rate in 1968, for example, was the lowest in American history.

The bureau's new projections foresee a population of between 266 million and 320 million by the year 2000, compared with about 205 million now. The 1967 projections ranged from 283 million to 361 million. The median decline in the projections amounts to 29 million since 1967.

All of these projections are based on certain assumptions about births, deaths and immigration in the years ahead. They may prove to be grossly inaccurate because it is impossible to predict future attitudes toward family size and its effect on the environment or to predict effects of possible abortion law changes.

In the early years of the last decade, birth rates were relatively high. If they had continued at that level—3.35 children for each woman during her child-bearing years—the population of the United States in the year 2000 would have been 361 million. But they did not continue and, in fact, fell off sharply after 1963.

The new projections are based on four possible birth rates and continued net immigration in the years ahead. The highest projection—called Series B—assumes that the birth rate over the next 50 years will match the birth rate of the early 1950s—3.1 children per woman.

If the Series B assumptions are realized, the population in 2000 will be 321 million.

The Series C projection is based on the fertility rate experienced in the 1940s—2.78 children per woman. This would produce a population of 301 million thirty years from now.

Series D is based on the fertility rate of the late 1920s which is approximately the current rate—2.45 children per woman. It would produce a population of 281 million in 2000.

Series E is based on a rate of 2.11, which is the rate necessary to produce just enough babies to replace the people who die. If that rate prevails for the next 30 years, the population in 2000 will be 266 million. The growth would come about because of the inrceased number of women of child-bearing age and because of continued immigration.

The Census Bureau makes one more projection—a hypothetical Series X. It assumes a fertility rate of 2.11 with no net immigration after 1969. Under those conditions, said the bureau, the U.S. population would level off at 276 million in the year 2037.

The tentative and risky nature of population projections is recognized by the bureau and is illustrated by the errors made in 1967.

Similar miscalculations may be involved in the current projections. The highest projection—Series B—is in line with what young married women are currently saying about family size.

But those expectations could change, the bureau said, "in view of the current concern with population growth and its effect on the environment, along with possible changes in the laws on abortion." It is even possible, said the bureau, that the fertility rate could drop below the level needed for population replacement—2.11 children per woman.

If that kind of stability is reached, the nature of the American population in 2037 would be far different from what it is today. The median age would rise from 27.7 to 37.3 Only 20 per cent of the people would be under the age of 15, compared with 29 per cent today. The percentage of people over 65 would be 16 per cent, compared with 10 per cent now.

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## CULVER CITES AIR POLLUTION DAMAGE TO FARM PRODUCTION

### HON. JOHN C. CULVER

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Friday, August 14, 1970*

Mr. CULVER. Mr. Speaker, in recent months much attention has been drawn to the damage which modern society inflicts upon our environment, but not enough emphasis has been placed on the damage suffered by the farmers from air pollution. We hear how our lakes and streams are becoming choked with poorly treated sewage and industrial wastes. We hear how the air of our cities is being poisoned by the exhaust fumes from automobiles and industrial smokestacks. And we hear how our landscape is being clogged with rusting automobile carcasses and other solid wastes.

This realization is long overdue. In the flood of concern for the polluted air and water afflicting our cities, however, sight is too often lost of the great damage done to the farmer and the production of our national food supply by these pollutants. Of course, rural residents have long been aware of the problems caused by dust originating from many different sources. It is the danger posed by certain chemicals on which more attention should be focused. According to the best available estimates air pollutants alone cause $500 million in crop and livestock damage annually.

Sulfur dioxide from fuels used in homes and factories can slow down and stunt the growth of alfalfa, cereal grains, sweet corn, and a number of other crops.

Airborne fluorides have become a serious toxicant to vegetation and animals over the last few decades in areas near certain industries, including aluminum, steel, and some nonferous metal plants and phosphate fertilizer manufacturers. Fluorides act as cumulative poisons to plants. For example, 0.005 parts per million of hydrogen fluoride in the atmosphere will be concentrated to 178 p.p.m. dry weight of corn foliage in only 150 hours. Large amounts of fluorides in plants can cause chronic fluorosis in cattle and other livestock. Although small amounts of fluorides can be safely ingested by livestock if they are in good health, amounts in excess of 1 or 2 milligrams per kilogram can cause excessive wearing of the teeth, pitting of the enamel, and exposure of the dentine. Severe cases can result in bone damage.

A number of dangerous pollutants are produced through the reaction of sunlight on the exhaust gases of motor vehicles. Ozone is one of these and in sufficient quantities can be a threat to field and forage crops. A concentration of 0.25 p.p.m. for 2 hours will burn back the tips of onions and will kill 20 percent of the foliage. It has been responsible for the kill of the ponderosa pine in the San Bernardino National Forest 80 miles east of Los Angeles.

Peroxyacetyl nitrate—PAN—another chemical created by the reaction of sunlight on exhaust gases, can be dangerous to many field crops including alfalfa and a long list of leafy vegetables. Some gases, such as nitrogen dioxide, may slow plant growth without causing visible injury.

Also originating from the exhaust fumes of automobiles and from the tetraethyl lead added to gasoline are lead compounds. These have often been found concentrated in large quantities, especially in grasses along highways. Although there is little evidence of lead poisoning to livestock up to the present time, numerous authorities believe that the situation is becoming critical.

Except in the Far West and the East damage from sulfur dioxide, ozone, and PAN is presently limited to the areas immediately surrounding urban areas. Farmers all across the country, however, should be aware of the potential danger to their own crops if this pollution spreads. Although agriculture adds less than 1 percent of the contaminants into the atmosphere, and although farmers generally live far enough away from cities not to be overly burdened by oppressive air conditions, all should realize the large stake they have in reducing the poisons we are sending into the air every day.

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# SENATE—*Wednesday, August 26, 1970*

*(Legislative day of Tuesday, August 25, 1970)*

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota.

The Reverend Lester Cotto-Thorner, pastor, Orlando United Methodist Circuit, Orlando, W. Va., offered the following prayer:

Almighty God, direct and bless those of our generation who speak where many listen, and write what many read. Shape our desires and our deeds in accordance with Your purpose for the world, that, seeking first Your kingdom and righteousness, we may set forth the true welfare of mankind. Guide the rulers of this Nation and of the world with Your wisdom, and restrain the passions of the people, so that bloodshed may be averted and peace be preserved.

Look, O Lord, upon Your family of nations and men, to whom You have given power in trust for our mutual health and comfort. Save us, O Lord, and help us, lest we abuse Your gifts and make them our misery and ruin. Heal our divisions, cast out our fears, and renew our faith in Your unchanging purpose of good will, and peace on earth.

In Thy name we pray. Amen.

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## THE REVEREND LESTER COTTO-THORNER

Mr. RANDOLPH. Mr. President, I am very grateful for the understanding of the leadership in permitting me this privilege to speak at this moment.

The Senate prayer this morning was

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given by a young man, the Reverend Lester Cotto-Thorner of West Virginia. He is 21 years of age. I believe, from a search of the records, that he is the youngest minister to offer in the Senate the prayer at the beginning of a daily session.

He is a student at the West Virginia Wesleyan College, and while at this institution of higher learning he is serving seven small churches, of the United Methodist faith, in the central section of our State.

One of the churches is at Clover Fork. Out of its small membership of eight, the youngest member is 92 and the oldest member is 97.

I felt that it was unique that we have such a young man here today. I know that he has been delighted with the opportunity to join the Senate in the service of a beginning of this body's deliberations with the presentation of the morning prayer.

We are grateful for the cooperation of the Chaplain of the Senate, the Reverend Dr. Edward L. R. Elson, in Reverend Cotto-Thorner's appearance.

## DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication from the President pro tempore of the Senate (Mr. RUSSELL).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., August 26, 1970.*

*To the Senate:*

Being temporarily absent from the Senate, I appoint Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
*President pro tempore.*

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

## THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, August 25, 1970, be approved.

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.

## MESSAGES FROM THE PRESIDENT

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

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. McGOVERN) 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.)

## THE SENATE'S SCHEDULE—A PLEA

Mr. SCOTT. Mr. President, this is simply a plea. All Senators understand that we will be here every morning at 9 o'clock, and on Saturday morning at 10 o'clock. I express the hope that some Senators may find it possible to restrain the extension of their rhetoric, and that perhaps we may yield back some of the time allotted for debate, because, assuredly, if some of the time is not yielded back, we will not finish the bill before Labor Day. In that case I would not blame the general public for blaming us and saying that we have wasted the time of the country; that we have needlessly palavered where we might have produced.

I, therefore, hope that some mutual understanding will arise in this Chamber to permit some degree of limitation of debate, so that we may be less concerned about what the people read about us and more concerned about what the people think about us.

If some sort of spirit can be engendered in this Chamber, we may finish the pending bill before Labor Day, and we may even be able to go home before Christmas. But if we continue to think only in terms of the beauty of the written word as it appears in the CONGRESSIONAL RECORD, the turkey which will be envisioned by the public will not be the turkey of Thanksgiving but the turkey which this body will then come to suggest itself to be, as symbolic of what we have accomplished.

## AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business.

The Senate continued with the consideration of the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the amendment of the Senator from Wisconsin (Mr. NELSON). Time for debate on this amendment is 3 hours, with the time to be equally divided between the proponents and the opponents of the amendment.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be equally charged against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Who yields time?

Mr. STENNIS. Mr. President, I yield 5 minutes to the Senator from New Hampshire.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. McINTYRE. I yield.

## ORDER FOR ADJOURNMENT TO TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate stand in adjournment instead of in recess at the close of business today until 9 a.m. tomorrow.

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

(Later in the day, this order was modified to provide for the Senate to adjourn until 8:30 a.m. tomorrow.)

## AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The Senate continued with the consideration of the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Mr. McINTYRE. Mr. President, one of the peripheral issues in the debate which will take place this morning on herbicides is the use to which chemicals containing 2,4,5-T may now be put in the United States.

It is well recognized that domestic agencies of the Government have acted to restrict some domestic uses of such chemicals. It is less well known, however, that many domestic uses are still permitted.

Accordingly, a brief summary of the present situation might be useful.

On 14 April, 1970, the Secretaries of Agriculture, Interior, and Health, Education, and Welfare, pursuant to the Interagency Agreement for Protection of the Public Health and the Quality of the Environment in Relation to Pesticides, issued a statement on chemicals containing 2,4,5-T, pointing out the dangers involved and the steps needed to meet those dangers.

Mr. President, I ask unanimous consent to have the statement printed in the RECORD at the conclusion of my brief remarks.

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

(See exhibit 1.)

Mr. McINTYRE. Following the issuance of this statement, the Department

of Agriculture published two regulations designed to implement it. These were as follows:

First. Pesticide regulation No. 11.—This regulation suspended the use of liquid formulations of 2,4,5-T on lakes, ponds, ditch banks, around homes and on food crops. It prohibited manufacturers from making interstate shipments of 2,4,5-T intended for these specific uses and required manufacturers' labels to be changed so as not to list any of the uses cited as recommended targets for the chemicals' application.

Second. Pesticide regulation No. 13.—This regulation suspended use of granular formulations of 2,4,5-T around homes, recreation areas, and on crops grown for human consumption.

Shortly thereafter, the Department of the Interior announced that chemicals containing 2,4,5-T would not be used on any lands under its administrative control, such as national park lands. The Department of Agriculture, however, is continuing to use chemicals containing 2,4,5-T on some lands under its administration, such as national forest lands.

The following is a brief summary of the areas in which the use of chemicals containing 2,4,5-T is and is not permitted:

| Areas on which 2,4,5-T can still be used: | *Million acres* |
|---|---|
| U.S. national forests | 187 |
| State, county and private forests | 180 |
| Forest industry (paper, lumber) | 216 |
| Nonfarm grazing | 317 |
| Pasture grassland | 487 |
| Rights of way (unknown) | ------- |
| Total | +1,387 |
| **Areas on which 2,4,5-T may *not* be used:** | |
| Department of Interior | 534 |
| Food crop land | 385 |
| Pasture/crop land | 109 |
| Urban areas (roads, etc.) | 160 |
| Farmsteads | 29 |
| Total | 1,217 |

I hope, Mr. President, that this information will be useful to Members concerned about our use abroad of chemicals controlled at home. According to information furnished me by the Defense Department, the series of restrictions to which I have referred have affected only 10 percent of the domestic 2,4,5-T market.

EXHIBIT 1

2,4,5-T

A statement prepared in accord with the Interagency Agreement for Protection of the Public Health and the Quality of the Environment in Relation to Pesticides. Department of Agriculture, Department of Interior, Department of Health, Education, and Welfare.

Secretaries Hardin, Finch and Hickel today announced the suspension by the Department of Agriculture of almost all registered uses of liquid formulations of the weed killer, 2,4,5-T for use around the home and registered uses on lakes, ponds, and ditch banks.

These actions are taken pursuant to the Interagency Agreement for Protection of the Public Health and the Quality of the Environment in Relation to Pesticides among the three Departments.

They also announced that the Department of Agriculture intends to cancel registered uses of non-liquid formulations of 2,4,5-T around the home and the registered uses on all food crops (apples, blueberries, cereal crops, rice and sugar cane).

The suspension actions were based on the opinion of the Department of Health, Education, and Welfare that contamination resulting from uses around the home and in water areas could constitute a hazard to human health.

New information reported to DHEW on Monday, April 13, 1970 indicates that 2,4,5-T, as well as its contaminant dioxins, may produce abnormal development in unborn animals. Nearly pure 2,4,5-T was reported to cause birth defects when injected at high doses into experimental pregnant mice but not in rats. No data on humans are available.

These actions do not eliminate registered use of 2,4,5-T for control of weeds and brush on range, pasture, forest, rights of way and other nonagricultural land. Users are cautioned that 2,4,5-T should not be used near homes or recreation areas. Registered uses will be reviewed to make certain that they include adequate precautions against grazing treated areas long enough after treatment by 2,4,5-T so that no contaminated meat or milk results from animals grazing the treated areas.

While residues of 2,4,5-T in meat and milk are very rare, such residues are illegal and render contaminated products subject to seizure. There is no tolerance for 2,4,5-T on meat, milk or any other feed or food.

USDA will issue guidelines for disposal of household products containing 2,4,5–T.

BACKGROUND INFORMATION

Secretary Finch's Commission on Pesticides, which reported its findings in November and December 1969, expressed concern that research conducted at Bionetics Research Laboratories, under the Direction of the National Cancer Institute, indicated that 2,4,5–T had produced a number of birth defects when fed or injected into certain strains of mice and rats. Because the test material contained substantial concentrations of chemical impurities (dioxins), the birth abnormalities could not be attributed with certainty either to 2,4,5–T or to the impurities known to be present. Representatives of the chemical industry pointed to evidence of extreme potency of the impurities as toxic agents, demonstrated that 2,4,5–T now being marketed is of a greater purity than that which had been tested in the Bionetics experiments and urged that further testing be undertaken to clarify the questions raised.

Responding to this suggestion and utilizing materials supplied by one of the major producers of 2,4,5–T scientists at the National Institute of Environmental Health Sciences promptly initiated studies to determine whether 2,4,5–T itself, its impurities, or a combination of 2,4,5–T and its impurities had caused the earlier findings, and whether the 2,4,5–T now being marketed produces birth abnormalities in mice and rats. The experiments were completed last week and the statistical analyses performed over the weekend. On Monday and Tuesday of this week the analyses of the data were presented to the regulatory agencies of the Federal Government and to the members of the Cabinet.

The dioxin impurities and the 2,4,5–T as it is now manufactured, separately produced birth abnormalities in the experimental mice. Because absolutely pure 2,4,5–T was not available for testing, it is possible only to infer from certain of the observations that the pure 2,4,5–T probably would be found to be teratogenic if it were tested. But, since pure 2,4,5–T is not marketed and could not be produced in commercial quantities, this is not a practical issue for consideration.

Believing that prudence must dictate action in these circumstances, the regulatory agencies of the Federal government will immediately move to minimize human exposure to 2,4,5–T and its impurities. The measures to be taken will be designed to provide maximum protection to women in the childbearing years by eliminating formulation of 2,4,5–T from household, aquatic and recreational area uses. Its use on food crops will be cancelled, and use on range and pastureland will be controlled. Maximum surveillance of water supplies and marketed foods will be maintained as a measure of the effectiveness of these controls. These measures will be announced more specifically in the Federal Register in a very few days.

While the restriction to be imposed upon the use of this herbicide may cause some economic hardship, we must all cooperate to protect human health from potential hazards of 2,4,5–T, other pesticides and the dioxins.

The chemical industry should be commended for its prompt and willing cooperation with the National Institute of Environmental Health Sciences in the studies to clarify questions raised by the initial studies of this herbicide and for working closely with the FDA in the other studies still underway. We look to the full support of industry, agriculture and the home gardner in insuring the safe use of 2,4,5–T and other pesticides which contribute in important ways to the welfare of the Nation.

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

Mr. McINTYRE. I yield.

Mr. NELSON. Did I understand the Senator to say that 2,4,5-T may not be used on Department of Interior land but that it is permitted to be used in the national forests?

Mr. McINTYRE. That is correct.

Mr. NELSON. Does the Senator have any knowledge of the reason for the permission of the use on lands under the control of one department but not under the control of the other department?

Mr. McINTYRE. No. I just suspect the Department of Agriculture and the Department of Interior differ on the need for a prohibition of the chemical insofar as lands under their control are concerned.

Mr. NELSON. Would it not indicate to the Senator that apparently in the Department of Interior the environmentalists, the ecologists, and the scientists decided it is too dangerous a chemical for them to permit it to be used on Interior Department land.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. McINTYRE. Will the Senator from Mississippi yield to me for 5 additional minutes?

Mr. STENNIS. I yield 5 minutes to the Senator from New Hampshire.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized for 5 additional minutes.

Mr. NELSON. My question is: Would it not appear to the Senator that the Department of Interior—which traditionally has been more concerned about the environment than the Department of Agriculture has a more sound position than the Department of Agriculture?

Mr. McINTYRE. Some might perhaps claim that the Department of Interior is a little more concerned with the environment. I, myself, have no evidence on which to base such a statement.

One of the problems in connection with the amendment offered by the Senator from Wisconsin and the Senator from New York is that there are differing opinions on the effects of these herbi-

cides, to the extent that reasonable people can differ on their future and present danger. That is why we find some experts expressing grave concern about the future of the mangrove forests, while others are saying that secondary forests should, in the natural course of events, be reestablished in 10 to 20 years. There are differing opinions on the effects of these chemicals.

Mr. NELSON. I wonder if the Senator would advise me which report he is referring to? The Tschirley report said it would be 20 years. Then the Pfeiffer report, which came after the Tschirley report, disagreed on the ground that it would take longer because it felt Dr. Tschirley had not taken into consideration the fact that the ground was hardened and was not reseeding naturally.

Does the Senator have a report contradicting that, the one saying it would take 20 years and the Pfeiffer report, following the Tschirley report, saying it would take more than 20 years for reforestation to occur?

Mr. McINTYRE. No; I think that is probably correct.

I am just trying to point out that the Tschirley report and the Pfeiffer report differ over the effects and the potential danger of these herbicides, that the scientists, biologists, and botanists of this country do not all foresee the same horrible consequences of which the Senator has spoken.

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

Mr. McINTYRE. I yield.

Mr. NELSON. In what way do the Tschirley report and the Pfeiffer report differ, except that the Pfeiffer report, which was made subsequent to the Tschirley report, says it is worse than Tschirley says it is? I do not think there is any dispute. The dispute is over how many years it will take a mangrove forest to recover. One of the reports says 20 years. Another one says it will take longer than that. That is not a dispute about the devastation that occurs; it is just a dispute about how long it will take before there will be a recovery from the serious intrusion into the environment, in this case the mangrove forest.

