "battle of the overpass" in 1937 for daring to circulate organizing leaflets at Ford's River Rouge plant. Later, he was labeled "the most dangerous radical in America" by George Romney, who was then chief spokesman for the auto manufacturers.

ATTACKED FROM TWO SIDES

When Reuther directed a 133-day strike against General Motors in 1945–46, he was accused of undermining the free enterprise system.

The Kremlin once called him a "lackey of Wall Street" although, as a young tool and die maker in a Ford plant at Gorki, Russia, Reuther was attacked as an "establishment man" by youthful revolutionaries and black militants—just as Communist foes within the union labeled him "the bosses' boy" in his 1946 fight for the UAW presidency.

ALIGNED WITH KING

"We will reject the voices of extremism, whether they be white or black, because we believe there are no white answers or no black answers," Reuther said. "There are only American answers.

He aligned himself with the late Martin Luther King, Jr. and his nonviolent crusade for racial integration, often offending many UAW members who did not approve of King's activities. Reuther was one of the ten sponsors of the 1963 March on Washington attended by a quarter-million Americans who heard the famous "I have a dream" speech by the black clergyman.

The march drove a wedge between Reuther and George Meany, AFL-CIO president, who had urged that orgnaized labor adopt a hands-off attitude toward the massive demonstration. When the AFL-CIO Executive Council passed a resolution to this effect at Meany's urging, Reuther fumed: "That resolution is so anemic it will need a transfusion to get through the mimeograph machine."

Reuther's dispute with Meany, which led to the UAW's break with the parent federation in mid-1968, seemed to be a mixture of

principle and personality. In Reuther's eyes, the labor movement should always be "on the march" in the front ranks of groups seeking social change. In Meany's eyes, the AFL–CIO can obtain better results through more conventional lobbying for federal and state legislation.

Reuther had headed the UAW since 1946, and became CIO president in 1952. In 1955 he joined Meany in forging the AFL–CIO, giving labor its first united front since John L. Lewis pulled out his United Mine Workers in 1937 and founded the Congress of Industrial Organizations as a rival to the American Federation of Labor.

But in 1968, Reuther pulled out his 1.6 million-member UAW, claiming the federation had become practically inactive. It joined the Teamsters in forming the Alliance for Labor Action, whose avowed goal was to organize the working poor into labor unions.

INDOCTRINATED AS A BOY

It may be necessary to go back to Reuther's boyhood in Wheeling, W. Va., where he was born on Sept. 1, 1907, to understand his labor philosophy. His father, the late Valentine Reuther, was a German immigrant, a socialist, an official of the Brewery Workers Union. Valentine raged against injustice he found all around him in that industrial town and preached labor's story to Walter and his three brothers.

Misfortune struck the family when Valentine lost an eye in a freak accident, forcing Walter to drop out of high school at age 15 and become an apprentice toolmaker at the Wheeling Corrugating Co.

"I made 11 cents an hour," Reuther recalled later. "We worked 11 hours a day."

On weekends, Walter and his brothers were coached in debate by Valentine, who assigned them research on such topics as the eight-hour day and then supervised the arguments in an upstairs bedroom. It was good training for the soap-boxing that Walter, Victor and Roy Reuther were to do later in the auto capital of Detroit.

IGNORED BY COWORKERS

Even before he left Wheeling, Walter started agitating against Sunday and holiday work, but his fellow workers paid little heed to the red-haired apprentice.

He went to Detroit at 19, and landed a job in the Ford tool and die department. He finished his high school education while working full time, often studying until 4 a.m. and stuffing textbooks in his tool box to finish his homework.

The Great Depression's impact on Detroit—with long lines of unemployed and soup kitchens—reinforced the socialist doctrines taught at home. Enrolled at Detroit City College, Walter and Victor formed a social problems club, took its members to picket lines and fought against an ROTC unit there.

In 1932 the Reuther boys stumped Michigan for Norman Thomas, the Socialist candidate for president, with an enormous "repeal unemployment" banner on their car. (Walter ran on the Socialist ticket for the Detroit City Council, losing decisively, in 1937).

FIRED BY FORD

Walter's political views perhaps led to his dismissal from Ford in early 1933, and he lost no time leaving with his brother Victor on a round-the-world tour that included a 22-month stint in a Ford plant in the Soviet Union. At the time, the two young men seemed to be staunch supporters of the Communist experiment that had captured the imagination of so many American liberals.

A letter attributed to the Reuthers, allegedly signed "Yours for a Soviet America," plagued them for years to come. Various versions of this "Vic and Wal letter"—many obviously forgeries—were employed in intra-union battles long after the brothers had declared war on the Communist party elements within the UAW.

Returning to the United States in 1935, Reuther set up shop as an unpaid organizer, got elected to the executive board at the Auto Workers' founding convention and quickly became a major figure in Detroit auto labor. With the aid of Victor and others boring from within, Reuther led a sit-down that brought a contract at Kelsey-Hayes Wheel Co. in late 1936, his baptism of fire in that turbulent year.

FIGHT WITH GM

Although his brothers had more prominent roles, Walter helped fight General Motors in the great sit-down at Flint in the winter of 1936–37 that produced an historic agreement on recognition of the union in the citadel of the open shop.

The UAW, rocked by factional fights, nearly fell apart in 1939 and GM tried to take advantage of the split. Reuther shrewdly timing a midsummer strike of tool and die makers that delayed production of 1940 models, managed to preserve the UAW's bargaining rights with the auto industry giant.

Reuther again showed his creative ability when he unveiled a plan for production of "500 planes a day" to help Britain survive the Nazi blitz in 1940.

The essence of the Reuther plan, which attracted national attention and almost got Roosevelt's approval, was to convert unused auto production capacity to build airplanes. Industrialists said it couldn't be done but later boasted of how they had used more than 90 percent of their machinery to build warplanes, not cars, during World War II.

SPOTLIGHT AFTER WAR

It was in the postwar era, however, that Reuther's negotiations with the auto industry began to command wide interest.

The bitter 1945–1946 strike against GM—highlighted by Reuther's slogans of "wage increases without price increases" and "let's take a look at the books"—received sympathetic attention from a presidential fact-finding board. The slogans represented an effort by Reuther to make bargaining more rational and more dependent on economic facts rather than power, and the strike paid dividends later.

In 1948, former GM president Charles E. Wilson introduced the "annual improvement factor" to reflect rising productivity in wages and the cost-of-living escalator to protect the buying power of a worker's paycheck. The UAW accepted these principles and they formed the basis for a five-year contract in 1950.

Reuther forced renegotiation of that contract when the Korean war sent prices soaring in 1953. He did this by striking key plants and then, under the theory that labor contracts are "living documents," reopened the provisions on wages with the grudging agreement of auto management.

LANDMARK IN 1955

But it was the 1955 bargaining, however, that may make Reuther's name live in labor history. He won a system of "supplemental unemployment benefits," or SUB, from Ford Motor Co. to increase the out-of-work payments to regular Ford employes who were laid off periodically.

With patience and determination, he built on those agreements until, in 1967, a regular Ford worker could collect 95 percent of his weekly pay for up to a year if he got a layoff slip.

It was the same kind of determination that Reuther displayed following an unsuccessful assassination attempt in 1948 that almost severed his right arm.

After the shooting, doctors said the odds were a million to one against his ever using his right hand again. But Reuther squeezed a hard rubber ball and underwent therapy until movement was restored, then took up carpentry to aid his recovery.

"I drove nails and sawed wood until tears came to my eyes. . . . I got a good house and a good hand," he recalled.

## LESSON IN PRACTICAL POLITICS

Mr. METCALF. Mr. President, election laws vary from State to State, but by and large they are similar. In Montana we elect our precinct committeewomen and committeemen at the primary election. Those voting the Democratic ticket vote for their precinct representatives; those voting the Republican ticket do likewise.

All one has to do in Montana to run for precinct representative is to file at the county courthouse with the clerk and recorder and be a registered voter. There is no filing fee. If a personal reference will be pardoned, my first office was precinct committeeman. I filed as soon as I was a qualified voter and won in a contested election.

Roger Hawthorne, a staff writer for the Billings, Mont., Gazette, has written a thought-provoking article on how those opposed to war, those seriously concerned about our environment, and those with other causes are voluntarily surrendering their chances to "turn the system around."

As Mr. Hawthorne states, it is the precinct officer who determines the direction of the political party he represents. The county convention is composed of the percinct committeemen and committeewomen. The county convention elects delegates to the State platform convention and in presidential years elects delegates to the State convention who in turn designate the delegates to the national presidential nominating convention.

Here is a little lesson in practical politics. The activists who are demonstrating about the issues of the day have an opportunity to particpiate in the solution of national problems insofar as Montana is concerned by merely walking down to the courthouse and filing for precinct office. This is the way the system works in Montana. I would wager that it works in a similar way in most States.

For those who are not satisfied with the people now in office but do not wish to seek a party post or office through the manner set forth in the Hawthorne article, a viable alternative is offered in an article written by James D. Barber and David R. Mayhew and published in the New Republic magazine. The Barber-Mayhew article outlines how the energy dissipated in street demonstrations could be more effectively used if converted into political muscle.

Responsible young people, and those who are not so young, but with causes to advocate, should look at the way the political system works and try to operate within it. If it is not democratic, change it. But where there is an opportunity to direct and control, there is no excuse for neglect of that opportunity—unless one just wants to protest.

I ask unanimous consent that the articles to which I have referred be printed in the RECORD.

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

THOSE WITH CAUSE MISSED A CHANCE

(By Roger Hawthorne)

The anti-war people, the environmentalists, indeed all the people with a cause to push that in any way relates to the political process (and what doesn't?) last week volun-

tarily surrendered their one chance to do something about it.

That is, to do something effective about it.

Of course, they can always hold their fasts, their demonstrations, their teach-ins.

None of that has been effective in the past, and it's not too likely to be effective in the future, but accomplishing something doesn't seem to be of much genuine concern to the cause-pounders.

What they could have done—but didn't—was to go to the clerk and recorder's office in the courthouse before the filing deadline April 23, take out nominating petitions for a precinct position, and sign them.

All they would have had to do is to be registered voters and reside in the precincts filed for. And just sign their names in many cases.

On the Republican side, 86 people did that. On the Democratic side, 106 people did that. Two Republicans and two Democrats will be eliminated in contested precincts.

Everyone else who took the time to sign his or her name on a nominating petition will be elected as either a precinct man or woman.

There are 81 precincts in Yellowstone County; 81 men and 81 women could be precinct workers.

There are 78 vacant precinct positions in the Republican Party—only four short of an absolute majority. On the Democratic side, there are 58 open positions, 24 short of an absolute majority.

And what is true in Yellowstone County is also true in varying degrees in every county in the nation.

For the politically naive, the precinct man or woman is the most elemental term in the political process. Ultimately the precinct worker decides the party's platform on both the state and national levels. Ultimately the precinct worker controls all patronage to be administered through the party.

The precinct worker is the one who delivers the votes, chooses the county central committee's executive committee, determines who will compose the state central committee, and the state central committee in turn determines who will compose the national central committee.

With all the vacancies in the two parties in Yellowstone County, it would have been an easy matter for the cause-pounders to have gained control of both parties.

In short, had any one really cared, they could have—in nearly every case—simply signed their names to finally decide what the political policies will be, all the way from City Hall to the White House.

They didn't do it.

Of course, the cause-pounders wouldn't have had to have an absolute majority to control the internal workings of the two major parties.

One young Republican estimated to control the central committee of his party would require only 15 people, 15 people who would ritually attend all central committee meetings.

Most people holding precinct positions don't go to the central committee meetings, and in actuality a miniscule number of cause-pounders could have—without any contest—seized the party apparatus of both parties.

They could still do it, only now it will be somewhat harder.

They can wage write-in campaigns or try to arrange with a party apparatus they voluntarily surrendered to be appointed to the vacant precinct positions.

It would have been so simple on Earth Day for the genuinely concerned environmentalists to go to the courthouse to sign the nominating petitions that would put them in a position to shape and guide both major political parties in this, the most populous county in the state.

It would have been so simple for those people fasting against the war in front of the federal building to cross the street to the courthouse to sign their names.

They didn't do it.

Kind of makes you question just how seriously they should be believed when they say they care about anything, doesn't it?

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FROM THE STREETS TO THE POLLS

(By James David Barber and David R. Mayhew)

Tell a hawk congressman you are planning a peace march through his district, and you're likely to get a cold rebuff. Tell the same man you have organized a thousand volunteers to canvass his district in the next primary in support of a dove opponent, then his attention picks up. Show him you know the law, the ins and outs of the nominating process. Show him a substantial campaign fund already available for peace candidates. Tell him the name of the popular citizen who has agreed to contest his nomination if necessary. At this point he is listening hard . . . Perhaps there is something to that Goodell Resolution after all.

The next step for the peace movement is from the streets to the polls. The massive Moratorium of October 15 and the immense (and 99 and 44/100ths percent pure nonviolent) march of November 15 made their point: a majority of Americans recognize that the war in Vietnam is a mistake. The job now is to translate that sentiment into political power. The President can always back up his popularity by appealing for personal support in time of crisis. He may yet discern in the flux of opinion the difference between allegiance to the flag and acceptance of his slow and secret policy. But he has nearly three more years for maneuver before he faces the electorate. Four-hundred thirty-five representatives and a third of the senators face that test in the coming year.

The machinery for '70 is already in motion. Incumbents are watching the election calendar, wondering if challengers will let the key dates pass without action. In Connecticut, for example, registration to vote in party primaries in 1970 closes on January 9. In other states candidates must file as early as the first or second week in February. Normally, all this early maneuvering takes place in obscurity; the public is not much interested, and the politicians are willing to leave it that way. But unless the peace forces want to wake up next November to congressional contests of the Humphrey vs. Nixon type, the time to shape the choices is upon us.

Success in a campaign for a peace Congress depends on mobilizing quickly to implement a plan with at least the following elements:

1. *Money.* It is an old political maxim that a dollar in January is worth $5 in July. The shift in public confidence from newspapers to television has escalated the cost of campaigning far beyond what most candidates can afford. A national effort to elect a peace Congress will cost millions, but in the early days of the campaign it is the thousand-dollar checks which count. Before a candidate takes on an intrenched opponent, he needs—and deserves—to know whether he has a realistic chance. Money helps that confidence.

2. *Candidate Recruitment.* In some states and districts, registration and petition efforts will have to get started before candidates appear, simply because the deadlines are approaching so rapidly. As soon as possible, however, these actions must be organized around specific candidates who articulate and lead the cause. The overriding criterion must be the man's determination to take an active, aggressive role, in cooperation with other congressmen, to stop the war. That comes first. But reactionaries, ideological wild men, and political inepts—however loudly they proclaim their dedication to peace—have to be screened out. The point is to win and get the U.S. out of Vietnam.

3. *Leg Power.* Personal contact with voters—canvassing—is probably the most effective way to bring out the votes. In the hoopla of Presidential campaigns other factors may be more important, but congressional primaries are prime targets for personal politics. Primaries can be won by small margins: in many of them, only 20 to 25 percent of eligible voters make it to the polls. There is much room for education at the doorstep: Gallup found in 1965 that 57 percent of American adults did not even know their congressman's name; 70 percent did not know when he would next stand for election—much less how he stood on the war. If the peace forces in both parties can mobilize the kind of volunteer effort we saw in New Hampshire, Oregon, Wisconsin and California in 1968, Congress can be turned around on its grassroots.

It won't be easy. Target states and districts will have to be carefully picked—although there is hardly a district in the country in which a serious challenge cannot be mounted if the war drags on. The national mood seems volatile; Representative Sam Steiger of Arizona and 14 of his colleagues read it one way when they call on the President to order a "sudden and major escalation" of the war. Furthermore, incumbents have been hard to beat; they hang onto their seats as if they owned them. In the current House, only 9.2 percent of the members are freshmen, the lowest percentage of new blood in the history of the U.S. Many are too busy climbing up the little ladders in their committees and subcommittees to grasp the urgencies felt among the people back home. That can change. A locally based movement for a peace Congress will know best the races on which to concentrate.

Take Rep. John Rarick, Democrat from Louisiana. Rarick has termed peace demonstrations "a public manifestation of disloyalty." Of three of Louisiana's eight Representatives who were opposed in the last election; Rarick was one. In the midst of his district, the Sixth, stands Louisiana State University, with more than 16,000 students and their teachers. What are the chances for defeating Rarick in a primary next year?

Consider Mr. William E. Minshall, Republican of Ohio's Twenty-Third District, Minshall is the second-ranking Republican on the Department of Defense subcommittee of the House Committee on Appropriations. He has not been what you might call an energetic advocate of prompt withdrawal from Vietnam. In November, 1968, Minshall squeaked through with 52 percent of the vote, defeating a liberal Democrat by a margin of 8,000 in 200,000 votes. Suppose that among the 40,000 students at Ohio State University, and those from other colleges, a thousand canvassers could be discovered, trained and transported to Minshall's district for a primary in May. Somewhere along the road Rep. Minshall might change his mind.

Why have we not heard of leadership for peace from the House Committee on Armed Services? Ranking right next to Mendel Rivers on that committee, and chairman of its subcommittee number one is Rep. Phil Philbin, Democrat, of Massachusetts' Third District. Mr. Philbin was not among the more than 80 members who spoke up for the Moratorium; so far he cannot be called a leader for peace. Philbin's district nests among one of the most thickly settled hotbeds of student power in the United States—the Harvard-MIT-University of Massachusetts-Brandeis complex. In the last election

he faced two challengers and won with a bare 47.8 percent of the vote. Should there be an alternative to Philbin in 1970?

The House has a Committee on Foreign Affairs, a fact that may be news to those who have noticed the leading role of the Senate Foreign Relations Committee. The ranking Republican there is E. Moss Adair, who won in Indiana's Fourth District with a shaky 51.4 percent of the vote. What could be accomplished by a team from Notre Dame, backed up with volunteers from Indiana University's nearly 50,000 students?

In districts like these, a double-barreled strategy may make sense: primaries in *both* parties, to raise the odds that a peace candidate will get on the ballot in 1970.

There are targets elsewhere. Hébert of Louisiana, Meskill of Connecticut—even the Rivers and Mahons may be challengeable. In the Senate, four seats are being vacated, their incumbents retiring, so the field is open; Holland of Florida, McCarthy of Minnesota, Young of Ohio, and Williams of Delaware, Dodd of Connecticut deserves to go, as does Murphy of California. Prouty of Vermont is being challenged by an attractive, outspoken Robert Kennedy-Eugene McCarthy, supporter, ex-Governor Phil Hoff, in a state increasingly attuned to change. Alaska could replace Republican-appointed Theodore Stevens and return to its Gruening tradition. Hawaii—strongly Democratic in Presidential voting—might replace Republican hawk Hiram Fong. Meanwhile, senators who *have* taken courageous leadership for peace need strong support: Gore of Tennessee, Hart of Michigan, Yarborough of Texas, Goodell of New York and others.

Realistically, present U.S. policy, dependent as it is on the Saigon junta, the NLF and Hanoi, may drift into re-escalation or widely spaced mini-withdrawals. The war may be worse by November, or drag on as now. Or it could be over by November. The campaign for a peace Congress must be ready, before it is too late to effect real changes in Washington. Act One is a visit to each incumbent senator or representative by a top delegation of citizens, urging him to join with his colleagues in a common move for a quick end to the war, and describing to him the organized peace forces developing in his constituency. Act Two is the nominating process—the registration drive, petitions, conventions, and primaries. Act Three is November. To play out this drama with hope in the results requires a special dedication which may be too much for the older generation. It means hour after hour of work few will notice. It moves beyond the excitement of provocation to the exhaustion of persuasion. There will have to be speeches by those who have never made speeches, lonely encounters with hostile voters, cold feet and missed recreations, chances taken in a cloud of uncertainty. No one can say how it will turn out. But if the alternative to politics is acquiescence to killing and dying, we have a responsibility to try politics.

## WITHDRAWAL FROM VIETNAM

Mr. FULBRIGHT. Mr. President, Life magazine for May 22, 1970, contains one of the wisest and most perceptive statements on our involvement in Southeast Asia—an article entitled "Set a Date in Vietnam. Stick to It. Get Out," written by Mr. Clark Clifford.

Mr. Clifford is, of course, uniquely qualified to write on this subject, having served as Secretary of Defense in 1968–69. He was an adviser to Presidents Truman, Kennedy, and Johnson and coordinated the transfer of power from Eisenhower to Kennedy. His article advocating the beginning of withdrawal from Vietnam, published in Foreign Affairs a year ago, received wide attention. President Nixon said then he hoped to better Clifford's proposed timetable.

Mr. President, I hope that Senators and the public will carefully consider Mr. Clifford's suggestions and conclusions. 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:

SET A DATE IN VIETNAM. STICK TO IT. GET OUT.

(By Clark Clifford)

On the evening of April 30, I heard President Nixon inform the American people that in order to "avoid a wider war" and "keep the casualties of our brave men in Vietnam at an absolute minimum," he had ordered American troops to invade Cambodia.

My mind went back to a day in April 1961 when I received a telephone call from President Kennedy. He asked me to come to the White House to discuss the Bay of Pigs disaster which had just occurred. He was agitated and deadly serious. I shall never forget his words: "I have made a tragic mistake. Not only were our facts in error, but our policy was wrong because the premises on which it was built were wrong." These words of President Kennedy apply with startling accuracy to President Nixon's decision to invade Cambodia. Unfortunately, it is clear that President Nixon's action is an infinitely greater mistake than President Kennedy's, because more than 400,000 American boys remain involved in Vietnam, and far graver damage has already been done to our nation, both at home and abroad.

Like most Americans, I welcomed President Nixon's promises to end the Vietnam war and bring our boys home. Like most Americans, I applauded the President's action in withdrawing 115,000 of our troops so far, and have noted his intention, with some qualifications, to withdraw 150,000 more in the next 12 months. Like most Americans, my sincere inclination is to support our President in times of crisis. However, I cannot remain silent in the face of his reckless decision to sent troops to Cambodia, continuing a course of action which I believe to be dangerous to the welfare of our nation. It is my opinion that President Nixon is taking our nation down a road that is leading us more deeply into Vietnam rather than taking us out.

George Santayana once said: "Those who cannot remember the past are condemned to repeat it." In my personal experience with the war in Vietnam, I have learned certain basic and important lessons. It has been my hope that the present administration would study the past and determine not to repeat certain actions previously taken. However, I must express the deepest concern that it is now apparent that President Nixon has not grasped these vital lessons which seem so blazingly clear as we look back at the last five years of our substantial participation in the Vietnam conflict.

I have learned three fundamental lessons from my personal experience with Vietnam and I shall present them in this article. I shall then discuss how these lessons apply to the Cambodian situation. Finally, I will suggest a specific plan for our extrication from Vietnam.

*The national security of the United States is not involved in Vietnam, nor does our national interest in the area warrant our continued military presence there.*

The basis of our original participation in the conflict in Vietnam was the general acceptance of the so-called "domino theory." If South Vietnam were permitted to fall, then other nations of Southeast Asia, and possibly even in the Asian subcontinent, might topple, one after the other. If this occurred, it was alleged, the national security of the United States would be adversely affected. At one time, I accepted the reasonableness of this theory, but my own personal experience has led me to the conclusion that it is now unsound.

One of the major reasons for the change in my own thinking has been the attitude, evidenced over the last five years, of the nations in Asia that would be most seriously affected if the domino theory were applicable. These nations are infinitely better acquainted with the political, military and diplomatic facts of life in that part of the world, for they have lived with them for hundreds of years. As one looks at the map of the area, it is interesting to fan out from South Vietnam and ascertain the number of troops that these countries have sent to help South Veitnam because, in the final analysis, that is the most accurate test of the degree of their concern.

Burma, Laos and Cambodia, to the west, have sent no troops to South Vietnam. Singapore and Malaysia have sent no troops, while Thailand has sent only token forces.

The Philippines have sent no combat troops. The personnel of the engineering units and hospital corps it did send have been largely withdrawn. Indonesia, India and Pakistan have sent no troops.

These are the closest dominoes, and should be the first to fall.

As far as Laos and Cambodia are concerned, their behavior hardly justifies any sacrifice of American lives or treasure on their behalf. The situation existing in these countries is incredibly sleazy, and should be known and understood by all Americans.

Most of the men and materiel of war used to fight against American forces in South Vietnam come down the Ho Chi Minh Trail through Laos. Is Laos prepared to make any sacrifice to prevent the use of the trail? Certainly not! In fact, the exact opposite is the case. On March 6, 1970, Souvanna Phouma, prime miniser of Laos, had a press conference and said:

"I told the ambassador from North Vietnam last year that we will accept the *use of the trail by North Vietnamese troops* with the condition that those troops withdraw from the important regions of Laos."

While American pilots, on a sharply escalated basis, are fighting and dying in support of Laotian forces engaged with Communist troops, the ruler of Laos suggests a deal that would permit the North Vietnamese free use of the trail through Laos to transport troops, guns and ammunition to kill Americans in South Vietnam.

In Cambodia, for years, enemy supplies have come into the port of Sihanoukville and have been transported across Cambodia into South Vietnam, to be used against American forces.

Laos and Cambodia have not been prepared to jeopardize their own interests to prevent North Vietnam from conquering the South. In fact, at least until Sihanouk's recent fall, both countries have been helping the North Vietnamese, and maneuvering to make their own deals. The United States has become involved in the age-old intrigue and chicanery that are traditional in the area.

I feel strongly that we have met, many times over, any obligation or commitment that we had in that part of the world, and I believe that the developments of the last five years should persuade us that the time has come to disengage in Southeast Asia and bring our men home.

I believe most Americans agree, but from what he says and does, President Nixon continues grossly to exaggerate Vietnam's importance to our national security.

In giving thought and study to this enigma, I have reached the conclusion that President Nixon has a curious obsession about Vietnam and Southeast Asia. Back in 1954, in a speech to the American Society of Newspaper Editors in the East Room of the White House, then Vice President Nixon said: "If in order to avoid further Communist expansion in Asia and particularly in Indochina, if in order to avoid it we must take the risk now of putting American boys in . . . I personally would support such a decision." This is particularly startling because Mr. Nixon was recommending that we send American troops into Indochina to help the French who were engaged in war there to retain their colonial territories.

In 1965, President Nixon, then a private citizen, wrote a letter to the New York *Times*. In that letter, he declared that "victory for the Vietcong . . . would mean ultimately the destruction of freedom of speech for all men for all time, not only in Asia but in the United States as well." In his speech of Nov. 3, 1969 he referred to the "great stakes involved in Vietnam," and asserted that they were no less than the maintenance of the peace "in the Middle East, in Berlin, eventually even in the Western Hemisphere."

I want very much for the President of the United States to be wise, mature and to exercise good judgment, but a statement of this kind shakes my confidence to its very core. I cannot remain silent when President Nixon acts as though he believes that a certain political result in a small underdeveloped country of 18 million persons in Southeast Asia is somehow crucial to "the future of peace and freedom in America and in the world."

I have learned these past years that the war in Vietnam is a local war arising out of the particular political conditions existing in Southeast Asia. I consider it a delusion to suggest that the war in Vietnam is part of a worldwide program of Communist aggression.

President Nixon continually argues that we must fight in Vietnam now to avoid "a bigger war or surrender later." But it is clear to me that the only real danger of a "bigger war" would come from the continued escalation of the rapidly widening conflict in Indochina.

*We cannot win a military victory in South Vietnam, and we must, therefore, cease trying to do so.*

The goal of winning a military victory in South Vietnam has proved to be a will-o'-the-wisp that has led us from one military adventure to another. I have reached the clear conclusion that we are not winning such a victory, nor can we win it in the future.

Certain restraints have been placed upon our military activity by the political realities that exist. We have been unwilling to invade North Vietnam, or to engage in indiscriminate bombing or mining of its harbors. As a result, we have been occupied in the most difficult type of guerrilla war and probably what is the most difficult terrain in which to fight. Our enormous firepower and our airpower are seriously limited and restricted by the fact that most of the fighting takes place in the deepest jungles in Southeast Asia.

In warfare, a nation has three major goals. The first is to kill as many of the enemy as possible on the field of battle. The second is to destroy the enemy's war-making potential, and the third is to seize and hold enemy territory. In the present conflict, a substantial number of the enemy have been killed but the troops from the North continue to come down in an uninterrupted flow. The enemy is well armed, well equipped and well trained, and is expert in guerrilla warfare. And Hanoi has made clear beyond any reasonable doubt its willingness and ability to accept substantial casualties for as long as necessary.

As the second goal, we have been unsuccessful because we are wholly unable to destroy the enemy's war-making potential. The factories turning out guns, rockets, mortars and the materiel of war are not located in North Vietnam, but in Red China and the Soviet Union. We cannot destroy the factories in those countries. We attempted instead to impede the flow of weapons into South Vietnam by a bombing campaign in the North. In my opinion, the results did not warrant the enormous cost to us.

We have been no more successful in pursuing the third goal of seizing and holding territory. The enemy does not operate along a battle line; his objective is not to hold territory. When we attack, the enemy yields, but he returns when we move out.

In the pursuit of these goals, we have lost the lives of close to 45,000 Americans, had more than 275,000 wounded, spent over $125 billion, lost close to 7,000 planes, and we have dropped more tonnage of bombs in this conflict than we did in World War II and the Korean War combined.

Our problem in Vietnam is due not only to our inability to attain the military goals, despite our great effort, but to the fact that the struggle is basically a political one. The enemy continues to symbolize the forces of nationalism. The regime which we support is a narrowly based military dictatorship.

President Nixon has repeatedly asserted that the only alternative to his Vietnamization program is the "defeat and humiliation" of the United States. He has announced his determination not to accept this "first defeat" in our nation's history. The President's view constitutes in my opinion, a complete misreading of the nature of the conflict in South Vietnam, of our role and purpose there and of the American national interest. The alternatives in Vietnam are not military victory on the one hand, or defeat and humiliation on the other. We did not intervene to conquer North Vietnam, but solely to extend a shield for South Vietnam. We did not intervene to impose any particular government on South Vietnam. The interests of the South Vietnamese people will be served and our objectives will be achieved by a realistic political settlement. A program for orderly disengagement will create the conditions in which productive negotiations become possible. Such a program is the only way to peace, and peace in Southeast Asia is the only victory that we should seek.

One of the deepest concerns I have about our present policy in Vietnam is that President Nixon, while he proclaims his dedication to a political settlement, by his actions still seeks to gain the military victory that cannot be won.

*We cannot continue to fight the war in Vietnam without doing serious and irreparable injury to our own country.*

The effect of the war on the young people in the United States is a virulent one. They feel especially affected by the war because they are the ones who have to fight it. Many of them do not believe in it and they are at a loss to understand why they must fight and die in a remote corner of Southeast Asia when they know their country is in no peril whatsoever. One of the poisonous effects of the conflict is the disunity and bitterness, and in some instances violence, it has brought about in our country.

The war has confused many Americans and has caused a continuing loss of confidence because the institutions of our government have not dealt with the pressing problem of national priorities. Every domestic problem we have, including poverty, inadequate housing, crime, educational deficiencies, hunger and pollution is affected adversely by our participation in the Vietnam war, and I do not believe these problems will be brought under control until we have disengaged from that conflict.

The war is a major contributor to the inflation that is hurting every citizen in our nation. We are also in the midst of a serious setback as far as business is concerned. The effect of the war on our economy is dramatic. Almost immediately after our foolhardy entry into Cambodia, the Dow-Jones industrial average declined over 19 points.

What troubles me is that President Nixon continues to give priority to policy in Indochina and to ignore its consequences at home. His actions are dividing the nation when we need desperately to be united and to devote our energies to our critical domestic problems.

*The Cambodian invasion ignores these three lessons.* The President ordered up to 20,000 American troops into Cambodia, and has now promised to have them out by July 1. I know already, in my own mind, that the operation will achieve little. The enemy will fade into the jungles of Cambodia, which are just as impassible and impenetrable as those in Vietnam. Any military gains will be temporary and inconsequential.

This is not an idle prognostication upon my part but is an opinion derived from past experience. Time and again in South Vietnam, the recommendation was made that a sweep be conducted through the Ashau Valley on the grounds that a vital blow could be struck against enemy forces. Time and again, thousands of American troops would sweep through the valley and find practically no enemy soldiers. The same will happen in Cambodia.

Also, there is a curious psychology I cannot understand that attaches importance to capturing territory even though it is held for a temporary period. A perfect illustration is Hamburger Hill. We drove the enemy off Hamburger Hill at great loss of life to our troops, and then later on withdrew. As soon as we pulled out, the enemy reoccupied Hamburger Hill and we went back and repeated the process. I do not know who holds the hill today, I am sure it doesn't matter.

After the adventure is concluded and our troops have been pulled back to South Vietnam, I predict the enemy will quickly reoccupy the areas that we have cleared. Even if the decision were made to remain in Cambodia, then I predict the enemy will develop new bases and staging areas just outside the perimeter of the area we occupy in Cambodia. In either event, the military effect is negligible and not worth the effort.

President Nixon, in his address to the nation of April 30, informed the American people that the invasion of Cambodia is indispensable to the withdrawal of our troops from South Vietnam, that it will serve the purpose of ending the war in Vietnam, that it will keep our casualties at a minimum, and that it will win a just peace.

These contentions violate every lesson that we have learned in the last five years in Vietnam. The bitter experience of those years demonstrates clearly to me that our incursion into Cambodia will delay the withdrawal of our troops from South Vietnam because it spreads the war and intensifies it. This decision will not end the war, but will lengthen it because of the reactions of the enemy to this new development. It will not keep our casualties down but will increase them, not only because of the men killed in Cambodia but because of the increased level of combat which I predict will be the other side's response in Vietnam. It will not achieve peace but will postpone it or destroy entirely the chances of obtaining it. Even though we pull out, the damage has been done, and the bankruptcy of our present Vietnamization program has been exposed.

The thrust of President Nixon's position in his speech of April 30 was that if we escalated our efforts into Cambodia, it would aid our program of Vietnamization.

How unfortunate it is that President Nixon did not heed the congressional testimony of Secretary of State William P. Rogers when he testified on April 23, just one week before the President spoke. Secretary ROGERS said:

"We have no incentive to escalate. Our

whole incentive is to de-escalate. We recognize that if we escalate and get involved in Cambodia with our ground troops, that our whole program [Vietnamization] is defeated."

I anticipate that in the period of the next few weeks glowing reports will flow back from Vietnam regarding the outstanding success of the drive into Cambodia. Figures will be proudly presented showing the number of tons of rice captured, bunkers and staging areas destroyed, substantial numbers of weapons and quantities of ammunition found. A determined effort will be made to portray the entire adventure as a success, even though no major engagements will have taken place and the number of enemy casualties will be woefully small. This has happened time and time again, and our hopes have been raised only to be dashed by new enemy offensives. The capture of supplies and equipment, in the past, has been met by an increase in the supply of such equipment by the Soviet Union and China, with resulting increased flow down the pipeline from North Vietnam.

A further worry I have is that this ill-advised move into Cambodia could create a whole new set of problems. The open violation of Cambodian neutrality on the part of our troops could well constitute an open invitation to the North Vietnamese to expand their efforts further over Indochina on the pretext of defending independence. Our march into Cambodia now jeopardizes the ancient capitals of Phnom Penh and Vientiane. I do not have the prescience to visualize what may take place in this regard, but I know that we have greatly expanded the danger of the conflict spreading throughout Cambodia and Laos, and even further.

Although I consider the attack on Cambodia to be fraught with the most serious military consequences, I attach even greater danger to the diplomatic results that will flow from it.

Many of our friends around the world are shocked at this imprudent expansion of the conflict. They had hoped that they would see a contraction of the area of conflict and instead they learn, with deep apprehension, that it is being widened. The Cambodian adventure ignored the request of Foreign Minister Malik of Indonesia that no action be taken to extend arms support to Cambodia pending a regional conference to find ways of preserving that country's neutrality.

The decision appears to have been made so precipitately that the proper consideration was not given to the effect of the action on Communist China. The action was taken right after the recent conference of Communist representatives from China, Cambodia, Laos and North Vietnam. This conference ended with an agreement of mutual support and cooperation in combating American and other enemy forces in Indochina.

The predictable Soviet reaction was also apparently discounted. Premier Kosygin, on May 4, called a special news conference to warn of the worsening in Soviet-American relations. Mr. Kosygin stated that the Cambodian move raised serious doubts about President Nixon's sincerity in seeking an "era of negotiation." Mr. Kosygin went so far as to suggest that President Nixon's statements could not be trusted. This does not mean that either China or Russia will intervene directly, but it does mean that they will give North Vietnam all the aid it needs to neutralize our action.

Another unfortunate result of our action is to imperil the success of the strategic arms talks now being held in Vienna. Mr. Kosygin stated that our actions put the Soviet Union on guard and decreased their confidence, without which it is difficult to conduct negotiations.

Domestically, the re-escalation of the war has gravely increased the disaffection of young Americans, and the disruption of our society.

The active invasion dramatizes another facet of President Nixon's statements on the war which has caused me the deepest concern. In his speech of April 30, President Nixon again warned the North Vietnamese that, if they accelerated the fighting, he would take stern action in response. He has done this on at least four or five occasions and, in each instance, the enemy has responded by some type of military action. I suggest that this is the road to utter chaos. While announcing the withdrawal of a limited number of troops on the one hand, the President keeps threatening the enemy by assuring him that we are perfectly willing to raise the level of combat. This is not the path to peace. It is the path that will lead to more and more fighting and more and more dying.

*It is time now to end our participation in the war. We must begin the rapid, orderly, complete and scheduled withdrawal of United States forces from Indochina.*

President Nixon has described his program of Vietnamization as a plan for peace. I believe, however, that it can never bring peace in Southeast Asia, and that it is, in fact, a formula for perpetual war.

This war can only be ended by a political settlement. Nothing that the Administration is now doing holds any promise of bringing one about. And our present program for indefinite military presence in Vietnam makes such political settlement impossible. So long as our withdrawals are conditioned on the ability of the South Vietnamese to assume the combat burden, Hanoi cannot be expected to believe that we are genuinely interested in, or would even accept, the kind of political compromise that a peaceful settlement would require. The present Saigon government, on the other hand, will never make the necessary accommodations so long as it is secure in the belief that American forces will remain in sufficient numbers to keep it in power.

It seems clear that the Administration believes it has proposed in Paris a genuine basis for compromise. In my opinion, however, these proposals are not realistic, nor will they lead to any progress.

Accordingly, what we need is a program that will Vietnamize the peace rather than prolong the war. In July 1969, in an article in the magazine *Foreign Affairs*, I recommended the definite, scheduled withdrawal of our ground combat forces from Vietnam by the end of 1970. I now propose to go further, and set a final date for our complete disengagement. Such final date might even be advanced if certain agreements are reached. The following is my specific three-point plan:

1. Announce publicly that all U.S. forces are to be removed from any combat role anywhere in Southeast Asia no later than Dec. 31, 1970, and that all U.S. military personnel will be out of Indochina by the end of 1971, at the latest, provided only that arrangements have been made for the release of all U.S. prisoners of war.

2. Move promptly to end B–52 attacks, all search-and-destroy missions, and all other offensive operations, except as necessary to protect the security of U.S. forces, as disengagement proceeds.

3. Inform Hanoi and Saigon that *we are prepared to negotiate an even more rapid withdrawal* if the safety of our forces is assured by a cease-fire or other arrangements in South Vietnam, and if there is an understanding regarding the cessation of military pressures in Laos and Cambodia.

President Nixon has maintained that, were he to announce a withdrawal schedule, Hanoi would lose all incentive to negotiate a settlement. It is abundantly clear, however, that Hanoi feels no incentive to negotiate at the present time. The President has also asserted that North Vietnam would then simply wait until our troops have been reduced in number and launch attacks. But this potential exists whether a withdrawal program is announced in advance, or simply in installments. A third objection has been that the South Vietnamese forces may not be ready to assume the full combat burden and that a military conquest and bloodbath may ensue. But our objective should be to establish the conditions that will lead, not to the continued necessity for combat capability, but rather to a political compromise that will bring peace and stability to that troubled land.

On a number of occasions, President Nixon, in arguing that it would be improper for us to leave Vietnam now, has used the so-called "bloodbath" argument. He has suggested that the massacre of many South Vietnamese, including a million and a half Catholics who fled from the North, would occur when our forces withdrew.

I find this position difficult to understand. In the first place, the figure of one million and a half Catholics who fled to the South, referred to by President Nixon in his speech of Nov. 3, 1969, is incorrect. A study of this subject, published in 1956, by the South Vietnam Department of Education and the National Commission for UNESCO, discloses that the number is not 1.5 million but 754,-710. This is significant because the President overlooked the fact that there are still living in *North* Vietnam today approximately 800,000 Catholics. There are also Catholics among the leadership of the National Liberation Front in South Vietnam.

The President bases his claim of "bloodbath" on his charge that when the Communists took over North Vietnam in 1954, they slaughtered thousands upon thousands of North Vietnamese. In fact, the records of the International Control Commission disclose that in the two years following the armistice of 1954, only 19 complaints were filed covering political reprisals in all of North Vietnam. Later, in 1955 and 1956, a peasant revolt was harshly repressed, and the best estimate are that 10,000 to 15,000 may have died.

It is my firm belief that, when it becomes apparent that the Americans are in fact leaving, all parties seeking power in South Vietnam will have a strong incentive to negotiate a compromise settlement. All will recognize that compromise is their one assurance of a share in political power. The contending factions must now be aware that, in the absence of compromise, they can look forward only to continued conflict and disruption. The need for peace must now be apparent to all but the very few whose power and profit depend on war. We should not forget that, in South Vietnam's election of 1967, and under circumstances that could hardly be described as favorable, a candidate advocating accommodation for the purpose of peace secured 17% of the votes counted, while the winning military ticket fell far short of a majority.

The North Vietnamese negotiators have indicated their willingness to talk seriously if the United States declares the total and unconditional withdrawal of its troops from South Vietnam. Their suggestion of a six-month period of such withdrawal need not be accepted, but their acceptance of the principle should not be ignored.

The obvious advantage of the three-point plan proposed herein is that it will specifically and unequivocally have all U.S. forces out of Indochina by the end of 1971 at the latest. It also frees the President from military pressure to slow or stop the withdrawal process. The plan takes account of the plight of the Americans now held captive and gives them and their families the hope of early release. No such hope can exist while the war continues and even intensifies. It offers also an immediate reduction in the level of violence throughout Vietnam. The ending of B–52 raids and search-and-destroy missions

so long as the other side does not act to jeopardize the security of our troops, will lower casualties and create a climate far more hospitable to the process of political settlement. This approach could serve to get negotiations started again, and as they progress, this diminution in hostilities can develop into a complete cease-fire.

The time has come for us to grasp the initiative in making the necessary and vital decisions. President Nixon's policy of making our withdrawal dependent on his three criteria is a grievous error. These criteria are: (1) the level of enemy activity; (2) progress at the peace talks in Paris, and (3) the speed with which the South Vietnamese take over the fighting. Even a cursory study discloses that items one and two are controlled by Hanoi, while item three is controlled by Saigon.