Mr. McINTYRE. I read the Tschirley report, and it has far from the alarming tenor that would lead the Senator from Wisconsin and the Senator from New York to bring in an amendment which says that the U.S. Army should suddenly be barred from using herbicides in Vietnam. Tschirley says that he was there only 30 days and did not have a chance to go into territory held by the enemy, but that as far as he could determine our defoliation program will not produce permanently damaging effects.

Let me ask the Senator a question. Under whose auspices did Dr. Pfeiffer go to Vietnam?

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. NELSON. Mr. President, I yield myself 5 minutes.

He went there under his auspices. He is a physiologist at the University of Montana, a man of considerable distinction in his field.

Mr. McINTYRE. Is the Senator talking about Dr. Pfeiffer?

Mr. NELSON. Yes.

Mr. McINTYRE. I think Dr. Pfeiffer was the one who said that in a journey somewhere across Vietnam he did not see a living plant, but that had the vegetation in question not been destroyed he would probably not have returned alive.

Mr. NELSON. Would the Senator mind addressing himself to this question: The military, as the Senator knows, takes the view that we need to spray these defoliants for perimeter defense, that we need to spray them along the waterways to destroy enemy cover and on crops to deny them food. It also takes the view that we need to spray them along the trails to expose their view from the air. As a consequence of this military policy, we have sprayed about 100 million pounds of agents orange, blue, and white that we have been talking about here. That is 6 pounds for every man, woman, and child in South Vietnam. One of these agents contains arsenic—54 percent. The agent 2,4,5-T and the agent 2,4-D have both been demonstrated to be teratogenic—which means that they deform the fetus as demonstrated in several animal tests. We have now sprayed approximately 6 million acres, an area almost the size of Massachusetts.

Does not the Senator have any real concern about this? Is he not worried about the long-term ecological implications? Is he not concerned about the frightening parallel, thalidomide? Thalidomide was discovered to be teratogenic too. That that drug went into the marketplace and was prescribed to women all over the world? It did not hurt the user, but suddenly we began to see in Germany, France, South America, Spain, babies being born with no arms and legs, because they had received a teratogenic substance just as 2,4,5-T is and just as 2,4-D is.

Does it not concern the Senator that we, as the only nation in the world, in the history of the world, have now sprayed 100 million pounds of these herbicides over the South Vietnam countryside as a matter of military tactics?

We now know that these herbicides have a fetal deforming effect. That has been proved. We know it kills the mangrove forests. We know two sprayings of it will kill 50 percent of the hardwoods. One spraying will kill 10 percent. Yet we are continuing the program.

Does not the Senator have some worry about what kind of environment we are going to leave the Vietnamese when we get out of there? Does he know what the implications are? Does he have enough scientific information to assure us that we are not sewing the seeds of ecological disaster? No he does not. Nobody knows. But all thoughtful scientists are concerned if not alarmed.

All the scientists are worried about it—all but the military at least in their public posture. However, they are worried about it, too, if we look at some of their classified documents, as the Senator knows.

Mr. McINTYRE. In answer to my good friend from Wisconsin, let me say that the Senator from New Hampshire——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD of West Virginia. Mr. President, in behalf of the Senator from Mississippi, I yield 2 minutes to the Senator from New Hampshire.

Mr. McINTYRE. Of course, the Senator from New Hampshire, like every other Senator, is concerned about the ecological effects of herbicides.

The point I want to make here this morning is that these herbicides are used for the protection and safety of the American fighting man, and that this immediate benefit has to be weighed against the possible ecological consequences. It is not a clear-cut case.

We have no figures or statistics to give the Senator, to tell him how many American lives have been saved by the use of defoliants in Vietnam, but we do know that they have been effective in this regard.

Mr. NELSON. Mr. President, if the question is that pure and that simple, and the only test of the conduct of the American military is the safety of American boys, why do we not drop the nuclear bomb? That would finish it in a hurry.

Mr. McINTYRE. I think that the effects of a nuclear bomb are far more clear-cut than the effects of herbicides. But in response to the Senator's earlier question, I have the same fears as he does about the ecological future of America and the world.

I question, however, whether the Defense Department has shown less concern about that future than other agencies. No one was concerned until the thalidomide tragedy and Rachel Carson's publication of "The Silent Spring." The Department of Interior and all the rest were just as dumb about it; is that not right?

Mr. NELSON. "Stupid" is a better word.

Mr. McINTYRE. All right. But we should not regard the Defense Department as the big ogre.

Mr. NELSON. But now we know; so why do we not stop it?

I should like the Senator to address himself to this point: On the floor of the United Nations General Assembly last fall 80 nations of the world voted to declare that the defoliants, the antiplant chemicals, the herbicides were, in their judgment, to be proscribed from use under the Geneva protocol. Three nations voted no: The United States, Australia, and Portugal. We now sit here as the only nation in the world advocating——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. I yield myself 5 additional minutes.

Advocating the use of herbicides as a new instrumentality of warfare. The only nation. Does not the Senator think that leaves us in an indefensible position?

Mr. McINTYRE. I thought Australia and Portugal voted with us, did they not?

Mr. NELSON. Yes, they did. I said that. I said 80 to 3.

Mr. McINTYRE. I thought the Senator said "all the nations of the world."

Mr. NELSON. I read the statement of the Australians, and it made no sense

whatever on the merits. I could not find that Portugal made any statement at all. Ours was a weak position on technical grounds that the United Nations General Assembly did not have the authority to make legal interpretations of treaties.

But I ask the Senator, is this not an impossible position to defend? Here we are, trying to reach peace in the world; we are trying to stop the proliferation of nuclear weapons; we are trying to negotiate agreements on stopping the arms race; what does the Senator think about the position of the United States being the only country in the world that advocates establishing the legality of ecological warfare?

Mr. McINTYRE. Mr. President, I do not intend to get into the argument that is forthcoming in the U.S. Senate about the Geneva protocol and our position with regard to the riot control agents and herbicides. But, is it not true that we have consistently taken the position that these were outside the protocol?

Mr. NELSON. We have not acted on the protocol yet. The President took that position; I have not. We have not voted on it yet.

Mr. McINTYRE. Unfortunately, we are involved in a very tragic war over in Vietnam, doing our best, I think, to extricate ourselves. And herbicides have been helping us to do just that.

I think the Department of Defense would be the first to admit that they have made some mistakes in their use of herbicides; that they used them in indiscriminate fashion at times until rather recently.

We are talking now, however, about an amendment the Senator is offering that would prevent herbicides from being used on the moderate scale they are being used today.

Mr. NELSON. Moderate scale?

Mr. McINTYRE. Moderate scale as compared to the years 1967–69, and with the purpose of saving American lives.

Let me ask the Senator, suppose he were riding in a 2½-ton truck, down a dirt road in South Vietnam.

Would the Senator like to have the jungle which is over there right on top of him, or would he like to have that jungle about a thousand feet off to the right and left as protection against any ambush?

I believe that by the use of defoliants we have very substantially reduced the possibility of ambushes by Vietnam guerrillas.

Mr. NELSON. Mr. President, I have read all the documents the Defense Department has produced to justify military usage of these chemicals in Vietnam, the classified ones and the secret ones. They assert its use is to save life. An equally powerful argument can be made that it is costing us much more than we are gaining.

As the Senator well knows, we destroyed a whole lot of crops over there that were planted by civilians, to be used by civilians, and it has been a serious morale factor. If all the Senator is saying is that any instrumentality of war that appears to us to be helpful, we will use, why not spray those trails that they are on with mustard gas? We would just have to do that once, and that would be the end of the trail.

Mr. McINTYRE. I do not think that is a fair argument at all. The devastating and permanent effects of mustard gas, nerve gas, or nuclear weapons, for example, are indisputable. Those of herbicides are not.

Let me say that the troops over there, and the company commanders, the battalion commanders, and the brigade commanders have all written in report after report that these herbicides have saved lives and been great morale boosters to the American troops.

I am concerned for the safety of American troops over there. That is why I oppose the Senator's amendment.

Mr. NELSON. We went over there, presumably—and I am the only one left in the U.S. Senate who voted against all the appropriations to go—but we went over there, it was said, to defend the South Vietnamese. Is it the Senator's idea of defending a country that you indiscriminately spray 100 million pounds of chemicals over the land with no idea of the long-term consequences. Is that the way we are going to defend that country?

We say we are over there to protect American boys. We could have protected American boys better by never having gone in the first place.

What are we leaving behind us? Does the Senator know, when we destroy the mangroves along the Rung Sat and alter marine estuaries what the effect will be? Does he know that we may be destroying the habitat shell fish and other marine creatures from which the people get most of their proteins?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. Mr. President, I yield myself an additional 5 minutes.

What are we leaving behind for the Vietnamese? I do not think anybody can stand here and say that we are entitled to do anything that we think will be of any benefit to a soldier who is there. That is why we do not drop the nuclear bomb. That is why we do not use mustard gas. That is why we do not do all kinds of things in war, because we have decided that some of them at least are unacceptable instruments of warfare.

I do not think it is very civilized or very sensible to be spreading into the atmosphere pollutants that are likely to cause problems that nobody can predict.

The Senator well knows that picloram like DDT is a long lasting persistent chemical that remains in the environment for an indefinite time.

The Senator knows what we did out of our ignorance with DDT in this country.

All I am saying is that it is environmental warfare, and we have no notion of what is happening to the oceans, the rivers, the soil, the plants, the animal life, or the insect life, and we are going ahead and using it, anyway.

The Senator says that we use it in the United States. We have done many foolish things in the United States, and we will continue to do them, I assume, but there is a difference. As irrational as our use of these chemicals is in the United States, it is 2 pounds per acre, and we are using 27 pounds per acre over there, which is a lot more intensive dose. But neither makes any sense, in my judgment, even for agricultural purposes, when we consider the discoveries they have now made about the teratogenic effect of these chemicals as well as the unsettled questions about their unknown effects in the environment.

All I can say to the Senator is that, as I understand it, his defense is that we are entitled to use these things because we claim that the use of them saves American lives. Is that it?

Mr. McINTYRE. As far as ecological effects are concerned, all we are talking about is possibilities. The Senator does not know for a fact, for example, that 20 years from now the mangrove forests will not be reestablished.

Yet the military benefits of herbicides are certain. I am saying that as long as we are in Vietnam we cannot simply ignore this side of the question.

Mr. President, this is on my own time, if the time of the Senator from Wisconsin has expired.

Mr. STENNIS. Mr. President, I yield to the Senator from New Hampshire such time as he desires.

Mr. McINTYRE. The Senator has mentioned agent blue. Is that correct?

Mr. NELSON. Blue, orange, and white.

Mr. McINTYRE. And the Senator has mentioned picloram. Picloram was tested by the U.S. Department of Agriculture in Puerto Rico—a tropical environment—at concentrations 30 times those used in Vietnam. Even at these high concentrations it did not affect food crops or natural vegetation the following year. Tests of soil from areas in Vietnam sprayed with picloram revealed no picloram present 11 months after spraying. In very dry soils it may persist for very long periods, but in areas of heavy rainfall it is carried down into the lower layers of soil where it is ineffective.

Picloram is one of the least toxic of herbicides and has been fed to numerous laboratory and domestic animals at much higher doses than could possibly be attained by animals grazing on sprayed areas. None of these data indicate any effect on the animals or their offspring. Picloram does not accumulate in the food chain, as DDT does, for example, so there is no danger from animals grazing on sprayed land.

Cacodylic acid, on the other hand, was at one time a drug given directly to humans. It has been replaced by newer more effective drugs. There is considerable medical experience to attest that its toxicity is indeed comparable to that of aspirin. There is no scientific basis for fearing that the arsenic in it would be changed in nature to the more toxic state. In any event the more toxic form of arsenic has been widely used in some Asian countries on rubber and cocoanut oil plantations. Concentrations 100 times the concentrations used in Vietnam have been applied annually for a quarter of a century or more with no ill effects to humans or to the ecology.

Mr. NELSON. Let me respond to the Senator by saying, No. 1, that the problem with all these agents—herbicides, pesticides—is that we conclude that be-

cause we do not see any immediate damage, there is nothing dangerous in their use, and we begin to use them without extensive tests, without understanding what we are doing until it is too late.

We started using DDT 30 years ago. I recall being attacked 7 years ago for introducing a measure to ban the use of DDT. I could not get anybody in either House to join me in that because my friends who were interested in the environment said, "I will be attacked as a kook if I join you in legislation to ban the use of DDT." Yet, long before 7 years ago, the knowledgeable scientists were raising the alarms about the continued use of this slow degrading pesticide.

Then Rachel Carson came along and published "The Silent Spring," and she was attacked by many entomologists and other scientists all over the country as unqualified in this field. They said that what she was saying about the disastrous effects of the irrational introduction of slow degrading herbicides and pesticides into the atmosphere was simply wrong. She was not qualified to make such a judgment. Some entomologists who worked on it for the companies came to see me and said it was all nonsense.

What is the result? A disaster is the result. The Senator knows it and I know it. So, after 30 years of spewing hundreds and hundreds of millions of ponds of DDT into the atmosphere, just as we are doing with these chemical herbicides, we find out that DDT is everywhere. We find it in the fatty tissue of the Adelie penguin in the Antarctic, where no DDT has ever been used. In 500 samples of fish in rivers and lakes all across this country, all but a few had DDT in their fatty tissue.

We see that the peregrine falcon and the bald eagle are being driven to extinction now because they have ingested so much DDT, being creatures that feed at the end of the food chain. We find now that the hen cannot produce enough calcium to produce a shell strong enough to hold the chick.

These are some of the ramifications of the indiscriminate use of DDT. Everybody throws up his hands now and says, "Why did we do it?" We did it because we were ignorant about the consequences of indiscriminate use of very potent pesticides and herbicides, and we are proceeding on the same ignorant basis now with 100 million pounds of it in Vietnam.

If you cannot answer the questions—if neither the military, the scientists, the Senator from New Hampshire, or anybody else—cannot say what the effect is on human and the environment we should not use it.

If you cannot answer the question about whether those mangrove forests will ever recover, you should not use it. If you cannot answer the question about what the effect is on all living creatures in the forests we are destroying, you should not use it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. I yield myself 5 additional minutes.

If you cannot answer what is going to happen to all the shellfish and marine creatures in the estuaries that feed the people in Vietnam, you should not use it. If you cannot answer the question as to those people who eat those shellfish and other fish, if their tissue becomes infiltrated with picloram you should not use it. The only argument that anybody has to use it is that it is a defense weapon that is helpful to us. But we have no notion at all what that means to the environment in Vietnam or, for that matter, the rest of the world. The DDT we sprayed on the fields in Wisconsin and Minnesota, or New Hampshire, is over the Indian Ocean, it is in the Antarctic, it is all over the world because it is picked up by evaporation and goes all over the world. It is in the fatty tissues of practically every animal in the world.

So, I say to you, Senator, that we are doing exactly the same thing with this herbicide as we have so tragically done with DDT. Now we see what the prospects and the consequences are. All I say is, it is not moral for us to continue to use it. I cannot find any defense that is, on balance, on any cost-to-benefit ratio, in terms of human beings, or anything else, that justifies us to proceed to medicate the whole countryside—and that is what it is—without knowing what the results will be.

Mr. McINTYRE. The Senator should make that speech to the company commanders at the various bases and centers in Vietnam. He should make it to the men who have the job of patrolling the areas where they can be ambushed and killed. They would make clear that the short-term benefits of herbicides are quite considerable, and that these have to be weighed against long-term ecological possibilities.

Mr. President, I do not know whose time I am on, but I will yield myself 5 minutes.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from New Hampshire is recognized for 5 minutes.

Mr. McINTYRE. Mr. President, a number of the scientists who went over to Vietnam are confirmed opponents of our war effort and would admit that they went determined to condemn our herbicide program as a result.

Dr. Tschirley went over there with an open mind. I placed his report in the RECORD on yesterday.

Let me read some of the high points of his conclusions as a result of his 30-day study:

> One of the principal fears about exposing soil in the tropics is the possibility of increased laterization.
>
> About 30 percent of the soils of Vietnam have a potential for laterization.
>
> But I do not find it reasonable to conclude that the defoliation program in Vietnam would hasten the laterization process significantly because bare soil does not result from defoliation.

Tschirley continues with some of the conclusions he reached as a result of his visit and study:

> The defoliation program has caused ecologic changes. I do not feel the changes are irreversible, but complete recovery may take a long time. The mangrove type is killed with a single treatment. Regeneration of the mangrove forest to its original condition is estimated to require about 20 years.

On the question of the fish catch, he says:

> Fish catch has increased during a period of intensive treatment for defoliation, which surprised and pleased me.

His final recommendation is as follows:

> The desirability of ecologic research in Vietnam after the war ends cannot be overemphasized. The research should be administered through an institution that will provide continuity and breadth for the research program. The opportunity of establishing ecologic research under the International Biological Program should be explored.

Mr. President, this is the type of study which the committee is providing for in the bill. It has asked the National Academy of Sciences to conduct the study. The Academy is a most distinguished and unimpeachable group. It will conduct research on the herbicide problem in Vietnam and report back to us within 18 months. This seems to me to be the most sensible thing we could do to try to get the facts.

Mr. NELSON. Mr. President, if the Senator will yield for a question, I know the Senator is aware of the fact that the Department of Defense itself stated that in most of the areas, a substantial percentage of the areas defoliated and sprayed, cannot be studied until after the war is over because they are in territory that cannot be gotten to because the way is blocked by the Vietcong or other areas under their control. So a study really cannot be made and we cannot make one in 18 months that would answer the questions, anyway.

But if—I emphasize if, Senator—if the problem is serious enough so that every environmentalist I know of that has commented on it, whether it be Dr. Tschirley or Dr. Pfeiffer or Dr. Galston, or any of the rest who are concerned and alarmed and say that it is critically important that a careful study be made to find out what has happened, if—if it is so critically important to make that study, because we are worried about what we might find out, does not the Senator think that we should stop using these chemicals until we find out what the results will be?

Mr. McINTYRE. Mr. President, I think I should point out to the Senator that at this moment in Vietnam we are down to a level of 25 percent of what we have used in the past on defoliants. There has been a response from the Department of Defense to the findings of Agriculture and Interior on 2,4,5-T. Its use has been suspended. But we cannot eliminate the whole program consistent with the safety of our troops.

Mr. GOODELL. Mr. President, will the Senator from Wisconsin yield?

Mr. NELSON. How much time does the Senator wish?

Mr. GOODELL. Fifteen minutes.

Mr. NELSON. Mr. President, I yield 15 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 15 minutes.

Mr. GOODELL. Mr. President, last week the President transmitted to the Senate for advice and consent the Geneva Protocol of 1925. As its title indi-

cates, it is the "Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare."

Under the interpretation of the administration, as stated in the report of the Secretary of State, the protocol's ban is not to apply to this country's use in war of chemical herbicides and a variety of antipersonal chemicals. The decision has been reached by the administration that the protocol's prohibition on chemical warfare is limited in coverage to only certain kinds of chemical weapons.

This protocol interpretation no doubt will be raised during the present debate on the Environmental Warfare Prohibitions amendment which I have authored with the Senator from Wisconsin (Mr. NELSON). Our amendment prohibits the use, transfer, and stockpiling of antiplant chemical weapons used in herbicide and defoliation military operations.

Defoliation, the reduction or elimination of forest vegetation and plant growth, has been adopted for warfare by the Department of Defense on the grounds that it allows an additional military tactical option for U.S. forces in combat. Objectives of this environmental warfare program are to deny an enemy food and concealment. Such military thinking then has brought into existence and use a vast antiplant chemical weapons arsenal, including the antiplant agents: orange—a mixture of 2,4,5-T and 2,4-D; white—a mixture of 2,4-D and picloram; and blue—an aqueous solution of cacodylic acid. Collectively, these agents have commonly been called "herbicides" and "defoliants." Technically, "orange" and "white" are growth regulating compounds and are directed mainly against forest vegetation; "blue" is considered a dissicant and is used primarily to destroy crops. Each of these antiplant chemical agents has been used as a weapon of war in Vietnam. Each can be used interchangeably to carry out programs of forest defoliation or crop destruction.

The military herbicide chemicals in formulated products of orange, white, and blue constitute the bulk of our antiplant chemical warfare arsenal. They have never been submitted to the U.S. Department of Agriculture for registration. The point here is that we are not talking about the use of domestic chemical pesticides 2,4,5-T; 2,4-D, picloram, and cacodylic acid. It is true that formulated products of these chemicals have been submitted to the USDA for registration and have registered uses. Nevertheless, according to the Pesticide Regulation Division, USDA, "none of these—domestic pesticide—chemicals are registered for use in the United States as defoliants." These chemicals are only registered for use to kill specified types of plants.

The fact is that military application of herbicide chemicals and domestic application of pesticide chemicals are different. Again, according to the Pesticide Regulation Division, in regard to domestice pesticide chemicals: 2,4,5-T; 2,4-D; picloram and cacodylic acid—

(1) "None are registered for application to crops or non-food crop areas at the dosages claimed to be used in Vietnam" (27 lbs. per acre in Vietnam as contrasted to average 2–4 lbs. per acre use in United States);

(2) "None are registered to be applied as an undiluted spray;

(3) "None are registered for use on rivers and streams."

The myth which blurs the distinction between military and domestic use—and the common misunderstanding which gives momentum to the myth—must be shattered.

Distinctions can be made which show that military use of herbicide chemicals is quite different from domestic use of pesticide chemicals. These distinctions include: dosage; concentrations of spray; limitations on use; and application at sites of use—be they food, feed, aquatic, or nonfood areas such as roadsides, rights-of-way or ditchbanks.

There is, however, a similarity between military herbicide chemicals and domestic pesticide chemicals. And it should be noted. The similarity is in the stark lack of study and the scarcity of real knowledge on the relationship of use to a safe and livable environment and the health safety of man now and for the future.

On many occasions I have criticized this "use now-study later" approach to unleashing chemicals into the environment. What we do know now, however, can help us to put a stop to reckless and harmful chemical use. This especially applies to the massive and indiscriminate use of military herbicide chemicals as used in defoliation and crop destruction operations.

What we know is that there are no food, feed, or aquatic registered uses of cacodylic acid or picloram for this country. Regarding nonfood areas, such as roadsides, rights of way or ditchbanks, picloram is registered for use with the following limitations:

First. Do not contaminate water used for domestic or irrigation purposes.

Regarding nonfood areas use, cacodylic acid is registered for use with the following limitations:

First. Keep children and pets off treated area until after first rain;

Second. Do not graze livestock on treated areas;

Third. Do not contaminate water used for domestic or irrigation purposes.

Cacodylic acid which is so restricted for use in the United States is the military herbicide chemical, blue, used in defoliation operations in Vietnam. It has been used to destroy crops. Let us think about that—used to destroy crops. Now let us reflect on those very strict limitations set for use here at home. It has been estimated that 7 percent of Vietnam cropland has been sprayed with chemical blue. At least 1 million gallons of blue has been sprayed on Vietnam cropland. Blue, it will be recalled is an aqueous solution of cacodylic acid. Cacodylic acid is 54 percent arsenic. It is described in the Merck Index as poisonous. By some quirk of irony, we have sprayed 1 million gallons of chemical containing poisonous substance on a country we are attempting to help save. Many of the crops sprayed, the Defense Department has to admit, have been grown by Vietnam civilians, many of whom are subsistence farmers.

How we can say that we are helping to save the country of South Vietman with crop destruction—how we can say this with any reasonableness, completely escapes me. It is mere lunacy.

The amendment before us outlaws this type of environmental warfare. Our amendment relates to military herbicide chemicals not to domestic pesticide chemicals. As a practical matter, our amendment would apply in the first instance to the use of chemical blue since the Department of Defense has recently banned the use of orange and the supply of white is low.

The present low-profile use of herbicide chemicals may also be used as an argument against our Prohibitions on Environmental Warfare amendment. It may be said that defoliation operations are phasing themselves out so why legislate them out? I cannot accept this argument.

First, the crop destruction program should be stopped, stopped now, not merely phased out.

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

Mr. GOODELL. I yield.

Mr. NELSON. Mr. President, the Senator refers to phasing out. Is the Senator aware that in 1969 $1,600,000 was spent for procurement of these herbicides and that in 1970 the amount was $5 million? That does not sound to me like it is being phased out.

Mr. GOODELL. Mr. President, I agree with the Senator from Wisconsin. I think there is a grave question as to whether it is being truly phased out. Indeed, the amount of money we are spending on this herbicide program is increasing.

Second, we should be concerned not only with use but with the proliferation of use of any and all military herbicide chemicals.

Third, the budget amounts requested for next year's herbicide R. & D. and procurement plans do not reflect a phasing out of defoliation operation at all. That is the point made by the Senator from Wisconsin.

The report of the Senate Armed Services Committee reflects a request of $500,000 for R. & D. in herbicide chemicals; and $1 million for procurement of herbicides. The report notes that "procurement programs for CBW are not subject to authorizing legislation." I think this is unfortunate. This is a way procurement programs get out of hand. I understand that presently the Defense Department has revised its request and the revision is upward. I understand that the request is now for $6 million in procurement funds and that plans are for the procurement of over 1 million gallons of chemical herbicides white and blue. This does not appear to me as a "phaseout" operation.

The argument of myth and the argument of gradual phase out may be used against our amendment. So too may the protocol interpretation be used as an argument against the Senate in making an independent judgment on the use of antiplant chemical weapons and in making

an independent determination on the wisdom of forest defoliation and crop destruction as tactics of war.

Mr. President, I do not wish now, nor is it necessary at this time, to engage in a lengthy discussion as to the history of the protocol—as to whether its framers, the American delegation to the 1925 Geneva Conference, intended the protocol's ban to cover all kinds of gas for use in war or merely some gas; whether all disease-producing germs or only some come under the prohibition for use in war.

At this point, I would like to make only brief observations regarding the history of the protocol.

Let us recall that the 1925 Geneva Protocol was advanced by the United States to universalize the prior treaty of the Washington Arms Conference, that is the 1922 Treaty Relating to the Use of Submarines and Noxious Gases in Warfare. This was a treaty negotiated by the United States, Great Britain, France, Italy, and Japan. The treaty proposed a prohibition on "the use in war of asphyxiating, poisonous or other gases and all analogous liquids, materials, or devices."

Secretary of State Hughes in explaining the position of the United States at that time cited the following passages from the report of the Advisory Committee to the American Delegation:

The Committee is of the opinion that the conscience of the American people has been profoundly shocked by the savage use of scientific discoveries for destruction rather than for construction . . . The American representatives would not be doing their duty in expressing the conscience of the American people were they to fail in insisting upon the total abolition of chemical warfare . . .

Resolved, that chemical warfare, including the use of gases, whether toxic or non toxic, should be prohibited by international agreement, and should be classed with such unfair methods of warfare as poisoning wells, introducing germs of disease, and other methods that are abhorrent in modern warfare.—Source: Minutes, Sixteenth Meeting, Committee on Limitation of Armament, January 6, 1922, p. 732.

The U.S. Senate approved this treaty on March 29, 1922. The vote was 72–0.

The only exchange in this Chamber then regarding the kinds of gas covered in the prohibition on chemical warfare was an exchange between Senator Wadsworth of New York, chairman of the Military Affairs Committee and Senator Henry Cabot Lodge. The CONGRESSIONAL RECORD records the exchange as follows:

Mr. WADSWORTH. . . . I think article 5 is drawn somewhat carelessly. . . . The phrase 'other gases' is all inclusive. It reads: 'asphyxiating, poisonous, or other gases.'

Mr. LODGE. To be used in war.

Mr. WADSWORTH. Yes; but there are gases used in war other than asphyxiating or poisonous gases. . . . For balloons, such as helium gas, and hydrogen. A strict construction would seem to prevent the use of any gas in war. Undoubtedly that is not meant. . . . It would seem in the French text that the word 'similaries' ties the matter up, but in the English text the equivalent of "similaries" is not used. That, however, is a point of comparatively small importance.—Source: U.S. Congressional Record, 67th Cong., 2d Sess., 1922, LXII, Part 5, p. 4729.

The remarks of Senator Wadsworth indicate his concern that the prohibition of the 1922 treaty could be construed to cover not only gas as a weapon of war, but also gas applied for a nonweapon use. The Senate, however, did not pursue this question of the kinds of gas covered by the treaty. The question, having been raised, remained unresolved.

Mr. President, for decades now, there have been varieties of interpretations by this country and other countries of the world over the kinds of gas to be prohibited for use in war. Regarding the protocol, interpretations over the years have faced difficulties such as those arising from the fact that scientific discovery brought into existence new chemical and germ weapons which were unknown at the time the protocol was negotiated. Moreover, there have been contradictions in interpretations within governments over the years. Contrasted to contradictions, there have been differences of opinion among governments as to whether all kinds of gas or only some gas should be banned in chemical warfare. Last December, 80 nations voted in favor of a U.N. resolution which declared in part that:

Any chemical agents or warfare—chemical substances, whether gaseous, liquid or solid—which might be employed because of their direct toxic effects on man, animals or plants are contrary to the generally recognized rules of international law, as embodied in the Protocol.

Of the 80 nations voting in favor of this resolution, 38 are parties to the protocol.

Let us bear in mind the vote of the United States against this U.N. resolution. Let us keep in mind the administration's interpretation of the protocol. Let us also, however, remember that successive administrations have repeatedly announced, as did President Nixon when he sent the protocol to the Senate last week, that this country observes the principles and objectives of the protocol.

What are the principles and objectives of the protocol? There is the principle of no first-use. There is the objective of prohibiting in the interest of humanity the use of chemicals and germs in warfare. There is the objective of bringing gas and germ weapons under control and the use of these weapons stopped. There is the objective of outlawing in war gases which in the words of the protocol "has been justly condemned by the general opinion of the civilized world."

ENVIRONMENTAL WARFARE AMENDMENT CONSISTENT WITH PRINCIPLES AND OBJECTIVES OF PROTOCOL

Mr. President, I have no intention in this debate to make the case that antiplant chemicals are covered in the protocol. I do believe, however, that our amendment to control antiplant chemical weapons and prohibit their use in war is consistent with the principles and objectives of the protocol.

Regarding antiplant chemical weapons, what has become of the principle of no first-use? What has become of the objective of stopping in the interest of humanity chemical warfare operations that threaten innocent noncombatant civilians?

U.S. FIRST-USE OF ANTIPLANT CHEMICALS IN VIETNAM

ANTIPLANT AGENT FROM CLASSIFICATION: FROM BIOLOGICAL TO CHEMICAL

According to a 1969 Army training manual, antiplant agents for military application are:

Chemical agents which possess a high offensive potential for destroying or seriously limiting the production of food and defoliating vegetation. These compounds include herbicides that kill or inhibit the growth of plants; plant growth regulators that either regulate or inhibit plant growth, sometimes causing plant death; dessicants that dry up plant foliage. . . . Military applications for anti-plant agents are based on denying the enemy food and concealment.—Source: Department of the Army Training Circular TC 3–16, Department of the Army, April 1969, p. 62.

It is of interest to note that in 1964 antiplant chemicals were officially listed as biological agents not chemical agents. In 1964 the joint manual of the Departments of the Army and Air Force on Military Biology and Biological Agents listed antiplant chemicals under the heading "Microbiology Applied to Biological Agents." Antiplant chemicals were so listed, according to the manual, as indicated below, as a matter of convenience:

MILITARY BIOLOGICAL AND BIOLOGICAL AGENTS MICROBIOLOGY APPLIED TO BIOLOGICAL AGENTS

The military application of microbiology concerns only those microorganisms which may be deliberately employed in weapon systems to cause disease or death to man, animals, or plants, or to cause deterioration of material. Certain chemical compounds that effect plant life, as well as toxins, may be used in chemical weapon systems and are included as a matter of convenience. These are grouped as shown below for discussion purposes, and they will be considered in this manual along with vectors of disease.

a. Microorganisms. . . .

b. Toxins. . . .

c. Vectors of Disease. . . .

d. Chemical Antiplant Compounds. Plant growth regulators, herbicides, weed killers, defoliants, and desiccants.—Source: Department of the Army Technical Manual. Department of the Air Force Manual TM 3–216. AFM 355–6 (Departments of the Army and the Air Force, March 1964).

In 1965, the joint manual omitted antiplant chemicals from the biological agent classification.

In 1968, however, the Joint Chiefs of Staff recognized that for certain regional organizations, such as SEATO and CENTO of which the United States is a member, biological warfare included the employment of plant growth regulators to produce death or casualties in man, animals, or plants.

Antiplant chemicals, as with biological toxins, were classified later as chemical weapons. Presently, antiplant chemicals are considered part of the chemical warfare arsenal.

U.S. FIRST-USE IN VIETNAM

The United States initiated use of antiplant chemicals in the Vietnam war. The antiplant chemical warfare arsenal was not brought into use in retaliation against enemy use of such chemicals.

Use of defoliants by U.S. forces began on December 4, 1961, when President Kennedy authorized the Department of Defense to test the military effectiveness

of defoliation on several lines of communication in South Vietnam. Since that time, this country has spent over $96 million to defoliate over 5 million acres of forest and cropland in South Vietnam. The primary target has been forest areas. Roughly 13 percent of South Vietnam's forest areas have been sprayed at least once and 15 to 20 percent of this sprayed forest area has been subject to repeated sprayings. Regarding crop destruction, it is estimated that 7 percent of Vietnam croplands have been sprayed.

Mr. President, I ask unanimous consent to have printed in the RECORD a table entitled "Chemical Defoliation and Anticrop Operations in South Vietnam for the Period 1962 to July 1969."

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

CHEMICAL DEFOLIATION AND ANTICROP OPERATIONS IN SOUTH VIETNAM—1962 TO JULY 1969

[Figures in acres]

| Year | Defoliation | Crop | Percent crop versus defoliation |
|---|---|---|---|
| 1962 | 4,940 | 741 | 5 |
| 1963 | 24,700 | 247 | 1 |
| 1964 | 83,486 | 10,374 | 12 |
| 1965 | 155,610 | 65,949 | 42 |
| 1966 | 741,247 | 103,987 | 14 |
| 1967 | 1,486,446 | 221,312 | 15 |
| 1968 | 1,267,110 | 63,726 | 5 |
| 1969 (January to July) | 797,180 | 38,819 | 5 |
| Total | 4,560,719 | 505,155 | |

Source: Data supplied by the Defense Department to the National Security Policy and Scientific Developments Subcommittee of the House Foreign Affairs Committee (December 1969).

NOTES

The total land area of South Vietnam is approximately 42,000,000 acres. Of this, about 7,600,000 acres is reported to be under intensive cultivation and about 14,000,000 acres is forested.

Aims of this environmental warfare program are to deny the enemy food and concealment. According to the Defense Department, "in the final analysis the sole purpose of the herbicide program is to protect friendly forces, conserve manpower and deny food resources to the enemy."

Mr. GOODELL. Mr. President, the defoliation program, then, has a number of objectives, including:

First, to improve vertical and horizontal visibility of the United States and Vietnam troops;

Second, to aid in target acquisition, that is, finding the enemy;

Third, to force enemy troop movement from one place to another in range of fire; and

Fourth, to make significant numbers of the enemy divert energy from fighting to growing food.

ANTIPLANT CHEMICALS: WAR USES

According to the Defense Department, antiplant chemical weapons have been put to the following war uses:

*1. Defoliation of base perimeters*

A portion of the small-scale ground based or the helicopter spray missions are used in improving the defense of base camps and fire bases. Herbicides are a great help in keeping down the growth of high jungle grass, bushes, and weeds which will grow in cleared areas near these camps. This clearance opens fields of fire and affords observation for outposts to prevent surprise attack and as such is truly a life-saving measure for our forces and our allies. Without the use of herbicides around our fire bases, adequate defense is difficult and in many places impossible.

*2. Defoliation of lines of communication*

There are many instances of ambush sites being defoliated for better aerial observation and improved visibility along roads and trails. In 1967 there were also many requests for defoliation of VC tax collection points. In otherwise friendly territory there were points along well-traveled routes where the enemy could hide under cover and intercept travelers to demands taxes. Defoliation along these roads was very effective in opening these areas so that they can be seen from observation aircraft, and with few exceptions these roads were opened to free travel. The use of aircraft to spray alongside lines of communication proved valuable in clearing these areas and preventing costly ambush of army convoys with resulting friendly casualties.

*3. Defoliation of infiltration routes*

Areas used by the enemy for routes of approach, resupply or movement are targets for herbicide spray. Probably the most valuable use of herbicides for defoliation is to permit aerial observation in such areas. This is particularly true in areas near the border so that we can detect movement of enemy units and their resupply.

*4. Defoliation of enemy base camps*

We know from prisoners of war and from observation that the enemy will move from areas that have been sprayed. Therefore, enemy base camps or unit headquarters are sprayed in order to make him move to avoid exposing himself to aerial observation. If he does move back in while the area is still defoliated, he will be observed and can be engaged.

*5. Crop destruction*

Crops in areas remote from the friendly population and known to belong to the enemy and which cannot be captured by ground operations are sometimes sprayed. Such targets are carefully selected so as to attack only those crops known to be grown by or from the VC or NVA. The authorization to attack crops in specific areas has been made by the U.S. Embassy, Saigon, MACV and South Vietnamese Government.

Frequently reviews have been conducted of the herbicide program. The most recent one was personally directed and reviewed by COMUSMACV in October 1968 to assure himself that the program was militarily effective. Prior to that, the U.S. Ambassador had directed a review which looked at the political and economic aspects of the program. The Embassy report was released in August 1968. The crop destruction program was also reviewed by the CINCPAC scientific adviser in December 1967. Each of these reports concluded that the program should be continued.

(SOURCE.—Rear Adm. William E. Lemos, Director of Policy Plans and National Security Council Affairs, Office, Assistant Secretary of Defense for International Security Affairs, Statement before House Subcommittee on National Security Policy and Scientific Developments, Hearings on Friday, December 19, 1969, pp. 229–230.)

ANTIPLANT CHEMICALS: DOD ASSESSMENT OF WAR USE

According to the Defense Department, the following examples should indicate the success of the defoliation effort in Vietnam:

In the final analysis the sole purpose of the herbicide program is to protect friendly forces and conserve manpower. The following examples should demonstrate the success of the defoliation effort in Vietnam:

1. Major defoliation has been accomplished in war zone C. Prior to defoliation, seven brigades were necessary to maintain U.S./GVN presence. During 1967, after defoliation only three brigades were required.

2. The commander of naval forces in Vietnam in a report to General Abrams stated—

As you know, a major concern is the vegetation along the main shipping channel. Your continuing efforts under difficult and hazardous flying conditions, in keeping this area and by the adjacent inland areas devoid of vegetation have contributed considerably in denying the protective cover from which to ambush the slow-moving merchant ships and U.S. Navy craft.