We should no longer allow our own perception of our own interests to be distorted or deflected by our apprehensions as to what may occur politically in Saigon. American national interests require American disengagement from South Vietnam. I am convinced that, as presently enunciated, the Nixon program will not bring this about.

We should, instead, decide now to get out of Vietnam on a scheduled and orderly basis no later than the end of 1971. We should, at the same time, make known our readiness to negotiate a much earlier withdrawal and we should move now to scale down the level of violence. Only in this way can we achieve the peace that all Americans want, and that American military might can never win.

The present policy must be changed. The only effective method to accomplish this is sustained pressure from the public. The enormous upswing in antiwar sentiment, following the Cambodian transgression, must be maintained and strengthened and continuously brought to the attention of our country's leaders.

The solution is within our hands—if we will but use it.

Mr. FULBRIGHT. Mr. President, I also invite the Senate's attention to two articles published in the New Yorker magazine of May 9 and May 16. They provide a most succinct analysis, particularly with regard to the Constitution. The logic of these articles is irrefutable. I ask unanimous consent that they be printed in the RECORD.

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

NOTES AND COMMENTS

President Nixon's decision to invade Cambodia and the speech he gave to justify it have precipitated one of the most dangerous crises in the nation's history. The arguments by which the President attempted to make this fateful escalation of the war appear a move toward de-escalation contained such extreme inconsistencies and such fundamental violations of logic that it becomes almost impossible to carry on rational debate in its aftermath. For example, the President was apparently unable to decide whether his action was designed to take advantage of what some members of the press have called a "golden opportunity"—afforded by the Cambodian government's momentary and highly doubtful support of our war effort—to eliminate a long-standing threat from North Vietnamese troops or whether he was responding to some fresh threat. He decided finally to have it both ways, and told us at the beginning of his speech that "in the last ten days" a new threat had appeared, and, later on in his speech, went to his map to prove that the threat had existed for five years. Our own guess is that the government is using recent political developments in Cambodia as an argument for once again chasing after the mirage of military victory. As for his contention that "once enemy forces are driven out of these sanctuaries and once their military supplies are destroyed, we will withdraw," we have had half a decade of bitter experience with this line of thinking in Vietnam, and the Army's announcement that the enemy appears to have learned of our attack in advance and withdrawn from the area before we arrived hardly comes as a surprise. (It is true that the enemy does not appear to have escaped with quite all his supplies. When Vice President Agnew was asked on "Face the Nation" what the objective of the mission was, he answered that it was not to kill enemy soldiers but only to destroy their bases and headquarters. As an example of the mission's early success, he pointed out that the Army had captured a "laundry facility" and a large store of "freshly laundered uniforms." How will the enemy manage to continue with his uniforms unlaundered?) The enemy's disappearance, combined with the news from Cambodia that thirty per cent or more of the troops fighting the dispirited Cambodian Army are thought to be native Cambodians, makes it look more likely that even opponents of the war could have predicted that civil war has begun in Cambodia and that our troops will soon be fighting in a "second Vietnam." Indeed, it is probable that we will soon face a powerful combined force of North Vietnamese, South Vietnamese, Laotians, and Cambodians. If this happens, and if the North Vietnamese and their indigenous allies are able to overthrow the current regimes in Cambodia and Laos, it may well be that most, or all, of Southeast Asia will become the new battleground and China the "Sanctuary." And at any point in the course of such a development the Chinese may choose to enter the war directly.

What must have come as a particular shock to the Cambodians, who have now said that they had no advance notice of the invasion, was the President's failure in his speech even to mention the interests of either the Combodian government or the Combodian people, who will, after all, suffer most immediately from the invasion. (The Vice-President's remark that "we have no responsibility to the Cambodians" cannot have reassured them.) There have already been reports of bombings and burnings of Cambodian villages, and the Administration's contention that the areas we are invading are "completely occupied and controlled by North Vietnamese forces" indicates that the scorched-earth tactics of the "freefire zone" and of the "hundred-percent V.C. area" are in effect. Very soon after the invasion, Cambodia's Premier Lon Nol denounced it, perhaps because he has learned from the experience of Vietnam that few fates are as terrible for a country as American military support in a civil war. The President's statement, on the very night of the invasion, that our respect for the neutrality of Cambodia was demonstrated by the fact that we maintained fewer than fifteen diplomats in Phnom Penh was a path-breaking non sequitur. The crowing paradox in the President's speech, however, came when, just after announcing that American troops were crossing the Cambodian border, he said, "This is not an invasion of Cambodia." Cambodia—a country we have gone into uninvited and unannounced. A similar problem arose when, a day after we had resumed the bombing of North Vietnam, Defense Secretary Laird threatened that if the enemy "reacted" in Vietnam to our operation in Cambodia we would resume the bombing of North Vietnam. Yet, terrible as it is to know that, with no apparent justification, we are beginning the destruction of a second nation in Asia (or, considering our massive bombings in Laos, perhaps we should say a third), it is the implications of these events for the world at large that, seen in the context of several alarming developments here at home, must be the cause of our greatest unease.

The invasion of Cambodia comes at a time when our republic is already seriously imperilled by the increasing use by many sections of government of a broad range of repressive measures, and by a growing impatience on the part of a significant section of the citizenry with any form of dissent. Impatience has been growing among the dissenters as well, and a minority of them have turned to violence to achieve their ends. This violence is dangerous in itself and damages the cause of peace. However, the government possesses virtually unlimited resources for repression, whereas the violent opposition is small and weak, and this means that the potential threat from the authorities is immeasurably graver than the threat from the rebels. The greatest dangers stemming from a turn to violence and illegal protest arise from the likelihood that it will provoke repressive retaliation from the government.

Before the invasion of Cambodia, only a few politicians had spoken out against these trends, but their predictions were of the most alarming kind. A few months ago, while the war was still confined to Vietnam, Senator Fulbright said that a continuation of the Administration's current war policy could lead, in the long run, to "a disaster to American democracy," and he added, "What a price to pay for the myth that Vietnam really mattered to the security of the United States." Mayor Lindsay declared that America was entering "a new period of repression." Senator Percy, Senator Goodell, Senator McGovern, and former Vice-President Humphrey were among the others who warned against the perils of growing repression. The Administration's attempt to rally the "silent majority" against the press, and the subpoenas it served on the press demanding the release of information received from confidential sources, had already damaged the press' access to news of dissenting groups, and has since caused many newsmen to think twice before they publish or broadcast controversial views or news stories. At the same time, dubious charges brought by members of the Administration against the organizers of anti-war demonstrations, and inflammatory and insulting remarks made about dissenters in general, have sent a chill of fear through the nation. Legislation has been passed by Congress to abridge the rights of people suspected of crime. Also, there is strong evidence that a national campaign by law-enforcement agencies to destroy the Black Panther Party is underway, and the Black Panthers have begun to experience the terror of facing a government they believe is bent on jailing or killing them.

In recent months, the campaign against dissenting citizens, which has jeopardized almost the entire Bill of Rights, has been paralleled by a considerable blurring of another fundamental provision of the Constitution; namely, the division of powers among the branches of government. There have been many cases in which the Senate challenged the authority of the Supreme Court. In passing the Omnibus Crime Control and Safe Street Act of 1968, it specifically contradicted the Court's Miranda decision. This left law-enforcement officials with two contradictory rulings to follow in their dealings with criminal confessions. Currently, many congressmen are engaged in a political move to impeach Justice Douglas for, among other things, espousing a "hippie-yippie style revolution." The President also showed an insensitivity to the need for a strong and authoritative Supreme Court when he persisted in pushing the nomination of G.

Harrold Carswell to the Court long after it was known that roughly half the Senate opposed the nomination. *And during his campaign to have Carswell confirmed the President displayed a deep misunderstanding of the powers of the Senate itself.* The trend toward executive usurpation of the powers of the other branches of government came close to receiving official justification in a letter that President Nixon wrote Senator Saxbe urging the Senate to confirm the nomination. In the letter, the President described himself as *"the one person entrusted by the Constitution with the power of appointment"* of Supreme Court justices, and asserted that a Senate rejection of the Carswell nomination would put "the traditional Constitutional balance" in "jeopardy." As many observers have pointed out, the Constitution provides that the President *"shall nominate,* and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court . . ." *The President simply left out the part about the Senate.* The reasoning in his letter, which also accused senators of substituting "their own subjective judgment" for his judgment, was of a piece with the *Administration's entire campaign against dissent.* The message to the press, to dissenting citizens, and to the Senate has been the same: You may express yourself freely until you begin to disagree with us.

These tendencies become all the more troubling when one reflects that the first sixteen months of the Nixon Administration has been marked by an actual slackening of opposition to government policies. President Nixon has not had to face a fraction of the bitter personal criticism that President Johnson faced, and his Administration has not had to deal either with ghetto riots or with the often violent large-scale demonstrations that characterized the Johnson years; nor, for that matter, has he been faced with anything like the volume of opposition in Congress that Johnson was faced with. But it is clear that with the invasion of Cambodia all this has been changed at a stroke, and that opposition will now revive, probably with unprecedented vigor. Immediately after the Cambodian speech, the students and faculties of universities and high schools all over the country decided to go on strike. Scores of newsmen and large numbers of political leaders of both parties who had remained silent since 1968—and many who had been silent even then—immediately expressed their alarm over the expansion of the war. One must now have apprehensions about how an Administration that has made threats against civil liberties in a period of relative calm will respond in a period of what might well be the most intense opposition faced by any recent Administration. The country will be fortunate if protest is so vast and comes from so many quarters that the Administration will become convinced that the cause of peace and the cause of protecting our democratic institutions will be best served by a reversal of our new course of action in Southeast Asia. There were, however, several passages in the President's speech that made such a turn of events seem doubtful. At one point, he said, "We live in an age of anarchy, both abroad and at home. We see mindless attacks on all the great institutions which have been created by free civilizations in the last five hundred years. Even here in the United States, great universities are being systematically destroyed." If this Administration believes that what we have now is anarchy, what will it think of what may come? Later in his speech, the President said, in reference to past wars, "The American people were not assailed by counsels of doubt and defeat from some of the most widely known opinion leaders of the nation. I have noted, for example, that a Republican Senator has said that this action I have taken means that my party has lost all chance of winning the November elections." And still later in his speech he said, "I realize in this war there are honest, deep differences in this country about whether we should have become involved, that there are differences to how the war should have been conducted. But the decision I announce tonight transcends those differences, for the lives of American men are involved." Does the President believe that the lives of American men were not involved in the decision to enter the war? Does anyone have to remind the President that because of that earlier decision more than forty thousand Americans have already died in Vietnam? The President has no monopoly on decisions that involve the lives of Americans—to say nothing of the lives of Vietnamese, Laotians, and Cambodians. Our legislators and even ordinary citizens also have decisions to make. The President has impugned both the right of our citizens and the right of our senators to question our war policy. The unnamed senator who made the remark about the November elections is Senator Aiken, the senior member of the Republican Party in the Senate, the President's reference to him is a signal that virtually no one is immune to the charge of betrayal who openly disagrees with the President.

One sentence in the President's speech brings up an entirely new theme. His statement that "any government that chooses to use these actions as a pretext for harming relations with the United States will be doing so on its own responsibility and on its own initiative, and we will draw the appropriate conclusions" can be read as a threat to our allies. And such a threat serves to remind us that behind the issue of the survival of freedom in America there is a still more fundamental issue, and that is the survival of freedom throughout the world. The invasion was carried out not in the name of protecting Cambodia, or even in the name of protecting America, but in the name of the principle of protecting American troops. We are forced to consider in a new light the dispersion of millions of American troops in many free countries (and also in a steadily increasing number of countries that are not free), and the deep penetration of America's enormous economic power into the economies of all free nations. We must ask how many democratic governments could withstand economic sanctions by the United States, and how many democratic governments, whose plans for defense are so tightly interwoven with American military power, could withstand *withdrawal* of our support—never mind an invasion. There would be nowhere for them to turn but to Russia, which is already a totalitarian state, and has recently demonstrated in Hungary and Czechoslovakia the quality of its respect for the independence of nations within the sphere of its power.

If the United States government fails to honor the freedom of its own people, who are protected by the American Constitution, it will not honor the freedom of any people. This is the true relationship between the invasion of Cambodia and the survival of the free institutions that President Nixon mentioned in his speech, and for this reason the invasion of Cambodia and its consequences within America are the urgent concern not only of Americans but of all mankind.

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NOTES AND COMMENT

As the defeated British regiments marched past the files of French and American troops at Yorktown, the British bands, in detached resignation, played "The World Turned Upside Down." The same tune would have been an appropriate accompaniment to the events of last week. For the two-hundred-year-old American system came under its most serious attack in modern times, not from the poor, the blacks, or the students but from the White House—the fount, the pinnacle, the keystone of the established order. President Nixon became the first President in the history of the United States deliberately to order American forces to invade another nation on his own, without seeking congressional approval or support. This order was in disregard of the Constitution, the tempering strictures of our history, and the principles of the American democracy. It was, therefore, an act of usurpation.

Few prohibitions are more clearly set forth in the Constitution. It makes the President Commander-in-Chief, and explicitly states that only Congress shall have the power to declare war or raise armies. The Federalist Papers reaffirm what the law makes clear: the term Commander-in-Chief meant only that the President could direct the conflict after Congress had decided to make war. Hamilton wrote that the President's power would be much less than the power of the British King, for "it would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the Confederacy; while that of the British King extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature." This was no casual division. The fear of military power under the control of a central government was one of the most serious popular objections to the establishment of the new nation. The only way this could happen, the founders responded, was by a "continued conspiracy" between the executive and the legislature. In this case, Hamilton advised, "the people should resolve to recall all the powers they have heretofore parted with out of their own hands . . . in order that they may be able to manage their own concerns in person." As sophisticated men, the Founding Fathers foresaw some of the dangers that lay ahead. They recognized explicitly that formal declarations of war were going out of style, but they still required our legislature to declare war. They saw "how easy [it] would be to fabricate pretenses of approaching danger," but they said that this would demand "a combination between the executive and the legislative, in some scheme of usurpation." In other words, the Constitution would protect the American people against the misuse of military power by prohibiting the executive from going to war without congressional approval and prohibiting Congress from directing the war it had started. Even this was dangerous, they acknowledged, but it was the best that could be done.

For over a hundred and sixty years, the Constitution was followed. Congress declared the War of 1812, the Mexican War (even though there had been a somewhat provoked attack on our troops), the Spanish-American War, and both World Wars. In the period after the Second World War, things began to change. The development of Soviet atomic power, the military impotence of Western Europe, and the shock of Korea impelled us toward the creation of a large peacetime standing Army—the first in our history. It was seen that a sudden emergency might require instant action, with no time to go to Congress. This implied exception to Constitutional principle was based on the technological realities of atomic war, and it has been invoked only once—when we intervened in the Dominican Republic. That intervention, however, was based on the claim that action within hours was necessary to protect the lives of Americans trapped between the contending forces—simply a traditional rescue operation. This claim may well have masked other motives, but American forces were not committed to combat, and support of the congressional leadership was sought and received within hours of the order to intervene and before the Marines had actually landed. In Korea in 1950, President Truman acted pursuant to a resolution of the Security Council, whose powers had been confirmed by the Senate when it consented to ratification of the United

Nations Charter. In addition, Truman met with the congressional leadership of both parties before ordering combat forces into action, and received their unanimous support, along with that of the defeated Republican nominee, Thomas Dewey. Nor was there any doubt of the overwhelming public and congressional approval of his action—at least in the beginning. (The same week, the draft was extended with only four dissenting votes.) Still, the Republican candidates in 1952—including Senator Nixon—were critical of Truman's failure to get more formal congressional approval. So President Eisenhower sought, and received, congressional resolutions authorizing him to act in the Middle East and in the Formosa Strait. President Johnson himself asked for a resolution at the time of the Gulf of Tonkin incident, and it was the literal verbal scope of this resolution that was construed as authorizing all subsequent action in Vietnam. Yet such a construction was clearly an evasion. and it was at this point that the great Constitutional principle began to decay.

Now President Nixon has taken a giant step. Not only has he evaded the spirit of the Constitutional division of powers but he has deliberately ignored its plain meaning and intent. He has decided that he will go to war in Cambodia because he feels it necessary, no matter what Congress wants or what the people think. He has even implied that such willful disregard of the people and their elected representatives is an act of noble self-sacrifice, and has hinted that we should admire his courage in exceeding the limits of his Constitutional powers. The war in Cambodia was not an emergency. There was time enough to present the matter to Congress for a swift decision. Indeed, unconcealed debate within the executive branch went on long enough to permit the Vietcong to evacuate the threatened area. But the President did not follow the precedent of all his postwar predecessors by seeking assurance of congressional support, either formally or through meetings with the leadership. Rather, he made war by fiat. He has thus united in himself the powers that the Constitution divides and that have remained divided through our history. This comes from an Administration that proclaims its devotion to "strict construction."

This is not a technical, legal question. In import, it transcends the question of the wisdom of the war itself. The President, in effect, says, "I, and I alone, have decided to go to war in Cambodia." Where does he get that power? The Constitution denies it to him. He is not acting under the necessary of instant reaction. He has the power only because he asserts it, and because the armies follow. In a world in which conflicts are interrelated, there is no limit to the possibilities of his reasoning. He can invade Laos and Thailand, in both of which countries Communists are active. He can enter North Vietnam itself. He can attack China, which is both a sanctuary and a source of supply for the North Vietnamese. Nor is the Soviet Union exempt, since it, too, helps our adversaries in Vietnam. Such an assertion of authority is not among the prerogatives of a democratic leader in a republic of divided powers. Our democracy is not an elective dictatorship. It is a government in which all elected officials have carefully limited powers. Suppose the President said he was going to change the tax laws, because the rates were unjust. What an outcry we would hear. Yet how trivial such an act would be, compared to concentrating the power over war and peace in a single office. The light of democracy depends on a common acceptance, by people and government, of the limits of power. What if, two years from now, the President should cancel the elections, on the ground of national need? Would it be easy to revolt against an armed force of three and a quarter million men if they remained obedient to their Commander-in-Chief? The possibility now seems absurd. But it illuminates the fact that our system works only because men have felt constrained by its assumptions; courts and legislatures have neither guns nor treasuries to enforce their will. Now one of the most basic of these liberating assumptions has been swept away. It must be restored.

The first duty of resistance lies with the legislative branch. For years, its members have been abdicating their responsibility, watching almost without protest while their authority was eroded and their mandates were evaded. They have allowed their power to be usurped. Now they are scorned and ignored, because the President is confident that they have neither the courage nor the will to challenge his action—that each, looking to his own interest, will allow the common cause to decay. If this is a true judgment and the President's act is not repudiated, then they will have denied the oath they took to uphold the Constitution. For Congress is the people's guardian. The authors of the Federalist Papers reassured the doubtful that "in the only instances in which the abuse of the executive authority was materially to be feared, the Chief Magistrate of the United States would . . . be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people?" What more indeed?

The other possibility is the Supreme Court. In 1952, President Truman seized the steel mills, because, he claimed, a steel strike was endangering the war effort in Korea. The Supreme Court decided that he had no such power and ordered him to return the mills. That opinion concluded, "The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand." How much more does this invasion transgress those same hopes and fears.

There are many ways to bring the issue to the Supreme Court. The Senate itself might instruct its leaders to bring an action to restrain the President or the Secretary of Defense from ordering further combat in Cambodia. This would be an unprecedented response to an unprecedented act. The issue is Constitutional, and is thus within the jurisdiction of the federal court. And surely no individual or institution has greater standing to bring such an action than the very body whose powers have been taken away. Another route lies through the recent Massachusetts statute that makes it unlawful to require any resident of that state to serve outside the United States in an undeclared war. The Attorney General of Massachusetts has been instructed by the law to bring an action in the Supreme Court in order to prevent such service from being required. In relation to Vietnam, the passage of the bill was a symbolic action. In the case of the Cambodian invasion, the law could be a vehicle for resolving a momentous issue. Would the Court decide? No one can be sure. But it alone can decide, and that is its responsibility. Discussing the Supreme Court, Hamilton wrote that it must have the power to invalidate all acts by the other branches of government which are contrary to the Constitution. "To deny this," he said, "would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize but what they forbid."

The President has now declared himself superior to the people, to the legislature, and to the laws. We have lasted as a functioning democracy for almost two hundred years. The foundation of that democracy has been a vigilant regard for the principle that no one man or institution shall impose an unrestrained will on the decisions that shape the nation. If the American people now let this principle be eroded, while the capacity for resistance still remains, then we will deserve our fate. For we will have lost the ultimate protection of liberty, stronger than governments, more enduring than constitutions—the will of a people to be free.

Footnotes at end of article.

## THE LEASE GUARANTEE PROGRAM

Mr. SPARKMAN. Mr. President, the April 1970 issue of the Business Lawyer, published by the Corporation, Banking and Business Law Section of the American Bar Association, includes an article by Tim C. Ford, a member of the staff of the Senate Small Business Committee, on the lease guarantee program as it is administered by the Small Business Administration. This article resolves many of the questions raised in an article published in an earlier issue—July 1969—by Rosario Grillo, general counsel for Equitable Life Assurance Society. I was the original sponsor of title IV of the Small Business Investment Act of 1958—Public Law 89–117—and a subsequent amendment—Public Law 90–104—which extended this program to all small businesses so I find it particularly significant that the program has attracted the attention of mortgage lenders, lawyers, and insurance underwriters.

With lease guarantees the Small Business Administration in the presently tight money market provides small business with a valuable tool with which it can compete for prime space on main streets, in industrial parks and shopping centers. By insuring the rentals of small businesses SBA provides a new form of collateral which is of value not just to the landlord but to his financier. But more importantly it affords small businesses a chance to compete with big businesses which have acquired triple A credit ratings.

I commend to your attention the excellent analysis of the lease guarantee program as discussed by Mr. Ford in this article. 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:

ANOTHER VIEW OF THE SBA "LEASE" GUARANTEE PROGRAM

(By Tim C. Ford, member of the District of Columbia bar)

The Small Business Act,[1] which created the Small Business Administration (hereinafter referred to as SBA) in 1953, provides that its primary mission is to foster free enterprise, encourage competition and help the economy to grow—and to do all of this specifically by helping small firms.

Since then, Congress, by enacting successive amendments to the Small Business Act and the Small Business Investment Act,[2] has expanded the Agency's responsibilities and programs so as to enable it to better meet the needs of the small business community.

One of the recurring problems of small businesses brought to the attention of SBA and Congress was their inability to secure commercial or industrial long-term leases of prime facilities. This handicap which

small businesses face in competing for prime locations is a fact of life that has been well substantiated. For more than six years, Committees of the United States Congress who were deeply concerned about it conducted the hearings on the problem.[3]

During these public hearings, witnesses affirmed the national preference which Landlords hold for Tenants with backgrounds of large volume, a high credit rating, and a strong financial statement.[4] They testified that because of this preference on the part of Landlords, small business was often at a very great disadvantage in competing with larger firms for space in new developments, particularly in shopping centers and industrial parks.

To remedy this situation, Congress authorized the Lease Guarantee Program.[5] The initial legislation was limited to small firms that had been forced to relocate because of Federally-financed urban renewal, highway or other programs, or to small firms that could qualify for assistance under Title IV [6] of The Economic Opportunity Act, administered by SBA.

New legislation which became effective on January 9, 1968, extended this program to all small businesses that can qualify for assistance under SBA's regular business loan program.[7]

The Lease Guarantee Program is novel, without a precise precedent in the business world. Because of its novelty, the program has attracted the attention of the mortgage lenders, lawyers and insurance underwriters. Because of its potential benefit to small business on an expanded national scale, trade associations, developers and construction contractors constantly seek more information regarding its operation but really little has been written on the subject.[8]

A recent article entitled, "The Small Business Administration 'Lease Guarantee Program' " appeared in the July issue of this publication [9] which pinpointed some questions regarding the practical aspects of the program. Subsequent to publication of the article, the author and SBA discussed the constructive criticism and several modifications in the recently published Regulations are based on that discussion.

As presently structured, the program is based on the following premises:

PREMISE NO. 1

The program is intended to cater to the Lessee of an existing location or premises as well as the lessee of premises being developed. It is contemplated that guarantee applications for leases of the premises already in existence will be more numerous than those where the premises are to be developed. Where a Lessor of existing property may be negotiating directly with a lending institution for a mortgage loan, it is unlikely that his success will depend as much upon the basis of rents which are to be guaranteed as upon existing leases and the general appraisal of the premises by the Lender.

Whether the number of guarantees issued for existing property will be in the majority is debatable, but it is generally thought that the number of such cases will be sizeable. The program is not designed solely to suit the developer of new projects and his institutional lender. In those instances where the relationship of the Lessor to a lending institution is direct and the premises are to be developed, as in the case of a shopping center or an industrial park, the benefits of the lease guarantee are intended to run primarily to the Lessee and not to the Lessor or his Assignee. Uultimately, it is the Lessee who pays the premium for the insurance policy issued to guarantee the rentals.

There is no provision in Title IV of the Small Business Investment Act, nor in the Regulations issued pursuant thereto, nor in the policy which purports to establish any privity of contract between the Guarantor of the lease and a Lessor's lender. A Lessor, who is developing a shopping center or industrial park, well might give consideration to the benefits that flow to his Lender if he adopts the program. The lease guarantee policy is assignable to a mortgage lender and as such is additional collateral.

In implementing the program, it appears that SBA has assumed that the principal concern of the Borrower or Lessor in assigning his policy to a lender or purchaser would be that his assignees or successors in interest are assured that they would receive the sums specified in the lease contract as rent over the term of the lease.

As has been noted, the assignment of the guarantee policy constitutes additional security to the Lender. However, SBA as Guarantor, under existing Regulations and policy provisions, does not assume all of the risks of a Lessor or of his assignee, whether the assignee be an institutional lender or a purchaser. There is presently no provision by which SBA could relieve the Lessor from his liability under the lease. The concept of a mortgage guaranty was rejected by the Committees of Congress when they were drafting the Lease Guarantee Program.[10] It was proposed at the Hearings [11] that the "traditional mortgage guarantee" be adopted instead of a lease guarantee program. But after consideration of that proposal,[12] the Congress enacted the law creating the lease guarantee program.

It is recognized that a "guarantee of the entire lease . . . would undoubtedly be much more attractive to landlords and lenders" as indicated in the Article,[13] but it is equally clear that SBA's authority to do so is lacking under the present statute. As SBA has interpreted the existing Act, the benefits are intended to flow primarily to small businesses.

PREMISE NO. 2

The program, by direction of the Congress, must be self-supporting. The premium schedule established by SBA MUST be sufficient to cover losses. But, at the same time, it must not be prohibitive for the small businesses who are the beneficiaries.

The Act itself provides three limitations or restrictions that the Administrator may require "in order to minimize the financial risk assumed under such guarantee" [14] and authorizes the Administrator to incorporate "such other provisions, not inconsistent with the purposes of this title, as the Administrator may in his discretion require.[15]

One restriction which affects the minimization of risks is that the program is limited to the guarantee of rent payments and does not cover any other obligations of the Lessee. The other risks which a Lessor undertakes when he signs a lease with a Lessee are not included in the guarantee. The assumption of these risks by the Lessor constitutes a kind of "co-insurance." In many types of casualty insurance, the provision for co-insurance is common. The protection it gives the Insurer against voluntary acts of the Insured is essential to the limitation of the Guarantor's or Insurer's liabilities.

In a new program such as that of Lease Guarantee, no statistical data existed on which actuarial schedules can be based in the establishing of the schedule of premium rates. In order to comply with the Congressional mandate that the premium rates be established in accordance with "sound actuarial practices and procedures," [16] SBA used numerous actuarial studies, [17] recognizing that it was not possible to establish firmly out of experience the parameters of risk involved in the Lease Guarantee Program. These parameters had to be based on such information as is available regarding the life expectancy or failure rates of businesses and other data not directly applicable but relevant.

A maximum premium charge of 2½ percent per annum of the rent guaranteed by SBA is fixed in the Act. This rate must be sufficient to make the program self-supporting. If additional risks were to be assumed by the Guarantor, the premium rates would have to exceed 2½ percent, and according to the best estimates obtainable, probably would be prohibitive for the many small businesses which the program is intended to assist. In brief, the premium required must represent a balance between the risks assumed by the Guarantor and the ability of the small business to pay.

PREMISE NO. 3

The third premise on which the Regulations and policy form are based is that the program is intended to benefit the small business Lessee, not the Lessor nor his institutional lender.

Nowhere in the Act does a reference to the Lessor's institutional mortgage lender appear. There are few references to Lessor and those establish his obligations rather than his benefits.

In a lease guarantee policy as presently issued there is no privity of contract between the Guarantor and the Lessor's institutional lender. It is questionable whether SBA by Regulations could create a relationship between the Guarantor and the assignee of the Lessor which does not exist between the Guarantor and Lessor.

This follows the basic legal premise that an assignee acquires no higher rights than the assignor held under the original contract.[18] Further, an assignee who acquires all the benefits of the policyholder, must assume all the responsibilities to which the original policyholder (Lessor) obligated himself when he received the policy. This is not only an equitable and fair arrangement but also one that is generally supported by the law.

PREMISE NO. 4

The last premise of this program is that private business including both casualty insurance companies and institutional lenders must be used, in terms of the Act, "to the greatest extent practicable." [19] The role of Government is to supplement rather than to supplant the operations of private business concerns. But, this mandate should not be interpreted to mean that no program should go forward without such participation of private companies.

This premise is spelled out in the Act. Section 401(a) provides: "any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or qualified company through a participation agreement with such company.[20] It is further provided in Section 401(a)(1) that "No guarantee shall be issued by the Administration (1) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms."

In the Article cited *infra* [21] there are suggested changes purportedly needed "to improve the endorsement" to the lease guarantee policy which are obviously intended to convey to the assignee on assignment by the Lessor *all the benefits* of lease guarantee without any of the responsibilities. If these suggestions were adopted, the result would make an assignment of the guarantee policy a straightforward and unconditional guarantee of the rents to the assignee except for fraudulent misrepresentation by the assignee. Such a modification of the guarantee contract would obviously increase the risks of the Guarantor. But since the assignee is giving no consideration for such a modification of the contractual obligations of the Guarantor, it is doubtful whether these modifications would be held binding in case the Guarantor chose to challenge them in court.

Footnotes at end of article.

As indicated above in connection with other items, there are means available to the assignee lender by which he can protect his interests as assignee and beneficiary of the guarantee policy. These means, however, depend upon the content of the mortgage contract or mortgage instrument. Since the Guarantor is not privy to this contract or instrument, he cannot dictate its terms. He can refuse to accept the responsibilities which the proposed conditions of the endorsement to the policy would impose upon him.

SBA appears to have made every effort to develop the Program in such a way as to maximize its conformity to current business policies and practices. The program will supplement rather than supplant the actions and operations of private business concerns whether sureties, casualty insurance companies, or institutional lenders.

The various topics in the Article are examined seriatim in the light of these four basic premises. The Small Business Administration already has adopted some of the changes suggested in the Article. It seems reasonable to assume that it may adopt others. Those most concerned are hopeful that none will be adopted which are inconsistent with the four premises discussed above. To adopt them when they fail to agree with these premises would be a direct violation of the intent of Congress.

1. FORM OF LEASE GUARANTEE

*A. Preliminary observations*

SBA's function is to help the small business concern, so its "guarantee" must run to the small business concern. Issuance of a mortgage guarantee would require new legislation by Congress. Accordingly, SBA (and guaranties reinsured by SBA, and all references herein to SBA as Guarantor encompass such participating surety or qualified companies) cannot issue a traditional mortgage guarantee but does issue instead a Lease Guarantee Insurance Policy.

The earlier Article observes that "the Landlord is looking for a Tenant who will be able to pay the rent and who will be an asset to the property in his operations. The lender is looking for a secure loan; one in which there is a sufficient and secure rent flow from the leases to cover the mortgage charges and other expenses. The lender will accordingly desire that the lease, and, of course, the guarantee of the rental payments, be collaterally assigned to it, and that no act by the Landlord which the lender is powerless to control will destroy the guarantee." [22]

However, the SBA Administrator is authorized by the Act to "guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns . . . ." [23] There are some provisions in the Act that must be complied with in a lease to be eligible for a guarantee and there are other provisions that set forth the actions which "the Lessor shall" take in order to qualify for payment of a claim. Nowhere in the Act is there any reference to a lender. Under the Regulations the lender can become a beneficiary of the guarantee only by assignment from the Lessor but the Lessor's negligence may destroy the guarantee.

*B. Change in tenant, his space, or in lease, etc.*

The Regulations and insurance policy do not state that any change of Tenant terminates the guarantee. However, an assignment by the Tenant with the consent of the Lessor, as required by the lease, shall terminate the guarantee if the Lessor's consent is given without notice to and consent of the Guarantor.

The purpose of these provisions in the Regulations is to establish the limits of the Guarantor's risks. Obviously, an assignment of the Lessee's interests can very greatly affect the risks of the Guarantor. If such an assignment could be made without the Guarantor's consent and the benefits of the guarantee be retained, a Landlord and Tenant who were having difficulty might make such an assignment, or agree to such an assignment, and very greatly increase the risks of the Guarantor. After all, one of the elements of risk to a Guarantor is the Tenant.

SBA's short track record does not indicate that these controls create a "potential undue servicing problem, requiring constantly knocking on SBA's door on routine operating matters." [24]

SBA would not cancel the policy in case of a change in Tenant which occurs as a result of death; or in a partnership Tenant, on change in partners by death as these changes could not be controlled by the tenant.

The recently published revised Regulations do provide that the interest of the lessee in the leased premises shall not be voluntarily assigned or transferred by corporate merger or capital stock transfer to a new lessee without the prior written consent of the lessor and insurer.[25]

It is my understanding that SBA would not be adverse to an amendment to the Regulations to provide that minor changes such as redecorating or moving partitions in the premises would not necessitate the consent of the Guarantor. In fact, SBA has already accepted some of the suggestions included in the Article including those regarding limitations or consent in the case of the subletting of a minor portion of the premises when such subletting is common practice in the trade.

SBA has indicated that there are no objections to making the guarantee indefeasible in the hands of an assignee because of actions on the part of the assignor or Lessor after the assignment has been made and the Guarantor has been notified of the assignment. But, it should be noted that the assignment carries to the assignee the obligations which the guarantee places upon the Lessor for protecting the Guarantor against risks against which he is protected by the Lessor before assignment. Otherwise, the premium schedule would have to be revised to compensate for the additional risk assumed by the Guarantor.

*C. Breach of lease by landlord*

This is a difficult issue. It obviously is impossible to provide that the Landlord shall receive payment of rents when he is in default and the Tenant has refused to pay the rent because the Landlord has failed to perform his obligations under the lease. No one would hold, on the other hand, that the Guarantor should be exonerated from rent liability for three months because the Landlord neglected a minor repair. This gray area continues to receive study by SBA and participating companies.

*D. Representations and concealment*

SBA has advised that the observation in the Article that where the guarantee policy is in the hands of an innocent assignee, the guarantee should be indefeasible except for concealment or misrepresentation on the part of the assignee, is sound.

*E. Damage to premises*

Apparently, the purpose of the proposal in the Article concerning the condition in the policy regarding damage to premises is intended to insure or guarantee the Lessor, and the Assignee, against any loss of rent on account of damage to the premises from whatever cause. With this contention, of course, SBA does not disagree entirely. The purpose of the lease guarantee is not to relieve the Lessor or his Assignee of all risks but to insure their receipt of rent for the use of the premises by the Lessee (or by a substitute tenant) in case he defaults and the Guarantor assumes possesssion and payment of the rent. It may be that to protect himself the Lessor should require in the lease that the Lessee carry casualty insurance in sufficient amount to cover the rent due in case of damage to the property for the period of time needed for restoration to prior condition.

SBA Regulations require that, in the event of a casualty, the rent abates in proportion to the unusable portion of the premises.

Practically every program participant concurs in the suggestion that the premises should be restored to their condition prior to the casualty rather than to their condition at the time the guarantee is issued.

*F. Construction, remodeling and refurbishing*

Frequently the leases upon which guarantees have issued the author's suggestion that the Landlord neither remodel nor refurbish the premises by providing that the Tenant assume that responsibility.

It should be noted, however, that the Guarantor should be notified if the proposed remodeling or construction or refurbishing appears to the Guarantor to increase his risks. In such event, perhaps an additional premium might resolve the matter.

*G. Minimizing rent losses*

Section 401(c)(2) of the Small Business Investment Act provides "That upon occurrence of a default under the lease, the Lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified Lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted." [26] Under this authority, the escrow funds may be used only to meet rental charges "accruing in any month for which the Lessee is in default." [27] So, the prompt obtaining of vacant possession by the Lessor is essential to mitigate the possible losses to the Guarantor.

The Regulations provide that in case of default and filing of a claim the Landlord must make a reasonable effort to obtain a new Tenant, so as to minimize the losses or amount of his claim against the Guarantor.[28] To prevent a Lessor's leasing to a new Lessee who would only pay a part of the rent in default, and charging the balance against the Guarantor, the Regulations require the acceptance of the new Lessee by the Guarantor for the Lessor to retain the guarantee. If this acceptance were not required, the Lessor would be free to rent or re-rent at any figure he pleased, charging the difference between the rent he collects and the guaranteed rent against the Guarantor. This, of course, is an unacceptable risk. But, the minimizing of the rent loss by securing a substitute Lessee cannot be left entirely to the diligent efforts of the Lessor. He might display seemingly considerable effort but not really seek a substitute tenant if he deemed his guaranteed rent was sufficient to meet all of his running expenses, for substitute Tenant would not be in his best interest.

The Regulations, therefore, require that the Lessor must give vacant possession to the Guarantor when he files a claim for payment of delinquent rent after the escrow fund has been exhausted.[29] The Guarantor after gaining vacant possession is in a position to find a substitute Tenant. If he succeeds, the Lessor may not object to the substitute Tenant so long as his use of the premises is not for any purposes prohibited by the original lease.

This provision in the Regulations [30] would not permit the Guarantor to place in occupancy a Lessee who, because of the nature of his business, is objectionable to the Lessor. But, it does not seem judicious to give the Lessor a blanket authority to veto a substitute tenant for he, in some instances, might increase thereby the risks of the Guarantor. Perhaps this point could be expressed more

Footnotes at end of article.

accurately than as presently stated in the Regulations.

In neither of the instances mentioned is there a "substitute lease." There is an extension of the privilege of occupancy to either the Tenant discovered and authorized by the Landlord with consent of the Guarantor or a Tenant found and placed by the Guarantor. In either case, the guarantee continues effective.

But, if the Lessor wishes to place his own Tenant without consent of the Guarantor and gives a new lease to such a Tenant, then the guarantee terminates.[31] If the Lessor wants a new guaranteed lease, then he and his prospective Lessee must apply anew for a guarantee and pay the appropriate premium charges. SBA or the Guarantor must consent and accept the proposed Tenant before he is given his lease or occupies the premises.

It is difficult to see how the obligation to pay a new premium on a new lease "would cast an unfair burden on the Landlord since a premium for the entire lease period has already been paid."[32] This prepaid premium had been paid by the original Lessee and not by the Landlord or his substitute Lessee. SBA again must seek the fair deal for the small business tenant.

*H. Increased coverage due to increased real estate taxes*

The statement, "A much preferable scheme would be to have the premium initially paid calculated to cover this item (of tax escalation) rather than to be left with a potentially annual additional charge which the Tenant may refuse to meet, and which then would have to be paid by the Landlord or lender,"[33] raises a calculation and administration problem and has been given some thought. In the first place, one cannot calculate a premium for covering an item which is unknown in amount, such as an escalation of taxes. Secondly, a premium, if collected in advance for this item, would not cover additional charges which the Tenant may refuse to pay. The penalty for a refusal to meet the charge should be provided for in the lease, *i.e.*, failure to pay it would be a failure to pay a part of the rent and a failure to perform a term or condition of the lease. This is the generally accepted interpretation of the present Regulations.

However, items of additional cost incurred by the Landlord because of failure of the Lessee to fulfill any of its obligations other than payment of rent apparently cannot be covered by the guarantee under existing legislation. This constitutes a part of the risk which is left in the hands of the Lessor and his Assignee.

SBA, by Regulations, has eliminated the problem of percentage rent or overages.[34]

*I. Inspection and audit*

SBA recently has indicated that the failure of Tenant to permit inspection of the premises by the Guarantor will not affect the guarantee.

*J. Processing of claims*

The suggestion is made that the Guarantor be made liable for rent falling due during the period of restoration of the property to its original condition. Should the Guarantor assume liability for all risks of the Lessor or his Assignee? Apparently, this is not feasible under the present schedule of premiums. The requirement that the Landlord wait out the period necessary to disposses the Lessee is not an unfair burden on the Lessor. The Regulations do provide that after the possession has been secured or eviction has been effected, the claim for rent can date back to the first default. Again, this risk on the part of the Lessor is a part of this co-insurance.

In nearly all forms of insurance except life some form of co-insurance protects both the insurance company or the Guarantor. It would make computation or estimate of the parameters of risks most difficult if a Lessor were given the right to collect from the Guarantor before he has dispossessed or evicted the Lessee whose tenancy is guaranteed.

The requirement in the Regulations that the payments received by the Landlord from the Tenant after default must be applied to the rent default as against all other payment requirements may need some clarification. As presently stated, it simply leaves in the hands of the Lessor the risks of the Tenant's failure to fulfill other provisions of the lease than that of the obligation to pay rent.

*K. Special endorsements to the guarantee*

Some modification of the lender's special endorsement in the policy as discussed in the Article is well deserving of consideration by SBA. Perhaps it could be developed so as to protect against an increase in the risk of the Guarantor which is out of proportion to the premiums collected. The Author's other proposals in this area should also be reviewed and measured by the same criteria,[35] and perhaps found feasible.

*L. Miscellaneous SBA requirements*

It is my understanding that SBA is no longer requiring the lease rider which is substantially a restatement of the Regulations.

*M. Special lease provisions for the lease guarantee program*

(1) Casualty and Condemnation

The changes suggested by the Author regarding casualty and condemnation have been resolved in the revision of the Regulations [36] published in September 1969.

*N. Desirable accessory documents*

The issuance of a guarantee policy by SBA is a representation that the Tenant is an eligible small business; that there is a reasonable expectation that the Tenant will not default in payment of his rent under the lease; and that a private insurance company guarantee is not otherwise available on reasonable terms; otherwise, the issuance of a lease guarantee would be in violation of the Act.

Each policy of guarantee is backed by the full faith and credit of the U.S. Government. One cannot see the need for SBA Counsel to issue an opinion to that effect in each case. Before accepting an assignment, however, it might be feasible for the assignee to request an opinion of Counsel regarding the validity of the assignment.

*O. Utilization of the program, present and future*

It is unlikely that either the Administration or the Congress would allow the program to languish and its benefits to be denied to small businesses solely because institutional lenders refuse to accept the guarantee as additional security for loans.