3. In 1968, the commanding general of the 1st Field Force reported—

Defoliation has been effective in enhancing the success of allied combat operations. Herbicide operations using C–123 aircraft, helicopters, truck mounted and hand sprayers have become an integral part of the II CTZ operations against VC/NVA. The operations are normally limited to areas under VC/NVA control remote from population centers. The defoliation program has resulted in the reduction of enemy concealment and permitted increased use of supply routes by friendly units. Aerial surveillance of enemy areas has improved and less security forces are required to control areas of responsibility. An overall result of the herbicide program has been to increase friendly security and to assist in returning civilian to GVN control.

4. The U.S. commander in the III CTZ related:

Herbicide operations have contributed significantly to allied combat operations in the III Corps. Defoliation is an important adjunct to target acquisition. Aerial photographs can often be taken from which interpreters can "see the ground" in areas that previously were obscured. Defoliation also aids visual reconnaissance. U.S. Air Force FAC's (forward air controllers) and U.S. Army aerial observers have discovered entire VC base camps in defoliated areas that had previously been overlooked.

5. In the south in the IV CTZ, C–123 herbicide operations are limited. This is because of the vast areas of valuable crops which are not to be destroyed, even though they may be in enemy hands. Therefore, the commander of the IV Corps area in presenting his evaluation cited the value of helicopter operations as follows—

A significant helicopter defoliation mission was conducted in the vicinity of SADEC in August 1968. The target area consisted of three main canals which converged and formed a strong VC base. The dense vegetation permitted visibility of only 10–15 meters horizontally and nil vertically. The area was sprayed with approximately 735 gallons of herbicide white and over 90 percent of the area was defoliated. As the result of the defoliation, an ARVN battalion was able to remain overnight in the area for the first time in 5 years. Many enemy bunkers were open to observation. Since the defoliation, the VC presence has decreased to the point that only RF/PF forces are now necessary for local security.

6. As a part of the 1968 evaluation report of herbicide operations, the U.S. senior adviser in the IV Corps tactical zone area reported—

A section of National Highway 4 in Phong Dinh Province was the site for a defoliation operation on June 24, 1968. Since January 1968, a series of ambushes was conducted against SVN convoys and troop movements. Because of the total inability of ground troops to keep the area clear of VC, this area was sprayed using 685 gallons of herbicide white. The target area was primarily coconut palm and banana trees that had been abandoned by their owners for several years. During the period of abandonment the vegetation had become so dense that convoy security elements were not able to see more than 5 meters into the underbush and had to rely on reconnaissance by fire to discover the

hidden enemy. This method of protection had proven ineffective. Three RF/PF companies with U.S. advisers were used to secure the target for the helicopter operation in addition to an armored cavalry troop. Since the defoliation mission was completed, convoys have used the highway two or three times a week without attack or harassment. Only one RF platoon has remained in the area to provide local security to the hamlet and highway.

7. In certain instances, we know the VC have been forced to divert tactical units from combat missions to food-procurement operations and food-transportation tasks, attesting to the effectiveness of the crop destruction program. In local areas where extensive crop destruction missions were conducted, VC/NVA defections to GVN increased as a result of low morale resulting principally from food shortages.

The most highly valued item of equipment to field commanders in Vietnam is the helicopter. There was some question when the helicopter spray equipment was first procured whether field commanders would divert the use of helicopters from combat operations for herbicide spray operations. The very fact that the commanders have used their helicopter spray equipment to the fullest and have asked for more is certainly proof that herbicide operations have been helpful in protecting the American soldier and contributing to successful accomplishment of the ground combat mission.

CONCLUSION

. . ., we have presented to you in as complete and candid a manner as possible the lifesaving usage that we have made of riot control agents and herbicides in South Vietnam and the policies under which this usage has taken place. We believe this usage has been wise and has been accomplished with restraint. The result is that our forces have been better able to accomplish their mission with significantly reduced U.S. and Vietnamese casualties.

(SOURCE.—Rear Adm. William E. Lemos, Director of Policy Plans and National Security Council Affairs, Office, Assistant Secretary of Defense for International Security Affairs, Statement before House Subcommittee on National Security Policy and Scientific Developments, Hearings on Friday, December 19, 1969, pp. 231–232.)

ANTIPLANT CHEMICALS: CURRENT WAR USE

This April, following the "suspension" and "cancellation" orders by the U.S. Department of Agriculture on certain registered use of 2,4,5-T for domestic civilian applications because of hazards to public health, the Defense Department announced that it would ban the use of its primary chemical herbicide, orange in the defoliation program in Vietnam.

This decision provides an appropriate opportunity to review the basic question of whether an antiplant chemical warfare arsenal is really needed and whether the negative side effects of the U.S. "first-use" of these chemicals in Vietnam outweigh the value of defoliation and crop destruction as tactics of war.

White and blue are the herbicide chemicals now authorized by the Defense Department for use in the remaining defoliation program in Vietnam.

MILITARY DEFOLIATION VICTIMS: PLANTS AND CIVILIAN PEOPLE

It has been said by some that antiplant chemicals merely kill or injure plants, not people; therefore, they ought not to be condemned for use in warfare.

I cannot accept this logic or conclusion for several reasons.

First, there is the assumption that the chemical products and the practices in military application of herbicide chemicals present no health hazard to humans.

This assumption is sorely strained in view of the results of tests done this year by the National Institute of Environmental Health Sciences on the teratogenic, or fetus-deforming effects of 2,4,5-T registered for use in domestic civilian application.

The chemical 2,4,5-T is a polychlorinated phenolic compound that contains dioxin contaminants or impurities. When a chlorophenol is heated sufficiently, it is likely that some dioxin will result. Dioxin is considered a toxic agent.

Last year the Bionetics Research Laboratories in Bethesda, Md., under contract to the National Cancer Institute, reported that its studies on 2,4,5-T showed deformities in the offspring of pregnant mice and rats. It recommended that the Government take actions to restrict the use of 2,4,5-T in both domestic civilian applications and military herbicidal operations. Critics of the bionetics report, both in the administration and in industry, claimed that the 2,4,5-T marketed and registered for use as a pesticide chemical was of "greater purity" than the test material of 2,4,5-T used in the bionetics study. That test material, they claimed, contained substantial concentrations of dioxin chemical impurities.

In light of these claims and counterclaims on the hazard to public health of registered 2,4,5-T, the Senator from Michigan (Mr. HART) initiated hearings before the Subcommittee on Energy, Natural Resources, and the Environment.

It was on April 15 during one of these hearings that Dr. Jesse Steinfeld, Surgeon General, USPHS announced the conclusions of additional studies conducted by the National Institute of Environmental Health Sciences on the fetus-deforming effects of 2,4,5-T. The conclusion was that "the dioxin impurities and the 2,4,5-T as it is now manufactured, separately produced birth abnormalities in the experimental mice." Although there is consensus as to the "extreme potency of the impurities as toxic agents," Dr. Steinfeld emphasized that the studies "do not clarify the uncertainties as to significance to man." Indeed, Dr. Steinfeld said, "No data on humans are available."

It should be noted here that Dr. Steinfeld's assessment of no data on the effects of 2,4,5-T or its impurity dioxin on humans has been questioned. Dioxin could have a teratogenic, or fetus-deforming effect on pregnant women and/or a toxic or body poisoning effect on humans. While there is no confirmed evidence of the former, there is evidence of the toxic effects of dioxin on humans. It has been reported that in the mid-sixties, Dow was obliged to close down part of a 2,4,5-T plant in Midland, Mich., for some time because about 60 workers contracted "chloracne" as a result of contact with dioxin. The symptoms of this disease include skin disruptions, disorders of the central nervous system and chronic fatigue.

As a result of the conclusions of the studies by the National Institute of Environmental Health Sciences, the Secretary of Agriculture found that in order to prevent an "imminent hazard" to the public health, it was necessary "to suspend" registration for products containing 2,4,5-T and to require relabels for use as follows:

First. Suspension of liquid formulations of 2,4,5-T for use around homes, and recreation areas;

Second. Suspend all formulations of 2,4,5-T in aquatic areas, that is, in lakes, ponds, or on ditch banks.

The "suspension" order carries with it immediate halt to interstate shipments.

The Secretary of Agriculture also found that in order to prevent a "hazard" to public health, it was necessary "to cancel" registration for products containing 2,4,5-T and bearing directions for use as follows:

First. All granular 2,4,5-T formulations for use around the home, recreation areas, and similar sites.

Second. All 2,4,5-T uses on food crops intended for human consumption, such as apples, blueberries, barley, corn, oats, rice, rye, and sugarcane.

Dr. Lee DuBridge, formerly President Nixon's science adviser, has said that—

If the effects on experimental animals are applicable to people it's a very sad and serious situation.

Does the Defense Department think the military application of its primary defoliant orange, a mixture of 2,4,5-T and 2,4-D could be affecting the public health of Vietnam? According to the Defense Department, the answer is "No." When asked: Why not? the Department simply responds that there is no confirmed evidence that illness is directly the result of defoliant spraying.

Nevertheless, following the "suspension" and "cancellation" orders on registered use of 2,4,5-T for domestic civilian applications—orders affecting only about 10 percent of 2,4,5-T use in this country—the Defense Department announced that it would ban use of orange henceforth in the defoliation program in Vietnam.

It has been estimated that 50,000 tons of antiplant chemicals have been sprayed on Vietnam land, including forests, crops, ditch banks and along shipping canals and communications lines. Of the 50,000 tons, it is estimated that 20,000 tons of oranges have been sprayed.

Now let us consider again the notion by some that antiplant chemicals merely kill or injure plants not people; and that they ought not to be condemned for use in warfare.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GOODELL. May I have 5 additional minutes?

Mr. NELSON. Mr. President, I yield the Senator 5 minutes.

Mr. GOODELL. I have said previously that I cannot accept this logic or conclusion for several reasons. The first is the questionable assumption that the formulations of antiplant chemicals for military purposes as well as the practices in military application of such chemicals present no health hazard to humans. In

addition to the fetus-deforming effects and toxic effects of 2,4,5–T shown in laboratory studies, there is the question of whether or not 2,4,5-T is biologically degradable, that is, the question of whether it persists in the environment or accumulates in animal tissue. Although some claim that 2,4,5-T is readily decomposable in soil and by the action of sunlight after it has been applied, there have been no thorough studies to show that 2,4,5-T's dioxin contaminant is biologically degradable, that is that it does not persist in the environment or accumulate in animal tissue.

Consider antiplant chemicals used in war as part of a program to deny an enemy concealment. Now think of the animals in the forest. Consider whether any of these animals are destined for food and having been exposed to the dioxin contaminant, contain residues of dioxin in their systems. Suppose that there are no food inspection teams to detect harmful levels of 2,4,5-T residue and to protect people from contaminated food.

Consider antiplant chemicals used in war to destroy forests near streams and canals. Think of the fish in the streams as another possible food supply. Think of the water as being used for irrigating food crops. Now recall the USDA suspension order for 2,4,5-T banning use in aquatic sites because it presented an imminent hazard to public health. Recall the USDA warnings and limitations for domestic use of picloram and cacodylic acid: "do not contaminate water used for domestic or irrigation purposes."

Consider drift from antiplant chemical operations to water supplies for drinking purposes.

Consider antiplant chemicals used in war to destroy crops, that is part of any enemy food denial program. Then consider the history of warfare which shows that it has always been the fighting men who have had the first claim to the available food supply; civilians always have been the ones to suffer the shortages.

Many of us were very concerned during the recent Nigerian civil war about starvation in Biafra. Allegations were made that at least some officials of Nigeria were using food and starvation as a weapon of war. Many of us stood up and called upon the international community and the Nigerians and the Biafrans to agree on ways to get food in there so that women and children would not be the primary sufferers of the civil war in Nigeria.

Many of us are equally concerned with the effects of the present food denial program in Vietnam; many of us are concerned with the effects of the entire military defoliation operation in Vietnam.

Considering all the links between man and environment, it seems clear to me that the massive spraying of antiplant chemicals in Vietnam constitutes a dangerous hazard to public health in Vietnam and warrants a total ban on this country's engagements in military defoliation operations.

Looking beyond the links in the ecosystem and the food chain, there can be no doubt that massive application of antiplant chemicals is having an adverse effect on the people of Vietnam. What effect it is having on what effects show up in the future, may be one of the saddest chapters in the epilogue of the war.

Those who defend the use of herbicide chemicals and the use of chemicals against crops in Vietnam, do so by claiming that such use saves lives of our troops. Obviously, we want to do everything possible to protect the lives of our men fighting in Vietnam.

The claim, however, that defoliation operations are "life saving" is open to question.

Regarding the military value of defoliation, several drawbacks can be considered. These drawbacks raise the possibility of "risk to life" for our men fighting in Vietnam. Drawbacks are based on the following considerations:

After spraying, several days pass before leaves fall off trees; dying leaves can "alert" the enemy to impending United States-Vietnamese operations;

After spraying along lines of communication, ambushes may still take place behind curves in the road as well as create a broader enemy fire on United States-Vietnamese troops;

Defoliation of base perimeters has often led to deemphasis of saturation patrolling which may be false economy;

There may be a trade-off between vertical and horizontal visibility; that is, defoliation of a double or triple canopy jungle increases the amount of sunlight that reaches ground level; in time this greatly stimulates growth of vines and bamboo which could impede movement of United States-Vietnamese ground troops. While United States-Vietnamese pilots may increase their visibility; ground troops may find it more difficult to move on foot. According to the report made by Dr. Fred Tschirley, Agricultural Research Service, USDA, after his investigation in 1968 of environmental effects of defoliation in Vietnam; "repeated treatments will result in invasion of many sites by bamboo. Presence of dense bamboo will then retard regeneration of the forest." It may also retard the mobility of our ground combat troops.

By all reasonable standards, crop destruction in Vietnam is a military failure. It is cursed by the locally affected Vietnamese, most of which are rural subsistence farmers. It is exploited by the VC. It is counterproductive to Vietnamization. An indicator of ill-will may be the damage claims, both valid and trumped-up. Since 1968, over 10,000 claims have been validated at a cost of over $3 million. Invalidated claims are unrecorded. Rather than save lives of U.S. troops, crop destruction could contribute to the risk of life by decreasing the cooperation we need from the Vietnamese themselves. The less cooperation we get, both in intelligence gathering and fighting, the more our troops must fight and along with this goes greater risk to the lives of our troops.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GOODELL. May I have 5 additional minutes?

Mr. NELSON. Mr. President, I yield 5 additional minutes to the Senator from New York.

Mr. GOODELL. In Vietnam, we are fighting, supposedly, for the hearts and minds of the people.

One of the greatest problems we have in the so-called Vietnamization program is the psychological impact and the direct impact of crop destruction on the people and the small farmers. It is a very unpopular program.

It is a program which turns many of the rural people against us in South Vietnam. It is a program of marginal military significance. The end result may, on occasion, save a few lives of American soldiers, but then later lead to the deaths of many more American soldiers.

Mr. President, I believe our amendment deals directly, and precisely with the issue at hand. It would bar future military use of chemical herbicides by this country. It would bar use by proxy. It would dismantle this country's chemical herbicide arsenal. Such a measure is long overdue.

Mr. President, there are many aspects of our military defoliation operations that cannot be discussed openly here. I do not wish to make specific references to studies that have been made available, but are considered confidential and secret. But I think there is ample evidence available to all of us in the U.S. Senate that indicates that the use of chemicals for crop destruction in Vietnam has been counterproductive. We are cutting off our nose to spite our face with the continued use of these defoliants, whether we talk about it simply in a military sense or in terms of the environment of Vietnam.

I hope that the Senate will act today to let the world know that we are going to prohibit the use of antiplant chemicals in war; that we will prevent the future use of those chemicals which have, for the past 9 years, been used in Vietnam.

Mr. STENNIS. Mr. President, I ask unanimous consent that when the Senator from Mississippi happens not to be present in the Chamber, the time in opposition to the amendment may be allotted by the Senator from New Hampshire.

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

Who yields time?

Mr. NELSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 22 minutes, the Senator from Mississippi 55 minutes.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum, on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. STENNIS. Mr. President, I yield the Senator from Colorado 20 minutes.

Mr. DOMINICK. Mr. President, I have a prepared speech here, which I am going to make, but before I do that, I wish to say that I know how sincere the Sen-

ator from Wisconsin is. He has been against our involvement in Southeast Asia from the very beginning. He has voted against every appropriation, every authorization, and everything else I can think of. So I am not a bit concerned over the heat with which he debates this particular amendment, because he does not think we ought to be there at all.

That is perfectly proper, and it is his right, obviously, but it is not the policy of the last three Presidents. We are there, and we have to recognize the fact that we have people there who are fighting a war, and who must have the ability to do so both efficiently and successfully.

I also wish to say, before I go any farther, that the committee has in fact not only eliminated authorization for the use of the so-called orange herbicide, which was referred to in the debate, and we do not have any money in the bill for that at all. We have also reduced the new authorization from $2 million to $1 million, and the balance of the money that has come in is money that had previously been authorized but not spent in connection with the procurement of orange, which has been reslated in order to provide the funds for the defoliants in connection with both crops, trees, brush, and lines of communication, but not with the poisonous type Orange that has been referred to heretofore.

One of the most difficult problems faced by the military in South Vietnam is the inability to observe the enemy in the dense forest and jungle. As one method to help overcome this problem, defoliating herbicides were introduced in 1962, and since that time have been employed on an increased basis.

Defoliants are capable of producing a tremendous improvement in vertical and horizontal visibility in the type of jungle found in South Vietnam. As viewed by an aerial observer, it may be impossible to see through the jungle canopy at the time of spraying. After spraying, defoliation will begin in 2 to 3 weeks and in 6 to 8 weeks, the observer will have almost complete observation through the canopy. After 8 to 12 months, he will have only limited visibility due to regrowth. For ground observation, defoliation is capable of improving vertical visibility 70 to 90 percent and horizontal visibility 40 to 60 percent.

It has been claimed that defoliation along lines of communication permits the enemy to attack with heavier weapons and provides allied soldiers little cover if they are attacked. Such statements ignore the purpose of the defoliation which is to provide observation out to 200 or 300 meters on either side of a road or canal and deny the enemy a close-in, concealed ambush position.

Any soldier will tell you that it is easy to hit a target up to 100 feet away with a rifle or machinegun but it becomes increasingly difficult to hit one at 600 to 1,000 feet. Heavier weapons are effective at these greater ranges but they require open fields of fire or cleared firing positions.

The critical period in an ambush is the first 10 to 15 seconds. After this, evasive action and counterambush fires will reduce the effectiveness of the ambush. The inaccuracy resulting from distant fires gives our troops a better chance to survive the first few critical moments and then overcome or evade the enemy forces.

There is considerable evidence supporting the military effectiveness of defoliation operations. The most recent study was conducted in October of 1968 at the request of General Abrams, COMUSMACV. That study produced overwhelming evidence from both intelligence sources and afteraction reports on the effectiveness of herbicides. The following examples demonstrate the value of the defoliation effort in Vietnam:

First. According to the commander, U.S. Naval Forces Vietnam, the defoliation along the main shipping channel between the ocean and Saigon contributed considerably to denying protective cover to the enemy for ambush of the slow-moving merchant ships and U.S. naval vessels.

Second. The commanding general of I Field Force reported that the defoliation program reduced enemy concealment and permitted increased use of the lines of communication by friendly units. Aerial surveillance of enemy areas improved and less security forces were required to control friendly areas.

Third. Defoliation aids visual reconnaissance. Air Force forward air controllers and Army aerial observers have discovered VC base camps in defoliated areas that had previously been undetected.

Fourth. Helicopter defoliation operations were conducted in 1968 against infiltration routes and mortar and rocket sites in the vicinity of Pleiku City. Aerial observation of the area is now possible and Pleiku has not experienced mortar or rocket attacks since the area was defoliated.

Fifth. A portion of National Highway 4 in Phong Dinh Province was defoliated in June 1968. This mission was conducted after a series of missions against GVN convoys and troop movements. The target area consisted primarily of coconut palms and banana trees that had been abandoned for several years. The vegetation had become so dense that convoy security elements were unable to see more than 5 meters into the underbrush. It required three companies of regional and popular forces and an armored cavalry troop to secure the target during the helicopter spraying. Since defoliation, convoys have used the highway two to three times a week without attack or harassment. Only one platoon of popular forces is now required to provide local security to the nearby hamlet and the highway.

Sixth. The most important piece of military equipment in Vietnam is the helicopter. The fact that commanders use their helicopters in spray missions on a priority basis is further evidence that herbicide operations are considered valuable for protecting American soldiers and contributing to the successful accomplishment of the ground combat mission.

To determine the effectiveness of herbicides in Vietnam a number of additional tests over and above the data previously existing in the United States were conducted. Five years were spent studying the effects of herbicides in areas of Puerto Rico and Texas—by the Department of Agriculture—areas similar to portions of South Vietnam. A year's study was also made on experimental plots in South Vietnam; a botanical survey of South Vietnam was compiled and on several occasions Department of Defense and Department of Agriculture scientists went to Vietnam to search for evidence of adverse ecological change. The Agency for International Development of the Department of State also made such surveys utilizing consultants from universities, the Department of Agriculture and the U.S. Forest Service. Several years have also been spent on studying the effects of herbicides on experimental plots in Thailand. These studies have been published in the open literature. Additionally, the United States reviewed the experience of other nations, since almost all of the developed nations of the world employ herbicides domestically. For example, herbicides have been used extensively in rubber and oil-palm plantations in Malaysia for over 20 years at an application rate 5 to 6 times those used in Vietnam. The herbicide operations in Malaysia were conducted to kill old nonproductive trees and jungle vegetation in preparation for planting new trees. As the program of herbicide usage has continued in Vietnam, nearly continuous review has been made of the resulting effects. All of the information available indicates that it is not concentrated in soil or water, nor concentrated to any appreciable degree in plants.

There have been many claims of possible long-term ecological dangers from the use of chemical defoliants. These include laterization—conversion of certain soil to hardened, infertile form—permanent destruction of mangrove swamp forest and poisoning of aquatic life. The ecological investigation conducted by Dr. Fred H. Tschirley from the Department of Agriculture does not substantiate these claims. He found that laterite soil was not being produced because bare soil does not result from defoliation. Although the trees and brush may be killed, the grassy ground cover survives and grows rapidly when exposed to the sunlight as a result of the defoliation. Tschirley also found that the mangrove forest would not be permanently eliminated. He estimated it would take 20 years for the reestablishment of a mangrove forest. Surveys of defoliated mangrove areas have shown definite regrowth after 6 or 7 years. The increased fish catch in the mangrove areas indicates that the aquatic food chain has not been seriously damaged. In fact, the total fresh water fish catch in Vietnam has increased during the last few years. In addition, all of the mangrove in any particular area has not been destroyed, thereby permitting germination of seed from the established forest.

Recent test reports have indicated that 2,4,5-T caused abnormal fetuses in mice, rats, and chicken embryos. It is recognized that animal data cannot be directly extrapolated to humans. To create a comparable situation wherein a Vietnamese woman could probably have an abnormal child as a result of drinking

2,4,5-T would require that she consume large quantities of contaminated water each day for about 3 months during the middle of her pregnancy period. If one assumes an extensive rain water collection system, the necessary concentration of 2,4,5-T in the water would require that the area be sprayed every few weeks. Since an area is normally sprayed only once during any 6- to 9-month period, this postulated condition would be virtually impossible to attain. No incidents of verified malformed births resulting from herbicide operations are known.

An examination in December 1969, of the hospital records in Mimot, Cambodia, for 1968 and 1969 by Dr. A. Westing of the American Association for the Advancement of Science showed no increase in birth defects as a result of herbicide spraying of rubber plantations that occurred in April 1969.

An examination of hospital records in Vietnam has been initiated, but the results are not yet completely collated. Indications are that the birth defect rate remains essentially unchanged from the predefoliation era.

Although it appears that there are no confirmed public health hazards associated with the use of the 2,4,5-T contained in herbicide orange in Vietnam, the Department of Defense deemed it prudent to suspend all operations using orange until the problem could be resolved. In the meantime, operations continue using defoliants white and blue.

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

Mr. DOMINICK. I am happy to yield.

Mr. NELSON. Why did the Department of Defense decide to suspend the use of 2,4,5-T in Vietnam? What was their concern?

Mr. DOMINICK. I think the concern originated, as I said earlier in the prepared statement, from the findings that this did create problems with fetuses of mice, rats, and chickens. As a result, since we do not yet know fully what the immediate results will be, they just decided that, since the others would work, they would stop this.

Mr. NELSON. Would not the Senator consider it rather a dramatic situation and would not he consider it a very serious matter that we have been spraying million of pounds of 2,4,5-T, which Dr. Verrett and other scientists have found deforms the fetus of certain creatures? Would not that alarm the Senator, since it has demonstrated its teratogenic capacity? We have been spraying vast amounts of it, and, in fact, 2,4-D has also been shown to be teratogenic and we are continuing to use that.

Mr. DOMINICK. I say to the Senator that if all things were fair in a perfect world, I would wish that we were not using any of these, so far as I personally am concerned. But as long as we are engaged in an effort to try successfully to assist the South Vietnamese against the attacks by both the Vietcong and the North Vietnamese, I think we will have to take such action as is necessary to make that effort successful.

Mr. President, earlier this year there was a great deal of national publicity concerning deformed animals that resulted from the use of herbicides in Globe, Ariz. A lame goat and a deformed duck were shown on television to support the claims of damage caused by the herbicides. When scientists evaluated the claims, it developed that there was no causal relationship between the spray operation and the alleged damage. Nine doctors serving the Globe area stated that there had been no significant increase in human illness related to the spraying. Reports from wildlife specialists indicated no significant effects on birds, deer, and other wildlife. The team of scientists reported:

> It is doubtful that the spraying of the herbicides or dioxin caused the affliction in the goat or duck because the goat was born before the treatment and the duck was hatched about four miles away from the treated area.

The amendment proposed by Senator NELSON and Senator GOODELL would prohibit the U.S. military use of antiplant chemicals. There are over 100 antiplant chemicals available on the commercial market. Many of these chemicals are used by the military to clear rights-of-way, fence lines, and to remove undesired vegetation on posts, camps, and stations both here and abroad. This amendment would prohibit the use of these chemicals for grounds maintenance without affecting the use by other Government agencies. In addition, large quantities of herbicides are furnished the Vietnamese under the AID program in order to improve their agricultural output.

I would ask, as a rhetorical question, why we should prohibit the use of defoliants by the military and preclude any ability to support some of the Vietnamese agricultural output.

Is it the intent of Senator GOODELL and Senator NELSON to prohibit the use of all herbicides by the military and to preclude our supporting the Vietnamese agriculture?

On July 16, the Senator from Wisconsin introduced into the RECORD an article by Drs. Pfeiffer and Orians. This article was based on a visit to Vietnam by these two gentlemen and questioned the value of the defoliation program in light of the ecological consequences. It should be noted that in a press interview in New York upon his return, Professor Pfeiffer expanded somewhat on his report. I do not believe this was in the message the Senator from Wisconsin put in. He observed that it was "completely unrealistic" to expect military commanders to abstain from defoliation actions. He said:

> There is no question about it, they save American lives. On a sixty-five mile journey by armed boat from Saigon to the sea, we scarcely saw a living plant.

However, he added that had the vegetation not been destroyed, he and his companion would probably not have returned alive.

I would add, as a matter of fact, they would not even have been allowed to go down there. So that is some indication of the value of defoliants from the point of view of the preservation of American lives.

In the Republic of Vietnam, we have treated approximately 5.5 million acres since 1962. Of this total, a few areas such as war zones C and D have been resprayed, thus the actual area sprayed is closer to 4.5 million acres—in other words, we have resprayed two war zones, therefore the total acreage is only 4½ million. This represents approximately 11 percent of the land area of Vietnam. The defoliants used in Vietnam are not sprayed at random but are used only on important targets.

Under policy guidance provided by State and Defense Departments, the U.S. Ambassador in Saigon and COMUSMACV are empowered jointly to authorize U.S. support of GVN requests for herbicide operations. All requests for defoliation and crop destruction must originate with the province chief at the province level.

I repeat that, Mr. President: All requests for defoliation and crop destruction must originate with the province chief at the province level. These are the South Vietnamese province chiefs.

Requests must contain a detailed justification for the operation and include a civil affairs annex to insure that any impact on the civilian population has been considered. Authority to approve small-scale defoliation projects has been delegated to the ARVN Corps commander and the U.S. Corps senior adviser.

All requests for large-scale defoliation by fixed-wing aircraft and all crop destruction missions must be approved by the Chief of the Vietnamese Joint General Staff. When the Vietnamese request for support is received at Headquarters MACV it is staffed along with a parallel request submitted through U.S. advisory channels to MACV. During staffing, the project is reviewed by Civil Operations and Revolutionary Development Support—CORDS—that is an American agency, U.S. Agency for International Development—USAID—Joint U.S. Public Affairs Office, American Embassy, and MACV.

A final opportunity is given the province chief to approve or reject each spray mission 24 to 48 hours before the scheduled time of execution. All planes using defoliants are provided with a navigator, so that they know for sure where they are going. I think this is a good reply to the concept that some believe, that Americans have been kind of broadcasting these defoliants around on their own, indiscriminately, around the country. They have not done so. It must originate with the province chief in that area.

Some specific uses of defoliants are:

Perimeter defoliation: Herbicides are used to restrict growth of high jungle grass, bushes, and weeds around base camps and fire bases. This provides fields of fire and affords observation to prevent surprise attack.

Mr. President, I was in Vietnam twice, and I have been to the fire bases and have seen the areas, and I can assure Senators that if we did not have some method to clear this out to see what we are doing, surprise attacks around that area would be very heavy now.

The PRESIDING OFFICER (Mr. HOLLINGS). The time of the Senator has expired.

Mr. BYRD of West Virginia. Mr. Pres-

ident, on behalf of the Senator from Mississippi, I yield 5 additional minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 additional minutes.

Mr. DOMINICK. Mr. President, on defoliation of lines of communication, defoliation along roads and canals has been successfully used to permit aerial observation and minimize concealment which could be used by the enemy for ambushes.

Defoliation of infiltration routes: Areas used by the enemy for routes of approach, resupply or movement are important targets for herbicide spray. Defoliation of these routes permits aerial observation and allows better detection of enemy units and their resupply activities.

Defoliation of enemy base camps: Spraying of enemy base camps is used to expose them to aerial observation. Even if he does move out before the defoliation is complete, his bunkers, living quarters, and other facilities can be destroyed.

The effectiveness of defoliation has been questioned on the grounds that it produces no military contact. However, this in itself can be a measure of its effectiveness. For example, in Sa Dec Province a major VC base was defoliated in August 1968. After defoliation, an ARVN battalion was able to remain overnight in the area for the first time in 5 years. Many enemy bunkers were opened to observation and destruction. Since the defoliation, the VC presence has decreased to the point that only regional and popular forces are now necessary for local security.

The American Embassy in Saigon sponsored a detailed review of the herbicide program in 1968, with particular emphasis on economic and sociopolitical aspects. To assist in the review, Dr. Fred Tschirley of the U.S. Department of Agriculture visited Vietnam to assess the ecological consequences of the defoliation program. The Embassy report indicated that the defoliation program was worthwhile and that the military value far outweighed any adverse economic effects. However, as a result of the study, improved controls were instituted to minimize the probability of inadvertent spraying of rubber trees and other crops.

The improved controls reduced South Vietnamese civilian complaints of damage to friendly crops from some 30 a month to three a month by early 1969. For comparison, it is interesting to note that in 1965 there were 259 cases of herbicide drift damage to crops in North Carolina. There was less damage in South Vietnam in terms of complaints than there were there.

The use of defoliants has created some problems but detailed reviews have shown that benefits outweigh adverse effects. Not only have herbicides assisted the military effort but they have also had a beneficial impact on the local economy in many areas by permitting the opening of roads and canals which had been under enemy control. The farmer is now able to take his produce to market without paying a tax to the VC or worrying about ambushes. In many sections, the defoliated area along roads has been cleared and is now used for farming. Rather than hindering the small farmer in his attempts to improve his lot, defoliation in conjunction with road clearing and road building operations has opened up new markets and new opportunities for him. In the light of all these factors, I urge that the pending amendments be rejected.

I ask unanimous consent at this point to have printed in the RECORD as part of my remarks a brief statement which I have made in connection with the President's actions in limiting the use of chemical warfare agents and in cutting out totally biological warfare. This is the first time, I point out, that this has been done. I think it shows the understanding the President had on the economic, emotional, and biological problems that these particular agents create.

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

STATEMENT OF SENATOR DOMINICK

Mr. DOMINICK. Mr. President. In the current controversy over the Army's disposal of nerve gas, I think we are forgetting the fact that President Nixon has long since taken the lead in renouncing the use of chemical and biological weapons.

On November 25, 1969, President Nixon announced that, as the result of an exhaustive review led by the National Security Council, the U.S. reaffirmed that this country would never be the first to use lethal chemical weapons and that he would extend that renunciation to include the use of chemical weapons that incapacitate.

At that time, the President also announced that in regard to biological weapons the United States would renounce the use of lethal biological agents and weapons, and all other methods of biological warfare; that the United States would confine its biological research to defensive measures such as immunization and safety; and that he had asked the Department of Defense to make recommendations as to the disposal of existing stocks of bacteriological weapons.

In his November statement the President also promised that he would submit to the Senate, for its advice and consent to ratification, the Geneva Protocol of 1925 which prohibits the first use in war of "asphyxiating, poisonous or other Gases and of Bacteriological Weapons of Warfare". That promise has been kept. On August 19th, the President formally asked the Senate to approve the 1925 Geneva agreement.

I would submit that the record of the Nixon Administration in regard to chemical and biological warfare is both commendable and unassailable. The President has clearly taken the lead in the renunciations of these terrifying weapons. I would particularly commend the President's action on the Geneva Protocol, which was never approved by the Senate although it was the United States in 1925 which sought this ban on chemical and biological weapons. In 1947 this Protocol was returned to the White House and still there was no action by the Executive Branch or the Senate.

It remained for this President to finally—after 45 years—take the humane action which I hope will result in approval of the Geneva Protocol by the Senate.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. NELSON. Mr. President, would the Senator give me his view about the implications of the use of herbicides for food denial? We say that we use it for the purpose of denying the enemy food raised by the Vietcong themselves or food that might be raised by someone else for the Vietcong. If we validate the theory that it is acceptable military practice to deny food to the enemy, how about conditions in the future when another country can say, "We are spraying all crops in country 'X' because we are at war with that country and the dictatorship in that country will take whatever food there is and give it to the military. Since we have to deny food to the military, we have to spray it all because the dictatorship controls all crops."

Is that not what is likely to happen and are we not really then endorsing the use of an instrument of warfare which is applied with very little sophistication but which will proliferate in the hands of the enemy and would put us in the position of endorsing starvation warfare?

Mr. DOMINICK. Mr. President, let me say to the Senator that he is building one of his great parades of horrors—and I have seen him do it before and I admire him—on hypotheses that have not happened.

I would say that in any war that I can remember, since Atilla the Hun, the scorched earth policy has been followed. Countries have used it. We are not doing this. We are being very careful to do this only in areas which will give us the ability to protect ourselves from ambushes and to deny the use of crops to the enemy in areas we know are controlled by the Vietcong or are used by them for their crops. It is a very limited use.

As an example of what we have been trying to do, we have introduced the new wheat and the new rice grains in there and have increased the production throughout Vietnam as a result in areas that we can control.

Mr. NELSON. Mr. President, is the Senator aware of the fact that we have sprayed 500,000 acres of crops and are procuring enough Agent Blue—which includes 54-percent arsenic—this year that could be used to spray an additional 200,000 acres of crops? Some of the statistics are classified on the question of how careful we are. The Senator knows that I cannot use them. But the Senator will concede that the vast majority of croplands sprayed up until 1967 were for crops raised by civilians for use by civilians.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. NELSON. Mr. President, I yield the Senator 3 minutes in which to answer the question.

The PRESIDING OFFICER. The Senator from Colorado is recognized for an additional 3 minutes.

Mr. DOMINICK. Mr. President, I will concede that we have used herbicides to destroy crops that would be used by the enemy who attack the South Vietnamese

in the villages and cities and the American soldiers as well.

It seems to me that if we are fighting a war, we have to do that.

The position of the Senator is that he does not want to fight a war. I do not blame him for taking that position. I do not want to fight it either. However, if we are fighting a war, let us do something about protecting our boys.

Mr. NELSON. I think the Senator has changed the question a little bit. I would be willing to debate that matter later. However, are we not putting ourselves in the position of being the only nation in the world—except Australia and Portugal—that says that herbicidal warfare ought to be used? Eighty nations have voted that they are against it. Italy abstained on the grounds that it is against it but it did not think that the General Assembly had the authority to make legal interpretations of treaty policies.

Mr. DOMINICK. Mr. President, I assume the Senator is talking about the U.N. debate on the use of chemical warfare.

Mr. NELSON. Where does this leave us vis-a-vis all of the rest of humanity?

Mr. DOMINICK. Where does it leave us?

Mr. NELSON. That is correct.

Mr. DOMINICK. It leaves us in the position of saying that if we are going to be engaged in an area with our troops we are going to defend our troops. Unless we do that, there is no point in being there. I am not going to send my boy over to Vietnam and say, we are not going to use herbicides because they will kill trees," knowing that the enemy can get behind those trees and kill my boy. I am not going to do that and neither is the Senator from Wisconsin.

Mr. NELSON. If the justification is that it is effective, why do we not drop a nuclear bomb?

Mr. DOMINICK. There the Senator goes with his parade of horrors. I have great admiration for the Senator, but his statement does not convince me.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 3 minutes.

Mr. NELSON. Mr. President, every time the Senator is asked a question that the Senator cannot answer, he says that the Senator is blowing up the matter and creating a parade of horrors.

I think the Senator does not see the ecological implications of the use of these materials.

No one can tell, in our country or in any other country, the consequences of the use of this 100,000,000 pounds of herbicides in Vietnam. The only answer one can give is that he does not know.

That is the answer we got from DDT for 30 years in this country, even though the scientists were predicting that DDT was a persistent, long-lasting chemical compound that would have disastrous effects worldwide.

In 1962, the biologists and botanists and others who did not agree with Rachel Carson made the same criticism of her that the Senator just made of me, that she was parading the horrors. They said that she was not qualified to make these judgments. However, she was absolutely right. Everyone knows it now.

The Senator knows that we are proceeding again with the continued introduction of pidoram into the atmosphere, the soil, the water, and the air all over the world, which is a very slow degrading herbicide.

Because we do not know what it will do we deny there is any danger to it, despite the fact we now do know of the effects it has.

Mr. DOMINICK. Mr. President, will the Senator yield for a question?

Mr. NELSON. I would like to finish my thought first. The situation is alarming. We know that picloram in tests in some soils only 3.5 percent disappears in over a year. That is very slow degrading. We do not know what happens to the absorption of these herbicides by plankton in the water or by other marine life. Certainly, the study by Dr. Tschirley, as fine a man as he is, does not answer even one-millionth of the consequences. The evidence with respect to massive usage of slow degrading pesticides is correct, horror stories. How can we proceed with this program when no other nation in the world agrees to it, except Australia and Portugal—who do not defend their position. Yet, we are willing to risk the environment of Vietnam.