Congress intends that small businesses should be able to compete with the large business concerns for prime commercial or industrial locations. If institutional lenders will not participate in the program without an unconditional guarantee of mortgage loans, there is the likelihood of Congressional legislation in this program similar to that passed in the thirties when lenders, especially large life insurance companies, hesitated to participate in traditional mortgage guarantee programs; namely, the Acts creating the Federal Housing Administration [37] including the FNMA [38] and the Veteran's Home Mortgage Programs.[39]

And, whether Congress decides on either course, it must be noted that an unconditional guarantee of a loan made by the traditional institution lenders would probably be accompanied by a limitation on the interest rate which such loans will bear.

Finally, it seems reasonable to suppose that in striving to get access to prime business locations for small business, if it is necessary to give both the Lessor and his lender an ironclad guarantee against all risks, the cost of such a program to the government would be greater than that of the simple guarantee of rents.

Certainly a program of developing prime locations for commercial and industrial purposes and making them available to small business concerns carried on by the Federal Government with the cooperation and participation of local public authorities, analogous of the local agencies now carrying on the programs of urban renewal and public housing in cooperation with the Department of Housing and Urban Development, would be less expensive to the Federal Government than the assumption of all risks of lessor and mortgagee without being able to participate in any of their profits.

FOOTNOTES

*Member of the District of Columbia Bar.

[1] Small Business Act, 15 U.S.C. § 631 et seq. Originally enacted as Title II of Act, July 30, 1953, Ch. 282, 67 Stat. 232.

[2] 15 U.S.C. § 661.

[3] Hearings on "Shopping Centers" before the Senate Select Committee on Small Business, 86th Congress, 1st Sess., April 28–29, 1959. Hearings on "Lease Guarantees" before the Senate Select Committee on Small Business, 87th Congress, 1st Sess., December 18–19, 1961.

[4] Hearings on "Lease Guarantees" before the Senate Select Committee on Small Business, 87th Cong., 1st Sess. 1961, pp. 5, 21, 26, 30, 47, 55, 60, 80–81, 85.

[5] PUBLIC LAW 85–699, TITLE IV §§ 401–3 as added by PUBLIC LAW 89–117, TITLE III, § 316 (a), August 10, 1965, 79 Stat. 482. Title IV was amended by PUBLIC LAW 90–104, TITLE II, § 209, October 11, 1967, 81 Stat 271. Title IV as amended is codified at 15 U.S.C. §§ 692–4 (Supp. III, 1956–8). (Hereinafter referred to as "Program").

[6] 42 U.S.C. 2901 et. seq.

[7] P.L. 90–104, Title II, § 209, October 11, 1967, 81 Stat. 271. Title IV, as amended, is codified at 15 U.S.C., § 692–4 (Supp. III, 1965–8).

[8] Ford & Suss, *Lease Guaranties for Small Firms*, THE BUSINESS LAWYER, Vol. 23, No. 2 (1968).

[9] Grillo, *The Business Lawyer*, Vol. 24, No. 4 (1969) (hereinafter cited as Article).

[10] Small Business Lease Guarantees, S. R. No. 1532, 87th Cong., 2nd Sess. (1962) 23–28.

[11] *Supra* Note 4 at 107, 108.

[12] *Supra* Note 9.

[13] Article, 1193.

[14] *Supra* Note 9, Sec. 401(c).

[15] Cit. Note 9, *Supra* Sec. 401(c)(4).

[16] *Supra* Note 9, Sec. 401(b).

[17] Inter alia—E. Friend, *Actuarial Analysis of the Underwriting Risk in the Guaranty of Leases* (1966); M. Le Vita, *Insurance for the Guarantee of Leases;* E. Friend, *"An Extension of the Actuarial Analysis of the Underwriting Risk in the Guaranty of Leases* (1966).

[18] Gillette v. Murphy, 7 Okla. 91, 54 p. 413; Simmons v. Smith County Bk. 225 Miss. 384, 83 S. 20441, 83 So. 2d 441 (1955) U.S. v. Bland 159 F. Supp. 395 (1958) W. Jaeger, Williston on Contracts §§ 432, 438.

[19] Id. Note 5, Sec. 401(a)2.

[20] Id. Note 5, Sec. 401(a)2.

[21] Article 1204.

[22] Id. 1197.

[23] Id. Note 5, Sec. 401(a).

[24] Article 1198, (e).

[25] 34 C.F.R. 14881 (1969), Part 106, § 106.13 (a).

[26] Id. Note 5.

[27] Id. Note Sec. 401(c)(1).

[28] Id. Note 25 § 106.11(d).

[29] Id. Note § 106.11(c).

[30] Id. Note 25 § 106.12(b)(1).

[31] Id. Note 25 § 106.11(e).

[32] Article, 1201.

[33] Id.
[34] Regulations. Note 25 Supra § 106.3(j).
[35] Article, 1205.
[36] Regulations. Note 25 Supra, §§ 106.9(a), 106.9(f), 106.16(a) and (b).
[37] 12 U.S.C. § 1702 (June 27, 1934) Ch. 847, Title I, § 1, 48 Stat. 1246; Aug. 23, 1935 Ch. 614, § 344(a) 49 Stat. 722; Mar. 28, 1941, Ch. 31, § 2, 55, Stat. 61; June 28, 1941, Ch. 261, § 6, 55 Stat. 365; Reorg. Plan 3 Eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 10, 1948, Ch. 832, Title IV, § 402, Title V, § 501(a), 62 Stat. 1283; Aug. 8, 1949, Ch. 403 § 2, 63 Stat. 576; Oct 25, 1949, Ch. 729, § 2, 63 Stat. 905; Apr. 20, 1950, Ch. 94, Title I, § 122, 64 Stat. 59; Sept. 1, 1951, Ch. 378, Title II, § 202, 65 Stat. 303.
[38] 12 U.S.C. § 1716 (June 27, 1934 Ch. 847, Title III, § 301, 48 Stat. 1252; May 28, 1935, Ch. 150, § 30, 49 Stat. 300; Feb. 3, 1938, Ch. 13, §§ 4, 5, 52 Stat. 23; June 3, 1939, Ch. 175, §§ 15, 16, 53 Stat. 808; Mar. 28, 1941, Ch. 31, § 5, 55 Stat. 62; 1947 Reorg. Plan No. 3, § 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 1, 1948, Ch. 784, § 1, 62 Stat. 1206; Aug. 10, 1948, Ch. 832, Title II, §§ 201, 202, 62 Stat. 1275; Aug. 8, 1949, Ch. 403, § 4, 63 Stat. 576; Oct. 25, 1949, Ch. 729, § 7, 63 Stat. 906; Apr. 20, 1950, Ch. 9, Title I, §§ 116, 122, 64 Stat, 57, 59; 1950 Reorg. Plan No. 22, eff. July 9, 1950, 15 F.R. 4375, 64 Stat. 1277; Sept. 1, 1951, Ch. 378, Title II, § 205, Title VI, § 608 (b), 65 Stat. 303, 315; Apr. 9, 1952, Ch. 173, 66 Stat. 51; July 14, 1952, Ch. 723, §§ 3(a), 10(a)(2), 66 Stat. 602, 603).
[39] 38 U.S.C. Supp. IV 1964 Ed. 1802, as amended Pub. L. 90–19, § 25(1), May 25, 1967, 81 Stat. 28; Pub. L. 90–77, Title IV, § 403(a) Aug. 31, 1967, 81 Stat. 190; 38 U.S.C. § 694 (June 22, 1944, Ch. 268, Title III § 500, 58 Stat. 291; Oct. 6, 1945, Ch. 393, § 11(b), 59 Stat. 542; Dec. 28, 1945, Ch. 588, § 8, 59 Stat. 626; Aug. 10, 1948, Ch. 832, Title I, § 103, 62 Stat. 1275; Apr. 20, 1950, Ch. 94, Title III, § 301(a-c), 64 Stat. 74; July 16, 1952, Ch. 875, Title III, §§ 301, 302, 66 Stat. 682.

## SENATE OF MARYLAND RESOLUTION ON RED TREATMENT OF AMERICAN POW'S

Mr. MATHIAS. Mr. President, one of the tragedies of the current war in Southeast Asia, about which all Americans can agree, is that the Government of North Vietnam is totally wrong in its handling of American prisoners of war.

The Government of North Vietnam and the National Liberation Front, regardless of their rhetoric about U.S. policies, should recognize that these prisoners of war were military men carrying out orders given to them by their Government. To date, the Red treatment of prisoners has been in total disregard of the Geneva Convention relative to the treatment of prisoners to which North Vietnam acceded in 1957.

I would hope that the Government of North Vietnam would provide information on the status of prisoners of war and give evidence that they are being treated humanely.

The Senate of Maryland recognized this serious violation of fundamental human rights in its passage of Senate Resolution No. 78. The State Senate called for compliance with the Geneva Convention relative to POW's.

The resolution coincides closely with the thinking of many of my colleagues and myself. I ask unanimous consent to have the resolution printed in the RECORD.

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

SENATE RESOLUTION No. 78

Senate Resolution strongly protesting the treatment of American servicemen and civilians held prisoner by North Vietnam and by the National Liberation Front of South Vietnam and calling upon them to comply with the 1949 Geneva Convention

Whereas, more than 1,400 members of the U.S. Armed Forces, plus 35 civilians are known or believed to be prisoners of North Vietnam and the National Liberation Front of South Vietnam as a result of the conflict in Southeast Asia; and

Whereas, the families of forty-nine of these servicemen are residents of the State of Maryland; and

Whereas, North Vietnam and the National Liberation Front of South Vietnam have repeatedly refused to release the names of the prisoners that they hold, to allow inspection of prison facilities by neutral parties, to permit a regular exchange of mail between prisoners and their families, to release seriously ill or injured prisoners, and to engage in negotiations for the release of all prisoners; and

Whereas, these actions on the part of the enemy are in direct and flagrant violation of the requirements of the 1949 Geneva Convention on prisoners of war which North Vietnam has ratified and by which it is bound; and

Whereas, the refusal of North Vietnam and the National Liberation Front of South Vietnam to identify members of the United States Armed Forces and civilians who are in their custody has caused immeasurable distress, agony and uncertainty in the hearts of their loved ones; and

Whereas, all evidence indicates inhumane treatment of United States servicemen and civilians by their captors, which violates fundamental standards of human decency and deviates from civilized concepts concerning the treatment of prisoners of war; and

Whereas, the twenty-first International Conference of the Red Cross, on 13 September, 1969, approved by a vote of 114 to 0 a resolution calling on all parties to armed conflicts to prevent violations of the Geneva Convention on prisoners of war; and

Whereas, the House of Representatives, on 15 December, 1969, adopted by a roll call vote of 405 to 0 a resolution calling on North Vietnam and the National Liberation Front of South Vietnam to comply with the provisions of the 1949 Geneva Convention; and

Whereas, the United States of America has always abided by these provisions; now, therefore, be it

*Resolved by the Senate of Maryland,* On behalf of the residents of the State and United States citizens generally, strongly protests the treatment of American servicemen and civilians held prisoner by North Vietnam and the National Liberation Front of South Vietnam, and calls on them to comply with the requirements of the 1949 Geneva Convention relative to the Treatment of Prisoners of War, and endorses efforts by the United States Government, the United Nations, the International Red Cross, and leaders and peoples of the world toward attaining that objective; and be it further

*Resolved,* That copies of this Resolution be sent to the President of the United States, the Vice-President of the United States, the Speaker of the House of Representatives, the Department of State, the Department of Defense, all Maryland Senators, all Maryland Congressmen, and William Michael Tolley, 1206 Briggs-Chaney Road, Silver Spring, Maryland.

Read and adopted.
By the Senate, March 27, 1970.
By order, Oden Bowie, Secretary.

WILLIAM S. JAMES,
*President of the Senate.*
ODEN BOWIE,
*Secretary of the Senate.*

## FEDERAL PROGRAMS TO ASSIST HIGHER EDUCATION

Mr. YARBOROUGH. Mr. President, the distinguished Senator from Rhode Island (Mr. PELL), today spoke to the faculty of Brown University on a subject which I know is of great interest to the Senate, the future of Federal programs for assistance to higher education.

The Senator meaningfully discussed not only the present program and pending administration proposals, but also described his own view of what the thrust of Federal programs should be in the future; and happily, I note that he calls for programs of broad scope and one which makes Government assistance a matter of right.

Mr. President, I believe this speech should be read by all Senators; I therefore 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:

ADDRESS BY SENATOR CLAIBORNE PELL

I should like to express my thanks for according me the opportunity to meet with you to discuss my work as Chairman of the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, it is most fortuitous that I stand before you speaking on this subject at this point in time. All too often I find myself giving interesting general statements to generalized audiences on a subject matter which, while meriting public attention, is not currently before us in the Senate. However, my discussion today on the Federal role in higher education is one which I can speak of with great familiarity, for the Subcommittee on Education is presently conducting a series of hearings on this very subject—the role of the Federal Government in higher education.

I used the word fortuitous a few sentences back, and I must turn to it again, for a set of circumstances has occurred which succinctly brings to public view the whole question of Federal support of higher education. The various pieces of legislation comprising our national governmental approach to support of colleges and universities expire next June (1971). With the need for legislation prior to the Appropriations Committee consideration of a fiscal year budget I personally like to handle needed authorization work a year before it is actually necessary. In conjunction with our plans, the Administration has presented us with its proposal for higher education. It is embodied in a bill entitled S. 3636, introduced by Senator Javits of New York.

The timing of this bill's introduction and our plans for legislative activity have very clearly brought before us the major philosophical question of what is to be the Federal Government's role with regard to higher education. A question which when acted upon will set the course of Federal aid for years to come.

A major debate, admittedly not in the public view, is now taking place, for the Administration proposal would redirect the thrust of Federal activity from present aims and goals to one, which if I may borrow a phrase is, to my mind, "benign neglect".

To gain some perspective, perhaps we should review the present Federal programs. In effect, we have a many-tiered system of assistance. Leaving aside the categorical grants, the major thrust of the programs go to making college available to as many students as is possible. For the most needy there are the educational opportunity and work-study grants. The key word here is "grants", which, in the aggregate, can total up to $1,800.

Supplementing this grant program is a two-part loan program. The National Defense Student Loan Program provides for direct loans from the Federal Government to the student at three percent interest during the repayment period on the loan with certain forgiveness provisions. Coupled with this is a program of guaranteed loans with an interest subsidy provision while the student is in college.

The Administration, while retaining certain of the direct grant programs—as subsidies, would limit the top amount to be granted to approximately $1,400, and would make these available only to those whose families have an income of under $10,000. The proposal would do away with the National Defense Education Act loan program entirely; would change the major government program to one of guaranteed loans, but the loan would be made at the prevailing market rate.

You will also be interested to learn that the Administration would repeal the Higher Education Facilities Act.

What I see here is a change in the basic philosophy of Federal assistance from one which states that there is a Federal responsibility toward making college education universally available, to one of saying that there is a limited Federal role to play. For the Administration proposal would, when the rhetoric is stripped away, put the cost of education clearly on the student, causing him to borrow today at a market rate which, sadly, does not seem about to go down, and saddles him with a debt, which in the case of a young couple who both finance their way through college, could amount to about $40,000 upon attainment to a bachelor's degree; and coupled with this is no provision for a cost of education allowance to the institution.

To my mind, the present programs of direct NDEA loans and grants is infinitely better than the proposals of the Administration. However, it is my belief, and I think I represent a certain membership in the Senate when I say, that the Federal responsibility must be even greater. It is time we recognized that there is to be a right, if one can cope with it, for a person to pursue higher education, not Harvard, not Yale, not Brown, but at least some school of higher education in which he can hone his skills and abilities. And this right must be underwritten by the Federal Government.

What I would envision as the future structure of higher education is embodied in my own bill, S. 1969. This proposal establishes a program of direct grants to students—direct grants, as I envision them, coupled with an income tax factor. For example, the grant would be $1,200 from which would be deducted the amount of income tax a student's family or the student himself, pays. If a family paid no taxes, the student would get $1,200. If the family pays $1,200 in taxes he would get no grant. I would retain the present program of direct NDEA loans, and with some amendments to assure that the loans were available to all rather than bank favorites, retain the guaranteed loan program.

In the case of deserving needy students who are accepted at one of our more expensive schools, there remain—as a supplement—educational opportunity and work-study grants and, coupled with this would be a cost of education allowance of $1,000 for each of the grant students the university accepted.

What we are doing here is getting away from a question of need to a question of right and recognized responsibility. I believe the Federal Government should be responsible for a floor for higher education. I do not believe that a student should have to demonstrate how poor he is to get a grant. What we are saying here is that the Federal Government should not merely set up a system of loans through which the private banks would gain income, but should be directly involved in the education of its youngsters.

In fact, I think we are at a crossroads right now as to Federal support of higher education. A system of funding higher education through loans and the money market with little or no Federal support is one which will defeat the American dream of the opportunity of education for all. It is also, I should add, one that would play hob with private colleges and universities. For these schools are the ones most feeling the crunch of rising costs. There is a great possibility that in years to come, without a change in Federal activity, the private colleges would be the bastions of the very rich and the very poor. The middle class student would be priced out of the market.

Now is the time for a thorough thrashing out of this philosophic question—our hearings are going on, a decision will in all probability be made this year. That decision will turn on the question of: will the Federal Government have an activist role in higher education or a passive one, creating what one person has termed a natural aristocracy. I cannot impress upon you my concern about this vital issue, and my hope that the academic community of this nation will make its thoughts known about this.

It is my belief that the future of our nation calls for an activist approach to higher education assistance. This view was summed up quite succinctly by John F. Kennedy in his 1961 Education Message to the Congress, when he said—

"Our twin goals must be: a new standard of excellence in education—and the availability of such excellence to all who are willing and able to pursue it."

## BRUNO BITKER PRESENTS COMPELLING REASONS FOR RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the recent hearings held by a special Senate Foreign Relations Subcommittee covered the Genocide Convention in great detail. Senator CHURCH's subcommittee heard from many excellent and well-qualified witnesses, the majority of whom, I am pleased to say, spoke in support of the treaty.

Testimony presented by Bruno Bitker was extremely informative on issues of extradition, site of the trial, the international penal tribunal mentioned in article VI, enforcement of the treaty, and jurisdiction of the World Court under the convention. His testimony establishes, I believe, that ratification of the convention is in the national interest.

The high point of his testimony was the conclusion of his presentation:

The United States was a leader in the drafting of and securing the adoption of the Genocide Convention. It is a paradox that we continue to be inhibited from signing on the dotted line.

The political ideology under which absolute sovereignty allows a nation to do with those what it will, as exemplified by the Nazi regime, should have lost any claim to support with the death of Hitler. The sovereign power to commit mass murder, if ever it existed, must be outlawed.

It is in the interest of the interntional community and in the interest of the United States that we join with the family of nations in outlawing the crime of Genocide. I therefore urge the Senate to give its advice and consent to ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.

I could not agree with Mr. Bitker's conclusion more.

Mr. President, I ask unanimous consent that a portion of Mr. Bitker's testimony be printed in the RECORD.

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

THE SITUS OF THE TRIAL AND EXTRADITION

Article VI provides that the trial of an accused shall be "by a competent tribunal of the State in the territory of which the act was committed." This expresses recognized international law. In addition, Article VII requires each party "to grant extradition in accordance with their laws and treaties in force."

As this affects the United States, the question is what are the laws of the United States respecting extradition, with whom do we have such agreements, and what are the terms thereof. As of now no such treaty "exists" as to Genocide. When the time comes for considering such new treaty (or supplementing an existing one) the advice and consent of the Senate must be first obtained before it could come into force. Perhaps the same rules would apply to extradition on a charge of Genocide as they would to any other extraditable crime. But certainly no order of extradition is going to issue from the executive or the judicial branch of the government without our being satisfied as to the substantiality of the charge and the likelihood of a fair trial. If the request comes from a nation with which we are at war, obviously no extradition will be ordered: none would be sought and none would be granted.

An unfriendly nation, including any with which we are at war, if it holds American prisoners of war, can physically detain them for any or no reason. It can charge them with whatever crime it wishes. It could allege burglary, rape, theft, or murder. If Genocide is recognized as a crime, the unfriendly nation would merely add another count to the charges. This could not be prevented under any circumstances while the war is in progress.

The arguments advanced on what would, could or might conceivably happen if Genocide were charged by an unfriendly nation are completely unfounded. But they have an emotional appeal to those not fully informed on how extradition actually functions. Suffice it to repeat the words of the Genocide Treaty that extradition must be "in accordance with their laws and treaties in force."

THE NON-EXISTENT INTERNATIONAL TRIBUNAL

Article VI provides for a possible alternative trial court: such "international penal tribunal as may have jurisdiction with respect to those contracting parties which have accepted its jurisdiction". No such tribunal exists. It is not mandatory for any party to participate in such a court. If, however, at some future date one is created under a United Nations treaty, the then President of the United States, if he desires to ratify it, must submit it to the Senate for its advice and consent. At that time the Senate will determine whether or not it is in the interest of the United States to accept the court's jurisdiction.

ENFORCEMENT

There are those so pessimistic about the state of man that they believe it is futile to go through the formality of making Genocide an international crime. They would insist, as a prior condition to ratification, that we must be assured in advance that there will be enforcement of the treaty provisions. This, of course, is impossible. It is equally impossible to assure the observance of any treaty commitment by any contracting party. The same pessimistic outlook might apply as to any legislation on

crimes: there is never any guarantee of compliance or assurance of enforcement. To insist that a treaty should never be adopted unless it prevents another Hitler from committing the crime of Genocide, is like demanding in advance of the enactment of a State Statute against homicide, that it must guarantee prevention of murder.

There is, however, a measure of international enforcement provided for in the Treaty. Article VIII recognizes that any party "may call upon the competent organs of the United Nations to take such action under the Charter . . . as they consider appropriate for the prevention and suppression" of the crime. In addition, there is the moral force which is attached to any contract, and the persuasive power implicit in every international agreement. The requirements of morality are more likely to be recognized if they are also the requirements of the law. Who dares now assert that the existence of such a treaty would have been without any effect on the international community, and more specifically on the United States, in the earlier days of the Nazi regime?

SUBMISSION OF DISPUTES TO INTERNATIONAL COURT

Article XI provides that certain disputes between the ratifying nations can be submitted to the International Court of Justice. These are disputes relating to "interpretation, application or fulfillment" of the Convention. Similar provisions have been included in other treaties approved by the Senate and ratified by the United States. These include the Treaty on Slavery in 1967 and, more recently, the Treaty on Refugees in 1968 (Senate Executive Report No. 14, p. 11 90th Congress, 2d Sess. Sept. 30, 1968).

In Digest of International Law, vol. XI, (1968, Whiteman, ed.) Article XI is set out in full and thus commented upon: "Insofar as this article provides for the settlement of disputes relating to the interpretation, application or fulfillment of the Convention, it is a stock provision not unsubstantially unlike that found in many multipartite instruments".

CONCLUSION

The United States was a leader in the drafting of and securing the adoption of the Genocide Convention. It is a paradox that we continue to be inhibited from signing on the dotted line.

The political ideology under which absolute sovereignty allows a nation to do with those under its jurisdiction what it will, as exemplified by the Nazi regime, should have lost any claim to support with the death of Hitler. The sovereign power to commit mass murder, if ever it existed, must be outlawed.

It is in the interest of the international community and in the interest of the United States that we join with the family of nations in outlawing the crime of Genocide. I therefore urge the Senate to give its advice and consent to ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.

## DISTRICT OF COLUMBIA CRIME

Mr. MATHIAS. Mr. President, I would like to remind Congress of our responsibility in facing and dealing with the serious crime problem in the District of Columbia, since Congress has chosen to retain virtually exclusive governmental authority within the District.

To this end, I ask unanimous consent to have printed in the RECORD a listing of crimes committed within the District yesterday, as reported by the Washington Post. Whether this list grows longer or shorter depends on this Congress.

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

MAN FORCES WAY INTO DISTRICT OF COLUMBIA HOME; RAPES 27-YEAR-OLD WOMAN

A 27-year-old woman was raped at knifepoint early Sunday by a man who forced his way into her Southeast Washington home, police reported.

The woman told police that the man awakened her about 5 a.m. as she was sleeping on a couch in her living room. As the intruder was warning her not to scream, her children entered the room, she said.

Repeating his threats, the armed man told the woman to send the children back to their bedrooms, according to reports. He then forced her to disrobe, raped her and ordered her to get dressed again, police reported.

Her assailant then warned the woman that he had a rifle outside and that if she watched him from the window as he fled, he would shoot, according to police.

She was treated at D.C. General Hospital and released.

[Other crimes]

In other serious crimes reported by area police up to 6 p.m. yesterday:

ROBBED

High's dairy store, 3308 11th St. NW., was held up about 4:55 p.m. Friday by two boys concealing guns in their pockets. They approached the clerk and ordered her to put the money into a bag. Taking the sack full of cash, the pair escaped along the 1100 block of Park Road NW.

Ronnie Humphrey, of Alexandria, was held up about 4:10 a.m. Saturday by two young men in a green car who offered him a ride as he walked in the 600 block of Park Road NW. One of them drew a knife, which he held at Humphrey's back as they drove around Washington for about an hour. "Give me all you got," the armed man demanded and forced Humphrey to give him his clothes, cash and credit cards. Leaving him in the rear of the 600 block of Park Road NW., the men drove off.

Samuel Peterson, of Landover, was treated at Washington Hospital Center for head and facial injuries he suffered about 12:20 a.m. Saturday when he was beaten and robbed. Several men approached him at 18th Street and Columbia Road NW., struck him over the head with an unidentified object and escaped with his wallet containing money and papers.

Calvin L. Dahncke of Washington, was held up about 8:55 p.m. Saturday by three youths who surrounded him in the 600 block of Independence Avenue SE. One of them drew a revolver and said, "This is a holdup." While the gunman held Dahncke at bay, another youth frisked him and took his wallet from his pocket. Taking the bills and papers, the trio fled on foot.

Beatrice Moore, of Washington, was robbed of a large amount of money by two men who confronted her at 13th Street and Otis Place NW., and forced her to give them her pocketbook.

Albert C. Winefield, of Washington, was held up inside a restaurant in the 800 block of K Street NW at about 7 p.m. Saturday. A man approached Winefield pushed him into the men's room and forced him to turn over a large amount of money from his pockets.

David E. Rust, of Washington, was held up about 1:40 a.m. Saturday by two men who approached him at the corner of 28th and O Streets NW. "Do you know what this is? Give me the money," one of the men demanded after pulling out a gun. Rust handed the pair his cash and travelers' checks as well as numerous credit cards.

Clyde Frazier, of Alexandria, was treated at Cafritz Hospital for facial injuries he suffered during a robbery about 3 a.m. at the rear of Douglass Junior High School, Pomeroy and Stanton Roads SE. A man attacked Frazier, knocking him to the ground and hitting him in the face. His assailant fled on foot with $3.

Sharon D. Smith, Carolyn L. Cowen and Mary L. Homes, all of Pittsburgh, were held up about 7:50 p.m. Saturday as they were walking north in the 2000 block of 19th Street NW. Two young men, one brandishing a handgun, approached the women from the rear and escaped with a purse from Miss Smith, a purse and watch from Miss Homes and a wallet from Miss Cowen.

George Ginsberg, of Silver Spring, was held up about 12:15 p.m. Saturday by two men who entered his store at 547 42d St. NE. One of them displayed a revolver and warned, "Don't move. Put the money in the bag." After Ginsberg handed them the sack full of cash, the pair thanked him and fled from the store into an alley on Foote Street NE.

James Green, of Washington, was treated at Rogers Memorial Hospital for ear injuries he suffered during a robbery about 4:30 a.m. Two men approached him at 13th and D Streets NE and demanded, "Give me your money." When Green replied, "I don't have any," the men began hitting him in the face and body. A third man then approached Green from behind, stabbed him in the ear and fled with the money from his pockets.

William R. Alberger, of Washington, a Senate staff member, was held up about 12:10 a.m. as he was walking at 2d and C Streets NE by two men, one wielding a gun. "All your money," the gunman said and Alberger handed them his wallet. After they had removed the money, Alberger asked them to return the wallet, which they did before fleeing into the 700 block of C Street.

Naomi F. Taylor, of Washington, was robbed of a large amount of money about 8:50 p.m. Saturday by three boys who confronted her at South Capitol and 1st Streets SE. One of them pushed her to the ground from behind and the trio escaped with her pocketbook containing the cash.

Jack A. Hill, of Omaha, Neb., was beaten and robbed about 9:50 p.m. Saturday by two men who approached him in the 1700 block of South Capitol Street NE. "Do you want trouble," they inquired and then knocked Hill to the ground and hit him in the face and body. Taking his wallet, the pair fled, leaving their victim with a bloody nose.

Arnold Lee Milburn, of Washington, was robbed and kidnaped by three men who approached him when he stopped for a traffic light in Northwest Washington about 4:30 a.m. Saturday. The men forced their way into the car at gunpoint, robbed Milburn of $5 and ordered him to drive around. One of the abductors began driving Milburn's car and crashed into a utility pole. The three men fled, leaving Milburn semi-conscious. Unable to drive, Milburn hailed a taxi and went to Cafritz Hospital.

Frank Allen Creaser, of Gaithersburg, was beaten and robbed about 10 a.m. Saturday by three young men who approached him while he was walking in the 1400 block of Pennsylvania Avenue SE. The three struck him over the head, knocked him to the ground and took his wallet containing a large amount of money, credit cards and papers from his pockets. The trio then forced Creaser to give them his shoes and fled on foot.

Emanuel N. Dotch, of Washington, was held up about 11:10 p.m. Saturday by two young men who approached him from behind as he was walking in the unit block of 46th Street NE. One of them placed a hard object at his back and demanded, "Give me your money," then fled with the cash heading north on 46th Street.

O. R. Shelton, of Washington, was robbed about 4:30 p.m. Saturday by two men who approached him at 14th and G Streets NW and told him he was a suspect in a holdup. Warning him not to move, the two began searching Shelton, removing the money from his pockets. After they had frisked him, the two suddenly began running from the scene, heading east in the 1200 block of G Street.

Kirk J. Young, of 4120 14th St. NW, was

held up about 6:30 a.m. as he was riding his bicycle in front of his apartment building. A youth armed with a knife forced him to get off the bike and then climbed on and rode away on it, along the 4100 block of 14th Street.

John Heslop Canavan, of Washington, a Georgetown University student, was held up about 1:20 a.m. Saturday by four men and a woman he invited to join a party in progress at Harbin Hall. They accepted the invitation, then one of the men pulled out a pistol and said, "This is a holdup." The five escaped with money and a lamp from Canavan, money and a watch from Martin Everson, cash and a watch from Gregory Miksa, and a wallet from Susan J. Wold. All other three victims are Georgetown University students, also.

Malvin Skiner, of Washington, was held up and stabbed in the 700 block of Florida Avenue NW by two men who approached him, one of them demanding, "Give me your money." When Skiner replied that he had none, they began beating and stabbing him and escaped with his wallet.

High's dairy store, 4601 Sheriff Rd. NE, was held up about 9:45 p.m. Saturday by two youths, one brandishing a sawed-off shotgun. "This is a holdup. Give me all the money, and hurry," the gunman ordered and held the clerk at bay while his companion vaulted the counter. Taking the money from the register and stuffing it into a bag, the pair fled on foot.

Deryle J. Battle, of Washington, was held up about 6:55 p.m. Friday while he and Jackson Williams were walking in the 600 block of H Street NE. "Give me your money or I will kill you with a knife," threatened a boy, wielding the weapon. While the armed boy held the two men at bay, another boy searched them and took their cash. The pair escaped into an alley on the side of the block.

Harry Wood, of Washington, a cab driver, was held up about 8:35 p.m. Friday by three youths who hailed his taxi at 58th and East Capitol Streets NE. When Wood had driven them to 3d and Parker Streets NE, one of the passengers drew an automatic and told him, "This is a stickup." The hacker handed them his keys and wallet and the trio fled on foot.

Mildred E. Ashton, of King George, Va., was held up about 9:20 a.m. Saturday in the hallway of a building in the 3400 block of 18th Street SE by a man armed with a revolver. The gunman forced Miss Ashton to hand over her pocketbook and ran from the building.

STOLEN

Fifty-seven hand-made Italian sweaters valued at $626.50 were stolen between April 6 and May 9 from the surplus shop at 918 H St. NE. The sweaters, in assorted colors and sizes, were stored in a large cardboard box.

Three overcoats, 15 pairs of pants, a man's suit, three blazer jackets, two pairs of shoes, two watches, a television set, a radio, a wedding ring, a shotgun, a camera and bottles of whiskey were stolen between 2 and 4 p.m. Friday from the home of Robert I. Artist, 1352 Otis St. NE.

A camera and case and assorted lenses and photographic equipment, with a total value of $600, were stolen about 6:45 p.m. Saturday from the car of Omar Salinas, of Brooklyn, while the car was parked at 16th and Church Streets NW.

ASSAULTED

Agnes Bell, of Washington, was admitted to Cafritz Hospital with a gunshot wound in the head that she suffered during a fight with a man armed with a gun. The man fired one shot at her about 8:50 a.m. Saturday in the 2600 block of Wade Road SE, then drove off in a black car.

Percy Venable, of 510 7th St. NE, was treated at Rogers Memorial Hospital for a gunshot wound in the upper arm that he received when a man fired at him about 6:05 p.m. Saturday as he was walking in front of his apartment building.

Harry Nixon, of Washington, was admitted to George Washington University Hospital for head injuries he suffered, about 4:35 p.m. Saturday when three youths attacked him on a D.C. Transit bus in the 900 block of F Street NW. They pushed Nixon from the bus, kicked him in the head, then fled on foot.

Phillip Christopher Simms, of Washington, was admitted to Rogers Memorial Hospital with a gunshot wound in the chest. Simms was shot during a fight about 12:25 p.m. Saturday in the 100 block of 11th Street NE with two young men armed with revolvers. One of the gunmen fired three shots at Simms, then fled with his companion.

John Booth, of Alexandria, was treated at Washington Hospital Center for a gunshot wound in the back that he suffered during a fight with a man wielding a shotgun. The man asked Booth and his friend to leave a room inside an apartment building in the 2100 block of New Hampshire Avenue, then drew his gun when they refused to go. Frightened by the weapon, Booth and his friend fled from the building and the gunman fired at them as they escaped.

A 46-year-old woman was raped and robbed in her Northwest Washington home by a man who awakened her in her bedroom about 4 a.m. After the assault, the man, who had apparently entered through a bedroom window, took a gold watch and a television set and fled from the home. The victim was treated at D.C. General Hospital.

TWO ARRESTED IN ASSAULT

Two Baltimore men were arrested yesterday by Prince George's County police and charged with assault with intent to rape.

Police said that Edward Ellison, 29, and Alvin E. Robertson, 25, were being held on $10,000 bond each following an alleged 1 a.m. assault on a Brentwood woman.

Police said that after two men were invited into the victim's home by her husband, they struck him on the head with a wooden mallet, knocking him unconscious.

They said that while one man attempted to rape the 28-year-old woman, the other, in another bedroom, prevented her children from calling police.

[Other court and police actions]

In other area court and police actions reported by 6 p.m. yesterday:

SENTENCED

By U.S. District Court Chief Judge Edward M. Curran: Jack W. McRae, 23, of 624 15th St. NE, nine years under the Youth Corrections Act for assault with a dangerous weapon; James E. Lowery, 36, of D.C. Reformatory, one to three years for escape from custody.

By U.S. District Court Judge June L. Green: James T. Cogdell, 30, of 1221 T St. NW, 40 months for four counts of attempted forgery; William C. Hancock, 19, of 512 3d St. NW. committed for an indeterminate time under the Youth Corrections Act for robbery; Bernard Reese, 28, of 1712 1st St. NW, one to five years for possession of narcotics.

By U.S. District Court Judge Leonard P. Walsh: Sherman L. Winston, 23, of 831 3d St. NE, 10 months for receiving stolen property.

By U.S. District Court Judge Aubrey E. Robinson: Haywood Ballard, 19, of 4617 Kane Pl. NE, one to three years for second-degree burglary; Melvin G. Sheffield, 22, of 438 Burbank St. SE, 5 to 20 years for armed robbery, 3 to 9 years for assault with a dangerous weapon, one year for possession of a prohibited weapon, to be served concurrently; Irving Wright, 20, of 3442 Oakwood Ter. NW, committed for an indeterminate time under the Youth Corrections Act for unauthorized use of a vehicle; Fayette E. Felder, 24, of 1219 10th St. NW, suspended sentence with probation for three years for attempted robbery and escape from custody.

By U.S. District Court Judge John H. Pratt: Tony Koonce, 18, of 1521 Massachusetts Ave. SE, committed under the Youth Corrections Act for attempted robbery, simple assault and armed robbery; Oddie V. Padden, 21, of 1803 Burke St. SE, committed under the Youth Corrections Act for attempted robbery, simple assault and armed robbery.

By U.S. District Court Judge Oliver P. Gasch: Carl L. Stokes, 26, of Lorton Reformatory, 3 to 10 years for assault with intent to commit robbery; James B. Borum, 29, of 3625 New Hampshire Ave. NW, 8 to 24 years for armed robbery; Stanley H. Thornton, 26, of Lorton Reformatory, 10 years to life for armed robbery, 3 to 10 years for assault with a dangerous weapon; Harry Reid Gaskins, 28, of 2523 Savannah St. SE, 4 to 15 years for assault with intent to kill while armed, 3 to 10 years for assault with a dangerous weapon and 3 to 10 years for carrying a dangerous weapon, to be served concurrently.

By U.S. District Court Judge John Lewis Smith: Larry C. Ellerbe, 35, of 522 14th St. SE, suspended sentence with probation for five years for assault with a dangerous weapon and possession of narcotics; Samuel J. Armstrong, 21, of 912 Varney St. SE, two to six years for second-degree burglary and grand larceny; Daniel J. Brown Jr., 20, of 3113 Nichols Ave. S.E., committeed under the Youth Corrections Act for robbery.

By U.S. District Court Judge William B. Bryant: Sara M. Scott, 43, of 9332 Annapolis Rd., Lanham, suspended sentence with probation for two years for forgery and uttering; Nathan DeVaughn, 21, of 411 56th St. NE, committed under the Youth Corrections Act for robbery; James L. Watkins, 23, of 78 T St. NW, suspended sentence with probation for two years for assault with a dangerous weapon and carrying a dangerous weapon; Willie Odel Bowden, 21, of 1432 Girard St. NW, suspended sentence with probation for two years for petty larceny and second-degree burglary; Michael S. Thomas, 18, of 5401 13th St. NW, committed under the Youth Corrections Act for robbery; Jacques K. Robinson, 36, of 6806 Central Avenue, Seat Plesant, one year for false pretenses and one year for petty larceny, to be served concurrently; George Davis, 54, of 5004 Illinois Ave. NW, six months to five years for violating the Uniform Narcotics Act.

By U.S. District Court Judge Gerhard A. Gesell: Everett F. Buchwald, 22, of Baltimore, suspended sentence with probation for two years, $500 fine, for fraudulent sale of altered coins; Norleen Vaughn, 40, of 3715 Donnell Dr., Forestville, 5 to 20 years.

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## CONSERVING AMERICA'S FISHERIES

Mr. STEVENS. Mr. President, I have spoken on several previous occasions on the problem of protecting America's fisheries. I have continually urged that the United States take steps to exert jurisdiction over fisheries adjacent to our coasts and institute a regime of conservation coupled with enforcement based on the maximum sustained yield principle.

The Alaska State Legislature has indicated its desire to see Congress take similar action. I ask unanimous consent that Joint Resolution 89 of the Alaska State Legislature be printed in the RECORD at this point.

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

JOINT RESOLUTION 89

Joint resolution relating to the establishment of an exclusive fisheries zone for the United States

Whereas the present 12-mile exclusive fisheries zone of the United States is not adequate for the conservation of the stock of fish which this country will need to utilize fully in order to remain a major fishing nation; and

Whereas the United States has slipped to sixth place in world fishing behind such nations as the Soviet Union and Communist China, which intend to expand their fishing efforts in the North Pacific; and

Whereas the commercial fishermen of the Pacific Northwest, as well as the economy of the United States as a whole, are being detrimentally affected by the heavy flow of imported foreign seafood products, gear conflicts and other competition from the massive foreign fleets on the fishing grounds, and by the depletion of precious resources because of over-fishing and destructive fishing practices of foreign fleets; and

Whereas the United States has failed to implement fully two provisions from Geneva Conventions which would give our nation valuable bargaining tools in fisheries negotiations with other nations, the first of which states that sedentary species of fish on the Continental Shelf are part of the shelf and are considered to be the exclusive property of the coastal nation and the second of which provides for conservation of the living resources of the high seas and allows the United States to designate conservation areas and promulgate conservation measures to protect these resources;

Be it resolved that the Congress of the United States is respectfully requested to enact legislation declaring that this nation's exclusive fisheries zone is expanded to a depth of 300 meters or to 100 miles off the coast of the United States, whichever is greater.

Copies of this Resolution shall be sent to the Honorable Richard M. Nixon, President of the United States; the Honorable Walter J. Hickel, Secretary, Department of the Interior; the Honorable Donald L. McKernan, Special Assistant to the Secretary of the Interior for Fisheries and Wildlife; the Honorable John W. McCormack, Speaker of the U.S. House of Representatives; the Honorable Richard B. Russell, President Pro Tempore of the U.S. Senate; all Governors of the Coastal States in the United States; the International North Pacific Fisheries Commission; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and the Honorable Howard W. Pollock, U.S. Representative, members of the Alaska delegation in Congress.

Passed by the Senate April 13, 1970.

BRAD PHILLIPS,
*President of the Senate.*

Attest:

BETTY HANIFAN,
*Secretary of the Senate.*

Passed by the House April 10, 1970.

JALMAR M. KERTTULA,
*Speaker of the House.*

Attest:

CONSTANCE H. PADDOCK,
*Chief Clerk of the House.*

KEITH H. MILLER,
*Governor of Alaska.*

## STUDENT UNREST

Mr. PACKWOOD. Mr. President, the president of the University of California, Charles J. Hitch, delivered some timely and thought-provoking remarks on student unrest March 20, 1970, at a meeting of university regents. I ask unanimous consent that the remarks be printed in the RECORD.

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

REMARKS ON STUDENT UNREST

(By Charles J. Hitch, President, University of California)

It is said that for individuals and for societies, civilization is merely an outward appearance, a thin veneer covering a barbarian heartwood. If this is true—and the twentieth century has seen enough barbarism to give it at least some validity—all of us must share a mounting apprehension over the wearing away of our collective veneer. I am alluding here to many things—the bombings in New York City, alleged atrocities in Vietnam, the polarization of races—but I want to address myself particularly to more local abrasions, the various incidents of incivility and violence that have happened recently on or near our campuses . . .

Several Regents were in the audience when I spoke last November at a dinner honoring the Hoover Institution's fiftieth anniversary, and I will quote briefly from my remarks that evening. I spoke about "a new threat of conformity on campus, a pressure for orthodoxy generated ironically enough, on behalf of—or at least in the name of—change and freedom. Thus, we are confronted with a philosophy where subjectivity would replace objectivity, opinion would replace fact, emotion replace reason, and strength of voice supplant strength of argument. The ends come to justify the means, and any tactic is appropriate when the cause is just. Belief somehow becomes translated into fact, and the true believers feel it their duty to make converts by any means necessary.