The PRESIDING OFFICER. The time of the Senator is expired.

Mr. NELSON. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield 7 minutes to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, the purpose of the pending amendment is to end the use of herbicides as defoliants of the jungles of South Vietnam. Defoliation is the result of the elimination of plant chemistry and plant growth.

Defoliation has been adopted by the Department of Defense as a tactic of war to deny the enemy food and concealment. The American forces in Vietnam have been using herbicides for this purpose for 7 years.

I would like to see the use of herbicides ended; I would like to see the bombing ended; I would like to see the shelling ended; I would like to see the killing ended; I would like to see the war ended.

But the war has not been ended; and we still have many Americans fighting every day in Vietnam.

From the beginning I have taken a consistent view in regard to Vietnam.

From the begining I have stated on the floor of the Senate and throughout Virginia that it was a grave error of judgment to become involved in a ground war in Asia.

But I submit that so long as we continue to send Americans to Vietnam and so long as we continue to have Americans fighting in Vietnam we must give our men every protection possible.

We have tied the hands of the military commanders to an unreasonable extent ever since this war has been in progress. This measure would further tie the hands of those who are trying to protect American troops in Vietnam.

It seems to me that 7 years after the use of herbicides began for the purpose of trying to protect our troops, it is not very logical to pass an amendment at this stage ending the use of herbicides.

As I mentioned earlier, the purpose is to defoliate the jungles in order to protect our men. We send B–52's loaded with bombs over these jungles to clear away the triple canopy, so that our military men, our personnel, our troops can have better vision and view of the enemy and protect themselves. So if we are going to send these B–52's loaded with bombs to defoliate the jungle, why should the Senate outlaw the use of herbicides to accomplish that purpose?

It has been stated that the use of herbicides is immoral. I think war itself is immoral. General Sherman said "war is hell," and so it is.

I would like to see this war ended, but the war is not over. American men are still fighting there.

They are still being killed there every day and they are still being wounded there every day.

I do not like to see this war "run out" of the city of Washington. That is why we still have the war in progress now—because a former President of the United States and a former Secretary of Defense were determined to run the war from Washington and prevent the military leaders from taking responsible steps to bring the war to an end.

I am convinced the war could have been ended several years ago.

I think it is a mistake to agree to this amendment.

I think the foremost consideration should be the protection and welfare of American troops in Vietnam. This amendment, in my judgment, could only be harmful to our troops. I shall vote against it.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 5 minutes to the Senator from South Carolina. I regret I do not have more time available.

Mr. THURMOND. Mr. President, I rise in opposition to the pending amendment to H.R. 17123 which would prohibit the use of antiplant chemicals or herbicides by military forces in Vietnam.

My opposition to this amendment rests on two points.

First. There is absolutely no question that the use of defoliation type chemicals in Vietnam has saved the lives of many United States, South Vietnamese, and allied fighting men in South Vietnam. More important, its use will save lives in the future.

Second. Investigations by the Defense Department, State Department, and the Agriculture Department at various times in the past few years have revealed no serious ecological disturbances resulting from the use of antiplant chemicals.

Mr. President, I now wish to discuss in somewhat more detail the two points I have mentioned as a basis for my opposition to the pending amendment.

Point 1 related to the fact that many lives have been saved in Vietnam be-

cause of the use of antiplant chemicals. It does not take a military man to recognize this fact. In many tactical situations outposts, small villages, communications units, or base camps are effectively protected by defoliating the vegetation several hundred yards out from these installations. Thus the movement of enemy forces, infiltrators, and others may easily be detected due to the increased visibility resulting from this defoliation. Around some of our fire support bases in Vietnam adequate defense would be difficult if not impossible without the use of antiplant chemicals.

Further, movement of enemy forces and supplies along infiltration routes may now be detected and dealt with due to effective use of antiplant chemicals. Enemy prisoners have attested to the effectiveness of this technique and further evidence has been obtained from direct observation.

On point 2, the Defense Department has conducted repeated investigations in South Vietnam as to the aftereffects of the use of antiplant chemicals. These investigations have revealed that no serious ecological disturbances have taken place. Despite the claims by supporters of this amendment, these investigations have been unable to reveal any evidence of an increase in stillborn births among South Vietnamese women or of widespread nutritional deficiencies among the people there.

Mr. BYRD of West Virginia. Mr. President, may we have order? I ask that Senators' aides take their seats in the rear of the Chamber.

The PRESIDING OFFICER. That order will be followed.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, the most comprehensive study regarding the effects of antiplant chemicals was performed by Dr. Fred H. Tschirley in 1968. Dr. Tschirley is an official of the U.S. Department of Agriculture. He made the study at the invitation of the Departments of Defense and State. Certain recommendations on defoliation procedures made by Dr. Tschirley are being followed.

Mr. President, there is no doubt that the use of antiplant chemicals does have some effect on our environment, but the point is that competent investigative forces have found these effects generally harmless over a period of time. It is true that an antiplant chemical known as "Orange," which contains a chemical identified as 2,4,5-T, was discontinued from use in this country and South Vietnam. This resulted from findings by the Department of Health, Education, and Welfare that it caused malformed births in certain strains of rats and mice. The main benefit of the "Orange" chemical that it was fast acting in accomplishing the defoliation mission. "Orange" was was being used in this country for range and brush control prior to its discontinuance.

The Defense Department has advised all of the antiplant chemicals now being used in Vietnam are being used in this country and in other agricultural countries of the world for the control of weeds and unwanted vegetation. These chemicals are used by homeowners and farmers with little or no technical expertise, yet they can be used safely and without any incidents of harmful effects to humans.

The principal chemicals being used for weed and plant control include 2,4-D, which all of us use each summer to kill dandelions on our lawns. Other chemicals receiving wide use for control of weeds and unwanted vegetation include Tordon, manufactured by Dow Chemical, and cacodylic acid, a product of Ansul Chemical Corp.

Mr. President, it is ironic that the questions now being raised about the use of antiplant chemicals come at a time when their deployment has greatly declined. The fact is that usage of these chemicals had rapidly dropped because of the change in the nature of the conflict in South Vietnam. In the past, they were widely disseminated over huge areas of land because early in the war allied forces were conducting large search-and-destroy missions. Pacification is the big thing in Vietnam now and there has been a sharp reduction in large scale search-and-destroy missions. It should also be noted that the chemicals being used in South Vietnam can be bought in this country in carload lots by any citizen. Further, they are widely used by our agricultural community. In other words, the antiplant chemicals we are talking about are not some secret mixture which the military scientists have concocted in some hideaway laboratory. There is no Dr. Jekyll or Mr. Hyde in the military.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THURMOND. Mr. President, will the Senator yield me 1 minute?

Mr. STENNIS. I am glad to yield the Senator 1 minute.

Mr. THURMOND. Mr. President, another effective use of antiplant chemicals by the military involves carefully evaluated and precisely controlled attacks on Vietcong and North Vietnam Army food crops with antiplant chemicals. This technique has caused significant increases in defection rates and caused the enemy to divert a large fraction of his forces to food supply. Many crop fields in Vietnam are being used entirely by the enemy. Other fields are more or less under the control of the enemy although cultivated by civilians. Despite this fine line of distinction, the Defense Department estimates that only about 1 percent of the food supply of South Vietnam has been adversely affected by our defoliation campaign.

Finally, Mr. President, it seems to me this amendment is much like some other amendments we have debated in the Senate during recent days. It is similar in that it would in effect tell our field commanders in Vietnam how they should conduct the war. In other words, you would be telling some colonel who has the responsibility of defending a combat outpost that he cannot effectively clear vegetation around his outpost so that fields of fire may be established to protect the men under his command.

We would be taking away from our fighting men in Vietnam a useful tool in the conduct of the war, a tool which is not harmful to our allies and in fact a tool which the South Vietnamese value very high.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I understand the Senator from Wisconsin is ready to yield some time now.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. NELSON. Mr. President, how much time does the Senator from Wisconsin have left?

The PRESIDING OFFICER. Fifteen minutes.

Mr. NELSON. I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, the justification for the use of herbicides is a military justification which says that it is so important to us militarily that we find it necessary to spray herbicides for perimeter defense, herbicides to clear the supply and infiltration routes, herbicides to defoliate forests, and herbicides to spray the food that we think may get into the hands of the enemy.

Of course, a military justification can be made for almost any conceivable weapon if it does some damage or is of some inconvenience to the enemy. The reason why we do not drop the nuclear bomb among others, I guess, is that the devastation caused by it is immediately and shockingly apparent, and everybody shys away from the horror of the utilization of nuclear weapons.

We do not use poison gases because, out of the First World War, people became terribly disturbed about the effects of mustard gas on soldiers. So we do not use that, and all nations have declared that they would not use poison gases.

However, I think because we are ignorant—just plain ignorant—about the environmental implications and the disaster that could occur from introduction into the environment of a wave of herbicides that affect the flora and the fauna—and all creatures live in the soil and in water one way or another. We do not know what the result will be, and cannot know for a long time, and still we do not shy away from their use.

Yes, it is true that it takes 2 or 3 or 4 weeks for the leaves to fall off, and by the time they fall the base camp is gone, but we have made the guerrilla move. We can spray the trail so they cannot use it in the daytime or have to abandon it. We spray food crops under the ridiculous assumption that the Vietcong are going to be denied food.

They have been supplied all through this war with whatever supplies they needed, at times when our military said it could not be done.

I sat arguing in 1965 with one of our most distinguished generals in Senator MUSKIE'S office. He argued that we needed a ratio of at least 5 to 1 in warfare like this.

I said:

The infiltration is 1,500 a month from the North, according to our intelligence; that means we will need 7,500 troops.

He said:

Your mathematics is good, but if I were the adviser of the North Vietnamese, I would advise them to withdraw some of their troops, because logistically they cannot support them.

That general was one of the best logisticians in our Military Establishment. Six months later, 7,500 men a month were infiltrating. What about the argument that we are preventing the Vietcong from raising their food? The Vietcong will simply take food from the civilians when they need it. So it is the noncombatant civilians that are the losers.

I believe this argument raises a very grave military and moral question. The military admits that most of the food that we sprayed up to 1967—and I cannot state the amount, the figures are classified—was food raised by civilians.

Even if we could do what we say we intend to do—just spray food that is to go to the Vietcong—that spray, incidentally, is 54 percent arsenic—what really is the implication? If we validate that kind of warfare, contrary to the viewpoint of all the rest of the nations of the world save three—ourselves, Australia, and Portugal—then, under that theory, what is to stop any country from saying, "We are at war with country X; we know that food raised in that country is going to go to the military first, therefore, we are going to spray all the crops in that country?"

Do not think that will not happen, especially with some of the underdeveloped countries of the world. Anticrop chemicals are a cheap weapon. Underdeveloped countries are monocultures in the main, or at least cultures with a very limited variety of foods that are easy to destroy, and thus it is easy to bring them to their knees.

We are endorsing the concept that you can spray all the food in a country. That is the effect of what we are doing.

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

Mr. NELSON. I yield.

Mr. DOMINICK. Is it not a fact that we are now producing more rice and more agricultural products in Vietnam, through new hybrid strains we have introduced, than they had before?

Mr. NELSON. Yes, I believe we are. Is it not also a fact that the Senator's question has nothing to do with what I am talking about?

Mr. DOMINICK. I do not think so.

Mr. NELSON. I am talking about the question of the policy of endorsing the concept of using herbicides against food crops, in a food denial program. I am simply saying that if we can do it, any country in the world can do it. We are the only country now which says it wants to do it. We are the most peace-loving country in the world. We stand for peace. We do not stand for using horrible weapons and, yet, we are the only one engaging in anticrop warfare.

We have the chance, right here and now, at 12 o'clock today, to vote to endorse the position of almost all of the rest of the countries of the world. Why should we not do so?

Is it because it is a convenient, handy weapon? Surely it is; so are all kinds of things.

Or is it that, as soon as we get out of Vietnam, we will join the others in condemning it? Is that our answer? Or are we going to use it any time we find it convenient, thus setting a dangerous precedent for every other country in the world to follow?

I say we have sprayed 500,000 acres of crops in 8 years.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. I yield myself another 5 minutes.

We are now authorizing procurement of enough agent blue to spray another 200,000 acres for this year.

I think this raises a question that no one here has answered yet—none of the opponents of the amendment. That is the question: Do we intend to be the only country in the world that defends the use of these herbicides as valid military weapons? Are we going to be the only country in the world that does that? By our continued use of them, are we saying to the rest of the world that we put our stamp of legality on chemical warfare which involves risks of disruptions of the environment and life systems that no one in the world can predict? No one. Yet, every thoughtful scientist who looks at the matter is concerned, if not alarmed. Are we going to be the country that validates it?

Suppose that in World War II we had had these chemicals, which we did not. Let us assume that every other country in World War II had taken the position we take now, and had decided to spray the same amount we have sprayed in Vietnam, 6 pounds per capita. In that war about 700 million people were involved. At 6 pounds, the amount used would have been 4,200,000,000 pounds of herbicides, if everyone had taken the position we now take.

Is this what we endorse and validate as a peace-loving nation?

Mr. President, I think it is time for Congress to make a declaration that we join all the rest of the nations in the world in proscribing chemical herbicides as a valid instrument of war. If we do not do that, I think our standing as a country that has been arguing against the proliferation of nuclear weapons is suspect, from the standpoint of sincerity, when we are willing to use and see the proliferation of these weapons.

The Senator from Colorado referred to the horror stories that the Senator from Wisconsin builds up. Well, I ask any advocate of the use of these chemicals: Is the environmental deterioration around the world a horror story, or is it not? If it is not a horror story, I do not know what is. And this is just an additional facet of man's irrational introduction into the environment of chemicals that are having environmental eruptions and consequences in deteriorating the quality and the livability of the environment and affecting the life systems all over this planet.

This is just one more aspect of it. The answer always is, well, this little bit does not do too much damage, except when you add it all together. When you add it all together, we know what we are looking at environmentally. We know we are looking at a planet in which the whole envelope of air around it is becoming disastrously polluted. We know the oceans are going to lose all their productivity, if we continue what we are doing, in another 50 years.

That is the largest single asset on the globe. We know that we will wipe out most of the living species in the next 50 to 75 years, if we continue what we are doing.

I say that, not only as a matter of principle but also as a matter of practicality, we ought to tackle the question of the broadspread usage all over the world of the herbicides and pesticides in our country and in all other countries, too; and we ought to start in Vietnam, since we have almost all the other countries of the world agreeing with that position now. So we ought to start there and move to try to bring under control the indiscriminate use of all these herbicides and pesticides which are intruding upon and upsetting the plans of nature and having disastrous effects on the environment, which we can see now, and with further effects to come which nobody can predict.

Mr. STENNIS. How much time do I have remaining?

The PRESIDING OFFICER. Twelve minutes.

Mr. STENNIS. I do not intend to use more than half that time, and then I will ask the chairman of the subcommittee, the Senator from New Hampshire, to use the remainder.

Mr. President, I appreciate very much, and I am sure that the Senate as a whole does, the splendid work of the Senator from Wisconsin and the Senator from New York. I am frank to say that they have made a very impressive argument. There is one flaw in it, however.

I am ready to start anywhere with the Senator from Wisconsin except the very vital part we are talking about here, with respect to our boys who are being sent to Vietnam. Some of them are losing their lives. I am satisfied that the herbicides we are using now, which amount to approximately 25 percent of what we had been using, are saving the lives of some of them. I am satisfied, too, that the use of the herbicides is making the enemy's problems much more difficult and is making it more difficult for the enemy to accomplish results.

Major defoliation has been accomplished in war zone C. Prior to defoliation, seven brigades were necessary to maintain the superiority of the U.S. military forces and those of South Vietnam. During 1967, after defoliation, only three brigades were required.

The Commander of Naval Forces in Vietnam, in a report to General Abrams, stated:

As you know, a major concern is the vegetation along the main shipping channel. Your continuing efforts under difficult and hazardous flying conditions; in keeping this area and the adjacent inland areas devoid of vegetation have contributed considerably in denying the protective cover from which to ambush the slow-moving merchant ships and US Navy craft.

That is another classical illustration of its valued use in our shipping and keeping down the ambushing of men in those ships.

This amendment goes all the way; there is no middle ground to it. It provides:

No part of any amount authorized or appropriated pursuant to this act or any other law—

That is the appropriation bill that will be coming—

shall be expended for the purpose of—

(1) Engaging directly in the military application of antiplant chemicals.

It says all or nothing. This is the end, if this amendment is agreed to.

This is a matter of utmost attention and deepest concern on the part of our committee. Extensive and valuable hearings have been held by Senator McINTYRE and his valued committee, which includes Senators YOUNG, BYRD of Virginia, MURPHY, and BROOKE. They have come forth with certain facts and certain protective devices that we know will continue to be helpful. But this amendment now, going all out as it does, is premature and, if adopted, could and would seriously handicap our troops in the field.

The issue is very simple. Shall we take away one way of saving the lives of our men in Vietnam? There can be only one answer to this question—a categorical "no." So long as there is any possibility that the lives of American boys, as well as those of our allies, can be saved by using herbicides, there can be no justification for arbitrarily depriving our military commanders of the option for selective application of this material.

Reports from our field commanders, in case after case, dramatically illustrate how effective herbicides have been in depriving the enemy of protective cover. Defoliation permits enemy bases, equipment and supplies to be spotted and destroyed. Restricting the growth of vegetation around our bases prevents surprise attacks from these areas of concealment and permits our troops to fire more effectively. Defoliation along roads and waterways dramatically reduces ambushes. Defoliation of infiltration routes permits aerial observation of enemy movement and attacks by our forces on troops, trucks, weapons and supplies which traverse these trails. Herbicides also have been effective in destroying enemy food crops and inhibiting his combat capability.

Let me recite just a few examples of the advantages we have gained by using herbicides, as reported by our troops in Vietnam.

USE FOR DEFOLIATION

The banks along two rivers in An Xuyen Province were defoliated in February 1964. In the year prior to the spraying there had been five attacks of boats but none in the year following. Overall, Vietcong actions showed a change from attacks of boats, military and civilian facilities to harassment, accompanied by a decrease in the intensity of the actions.

Along a major highway in Kien Hoa Province, an area 14 kilometers long and 3 kilometers wide was defoliated in October to December 1965. In the year prior to defoliation there had been 145 Vietcong initiated actions. In the 12 months following defoliation there were only 46, a decrease of 68 percent in the number of incidents. After defoliation there was an abrupt shift in Vietcong targeting toward military facilities and away from civilian objectives.

Defoliation aids visual reconnaissance. Air Force forward air controllers and Army aerial observers have discovered Vietcong base camps and major supply routes in defoliated areas that had previously been undetected. A significant helicopter defoliation mission was conducted in the vicinity of Sa Dec in August 1968. The target area consisted of three main canals which converged and formed a strong Vietcong base. The dense vegetation permitted visibility of only 10 to 15 meters horizontally and none vertically. The area was sprayed with approximately 735 gallons of herbicide white and over 90 percent of the area was defoliated. As the result of the defoliation, a South Vietnamese battalion was able to remain overnight in the area for the first time in 5 years. Many enemy bunkers were open to observation. Since the defoliation, the Vietcong presence has decreased to the point that only regional and popular forces are now necessary for local security.

Foliage was removed within 300 meters on both sides of a road between two major fire-support bases of the 101st Airborne Division. This road was bounded by vegetation consisting of small trees and thick undergrowth approximately 6 feet tall. Prior to defoliation, troops were frequently subjected to enemy ambush. After defoliation, even though there had been indications of enemy activity in the surrounding areas, no major difficulty was encountered in keeping the road open to traffic.