"So classrooms are disrupted in the name of education, speakers are shouted down in the name of free speech, job recruiters are driven from the campus in the name of morality, and demands for total conformity to a particular line of thought are made in the name of nonconformity and dissent.

"This is wrong. If it is wrong for one group to seek to limit freedom of expression, it is wrong for another. Dogma is dogma, and it does not belong in a university, regardless of its origin and regardless of how many people agree with it."

I don't want to suggest, however, that the new conformity is joined in or even tolerated by all students. Indeed, there are refreshing signs to the contrary. For instance, the *Daily Californian* asked in a recent editorial for tolerance on campus of all political views, and the *Daily Bruin* has characterized window-breakers as having the mentality of ten-year-olds. And an anti-violence petition at Santa Barbara has garnered thousands of student signatures. No, rampant self-righteousness has not caught everyone's fancy, but there is enough of it floating around to burn down a bank in Isla Vista, to mob the Governor at Riverside, and to cause thousands of dollars of damage at Berkeley. Incidentally, I want you to know that I have apologized to Governor Reagan for the rudeness of part of our community—a rudeness which I am sure was opposed by the great majority of our community.

*Some* acts of violence that occur in American cities are no doubt the work of emotionally disturbed people whose reasons for lashing out at the society around them lie deep in their own individual mental and emotional illness. People like this are, as we have always known, a danger both to themselves and to society. We also know from much previous experience that when tensions increase and fires or bomb-scares occur, there can be an epidemic of additional incidents because borderline, emotionally disturbed people are pushed over the line of restraint by the attractive excitement that publicity causes. The University community shares with every other part of society the problem of how to deal with the risks that these disturbed people represent.

*But,* two other kinds of recent events involve the University with the community in a much more direct and different way. These are the instances in which assemblages of people turn into spontaneous, mob action and the instances in which extreme ideological rhetoric turns into the commission of criminal acts against persons and property.

University campuses, and the densely populated student housing areas near them, automatically present occasions for the gathering together of large crowds of young people. When these crowds become excited by a triggering event or statement, the result can be and has been to bring about mob behavior. The law enforcement authorities with whom the University must cooperate then face a very difficult problem; and the University itself is held responsible in the public's eyes for the results of mob behavior. As the President of the University, I must lay down the warning to the University community that it is wrong to resort to easy rationalizations about the impotence of words. We really do not believe that words are impotent. The foundation of universities is that ideas and the words to express them can be more powerful than any bomb. In the University, above all other institutions of American society, we have a profound duty to resist and oppose shoddy thinking, lies, and rhetoric which inflames and shocks but does nothing for the truth. Free speech means careful and skeptical listening, not taking a rhetorical trip. Free expression includes, especially in the University, the duty to oppose cant, dogma, and ideological harangue by reasoned and disciplined counter-argument. The crowd that turns into a mob is an insult to the principles of democratic society, and it is a moral insult to the fundamentals of a university. . . .

The university teacher has not only the obligations of his academic competence but also the duty to be the representative of mature wisdom in this troubled time. It is not enough to argue that all speech and doctrine has the minimal constitutional protections of the First Amendment, which of course, is no less true within the universities than in American society at large. The University must at one and the same time be even more zealously libertarian than the community at large *and* a great deal more alert to the philosophical and moral content of speech than is the community at large. And when rhetoric translates into violence upon the university or the surrounding community, we must treat that violence with particular vigor, not only as destructive of democratic institutions but as peculiarly poisoning to the moral foundations of the university and to its responsibility for the maturation of the young. The university teacher who participates in coercive revolutionary organization and action is betraying—in a special and particular sense beyond his normal obligations as a citizen—his charge to act as a responsible teacher. He must be the object of disciplinary attention by his colleagues.

So also must we oppose the revolutionaries and the vigilantes of Left and Right who take the law into their own hands. Their doctrines and their actions have no place in the university, for they and their organizations are peculiarly sinister in any institution having special responsibility for the young. History has many harsh lessons for us, and in the academic world we have a special obligation to remember and communicate them: the trial and death of Socrates; The Holy Inquisition; the Nazi Fifth Column; the Communist takeover of Czechoslovakia in 1948; and the saddening second betrayal of a re-emerging spirit of liberty in that same country.

It has become part of the style to put down history, as if these hard lessons did not exist for the young person who wants the galvanic release of his own energy on the feeling of the moment. Perhaps it is my own nature, but I am nauseated by the support that some of my academic colleagues give to this indulgent irrationalism. As a teacher myself, I have nothing in common with it, and yet it is the condition of many young people now, and as a teacher, I must try to find a way to speak to their condition.

If some of these are the problems of parents and of teachers with the young, I want to say with equal vigor that America's young generation has provocation to be indignant, and this is directly based on the failure of its elders to do the right thing at the right time. Our affluence, while there is poverty and deprivation within our own country which we have knowledge and ample resources to correct, but not the willingness; our resort to war while we say that it is both irrational and immoral to move for any other goal than peace; our failure to deal courageously with racial injustice—all of these give a real basis for the indignation of an intelligent, morally sensitized and committed young generation. We must learn to welcome the pain of being called to account by our children. Instead we apply to them a double standard in the realm of both personal morals and group responsibility. No wonder this is galling to them.

Our time and place and our society, imperfect as they are, are what we and the young must deal with. There needs to be a far greater exercise of both courage and restraint than the adult world has given to the task of renewal of American society.

One very moralistic quality that is peculiarly destructive in all this is the *selective* indignation of both the young and the old. The young condemn police brutality while practicing verbal and even physical assult. Their elders cry for law and order while flouting the Supreme Court of the United States.

If we must oppose polarization when practised by the young in the name of moral principles, let us have the honesty to oppose it no less when the representatives of the Establishment turn to baiting and provocation.

I was greatly impressed by the bluntness and the good sense of Mr. A. W. Clausen, President of the Bank of America. One of the triggers to our obvious and deep concern at this meeting of The Regents was the burning of the Isla Vista branch of that Bank. I want to quote and endorse these words of Mr. Clausen on March 17 to the annual meeting of the Bank:

"In the circumstances we now find ourselves we would like to make two things very clear, both to you our shareholders, and to the California public. The first of these is that we have great respect for the young people of America. We admire their integrity, their moral courage and their willingess to dissent. We need these qualities in America. We view our re-opening in Isla Vista as a demonstration that the participation of a few students in a destructive act will not deter us from attempting to serve the financial needs of the majority of students on the Santa Barbara campus.

"Our quarrel, therefore, is not with the young and not with the fact that they dissent. Rather our quarrel is with those who would perpetrate violence for any cause, whether it be violence in Isla Vista or violence in another small community 3,000 miles away called Lamar, South Carolina. Violence from either the right or the left cannot be tolerated in America.

"A troublesome factor involved in the current problem is the tendency of many of our citizens to seek to punish the universities for the actions of the violent few. Let us make our position clear on this issue also. We believe punitive action against the university or repression of dissent is as dangerous as violence. We owe a great debt to our universities and colleges. Our future is dependent upon them.

"Certainly the educational process cannot be carried on in an atmosphere of anarchy. But as we battle the anarchy which plagues our campuses, let us be certain that we do not damage our educational system in a more subtle and insidious way—by destroying the freedom of thought, inquiry and action which constitutes the only soil in which true education can flourish.

"Therefore, while we use every means at our disposal to strengthen the hands of the administrators of our colleges and universities in order that they may cope with and effectively put down anarchy, and in order that they may expel any outside agitators that may be plaguing our campuses, let us also be judicious and thoughtful in seeing that it is anarchy and unlawful disruption that we put down and not academic freedom, nor the right of students and faculty to dissent. Let us be sure that we do not go beyond that boundary which will destroy the freedom of inquiry that is the essence of a great university. For make no mistake about it, our educational system can be destroyed every bit as effectively, and perhaps more completely, by those forces who would, in whatever name, trample upon the universities' freedom to inquire."

## BIG THICKET'S IVORY-BILLED WOODPECKER

Mr. YARBOROUGH. Mr. President, for many years I have urged this distinguished body to act to establish the Big Thicket National Park, the last known habitat of the famous ivory-billed woodpecker.

The ivory-billed woodpecker has become a symbol of our endangered species. This great bird is dangerously close to extinction, and the preservation of its last-known habitat is one of the many reasons why we should preserve the Big Thicket of southeast Texas as a national park.

The ivory-billed woodpecker once existed from North Carolina to east Texas. It is larger than a crow, with a white bill, large patches of white on its wings, and white lines on either side of its neck. It calls a single note like the sound of a toy tin horn.

Too few people have ever had the opportunity to see the magnificent ivory-billed woodpecker. In my office rests a stuffed ivory-billed woodpecker, on loan from the Smithsonian Institution. I invite Senators and their staffs to come by the office and view this rare specimen, the symbol of our endangered species.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the Baltimore Sun of May 5, 1970, on page C–1. It is entitled "Is Ivory-Billed Woodpecker on the Way to Extinction?"

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

IS IVORY-BILLED WOODPECKER ON THE WAY TO EXTINCTION?

LAUREL.—Will one long-time resident of the United States—the ivory-billed woodpecker—be here to mark the 200th anniversary of the founding of the Republic?

"No one knows," said Dr. Ray C. Erickson, assistant director for Endangered Wildlife Research, with the Department of Interior's Bureau of Sport Fisheries and Wildlife. Its continued existence or demise is difficult to demonstrate; we can't cover its whole habitat."

If this woodpecker, the country's largest, does eventually become extinct, it will follow 32 other American birds (24 from Hawaii) to disappear since 1776. It will vanish from the nation as finally as have the eight mammals doomed by industrial society and burgeoning humanity.

Among the American species forever lost: the great auk bird, Labrador duck, passenger pigeon, heath hen, Merriam and Eastern elk, the California, Texas and plains grizzly bears, the Eastern forest and mountain bisons, giant sea mink, plains wolf, San Gorgonio trout, plus several etceteras.

AT RESEARCH STATION

Dr. Erickson is one of six scientists at the five-year-old Patuxent Center's Endangered Wildlife Research Station, a 355-acre complex in the woodlands near here.

While it may be too late to save the ivory-billed woodpecker, Dr. Erickson and his colleagues believe there is still hope for some other American creatures—such as the whooping crane, Aleutian geese, key deer, Nene goose of Hawaii and black-footed ferret (cousin to the weasel) of the Dakota Badlands, and many others currently listed as endangered.

The ivory-billed woodpecker once existed from North Carolina to east Texas. The Bureau of Sport Fisheries and Wildlife Redbook of rare and endangered fish and wildlife describes the bird as "larger than a crow, with a white bill, large patches of white on its wings and white lines on either side of its neck. . . . It calls a single note like the sound of a toy tin horn."

MANY WERE SHOT

Countless of the birds were shot and those remaining are disappearing with their habitat. Another Bureau publication description of the bird reads like an obituary:

"Too few people living have ever had an opportunity to see the magnificent ivory-billed woodpecker, with its shining black plumage and great scarlet crest. It is a shy, wild bird that lives in mature, broad-leaved forests of our Southern swamps and river valleys.

"It was doomed when loggers began cutting the great trees in the river swamps; its chief food, a beetle grub, lives under the bark of very old trees. There have been no authentic records for years."

Without the research center at Patuxent, we might soon say "R.I.P." to other spectacular North American birds—the Southern bald eagle, whooping crane and masked bobwhite quail.

"The station's program is designed to provide a measure of insurance against extinction by maintaining breeding stocks in captivity of as many endangered forms as possible, both birds and mammals," explained Dr. Erickson.

BUDGET OF $350,000

The station has had $350,000 annually, for the past three years, a sum that a few other Federal departments would consider subway fare. It now has facilities to study in captivity 6 of the 60 rare and endangered American birds and one of the 32 imperiled mammals.

However, there are 22 various endangered species—including 22,000 alligators—living on the 329 *wildlife* refuges maintained by the Bureau of Sport Fisheries and Wildlife. The refuges cover approximately 29 million acres and contain species as diverse as key deer and the whooping crane.

The new Endangered Species Act, signed by the President December 5, 1969, will affect the nation's program in that it increases the amount of money that can be paid for land destined to hold endangered creatures.

INTERNATIONAL ACTIVITIES

The authorization, previously $750,000, is now $2.5 million. The law will also make it

a Federal offense to poach alligators and sell their hides in areas where they are protected by state law.

The Bureau of Sport Fisheries and Wildlife "coordinates and sparks" the nation's Endangered Species Program, said Eley P. Dennson, Jr., who handles international activities for the bureau.

"The Endangered Species Program involves everything from individuals to government agencies. The Nature Conservancy, buying an area for the blind salamander in Texas, is just as much a part as the Research Station at Patuxent."

He said the program's goal "is to protect and preserve species of fish and wildlife in their natural environment."

What's the difference between a rare or an endangered creature? A rare form is one with few numbers in its habitat. A rare species can survive if its environment is not destroyed.

There are approximately 90 endangered mammals, birds, fish, reptiles and amphibians in this country—species "in immediate jeopardy." The rare forms—which include the prairies chicken and Puerto Rican whippoorwill—number 45.

MASKED BOBWHITE QUAIL

One of the birds now at Patuxent, the masked bobwhite quail, no longer exists wild in the United States. Most of the 300 quail there are the offspring of 36 birds captured in Mexico a year ago. In a few months, some of these quail will be flown from Patuxent and quietly released in part of the Arizona desert.

Large cattle drives and droughts in the late 1800's destroyed the Western habitat of of bobwhite. The ones to be released in Arizona will be the first to live there in 50 years.

The quail produce more young at Patuxent than they do in the wild. Dr. Erickson explained why:

"In the wild, the quail will lay a clutch of eggs and then stop at 12 or 15. We put a couple of male bobwhites in with several females, as a measure of insurance, in case one of the males is infertile.

EGGS REMOVED FREQUENTLY

"We remove eggs frequently, so that no clutch is formed, the eggs go into a period of storage at 55 degrees, until we get enough to move into an incubator. Last year, we got more than 80 eggs from one female . . . It doesn't hurt the birds, and we need the maximum number of eggs."

Dr. Erickson believes that wildlife is an irreplaceable natural resource. "Only if the public really insists that these values be preserved, can we save our wildlife. It's too bad that it's necessary to bring any animal into captivity in order to save them; their needs are so simple and yet the solutions to their problems are often complex."

Dr. Erickson once wrote that "Low populations and prolonged periods of adversity eventually may pass and conditions then become more favorable for a species, if only some stock survives. For example, successful propagation methods for passenger pigeons were known in the late 1800's.

NO SUSTAINED EFFORT

"Apparently, no sustained effort was made to preserve a reservoir of captive breeding stock during their final decline, so their loss is permanent."

## STATEMENT OF NET WORTH BY SENATOR MATHIAS

Mr. MATHIAS. Mr. President, Mrs. Mathias and I believe that one way to renew confidence in the institutions of government is to share with the public all information that may throw light upon the interest or disinterest of those who participate in making public decisions. Therefore, in addition to filing the confidential financial reports required under the Senate rules, we are making available to the public an identification of our assets and our creditors and a statement of our net worth, and our income in 1969 over and above congressional pay and allowance.

I ask unanimuos consent that my report, which has been submitted to Senator STENNIS, chairman of the Select Committee on Standards and Conduct, and the letter accompanying the report, be printed in the RECORD.

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

MAY 14, 1970.

Hon. JOHN STENNIS,
*Chairman, Select Committee on Standards and Conduct, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Senate Rules 42 and 44, I have submitted the information required. In addition to that disclosure, Mrs. Mathias and I wish to follow the practice that we have established and to make a listing of our assets, our creditors and our income over and above Congressional pay and allowances. A copy of this voluntary report is enclosed for your information and additional copies will be submitted to the Congressional Record and to the press.

During the calendar year, 1969, I withdrew from the practice of law, from all relationship with legal firms and resigned from the only corporate directorship that I retained, Mutal Insurance Company of Frederick County. Any fees, retainers or honorariums from these sources received and reported are terminal.

Sincerely yours,

CHARLES MCC. MATHIAS, Jr.
*U.S. Senator.*

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DISCLOSURE OF FINANCIAL INTERESTS—CHARLES MCC. MATHIAS, JR., AND MRS. MATHIAS—MAY 12, 1970

ASSETS

Equity in Federal Retirement System.
Life Insurance.
Livestock and Farm Machinery.

REAL ESTATE

House: RFD 2, Frederick, Maryland.
House: 3808 Leland Street, Chevy Chase, Maryland.
Half interest in forty-acre farm in Frederick County, Maryland.
Half interest in 306 Redwood Avenue, Frederick, Maryland.
Lease for 373-acre farm, expiring in 1973.

STOCKS

Farmers & Mechanics National Bank.
Capitol Hill Associates.
Citizens Bank of Maryland.
Foote Mineral Company.
Frederick Medical Arts.
G. D. Searle & Company.
Investors Loan Corporation.
Massachusetts Investors Growth.
The Detour Bank.
The Great Atlantic and Pacific Tea Company.
Warner Lambert Pharmaceutical Company.
Maryland National Corporation.

LIABILITIES

Debts due on mortgage, collateral and personal notes to:
Farmers & Mechanics National Bank, Frederick, Maryland.
First National Bank of Maryland, Baltimore, Maryland.
Frederick County National Bank, Frederick, Maryland.
Walker & Dunlop, Washington, D.C.
Net worth: computed to May 12, 1970—$157,678.78.

| Year | Investment income | Interest | Honorariums | Net rents | Legal fees |
|---|---|---|---|---|---|
| 1969 | $1,543.43 | $7.41 | $8,250 | $253.83 | $3,450 |

## VOCATIONAL REHABILITATION: A BOON TO THE MENTALLY RETARDED

Mr. YARBOROUGH. Mr. President, I am always delighted to see or hear of programs or projects which help the retarded become gainfully employed members of their communities, the Rehabilitation Record of March and April 1970, a Federal Government publication contains an article by June Kendrick and Jack Sudderth which discusses such a program.

In an article entitled "But It Doesn't Look Like a School," written by June Kendrick, rehabilitation writer with the Texas Rehabilitation Commission in Austin, and Jack Sudderth, vocational rehabilitation counselor with the commission in Dallas, describe a project of rehabilitation which must be measured a success by any standard.

Ten years ago the mentally retarded amounted to only 2.9 percent of the total rehabilitations of the Texas Vocational Rehabilitation Division. Last year they amounted to 19 percent. How did this come about? Let me summarize.

After some discussion, a group of vocational rehabilitation professionals concluded that a special facility that would give meaningful vocational training to educable mentally retarded youth was a prerequisite for success. Just such a facility was already in existence and was a part of the Dallas public school system.

The Dallas Vocational School—a huge hangar-like structure—had a 21-year history of teaching war veterans, construction apprentices, Indians, trainees in vocational nursing, and adults wanting to complete their general education. And J. T. Goode, the school principal, had long wanted to do something for young people who were not academically competent.

With a Federal extension and improvement grant, the facilities of the Dallas Vocational School, the cooperation of a host of concerned individuals, the project got underway in January of 1959 with 12 mentally retarded young men. A unit for girls was begun the second semester. The program proved to be very popular with the students. They had fun and yet they learned a trade.

The success of the program can best be gaged by the results. Of the total 925 students enrolled in the project up to this school year, 65 percent have been employed on a full-time basis. The average hourly wage of this group is nearly $1, but many of them earn over $1.30 per hour and a limited number earn $2.50 to $2.75 per hour.

Mr. President, I have obviously left out many of the details of this fine project. For the benefit of those who might be interested in the full report, I ask unanimous consent that the article on pages 28 through 31 of the March and April 1970 Rehabilitation Record be printed in the RECORD.

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

BUT IT DOESN'T LOOK LIKE A SCHOOL . . .

(By June Kendrick and Jack Sudderth)

When 12 mentally retarded young men and their teacher painted themselves out of a corner and into the world of work, a unique cooperative training effort progressed. It was 1959 in Dallas. How the fellows got themselves into a corner was an accomplishment that requires explaining.

Ten years ago in Texas, mentally retarded clients amounted to only 2.9 percent of the total rehabilitations of the Vocational Rehabilitation Division (VRD) in 1 fiscal year. Many professionals in guidance and education, as well as many parents, thought retarded people could do nothing vocationally. Optimists thought 10 percent of them might be helped to learn to work.

Others thought this group had not been reached for lack of the right approach; the watered-down academic approach obviously had failed. Some of these like-minded people—vocational rehabilitation counselors, regional rehabilitation professionals and special education teachers—kept talking to each other. An idea sprouted to have a special family that would give meaningful vocational training to educable mentally retarded youth.

A facility that could be adapted to this end was already in existence and was a part of the public school system. The Dallas Vocational School, located in the center of the city, had a 21-year history of teaching varied groups—war veterans, construction apprentices, Indians, trainees in vocational nursing, and adults wanting to complete their general education.

The school building, a huge hangar-like structure, was not the conventional school setting. But conventional educational approaches had not benefitted the retarded. Its industrial, buisness-like atmosphere conveyed a desirable quality for a vocational project. Containing about 60,000 square feet of open ground floor space and about 4,000 square feet on an upper floor, the building suggested flexibility. Another promising feature was that the principal of the school, J. T. Goode, had long wanted to do something for young people who were not academically competent.

To develop a project in this special facility, VRD applied for a Federal extension and improvement grant. The primary goal of the project would be to assist in the rehabilitation of educable physically and mentally handicapped young people between the ages of 16 and 21 by providing appropriate adjustment training, evaluation, and other services which would help them bridge the gap between what normally is offered by the public school and employment.

In January 1959, assisted by the grant, the VRD, the Special Education Division of the Texas Education Agency, and the Dallas Independent School District began cooperative action. Although generous space was available in the Dallas Vocational School, finding any young men for the first semester's class was a problem.

At that time in Dallas, special education classes were limited to a few elementary schools. High school offered nothing to retarded students but continued frustration. These youngsters usually left school at age 16 and often had not been diagnosed as retarded by the school. Later, after the Dallas Independent School District developed procedures to identify them—and the project's potential was demonstrated—enrollment difficulty vanished. Initially, when a few prospective students were located, parents were often dubious about their son's or daughter's working and were reluctant to put them in another school situation where they might fail again. And, too, they were apt to observe, "The Dallas Vocational School just doesn't look like a school."

Twelve boys, though, did enroll the first semester. They were assigned a corner of the facility and expected to stay clear of any vocational classes in progress. Having no fixed curriculum, the teacher had to be resourceful. Using some surplus paint, he and the boys painted everything in the facility that looked like it might need a coat, including a section of the wall. Then the paint ran out. Frantic for something to do, the teacher appealed to a colleague. She turned over some old furniture for refinishing. The boys kept busy.

A unit for girls was started the second semester. Learning good grooming habits was the first assignment for these new students. Their presence caused some nervousness on the part of the school administrator, who had them fenced into a private section. Eventually, with their teacher's help, they won more freedom and a social vote of confidence.

Those first years with the project represented on-the-job training for all the professionals involved. A curriculum evolved that was as flexible as possible in order to meet individual needs. The students had so many vital things to learn—how to use public transportation, how to get along with people, and how to have desirable work habits and attitudes. Many had never been given any responsibilities at home. The teachers sent notes to their parents suggesting chores the students be allowed to do.

Then, few people thought the retarded could hold a job other than dishwashing or carwashing. The instructors of vocational trades at the school were reluctant to accept retarded students into their classes. Choosing some who appeared capable of learning more sophisticated skills, the rehabilitation counselor persuaded trade instructors to take them into classes. Gradually, the students won over the instructors.

Success required strenuous cooperation. The principal of the Dallas Vocational School administered the two units—one for young men and one for young women. The office of special education processed applications and worked in a consultative capacity with the teachers. A counselor from VRD received the applications, secured diagnostic data, established eligibility, counseled and planned with the client and parents, and secured on-the-job training and employment for the clients as they were ready for these steps.

Placement for the job-ready retarded required a tremendous selling job. Persistently calling on friends and keeping in touch with many community resources, the VR counselor gradually opened employment opportunities.

At the conclusion of the students' first 6 weeks, parents were invited to a school meeting and were asked to report on any changes in their children's behavior that they had noted since the project began. Some of the comments were:

"He comes home, hungry and tired, ready for dinner and sleep."

"He tells us that we have not been taking care of our lawn mower, as the oil is supposed to be changed regularly."

"She tells me that I should be more saving in buying groceries."

"She wants to help me more."

"She acts more independent, actually has a feeling of worth."

"She does her own clothes and fixes her own hair."

"He never wanted to go to regular school, but he can't wait to get to the vocational school."

At the end of its 3-year grant, the project had gained school and community acceptance as well as statewide and regional recognition. Of all the students completing the project's program during this period, 61 percent were considered successes. The VRD and the school district decided to continue their joint undertaking with a pro rata plan for financing. The Texas Education Agency was encouraged to extend this successful venture by initiating a statewide cooperative, school-work program for handicapped high school students. The VRD, the Special Education Division, and the school districts joined resources to start what is generally considered to be the first such statewide cooperative venture. However, the Dallas Vocational School remained a unique facility where students could particiate in a vocational, individualized curriculum in an industrial setting.

Administering a vocational rehabilitation program for retarded youth is not the only responsibility of the Dallas Vocational School. In 1960 a program for school dropouts was started. Called the coordinated vocational academic program, it offers trade-type training to young men between the ages of 15 and 21. This program receives some Federal financial assistance through the Texas Educational Agency. VRD places a few boys in this program to teach them a specific trade. Some of the boys are juvenile offenders who have not profited from their other public school experiences. A large program, it currently has about 160 students. The two groups coexist smoothly and sometimes participate in the same classes.

The list of courses offered at the school shows the broad range of vocational choices. Training is available in auto body repair, auto painting, auto seat covers, bricklaying, crafts and plastics, dry cleaning and laundry, duplicating devices, furniture upholstery, home appliance repair, homemaking and handicrafts, machine operations, power mechanics, service station training, sheet metal layout and practice, supermarket operations, and combination welding.

Carlos M. Johnson, assistant principal and chief administrative officer of the two groups at the school, insists that all students be treated like men and women "on the job" and expects them to respond in like manner.

As students do everywhere, though, they manage some fun. After the instructor in bricklaying had his students build a brick planter in their work area, some neighborhood foliage appeared, transplanted to the new container. The planter remains, a pleasant green mascot amid the bricklaying and mortar-pouring activities in a corner of the facility.

Some students in the retarded group become employable after 3 to 6 months' training. Occasionally, a student spends as long as 3 years. The average length of time in training is 1 year. One boy who had an IQ of 55 and was hard of hearing, received personal and work adjustment training and tried nearly all vocational areas. His counselor and teachers nearly gave up on him, but today he is employed as a sander. He earns $1.25 per hour and has been holding the job 1 year.

The curriculum for the retarded is based on research findings indicating that the attitude of the mentally retarded worker and how he *reacts* socially with his coworkers and supervisors is more important for success on a job than is knowing how to do a specific job. To aim for the acceptable attitudes and social traits is the purpose of those activities labeled "personal or work adjustment training." Students who show a capability for learning the specific skills of a trade are given the opportunity to do this. Often they do not get their first jobs in vocations for which they have had training; still, the structured experiences at the school helped them gain confidence and other assets they needed to hold a job.

As there are no walls inside the school, a student can easily observe different types of

vocational training and widen his occupational knowledge. Only chain link fences or cabinets separate one training area from another. A boy can have a chance to try welding, for example, even though his test scores may indicate his chances for learning welding are poor. Sometimes the retarded will surprise everyone, including themselves, with what they can achieve. One memorable young man won third place in a contest sponsored by a welding machine company with specifications and photographs of his arc welding project.

Most project students do find some level at which they can be successful. If the student fails on his first outside job, he can return and get help to find out what went wrong and what can be done about it.

Of the total 925 students enrolled in the project up to this school year, 65 percent have been employed on a full-time basis. The average hourly wage of this group is nearly $1. Many of them earn over $1.30 per hour; while a limited number earn $2.50 to $2.75 per hour. For the most part, the jobs these students hold involve routine tasks. Most of the boys, and many of the girls, get their first jobs in the restaurant business.

Eventually, vocational adjustment coordinators (VAC's)—one for the boys and one for the girls—were added to the project's staff. The VAC's give daily, full-time supervision to the students, recommend or find job training stations, and otherwise assist the VR counselor in carrying out rehabilitation plans for each individual. The school has seven full-time teachers. Some are trained in special education, some in industrial arts, and some come from industry.

A student enters the VR project through referral by his teacher or by a VR counselor. Every referred person is accepted for an initial evaluation. For the girls, this takes place in the homemaking unit, where sections exist for living, kitchen, and laundry areas. Modern kitchen and laundry equipment are being used. The girls learn valuable lessons by serving lunch, brought in from an outside cafeteria, and cleaning up after meals.

They also learn the rudimentary social and personal traits required for adequate living or holding a job. When ready, they are moved into vocational training—primarily in dry cleaning or duplicating machines. Sometimes they are trained on the job, often in food service or packaging and assembly work outside the school.

Boys get their first evaluation in a crafts section. Here, interests and abilities to use tools can be determined. While the boys get attitudinal shaping, they work on tasks involving custodial work, furniture refinishing, maintenance, painting, and service station work. If a boy indicates by his work habits and performance that he is capable of doing work of a more technical nature, he may be transferred to one of the many regular vocational training areas.

Through cooperation with industry, the school offers training geared toward the immediate needs of employers. An example of this cooperation is the duplicating equipment placed in the school by business firms. The substantial equipment inventory includes mimeograph, dry-photo copiers, thermofax copier, plastic bookbinding machine, electronic scanner, silk screen mimeograph, A. B. Dick 360 offset, Multilith 1250 offset, Diazo copy machine, sign press, liquid copy machines, electric hole punch, electric paper cutter, spirit duplicator, and modern typewriters.

With this equipment, the school can handle contract work and give the students real job experience. Actual customer work is also done in dry cleaning, auto repair and painting, and upholstery.

Students who are competent on the duplicating machines can often get civil service jobs. And competent they can get. Mary Lee McLaughlin, who has been with the VR project since the first girl's unit started and is now a VAC at the school, enjoys recalling the time when a new instructor for the machines began work without knowing how to operate all of the machines. He was soon checked out on all of them by two retarded girls.

A realistic mockup of a supermarket, with stocked shelves and produce bins, was set up in the school by local grocery stores. This gives students a realistic setting for learning skills such as using a scale, stocking, and cashiering.

The school is conducted on the same time schedule as the other junior and senior high schools. All instruction is related to job and community living, however, with a minimum of formal classroom work. A learning center is being developed to include equipment for individual programed learning. A teacher is available to assist students in the center.

During the past 10 years, various approaches to the vocational rehabilitation of the mentally retarded in Texas have been used. The results have been impressive. In the fiscal year 1969, rehabilitated retarded clients amounted to 19 percent of the total VRD rehabilitations for the year.

Since 1964, one hundred or more students have been enrolled each year in the Dallas Vocational School VR project. Many other retarded youth are served through cooperative VR units in their local public schools or through other programs. The Dallas school continues to be a unique public school facility in the State with its many vocational opportunities available to the retarded and to other nonacademic oriented youth.

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

## AMENDMENT OF THE FOREIGN MILITARY SALES ACT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The BILL CLERK. An act (H.R. 15628) to amend the Foreign Military Sales Act.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

Under the previous order, the Chair recognizes the Senator from Wisconsin for not to exceed 30 minutes.

### THE ECONOMIC CONSEQUENCES OF CAMBODIA

Mr. PROXMIRE. Mr. President, the Cambodian intervention has raised many questions involving congressional responsibility for spending, budgeting, and in many other vital respects. Today I intend to discuss these significant economic implications.

It is now clear that the forecast of a budget surplus of $1.3 billion for fiscal year 1971 will not occur. This small estimated fiscal year 1971 surplus has disappeared even before fiscal year 1971 has begun.

While no new official budget figures have been given, the decline in corporate profits will bring a major fall off in receipts. And several of the gimmicks and jerry-built estimates on which the $1.3 billion surplus was based, have now been exposed for all to see. One example alone will suffice. The President's wholly unrealistic budget request for a postponement until January 1971 of the postal and civil service pay raises due on July 1, 1970, has been replaced by a pay increase which added $1.2 billion to fiscal year 1970 outlays and will add additional amounts to the 1971 estimates of expenditures.

We should face the facts. Instead of a $1.3 billion surplus for fiscal year 1971, we now face both an increase in expenditures—pay increases, interest payments, farm price supports—and a decrease in receipts—from corporate profits, offshore oil leases, a delayed postal rate increase—which have turned around the fiscal year 1971 estimate from a slight surplus to a deficit of several billions. While the details have yet to be made public, this basic truth has been admitted by the administration and by the Secretary of the Treasury. Unofficial estimates are that the deficit from these causes alone will run as high as $5 billion.

### WE ARE NOW IN A RECESSION

The figures released Friday by the Department of Commerce indicate that we are now in a recession as reportedly defined by the National Bureau of Economic Research. The gross national product has now declined for two successive quarters.

The first quarter figure has now been revised downward by some $2.6 billion from the preliminary estimates. It now stands at $959.6 billion. In constant 1958 dollars it fell from $730.6 billion in the third quarter of 1969 to $724.3 billion in the first quarter of 1970. This is very disheartening economic news.

The figures for corporate profits show a sharp decline in the first quarter of 1970. The figures released Friday show a seasonally adjusted annual rate of $85 billion for the first quarter of 1970. This is $6¼ billion less than in the fourth quarter of 1969 and more than $10 billion below the record high profits attained in the first two quarters of 1969.

But there is more fiscal bad news. We must face up to the economic consequences of Cambodia. There will be additional increases in spending because of war.

Unfortunately, administration spokesmen, including the Secretary of the Treasury and the Director of the Bureau of the Budget, stubbornly and foolishly refuse to admit it. They persist in stating that the military operations in Cambodia are not expected to add to total defense spending in 1970 or 1971. Such a judgment was made by the Secretary as late as May 9 in his speech at Hot Springs. But that is merely putting their heads in the sand.

The President's actions in Cambodia will raise the cost of the war. Military expenditures in Southeast Asia will rise. Whatever views we as individual Americans may hold about the President's action in launching the Cambodian expedition, we can be sure that as night follows day the costs of the war will go up. We must face that fact.

Mr. President, a little later I shall document that, and indicate exactly why the costs of the Cambodian war are sure to rise.

The question then becomes, What can we do about it? How can we prevent inflation from continuing, restore confidence in the business community, and

provide for our starved domestic needs at the same time that military and other costs rise and receipts go down?

The Secretary of the Treasury in a speech before the Business Council at Hot Springs, Va., on May 9 said that for the administration to remain fiscally responsible may require either rigid economics or an enlargement of our tax base, which is a polite euphemism for a tax increase.

And the Washington Star reported on Sunday, May 10, that administration officials indicated Saturday that Federal spending increases probably will compel President Nixon to ask Congress to raise taxes next year.

But I say that it would be unconscionable to raise taxes now. The country is sliding into an economic recession. Taxes are already too high. Furthermore, in my judgment, the country would not accept a tax increase to pay for the military adventures in Vietnam and Cambodia, in the present public attitude. It is difficult enough to raise taxes for a war which has the support of the American people—even in World War II, only about a third of the cost of the war was paid for through increased taxes, while the remaining two-thirds was paid for through borrowing or inflation.

But it would be impossible to raise taxes to pay for an unpopular and controversial war which is deeply opposed and strongly resisted by a very, very large proportion of the American people.

The suggestion of the Secretary of the Treasury that we could or should raise taxes to avoid a deficit is both wrong and wholly unrealistic.

In the present circumstances there is only one way to meet these problems. That way is to cut spending. Unfortunately, the Secretary did not specify where we might impose rigid economics.

But there is one place and only one place where big spending can be cut. That is the $75 billion defense budget proposed for next year.

It is therefore incumbent upon us to make big cuts in the regular military budget in order to offset the certain increase in the cost of the Vietnam war and the decrease in revenues from the slump. Unless that is done, we are bound to have a new round of price increases, a huge unbalanced budget, and a new economic crisis.

Let me develop the arguments both as to why the costs of the war will increase and why cutting the regular fiscal year 1971 military budget is the only feasible way to meet the new and serious problem of the budget deficit and the escalation in the costs of the Vietnam war.

THE COSTS OF THE WAR WILL INCREASE

On April 30, the President of the United States ordered American troops into Cambodia. Here is the indication and the documentation that this Cambodian adventure is going to cost money in a substantial amount. Reports are that some 20,000 American and 20,000 South Vietnamese troops are involved in military operations into North Vietnamese-Vietcong sanctuaries along the South Vietnamese-Cambodian border.

Some solace for those of us who oppose this action has come from the President in his promise that he will limit the penetration of troops into Cambodia to 19 to 21 miles and that he will withdraw the American troops entirely from Cambodia by July. 1 In addition, he has justified the Cambodian operation, in part, on grounds that it will make it possible to carry out his pledge to remove an additional 150,000 American troops from Vietnam by next spring.

We all hope that events will make it possible for the President to adhere to these limits and that the Cambodian expedition will become, in fact, a means to advance the date when our troops can leave Vietnam entirely.

But, in the meantime, the thrust into Cambodia, the troops and ammunition involved, the planes, tanks, and supporting helicopters, and the supplies needed to support them are bound to cost money and to raise the costs of the war.

In addition to the ground troops sent into Cambodia, at least four new major bombing missions over North Vietnam have taken place since April 30. Fifty to 100 planes flew 240 miles deep into North Vietnam during each of them.

Furthermore, in any military expedition of this kind, every commander will insist upon adequate reserves of ammunition, troops, planes, tanks, and supplies. There are, therefore, not only built-up costs involved in this endeavor, but reserve and replacement costs as well.

An increase in the costs of the war is also indicated by the casualty figures. The weekly casualty report released May 14 showed the highest American casualties in 8 months and the highest South Vietnamese casualties in 27 months.

While American troops were only indirectly involved and were very careful to avoid exceeding the 19-mile limit, the cost of the forays up the Mekong River by a flotilla of ships was obviously borne to some considerable degree by the United States.

Finally, we propose to support the South Vietnamese troops even after we leave Cambodia and withdraw further troops from Vietnam. And there is as yet no guarantee that the South Vietnamese and even the United States will not be involved in further forays, incursions, and expeditions. At least, the administration is arguing that we should not tie their hands, in arguing against the pending amendments.

All of this will cost money. In my judgment, tens of millions of additional funds are at stake. Unless some unusually fortuitous events take place, we should not be surprised if the additional costs of the Cambodian expedition and the stepup in fighting in Vietnam are several billions more than has been budgeted.

And if the Cambodian operation ties down our troops for a period longer than anticipated, or if it leads to an escalation of the war, then the costs will go up even more.

With the shift in the 1971 budget from precarious surplus to an admitted and growing and substantial deficit in the context of a situation where we have already failed to stop inflation and where prices are continuing to rise, the one thing that could really put a strain on the economy at this time is a rapid increase in spending as a result of the Vietnam-Cambodian War.

The huge inflation brought about by the escalation in the Vietnam war in the fiscal year 1966–67 period has not yet been brought under control. The pessimism engendered by the failure of the administration's anti-inflationary policies—if indeed they have carried out any meaningful anti-inflationary policies—has rocked the financial community and sent the stock market into a tailspin.

DREAM WORLD

But already the administration appears to be living in a dream world. The assurances of the Secretary of the Treasury, Mr. Kennedy, at Hot Springs, that the economic and budgetary impact of the escalation in Cambodia would be negligible, are impossible to accept.

This is where many of us came in. The same thing was said when the Vietnam war was escalated. In fiscal year 1966, new obligational authority for Vietnam was $14 billion more than the estimate in the budget. In fiscal year 1967, new obligation authority for Vietnam was $12 billion in excess of the budget figure.

And the same thing happened to spending. Vietnam spending in fiscal year 1967 rose from a $10 billion estimate in the budget to $20 billion before the year was out.

As a result, when the bills became due we incurred an $8 billion deficit in fiscal year 1967 and a $25.2 billion deficit in fiscal year 1968. The inflation from which we are still suffering, was induced by the failure to act at that time and because too many officials viewed the world through rose-colored glasses.

At that time, just as we are hearing now, we received assurances from the President and his advisers that the economic and budgetary impacts of the Vietnam war would be much smaller than they were.

There is an old Chinese saying which admirably describes the danger we face of once again underestimating the economic consequences of the Indochinese war.

Fool me once, shame on you. Fool me twice, shame on me.

It cost us a $25 billion deficit and massive inflation to learn our lesson once. Let us not make the same mistake twice.

WHAT TO DO ABOUT IT

In situations of this kind, certain elementary steps can be taken. They are familiar to every businessman, economist, and Budget and Treasury official. If this were merely a classroom exercise one might recommend taking any one or a combination or all of the following actions. They are, first, decrease the money supply and tighten monetary policy; second, increase taxes to decrease spending in the private sector and pay for the increased cost of the war in the public sector; third, resort to guidelines and persuasion and forms of credit restrictions in an effort to keep prices and wages and credit in line; and fourth, reduce spending in order to compensate for the increased spending for the war.

Those are the classic classroom things to do. But the problem we face now is that not all of them are available to us.

Because of past policies, administration reluctance, preconceived predilec-

tions, and public opposition to the war, the options are now limited—and I mean very limited.

In the present circumstances, there is only one clear course of action. That is to cut the regular military budget and to cut it hard in order to pay for the increased costs of Cambodian expedition, balance the budget, prevent runaway inflation, release funds for housing and construction in the private sector, and restore confidence to the business and economic community.

That this is so is clear from a statement of the facts.

TIGHTER MONETARY POLICY IS NOT POSSIBLE

We do not now have the option, which in other circumstances might be available to the economic authorities, to tighten money. Money is now as tight as it can possibly become. There is no more room to act.

The prime interest rate—the rate banks charge to their best customers—is now at 8 percent.

In March, mortgage rates were at 9.29 percent for FHA mortgages. We are already in a housing depression but with the greatest backlog of housing needs in the history of our country.

Four to 6 months prime commercial paper is at 8 percent. High grade municipals are bringing more than 6.5 percent and, of course, they are tax exempt.

From June of 1969 to February of 1970, there was virtually no growth in the money supply in this country. Since then, there has been a change in policy and some growth is taking place, as well as some limited monetary growth.

But the fact is that there is no way to tighten money now. To further tighten money, raise interest rates, and reduce the limited funds now available for housing would be unconscionable.

Tightening the monetary screws at this time is no option.

In fact, what we need is to make certain that the opposite policy is carried out. We need a relaxation in the tight money policy and a reduction in interest rates. The recent policies have not only brought a housing crisis but have in part—a significant part—been responsible for a level of unemployment of 4.8 percent and rising, according even to the testimony of the administration's own witnesses. Arthur Burns told us, just this past week, that he anticipated unemployment would continue to rise.

That is the highest level in 5 years. It means there are 1.3 million more men and women out of work than in January 1968 when President Nixon took office. But it means even more as well for certain individuals and groups.

Unemployment for Negroes and other minorities is double that for whites, or 8.7 percent as against 4.3 percent.

Teenage unemployment is over 16 percent. Construction workers unemployment is at 8.1 percent, and 8.8 percent of nonfarm laborers were out of work in April.

We should decrease, not increase, interest rates. A reduction in interest rates could spur housing which in turn has extremely healthy ramifications for the entire economy. An increase in housing construction not only benefits those who need a home, it stimulates almost every industry and every trade—lumber, brick, and cement. It stimulates the market for plumbing, hardware, carpets, and furniture. It helps the sale of durable goods—refrigerators, stoves, furnaces, and air conditioners.

A loosening of money, a reduction in interest rates, and the stimulation of housing production has effects and permutations of a thousand fold.

This in turn stimulates employment—especially employment for construction workers and for blacks and for laborers and teenagers—all those categories now hard hit and suffering from unemployment.

If we build housing, we can put the unemployed to work and stimulate almost every sector of the economy. And to do this does not require huge Federal outlays. Instead, it requires a cut in expenditures which will help stop inflation, relax money, and reduce interest rates. More than any other activity, housing can put men to work, stimulate the economy, help reduce prices, take up the slack from a fall off in Government or military spending, and satisfy urgent social needs.

There is an old saying which applies particularly to this situation; namely, that a rising tide floats all the boats.

TAXES ALREADY TOO HIGH

The Secretary of the Treasury said that fiscal responsibility may require an enlargement of our tax base—in effect, that we should raise taxes to pay for the increased costs of the Vietnam war and to offset the fiscal year 1971 deficit. In my view, as I have said, that is neither practical nor desirable. Let us look at the facts.

The burden of taxation on the average American is now much too high. Instead of raising taxes, we should be trying to find ways to reduce taxes.

At the Federal level we now collect about $91 billion in personal income taxes, $35 billion in corporate income taxes, although, as I have indicated, that will fall because of the recession, because they are vulnerable to a cutback in economic activity, and $26 billion from excises, customs, estate taxes and others, which are regressive sale taxes, by and large. In addition, social security taxes and contributions take another $49 billion. That is a very large tax burden which is borne by the citizens of the United States with remarkable equanimity.

THE BURDEN OF INCREASED STATE AND LOCAL TAXES

But that is not all. What is really causing the consternation is the terrible burden of taxation at the State and local level. In addition to the $200 billion tax bill paid by American citizens to the Federal Government, they paid over $82 billion to State and local governments in 1969. This was an increase in taxes of over $9 billion from the $73 billion paid in 1968 or a 13-percent increase in State and local government taxes.

At the State and local level, between 1968 and 1969, there was a 9.5-percent increase in property taxes, a 14.4-percent increase in general sales taxes, a 24-percent increase in individual income taxes, a 33-percent increase in corporate income taxes, and an 8- to 12-percent increase in other taxes such as motor vehicle licenses, and motor fuels.

Altogether, there was an enormous increase in the tax burden at the State and local level between 1968 and 1969. It fell most heavily on those least able to pay because in almost every instance these are regressive taxes.

The slight reduction in Federal income taxes passed in 1969, by no means offset the increase in State and local taxes. Especially, it does not offset the terrible sense of injustice generated because of the increase in these regressive taxes and because so many wealthy individuals at all levels escape their fair share of the tax burden.

Thus, it is not desirable to raise taxes when such high rates exist and when such inequities exist. But it would not be possible to do so even if it were desirable.

With the great ferment in the country and the intense and growing opposition by a very large proportion of the American people to the war, a proposal to raise taxes to offset the increased costs of the Vietnamese war and the Cambodian expedition would merely pour fuel on an already incendiary situation.

For any one even to suggest a course would be ridiculous on the face of it.

PERSUASION AND JAW BONING

The President, if he would, could resort to various forms of persuasion, to the institution of wage and price guidelines, and to various forms of credit controls.

For months, some of us have been pressing him to do some or all of these things. We have passed major legislation—the Proxmire bill—giving him authority in these areas, especially the authority to put a ceiling on interest rates and to roll them back. But the President and his advisers have eschewed all these forms of action. They refuse to act.

One can have little confidence that they would now be used by an administration which has steadfastly refused to use them in the critical months which have just passed.

CUTTING MILITARY EXPENDITURES ONLY REASONABLE ALTERNATIVE

In the face of new inflationary pressures which will inevitably flow from the prospective budget deficit and the action in Cambodia, it is both impossible and undesirable to tighten money, because money is now already too tight and interest rates are excessive. This would merely wreak more havoc on housing and raise unemployment. It is neither desirable nor possible to raise taxes, because taxes are now at an intolerable level, are unjust in their application, and the vast opposition to the war itself would prevent any increase to pay for expenditures which a very large and intense minority believes to be bad policy or immoral. The President and his advisers have steadfastly refused to use other more gentle forms of persuasion, such as credit controls, or guidelines. There is, therefore, only one policy left by which the new inflationary pressures can be offset.

That policy is to cut expenditures.

And the only area of expenditures which can be cut and cut decisively in a big and significant way are those for the on-going, regular, military budget.

DETAILED PROPOSALS MADE REPEATEDLY

Where these cuts can be made has been detailed time and again. The Congressional Quarterly, in a survey of Defense Department officials, set forth $10 billion in cuts which could be made without cutting back on military muscle.

Robert Benson, formerly in the Office of the Comptroller of the Defense Department, indicated where almost $10 billion could be cut, also without affecting the basic strength or security of the country.

We have held detailed hearings into procurement, and especially the procurement of weapons systems where billions upon billions of dollars in overruns exist. The General Accounting Office indicated to my subcommittee last December that the overrun on 38 weapons systems alone was $20 billion. Savings can and must be made here.

I think that sufficiently detailed areas where military spending can be cut have been pointed out in the past so that one need not repeat them here.

The military budget is the only logical place for major cuts in spending. The Pentagon is asking for $71 billion next year. The additional funds for national defense for military assistance, military construction, and atomic energy raise that figure to almost $75 billion.

Of the Federal budget of $200 billion, almost half of it is what the Budget Bureau calls "uncontrollable." That means about $100 billion is composed of social security payments, interest on the national debt, veterans payments, or expenditures such as CCC payments which cannot be cut except by changing the laws of the land.

Of the $100 billion in "controllable" items—what we can cut—$75 billion is for national defense. If there is to be any major cutting of the Federal budget it must be made here.

The logic of the situation calls for cutting the military budget. It is only by cutting back on the military budget that we can stop inflation, stimulate housing, restore some sense of confidence in the business community, and meet even a modicum of the priorities and needs of the civilian economy of the country.

NO REWARDS FOR EXCESSES

Even before the escalation of the war in Cambodia, the military budget was out of control. The military received a disproportionate share of the resources of the country.

Now they will want even more.

But the military budget already contains areas of excesses and unnecessary expenditures. To continue the wastefulness is wrong. To escalate military expenditures is unconscionable.

If the military is intent on additional forays into the jungles and swamps of Asia, let them pay for it out of their existing budget. They must not receive budgetary rewards for their military excesses.

A cut in the military budget is the only means by which we can reduce the budget deficit and pay for the additional expenditures which the Cambodian expedition will generate.

The military excesses are already so great that large cuts can be made without endangering the effectiveness of our forces or the lives of our soldiers. In fact, the fighting strength of this country could be enhanced by stopping the gold plating, increasing the ratio of combat to supply troops, and reforming the entire system of military procurement and supply.

We should cut the military budget. It is no longer just a desirable end. It is now a necessity.

Mr. PERCY. Mr. President, will the Senator yield for a comment?

Mr. PROXMIRE. Mr. President, I would be very happy to yield to the distinguished Senator from Illinois.

Mr. PERCY. Mr. President, I have been concerned about the economy and our present economic problems. However, I cannot really imagine that in a trillion dollar economy, the Cambodian incursions have put a strain on the economy.

The implication of the Senator from Wisconsin is that this incursion is leading to a broadening of the war and involves a great deal more in expenditures. I cannot see that at all. I think the implication is very strong that this is a very short-term situation.

I take the President at face value when he says that we will be out of there by June 30.

I cannot imagine that the expense involved will have a material effect upon the economy if the business community and financial interests recognize that the President will stick to his word. And I do not doubt that for a moment.

So, I do not look upon this as having a materially adverse effect upon the economy. I hope that business leaders and financial leaders will not use this as a reason for saying that the outlook in the future is bleak.

We have some real problems to face. But I do not believe they are caused, other than psychologically, by the incursion into Cambodia.

Mr. PROXMIRE. Mr. President, I appreciate the observations of the Senator from Illinois. He has gone on record, as I understand it, as being against the Cambodian action. Considering the Senator's position that takes great courage.

The Senator from Illinois understands the economy extremely well. He is a member of the joint committee. And he has a brilliant record in business.

We have been through this again and again in Vietnam. We were assured by the President—not President Nixon, but President Johnson—that the costs would not be excessive. They underestimated the costs by $10 billion in 1966. The New York Times called that the economic blooper of the past 10 years. Most people recognize that much of our present inflation was caused by that deficit.

I am not saying that the Cambodian situation will be as bad as that. But once we begin to escalate and as we have done, pour 20,000 troops into Cambodia to back up the South Vietnamese and escalate our bombing, and support the Vietnamese when flotilla costs increase.

I do not want to exaggerate the matter. I think the Senator's remarks are most helpful and help to put the matter in the proper perspective.

But a sharp increase in war costs is something that can happen. We were fooled repeatedly before. We should not be again.

Mr. PERCY. Mr. President, I appreciate the Senator's comments.

It is why I emphasize that there can be a psychological factor. It is why I feel that the action of the Senate is very important at this time.

We do not doubt the word of the President.

I talked face to face Saturday evening with the Secretary of Defense. He assured me that we would be out of there by June 30. I do not doubt his word one bit.

I think, however, that we have the responsibility to take into account the fact that there has been a psychological factor involved.

There may be those who feel that we are broadening the war and getting deeper into the quicksand of Southeast Asia.

Possibly by resolution of the Senate, such as the Cooper-Church amendment, it might be that we could reinforce the belief of the citizens of the country that we will be out of Cambodia by June 30 and that this will not constitute a broadening or a deepening of the war. We do believe what the President had to say.

Mr. PROXMIRE. Mr. President, I think there is possibly nothing that the Senate could do that would give the country greater confidence in the belief that the action in Cambodia would be limited than to pass the Church-Cooper amendment. That would be enormously helpful.

We were not told the truth in the past, or, perhaps I could say, there have been misunderstandings in the past. And until the people get confidence in the fact that we are making an accurate estimate of what our military costs will be, we will be in great trouble with an inflation psychology based on the expansion of more military spending. They will not believe us, and that uncertainty will have adverse consequences.

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

Mr. PROXMIRE. I yield.

Mr. CHURCH. Mr. President, I do not suppose that anyone speaks with greater authority than the senior Senator from Wisconsin when it comes to Government finances. I think he has made a worthy contribution this afternoon by pointing up the impact of this continuing war on the finances of the Government.

President Nixon had no more cherished objective than to balance the budget. And as this war has poisoned the hopes and aspirations of his predecessors before him, so it now poisons the best laid plans of President Nixon.

The war is causing great economic distress in the United States. It is the single most important cause for the inflation which still remains unbridled.

It is the central cause for the failure to which the Senator alludes, Nixon's failure to balance his budget.

It is the cause for the special war taxes that have been laid upon the people, and it doubtlessly accounts for the precipitous slide in the stock market that has so disturbed the entire financial community.

Now, I think from the standpoint of the economy alone, from the fact we have spent over $100 billion on this pointless war, it honestly can be said that never in the history of our country has so much been spent for so little.

I think that the Senator's address today should remind us of how much we are spending, and of our need for defining the outer limits of American participation in a widening Indochina war. The Senator from Wisconsin knows his subject, as shown by the accuracy of the positions he has taken in the past, and the way his own forecasts have been borne out. This gives special weight to his message today. I extend to the Senator my compliments for the timeliness of his address.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from Idaho for his comments. He and the distinguished Senator from Kentucky (Mr. COOPER) are leading the fight in the most significant and important debate we have had in the Senate, certainly this year, and perhaps for a long, long time.

Mr. CHURCH. I thank the Senator.

Mr. PROXMIRE. Mr. President, briefly on another subject related to this matter, 176 days ago, on November 22, 1969, I wrote to the Department of Justice asking for an immediate investigation into the firing of A. E. Fitzgerald after he testified before a committee of the Congress.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. BYRD of West Virginia. Mr. President, I wish to say to the Senator I am not absolutely sure that his statement is germane to the unfinished business that has been laid before the Senate.

Mr. PROXMIRE. I think it is germane but I understand the objection of the Senator from West Virginia. He is very consistent in this matter. He is a good friend of mine. For that reason I will have to find another time of day in which I can make the statement.

Mr. BYRD of West Virginia. If the Senator will assure me the matter is germane I will not question it.

Mr. PROXMIRE. I would prefer to make this statement later.

I yield the floor.

Mr. BYRD of West Virginia. Mr. President, I thank the able Senator for his usual courtesy, patience and forbearance. He truly is a dear friend of mine.

Mr. DOLE. Mr. President, may we have order?

The ACTING PRESIDENT pro tempore. The Senator's point of order is well taken. The Senate will be in order.

Mr. ERVIN, Mr. President I rise to voice my opposition to the so-called Church-Cooper amendment.

Mr. President, one of America's greatest constitutional authorities and historians, Edward S. Corwin, had the following to say at page 259 of his illuminating book, entitled, "The President—Office and Powers, 1787–1957":

> Actually Congress has never adopted any legislation that would seriously cramp the style of a president attempting to break the resistance of an enemy or seeking to assure the safety of the national forces.

I believe that the Church-Cooper amendment constitutes a recommendation by its proponents that Congress adopt for the first time in the history of our Nation legislation which would seriously cramp the style of the President in attempting to break the resistance of an enemy or seeking to insure the safety of the national forces.

Mr. President, this legislative proposal would undertake to forbid the President or any of his military subordinates in the field to send any American soldier across the boundary line between South Vietnam and Cambodia after its effective date no matter what the conditions might be that existed at that time and no matter how necessary the prohibited action might be at that time to secure the safety of members of our military forces in South Vietnam.

The Cooper-Church proposal and certain other proposals which have been introduced in the Senate attempt to do the impossible, that is, to repeal history and the consequences of history. The Creator of this universe made it impossible for a nation or for an individual to repeal past mistakes. I certainly wish it were possible for me to repeal the mistakes I have made in the past. I can assure the Senate that if I had this power, I would have one of the most unblemished records ever possessed by any man since the angels sang together for glory at the creation.

All that a nation can do and all that an individual can do in reference to past mistakes is to take the wisest action under existing circumstances to minimize to the highest possible degree the consequences of those mistakes.

I think it would be of interest to the Senate for me to review the history of the events which led to our present involvement in Southeast Asia. Prior to the Second World War, which began on September 1, 1939, France exercised political power through the mechanism of colonies and protectorates over those portions of Southeast Asia which were then known as Indochina and which are now known as Cambodia, Laos, North Vietnam, and South Vietnam.

During the Second World War, the Japanese occupied parts of these lands with their military forces, ousted the French, and set up nationalist puppet governments. On August 19, 1945, after the bombing of Hiroshima, however, the Japanese withdrew from this area. Thereupon, a nationalist party, the Vietminh, which had been organized in China during the war by the veteran Communist, Ho Chi Minh, seized power at Hanoi, declared their country to be independent, and undertook to set up governing committees of Communists throughout Vietnam.

Shortly thereafter the French returned to the scene, occupied various posts in Vietnam with their military forces, and undertook to resume their control of the country by negotiating an agreement with Ho Chi Minh, the leader of the Viet Minh, to make Vietnam "a free state forming part of the Indochina Federation and of the French Union."

Being unable to work out the details of the proposed agreement with Ho Chi Minh, the French took measures on November 23, 1946, to end the smuggling of arms by Communist powers to the Viet Minh through the port of Haiphong, and a bitter and bloody war ensued between the French and the Viet Minh.

On March 8, 1949, France and Bao Dai, former emperor of the part of Vietnam known as Annam entered into an agreement setting up the Associated State of Vietnam within the French Union with Bao Dai, the head of the new regime, and a Vietnamese army to fight beside the French forces. By this agreement, France undertook to grant nominal independence to Vietnam while keeping control of the country.

During the next year—that is, 1950—President Harry S. Truman granted recognition to the newly created "Associated State of Vietnam." The United States was induced to take this step and to make substantial contributions toward financing the French war effort in Vietnam because it was convinced that France was fighting to contain the outward thrust of communism.

It is worthy of mention that the Congress of the United States apparently shared this conviction of President Truman, because it made appropriations to assist in financing the military actions of the French in Southeast Asia.

Early in 1954 the Viet Minh besieged the French fortress of Dienbienphu, and France sought military air support from the United States. American congressional leaders frowned upon this request, and Secretary of State John Foster Dulles undertook to ascertain whether Britain would join the United States in aiding the French militarily. Britain refused to do this, but persuaded Russia to join it in calling a general conference on the Far East.

This conference met in Geneva, Switzerland, April 26, 1954.

While the conference was sitting, namely, on May 7, 1954, the French forces suffered a devastating defeat at the hands of the Viet Minh, who captured the fortress of Dienbienphu and 10,000 prisoners.

As a consequence, France became reconciled to the acceptance of any face-saving agreement which would enable it to withdraw totally from Vietnam without surrendering all of it to Ho Chi Minh and the Viet Minh.

The result was that on July 21, 1954, the parties directly involved in the fighting in Southeast Asia agreed to an armistice based upon terms stated in the Geneva accords.

The Geneva accords provided for these conditions:

First, division of Vietnam—the most populous of the three states of Indochina—along the 17th parallel, with control of the northern half going to the Viet Minh while the French-supported regime of the Bao Dai retained the south.

Second, free movement of Vietnamese civilians between north and south.

Third, elections within 2 years to establish a single government, or at least

to permit the people of North and South Vietnam to determine whether a single government should be established.

Fourth, neutralization of the states of Cambodia and Laos; and

Fifth, supervision of the terms of the agreements by commissions composed of representatives from India, Poland, and Canada.

Ho Chi Minh was persuaded to accede to the Geneva accords by his conviction that they would remove from South Vietnam any military force strong enough to offer effective resistance to the Viet Minh and the hope that the Communists could take over South Vietnam by winning the proposed election in 1956.

The United States did not accept the Geneva accords, but took the position that it would not interfere with the carrying out of their spirit.

The United States declared, however, that it "would view any renewal of the aggression in violation of the agreements with grave concern and as seriously threatening international peace and security."

Largely as a result of the efforts of John Foster Dulles, the Secretary of State of the United States, the Southeast Asia Collective Defense Treaty, which is commonly called SEATO, was signed at Manila on September 8, 1954, by the United States, Britain, France, Australia, New Zealand, Pakistan, Thailand, and the Philippines.

On February 1, 1955, the Senate ratified the SEATO Treaty by a vote of 82 to 1. The dissenter, and the only dissenter, was Senator William Langer of North Dakota.

The SEATO agreement is set forth in full on pages 114 through 118 of a publication prepared at the instance of the Senate Committee on Foreign Relations. This is the fifth revised edition of a publication entitled "Background Information Relating to Southeast Asia and Vietnam," published in March 1969. I ask unanimous consent that the SEATO Treaty as set forth on those pages of that publication be printed in the RECORD at this point.

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

SOUTHEAST ASIA COLLECTIVE DEFENSE TREATY AND PROTOCOL THERETO, SEPTEMBER 8, 1954[1]

The Parties to this Treaty,

Recognizing the sovereign equality of all the Parties,

Reiterating their faith in the purposes and principles set forth in the Charter of the United Nations and their desire to live in peace with all peoples and all governments,

Reaffirming that, in accordance with the Charter of the United Nations, they uphold the principle of equal rights and self-determination of peoples, and declaring that they will earnestly strive by every peaceful means to promote self-government and to secure the independence of all countries whose peoples desire it and are able to undertake its responsibilities,

Desiring to strengthen the fabric of peace and freedom and to uphold the principles of democracy, individual liberty and the rule of law, and to promote the economic well-being and development of all peoples in the treaty area,

Intending to declare publicly and formally their sense of unity, so that any potential aggressor will appreciate that the Parties stand together in the area, and

Desiring further to coordinate their efforts for collective defense for the preservation of peace and security,

Therefore agree as follows:

ARTICLE I

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

ARTICLE II

In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack and to prevent and counter subversive activities directed from without against their territorial integrity and political stability.

ARTICLE III

The Parties undertake to strengthen their free institutions and to cooperate with one another in the further development of economic measures, including technical assistance, designed both to promote economic progress and social well-being and to further the individual and collective efforts of governments toward these ends.

ARTICLE IV

1. Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

2. If, in the opinion of any of the Parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any Party in the treaty area or of any other State or territory to which the provisions of paragraph 1 of this Article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the Parties shall consult immediately in order to agree on the measures which should be taken for the common defense.

3. It is understood that no action on the territory of any State designated by unanimous agreement under paragraph 1 of this Article or on any territory so designated shall be taken except at the invitation or with the consent of the government concerned.

ARTICLE V

The Parties hereby establish a Council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The Council shall provide for consultation with regard to military and any other planning as the situation obtaining in the treaty area may from time to time require. The Council shall be so organized as to be able to meet at any time.

ARTICLE VI

This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of any of the Parties under the Charter of the United Nations or the responsibility of the United Nations for the maintenance of international peace and security. Each Party declares that none of the international engagements now in force between it and any other of the Parties or any third party is in conflict with the provisions of this Treaty, and undertakes not to enter into any international engagements in conflict with this Treaty.

ARTICLE VII

Any other State in a position to further the objectives of this Treaty and to contribute to the security of the area may, by unanimous agreement of the Parties, be invited to accede to this Treaty. Any State so invited may become a Party to the Treaty by depositing its instrument of accession with the Government of the Republic of the Philippines. The Government of the Republic of the Philippines shall inform each of the Parties of the deposit of each such instrument of accession.

ARTICLE VIII

As used in this Treaty, the "treaty area" is the general area of Southeast Asia, including also the entire territories of the Asian Parties, and the general area of the Southwest Pacific not including the Pacific area north of 21 degrees 30 minutes north latitude. The Parties may, by unanimous agreement, amend this Article to include within the treaty area the territory of any State acceding to this Treaty in accordance with Article VII or otherwise to change the treaty area.

ARTICLE IX

1. This Treaty shall be deposited in the archives of the Government of the Republic of the Philippines. Duly certified copies thereof shall be transmitted by that government to the other signatories.

2. The Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. The instruments of ratification shall be deposited as soon as possible with the Government of the Republic of the Philippines, which shall notify all of the other signatories of such deposit.

3. The Treaty shall enter into force between the States which have ratified it as soon as the instruments of ratification of a majority of the signatories shall have been deposited, and shall come into effect with respect to each other State on the date of the deposit of its instrument of ratification.

ARTICLE X

This Treaty shall remain in force indefinitely, but any Party may cease to be a Party one year after its notice of denunciation has been given to the Government of the Republic of the Philippines, which shall inform the Governments of the other Parties of the deposit of each notice of denunciation.

ARTICLE XI

The English text of this Treaty is binding on the Parties, but when the Parties have agreed to the French text thereof and have so notified the Government of the Republic of the Philippines, the French text shall be equally authentic and binding on the Parties.

*Understanding of the United States of America*

The United States of America in executing the present Treaty does so with the understanding that its recognition of the effect of aggression and armed attack and its agreement with reference thereto in Article IV, paragraph 1, apply only to communist aggression but affirms that in the event of other aggression or armed attack it will consult under the provisions of Article IV, paragraph 2.

In witness whereof, the undersigned Plenipotentiaries have signed this Treaty.

Done at Manila, this eighth day of September, 1954.

For Australia:
R. G. Casey
For France:
G. La Chambre

[1] 6 UST 81; Treaties and Other International Acts Series 3170.

For New Zealand:
Clifton Webb
For Pakistan:
Signed for transmission to my Government for its consideration and action in accordance with the Constitution of Pakistan.
Zafrulla Khan
For the Republic of the Philippines:
Carlos P. Garcia
Francisco A. Delgado
Tomas L. Cabili
Lorenzo M. Tañada
Cornelio T. Villareal
For the Kingdom of Thailand:
Wan Waithayakon Krommun Naradhip Bongsprabandh
For the United Kingdom of Great Britain and Northern Ireland:
Reading
For the United States of America:
John Foster Dulles
H. Alexander Smith
Michael J. Mansfield

I certify that the foregoing is a true copy of the Southeast Asia Collective Defense Treaty concluded and signed in the English language at Manila, on September 8, 1954, the signed original of which is deposited in the archives of the Government of the Republic of the Philippines.

In testimony whereof, I, Raul S. Manglapus, Undersecretary of Foreign Affairs of the Republic of the Philippines, have hereunto set my hand and caused the seal of the Department of Foreign Affairs to be affixed at the City of Manila, this 14th day of October, 1954.

RAUL S. MANGLAPUS
*Undersecretary of Foreign Affairs.*

*Protocol to the Southeast Asia Collective Defense Treaty*

DESIGNATION OF STATES AND TERRITORY AS TO WHICH PROVISIONS OF ARTICLE IV AND ARTICLE III ARE TO BE APPLICABLE

The Parties to the Southeast Asia Collective Defense Treaty unanimously designate for the purposes of Article IV of the Treaty the States of Cambodia and Laos and the free territory under the jurisdiction of the State of Vietnam.

The Parties further agree that the above mentioned states and territory shall be eligible in respect of the economic measures contemplated by Article III.

This Protocol shall enter into force simultaneously with the coming into force of the Treaty.

In witness whereof, the undersigned Plenipotentiaries have signed this Protocol to the Southeast Asia Collective Defense Treaty.

Done at Manila, this eighth day of September, 1954.

Mr. ERVIN. Article IV of the SEATO agreement provides, in section 1, as follows:

Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

Section 2 of article IV of the SEATO treaty reads as follows:

If, in the opinion of any of the Parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any Party in the treaty area or of any other State or territory to which the provisions of paragraph 1 of this Article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the Parties shall consult immediately in order to agree on the measures which should be taken for the common defense.

Section 3 of article IV of the SEATO treaty is in these words:

It is understood that no action on the territory of any State designated by unanimous agreement under paragraph 1 of this Article or on any territory so designated shall be taken except at the invitation or with the consent of the government concerned.

I digress from reading the SEATO treaty to remark that the treaty provisions make it plain that the territory covered by the treaty embraced Southeast Asia.

When it executed the SEATO treaty, the United States attached to it this understanding:

The United States of America in executing the present Treaty does so with the understanding that its recognition of the effect of aggression and armed attack and its agreement with reference thereto in Article IV, paragraph 1, apply only to communist aggression but affirms that in the event of other aggression or armed attack it will consult under the provisions of Article IV, paragraph 2.

The parties to the SEATO treaty adopted what is called in diplomatic language a protocol, which reads as follows:

The Parties to the Southeast Asia Collective Defense Treaty unanimously designate for the purposes of Article IV of the Treaty the States of Cambodia and Laos and the free territory under the jurisdiction of the State of Vietnam.

The Parties further agree that the above mentioned states and territory shall be eligible in respect of the economic measures contemplated by Article III.

This Protocol shall enter into force simultaneously with the coming into force of the Treaty.

The protocol used the term "the free territory under the jurisdiction of the state of Vietnam" to describe and include what we call South Vietnam.

Meanwhile, these things occurred: On September 29, 1954, the Department of State issued a communique concerning conversations had between representatives of France and the United States in respect to Southeast Asia.

This communique is printed in full on pages 118 and 119 in the publication of the Foreign Relations Committee which I have mentioned. I ask unanimous consent that the entire communique, as set forth in such publication, be printed in the RECORD at this point.

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

DIRECT AID TO THE ASSOCIATED STATES
(Communique Regarding Franco-American Conversations, September 29, 1954)

Representatives of the two Governments have had very frank and useful talks which have shown the community of their views, and are in full agreement on the objectives to be attained.

The conclusion of the Southeast Asia Collective Defense Treaty in Manila on September 8, 1954, has provided a firmer basis than heretofore to assist the free nations of Asia in developing and maintaining their independence and security. The representatives of France and the United States wish to reaffirm the support of their Governments for the principles of self-government, independence, justice and liberty proclaimed by the Pacific Charter in Manila on September 8, 1954.

The representatives of France and the United States reaffirm the intention of their governments to support the complete independence of Cambodia, Laos, and Viet-Nam. Both France and the United States will continue to assist Cambodia, Laos, and Viet-Nam in their effort to safeguard their freedom and independence and to advance the welfare of their people. In this spirit France and the United States are assisting the Government of Viet-Nam in the resettlement of the Vietnamese who have of their own free will moved to free Viet-Nam and who already number some 300,000.

In order to contribute to the security of the area pending the further development of national forces for this purpose, the representatives of France indicated that France is prepared to retain forces of its Expeditionary Corps, in agreement with the government concerned, within the limits permitted under the Geneva agreements and to an extent to be determined. The United States will consider the question of financial assistance for the Expeditionary Corps in these circumstances in addition to support for the forces of each of the three Associated States. These questions vitally affect each of the three Associated States and are being fully discussed with them.

The channel for French and United States economic aid, budgetary support, and other assistance to each of the Associated States will be direct to that state. The United States representatives will begin discussions soon with the respective governments of the Associated States regarding direct aid. The methods for efficient coordination of French and United States aid programs to each of the three Associated States are under consideration and will be developed in discussions with each of these states.

After the bilateral talks, the chiefs of diplomatic missions in Washington of Cambodia, Laos and Viet Nam were invited to a final meeting to have an exchange of views and information on these matters. The representatives of all five countries are in complete agreement on the objectives of peace and freedom to be achieved in Indochina.

Mr. ERVIN. The communique declared among other things, that the representatives of France and the United States reaffirm the support of their governments for the principles of self-government, independence, justice, and liberty proclaimed by the Pacific Charter in Manila on September 8, 1954.

In this statement, the representatives of France and the United States called the SEATO Treaty the Pacific Charter of September 8, 1954.

On October 23, 1954, President Eisenhower sent a letter to the South Vietnamese Premier Ngo Dinh Diem, pledging that the United States would assist the Saigon government in developing and maintaining a strong, viable state, capable of reducing attempted subversion or aggression through military means. The entire letter of President Eisenhower is set forth on pages 119 and 120 of the publication to which reference has heretofore been made, I ask unanimous consent that President Eisenhower's letter, as therein set forth, be printed at this point in the RECORD.

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

AID TO THE STATE OF VIETNAM

(Message From the President of the United States to the President of the Council of Ministers of Vietnam, October 23, 1954)

DEAR MR. PRESIDENT: I have been following with great interest the course of developments in Viet-Nam, particularly since the conclusion of the conference at Geneva. The implications of the agreement concerning Viet-Nam have caused grave concern regarding the future of a country temporarily divided by an artificial military grouping, weakened by a long and exhausting war and faced with enemies without and by their subversive collaborators within.

Your recent requests for aid to assist in the formidable project of the movement of several hundred thousand loyal Vietnamese citizens away from areas which are passing under a *de facto* rule and political ideology which they abhor, are being fulfilled. I am glad that the United States is able to assist in this humanitarian effort.

We have been exploring ways and means to permit our aid to Viet-Nam to be more effective and we make a greater contribution to the welfare and stability of the Government of Viet-Nam. I am, accordingly, instructing the American Ambassador to Viet-Nam to examine with you in your capacity as Chief of Government, how an intelligent program of American aid given directly to your Government can serve to assist Viet-Nam in its present hour of trial, provided that your Government is prepared to give assurances as to the standards of performance it would be able to maintain in the event such aid were supplied.

The purpose of this offer is to assist, the Government of Viet-Nam in developing and maintaining a strong, viable state, capable of resisting attempted subversion or aggression through military means. The Government of the United States expects that this aid will be met by performance on the part of the Government of Viet-Nam in undertaking needed reforms. It hopes that such aid, combined with your own continuing efforts, will contribute effectively toward an independent Viet-Nam endowed with a strong government. Such a government would, I hope, be so responsive to the nationalist aspirations of its people, so enlightened in purpose and effective in performance, that it will be respected both at home and abroad and discourage any who might wish to impose a foreign ideology on your free people.

Mr. ERVIN. On November 3, 1954, the White House issued a statement informing the public that President Eisenhower was sending Gen. J. Lawton Collins on a special mission to South Vietnam to determine how the United States could best extend aid to the South Vietnamese Government. This statement is set forth in full on pages 120 and 121 of the publication to which I have made reference. I ask unanimous consent that the entire statement, as therein set forth, be printed at this point in the RECORD.

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

MISSION OF THE SPECIAL U.S. REPRESENTATIVE IN VIETNAM [1]

(Statement issued by the White House, Nov. 3, 1954 [2])

The President on November 3 designated Gen. J. Lawton Collins as Special United States Representative in Viet-Nam with the personal rank of Ambassador, to undertake a diplomatic mission of limited duration. He will coordinate the operations of all U.S. agencies in that country.

General Collins will proceed immediately to Saigon, where he will confer with Ambassador Donald R. Heath prior to the latter's already scheduled return to the United States for reassignment following 4½ years of distinguished service in Indochina. For the duration of this assignment General Collins will relinquish his other duties, including that of U.S. representative on the Military Committee of the North Atlantic Treaty Organization.

Since the conclusion of hostilities in Indochina, the U.S. Government has been particularly concerned over developments in Viet-Nam, a country ravaged by 8 years of war, artificially divided into armistic zones, and confronted by dangerous forces threatening its independence and security.

The U.S. Government is fully aware of the immense tasks facing the Government of Viet-Nam in its effort to achieve solidarity, internal security, and economic rehabilitation. The United States has already played an important role in the evacuation of hundreds of thousands of refugees from Communist rule in North Viet-Nam.

Moreover, as the President told Prime Minister Ngo Dinh Diem in his letter of October 23d, U.S. representatives in Viet-Nam have been instructed to consider with the Vietnamese authorities how a program of American aid given directly to Viet-Nam can best assist that country. General Collins will explore this matter with Prime Minister Ngo Dinh Diem and his Government in order to help them resolve their present critical problems and to supplement measures adopted by the Vietnamese themselves.

In executing his temporary mission, General Collins will maintain close liaison with the French Commissioner General, Gen. Paul Ely, for the purpose of exchanging views on how best, under existing circumstances, the freedom and welfare of Viet-Nam can be safeguarded.

(A national referendum on October 23, 1955 deposed Bao Dai, former Emperor and since March 7, 1949, head of state of Vietnam,who had lived mostly abroad. On October 26, Diem became first President of South Vietnam and proclaimed a Republic.)

RECOGNITION OF THE NEW CHIEF OF STATE OF VIET-NAM

Statement by the Department of State, October 26, 1955 [3]

On October 20, the Government of Viet-Nam sent the following communication to the American Embassy at Saigon:

"The Ministry of Foreign Affairs has the honor to inform the United States Embassy that by referendum October 23 the Vietnamese people have pronounced themselves in favor of the deposition of Bao Dai and have recognized President Diem as Chief of State. It is hoped that the Government of the United States will continue as in the past, to entertain diplomatic relations with the new Government of the State of Viet-Nam."

U.S. Ambassador G. Frederick Reinhardt, under instructions, has replied as follows:

"The Government of the United States looks forward to maintaining with the new Government of Viet-Nam the same cordial and friendly relations which have in the past so happily existed between the two governments."

The United States affirms its intention to maintain friendly relations with the Government of Viet-Nam. We are glad to see the evolution of orderly and effective democratic processes in an area of Southeast Asia, which has been and continues to be threatened by Communist efforts to impose totalitarian control.

Mr. ERVIN. Pursuant to recommendations made to him by Gen. J. Lawton Collins as a consequence of this special mission, President Eisenhower set up a military advisory group in Saigon in 1955. This military advisory group, which originally was composed of 327 American officers and enlisted men, was gradually increased, prior to the inauguration of President Kennedy, to 685 American military advisers and enlisted men.

On November 20, 1955, a national referendum deposed Bao Dai, the former emperor of Annam and head of the state of Vietnam, who had lived mostly abroad. Three days later, Ngo Dinh Diem because the first president of South Vietnam and proclaimed it a republic. The State Department of the United States immediately recognized the new Government of South Vietnam.

Diem refused to acquiesce in the holding of the elections to unify Vietnam, and the United States supported him in this stand. Diem took this action because Ho Chi Minh and the Viet Minh would not come to any satisfactory agreement on methods to supervise the election which would enable the Vietnamese people to make a free choice.

On June 1, 1956, Walter S. Robertson, who was the Assistant Secretary of State for Far Eastern Affairs, issued a statement of the policy of the United States in respect to Vietnam, which is set forth on pages 122 to 125 of the publication to which I have previously made reference. I ask unanimous consent that this statement of Assistant Secretary of State Robertson be printed at this point in the RECORD.

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

UNITED STATES POLICY WITH RESPECT TO VIET-NAM: ADDRESS BY THE ASSISTANT SECRETARY OF STATE FOR FAR EASTERN AFFAIRS, WASHINGTON, JUNE 1, 1956 [1]

(This address by Assistant Secretary of State Robertson restated American policy and was delivered at a time of relative stability in South Vietnam.)

This past March, I had the pleasure of accompanying the Secretary of State on his visit to Saigon where we conversed with President Diem on the present and future problems of Viet-Nam. I was struck, as so many other recent observers have been, at the progress Free Viet-Nam has made in a few short months toward stability, security, and strength. President Diem seemed to reflect this progress in his own person. On the occasion of our earlier visit some 15 months ago, he seemed tense and gravely concerned about the problems facing Viet-Nam. This time he was reposed, poised, and appeared confident of the future of his country.

Among the factors that explain the remarkable rise of Free Viet-Nam from the shambles created by 8 years of murderous civil and international war, the division of the country at Geneva and the continuing menace of predatory communism, there is in the first place the dedication, courage, and

[1] Gen. J. Lawton Collins.

[2] Department of State *Bulletin*, Nov. 22, 1954, pp. 777–778.

[3] Department of State Bulletin, Nov. 7, 1955, p. 760.

[1] Department of State press release No. 289, May 31, 1956 (also printed in the Department of State *Bulletin*, June 11, 1956, pp. 972–974). This address by the Assistant Secretary of State for Far Eastern Affairs, Walter S. Robertson, was delivered before the American Friends of Viet-Nam, meeting at the Willard Hotel in Washington.

resourcefulness of President Diem himself. In him, his country has found a truly worthy leader whose integrity and devotion to his country's welfare have become generally recognized among his people. Asia has given us in President Diem another great figure, and the entire free world has become the richer for his example of determination and moral fortitude. There is no more dramatic example of this fortitude than President Diem's decisions during the tense and vital days of the battle against the parasitic politico-religious sects in the city of Saigon in the spring of 1955. These decisions were to resist the multiple pressures to compromise that were building up around him, and to struggle to the victorious end for the sake of a just cause. The free world owes him a debt of gratitude for his determined stand at that fateful hour.

Consider Viet-Nam at three stages in its recent history:

First, in mid-1954, partitioned by fiat of the great powers against the will of the Vietnamese people, devoid of governmental machinery or military strength, drifting without leadership and without hope in the backwash of the defeat administered by the combined weight of Communist-impressed infantry and of Chinese and Russian arms.

Secondly, in early 1955, faced with the military and subversive threat of the Communists north of the 17th parallel, confronted with internal strife, its government challenged by the armed, self-seeking politico-religious sects, its army barely reformed and of uncertain loyalty, assailed from within by the most difficult problems, including that of having to absorb the sudden influx of three-quarters of a million refugees who would rather leave their ancestral lands and homes than suffer life under Communist tyranny:

And finally Viet-Nam today, in mid-1956, progressing rapidly to the establishment of democratic institutions by elective processes, its people resuming peaceful pursuits, its army growing in effectiveness, sense of mission, and morale, the puppet Vietnamese politicians discredited, the refugees well on the way to permanent resettlement, the countryside generally orderly and calm, the predatory sects eliminated and their venal leaders exiled or destroyed.

Perhaps no more eloquent testimony to the new state of affairs in Viet-Nam could be cited than the voice of the people themselves as expressed in their free election of last March. At that time the last possible question as to the feeling of the people was erased by an overwhelming majority for President Diem's leadership. The fact that the Viet Minh was unable to carry out its open threats to sabotage these elections is impressive evidence of the stability and prestige of the government.

The United States is proud to be on the side of the effort of the Vietnamese people under President Diem to establish freedom, peace, and the good life. The United States wishes to continue to assist and to be a loyal and trusted friend of Viet-Nam.

Our policies in Viet-Nam may be simply stated as follows:

To support a friendly non-Communist government in Viet-Nam and to help it diminish and eventually eradicate Communist subversion and influence.

To help the Government of Viet-Nam establish the forces necessary for internal security.

To encourage support for Free Viet-Nam by the non-Communist world.

To aid in the rehabilitation and reconstruction of a country and people ravaged by 8 ruinous years of civil and international war.

Our efforts are directed first of all toward helping to sustain the internal security forces consisting of a regular army of about 150,000 men, a mobile civil guard of some 45,000, and local defense units which are being formed to give protection against subversion on the village level. We are providing budgetary support and equipment for these forces and have a mission assisting the training of the army. We are also helping to organize, train, and equip the Vietnamese police force. The refugees who have fled to South Viet-Nam to escape the Viet Minh are being resettled on productive lands with the assistance of funds made available by our aid program. In various ways our aid program also provides assistance to the Vietnamese Government designed to strengthen the economy and provide a better future for the common people of the country. The Vietnamese are increasingly giving attention to the basic development of the Vietnamese economy and to projects that may contribute directly to that goal. We give our aid and counsel to this program only as freely invited.

I do not wish to minimize the magnitude of the task that still remains and of the problems that still confront this staunch and valiant member of the free world fighting for its independence on the threshold of the Communist heartland of Asia.

The Communist conspiracy continues to threaten Free Viet-Nam. With monstrous effrontery, the Communist conspirators at Hanoi accuse Free Viet-Nam and its friends of violating the armistice provisions which the Vietnamese and their friends, including ourselves, have scrupulously respected despite the fact that neither the Vietnamese nor ourselves signed the Geneva Accords while they, the Communists who have solemnly undertaken to be bound by these provisions, have violated them in the most blatant fashion.

The facts are that while on the one hand the military potential of Free Viet-Nam has been drastically reduced by the withdrawal of nearly 200,000 members of the French Expeditionary Corps and by the reduction of the Vietnamese Army by more than 50,000 from the time of the armistice to the present as well as by the outshipment from Viet-Nam since the cessation of hostilities of over $200 million worth of war equipment, we have on the other hand reports of steady constant growth of the warmaking potential of the Communists north of the 17th parallel.

Our reports reveal that in complete disregard of its obligations, the Viet Minh have imported voluminous quantities of arms across the Sino-Viet Minh border and have imported a constant stream of Chinese Communist military personnel to work on railroads, to rebuild roads, to establish airports, and to work on other projects contributing to the growth of the military potential of the zone under Communist occupation.

As so eloquently stated by the British Government in a diplomatic note released to the press and sent to Moscow in April of this year, and I quote:

"The Viet Minh army has been so greatly strengthened by the embodiment and reequipment of irregular forces that insead of the 7 Viet Minh divisions in existence in July 1954 there are now no less than 20. This striking contrast between massive military expansion in the North and the withdrawal and reduction of military forces in the South speaks for itself."