The removal of double and triple jungle canopy in the Ashau Valley area has significantly contributed to the gathering of intelligence. This removal of foliage has exposed and permitted the destruction of base areas and storage sites, and has impeded enemy infiltration into areas adjacent to friendly populations.

Defoliation operations have strengthened the defensive posture of most of the fire-support bases in Vietnam by removing available concealment for sappers—troops carrying demolition charges.

During the period November 1969 to March 1970, large area defoliation operations along major infiltration routes in western Kontum Province have significantly improved visual reconnaissance and target acquisition, aerial photography and artillery fire adjustment effectiveness. This has considerably enhanced the security posture within the 24th special tactical zone.

USE FOR CROP DESTRUCTION

Crop destruction is a small but important element of the herbicide program. Crops in areas remote from population centers, under control of the Vietcong and North Vietnamese, which cannot be captured by ground operations are considered for spraying. Crop destruction targets are carefully selected in food-scarce areas so as to attack only those crops known to be grown by or for the Vietcong or North Vietnamese.

Captured enemy documents have revealed that some Vietcong and North Vietnamese units have been put on reduced rations and forced to divert tactical units from combat missions to food-growing and food-transportation operations, attesting to the effectiveness of the crop destruction program. In areas where extensive crop destruction missions have been conducted, increased Vietcong and North Vietnamese defections to South Vietnam have been attributed to the low morale resulting from food shortages. Here are several examples of reports from Vietnam involving the effectiveness of crop destruction.

The 120th Farm Production Company, 20th Montagnard Communist Battalion, was deployed to central Quang Ngai Province in December 1969 to set up operations in a 36,000 square meter rice field. After the farm was heavily damaged by herbicides, the unit only produced enough food for its own personnel. The unit has since relocated.

In four of the five provinces in I Corps tactical zone, helicopter crop destruction operations have been effectively employed to destroy small garden plots and rice plots in areas solidly controlled by the Vietcong or North Vietnamese. During a recent 3-month period in one province, 237 garden plots were located. These are being destroyed as assets become available. Hoi Chanhs—defectors—have rallied from these areas because of food shortages. The Hoi Chanhs also report on low morale in their units because of food shortages.

COMMENTS ON THE USE OF HERBICIDES

Mr. President, I am very mindful and fully aware of the issue involving the possible ecological and physiological effects of the use of herbicides in Vietnam.

The amendment No. 784, cosponsored by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. GOODELL) provides that no funds authorized under this bill will be used to procure, maintain, or use herbicides, including delivery or dissemination equipment.

In my view this proposed amendment is premature and could, if adopted, seriously handicap our troops in the field. It would remove the option of employment of materials which are widely used by all agricultural nations for control of weeds and unwanted vegetation. More importantly, such denial could increase manpower requirements, encourage increased enemy activity, and result in large numbers of casualties among our military and civilian population in Vietnam. Those are carefully used words, Mr. President, based upon the facts of life. I, for one, would not wish to share the responsibility for these consequences.

PROPOSED LANGUAGE CALLS FOR STUDY BY NATIONAL ACADEMY OF SCIENCES

The committee has proposed language in the bill, section 506(c), which fully recognizes the problem of the use of herbicides. It calls for a study by the National Academy of Sciences into the ecological and physiological consequences inherent in the use of herbicides, to be financed from the fiscal year 1971

chemical and biological warfare program. The results of this study are required to be submitted by the Secretary of Defense with appropriate comments and recommendations by March 1, 1972. This committee will give due consideration to the report and recommendations, and will report its findings and any necessary recommendations to the Senate.

The committee believes that such a study is essential, and commends the recent decision of the Defense Department to suspend further use in Southeast Asia of herbicides containing 2,4,5-T.

The evidence which has been presented to date by our scientists does not prove conclusively that the effects of the use of herbicides are such as to preclude their use by military forces in Vietnam in certain situations. While there may be some risk even in the selective use of herbicides, the risks of our fighting men are even greater in their life and death struggle. I would not wish to increase those risks.

AUTHORIZATION FOR USE OF HERBICIDES

Let me explain the very clear lines of responsibility and the procedures which have been established for the use of herbicides to insure that their use is controlled.

Under policy guidance provided by State and Defense Departments, the U.S. Ambassador in Saigon and the commander of the Military Assistance Command in Vietnam, are empowered jointly to authorize U.S. support of South Vietnamese Government requests for herbicide operations. All requests for defoliation and crop destruction must originate with the province chief at the province level. These requests must contain a detailed justification for the operation and include a civil affairs annex to insure that any impact on the civilian population has been considered. So there is no reckless calculation in haste that possibly could creep in. Authority to approve small scale defoliation such as helicopter spray projects has been delegated to the South Vietnamese corps commander and the U.S. corps senior adviser.

All requests for large-scale defoliation by fixed wing aircraft and all crop destruction missions must be approved by the Chief of the Vietnamese Joint General Staff. When the Vietnamese request for support is received at MACV—Military Assistance Command, Vietnam—it is staffed, along with a parallel request submitted through U.S. advisory channels, to MACV. During staffing at the Saigon level, the project also is reviewed by the U.S. Agency for International Development, Joint U.S. Public Affairs Office, American Embassy, and MACV. A final opportunity is given the province chief to approve or reject each spray mission 24 to 48 hours before the scheduled time of execution.

ALLEGATIONS OF HARMFUL EFFECTS OF CERTAIN HERBICIDES

The American Embassy in Saigon sponsored a detailed review of the herbicide program in 1968, with particular emphasis on economic and socio-political aspects. To assist in the review, Dr. Fred Tschirley of the U.S. Department of Agriculture visited Vietnam to assess the ecological consequences of the defoliation program. The Embassy report indicated that the defoliation program was worthwhile and that the military value far outweighed any adverse economic effects. However, as a result of the study, improved controls were instituted to minimize the probability of inadvertent spraying of rubber trees and other friendly crops. These controls preclude destruction of any crops in populated areas or which might be grown for civilian use.

Recent test reports have indicated that 2,4,5-T caused abnormal fetuses in mice, rats, and chicken embryos. It is recognized that animal data cannot be directly extrapolated to humans. Investigations have been made to identify possible effects on humans resulting from the use of this chemical. No incidents of verified malformed births resulting from herbicide operations are known.

An examination in December 1969, of the hospital records in Mimot, Cambodia, by Dr. A. Westing of the American Association for the Advancement of Science showed no increase in birth defects as a result of herbicide spraying of rubber plantations that occurred in April 1969.

Although there are no confirmed public health hazards associated with the use of the 2,4,5-T contained in herbicide orange in Vietnam, the Department of Defense deemed it prudent to suspend all operations using orange until the problem could be resolved. In the meantime, operations continue using defoliants white and blue.

The proposed amendment would prohibit the U.S. military use of antiplant chemicals. There are over 100 antiplant chemicals available on the commercial market. Many of these chemicals are used by the military to clear rights-of-way, fence lines, and to remove undesired vegetation on posts, camps, and stations both here and abroad. This amendment would prohibit the use of these chemicals for grounds maintenance without affecting the use by other Government agencies. In addition, large quantities of herbicides are furnished the Vietnamese under the AID program in order to improve their agricultural output. Is it the intent of the amendment to prohibit the use of all herbicides by our military and to preclude our supporting the Vietnamese agriculture?

SUMMARY

To sum up, Mr. President, the case before us is crystal clear. Based on the detailed facts which I have presented, I must again emphasize the importance of providing our military commanders in Vietnam with selective and discretionary authority to employ herbicides to help shorten the war, save the lives of our men, and contribute to the successful conclusion of the Vietnamese conflict. This can best be accomplished by defeating the proposed amendment.

I cite these things to show that this is a matter of vast concern at every level of our Government, by the committee, and by individual Senators. We have worked on it, and we have gotten far along, as has the military, to the practical side of the problem and the only practical remedy. We are fighting there and are sending these boys into these places, and their lives are in jeopardy. The practical use of these herbicides lessens the probability of loss of life.

Mr. President, how much time do I have remaining? I meant to limit myself to 6 minutes.

Mr. BROOKE. Mr. President, our experience in Vietnam in recent years has served to focus national attention on the employment of chemical and biological warfare. No one can deny that its unregulated utilization could possibly lead to an unwanted and possibly uncontrollable proliferation of lethal CBW agents by countries who presently cannot afford the deployment of more sophisticated nuclear weaponry.

As we all know, President Nixon adopted a forward-looking position of leadership in this area last November when he announced the policy that the United States will not employ biological weapons under any circumstances and that our existing stockpiles of germ weapons are to be destroyed. He is hopeful, as we all are, that all nations will take heed and adopt a similar course of responsible action.

Herbicides, not included in this category, have been the cause for additional concern by many who question their strategic value in light of evidence suggesting long-range effects on the environment. However, the concern over possible ecological consequences of herbicides in recent months has given way to a concern over the teratogenic, or fetus-deforming, properties of 2,4,5-T, a compound present in a number of herbicides. From the studies that have been completed, it is not conclusive, in my view, that the results on experimental animals can be effectively extrapolated into the human experience. More important, on April 15 of this year, Secretary Packard announced that the use of 2,4,5-T for military operations had been suspended. This action has, in my opinion, rendered the debates over this compound moot.

On the other hand, evidence gathered from field commanders in Vietnam suggests strongly that the herbicide program is strategically valuable and is saving American lives. Their reported use includes defoliation for purposes of improved aerial reconnaissance, defoliation of enemy base camps for purposes of air strikes, defoliation around lines of communication, and around the perimeters of isolated base camps and, most important, defoliation along key roadways for the purpose of minimizing ambushes.

The Department, equally concerned over the environmental impact of their herbicide program has imposed a number of restrictions. The result has been a 75-percent reduction in use level in this area over the past 2 years.

The Armed Services Committee, under the able leadership of our Chairman, has authorized a study to be conducted by the National Academy of Sciences for the purposes of ascertaining the ecological and physiological consequences that follow the use of herbicides. This, hopefully, will clarify the effects of the various compounds presently in use.

In my view, the Department of Defense has adopted a responsible course of action by limiting the use of herbicides while seeking to achieve specific military objectives. Accordingly, I will vote against the amendment offered by my distinguished colleague from Wisconsin.

Mr. McINTYRE. Mr. President, I cannot accept the conclusions to which the proponents of the pending amendment are drawn, that the herbicide program should be immediately discontinued. Whatever the possible side effects of the program, there can be no dispute as to the primary contribution it has made to the war effort. It has saved the lives of Americans in Vietnam.

Mr. President, I think the best way to sum it up, with all due deference to the Senator from Wisconsin and his good ally the Senator from New York (Mr. GOODELL) in their serious concern for the ecological and physiological consequences of our herbicide program is as follows: I should like to ask of every Senator:

Suppose that you were an infantryman, riding in a jeep along a lonely Vietnamese road. Would you prefer to have the roadside within 100 feet covered by thick jungle growth, suitable for ambush, or would you prefer a clear area out to 1,000 feet, offering little chance of concealment and permitting aerial surveillance ahead of your convoy? And, if an attack were launched upon you, would you prefer to have your attackers, your ambushers, close at hand, or a long distance off, so that their accuracy would be low and your chances for evasive action high?

Which would you prefer, if you were a soldier in Vietnam?

Mr. President, we all want our boys to come home, but the policy of the Government at present is to have them there. And as long as they are there, it is the feeling of the Armed Services Committee and the Research and Development Subcommittee which looked into this program, that the herbicide program at its present much reduced level, in order to save the lives of our American soldiers fighting in Vietnam.

So, with that, Mr. President, I urge the Senate to reject the amendment of the Senator from Wisconsin (Mr. NELSON).

Mr. HART. Mr. President, I urge passage of this amendment offered by the able Senator from Wisconsin (Mr. NELSON) to prevent the use of antiplant chemical weapons by the U.S. military.

The amendment, which I have cosponsored, also would prohibit the transfer of our stockpiles of such weapons to another country and would provide for elimination of those stockpiles.

My strong support for this amendment is based on testimony we have heard before the Senate Subcommittee on Energy, Natural Resources, and the Environment.

While little evidence is available as to the actual military effectiveness of such weapons, our hearings did make clear the potential damage which may result from continuation of defoliation and anticrop operations in South Vietnam.

Several prominent scientists have argued that no limits can yet be placed on the potential damage to man that may result from the use of chemicals such as 2,4,5-T and 2,4-D.

Whereas no case of human damage has yet been determined conclusively to be attributable to 2,4,5-T or 2,4-D, constantly we have been reminded that birth defects seldom bear a brand name which will allow determination of their cause.

Perhaps the most alarming prospect discussed at the hearings was that a highly toxic contaminant known as dioxin may now be building up in our bodies and in those of the Vietnamese. Currently produced 2,4-T, a major ingredient of agent orange, is known to contain small amounts of this contaminant. Although dioxin has not yet been found in 2,4-D, which is used in both agent orange and agent white, it has been discovered in its chemical precursor 2,4-dichlorophenol. Some scientists have concluded, as a result, that it is likely that it is contained in 2,4-D as well.

The dioxin associated with 2,4,5-T, we have been told, is stable when sprayed on soil. We have also learned that it accumulates in the tissue of chicks. What this evidence suggests is that dioxin may persist in the environment after being deposited on forests and plants and that it may, when transferred to the human body through the food chain, accumulate in human tissue. Although we do not know that it will do so, it seems irresponsible to take the risk with a chemical shown to be many times more toxic than thalidomide in experiments with chick embryos.

We have also received testimony at our hearings on the ecological damage that may be caused by defoliants. The risks of destruction of nontarget plants and of wildlife and fish species has been discussed, as has the possibility of permanent replacement of valuable vegetation by bamboo.

Although in most of these cases, we are dealing with possibilities rather than with instances of known harm to humans and the environment, we must ask ourselves whether the benefits of our defoliation and anticrop programs can justify these risks. Until impressive evidence of military effectiveness is available, I cannot find any such justification. At a time when we must make every effort to wind down the war in Southeast Asia, every weapon in our arsenal must be subjected to increased scrutiny and stiffer tests for effectiveness and possible harmful consequences. With the evidence at hand it does not appear that these tests have been met.

A policy which would destroy a country in order to save it would be absurd. It is the responsibility of Congress to insure against actions which might have such a consequence.

Senator NELSON effectively has described the reasons which should persuade us to adopt his amendment.

Mr. NELSON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. GOLDWATER. Mr. President, while this particular subject is outside the province of the subcommittee I work on, I want to relate what I found in South Vietnam as to the use of these defoliants.

It is absolutely true that the Province chief must be consulted and that he must approve of any use of the defoliants.

I remember the trouble I got into in the campaign, about 6 years ago, when I suggested using liquid defoliants. I had served in the jungle, and I tell you, Mr. President, the jungle is no place for American boys to be. We made a mistake sending ground troops there, in the first place; but, as long as we made that decision, we had better not give up protecting the lives of our soldiers when they are in the jungle, when one cannot see through for 5 feet, and where it rains for a month after the rains above have ceased.

We must use these defoliants. It would be a tremendous and dangerous mistake for us not to do so, in order to protect our American boys, so that when they have to move through a defoliated forest, they can get to the enemy.

The PRESIDING OFFICER (Mr. HOLLINGS). All time has now expired on the amendment.

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. STENNIS. Mr. President, a parliamentary inquiry: Do I correctly understand that this is a direct vote on the amendment, up or down?

The PRESIDING OFFICER. That is correct.

Mr. STENNIS. I thank the Chair.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL) would vote "yea."

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. FONG), the Senator from California (Mr. MURPHY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE), and the Senator from Alaska (Mr. STEVENS), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT), and the Senator from California (Mr. MURPHY), would each vote "nay."

The result was announced—yeas 22, nays 62, as follows:

[No. 272 Leg.]

YEAS—22

| | | |
|---|---|---|
| Bayh | Hughes | Nelson |
| Case | Magnuson | Proxmire |
| Cranston | Mansfield | Ribicoff |
| Eagleton | McGovern | Smith, Ill. |
| Goodell | Metcalf | Williams, N.J. |
| Harris | Mondale | Young, Ohio |
| Hart | Moss | |
| Hatfield | Muskie | |

NAYS—62

| | | |
|---|---|---|
| Aiken | Ellender | Pastore |
| Allen | Ervin | Pearson |
| Allott | Fannin | Pell |
| Anderson | Goldwater | Percy |
| Baker | Griffin | Prouty |
| Bellmon | Gurney | Randolph |
| Bennett | Hansen | Russell |
| Bible | Holland | Schweiker |
| Boggs | Hollings | Scott |
| Brooke | Hruska | Smith, Maine |
| Byrd, Va. | Jackson | Sparkman |
| Byrd, W. Va. | Javits | Spong |
| Church | Jordan, N.C. | Stennis |
| Cook | Jordan, Idaho | Symington |
| Cooper | Kennedy | Talmadge |
| Cotton | Long | Thurmond |
| Curtis | Mathias | Tower |
| Dodd | McClellan | Williams, Del. |
| Dole | McGee | Yarborough |
| Dominick | McIntyre | Young, N. Dak. |
| Eastland | Miller | |

NOT VOTING—16

| | | |
|---|---|---|
| Burdick | Hartke | Packwood |
| Cannon | Inouye | Saxbe |
| Fong | McCarthy | Stevens |
| Fulbright | Montoya | Tydings |
| Gore | Mundt | |
| Gravel | Murphy | |

So the Nelson-Goodell amendment (No. 784) was rejected.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HOLLAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## PUBLIC WORKS APPROPRIATIONS, 1971—APPOINTMENT OF A CONFEREE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Arkansas (Mr. McCLELLAN) be added as a conferee on the public works apropriations bill, H.R. 18127.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

## AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The Senate continued with the consideration of the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

AMENDMENT NO. 853

The PRESIDING OFFICER (Mr. HOLLINGS). Under the unanimous-consent agreement, the Chair now lays before the Senate the Proxmire amendment No. 853, which the clerk will state.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment will be printed in the RECORD.

The amendment (No. 853) is as follows:

AMENDMENT NO. 853

On page 21, beginning with line 17, strike out all down through line 9 on page 22, and insert in lieu thereof the following:

"SEC. 504. (a) Of the total amount authorized to be appropriated by this Act for the procurement of the C–5A aircraft, $200,000,000 of such amount (hereinafter in this section referred to as the 'contingency fund') may not be obligated or expended except as provided in this section.

"(b) The contingency fund may be expended only for the reasonable and allocable direct and indirect costs incurred by the prime contractor under a contract entered into with the United States to carry out the C–5A aircraft program. No part of the contingency fund may be used for—".

On page 22, lines 23 and 24, strike out "such $200,000,000" and insert in lieu thereof "the contingency fund".

On page 23, line 4, strike out "such $200,000,000" and insert in lieu thereof "the contingency fund".

On page 23, between lines 16 and 17, insert the following:

"(d) No part of the contingency fund may be expended pursuant to this section except under one or both of the following conditions:

"(1) If the Armed Services Board of Contract Appeals has made a determination with respect to the amount in dispute between the prime contractor and the United States on the C–5A aircraft contract and has determined that the United States is obligated to such contractor on such definitized contract in effect on July 1, 1970 for all or any portion of the amount in dispute between the parties and no judicial review has been sought by either party with respect to the action of such Board, or if judicial review of the action of such Board was requested and has been completed, the amount, if any, finally determined to be owing to the contractor shall be paid from the contingency fund; by no amount in excess of the amount so determined to be owing by the United States (of the amount in dispute) may be expended from the contingency fund.