By lies, propaganda, force, and deceit, the Communists in Hanoi would undermine Free Viet-Nam, whose fall they have been unable to secure by their maneuverings on the diplomatic front. These people, whose crimes against suffering humanity are so vividly described in the book by Lt. Dooley who addressed you this morning, have sold their country to Peiping. They have shamelessly followed all the devious zigzags of the Communist-bloc line so that their alliance with Communist China and the Soviet Union is firmly consolidated. These are the people who are now inviting President Diem to join them in a coalition government to be set up through so-called "free elections."

President Diem and the Government of Free Viet-Nam reaffirmed on April 6 of this year and on other occasions their desire to seek the reunification of Viet-Nam by peaceful means. In this goal, we support them fully. We hope and pray that the partition of Viet-Nam, imposed against the will of the Vietnamese people, will speedily come to an end. For our part we believe in free elections, and we support President Diem fully in his position that if elections are to be held, there first must be conditions which preclude intimidation or coercion of the electorate. Unless such conditions eixst there can be no free choice.

May those leaders of the north in whom the spirit of true patriotism still survives realize the futility of the Communist efforts to subvert Free Viet-Nam by force or guile. May they force the abandonment of these efforts and bring about the peaceful demobilization of the large standing armies of the Viet Minh. May they, above all, return to the just cause of all those who want to reunify their country in peace and independence and for the good of all the people of Viet-Nam.

Mr. ERVIN. This statement declared, among other things, that the policies of the United States "in Vietnam may be simply stated as follows":

To support a friendly non-Communist government in Viet-Nam and to help it diminish and eventually eradicate Communist subversion and influence.

To help the Government of Viet-Nam establish the forces necessary for internal security.

To encourage support for Free Viet-Nam by the non-Communist world.

To aid in the rehabilitation and reconstruction of a country and people ravaged by eight ruinous years of civil and international war.

Our efforts are directed first of all toward helping to sustain the internal security forces consisting of a regular army of about 150,000 men, a mobile civil guard of some 45,000, and local defense units which are being formed to give protection against subversion on the village level.

In 1957, the Communists who had gone to Vietnam from South Vietnam after the division of Vietnam at the 17th parallel, under the Geneva accord, began to return to South Vietnam. They formed the Vietcong and started their military assault on the South.

In 1960, Hanoi declared it would "liberate South Vietnam from the ruling yoke of the U.S. imperialists and their henchmen."

Shortly thereafter, the National Liberation Front was established as a political arm of the Vietcong and it became indisputable that Hanoi was directing the army of Vietcong and supplementing their forces from time to time with North Vietnamese militarily trained men.

In 1961, John Fitzgerald Kennedy succeeded President Eisenhower in the Presidency. President Kennedy sent Vice President Johnson to South Vietnam and on May 13, 1961, Vice President Johnson, who stated that he acted on behalf of President Kennedy, and Diem issued a joint communique which revealed the measures agreed upon by the United States and South Vietnam.

This joint communique appears on pages 128 and 129 of the publication to which I have referred, and I ask unani-

mous consent that the communique be printed, as there set forth, in the RECORD.

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

JOINT COMMUNIQUÉ ISSUED AT SAIGON BY THE VICE PRESIDENT OF THE UNITED STATES AND THE PRESIDENT OF VIETNAM, MAY 13, 1961 [1]

*(In view of the worsening situation in South Vietnam, President Kennedy announced on May 5, 1961 that Vice President Johnson would discuss with President Ngo Dinh Diem measures to help the country resist Communist pressures. The joint communique set forth the outcome of these discussions.)*

Lyndon B. Johnson, Vice President of the United States, has just completed a visit to the Republic of Viet-Nam, on behalf of President Kennedy and on invitation of President Ngo Dinh Diem.

The enthusiastic welcome he received in Viet-Nam reflected a deep sense of common cause in the fight for freedom in Southeast Asia and around the world.

This recognition of mutual objectives resulted in concrete understandings between the Republic of Viet-Nam and the United States.

It is clear to the Government and the people of Viet-Nam and to the United States that the independentce and territorial integrity of Viet-Nam are being brutally and systematically violated by Communist agents and forces from the north.

It is also clear to both Governments that action must be strengthened and accelerated to protect the legitimate rights and aspirations of the people of free Viet-Nam to choose their own way of life.

The two Governments agreed that this is the basic principle upon which their understandings rest.

The United States, for its part, is conscious of the determination, energy and sacrifices which the Vietnamese people, under the dedicated leadership of President Ngo Dinh Diem, have brought to the defense of freedom in their land.

The United States is also conscious of its responsibility and duty, in its own self-interest as well as in the interest of other free peoples, to assist a brave country in the defense of its liberties against unprovoked subversion and Communist terror. It has no other motive than the defense of freedom.

The United States recognizes that the President of the Republic of Viet-Nam, Ngo Dinh Diem, who was recently reelected to office by an overwhelming majority of his countrymen despite bitter Communist opposition, is in the vanguard of those leaders who stand for freedom on the periphery of the Communist empire in Asia.

Free Viet-Nam cannot alone withstand the pressure which this Communist empire is exerting against it. Under these circumstances—the need of free Viet-Nam for increased and accelerated emergency assistance and the will and determination of the United States to provide such assistance to those willing to fight for their liberties—it is natural that a large measure of agreement on the means to accomplish the joint purpose was found in high-level conversations between the two Governments.

Both Governments recognize that under the circumstances of guerrilla warfare now existing in free Viet-Nam, it is necessary to give high priority to the restoration of a sense of security to the people of free Viet-Nam. This priority, however, in no way diminishes the necessity, in policies and programs of both Governments, to pursue vigorously appropriate measures in other fields to achieve a prosperous and happy society.

The following measures, agreed in principle and subject to prompt finalization and implementation, represent an increase and acceleration of United States assistance to the Republic of Viet-Nam. These may be followed by more far-reaching measures if the situation, in the opinion of both Governments, warrants.

First, it was agreed by the two Governments to extend and build upon existing programs of military and economic aid and to infuse into their joint actions a high sense of urgency and dedication.

Second, it was agreed that regular armed forces of the Republic of Viet-Nam should be increased, and that the United States would extend its military assistance programs to include support for an additional number of regular Vietnamese armed forces.

Third, it was agreed that the United States would provide military assistance program support for the entire Vietnamese civil guard force.

Fourth, it was agreed that the two Governments should collaborate in the use of military specialists to assist and work with Vietnamese armed forces in health, welfare and public works activities in the villages of free Viet-Nam.

Fifth, it was agreed that the assistance of other free governments to the Government of the Republic of Viet-Nam in its trouble against Communist guerrilla forces would be welcome.

Sixth, it was agreed that, to achieve the best possible use of available resources, the Vietnamese and the United States, in prosecution of their joint effort against Communist attacks in Viet-Nam, a group of highly qualified economic and fiscal experts would meet in Viet-Nam to work out a financial plan on which joint efforts should be based.

Seventh, it was agreed that the United States and the Republic of Viet-Nam would discuss new economic and social measures to be undertaken in rural areas, to accompany the anti-guerrilla effort, in order that the people of Viet-Nam should benefit promptly from the restoration of law and order in their villages and provinces.

Eighth, it was agreed that, in addition to measures to deal with the immediate Viet-Nam guerrilla problems, the two Governments would work together toward a longer range economic development program, including further progress in the fields of agriculture, health, education, fisheries, highways, public administration, and industrial development.

These longer range plans and programs would be developed in detail after further consideration and discussion.

Their goal would be a Viet-Nam capable of a self-sustained economic growth.

President Ngo Dinh Diem and Vice President Lyndon B. Johnson, on behalf of President Kennedy, established a sense of mutual confidence and respect which both believe essential to fulfillment of their objectives.

[1] Department of State *Bulletin*, June 19, 1961, pp. 956–957.

Mr. ERVIN. Mr. President (Mr. METCALF), toward the end of 1961, President Kennedy and President Diem of South Vietnam exchanged correspondence. This correspondence appears in full on pages 130 through 132 of the publication, made at the instance of the Committee on Foreign Relations, to which I have referred several times, and I ask unanimous consent that the correspondence be printed in the RECORD.

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

EXCHANGES OF MESSAGES BETWEEN PRESIDENT KENNEDY AND PRESIDENT NGO DINH DIEM OF THE REPUBLIC OF VIET-NAM, DECEMBER 14 AND DECEMBER 7, 1961 [1]

*(In this exchange of messages, President Kennedy pledged increased assistance to Vietnam's defense effort.)*

PRESIDENT KENNEDY TO PRESIDENT DIEM

DECEMBER 14, 1961.

DEAR MR. PRESIDENT: I have received your recent letter in which you described so cogently the dangerous condition caused by North Viet-Nam's efforts to take over your country. The situation in your embattled country is well known to me and to the American people. We have been deeply disturbed by the assault on your country. Our indignation has mounted as the deliberate savagery of the Communist program of assassination, kidnapping and wanton violence became clear.

Your letter underlines what our own information has convincingly shown—that the campaign of force and terror now being waged against your people and your Government is supported and directed from the outside by the authorities at Hanoi. They have thus violated the provisions of the Geneva Accords designed to ensure peace in Viet-Nam and to which they bound themselves in 1954.

At that time, the United States, although not a party to the Accords, declared that it "would view any renewal of the aggression in violation of the agreements with grave concern and as seriously threatening international peace and security." We continue to maintain that view.

In accordance with that declaration, and in response to your request, we are prepared to help the Republic of Viet-Nam to protect its people and to preserve its independence. We shall promptly increase our assistance to your defense effort as well as help relieve the destruction of the floods which you describe. I have already given the orders to get these programs underway.

The United States, like the Republic of Viet-Nam, remains devoted to the cause of peace and our primary purpose is to help your people maintain their independence. If the Communist authorities in North Viet-Nam will stop their campaign to destroy the Republic of Viet-Nam, the measure we are taking to assist your defense efforts will no longer be necessary. We shall seek to persuade the Communists to give up their attempts of force and subversion. In any case, we are confident that the Vietnamese people will preserve their independent and gain the peace and prosperity for which they have sought so hard and so long.

JOHN F. KENNEDY.

PRESIDENT DIEM TO PRESIDENT KENNEDY

DECEMBER 7, 1961.

DEAR MR. PRESIDENT: Since the birth, more than six years ago, the Republic of Viet-Nam has enjoyed the close friendship and cooperation of the United States of America.

Like the United States, the Republic of Viet-Nam has always been devoted to the preservation of peace. My people know only too well the sorrows of war. We have honored the 1954 Geneva Agreements even though they resulted in the partition of our country and the enslavement of more than half of our people by Communist tyranny. We have never considered the reunification of our nation by force. On the contrary, we have publicly pledged that we will not violate the demarcation line and the demilitarized zone set up by the agreements. We have always been prepared and have on many

[1] Department of State *Bulletin*, Jan. 1, 1962, pp. 13–14.

occasions stated our willingness to reunify Viet-Nam on the basis of democratic and truly free elections.

The record of the Communist authorities in the northern part of our country is quite otherwise. They not only consented to the division of Viet-Nam, but were eager for it. They pledged themselves to observe the Geneva Agreements and during the seven years since have never ceased to violate them. They call for free elections but are ignorant of the very meaning of the words. They talk of "peaceful reunification" and wage war against us.

From the beginning, the Communists resorted to terror in their efforts to subvert our people, destroy our government, and impose a Communist regime upon us. They have attacked defenseless teachers, closed schools, killed members of our anti-malarial program and looted hospitals. This is coldly calculated to destroy our government's humanitarian efforts to serve our people.

We have long sought to check the Communist attack from the North on our people by appeals to the International Control Commission. Over the years, we have repeatedly published to the world the evidence of the Communist plot to overthrow our government and seize control of all of Viet-Nam by illegal intrusions from outside our country. The evidence has mounted until now it is hardly necessary to rehearse it. Most recently, the kidnapping and brutal murder of our Chief Liaison Officer to the International Control Commission, Colonel Noang Thuy Nam, compelled us to speak out once more. In our October 24, 1961, letter to the ICC, we called attention again to the publicly stated determination of the Communist authorities in Hanoi to "liberate the South" by the overthrow of my government and the imposition of a Communist regime on our people. We cited the proof of massive infiltration of Communist agents and military elements into our country. We outlined the Communist strategy, which is simply the ruthless use of terror against the whole population, women and children included.

In the course of the last few months, the Communist assault on my people has achieved high ferocity. In October they caused more than 1,800 incidents of violence and more than 2,000 casualties. They have struck occasionally in battalion strength, and they are continually augmenting their forces by infiltration from the North. The level of their attacks is already such that our forces are stretched to the utmost. We are forced to defend every village, every hamlet, indeed every home against a foe whose tactic is always to strike at the defenseless.

A disastrous flood was recently added to the misfortunes of the Vietnamese people. The greater part of three provinces was inundated, with a great loss of property. We are now engaged in a nationwide effort to reconstruct and rehabilitate this area. The Communists are, of course, making this task doubly difficult, for they have seized upon the disruption of normal administration and communications as an opportunity to sow more destruction in the stricken area.

In short, the Vietnamese nation now faces what is perhaps the gravest crisis in its long history. For more than 2,000 years my people have lived and built, fought and died in this land. We have not always been free. Indeed, much of our history and many of its proudest moments have arisen from conquest by foreign powers and our struggle against great odds to regain or defend our precious independence. But it is not only our freedom which is at stake today, it is our national identity. For, if we lose this war, our people will be swallowed by the Communist Bloc, all our proud heritage will be blotted out by the "Socialist society" and Viet-Nam will leave the pages of history. We will lose our national soul.

Mr. President, my people and I are mindful of the great assistance which the United States has given us. Your help has not been lightly received, for the Vietnamese are proud people, and we are determined to do our part in the defense of the free world. It is clear to all of us that the defeat of the Viet Cong demands the total mobilization of our government and our people, and you may be sure that we will devote all of our resources of money, minds, and men to this great task.

But Viet-Nam is not a great power and the forces of International Communism now arrayed against us are more than we can meet with the resources at hand. We must have further assistance from the United States if we are to win the war now being waged against us.

We can certainly assure mankind that our action is purely defensive. Much as we regret the subjugation of more than half of our people in North Viet-Nam, we have no intention, and indeed no means, to free them by use of force.

I have said that Viet-Nam is at war. War means many things, but most of all it means the death of brave people for a cause they believe in. Viet-Nam has suffered many wars, and through the centuries we have always had patriots and heroes who were willing to shed their blood for Viet-Nam. We will keep faith with them.

When Communism has long ebbed away into the past, my people will still be here, a free united nation growing from the deep roots of our Vietnamese heritage. They will remember your help in our time of need. This struggle will then be a part of our common history. And your help, your friendship, and the strong bonds between our two peoples will be a part of Viet-Nam, then as now.

NGO DINH DIEM.

THE PRESIDENT
*The White House*
*Washington, D.C.*

(This communiqué focused on new joint efforts to accelerate and broaden assistance to the countryside and to support a comprehensive and coordinated counterinsurgency program.)

Mr. ERVIN. Mr. President (Mr. CRANSTON), in his letter to the President of South Vietnam, President Kennedy made the following pledge in accordance with the provisions of the Geneva accords to insure peace in Vietnam:

At that time, the United States, although not a party to the Accords, declared that it "would view any renewal of the aggression in violation of the agreements with grave concern and as seriously threatening international peace and security." We continue to maintain that view.

In accordance with that declaration, and in response to your request, we are prepared to help the Republic of Viet-Nam to protect its people and to preserve its independence. We shall promptly increase our assistance to your defense effort as well as help relieve the destruction of the floods which you describe. I have already given the orders to get these programs underway.

The United States, like the Republic of Viet-Nam, remains devoted to the cause of peace and our primary purpose is to help your people maintain their independence. If the Communist authorities in North Viet-Nam will stop their campaign to destroy the Republic of Viet-Nam, the measures we are taking to assist your defense efforts will no longer be necessary.

In 1962, President Kennedy created the U.S. Military Assistance Command in Vietnam, and increased the American military strength in South Vietnam to 10,000 men by the end of the year.

In November of 1963, the Diem regime fell and President Diem was killed. The military situation in South Vietnam subsequently deteriorated.

On August 2, 1964, the U.S. destroyer *Maddox* was cruising in international waters in the Gulf of Tonkin, off the coast of North Vietnam. It was attacked by three North Vietnamese PT boats with torpedoes and gunfire. The State Department thereupon sent a strong protest to North Vietnam, warning that Government that grave consequences would inevitably result from any further military action against U.S. forces.

On August 4, 1964, North Vietnamese PT boats again attacked two U.S. destroyers, and were driven off.

On August 5, 1964, President Johnson sent Congress a special message, urging passage of a joint resolution affirming support of all necessary action to protect our armed forces and to assist nations covered by the SEATO Treaty. He added:

We must make it clear to all that the United States is united in its determination to bring about the end of Communist subversion and aggression in the area.

Congress began prompt consideration of the requested resolution. The Senate version, Senate Joint Resolution 189, was introduced by Senators RUSSELL of Georgia, FULBRIGHT of Arkansas, Saltonstall of Massachusetts, and Hickenlooper of Iowa, the ranking members of the Senate Armed Services and Foreign Relations Committees.

The House version was introduced by Representatives MORGAN, ZABLOCKI, and Bolton.

On August 6, 1964, the combined Senate Armed Services and Foreign Relations Committees received testimony from Secretary of State Rusk, Secretary of Defense McNamara, and the chairman of the Joint Chiefs of Staff, Gen. Earl Wheeler, and then voted 31 to 1 to report the resolution.

The only dissenter was Senator Wayne Morse of Oregon.

The House Foreign Relations Committee heard testimony of the same witnesses, reporting the resolution by a 29 to 0 vote. On August 7, 1964, the House adopted its version of the resolution, House Joint Resolution 1145, by a rollcall vote of 416 to 0. The Senate then adopted the House version, in lieu of its own, by an 88 to 2 rollcall vote. The two Senate dissenters were Senators Gruening of Alaska and Morse of Oregon.

The President forthwith approved the resolution which, thereupon, became a part of the law of the land.

Mr. President, I propose to make some comments upon the Southeast Asia resolution, commonly known as the Gulf of Tonkin joint resolution, in my subsequent remarks. To maintain the chronology of events in the history of our involvement in Vietnam, however, I ask unanimous consent that the Southeast Asia resolution be printed at this point in the RECORD.

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

SOUTHEAST ASIA RESOLUTION

Whereas naval units of the Communist regime in Viet Nam, in violation of the prin-

ciples of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace;

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Viet Nam has been waging against its neighbors and the nations joined with them in collective defense of their freedom;

Whereas the United States is assisting the peoples of Southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way; Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

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

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Mr. ERVIN. Mr. President, after the passage of the Southeast Asia resolution, President Johnson, who had succeeded President Kennedy on his tragic death, ordered the bombing of military targets in North Vietnam. This action was pursued with pauses from time to time from that time until March 1968.

In late 1964, the first regular North Vietnamese troops entered the war. While their strength was only about 17,500, by the end of 1965 another 10,000 northern regulars reportedly moved south in January 1966.

History makes it quite clear, however, that from time to time men trained in military skills in North Vietnam had gone south at the instance of Hanoi to join forces with the Vietcong already operating in South Vietnam.

The first U.S. combat troops, 3,500 Marines, went ashore on Vietnam in March 1965. Prior to that time American troops had assisted in the training and in the advising on warfare tactics of the South Vietnamese troops. And some of them had been killed in action while engaged in those tasks.

The American combat forces were gradually increased in strength from the time the 3,500 Marines landed in 1965, and they had been increased during that year to 200,000. Thereafter, they were further increased so that by 1968 there were 540,000 U.S. fighting men in Vietnam.

From time to time, as the American combat troops became involved in the fighting between the South Vietnamese and the North Vietnamese and the Vietcong, it was asserted by many Senators and many others that if the United States would only cease bombing North Vietnam, Hanoi would come to the conference table and negotiate a peaceful settlement of the controversy in Southeast Asia.

In March 1968, President Johnson ordered a limitation of the bombing in the area south of the 20th parallel in the hope that these predictions would come true. This limitation move, which was intended by President Johnson as a peace overture, led to the so-called Paris peace talks which began on May 13, 1968.

In January 1969, President Johnson was succeeded in the Presidency by President Nixon. After President Nixon's inauguration, our military policy began to change, with the word "victory" being replaced by the word "Vietnamization" of the war.

With this change of policy, President Nixon assumed the delicate and difficult task of extricating the United States from the war, while saving South Vietnam from military and political collapse.

President Nixon stated his views with respect to how we can extricate ourselves from South Vietnam in a way which would be consistent with what he deems to be sound principles. As I understand the policies which he has proposed, and is attempting to follow, he is determined, if possible, to secure a negotiated settlement with the North Vietnamese and the Vietcong which will bring an end to the fighting in South Vietnam and lay at rest the various problems existing there in a manner satisfactory to all the people involved. These problems have arisen in Southeast Asia as a result of all these years of fighting which have engulfed that unfortunate portion of this earth.

As I further understand President Nixon's policies, he proposes an alternative course of action for this Nation to pursue in disengaging itself from further combat in Southeast Asia and in extricating our Nation from this war.

This alternative policy, as I understand it, is that in case the United States and South Vietnam are unable to negotiate a satisfactory settlement of the war and all of the problems associated with it, the United States will train the South Vietnamese to such an extent that we can reasonably hope they will be able to defend their own country against aggression from North Vietnam, and we will thereby be enabled to withdraw all of our ground combat forces from South Vietnam and return them to their homes in this country.

Pursuant to these policies 115,000 combat troops have been withdrawn from South Vietnam and returned to America; and the President has announced his purpose, if existing events permit such action, to return another 150,000 combat troops from South Vietnam to America within the next year. So much for the history of our involvement in South Vietnam prior to what may be called the Cambodian exercise.

Before dealing with that subject I wish to say something about charges which have been made and are now being made to the effect that President Johnson and President Nixon have exceeded their constitutional powers in some of the military operations they have undertaken in Southeast Asia. This necessitates a consideration of relevant constitutional provisions.

Section 8 of article I of the Constitution declares that Congress shall have the power to declare war. Section 10 of article I of the Constitution contains a provision that no State shall, without the consent of Congress, engage in war unless actually invaded or "in such imminent danger as will not admit of delay." Section 4, of article IV of the Constitution provides that the United States shall guarantee to every State in this Union a republican form of government and shall protect each of them against invasions.

Mr. President, the provisions of the Constitution which I have just read make these things clear. First, Congress and Congress alone has the power to declare a national or foreign war; and second, that the United States or even a State may engage in war without waiting for the consent of Congress when the United States or the State so acting is invaded or threatened with imminent invasion.

It seems to me that these propositions are made extremely plain by the words of the Constitution itself. The question which arises in respect of the war powers of the United States is this: Who is to direct the tactical operations of the military forces of the United States when a war is being fought? As I analyze the Church-Cooper amendment it asserts, in effect, that the Congress has some power to direct the actual operations in war of American troops in the theater of operations.

Mr. President, I submit that the Founding Fathers were not foolish enough to place the command of American troops engaged in combat operation in a Congress of the United States which is now composed of 100 Senators and 435 Representatives. I cannot imagine anything that would more nearly resemble bedlam than to have a council of war composed of 100 Senators and 435 Representatives to determine where the enemy is to be attacked or how the defeat of the enemy is going to be undertaken, or how to protect American forces from destruction by an armed enemy.

We have had some historic filibusters in the Senate but the longest of those filibusters would, by comparison, constitute just a few laconic remarks if we were to undertake to have a war council composed of 535 different men with different notions. The Founding Fathers were wiser than that, so they put a provision in the Constitution to determine that the Commander in Chief of the Armed Forces of the United States was not to be the Members of the Senate and the Members of the House of Representatives, and it was not to be the Members of the Senate and Members of the House of Representatives acting in conjunction or in opposition to the President.

To make this plain, the Constitution of the United States declares, in section 2 of article II, that—

The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several states, when called into the actual service of the United States.

To be sure, no President or no power on earth can declare war, that is, put the United States in a national or foreign war, except the Congress of the United States; but after the Congress of the United States declares war, the President of the United States becomes the Commander in Chief of the Armed Forces of the United States and has the power to direct the action and practical operations of those forces in the theater where war is being waged.

This power is usually exercised by the President by way of delegation to militarily trained men. It may be noted, however, that on certain occasions President Washington undertook to direct the forces of the United States himself, as in the case of the Whisky Rebellion, and that President Lincoln on several occasions during the War Between the States undertook to direct, to a more or less limited degree, the actual operations of the Union forces.

I have high admiration and deep affection for those who are proponents of the Church-Cooper amendment, but I cannot escape the abiding conviction that this amendment, if adopted, would represent an attempt upon the part of the Congress of the United States to usurp and exercise, in part at least, the constitutional powers of the President of the United States as the Commander in Chief of our Army and Navy.

The Supreme Court declared, in an early case, *Fleming* v. *Page*, 9 Howard (U.S.) 603, that as Commander in Chief, the President is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer, and subdue the enemy. It goes without saying that the President has the right to employ military forces in the manner he deems most effectual to protect them from destruction by an armed enemy.

The President, of course, has the advantage of the intelligence received by him from the intelligence sources on the scene in South Vietnam. He also has the advantage of the advice of men who have spent their lives studying military matters, and who for that reason are quite competent to give advice and assist in reaching conclusions as to what actual tactical operations should be undertaken at a specific time and at a specific place.

If the Church-Cooper amendment should be adopted by Congress, it would forbid the President from acting as Commander in Chief and it would forbid every military man acting under his command from putting a foot within the borders of Cambodia after the enactment of the amendment, even though such action was necessary to protect the American forces from annihilation. The amendment would also constitute the granting of an assurance by Congress that the North Vietnamese and the Vietcong can use the borders of Cambodia, even against the will of the people of Cambodia, to their hearts' content as sanctuaries for operations against American and South Vietnamese troops and the people of South Vietnam, and that the United States, as far as Congress can prescribe, will not do anything to molest them in such activities, even though such activities would threaten the destruction of American soldiers serving under the flag of our country in that far off corner of the earth to which they have been sent by the President, with the consent of Congress.

Mr. President, when I first rose to speak, I mentioned a book by one of our most distinguished constitutional lawyers and constitutional historians, Edwin S. Corwin, entitled "The President: Office and Powers, 1787–1957." On page 228 of this book, he quoted a statement made on this subject by Alexander Hamilton in Federalist No. 69. I will not trespass upon the time of the Senate to read Alexander Hamilton's entire statement, but I should like to state to the Senate the interpretation placed on that statement by Professor Corwin. Professor Corwin makes this statement on page 228 of his book:

Rendered freely, this appears—

That is, Alexander Hamilton's statement—

to mean that in any war in which the United States becomes involved—one presumably declared by Congress—the President will be top general and top admiral of the forces provided by Congress, so that no one can be over him or be authorized to give him orders in the direction of the said forces; but otherwise he will have no powers that any military or naval commander not also President might not have.

In the succeeding pages of this book, Professor Corwin proceeds to demonstrate that Alexander Hamilton was something of a piker when he said that the President will have no powers that any high military or naval commander not also President might not have.

The succeeding pages of Mr. Corwin's book demonstrate the great extent to which the powers of the President as Commander in Chief of the military forces of this Nation in time of war have been expanded. I would suggest to some of our friends, who are not willing to accord the President the power to direct the actual operation of troops in combat, to read Professor Corwin's book and see how the powers the President as Commander in Chief have been expanded by interpretations placed upon this provision in the Constitution by the Supreme Court in subsequent days and particularly during the First and Second World Wars.

There is nothing obscure in reading Chief Justice Marshall's so well declared statement in the case of Gibson against Ogden:

We should take it for granted, in seeking to interpret the constitution, that the framers of the Constitution used words just as ordinary men do to express their intentions.

Mr. President, let us see what words the framers used in setting out the congressional power to declare war. They said, "Congress shall have the power to declare war."

Now there is no obscure meaning in the word "war." There is no obscure meaning in the word "declare."

Anyone can pick up a dictionary and find that the word "war" means:

A state of open, armed conflict carried on between nations, states, or parties.

He will also find that the word "declare" means—

To state officially or formally, to state with emphasis or authority.

It also means—

To affirm.

Now, Mr. President, I maintain that the Gulf of Tonkin resolution, which is technically known as the Southeast Asia resolution, constitutes a declaration of war in a constitutional sense.

What does that resolution say?

It asserts in its preamble—

Whereas naval units of the Communist regime in Viet Nam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace;

That is one of the assertions in the preamble, a preamble passed by both Senate and House with only two dissenting votes.

The next assertion is that—

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Viet Nam has been waging against its neighbors and the nations joined with them in collective defense of their freedom:

Thus, here in the preamble of the Southeast Asia resolution, the Congress of the United States declares two significant facts. First, that the naval vessels of the United States have been deliberately and repeatedly attacked by North Vietnam's naval forces; and, second, that the attacks were a part of a deliberate and systematic campaign of aggression that North Vietnam is waging against South Vietnam.

Then, after the account of those recitations and those facts, it states:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Mr. President, there is no other way that has ever been devised by the mind of man to repel an armed attack except by force. Thus, Congress expressly stated in the first paragraph, following the preamble to the Southeast Asia resolution, that the President was empowered to take all the necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression. Now, "aggression" as mentioned in the resolution means the aggression of North Vietnam upon its neighbors and the nations joined with them in collective defense of their freedom.

Section 2 of the resolution states that—

Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective

Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Mr. President, that is strikingly in harmony with the declaration that the United States made when it went to war with Spain in 1898.

On April 20, 1898, after the sinking of the battleship *Maine* in the harbor of Havana, the Congress of the United States passed the following resolution, which every one who has studied the subject admits to being a declaration of war. It is strikingly similar to the Southeast Asia resolution and even contains the same assertion made in the closing paragraph of the Southeast Asia resolution, that the United States has no territorial ambitions:

Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battleship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Habana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April 11, 1898, upon which the action of the Congress was invited: Therefore,

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* First. That the people of the island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished to leave the government and control of the island to its people.

Let us see what it takes to declare war. A very learned scholar, W. Taylor Reveley, III, wrote an interesting article which appeared in the Virginia Law Journal for November, 1969, entitled, "Presidential War-Making: Constitutional Power or Usurpation."

I read this statement from pages 1283 and 1284:

It seems reasonably clear from proposals made and rejected at the Constitutional Convention, from debates there, subsequent statements by the Framers and from practice in early years that the Drafters intended decisions regarding the *initiation* of force abroad to be made not by the President alone, not by the Senate alone, nor by the President and the Senate, but by the entire Congress subject to the signature or veto of the President.

Mr. President, in other words Mr. Reveley says in substance that the Congress declares war when it authorizes the initiation of the use of the military force of the United States in lands lying outside of the United States. He then adds, on page 1289 the following:

Congressional authorization need not be by formal declaration of war:

In other words, the Congress does not have to pass a resolution saying: "Congress hereby declares war."

Mr. Reveley adds further in the Virginia Law Journal:

"[N]either in the language of the Constitution, the intent of the framers, the available historical and judicial precedents nor the purposes behind the clause" is there a requirement for such formality, particularly under present circumstances when most wars are deliberately limited in scope and purpose. A joint resolution, signed by the President, is the most tenable method of authorizing the use of force today. To be meaningful, the resolution should be passed only after Congress is aware of the basic elements of the situation, and has had reasonable time to consider their implications. The resolution should not, as a rule, be a blank check leaving the place, purpose and duration of hostilities to the President's sole discretion. To be realistic, however, the resolution must leave the Executive wide discretion to respond to changing circumstances. If the legislators wish to delegate full responsibility to the President, it appears that such action would be within the constitutional pale so long as Congress delegates with full awareness of the authority granted.

I am certain that when Congress passed the Gulf of Tonkin joint resolution, it was aware of what authority it was granting to the President of the United States. This is made exceedingly clear by a statement which one of the opponents of the resolution made on the floor of the Senate.

Former Senator Wayne Morse made this statement:

We are, in effect, giving the President of the United States warmaking powers in the absence of a declaration of war. I believe that to be an historic mistake.

Former Senator Morse stated that by passing the Gulf of Tonkin joint resolution Congress was giving to the President warmaking powers. I agree with that statement of former Senator Morse to that extent. But I disagree with the statement that Congress was doing it without a declaration of war, because I contend that the Gulf of Tonkin joint resolution is clearly a declaration of war.

Let us now examine another facet of this situation. When the resolution was under consideration in the Senate, the Senator from Kentucky (Mr. COOPER) put this question to the distinguished Senator from Arkansas (Mr. FULBRIGHT), the floor manager of the Gulf of Tonkin joint resolution:

Mr. COOPER. Does the Senator consider that in enacting this resolution we are satisfying that requirement of Article IV of the Southeast Asia Collective Defense Treaty? In other words, are we now giving the President advance authority to take whatever action he may deem necessary respecting South Vietnam and its defense, or with respect to the defense of any other country included in the treaty?

Mr. FULBRIGHT. I think that is correct.

Mr. COOPER. Then looking ahead, if the President decided it was necessary to use such force as could lead into war we will give that authority by this resolution?

Mr. FULBRIGHT. That is the way I would interpret it.

Mr. FULBRIGHT added:

If a situation later developed in which we thought approval should be withdrawn it could be withdrawn by concurrent resolution.

Mr. President, there are two interesting cases in which the Supreme Court passed on the question of what is a declaration of war. The earliest of these cases is entitled Bas against Tingy, 4 Dallas, page 36. The question involved the rescue of an American vessel and the right to certain compensation. The amount of compensation depended upon whether the rescue was from an enemy. The question arose in this case as to whether or not this American vessel, which had rescued another vessel from the French—who were then giving us a good deal of trouble by seizing vessels on the high seas—was entitled to a high rate of compensation because the rescue occurred in time of war. The Supreme Court unanimously decided that the rescuing ship was entitled to the higher compensation because the rescue occurred during a war between the United States and France.

Now, Congress had never passed any act or any resolution declaring war against France in so many terms, but it had passed laws providing that Americans could seize vessels operated by the French, something in the nature of letters of marque and reprisal. In that case Judge Chase said:

What, then, is the nature of the contest subsisting between America and France? In my judgment, it is a limited, partial war. Congress has not declared war, in general terms; but congress has authorized hostilities on the high seas, by certain persons, in certain cases. There is no authority given to commit hostilities on land; to capture unarmed French vessels, nor even to capture French armed vessels, lying in a French port; and the authority is not given indiscriminately to every citizen of America, against every citizen of France, but only to citizens appointed by commissions, or exposed to immediate outrage and violence. So far it is, unquestionably, a partial war; but, nevertheless, it is a public war, on account of the public authority from which it emanates.

This statement appears on page 43 and clearly recognizes that where Congress authorized certain Americans to carry on hostilities against French vessels that Congress had declared war within the purview of the section of the Constitution vesting in the Congress the power to declare war.

Another case is *Marks* v. *United States,* 161 U.S. 297. I will read the opinion of Justice Brewer on page 301:

As war cannot lawfully be commenced on the part of the United States without an Act of Congress, such an Act is, of course, a formal official notice to all the world, and equivalent to the most solemn declaration.

Now, manifestly when Congress passed the Southeast Asian Resolution, it solemnly declared, in effect, that our naval vessels were being attacked by North

Vietnam, that this attack was part and parcel of the aggression which North Vietnam was inflicting upon South Vietnam, that pursuant to the Constitution, the Charter of the United Nations, and our obligations under the SEATO Treaty, Congress was authorizing the President to take all necessary measures, including the use of armed forces to repel attacks on our ships, and to repel aggression on South Vietnam and the other nations covered by the SEATO Treaty. When Congress declared these things, it was certainly declaring that a state of war existed. Congress was declaring that it consented for the President to initiate hostilities and the use of our Armed Forces in South Vietnam and Southeast Asia. Nothing could be plainer than that.

A study of this very question was made and is set forth in the Notes in the Harvard Law Review for June, 1968, entitled "Congress, the President, and the Power to Commit Forces to Combat." This is a long article and deals with the war powers of Congress and the President. I wish to read a statement from page 1804, in which the writer of the Notes makes this declaration:

> The second section, however, proclaims that "the United States is . . . prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." This rather comprehensive language certainly supports the interpretation given it by the administration that it is a functional equivalent of a declaration of war and as such the President may conduct the war as he sees fit.

I do not see how anything can be plainer than the fact that when Congress adopted the Tonkin Gulf resolution, or the Southeast Asia resolution, as it is sometimes called, it declared war on North Vietnam and authorized the President of the United States to use our Armed Forces to protect the Armed Forces of the United States, and to repel aggression from North Vietnam.

Mr. President, I digress here for a moment to note that a plausible case can be made for the proposition that when Hanoi declared, in 1960, that it would—

> Liberate South Vietnam from the ruling yoke of United States imperialists and their henchmen.

Hanoi declared war upon the United States and upon its forces then stationed in South Vietnam.

This brings us to the question whether or not President Nixon exceeded his constitutional and legal powers when he ordered our Armed Forces in Vietnam to join the South Vietnamese in wiping out the sanctuaries which the North Vietnamese and the Vietcong had established on the borders of Cambodia fronting on South Vietnam.

During his remarks which will follow my speech, the distinguished Senator from California (Mr. MURPHY) portrays in eloquent language the purpose of this action and the results thus far obtained by this action.

Charges have been made that this was the initiation of a new war. I controvert that charge. This is just the same war with the same enemy. For 5 years the North Vietnamese have been using these sanctuaries along the border of South Vietnam. They have been sallying forth and making attacks, destroying American lives and destroying the lives of South Vietnamese troops and the lives of South Vietnamese civilians, and then running back to the sanctuaries where the United States had been giving them total exemption from the hot pursuit doctrine which prevails in wars.

Cambodia is a neutral country, or has attempted to be a neutral country, but it has been compelled to permit the North Vietnamese and the Vietcong to use these sanctuaries as a base of military operations against U.S. forces and South Vietnamese forces for 5 years.

In my honest judgment, President Nixon, as the Commander in Chief of the American military forces in Vietnam, and as the individual charged above all others with responsibility for protecting the American forces, as far as possible, against unnecessary deaths and wounds, had a perfect, legal right—a perfect constitutional right—to put American troops into action to wipe out these sanctuaries of our enemy in Cambodia along the border of South Vietnam.

Also, President Nixon had a right to do this under international law. International law places upon every neutral country the duty to protect its neutrality, that is, to deny the use of its territory by a belligerent nation as a base for its military operations. If a neutral country is unable to enforce its own neutrality, then, under international law, a belligerent which is being injured by the use of the territory of the neutral nation by an opposing belligerent has a right to enter such territory and take such steps as are reasonably designed to put an end to this unlawful use of the territory of the neutralist nation by the opposing belligerent nation. This is what the United States has done in going into Cambodia.

During previous years, I have received many requests from fine and well-meaning persons that I rise upon the Senate floor and denounce our presence and conduct in South Vietnam as illegal and ourtrageous.

Even if I were sure that these persons had complete possession of all the truth on the subject, I would be reluctant to do this for one reason and incapable of doing it for another.

While I am always ready to participate in efforts to persuade our National Government to pursue wise policies or abandon foolish ones, I am ever reluctant to denounce my country in respect to its contests with foreign foes. This is true because I was nurtured on the brand of patriotism which prompted Senator Crittenden to make this statement while the Mexican War was raging:

> I hope to find my country in the right; however, I will stand by her, right or wrong.

My incapability to stand upon the Senate floor and denounce the United States for its presence and conduct in South Vietnam arises out of this consideration: My action in so doing would lend aid and comfort to North Vietnam and the Vietcong because it would tend to engender in them the belief that America's will to fight is weak and that they will be masters of South Vietnam if they prolong the war and slay more Americans.

I think that the Church-Cooper amendment is unconstitutional, in that it attempts to have Congress usurp and exercise some of the powers to direct the military forces in the theater of operations which belong, under the Constitution, to the President of the United States.

But apart from any question of constitutionality and any question of legality, I would say that we should remember what St. Paul said in I Corinthians chapter 10, verse 23:

> All things are lawful for me, but all things are not expedient: all things are lawful for me, but all things edify not.

My dictionary informs me that the word "edify" means "to instruct or enlighten so as to encourage moral and spiritual improvement."

I do not think it would encourage moral or spiritual improvement, and therefore it would not edify, for the Congress of the United States to pass a resolution which would tend to destroy the last hope we have of achieving a just and lasting peace in South Vietnam by negotiations now being carried on in Paris between the representatives of the United States and the representatives of the South Vietnamese Government with the representatives of North Vietnam and the Vietcong or the National Liberation Front.

The passage of a resolution of this character would say to them that the United States, in effect, has lost the will to carry on, and that they can take over everything there after we depart, which will be soon. That is the inference they will draw from it.

I think it would not be edifying for the Congress of the United States to say that American troops cannot put a foot across the borders of Cambodia to destroy sanctuaries of the enemy, but that the enemy, as far as Congress is concerned, can use those areas as sanctuaries from which to make sudden surprise attacks upon American soldiers.

I think that the country is in no mood to seek a military victory in South Vietnam, and for that reason it should undertake to withdraw in a sound and sensible manner—in a manner which would make that area we have been trying to protect as safe as possible from our enemy, and in a way which would contribute to future peace and security.

I remember, between the First and the Second World Wars, when Hitler and Mussolini came to power in Germany and Italy. They began to rattle their sabers. Americans did not want to be involved in another world war, as they had been involved in the First World War; so they decided that they would contrive some way to make certain that we would not be involved in another world war if Hitler and Mussolini saw fit to plunge the world into darkness again. So Congress passed the Neutrality Act. It passed that

act with good motives; it passed it with the desire to keep America out of any new world war.

The Neutrality Act declared that we would be neutral, that we would not assist any nation, even though it was fighting for its ultimate liberty, and that we would not even furnish any supplies to help a nation fighting for its liberty against Hitler or Mussolini with our material of war unless that nation came here, in its own ships, and paid us cash on the barrelhead for those materials.

That act was passed with good motives. It was passed to keep us from becoming involved in another world war. But it was exactly what Hitler and Mussolini were looking for, that is, having the assurance from Congress that Europe could go hang so far as the United States was concerned. After passage of that act, Hitler and Mussolini believed that they could extinguish the liberties of the peoples of Europe, and they need not fear the intervention of the United States.

Hitler and Mussolini went to war, and the declarations of the Neutrality Act, which were passed in good faith, with the noble purpose of keeping us out of war, were the things which prompted Hitler and Mussolini to plunge the world into the Second World War; and it contributed, by so doing, to the deaths, the untimely deaths, of millions of helpless men, women, and children.

What will happen if Congress passes resolutions such as the Cooper-Church amendment and tells the enemy, "You can use the sanctuaries to kill our boys," but our boys cannot invade the sanctuaries to protect their own lives? If we pass such resolutions, regardless of whether there has been any peace agreement and regardless of what the conditions are, we will be attempting to repeal history, and thus to repeal past mistakes. It cannot be done. I said at the beginning of my argument that the Creator of the universe made it impossible for either a nation or an individual to repeal its mistakes or the consequences of its mistakes. I think that is undoubtedly true. As the Persian poet said:

The Moving Finger writes; and, having writ,
Moves on: nor all your Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all your Tears wash out a Word of it.

We cannot wash out our involvement in the war. We cannot escape the mistakes of history. We must try to minimize those mistakes.

One of the worst mistakes we could make would be to withdraw from Vietnam without getting a peace treaty or without having the South Vietnamese troops trained to the point that we could reasonably hope that they could defend their own country.

I am in favor of trying to settle this war by negotiation. I am in favor of withdrawing from Vietnam if we can do so in a safe and sound manner. If we cannot come to an agreement by negotiation, then let us train the South Vietnamese troops in order that they might be able to defend their own country. Let us not precipitately flee from South Vietnam to escape from fighting for a moment. It will not contribute to the future peace or the future safety of our country. Instead of doing that, it will be sowing the seeds of future wars of this character.

(The following colloquy occurred during the address by Senator ERVIN, and is printed at this point in the RECORD by unanimous consent.)

Mr. GRIFFIN. Mr. President, will the Senator yield to me briefly for a comment?

Mr. ERVIN. Yes; I am delighted to yield to the distinguished Senator from Michigan.

Mr. GRIFFIN. I think the speech being delivered by the Senator from North Carolina is one of the most important that has been or will be delivered during the course of this debate. We read a good deal in the newspapers and hear from the media that the pending amendment goes to the constitutional powers and prerogatives of the President and the Congress. Certainly that is the question raised, but the Senator from North Carolina has gone directly to the heart of the issue; that is, whether or not the Congress of the United States expects to be able to make military decisions—strategic and tactical decisions—which our Founding Fathers intended should be left to the Commander in Chief.

As the Senator from North Carolina has pointed out today, and as I indicated in my remarks on the floor the other day, it would be perfectly appropriate if a Senator wanted to offer a resolution to declare war. The Constitution does give Congress that power. That would be the appropriate way for any Senator to bring up this question. The Senator from Michigan does not believe it would serve any useful purpose at this stage to debate a declaration of war. We are in the process of moving out of the war and disengaging in our participation——

Mr. ERVIN. If the Senator from Michigan will pardon me, I trust I will be able to demonstrate in a few minutes that we have already declared war.

Mr. GRIFFIN. I will listen with interest to the Senator from North Carolina, but I want to indicate my agreement with the Senator from North Carolina that the amednment that is proposed and pending before the Senate is not confined to the area over which our Founding Fathers intended Congress should exercise judgment.

I want to commend the Senator from North Carolina, who is one of the ablest constitutional lawyers ever to serve in this body. I hope that all Members of the Senate who are not present today will study what he is saying.

Mr. ERVIN. I am deeply grateful to the distinguished Senator from Michigan for his very gracious remarks.

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

Mr. ERVIN. Yes; I am delighted to yield to the distinguished Senator from Florida.

Mr. HOLLAND. Mr. President, I would like to say, first, that I am so grateful to my distinguished friend for going into this matter on the sound constitutional basis to which he addresses himself. I approve completely of what he is saying and what he has said, and I think he is on the soundest possible constitutional ground.

I would like, if I may, though, to say that I think not only is he on sound constitutional ground, not only was the President on sound constitutional ground, but that there were many things in connection with the President's action that justified it which have not, I think, been sufficiently mentioned.

I would like to ask consent of the distinguished Senator from North Carolina, at the end of my comment, to place in the RECORD an editorial by Mr. William Randolph Hearst, Jr., bearing on his recent statements published in newspapers throughout the Nation entitled "Campus Confrontation." I will ask for that at the appropriate time.

I would now like to ask permission to read one paragraph out of that editorial which I think accentuates the fact that the President not only had a constitutional basis for his action, but that he had a very practical basis to support the constitutional action.

For instance, this editorial, which speaks of a speech made by Mr. Hearst at the California State Polytechnic College, reads in part as follows:

One thing that was made fully clear was my sense of shock, and even amazement, at how many Americans and some of our friends abroad had reacted so critically to President Nixon's decision on Cambodia.

Instantly—from the doves in Congress to the editorial pages of our left of center press—the howl went up that the President was wilfully and unilaterally expanding the war. That we were invading a sovereign nation. That a terrible and costly blunder had been made.

What seemed almost incredible to me was that so much of the criticism was a literal echo of the condemnations which came from Moscow, Peking and Hanoi. Even more discouraging was the spectacle of college presidents giving their blessing to student protest strikes.

To me it was—and continues to be—simply astonishing. Not one of the liberal voices sounding off in Congress and elsewhere made a peep of protest when it was revealed last month that 40,000 Communist troops had invaded Cambodia and were threatening to capture its capital city.

Not one of the voices that I can remember ever said a word about the long-standing Communist violations of Cambodia's neutrality and independence along the southern section of the Ho Chi Minh Trail.

And very few gave the slightest serious consideration to President Nixon's explanation—that he acted to save Cambodia from imminent Red conquest and the need to safeguard his plan to withdraw American combat troops from South Vietnam.

The explanation was virtually ignored. It was as though the protesters were deaf to any explanation; as though they had just been waiting and biding their time for an excuse to renew their attacks on the Vietnam war.

Then, in an additional comment in this same editorial, Mr. Hearst pointed out:

Cambodia had become nothing but a sideways DMZ zone. The Communists had dug in there and were using it as an advance headquarters in which to store their supplies and launch what could easily be an encircling attack on our men in South Vietnam.

When the Reds began their attempted takeover of the whole country, President Nixon—in the interests of protecting our

fighting men—had literally no other military alternative but to break up the enemy emplacements.

Not to have done so would have meant the loss of time needed to complete our Vietnamization of the war. Far worse, it would have left our withdrawing forces wide open to a looming disaster.

Mr. President, I cannot help but feel that the portions of this editorial which I have read, and other portions which will appear in the entire editorial as printed, show not only that there was a constitutional duty upon the President, but that if that duty had been ignored, there was the gravest sort of danger involved upon our troops there in South Vietnam, and upon his good faith effort to withdraw them in accordance with his promises to our country.

I ask my distinguished friend that I may be permitted to have the entire article printed in the RECORD at this point.

Mr. ERVIN. Mr. President, at the request of the Senator from Florida, I ask unanimous consent that the editorial to which he has alluded be printed in the RECORD at this point.

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

CAMPUS CONFRONTATION

(By William Randolph Hearst, Jr.)

SAN SIMEON, CALIF.—In this week when student war protests were erupting at what hopefully will be the peak of such turmoil, my favorite weekly columnist (and I hope yours) had a highly instructive campus experience of his own. It definitely deserves retelling here.

It so happened that long before the news about Cambodia exploded, an invitation was extended and accepted by me to address an audience on May 6 at California State Polytechnic College in nearby San Luis Obispo. I showed up on schedule last Wednesday—with more than a little feeling of trepidation.

As a fairly well known supporter of President Nixon's war policies, I figured I was in for a tough time. At the very least I expected to catch some catcalls and heckling from some of the several hundred students and faculty members waiting to hear me.

By way of background, it should be noted here that Cal Poly, as it is generally called has a remarkable achievement record. Only five years ago it was a relatively small college with an enrollment of about 5,000, whose big extra-curricular interest was in the spectacular rodeos staged by the school.

Today it is a full-fledged state institution with an enrollment of nearly 12,000. Its faculty and staff number more than 1,400. It has schools of agriculture, journalism, applied arts, applied science, engineering and business, among others.

Unlike so many other colleges and universities, the whole academic emphasis is on preparing students for specific practical careers upon graduation. The students begin majoring in the subject of their choice as freshmen, rather than as juniors and have very few opportunities to take what are known elsewhere as elective snap courses in various theories.

This is important, as I hope to show here later. For the moment, try picturing me facing that sea of young faces and wondering what the reaction would be when I started defending a military decision which had caused so much student violence elsewhere.

My informal speech was on world affairs. It was impossible to avoid the controversial issue of recent events in Southeast Asia. So when it came time I waded right in with my fingers crossed.

There is no need to go into much detail on what was said. My views were pretty well outlined in this space last Sunday and most of what I said simply elaborated on that column.

One thing that was made fully clear was my sense of shock, and even amazement, at how many Americans and some of our friends abroad had reacted so critically to President Nixon's decision on Cambodia.

Instantly—from the doves in Congress to the editorial pages of our left of center press—the howl went up that the President was wilfully and unilaterally expanding the war. That we were invading a sovereign nation. That a terrible and costly blunder had been made.

What seemed almost incredible to me was that so much of the criticism was a literal echo of the condemnations which came from Moscow, Peking and Hanoi. Even more discouraging was the spectacle of college presidents giving their blessing to student protest strikes.

To me it was—and continues to be—simply astonishing. Not one of the liberal voices sounding off in Congress and elsewhere made a peep of protest when it was revealed last month that 40,000 Communist troops had invaded Cambodia and were threatening to capture its capital city.

Not one of the voices that I can remember ever said a word about the long-standing Communist violations of Cambodia's neutrality and independence along the southern section of the Ho Chi Minh Trail.

And very few gave the slightest serious consideration to President Nixon's explanation—that he acted to save Cambodia from imminent Red conquest and the need to safeguard his plan to withdraw American combat troops from South Vietnam.

The explanation was virtually ignored. It was as though the protestors were deaf to any explanation; as though they had just been waiting and biding their time for an excuse to renew their attacks on the Vietnam war.

The above were some of the thoughts I gave to my audience. When no boos or catcalls developed, my fingers came uncrossed and I gave them some more.

No matter how you look at it, I said, Vietnam is a bloody mess and there is no question that we miscalculated the tenacity of the enemy in waging a war our forces were never permitted to win. At the root of today's national unrest is frustration over not having the war over and done with by now.

All the same, it was pointed out, Cambodia had become nothing but a sideways DMZ zone. The Communists had dug in there and were using it as an advance headquarters in which to store their supplies and launch what could easily be an encircling attack on our men in South Vietnam.

When the Reds began their attempted takeover of the whole country, President Nixon—in the interest of protecting our fighting men—had literally no other military alternative but to break up the enemy emplacements.

Not to have done so would have meant the loss of time needed to complete our Vietnamization of the war. Far worse, it would have left our withdrawing forces wide open to a looming disaster.

I asked my audience to compare the frustration it felt with the frustration of our military leaders, who have never been permitted to wage a decisive war. I asked a further comparison with the frustration undergone in Paris by our negotiators whose many concessions have led to nothing from the enemy.

I wound up by noting that some of the more virulent war critics had even mentioned the possibility of trying to impeach the President for his decision on Cambodia.

Suppose you had a brother or a father over there in Vietnam, I asked, and he got a bullet in the back from encircling troops based in Cambodia at a time when every effort was being made to bring him home?

If that were to happen—and that's what the Communists were threatening for large numbers of our men—then you can bet your own sweet life there would be an impeachment for real.

So that was the speech.

I want to take this opportunity to personally thank the student body for its courtesy in hearing me out and making academic freedom a living truth. All through it the kids sat attentive and obviously interested. They laughed at my few attempts at humor, applauded in gratifying fashion when I finished, later gathered around to ask many specific questions.

It was hard to believe that even at that time hundreds of other college campuses were either shut down or in utter disorder because of student antiwar demonstrations. Were these a special breed?

Robert E. Kennedy, the president of Cal Poly, and Dale W. Andrews, its academic vice president, offered some explanations which made me conclude that their students in fact are much different from the hell raisers.

They assured me there were many in my audience who also felt strongly against the war. Disorder and the shouting down of unwanted opinions, however, are not the rule of life at Cal Poly.

The stress on practical education for future employment is so dominant that the first thing you see when entering the college is its job placement bureau.

There, all points of view are examined and discussed in an atmosphere of true academic freedom. Their officials said this was not surprising since the whole operation of the college was geared to instruct students who came there solely to learn and prepare themselves for useful careers.

There is a real object lesson here.

Last Wednesday, just a few miles to the north and south of me, the campuses at Santa Barbara, Berkeley, San Francisco and San Jose were erupting in violence or threatening to erupt. The situation was, in fact, so serious that Gov. Reagan wisely ordered a four-day closing of all public colleges and universities in the state.

Who has filled the heads of those students with the ideas which steam them up and cause them so violently to attack their own country, its institutions and leaders?

It's a good question—and part of the answer lies in the fact that too many of our institutions of higher learning are infested with radically minded professors and courses with no constructive purpose.

I am convinced that most college students have too little to do, too few academic challenges from courses that train them for specific careers—especially in their freshmen and sophomore years.

It is high time the system got a top-to-bottom overhauling with Cal Poly as the model.

Mr. HOLLAND. I thank my distinguished friend. I say to my friend that while the essence of his point, his constitutional argument, is so sound, the constitutional question is so much bolstered by the practical need for the exercise of the constitutional power by the facts recited by this editorial and otherwise that it seems to me it makes a case that is completely invincible when approached by those attacking both the President's right of action and the particular action he has taken.

I thank the Senator for yielding.

Mr. MURPHY. Mr. President, will the Senator yield for a comment?

Mr. ERVIN. I am delighted to yield to the Senator from California.

Mr. MURPHY. First of all, I should like to associate myself with the very learned and well-prepared remarks of the Senator with reference to the constitutional conditions with which we are here confronted. I think the distinguished Senator has clarified a great deal of the contrived confusion that has been rampant in the country.

It is of great concern to this Senator that amid the intense objections to the President's decision—which was taken, as my distinguished colleague points out, on the basis of all the intelligence, all the information, and all the knowledge of the experts—we hear very little about the success of this operation.

I have looked as carefully as I can to find the information which I know is available. I have listened to the reports. I hope that my distinguished colleague will permit me, at this point, to suggest that so far, rather than extending or expanding the war, this military operation, this expedition into Cambodia, has in my opinion done more to shorten the war than any other one thing that has happened in 6 years.

I will explain why. In the first place, as of this morning, we had captured 3,305 tons of rice. That is enough to provide man-months of food for 145,420 North Vietnamese soldiers. We have captured 15,763 rockets. We have captured mortar rounds. These are the ones that are extremely troublesome, where they can sneak in at night, set it down, fire five or six rounds, move off with it, and be gone before dawn. This is the one that lately has been hitting hospitals and schools indiscriminately, as part of the system of atrocity that has been used by the North Vietnamese in order to frighten the South Vietnamese into subjugation. Mortar rounds captured, 38,879.

Small arms ammunition captured, 11,502,740. Let us say that one bullet out of 50 hits an American soldier. I think this alone is worth the trip.

I should like to point out that, in keeping with the President's promise, the first group of the ARVN troops, the South Vietnamese who had gone into the southernmost perimeter, had completed their mission, and were moving out as of 3 days ago. I do not understand why we do not hear about this.

Land mines: These are the scourge of the troops. The mines are hidden in the bushes, in the jungle, in the swamps, triggered in all sorts of ways.

They have captured 1,865, almost 2,000, that will not go off and injure and maim Americans and South Vietnamese.

Bunkers destroyed: These are heavily constructed, permanent type bunkers, from which the North Vietnamese had been conducting their entire operation in this area. Bunkers destroyed, as of this morning, 4,651.

This, without question, has been even a greater success than envisioned by those who pleaded, as my distinguished colleague has pointed out, that it was necessary and the immediacy forced it to be done at the moment.

The President's program, based on the weather in that area, will gain us 8 to 9 months in the continuation of the Vietnamization program, so that the good people of South Vietnam will have an opportunity to be trained, armed, and supplied so that they can carry on their own job, which they are perfectly willing to do, once they are given the chance.

The enemy killed in this operation, because of the surprise, because of the logistics, the way it was planned, number 6,945. Prisoners taken, 1,576. Individual weapons captured, over 9,000. This goes on endlessly.

Without question, this is the most successful operation. Those who say, "Well, we don't believe that the President means it when he says they are going to go in, clean up this area, and get out," have no reason to doubt it, no reason whatever. He has promised, and he has kept his word thus far.

I thank my colleague for permitting me the courtesy of putting these figures in the RECORD during his most learned and most noteworthy comments on this subject, because I think that in addition to the studious, carefully prepared approach from the constitutional angle, there is an approach that has to do with the safety, the welfare, and the lives of those who are out there fighting and with the future of those, please God, we will not have to send out to continue this unfortunate struggle.

Mr. ERVIN. I wish to thank the distinguished Senator from California for the fine contribution he has made. He has pointed out, in a very eloquent fashion, the purposes of the operation in Cambodia and the results of that operation to date. He has voiced the hope which we all hope will materialize, that the operation will result in a speedy end to the war and in the sacrifice of fewer American lives.

I join with the Senator from California in thanking the good Lord for the fact that we have been able to take the weapons enumerated by the Senator from California from the hands of the enemy and to make certain that they will never be used to take the life of another American boy.

Mr. MURPHY. I thank my distinguished colleague.

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

Mr. ERVIN. Yes; I am delighted to yield to the distinguished Senator from Florida.

Mr. HOLLAND. Mr. President, I think all of us have been receiving letters from troops fighting in Vietnam, and now in Cambodia. I have had one brought to my attention in the last couple of days, a letter written to one of the young ladies in my office by her boy friend, a sergeant in the 1st Cavalry now in Cambodia, or he was there at the time of writing the letter, which accentuates some of the points just made by my very distinguished friend from North Carolina.

I would like to read a part of the letter. I have seen the letter and compared this part with what I have seen. That is a correct statement of what he says in the letter. I may add that he did not want to go to war. He is a trained artist. He thought of going into the Peace Corps and VISTA, and even thought about going into Canada, and finally decided to take his lot like a good American. When drafted, he was put into the 1st Cavalry, and there is where he is now. This is what he says:

> Now for some strange ideas on the Cambodian thing. I may sound like HAWK, but I seriously think that the offensive into Cambodia is possibly the wisest thing that Nixon has done since he has been in office. I just wish he would start bombing the industrial areas of North Vietnam again. As long as we have to play the game here we might as well play to win. The move into Cambodia should have been made a long time ago. We have been playing war with rules, but we have been the only ones observing most of the rules. Perhaps Nixon has finally called the North Vietnamese's bluff. And perhaps for the first time he has quit worrying so much about his image. Most of the troops in Cambodia are South Vietnamese—that I do know. There are only a few 1st Cav. units there so far.
>
> "It's strange—if I were back in the world and a civilian I would probably be right there yelling and screaming against such a move. Most of the college students are screaming against it because they are just like I was—afraid and not wanting to commit myself to the Army and fighting at all. But when people have been out there in the boonies and are located less than 75 miles from the Cambodian border where the N.V.A. can't be touched but can still bring lots of smoke on us, that's insane. And—if Nixon continues to withdraw troops it will be spreading people thin over areas of operation. So the thing about potential threat to the lives of our troops left after withdrawals is not a joke. For one time I wish that Nixon was being supported by everyone because I feel he has done the right thing.

This from a young man, a trained artist, and not a friend or supporter of President Nixon. It shows so clearly how he, and others like him, feel that the spreading of troops thinner by the withdrawal of troops makes even more dangerous to those left the presence of the sanctuaries a few miles away across the Cambodian border.

I wanted this to appear in the RECORD because it so clearly upholds some of the argument of my distinguished friend from North Carolina, on which I again congratulate him most warmly.

Mr. ERVIN. I thank the Senator from Florida for his contribution. I should like to add that since we became involved in conflict in South Vietnam, I have received hundreds of letters from North Carolina boys serving with our combat forces there. These letters have made me proud. All those that I have received letters from were willing to be there. They were willing to fight for their country. They were willing, if need be, to suffer wounds or to suffer death, without making any inquiry as to whether the policies which took them to Southeast Asia were wise or foolish.

We have the greatest nation on earth. We have a Constitution which gives our citizens the greatest rights on earth, such as the right to freedom of speech, which has been exercised on Capitol Hill by thousands and thousands of people during the past several weeks. We have the right to petition our Government for redress of grievances; and I have been pleased to meet on at least nine occasions with students from North Carolina and other States and listen to their petition for the redress of grievances, which was the exercise of a constitutional right.

But, as I told some of them, the reason we have this great country, the

reason we have this Constitution, the reason we have these great freedoms, the reason we can urge our Government to change its policies, is that in all generations there have been American boys who were willing to wear the uniform of their country and carry the flag of their country and, if need be, to die, in order that this country and these great freedoms might survive. And that is the price which we must pay for the continued existence of this country.

I suppose I would be designated in present-day parlance as "an old square." I still get a thrill when the flag goes by. I still get a thrill when the band plays the Star-Spangled Banner. I still believe that everybody has certain duties to his country, and that one of those duties is, if need be, to bear arms for his country in time of war, whether he thinks the war is right or whether he thinks it is wrong, because that is the condition upon which our country must hold its freedom in the future.

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

Mr. ERVIN. I yield.

Mr. HOLLAND. I just want the RECORD to show here and now that my distinguished friend from North Carolina, as an infantryman in France in World War I, demonstrated just what he is talking about now. He came home with the emblem of heroism placed on his chest by his commander; and he is fighting right now for the same things which impelled him, as a youth from North Carolina, to go to a far-away country and fight for his country's freedom. I commend him for continuing that valiant record.

Mr. ERVIN. I am deeply grateful to my friend from Florida, who won the Distinguished Service Cross in that same war for extraordinary heroism in combat with an armed enemy of the United States.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. JORDAN of North Carolina. The Senator has brought out some information in an excellent speech that certainly should mean a great deal in setting forth the facts concerning the problem we are debating. I should like to ask a few questions of the Senator.

Is it not a fact that when Prince Sihanouk was in power, he could not keep the North Vietnamese from coming into his country and occupying portions of it, or he hoped not to be bothered, one way or the other?

He figured that he was not going to bother them and they would not bother him, and he would let them go ahead and build up their fortifications in his country any way they pleased.

Mr. ERVIN. It is a fact that for 5 years prior to the time this incursion was made into Cambodia by the American and South Vietnamese troops, the North Vietnamese and Vietcong had been occupying areas along the border of South Vietnam as a sanctuary from which they came out and made hit-and-run attacks on American and South Vietnamese troops and killed South Vietnamese people.

I do not know of anything that could happen that would be more injurious to the free world than for the United States to withdraw from South Vietnam regardless of the conditions there, or regardless of whether an agreement has been reached or regardless if the Vietnamese are trained sufficiently to defend their own country. I am opposed to any such action which might prompt other nations to believe that America is spiritually swapping Old Glory for a white flag.

Sihanouk professed to be desirous of preserving the neutrality of Cambodia. What his actual practice was, I do not know. But it may be that he was incapable, or his country was incapable, of preventing our enemy from using these sanctuaries. My information is that at the time Sihanouk went to Russia and to Peking, just before he was deposed by the Cambodian Assembly, he had gone to these countries to ask their assistance in getting the North Vietnamese and the Vietcong troops out of his borders. That is what I have been informed. Lon Nol, who succeeded him and has exactly the same title to the office as Sihanouk had, has protested against this invasion of the neutrality of Cambodia by the North Vietnamese and the Vietcong. I think he honestly does not want these sanctuaries used by the enemy of the United States and the enemy of South Vietnam.

Mr. JORDAN of North Carolina. Is it not true that our intelligence and our military officers there knew that munitions of war and supplies of all description were constantly trickling down the Ho Chi Minh Trail and were winding up in the area in which we now find them?

Mr. ERVIN. The United States has known that for 5 years, according to my best recollection. Approximately 5 years ago, General Larson made a public statement to that effect, and he also suggested at that time that our forces should wipe out those sanctuaries.

Mr. JORDAN of North Carolina. We have been bombing some of those trails, where we could catch the trucks in the open, in an attempt to cut off those supplies, but we have not been able to do it because it was not too clear and we did not know about it or could not get to it because of the tremendous amount of supplies in the lower part of the country where they have been able, as the Senator has said, to hide it, without our people having to run back into the sanctuaries——

Mr. ERVIN. The underground bunkers.

Mr. JORDAN of North Carolina. Yes. From the best information that I have, furnished to me by the Senator from California (Mr. MURPHY), we have destroyed 4,651 bunkers——

Mr. ERVIN. Yes.

Mr. JORDAN of North Carolina. But we cannot see them from the air. They are deep underground. They have the most intricate set of fortifications that anyone has ever seen in the world.

On top of that, is it the Senator's feeling—we all, of course, want to get our boys back home as soon as possible——

Mr. ERVIN. Yes, as soon as possible. As soon as we can get them home without endangering their lives, and also by making certain that we are not, thereby, promoting other wars and troubles of the kind we are now enduring, rather than securing peace.

Mr. JORDAN of North Carolina. Right. Figures were presented on the floor today on our forces, counting the South Vietnamese and Cambodians, too, because the Cambodians are now fighting for themselves and getting a decent army going. They recently have retaken one of their biggest cities.

Mr. ERVIN. That is my understanding. Furthermore, I think this effort to wipe out the sanctuaries the enemy has been using on the borders of Cambodia gives reasonable assurance that the South Vietnamese troops will soon be trained to the point that they can defend their own country. Two-thirds of the troops now involved in this engagement are South Vietnamese. Gen. Earle Wheeler, who has served with such distinction as Chairman of the Joint Chiefs of Staff, has given us assurance that the South Vietnamese troops which are operating for the first time, as a division, are giving a good account of themselves.

Mr. JORDAN of North Carolina. Has not our intelligence, through military people over there, established to some extent that if the South Vietnamese, along with our aid, can destroy enough of the equipment now stored in Cambodia, and can kill enough North Vietnamese and Vietcong, it is possible for the Cambodians to defend their own country and not let them get back in there?

Mr. ERVIN. We would hope that, certainly, because they are apparently doing that very thing.

Mr. JORDAN of North Carolina. It has been brought out here on the floor of the Senate today—this was the Friday casualty list—that our forces have killed 6,495 of the enemy, that we have captured 1,576 enemy soldiers, and we are getting a lot of information from them.

In addition, they have captured individual weapons, 9,109, and that includes machineguns and all types of guns used that would have been used to kill our own boys, not theirs.

Mr. ERVIN. I rejoice in the figures that we have captured, approximately 8½ million rounds of small arms ammunition, including ammunition for large-caliber machineguns. A lot of men can be killed with 8½ million rounds of ammunition. I thank the good Lord, as a result of this incursion into Cambodia, that these 8½ million rounds of ammunition will not be used to kill American boys.

Mr. JORDAN of North Carolina. The information I have up to today is that they have captured 11,502,740 rounds of ammunition.

Mr. ERVIN. I knew it was higher than the figure I gave. My figure was based on May 13.

Mr. JORDAN of North Carolina. In addition to that, no army can survive very long without something to eat. Our forces have captured 3,305 tons of rice, which would support the large detachment of soldiers for, I understand, 4 months that they have over there. There is no question about it, this maneuver has done irreparable damage to their forces.

The question I should like to ask the Senator now is—I think I know what his answer will be—but in his opinion, all the damage we have done over there and the supplies and material captured and taken away there, and the other things which have been done in this particular engagement, in the Senator's opinion, will this not shorten the war and bring our boys home quicker?

Mr. ERVIN. I would think so. According to all the information I have from the military who are familiar with the situation, it will certainly prevent the North Vietnamese from mounting a substantial offensive from that area until after the monsoon rains end next November. That will give us that much more additional time to train the South Vietnamese.

Mr. JORDAN of North Carolina. The President said he was going to bring our boys home, 150,000 of them, within a year. He made that statement. In the Senator's opinion, from what has happened so far in this particular venture, will that not make it safer for the soldiers left there?

Mr. ERVIN. Yes. That is shown most clearly to be true by a letter which the distinguished Senator from Florida (Mr. HOLLAND) read a moment ago from a sergeant over there about this affair, in which he pointed out how essential it was for us to destroy the sanctuaries and seize the equipment and supplies of the enemy, in view of the fact that the removal of our troops, as they have been removed and will be removed from South Vietnam, will thin our ranks and render our position more hazardous, temporarily at least.

Mr. JORDAN of North Carolina. In the Senator's opinion, would the North Vietnamese be apt to reach any agreement at the peace table in Paris if they thought we would leave by a certain day?

Mr. ERVIN. They would certainly not. That would be just giving them assurance that it was not necessary for them to try to make any agreement with us.

Mr. JORDAN of North Carolina. They would just sit there and wait.

Mr. ERVIN. Yes; they would just sit there and wait. That would be easy for them. The Orientals are very patient people. Occidentals are impatient people. Patience is one of their virtues and impatience is one of our great weaknesses. In other words, there are many people in this country who want to get our boys out of Vietnam before the sun goes down, despite the fact that that is an impossibility.

The North Vietnamese can simply fold their hands and wait a long time. We started to talk to them on the 13th of May 1968. That is 2 years and 5 days ago, and the only thing we have been able to agree on so far, after great verbal controversy, is the shape of the table that we are to sit around and talk to them about peace.

Mr. HOLLAND. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I am delighted to yield to the Senator from Florida.

Mr. HOLLAND. In the event that this resolution is passed, either with a fixed date for removal of our troops from Cambodia in it—and it is not in it at the present time—or with the implicit provision in it that the date fixed by the President himself will be the date for removal, does not the distinguished Senator think that our enemies would put on a rush to get back in there that would be reminiscent of the old Oklahoma land rush days, just as soon as possible, just as soon as that time limit had expired?

Mr. ERVIN. It would certainly be a temptation for them to do so.

Mr. HOLLAND. I thank the Senator.

Mr. PERCY. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I am happy to yield to the Senator from Illinois.

Mr. PERCY. If I may make just a quick comment. I have tried to hear as much of the argument propounded by the distinguished Senator from North Carolina, because of my very high regard for his knowledge of these matters. I intend very carefully to study the record of those portions of the discussion that I missed. I would hope to express my views over the period of the next few weeks, on the basic, fundamental question of the war-making powers of Congress versus those of the Presidency.

I did speak on the floor of the Senate on May 14 on this subject, trying to put into the RECORD some of the historical background.

At the suggestion of the distinguished Senator from Delaware (Mr. WILLIAMS), I shall update that material through not only the Presidents I have already mentioned but also the Korean and Vietnam situations. But I would highly value the judgment of the distinguished Senator from North Carolina. I think we have a desire to find, in this very fuzzy area, where we no longer declare war but we do make war, what the respective responsibilities of the Presidency are and what his responsibilities as Commander in Chief are—and we do not wish to infringe upon those responsibilities at all—but also, what are our responsibilities.

And I think that the Senate can be guided greatly by the wisdom and the judgment and the background and the understanding that the distinguished Senator from North Carolina has.

Mr. ERVIN. Mr. President, I think that virtually all Members of the Senate have agreed that the American people would like to extricate themselves from their involvement in Southeast Asia without having to resort to the drastic action of doing so by a military victory.

The question involves the best way to get out of there in such a way as to minimize the loss of life among our men and make it reasonably certain that further conflicts of this kind will not occur.

Mr. PERCY. Mr. President, I concur with the distinguished Senator. I would like to reiterate once again, as I did immediately after the President announced his decision, that in my judgment the President had the full authority and the power of the Constitution, as well as law, for the incursion we made into Cambodia.

It is a question of whether the military advantages offset some of the other problems that have been involving the political, diplomatic, and psychological aspects of the war.

Certainly he had full authority to act as he did in the best interests of the lives he was trying to save and the program of Vietnamization and the steady withdrawal he intends to carry on in accordance with the plans he previously announced.

Mr. ERVIN. Mr. President, I thank the Senator. I have attempted to demonstrate by reference to various authorities that the President did have authority to order the incursion to be made into Cambodia.

I think he is quite within his constitutional powers.

I further think that he was exercising an honest judgment in so doing.

Mr. President, I go further and say that I think, from all the information I have, it was probably a wise move. And I would go further and say that I think the policy he has announced is the safest way to get out of Southeast Asia without doing great injury to the prospects of peace and security in the immediate future.

(This marks the end of the colloquy which occurred during the address by Senator ERVIN and which was ordered to be printed in the RECORD at this point).

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## TRIBUTE TO SENATOR YOUNG OF NORTH DAKOTA ON HIS BEING AWARDED THE DEGREE OF DOCTOR OF LAWS

Mr. BAKER. Mr. President, yesterday Graceland College conferred upon one of her most distinguished alumni and one of our most distinguished colleagues the doctor of laws degree. For 25 years MILTON YOUNG has served in this body with great ability. I believe that it is altogether fitting that his college bestow upon him this honor for his many years of achievement and outstanding service to his State and country.

I ask unanimous consent that the citation read upon presentation of this award be reprinted in full at this point in the RECORD.

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

CITATION OF MILTON R. YOUNG ON THE OCCASION OF HIS BEING AWARDED THE DEGREE DOCTOR OF LAWS BY GRACELAND COLLEGE, MAY 17, 1970

It was the Nephite King Benjamin who said, "When ye are in the service of your fellow beings, ye are only in the service of your God." Today Graceland College honors a man who has never forgotten that lesson.

Milton R. Young has served his fellow man in elective public office continuously for the past forty-six years, the last twenty-five in the Senate of the United States. Prior to that, he served at different times in both houses of the legislature of North Dakota, on school and township boards. He is now the ranking Republican member of the Senate Appropriations Committee and the second ranking Republican member of the Agriculture and Forestry Committee.

Milton Young is a son of North Dakota. He was born there in 1897, grew up there, farmed the same land his father farmed until he went to the Senate in 1945. The prairies of North Dakota have always been somehow in him. There is something of their openness, something of their ruggedness. He has carried on a long and tireless struggle on behalf of the farm people of the entire na-

tion and is widely recognized as one of the leading authorities on matters of agricultural policy. But he is a man of history and culture also. He counts among his achievements the essential role he played leading to the rennovation of Ford Theater, where Abraham Lincoln was shot.

The alma mater hymn of Graceland calls her sons and daughters to "answer to the hour." You have done that, Senator Young, and Graceland salutes you as among her most distinguished alumni. You have never sought the front pages, but you have carried the burdens long and responsibly. You have kept worthy company with the most distinguished men of our day, yet the man of the soil has remained—direct, honest, responsible. You have served well your state, your nation, your conscience, your God. Graceland College is proud to confer upon you the degree, Doctor of Laws.

## DEATH OF LOUISE GOFF REECE

Mr. BAKER. Mr. President, Tennessee has been blessed through its long and illustrious history with women who have been willing and able to assume their share of the responsibility in the development of a great State, struggling to assume its rightful place in a great nation.

Such a woman was Louise Goff Reece of Johnson City.

While she was not a native to Tennessee, there was never a doubt as to her loyalties after she married the distinguished late B. Carroll Reece, one of the outstanding Members of the U.S. House of Representatives from the First Congressional District over a period of 36 years and a former chairman of the Republican National Committee.

On Thursday night, May 14, 1970, Mrs. Reece passed away in Johnson City, and I know that the members of this body, most of whom were acquainted with B. Carroll and Louise Reece, want to join me in expressing deep sympathy to the family and to say a final "well done" to a most deserving couple.

I felt particularly close to this family because my father served with them—with Mr. Reece before his death in 1961 and with Mrs. Reece as she filled out his unexpired term—in the House of Representatives. Because they represented adjoining congressional districts in Tennessee, because the two families visited frequently and were together on many social occasions and because we were friends for most of my life, the end of this era is especially depressing to me.

I should also recall that it was at the wedding of the daughter, Louise, to Col. George W. Martens in Johnson City, that I met my wife, Joy. So this death has resulted in a deep sense of sorrow in the Baker family.

Perhaps ironically, then, when I came to the U.S. Senate, I occupied the seat in this great Chamber that once was claimed by Guy Despard Goff, who served the great State of West Virginia ably and well from March 4, 1925, until March 3, 1931. He was the father of this distinguished lady.

Time has claimed another great leader of our country, but the monuments built by Mrs. Reece and this family will never die. Their accomplishments would fill a CONGRESSIONAL RECORD on a normal day and I will not, at this time, attempt to itemize the good that they have done.

I would simply like to say that the world is a better place because of this woman and her family and that, in my view, is the greatest compliment that can be paid.

## MOTHER'S DAY, 1970

Mr. BAKER. Mr. President, a number of my constituents have brought to my attention a Mother's Day sermon delivered by Dr. Walter R. Courtenay to his congregation at First Presbyterian Church in Nashville, Tenn. Dr. Courtenay is a distinguished minister and member of the Nashville community and his Mother's Day remarks concern the difficult problems with which we are presently confronted. At the request of my constituents, I ask that this sermon be printed in the RECORD.

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

MOTHER'S DAY 1970—JUDE 1: 17-21

(By Dr. Walter R. Courtenay)

Today is Mothers Day, a day when we speak appreciatively of those who were our first nursery, our first pantry, our first playground, and our first means of transportation.

Whenever we deal with the subject of motherhood, we always confront two problems, first, what mothers should we talk about on a day like this, the young mothers with their little children around them; the not so young, whose teen-age children confuse them with their attitudes and philosophy of life; the still older whose children are now grown, some successes, some failures; or the older mother whose silver hair turns gold in the glow of the after sunset? Every woman who has reached the age of 60 knows the tremendous changes that occur between the birth of the first baby and the time when life is mostly the history of yesterday.

The second problem is that we tend to idealize mothers who are only slightly related to reality. Few mothers achieve the ideal, even as very few fathers, sons and daughters achieve the ideal. Mothers, after all, are persons of flesh and blood. They are people who have vices as well as virtues, weaknesses as well as areas of great strength. But, in the main, the mothers of America have achieved accomplishments that are both high and wholesome. It is because of this that we pause to honor motherhood today. It is well that we do so, and I am pleased to do so, because I remember all too well my own mother and the wonderful girl who became the wonderful mother of my sons.

As we pause to observe Mothers Day we do so in the midst of disturbed conditions throughout our country. The America that I see around me today is completely foreign to the America that I have known all my life. The war in Vietnam goes on with its staggering cost of men and money. The entire nation is shackled to it, and our society is being dragged down and plunged into attitudes and moods that are uncomplimentary to us and which give the world a distorted picture of this land we love.

In all of this, the mothers of all ages and conditions are involved, some having sons and daughters in colleges, some having sons and daughters who this fall will enter college, some having husbands and sons in the armed forces, and some having loved ones on the battlefronts of Asia. Some have sons who may soon have to break away from normal vocations and avocations and learn the arts of brutal war.

Mothers cannot help but be worried as they look out of their windows upon a world that is as jumbled and as messy as a city dump. We cannot blame them for asking the questions, what is ahead for our loved ones, what is ahead for our nation, what is ahead for the world? Are we now doomed to anarchy and a peaceless America? Is there no way, and is there no one, who can alter the stream of events carrying us swiftly toward the rapids and the plunge of the mighty waterfall?

STAGGERING, IRREPARABLE LOSS

Today we cannot avoid thinking of the mothers of the four Kent State students who this past week were killed. Regardless of the factors, their loss is a staggering, irreparable one. We, of course, assume that these youngsters were innocent. We assume that they shouted no obscenities, threw no bottles, rocks or steel slugs, hurled no profanity and insults. We assume that they did not curse the soldiers or patrolmen nor spat upon them. We assume that they were fringe people who understandably gather to observe these absurd displays of temper and terror. Innocent they may have been but they part of that noisy minority group led by hard core radicals from off and from on the campus, who were determined to create a situation that hopefully would end in bloodshed. I agree that bottles, bricks, rocks steel slugs and profanity are not the same as bullets, but they are weapons of offense.

It is to be regretted that the leaders who created the disturbances were not where the action was when young Guardsmen, hearing shots and fearing for their lives, opened fire in self defense. The facts are not all in, and in all probability we will never know the actual facts of what created the death of these students at Kent State. But we can pause on this day to extend our sympathy and our prayers to the mothers of those who died, and the mothers of the young people who were stupid enough to become part of that senseless mob.

BE REALISTIC

Here we must be realistic about campus disturbances. First, they never involve the majority of students. Second, they seldom involve the students who are on the college campus to get an education. Third, the disturbances are rarely spontaneous. They are planned, they are fanned, they are fomented, they are created. Fourth, they are never nonviolent. The lighted fuse of a dynamite charge may seem non-violent, but you and I know that that fuse, once lighted, will eventually explode the dynamite. Of course, the leaders on our campuses claim non-violence even while they are collecting the bottles, the rocks and the steel slugs with which to confront the patrolmen and, if necessary, the National Guard. After heads are broken and members of the mob are arrested, naturally they cry out against police and guard brutality, and loudly protest their own innocence.

There is a hard core of anti-order, anti-America radicals on every campus and in every community. Their contribution to America's prosperity, security and peace is nil. Their contribution to America's disunity, disorderliness, and disgraceful conduct is beyond measure. They organize, they incite, they motivate, they spread false rumors, information and charges. They foment alienation and senseless antipathy. They do all they can to arouse the beast in students and to give it liberty. They begin the rallies, and they lead until the action gets too hot. They encourage sabotage and subversion. They draw into their ranks idealistic, impulsive, excitable students who know little of the facts but whose emotions are aflame. Thus, they create a mob and when confrontation comes, the hard core leaders put the idealistic, excitable students in the front ranks of the battle and seek safety for themselves. They are seldom beaten and bruised. They are trained to use others but never to get hurt themselves.

Let it be clearly understood that the organizers, the fomenters, who lead the idealistic, excitable, venturesome students are in no sense representative of their campuses. By any measure, they are not loyal, informed, clear thinking Americans. They are the paid servants of subversive forces. They are the manipulators of situations. They are the managers of chaos. They are anti-America, anti-decency, anti-democracy, anti-justice, anti-free speech, anti-law, anti-authority, anti-church and anti-God.

BUT ONE GOAL

They have but one goal, to so disrupt our normal ways of life that institutions in America cannot function with success. And all of this is blamed on the war in Vietnam.

Let me read part of an editorial that appeared not long ago in the Nashville Banner: "In the 50 years of recorded history history there have not been more than 230 years of peace, and in the relatively brief history of the United States, there have been fewer than 20 years in which one or our armed services has not been engaged in some military operation. Despite these facts, most Americans still cling to the delusion that peace is normal and war is abnormal."

We are in Vietnam because of a solemn and sacred treaty. We are there because the Viet Cong are the paid henchmen of Hanoi, and Hanoi is but the satellite of Moscow and Peking. If the border created by treaty had been honored by Hanoi and her expansionist allies, if the border created by Great Britain, France, Russia, the United States and others, had not been crossed, and if the South Vietnamese people had been left to develop their own way of life as Hanoi and the rest of us had agreed, we would not be in Vietnam today.

And now we are in Cambodia. The adolescent intellectuals in our midst, the critics of our current Administration, and the hard core hirelings of subversive forces have joined ranks to create further division in our midst. Now, we are not fighting Cambodia. We are fighting the same enemy that we have been fighting for five years. The drive to destroy the sanctuaries within Cambodia makes sense. Actually we have not invaded Cambodia. We have invaded communist territory held for the past five years by the Viet Cong and the soldiers of Hanoi. Cambodians have not owned nor controlled this area of their country during the last four or five years. We have invaded Hanoi territory. We have invaded Viet Cong territory. We have not invaded Cambodian territory, and we are not at war with Cambodia. The war has escalated only in the sense that we have finally decided to do what we should have done a long, long time ago.

No one can rejoice over our presence in Asia, least of all the mothers who have husbands and sons in the armed forces in Vietnam. On this Mothers Day I am all too conscious that such mothers are not being honored publicly as they have been in all the other wars that we have fought. Many husbands and sons will never return to these mothers, and many husbands and sons will return but never to a normal way of life again. The tears of such American mothers today are truly salty and their vision has to be misty, and their hearts have to know pain.

MOTHERS DAY 1970

Mothers Day 1970 is a day fraught with danger. Never has our unity been so seriously jeopardized, nor citizen responsibilities held so cheaply. The moral fibre of our people seems flabby in the face of the forces that disrupt law and order, decency and loyalty, fairmindedness and fair delivery. Standards of value long held valid are now trampled in the mud along with the ashes of burned American Flags and hopes. Respect and good manners seem to have evaporated in heat of bad tempers. Vulgarity and cheapness are honored rather than condemned. God and His law mean little as radical students and their idealistic followers seek to jerk the rug of honor and respect from under our feet. Quicksands have been substituted for hard trails, lies for truth, revolution for renewment, and a hog's view of life for that of mature, informed, responsible people.

Nor do many of our leaders in Congress, college and church seek to improve our situation, for they demand the impossible while believing with all their hearts in the improbable. They subsidize and support subversion and arson. They add fuel to the social fires that threaten to destroy us, and not once have I seen a fire extinguisher in the hands of any of them seeking to put out the flames that threaten our land. Students and others who call policemen "pigs" and National Guardsmen "bastards" and "s.o.b.'s" now become angry when a leader in high responsible position refers to certain students as "bums." We have always had bums. They have always been part of our campuses. We have always had bums in our communities. Let's call them what they are, and not quibble about it. We have more on our college campuses today because we have admitted to our campuses people that should never have been admitted in the first place. Many are there for no other purpose than to disrupt the tranquility of the campus, and to bring our institutions to a state of helplessness.

I could believe neither my eyes nor my ears the other morning when a law professor of the University of California stood on a platform and exhorted students to go on with their violence, and concluded his remarks by saying, "We are either going to liberate this country from within, or we will do it from without."

DIFFICULT TO RESPECT

I find it difficult to respect the TV commentators of our national chains who speak of student unrest as if the majority of students were involved, who speak of student riots as if most of the students on the campus were part of the riots. None supports the administration nor the people responsible for law and order in our nation. To me it is most unfortunate that faculty members, congressmen and churchmen join these people to further disturb and disrupt our normal way of life.

I say to you this morning with all the conviction I possess that when dissent becomes descent into ways and words that dishonor the sacred and belie the sensible, it is time for American leaders to take strong action. When mobs feel free to throw bottles and rocks, steel slugs and profanity, not to mention Molotov cocktails, why should they resent the use of our more normal weapons of defense on the part of our policemen and our National Guard? It seems sensible to them to curse, to riot, to burn, and create disorder, but irrational for policemen and guardsmen to defend themselves and the honor and security of our society.

TO THE MOTHERS

To the mothers of this church and community who have tried to do a good job in rearing their children to respect God and their citizenship, and to carry their responsibilities with a real sense of commitment, I tender my sympathy, my encouragement and my prayers. To the mothers of America who are striving to do the same I offer them my help. To the mothers of the slain Kent State students I can only offer my tears and my regrets, my sympathy and my hope for better things. To the mothers whose children have exchanged a heritage of value for a mess of communistic pottage, and a normal faith in the cross for an absurd faith in the hammer, I can only send my sympathy and my encouragement. To the mothers whose husbands and sons and daughters are on the front lines of Vietnam and Cambodia today, I can only remember them in prayer before God that they will have the strength to endure.

This is indeed a strange Mothers Day, but it ought to remind us that emotions are seldom rational, that anarchy destroys but never builds, and that a life or a program that is not built in accordance with the absolute laws of God and the universe cannot long endure.

I hope, therefore, that the events of the past week will motivate us to prevent further deterioration within our nation, and to cancel out the repeats of Kent State. We must do all in our power to rededicate ourselves to the task of character building, of Christian nurture, and of loyal American citizenship. We must dedicate ourselves anew to the creation of American unity and the building of security. We must get on with the church's main task, that of bringing men into a full commitment to Christ to the end that they may then go out into the world to live lives that honor God and elevate the standards of men. We must return to America's major task of making this land of ours the land of the free.

## THE ABOLITION OF THE ELECTORAL COLLEGE AND THE DIRECT ELECTION OF THE PRESIDENT AND VICE PRESIDENT

Mr. BAKER. Mr. President, I have for quite some time advocated the abolition of the electoral college in favor of the direct election of the President and Vice President. I am a cosponsor of the proposed constitutional amendment introduced by the distinguished junior Senator from Indiana (Mr. BAYH) which has recently been reported by the Senate Judiciary Committee. I support this proposal because I believe that the present system is more than a harmless anachronism; it represents a dangerous impediment to the voice of the people, an unnecessary barrier interposed between the voting citizen and the highest office in the land.

A recent editorial from the Memphis Press-Scimitar expresses quite well my views on the need for early Senate action on this proposal, and I ask unanimous consent that it be printed at this point in the RECORD.

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

BY CHOICE OF THE PEOPLE

The Senate Judiciary Committee stalled seven months before it reported to the Senate floor a proposed constitutional amendment to permit the people to elect their president and vice president by direct vote.

The House, in keeping with the overwhelming judgment of the people, approved this amendment last September by a vote of 339 to 70. But the amendment survived the Senate Judiciary Committee this week by a vote of only 11 to 6.

And the present prospect is that the amendment may be subjected to a series of quibbling changes, even filibustered, that it may have a "tough go" to carry the Senate, and that in any case no vote is planned for several weeks.

In essence, this is a simple proposition: the long-obsolete Electoral College, which has and could again elect a president who was not the popular choice, would be abolished. Instead, the people would vote directly for president and vice president.

The Supreme Court has held, again and again, to the "one-man-one-vote" principle, insisting that it applies even to school board and dog catcher elections. Where could this principle be more rightfully applied than to the election of the President of the United States?

The changes to the constitutional amendments which were voted down in the Senate Judiciary Committee, but which probably will be offered again on the Senate floor, indicate a distrust of the people's judgment, of the people's right to make their choice freely and directly.

The House, by its 339–70 vote, showed no such evidence of distrusting the people.

The Senate is not so busy that it couldn't act on this constitutional amendment within days, instead of weeks. All that's necessary is for the Senate leaders to schedule a vote. If it has time, as it did this week, to pass a bill naming a federal building after the late Senator Dirksen (Lord rest his soul) and similar miscellaneous legislation, it certainly can find time speedily to pass a measure going to the heart of the people's right to choose their own president.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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. Without objection, it is so ordered.

## THE LOWERING OF VOICES IN TIMES OF PUBLIC UNREST

Mr. HANSEN. Mr. President, yesterday the Vice President of the United States urged that the media be among those to lower their voices in these times of public unrest. There have been many examples of name calling, by the media, and of efforts by the media to destroy the faith of the people in their Government.

One of the most flagrant violators has been the Washington Post.

Yesterday was a typical example:

On the first page of the Post's "Outlook" section is an article by Ben Bagdikian.

A large two-column headline over the article is entitled "The Government Is a Crude Liar."

The immediate implication from that headline is that the Government today is guilty of lying. It is hard to draw any other conclusion.

It is only when you read the story that you find that Mr. Bagdikian's point is that the Johnson administration back in 1967 was guilty of deception. The other specific incident he mentions is the Arthur Sylvester statement that government has a right to lie.

Nowhere in the article is there an accusation leveled against the Nixon administration.

Mr. President, the headline is both misleading and inflammatory. The Washington Post should indeed lower its voice, at least until it decides to tell the truth.

Mr. President, I ask unanimous consent that the article to which I have referred be printed at this point in the RECORD.

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

### THE GOVERNMENT IS A CRUDE LIAR

(By Ben H. Bagdikian)

Newspapers reporting on government are often wrong, and Presidents of the United States are often prepared to say so. On leaving the presidency, George Washington * * * in disgust. Thomas Jefferson once wrote, "Nothing can now be believed which is seen in a newspaper."

Modern Presidents have been no exception, with bitter comments on the subject from Franklin Roosevelt, Harry Truman and Dwight Eisenhower (who, in his last presidential press conference, delivered the unkindest cut by saying he wasn't sure that the press made much difference, anyway). John Kennedy canceled his subscription to the New York Herald-Tribune. Lyndon Johnson on the subject of newspapers was not always quotable in mixed company. Richard Nixon through much of his career has been passionate in his feeling that he is kicked around by the media.

Vice Presidents of our time have been known to murmur an occasional reservation about the press. Even presidential assistants are ready to sneak in a kidney punch while their bosses swing the haymakers. Arthur Schlesinger, Jr., while in the White House seven years ago, said that newspaper and magazine accounts "are sometimes worse than useless when they purport to give the inside history of government decisions."

All of this has some justification. Journalists are often wrong. Sometimes they are malicious, other times, lazy. More often they are honestly in error. When that happens, they have no "Top Secret" label to cover up their human and professional failings. When they make mistakes, they make them in public.

But what government officials almost never talk about when they complain about press inaccuracy is that some of this is the result of the government's own frequent dishonesty in dealing with the press and the public. The conventional assumption is that the government of the United States never lies to its people. But it does, and when this is proved, (1) the government is very ungracious and (2) it usually answers that it had good reasons for lying.

Sometimes there are compelling reasons for the government to lie—as in the days of the Cuba missile crisis when we were on the brink of a nuclear war. But most of the time, the government excuse for secrecy, or secrecy that creates a distorted public picture, is on spongy ethical and practical ground.

Arthur Sylvester, lately an Assistant Secretary of Defense, once said that the government has a "right to lie," which was refreshing bureaucratic candor but appalling doctrine. As a practical matter, diplomatic negotiations are, like photographic film, best developed in the dark. But they can, through secret error, also go wrong because of the dark.

Some military information must be kept under cover. But a lot of it, maybe most, is already known to our adversaries, leaving only the American people uninformed. Friendly governments should not be unduly embarrassed. But frequently the friendly government is the United States, and the embarrassment is to one of its erring leaders.

And there is that most fishy of all reasons: the other side lies more than we do.

#### A MASSIVE LID

Whatever the excuse, secrecy and its use to distort is a perpetual threat to the democratic process. It means that "Big Brother knows best." Neither history nor contemporary events confirm that Big Brother is ever that wise. Elitist decisionmaking has produced catastrophes that match anything created by popular folly (the United States can be grateful that no electorate interfered with King George III).

The government has a massive apparatus to prevent the whole truth from coming out. In Congress, the most open forum the country has for policy evolution, 40 per cent of all hearings are secret. The Executive Branch of government, expecially in diplomacy and defense, has systematic secrecy with tough laws to back up its power to conceal.

If all of this apparatus followed its natural bureaucratic tendencies, the press of the United States could become like Pravda and Izvestia, reporting only those official things that officialdom wishes to say, reducing the public to a passive audience instructed how to implement what its leaders have already decided.

Ironically, the distortions of secrecy may be greater because officials can selectively cancel it, picking certain fragments to release. The President, the Secretary of Defense and the Secretary of State preside over an enormous jigsaw puzzle that constitutes their best view of the world. Much of this picture is officially secret. At any moment, an official can reach behind the curtain and select a piece of the jigsaw puzzle and show it to the press or directly to the public. It could be a genuine piece of the puzzle but still give a false impression of reality.

#### THE VIETNAM ELECTION

For example, in the summer of 1967, the nature of the government of South Vietnam was at issue in the United States. The debate on Vietnam had already poisoned the domestic political atmosphere. Distrust bordering on paranoia characterized almost everything said on the subject, whether hawkish or dovish.

An election was being held in Saigon to demonstrate or create . consensus in South Vietnam. This would, among other things, show that the United States was fighting for the life of a regime that at least had the support of its own people. Washington hoped that this would lay to rest some American and European suspicions that the incumbent regime in Saigon was a narrowly based military clique that could not, on its own, obtain the loyalty of the South Vietnamese.

Some of the press was reporting that the regime in Saigon had no intention of relinquishing power, regardless of how the election came out. On July 28, 1967, the Washington Post reported from Saigon that there were rumors that "South Vietnamese generals . . . are forming a committee that would preserve their power in the remote event that a civilian ticket wins the Sept. 3 election."

On Aug. 2, The New York Times reported flatly, "The generals who rule South Vietnam are at work on a plan that would perpetuate collective government by the junta despite the election of a President, Vice President and Congress."

Such reports persisted for a few days. Then, curiously, on Aug. 16, a number of supposedly independent news outlets carried contrary accounts. At a high level of government, a secret cable from Ambassador Ellsworth Bunker in Saigon had been made known to selected columnists.

Rowland Evans and Robert Novak, for example, began their column for that day, "The vital importance to the Johnson administration of a reasonably clean election in Vietnam was underscored last weekend in a confidential cable from Ambassador Ellsworth Bunker. Deeply worried by the clamor in Congress over alleged irregularities in the campaign for president, Bunker methodically knocked down one charge after another . . . Bunker's cable has deep significance."

That same day, William S. White, attacking doves and other administration critics, wrote in his column that these critics ignored "all the factual information patiently supplied by Americans on the ground in South Vietnam, including Ambassador Ellsworth Bunker . . . Bunker has reported over and over that charges by the civilian candidates [in Saigon] that the present heads of South Vietnam, Gens. Thieu and Ky, are loading the electoral dice have no foundation."

#### DEFT "DECLASSIFICATION"

Government officials regularly criticize the press for using classified information, but it is often secret information deliberately handed the press by high-level government people. The press is inclined to believe such in-

formation partly because of the impressive "secret" stamp. The Bunker cable, for example, was classified "EXDIS," meaning exclusive, or very limited, distribution, even among cleared policymakers.

Among the point-by-point rebuttals by Bunker referred to by Evans and Novak was the one that the South Vietnamese armed forces "had formed a council that would 'run the government' no matter who is elected." Citing this, Bunker said, "The formation of any such council and such intent of the armed forces have been categorically denied by Thieu and Ky, although, of course, the constitution provides for a military council to advise the government on military matters."

This was a genuine piece of the jigsaw puzzle. That is, the cable really existed. But its history is interesting.

The journalists who were given the contents of that cable were not shown an earlier cable to Bunker asking him to comment on a number of matters. "Please comment" is diplomatic cablese for, "What shall we tell people about this?" And that Bunker's reply was preceded by, "This . . . may be useful in answering criticisms in the U.S."

Furthermore, the journalists could not know that 10 days earlier, on Aug. 3, there had been another secret cable from Saigon on the same subject. It was distributed to officials on Aug. 13, the same day as Bunker's cable denying it and three days before the appearance of the newspaper columns on the subject. These columns, as noted above were based on Bunker's Aug. 13 cable saying that there was no reason to believe that there was a secret military committee prepared to seize power in Saigon.

DEFINITELY TOP SECRET

The Aug. 3 cable that was not divulged to the journalists said:

"Senior Vietnamese generals have had the Ministry of National Security draft a charter or organization plan for a Supreme Military Committee which is to serve as the vehicle through which the generals will continue to exercise ultimate power in South Vietnam, even after election of a President. The existence of the committee is being treated as 'top secret' for the present and will not be admitted till after the 3 September elections, if at all.

"Ky has been designated committee chairman and Minister of National Security, Maj. Gen. Linh Quang Vien, secretary general. At present, other members are Thieu, Minister of Defense Cao Van Vien and the four corps commanders. Meeting of 17 July attended by all . . . actual government powers will be vested in an extralegal S.M.C. . . . Definitely not provided for in the constitution, hence top secret . . . should not be confused with Advisory Armed Forces Council . . ."

Two days later, confidential analysis of the evidence also circulated in Washington commented further:

"Despite Premier Ky's public and private denials, several intelligence reports indicate that the South Vietnamese military leadership is proceeding with secret plans to form an extraconstitutional 'inner sanctum' of generals that would exercise the real power in any elected government . . .

"These plans and the point to which they have apparently progressed have some ominous implications. For one, additional support is provided for the view, already prevalent among many informed Vietnamese, that the military have no intention of really sharing power with the civilians, regardless of the election outcome. At the same time, the prospect is raised that the army intends to operate largely through its own political control apparatus rather than through the constitutional structure."

"COMPLETELY UNTRUE"

Presumably, Ambassador Bunker saw the cable based on the evidence acquired Aug. 3. In any event, on Aug. 12, he cabled the State Department:

"I asked him (Ky) 11 August about the report of an armed forces committee to run the government which had such adverse editorial comment. Ky said this report was completely untrue and added that it was merely a series of meetings that the usual group of top generals held to discuss reorganization of the armed forces and pacification matters prior to discussion with Westmoreland, Komer and me . . ."

The cable referred to Gen. William Westmoreland, then commander of ground forces in South Vietnam, and Robert Komer, chief of the pacification program.

Bunker's Aug. 12 cable said of his conversation with Gen. Ky:

"He said there was absolutely no intention to set up any inner military group to run the government after the elections and this report could be flatly denied . . . I reverted to my earlier advice to him as an 'elder' regarding handling of the press. Ky said yes, he remembered, and perhaps the best thing for him to do was first to keep his mouth shut. I agreed with him . . ."

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## FREE TRADE AND FAIR TRADE

Mr. HANSEN. Mr. President, since joining this distinguished body at the beginning of the 90th Congress, I have been amazed at the attitudes of many in our Federal Government and some of our news media toward those of us in Congress who have sought some reasonable limits of foreign imports.

In seeking to stem a mounting flood of cheaply produced foreign lamb, beef, oil, steel, textiles, shoes, and numerous other products, we have been called protectionists and accused of attempting to build a cocoon of special privileges around American industry and agriculture. We have even been charged with anticonsumerism because we oppose a continuation of the liberal trade policies that have literally driven many American industries to the wall of desperation in their attempts to compete with foreign producers who operate under entirely different ground rules from those imposed by law on U.S. producers.

As an example of this attitude, the Wall Street Journal in April carried an editorial, "Polishing Up Protectionism."

The editorial of the Journal carried my reply to his views a few days later and I ask unanimous consent that my letter to the editor be reprinted in the RECORD.

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

FREE TRADE AND FAIR TRADE

EDITOR, *the Wall Street Journal:*

Your editorial "Polishing Up Protectionism" (April 2) expressing the free trade philosophy, says the problem stems from the fact that the nation's resources are finite and in some way or other it has to allocate them to accomplish the greatest good for the greatest number.

If all people would renounce war and insist on living in peace, if all pepole would be equally as concerned for every other human as for themselves, If all people would reject greed and cupidity there is no question but that free trade would best serve humanity.

But unfortunately this is not the world we live in.

I happen to think Americans are not the world's worst people. We've been reasonably generous in rebuilding the countries torn by World War II. We've tried to help developing nations—we've shed some blood to insure freedom and self-determination for other peoples.

But the fact is that most of these objectives—goals often not reached—could not have been pursued at all if we had not been a strong nation.

There can be no doubt that our unchallenged access to energy has been one of our most important sources of strength.

About one-fifth of all the oil we use is imported. But I agree with the President: Limits must be defined which will assure the adequacy of domestically produced oil and gas necessary to guarantee our national security.

Further our total strength will reflect the industry, the jobs, and the services we are capable of sustaining in the United States. America proved long ago that power is the result of brains and energy applied to natural resources.

One final thought—the competition American business is subjected to is not fair. Wages, standards of living, social responsibility (taxes) all place a most unequal burden on us. Free trade and fair trade should go hand in hand.

CLIFFORD P. HANSEN,
*U.S. Senate.*

WASHINGTON.

Mr. HANSEN. Mr. President, as further evidence of the need for realistic revision of U.S. trade policy, the figures just released by the U.S. Department of Commerce show a substantial and continuing deficit in the U.S. balance of payments for the first quarter of 1970. That deficit last year amounted to $7 billion and at the rate reported for the first quarter, may well exceed the 1969 figure by the end of this year.

In view of this discouraging news, it is encouraging that the Ways and Means Committee of the other body now has hearings underway on U.S. trade policy. I hope these hearings may result in some meaningful legislative recommendations which may be acted upon in time for consideration by the Senate during this session.

It is also encouraging that the chairman of the Senate Finance Committee which would conduct such hearings has introduced a general trade policy bill of his own known as the Fair International Trade Act which would establish ceilings on imports to prevent imports from running wild. The bill would generally accept present levels of imports but would hold future penetration to a growth on a par with the increase in domestic consumption of the same product.

This was the approach used in the Meat Import Act of 1964 but even now meat imports for the first quarter are running at a rate that will exceed the quota before the end of the year if continued at the same rate. And this Act did not include lamb meat which should certainly be treated as any other meat under the provisions of the act.

Mr. President, some of our free trade advocates say that the American consumer is entitled to the prices at which foreign producers are able to sell their wares in this country. They also accuse American industry of being inefficient if the American product cannot compete pricewise with a foreign product. The freetraders offer the absurd solution of compensation through various means to an industry and its workers injured or displaced by cheaper imports.

In at least two cases this year, one in the case of steel workers and another in the case of glass, the escape clause of the Foreign Trade Act has been invoked. But why should this be necessary?

In the Cabinet Task Force Report on Oil Import Control, the free-traders who recommended that we flood the country with cheap imported oil glibly suggested that the decline of domestic drilling and exploration for oil and the resultant unemployment "would benefit the economy as a whole by releasing inefficiently used labor to other sectors—this is one of the aspects of efficiency losses previously considered in the report."

Mr. President, this muddle-headed thinking and planning must not be allowed to wreck American industry and force its workers on to the unemployment rolls or invoke other financial assistance plans to be paid by the overburdened American taxpayer. And how could he pay it if he was unemployed?

One of those who has for years warned of the impending crisis in U.S. trade policy is O. R. Strackbein, president of the Nationwide Committee on Import-Export Policy. His has been a voice in the wilderness of the free-traders but his prophecies and warnings are now coming to pass.

In a recent speech he reiterated what he and some of us here have been saying about the difference in free trade and fair trade.

He concluded his speech by saying:

The notion that imports should be given priority over domestic production to the extent of bulldozing the jobs of our workers out of the way and leaving it up to us to pick up the pieces and repair the wreckage by a system of adjustment assistance is a wholly unjustifiable philosophy and represents an amazingly harsh attitude in point of public policy.

That foreign producers should be able to pay wages that would be illegal in this country and then build a destructive trade on that basis with the blessing of our Government, seems incredible. Yet, that is the basic philosophy of adjustment assistance. It proceeds on the wholly untenable assumption that if an American producer cannot compete with imports he is necessarily inefficient. He is guilty without trial, and must take the consequences. *Yet on a relative efficiency basis, which is to say, output per man-hour or per man-year, American industry continues to lead the world.* This lead is shrinking, however, and the low foreign wages combined with rising foreign technological productivity produces the foreign competitive advantage.

We cannot hope to hold our own industrially in this type of competitive climate. The fact of our competitive defeat from the persistence of lower foreign wages can no longer be concealed by sleight-of-hand trade statistics. The trend of rising imports will force a recasting of our obsolete trade policy.

Mr. President, Mr. Strackbein has sent me a copy of the speech from which I have quoted and also a copy of a letter to President Nixon in which he summarized his views on the competitive state of our foreign trade. Because of the vital interest many of us have in the well-being of industries in our own States now threatened by imports, I ask unanimous consent that the letter and the text of Mr. Strackbein's speech be printed in the RECORD.

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

THE NATIONWIDE COMMITTEE
ON IMPORT-EXPORT POLICY,
*Washington, D.C., April 9, 1970.*

The PRESIDENT,
*The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: It is my impression that the Presidency is inadequately informed and therefore misinformed on the competitive state of our foreign trade.

Accordingly I send you herewith a copy of a speech I am scheduled to make before the Optical Manufacturers Association in a few days. It is entitled "A Decade of U.S. Trade Defeat." The speech is self-explanatory; but in view of the heavy demands on your time I shall present here a very brief account of its principal points:

1. Contrary to official foreign trade statistics the United States has for several years run a deficit in our merchandise import-export account. This deficit, in terms of private commercial competitive trade, is in the annual magnitude of some $5 billion.

2. We do indeed enjoy a surplus in a limited category or two of goods. In 1969 this surplus was some $8 billion, concentrated overwhelmingly in machinery and transport equipment and, to a much lesser extent, in chemicals. Imports, however, have been rising several times as rapidly as exports in the machinery sector during the past decade. This handsome surplus may therefore be expected to disappear in a few years.

3. With respect to nearly all "Other Manufactured Goods" we incurred a deficit of some $5 billion in 1969. The products include steel, textiles, footwear, glass, pottery, radio, plywood, bicycles, musical instruments, optical goods, toys and athletic goods, rubber and plastic manufactures, screws and bolts, hand tools, clocks and watches, etc.

4. If the deficit in certain agricultural products is included, such as tomatoes, strawberries, citrus fruit, mushrooms, fish, olives, meat, mink; as well as certain minerals, such as petroleum, lead and zinc, copper and bauxite, the surplus enjoyed in machinery exports is swamped.

5. Employment in the so-called "Other Manufactured Goods" mentioned above or "Miscellaneous Manufactured Articles," both as classified by the Census Bureau, exceeds employment in the narrow sector in which we enjoy the export surplus described above, by about 2 million workers. When the export surplus in machinery disappears we will be at bedrock of a foreign trade disaster.

6. Imports of manufactured goods now account for about 65% of our total imports, compared with only about 30% fifteen years ago.

7. Importation of manufactured goods offers our importers the most attractive bargain since these goods incorporate all the steps of the manufacturing process, which may be three to five. The cheap labor advantage is thus magnified compared with the raw materials, which do not go beyond one or two of the steps of production. Little wonder that imports of finished goods have left the imports of raw materials far behind.

8. The incontestable competitive advantage enjoyed by foreign manufacturers in this market rests on nothing more mysterious than the lower level of wages they pay, coupled with the fast-rising productivity that has come from technological advancement and adoption of mass production methods abroad.

9. Looking to the tariff, which on the average is down 80% from its level of 35 years ago, as a defense is unrealistic. Also to rely on adjustment assistance is to vacate our productive facilities with their workers in favor of a form of competition that derives its advantage principally from the simple fact foreign producers pay wages that would be illegal in this country. This fact should be weighed carefully in any assessment of inefficiency of our producers and manufacturers who in fact continue to lead the world in productivity. Fairness demands that the unequal burden be taken into account and that we do not penalize our industries and workers for complying with labor standards imposed by the Government in response to the wishes of the electorate.

10. As the tide of imports rises we need a ceiling over them in specific instances, designed to share our market on a reasonable basis, permitting imports to grow with our economy, but denying them the license to run wild while trampling over our established labor standards.

I shall be ready on request to substantiate more fully this outline of our trade position.

With assurances of my esteem,
Sincerely,

O. R. STRACKBEIN,
*President.*

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A DECADE OF U.S. TRADE DEFEAT

(Speech of O. R. Strackbein, president, the Nation-Wide Committee on Import-Export Policy Before the Optical Manufacturers Association, New York City, April 16, 1970)

The United States has suffered a spectacular defeat in its foreign trade during the past decade and particularly during the past few years.

With the exception of a very few lines of products we find ourselves in a growing deficit position in our trade with other countries of the world. So great is our general competitive disadvantage that it can no longer be ignored or hidden. Some dramatic developments have indeed surfaced within recent years to underscore the blindness of a policy that should have been modified before now.

A defeat such as we have suffered in the field of trade would have called for the scalps of directors and managers in any other line of endeavor. A conspiracy of concealment and silence has kept the unwelcome facts from the public.

This is a heavy indictment, all the more so because the concealment has been both unconscionable and stubborn, running over a period of years.

A few examples will illustrate the trade trends of the 'Sixties:

Our exports to Japan from 1960–69 increased 141.1%; our imports 325.4%. Our exports to West Germany rose 66.4%, our imports 190.2%. Twenty per cent of all our imports in 1969 came from these two countries. They took only 14.8% of our total exports.

We increased our exports to the Common Market countries by 75.7% while our imports rose 156.3%, or double our exports.

With respect to Italy our exports rose 76.4% while we imported 206.8% more.

The United Kingdom increased her sales to us by 113.5% while our sales to the U.K. increased only 57%.

Our exports to all of Asia increased 97.4% while our imports swelled by 204.1%.

Our imports from the countries of the European Free Trade Association (England, Norway, Denmark, Finland, Sweden, Switzerland and Portugal) increased twice as much as our exports to those countries: 127.2% compared with 63.4%. Our imports from Sweden rose more than twice as fast as our exports to her or 108.2% vs. 43.4%.

The great exceptions were Canada and Latin America. In the case of Canada, largely because of the automotive agreement, both our exports and imports increased greatly. Exports rose 239.8% and imports 258.1%.

Latin America, with the exception of Argentina, Peru and Mexico, showed a depressive result from the Latin American point of view. Our exports to Argentina rose only

5.3% while our imports increased 58%. Yet our exports still exceeded greatly our imports. In the case of Peru our exports grew only 13.6% while our imports went up by 71.6%. Our actual imports in this case were nearly twice as heavy as our exports. Mexican sales to this country rose by 132.3% while our exports to that country rose a more modest 74.1%. Yet we still had a favorable trade balance.

Our exports to Latin America as a whole, including the three countries mentioned, grew 36.1% while our imports rose only 19.4%. In a few instances our imports showed an actual decline during the decade, namely, from Chile and Venezuela.

In our total world trade our exports increased 84.6% while our imports went up 146.0%.

Our trade with all the world except Canada and Latin America showed a sharper disadvantage. Our exports grew 81.8% compared with an import increase of 160.8%. In other words, our imports from the rest of the world outside of Canada and Latin America, grew twice as fast as our exports to that part of the world.

In the case of Latin America our imports consist principally of raw materials and crude foodstuffs. However, the great increase registered in our total imports in recent years from all the world has occurred in manufactured goods rather than in raw materials. Therefore imports from the industrialized countries accounted for much the greater part of the sharp rise in our imports during the past decade.

It may be asked why this great discrepancy between the growth of our imports of raw materials and manufactured goods should have occurred. The trend should really be no occasion for surprise. Imports of raw materials did indeed increase, but they rose from an index of 100 in 1956–60 to 130 in 1968, compared with a rise from 100 to 402 for finished manufactures. In other words imports of the latter grew thirteen times as fast as imports of raw materials.

The sharply divergent trend is traceable to the relative labor content in the two forms of products. Raw materials incorporate only the first step or two of production. The amount of cheap labor expended is therefore the minimum. In the case of finished goods the full complement of labor is incorporated. This might be four or five stages of production. The savings on imports is therefore all the greater. Not only is there one stage of production at low labor cost but several stages. Therefore it is of a much greater advantage to import finished products compared with raw products, because the former have more of the low-cost labor in them.

Today about two-thirds of our imports consist of manufactured goods. Not many years ago less than a third of all imports were of this variety.

If imports have grown briskly compared with our exports, why do we not have a foreign trade deficit?

The answer is we do have a trade deficit. It merely does not so appear from the official trade statistics issued by the Department of Commerce. That Department elects to count as dollar exports not only the goods that we give away or sell abroad at cut prices but also those that we can export only because of our governmental subsidies. This practice swells our exports unjustifiably. If that practice were stopped our merchandise balance would show a deficit. Also we total up our imports on their foreign value rather than what they cost us landed at our ports of entry. This practice undervalues our imports by several billions of dollars a year. The upshot is that our trade deficit is in the magnitude of $5 or $6 billion in terms of commercial competitive trade instead of having a surplus as reported by the Department of Commerce.

These facts have been concealed too long. Their concealment has abetted the perpetuation of a trade policy that is against the national interest and has prevented the adoption of prudent restraints on imports that will prevent their running wild.

The great surge in imports has been explained by the "extraordinary increase in domestic demand." Yet the experience of Japan, West Germany and Italy thoroughly contradicts that explanation. Those countries, too, have experienced a great expansion at home. In spite of that they nevertheless also made great strides in their exports. Some other factor must explain our trade debacle. Only those who will not see will fail to perceive the real reason. This is simply that other countries, with their new productive technology and their lagging wages, can and do out-compete us both here and in foreign markets.

Unless something is done soon, not indeed, to reverse the trend, but to keep the imports within reasonable bounds of growth—not a cutback, but a moderation—a bitter reaction will set in, not only among the manufacturers, growers and producers who are being injured, but by labor as well. The latter is already showing signs of unrest from this source. National unions that formerly supported the freer trade policy are shifting their position because they see in unregulated imports the evaporation not only of actual jobs but of potential jobs upon which the employment of their members depends in the future.

Such favorable trade balance as we do still enjoy in some sectors is confined to a very few products, most notably, and preponderantly, machinery, including automobiles, aircraft, and computers. In 1969 we exported $6.6 billion more in this category than we imported. Chemical exports on a much smaller scale were also in a surplus position.

Machinery exports, both electrical and nonelectrical, have indeed continued at a high pace, thanks largely to our heavy investments in branch plants abroad, but imports have been gaining impressively. In 1960 we exported 4.7 times as much machinery and transport equipment as we imported. In 1969 the ratio was considerably less than 2 to 1. This is by far the heaviest single item in our exports. In 1969 it was 43% of our total exports. The 1960–69 trend has continued. Exports of machinery exclusive of transport equipment grew 46.2% since 1965 through 1969, but imports rose 154% or more than three times as rapidly, in this 5-year period.

In "Other Manufactured Goods" our exports rose from $3.8 billion in 1960 to only $7.0 billion in 1969. During the same period imports of "Other Manufactured Goods" rose from $4.5 billion in 1960 to $12.0 billion in 1969. In other words, exports of this class of wide variety of products rose 83%; imports rose 163%. Among the products included in this broad class of products are iron and steel mill products, shoes, paper and manufactures, textiles, clothing, glass, glassware and pottery, clocks and watches, nails, screws, nuts and bolts, toys and athletic goods, rubber and plastic manufactures, bicycles, bicycle parts, motor scooters, hand tools, plywood, cameras, musical instruments, radio and TV sets, phonographs and records, musical instruments, sound recorders, optical goods, etc. In this group as a whole we suffered a deficit of $5 billion in 1969, even when imports are tabulated on their foreign value rather than landed at our ports of entry.

In agricultural products we have import problems in strawberries, tomatoes, citrus fruits, canned olives and mushrooms, meat, lamb, potatoes, dairy products, honey, mink, fish, oysters, crabmeat, flowers, etc. In minerals we have a trade deficit in petroleum, copper, lead and zinc, bauxite and aluminum. Added to manufactured goods and agricultural products the total deficit far outstrips the surplus in machinery and chemicals.

Employment in the lines of products constituting these "Other Manufactured Goods" exceeds employment in the limited lines in which our exports have been enjoying a surplus, by some 2 million workers.

Our national policy is therefore in the posture of helping one broad industry (machinery and transport equipment, in which our lead is narrowing ominously in any event) at the expense of a wide spectrum of industries wherein imports are overrunning our market almost at will.

In view of the rapid narrowing of the export surplus in machinery and transport equipment, as noted previously, the exceedingly unstable foundation of our fictitious over-all surplus provides little ground for confidence.

Moreover, since duties will be cut still further under the Kennedy Round, the outlook for improvement of our trade position must be regarded as bleak.

The reduction of our tariff has gone so far, and since its resurrection is hardly probable, we must look elsewhere for relief.

Imports of optical goods, which are your immediate concern, have followed a rather common pattern. You have been losing out in terms of the share of domestic consumption supplies by your companies. In the case of lenses you have seen imports come from some 7% or 8% of domestic consumption as recently as 1965 to some 18% in 1969.

Imports of frames which had already taken 22% of your market in 1965 rose to about 33% in 1969.

In each instance the invasion of imports has been relentless; and there is nothing now on the scene to suggest that the penetration will not proceed toward greater deprivation of our market.

The tariff would not, in any case, be of much help, unless it were raised to seemingly exorbitant levels, because of the low unit cost of foreign producers, especially the Japanese.

We therefore seek a different means of holding imports at a reasonable level.

Recently legislation has been introduced in the Congress that would accomplish a moderation of imports. This legislation which was introduced in the Senate by the Chairman of the Finance Committee, Senator Russel Long, has been introduced in the House by some sixty-five Members, among them 4 Committee chairmen. It is called the Fair International Trade bill.

This bill would establish ceilings on imports for the purpose of preventing imports from running wild. It would generally accept present levels of imports but would hold future penetration to a growth on a par with the increase in domestic consumption of the same product. This might be 10%, 15%, 30%, 40% or more of our market, depending on the penetration already achieved.

Import quotas would be imposed only if imports should break through the ceiling for a period of six months.

If the ceiling principle is adopted domestic industries would be assured of holding a fair share of the domestic market, no matter how low the foreign production costs. The notion that imports should be given priority over domestic production to the extent of bulldozing the jobs of our workers out of the way and leaving it up to us to pick up the pieces and repair the wreckage by a system of adjustment assistance is a wholly unjustifiable philosophy and represents an amazingly harsh attitude in point of public policy.

That foreign producers should be able to pay wages that would be illegal in this country and then build a destructive trade on that basis with the blessing of our Government, seems incredible. Yet, that is the basic philosophy of adjustment assistance. It proceeds on the wholly untenable assumption that if an American producer cannot compete with imports he is necessarily inefficient. He is guilty without trial, and must take the consequences. Yet on a relative efficiency basis, which is to say, output per man-hour or per man-year, American industry continues to lead the world. This lead

is shrinking, however, and the low foreign wages combined with rising foreign technological productivity produces the foreign competitive advantages.

We cannot hope to avoid our own industrially in this type of competitive climate. The fact of our competitive defeat from the persistence of lower foreign wages can no longer be concealed by sleight-of-hand trade statistics. The trend of rising imports will force a recasting of our obsolete trade policy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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. Without objection, it is so ordered.

## CAMBODIAN CONFERENCE

Mr. HOLLAND. Mr. President, I have just noted on the Associated Press ticker which is outside the Chamber a reference to the Cambodian situation which I will place in the RECORD at this time for the information of the Senators.

It reads:

CAMBODIA CONFERENCE

WASHINGTON.—The United States endorsed today a call for an Indochina peace conference issued by Asian and Pacific Nations meeting at Jakarta, Indonesia.

A proposal for re-activating international control machinery to preserve Cambodia's badly battered neutrality also got American backing. A State Department statement said the United States "does not wish to see any change of Cambodia's long-standing policy of neutrality and it has no intention of interfering in the internal affairs of Cambodia."

"The U.S. Government," the statement continued, "also supports the conference's call for reactivation of the international control commission made up of India, Poland and Canada and for consultations looking toward the early convening of an international conference to find a just, effective, peaceful resolution of the present situation."

## AFTER 176 DAYS NO ACTION BY THE JUSTICE DEPARTMENT ON THE FITZGERALD CASE

Mr. PROXMIRE. Mr. President, 176 days ago, on November 22, 1969, I wrote to the Justice Department asking for an immediate investigation into the firing of A. E. Fitzgerald after he testified before a committee of the Congress.

What appears to be a clear violation of the criminal law occurred. It is a crime to threaten, influence, intimidate, or impede any witness in connection with a congressional investigation. It is a crime to injure a witness on account of his testimony to a committee of the Congress.

When A. E. Fitzgerald testified, truthfully and at our request, that there was a $2 billion overrun on the C–5A, things began to happen to him. He lost his tenure on the spurious grounds that there was a computer error. He was taken off the examination of weapons system and assigned to cost problems at bowling alleys in Thailand and messhalls in the Air Force.

In turn he was ostracized, lied about, investigated, and fired.

The Justice Department has started a crusade for law and order. But when will it include the Pentagon in its effort?

What we have is a double standard. I am reminded of the old English quatrain of unknown origin.

The law locks up both man and woman,
Who steals the goose from off the common.
But lets the greater felon loose,
Who steals the commons from the goose.

I still await word of Justice Department action on the Fitzgerald case.

## SENATE CONCURRENT RESOLUTION 67—SUBMISSION OF A SENATE CONCURRENT RESOLUTION REQUESTING THE PRESIDENT TO PROCLAIM NATIONAL HALIBUT WEEK

Mr. BYRD of West Virginia. Mr. President, on behalf of the able senior Senator from Washington (Mr. MAGNUSON) I submit for appropriate reference a concurrent resolution. I ask unanimous consent that a statement by the distinguished Senator from Washington (Mr. MAGNUSON) on the measure be printed in the RECORD.

The PRESIDING OFFICER (Mr. DOLE). The concurrent resolution will be received and appropriately referred; and, without objection, the statement will be printed in the RECORD.

The concurrent resolution (S. Con. Res. 67), which reads as follows, was referred to the Committee on the Judiciary:

S. CON. RES. 67

*Resolved by the Senate (the House of Representatives concurring)*, That the President is authorized and requested to issue a proclamation designating the seven-day period beginning May 18, 1970, and ending May 24, 1970, as "National Halibut Week" and calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

The statement of Senator MAGNUSON is as follows:

Mr. MAGNUSON. Mr. President, I submit for appropriate reference, a concurrent resolution authorizing and requesting the President of the United States to proclaim the week beginning May 18, 1970, and ending May 24, 1970, as "National Halibut Week." In addition, the resolution calls upon the people of the United States to observe such week with appropriate ceremonies and activities.

Mr. President, this will be the sixteenth observance of the special week and also marks the fifteenth anniversary of the founding of the sponsoring organization, the Halibut Fishermen's Wives Association, based in Seattle.

This group deserves such credit for its regular effort, not only during the observance of Halibut Week, but throughout the year toward a better appreciation of this fine fish and fishery.

## PROGRAM

Mr. BYRD of West Virginia. Mr. President, shortly a motion will be made to adjourn. The Senate will convene tomorrow at 10 a.m. Immediately after disposition of the reading of the journal tomorrow the able senior Senator from New York (Mr. JAVITS) will be recognized for not to exceed 40 minutes, to be followed by the distinguished Senator from Georgia (Mr. TALMADGE), who will be recognized for not to exceed 30 minutes, and he will be followed by the able Senator from Missouri (Mr. SYMINGTON), who will be recognized for not to exceed 1 hour.

## ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow, following the remarks of the able Senator from Missouri (Mr. SYMINGTON), there be a period for the transaction of routine morning business and that speeches therein be limited to 3 minutes.

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

## ORDER FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the close of the period for the transaction of routine morning business tomorrow the unfinished business be laid before the Senate.

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

## ADJOURNMENT TO 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 4 o'clock and 21 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, May 19, 1970, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Senate May 18, 1970:

AMBASSADOR

John G. Hurd, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of South Africa.

INTERSTATE COMMERCE COMMISSION

W. Donald Brewer, of Colorado, to be an Interstate Commerce Commissioner for the term of 7 years expiring December 31, 1976, vice Paul J. Tierney.

CORPORATION FOR PUBLIC BROADCASTING

The following-named persons to be Members of the Board of Directors of the Corporation for Public Broadcasting for terms expiring March 26, 1976:

Frank E. Schooley, of Illinois (Reappointment).

John Hay Whitney, of New York, vice Saul Haas, term expired.

Jack Wrather, of California, vice Erich Leinsdorf, term expired.

## CONFIRMATION

Executive nomination confirmed by the Senate on May 18, 1970:

CALIFORNIA DEBRIS COMMISSION

Brig. Gen. Frank A. Camm, Corps of Engineers, U.S. Army, to be a member of the California Debris Commission, under the provisions of section 1 of the act of Congress approved March 1, 1893 (27 Stat. 507; 33 U.S.C. 661).