"(2) A trustee appointed by a court of bankruptcy pursuant to a voluntary or involuntary petition or in a corporate reorganization proceeding under chapter 10 of the Bankruptcy Act has determined that all or a part of the contingency fund is needed for the purpose of assisting the prime contractor in meeting the terms of the contract for the completion and delivery of C–5A aircraft during the fiscal year ending June 30, 1971; but no amount in excess of the amount determined by the trustee to be necessary for the contractor to meet such schedule may be expended from the contingency fund.

The Comptroller General of the United States shall, at the earliest practicable date after the enactment of this section, conduct a study of the financial capability of the prime contractor on the C–5A aircraft with a view to determining such contractor's capability of meeting the terms of the contract for the completion and delivery of forty-two C–5A aircraft by June 30, 1971, and for completion and delivery of the total number of such aircraft under the contract. The Comptroller General shall submit the results of such study to the Congress and the Secretary of Defense, at the earliest practicable date, and shall include in such report the total amount which would have to be expended by the United States to insure completion and delivery of forty-two C–5A aircraft and to insure completion and delivery of the total number of such aircraft contracted for by the United States. The Comptroller General shall include in such report such other information and cost data as he may deem appropriate.

"(e) In the event of any bankruptcy or corporate reorganization proceeding involving the prime contractor on the C–5A aircraft, the Secretary of Defense shall take all appropriate measures to insure that (1) the financial interests of the United States are fully protected, and (2) priority is given to the expeditious completion of the C–5A aircraft contract."

On page 23, line 17, strike out "(d)" and insert in lieu thereof "(f)".

On page 23, lines 18 and 19, strike out "$200,000,000 referred to in subsections (a) and (b) of this section" and insert in lieu thereof "contingency fund".

On page 23, between lines 21 and 22, insert the following:

"(g) None of the funds authorized to be appropriated by this or any other Act for any purpose other than the C–5A aircraft program may be transferred to or used for the C–5A aircraft program."

Mr. PROXMIRE. Mr. President, I send to the desk a modification of the amendment and I ask unanimous consent that the reading of the modification be dispensed with. I will explain it.

The PRESIDING OFFICER. Without objection, it is so ordered, and the modification of the amendment will be printed in the RECORD.

The modification of amendment No. 853 is as follows:

On page 2, line 18, strike out "both" and insert in lieu thereof "more".

On page 2, line 25, after the word "contract" insert a comma and the word "as".

On page 3, line 1, after "1970" insert a comma.

On page 3, line 11, strike out "A" and insert in lieu thereof "If a".

On page 3, between lines 21 and 22, insert the following:

"(3) If the Comptroller General of the United States has determined, on the basis of the study of the financial capability of the prime contractor conducted pursuant to this section, that the prime contractor cannot, without the assistance of all or a part of the contingency fund, meet the contract schedule for completion and delivery of forty-two C–5A aircraft by June 30, 1971, but can reasonably be expected to meet such schedule with the assistance of all or a part of such fund; but no amount in excess of the amount determined by the Comptroller General to be necessary for the contractor to meet such schedule may be expended from the contingency fund."

On page 4, line 7, strike out "and" and insert in lieu thereof the following: "except that the portion of the study relating to the contractor's capability of meeting the terms of the contract for the completion and delivery of forty-two C–5A aircraft by June 30, 1971, shall be submitted to the Congress and the Secretary of Defense not later than November 15, 1970. The Comptroller General".

Mr. STENNIS. Mr. President, before the Senator's time starts to run, I ask for order in the Senate.

The PRESIDING OFFICER. The Senate will be in order. This is an important matter. A period of 3 hours has been allocated for the amendment, the time to be controlled by the Senator from Wisconsin and the Senator from Mississippi.

The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PROXMIRE. Has the amendment been modified in accordance with the language I sent to the desk?

The PRESIDING OFFICER. The amendment is so modified in accordance with the modification.

Mr. PROXMIRE. Mr. President, I ask

for the yeas and nays on the amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 10 minutes.

Mr. PROXMIRE. Mr. President, last Thursday on behalf of the Senator from Pennsylvania (Mr. SCHWEIKER) and myself, as well as the Senator from Massachusetts (Mr. BROOKE), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG), I introduced an amendment aimed at protecting the taxpayers' interest in the disposition of the $200 million Lockheed contingency.

BUILD THE PLANES AMENDMENT

We believe that our amendment is necessary to make certain that the 42 planes funded by this bill are built, and we believe our amendment is necessary to guarantee that the men are kept at work. It is a build-the-planes, keep-the-men-at-work, protect-the-taxpayers-interest amendment.

The bill before us contains a $200 million contingency fund. This amount is over and above any money owed to Lockheed under the contract. That is what the Air Force says Lockheed insists that unless it gets these, and additional funds later, it will have to default on its contract. They have threatened to default unless they get the funds.

We have asked, repeatedly, for detailed cash flow information from the company to prove that they must have the funds. But the company and the Air Force tell us that such information is proprietary and will not be made public. We are asked, therefore, to give $200 million to the company on the basis of their word and their threat that without it they cannot complete even the 42 planes which the funds in this bill would provide.

This does not protect the public interest. Our amendment adds three additional conditions to the payment of the funds. Their basic purpose is to make certain that the funds are not paid out unless the company either has them coming or that they are needed to build the planes and keep the men at work.

THREE CONDITIONS

This amendment as modified provides that the $200 million provided in the bill for Lockheed above the amount the Air Force says is owed to Lockheed under the contract would not be given to Lockheed unless one of the following conditions were met:

First. The Armed Services Board of Contract Appeals or a court should decide that part or all of the $200 million is owing to Lockheed under the contract.

Second. A trustee in bankruptcy determines that all or part of the $200 million is necessary to complete the production of the 42 C–5A planes this bill would fund.

Third. The comptroller general determines, after a study that must be completed by November 15, 1970, that all or part of the $200 million is necessary to complete production of the 42 C–5A planes.

The third condition is a modification of the original amendment. It would permit the $200 million to be paid to Lockheed, but only after a competent, independent finding that could assure the Congress that the funds were needed to make production of the plane possible.

It would avoid what otherwise would be a precedent set in the bill that would give a defense contractor $200 million that the Air Force itself says the Government does not owe, and would give the funds without any independent determination that the money is necessary to produce the planes or that the $200 million would be adequate to permit the planes to be produced. The bill without the amendment would make the Government liable for a total of $800 million above the contract, not owed by the Government, before the contract is completed, and perhaps much more.

The amendment would require the Comptroller General to determine how much will be necessary to complete the contract.

Now that I have stated the general points in the amendment, let me go into additional details about the amendment.

The Senator from Pennsylvania (Mr. SCHWEICKER) and I are offering a very modest and, we believe, reasonable amendment. It places limitations on the use of the contingency fund and allows it to be used if any one of the three conditions is met.

EXPLANATION OF CONDITIONS

As originally offered, our amendment contained only two provisions aimed at seeing to it that 42 of the planes were finished and delivered, the subcontractors kept whole, and finally the workmen kept at their jobs building the C–5A. At the same time, the financial interests of the taxpayers would be protected.

Our first provision stipulated that if the Armed Services Board of Contract Appeals ruled that the Government owed Lockheed the money they were claiming, Lockheed would be paid and that would be the end of it. Lockheed's appeal has been before the ASBCA since early January of this year. And as I have indicated before, there is no reason the matter should not have been settled already. If the Armed Services Board of Contract Appeal rules that the Government does not owe Lockheed the money under the contract, two things could happen: first, it is possible that Lockheed could still meet their commitments. The assumption that they cannot meet their commitments is just that—an assumption. We have been told by the Pentagon that Lockheed is in desperate financial straits. On the other hand, we have not seen any hard facts that would substantiate this assertion by the Pentagon. Moreover, we have been specifically refused access to elementary cash flow information which could define both the type and magnitude of Lockheed's cash difficulties and indicate the source of those difficulties. According to the Pentagon, the U.S. Senate is denied this information because Lockheed does not want the Senate to see it.

PROTECTS AGAINST LOCKHEED THREAT TO DEFAULT

If events subsequently prove that the Pentagon's assertions regarding Lockheed's financial status are correct or if Lockheed's management chooses to default on their contractual agreements, our amendment would help keep the plant open and get the 42 airplanes built. If Lockheed should carry out its threat to default and file for bankruptcy, our amendment would speed up the granting of the $200 million contingency money if an independent and impartial trustee determined that the money was truly required to complete the 42 airplanes due the Government at the end of this year.

Nothing in our amendment would undercut the authority of the Senate Armed Services Committee to review and approve whatever plan the Pentagon submits for solving the Lockheed problem. All the restraints and provisions of the legislation reported out of the Armed Services Committee remain in effect. In my opinion, our amendment expanded and clarified the restrictions imposed by the Armed Services Committee. In addition, it provided for accelerating approval for use of the contingency fund if justified by an impartial trustee in the event the company carried out its threat to default or to go into bankruptcy.

Our amendment also provided that the GAO would furnish additional information to the Senate on the C–5A program, information we should have had long ago.

This was our original amendment. We thought it fair and constructive. We thought it helped protect the interests of our military and our taxpayers. Notwithstanding, our amendment has been strongly opposed. It has been opposed on the grounds that conditions we laid down were impossible to meet, that the ASBCA needs another year or so to rule on the Lockheed claim they have already had for 7½ months. It has been opposed on the strongly emotional grounds that our intent was to drive Lockheed into bankruptcy and throw thousands of people into the ranks of the unemployed. But it was Lockheed which threatened default and it is our amendment which protects the workers and the subcontractors if that should happen. But the opponents distorted our amendment.

Neither Senator SCHWEIKER nor I, nor any of our cosponsors, have any intent to single out Lockheed for special punishment or for special treatment. But we are intent on keeping a semblance of free enterprise motivation in the Pentagon's major weapons programs.

GAO REPORT

To demonstrate further our intentions, and our reasonableness we have modified our amendment to provide that the contingency fund can be used to keep the production lines open if the GAO, after study and analysis, determines it is necessary. Furthermore, in order to assure that there is no halt in the production of the 42 aircraft, we have stipulated that the GAO's report to the Congress should be made no later than November 15, 1970. The $344 million in the con-

tract for Lockheed under the contract will be sufficient to meet Lockheed's production needs until January 1971. So the additional $200 million will be available under the amendment, if necessary, in ample time.

It is my hope that this latest concession will convince our opponents that we are seeking only to provide what we perceive to be the minimum protection for the Government's interests in the spending of additional C–5A funds.

LANGUAGE OF MODIFICATION

Let me read the specific language of this third condition we have provided which, if met, would free the funds. It reads:

The $200 million contingency fund can be expended under the following conditions:

"If the Comptroller General of the United States has determined on the basis of the study of the financial capability of the prime contractor conducted pursuant to this section, that the prime contractor cannot, without the assistance of all or a part of the contingency fund, meet the contract schedule for completion and delivery of forty-two C–5A aircraft by June 30, 1971, but can reasonably be expected to meet such schedule with the assistance of all or a part of such fund; but no amount in excess of the amount determined by the Comptroller General to be necessary for the contractor to meet such schedule may be expended from the contingency fund."

We also provide specific language that the report shall be made by November 15, 1971.

The $200 million could be paid out if either this condition or one of the two other conditions were met. And each of them provides, essentially, that the funds can be paid out if an independent board or official determines that the company either has the money coming or that it is needed to build the planes.

The General Accounting Office is certainly in a position to make this determination. First of all, they have had officials in the plant from almost the day the C–5A was started.

Second, on numerous occasions they have gathered data above the financial conditions of the plane. They have done this for their reports on overruns—the SAR's. Furthermore, I asked them some months ago to determine the facts about the cash flow and other financial matters. This information ws refused to the GAO and to me. But the Pentagon told us the company had the information, but claimed it was proprietary. Thus, since the information is available, according to both the Air Force and the company, there is no reason why the GAO cannot determine from the information whether the $200 million is needed.

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

Mr. PROXMIRE. I yield.

Mr. TALMADGE. Has the Senator from Wisconsin asked whether the General Accounting Office is qualified to and can make the investigation he now proposes?

Mr. PROXMIRE. The question is, is it my judgment that they are qualified——

Mr. TALMADGE. Has the Senator from Wisconsin interrogated the GAO or the Comptroller General to determine whether or not they can make the decision the Senator from Wisconsin would require of them?

Mr. PROXMIRE. No; and frankly, I would say to the Senator from Georgia that, on the basis of my knowledge of Mr. Elmer Staats and my experience with him, he is not going to do anything unless the Senate or the Congress directs him to do it. If he is asked about engaging in a new activity he might indicate he did not want to take part in it or do it. That has consistently been his view, as it was when we wanted him to make a feasibility study of providing uniform accounting standards. He was reluctant to do it. He made a study, at the request of Congress however, and found such standards possible. On the basis of his study we went ahead and directed the Comptroller to start to put them into effect.

Mr. TALMADGE. The Senator from Wisconsin is aware, is he not, of the fact that the General Accounting Office, the Office of the Comptroller General, is a bookkeeping agency and does not have the authority to make decisions affecting the Pentagon?

Mr. PROXMIRE. In this particular case the decision is one that involves financial capability, whether or not funds are available to do this particular job. Of course, I understand that the GAO does not have the capacity to determine the performance capability of the C–5A or any other weapons system, but they certainly, in my view—it would seem to me obvious—have the capability of determining whether or not Lockheed Corp. has the financial capability of completing this particular contract.

Mr. TALMADGE. Mr. President, will the Senator yield further?

Mr. PROXMIRE. Yes.

Mr. TALMADGE. It seems to me that the Senator's sudden proposition, which was unknown to Members of the Senate until he modified his amendment a moment ago, would delegate something to the General Accounting Office and to the Comptroller General that is the prerogative of Congress and the Defense Department, to wit, the expenditure of Federal funds for a matter that is of primary importance to the military security of this country.

I do not think we ought to bring a bookkeeping agency in and say, "The Secretary of Defense cannot handle his job well, Congress cannot handle their job well, the Armed Services Committee of the Senate cannot handle their job well, the House Armed Services Committee cannot handle their job well, so we are going to delegate this responsibility to you, a bookkeeper."

Mr. PROXMIRE. First let me say to the Senator from Georgia that we are not delegating. We are determining the conditions under which this finding would trigger the release of the $200 million.

In the second place, I think it is perfectly obvious that as far as this particular contract is concerned, the Defense Department has not done its job right, and David Packard told the contractors of this country that only Thursday night. He cited the Lockheed case as a flagrant example of incompetent procurement, a situation in which the job had not been done right.

I think there is no question that Congress itself has shown, in regard to the C–5A, a long record of doing this job very badly. Therefore, it seems to me, that getting an independent agency to go over the facts with regard to the financial capacity of the contractor in this case is logical and appropriate.

Mr. TALMADGE. Mr. President, I call attention to the language of the committee report, on page 16, as follows:

The Committee in Section 504(a) provides that the $200 million will not be obligated until the Secretary of Defense has presented a plan that has been approved by the House and Senate Committees on Armed Services. In effect this means that the proposed contractual arrangement both for the use of the $200 million and the completion of the entire C–5A program will require approval of the two Committees. Through this method there will be the opportunity of a complete review by the Committees on this problem.

The second Committee language provision provides for strict statutory guidelines which will insure that the $200 million in contingency funding will be used only for the C–5A program insofar as the contractor is concerned and not possibly intermingled or diverted to other uses among the various other programs of the company. The bill in section 504(b) expressly excludes other uses for the $200 million.

It seems to me that this language is very stringent. I think the Senator's amendment, in effect, says we do not have confidence in the Armed Services Committees of the House and the Senate to handle their responsibilities and duties, their job, and that we are going to take it away from them and give it to the General Accounting Office.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator's time has expired. The Chair is at fault; the Senator from Wisconsin yielded himself 10 minutes, but 16 minutes have expired.

Mr. PROXMIRE. I yield myself an additional 5 minutes.

Mr. TALMADGE. I know the Senator is on limited time. I thank him for yielding to me.

Mr. PROXMIRE. I say to the Senator from Georgia that there is nothing in this amendment, as I tried to say in my statement, there is nothing in this amendment which indicates any lack of respect for the ability or the judgment of the Senate Armed Services Committee. What we are saying is that it would be helpful to Congress and the Senate Armed Services Committee, in our view, to have a finding by an expert accounting agency such as the General Accounting Office, which is a competent agency, which has been found to be accurate and reliable in the past, as to just what the financial conditions of Lockheed was, whether they needed this $200 million, for the production of the C–5A plane.

I cannot see anything wrong with a finding of that kind, except that the Senator from Georgia says that they are not capable of it. If they are not capable of it, many Members of Congress will be very surprised. The GAO has 2,000 or 3,000 people working over there, and their record has been excellent in the past.

Mr. TALMADGE. I would point out to

the Senator from Wisconsin that the Armed Services Committees of the Senate and the House of Representatives could, if they saw fit, call on the Comptroller General to provide whatever information the Senator would request, but the decisionmaking authority would be with the committees, and not in the Comptroller General. It seems to me that the Senator's third alternative is a vote of no confidence in the Senate and House committees.

Mr. PROXMIRE. May I say to the Senator that that certainly was not our intention, that we do not intend to indicate that we have no confidence in the committees. We do feel, however, that before this money is released, we ought to at least have a finding that the money is necessary to complete production on this plane.

To continue, Mr. President:

If we fail to at least have that kind of determination made, we will be setting a highly dangerous precedent.

MODEST AMENDMENT

Our amendment is certainly very modest. We do not strike out the $200 million. Neither do we seek to correct the grievous past errors in this program, including the ghastly mistake made by the Senate on the C–5A issue last year. In my opinion, the Senate's concurrence in last year's giveaway plan by the Pentagon was one of the most expensive errors we have made since I have been in the Senate. We wasted hundreds of millions of dollars of the taxpayers' money by failing to assess properly the facts that were before us at that time and to obtain quickly the additional facts that were so clearly needed. I would hope that having been misled and persuaded to give our blind approval we have learned a lesson. I would hope that the mistake will not be repeated, at least on this same disastrous and scandalous program.

SCANDALOUS PROGRAM

And it has been scandalous, make no mistake about that. Facts were deliberately concealed from the Congress. Civil servants and military officers who attempted to hold down the costs or even to get the true facts on the status of this program have suffered personal reverses through retaliation by high level Pentagon officials.

The real question is: What do we do from here on? I hope we will demonstrate that we have learned our lesson. I hope we will begin today to refurbish the Senate's reputation as the world's greatest deliberative body, and to dispel the growing belief that we are pushovers for special interest groups, particularly the military contracting community.

Senators can make a modest start on this undertaking by supporting the amendment offered by the Senator from Pennsylvania and me, along with our cosponsors.

Let me say, Mr. President, that anyone who has read the speech made by David Packard on Thursday night must have been convinced, although the secretary diplomatically did not indict Congress, that we have not done our job as far as procurement is concerned.

The PRESIDING OFFICER. The Senator's time has expired.

MESS IN PROCUREMENT

Mr. PROXMIRE. I yield myself 2 additional minutes.

He said that procurement was in a bad mess, that we overspent on our weapons systems as well as made many other serious mistakes.

It is Congress that authorizes this spending. If we are ever going to exercise any decision with regard to any question involving the Pentagon, it seems to me we should do it in this particular case.

Let me conclude by quoting the statement of the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) in the conclusion he very effectively used in his speech on last Thursday. He said:

I ask Senators to support this amendment, whether they believe that the C–5A is needed or not, in the hope that we can give the clear indication to the Defense Department, the defense industry, and, most important, the people who pay the bills, that we are unwilling to sit back and give a blank check to these requests without asking "How much?" "How many?" "When?" and "Why?"

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield the Senator from Pennsylvania whatever time he may require.

Mr. SCHWEIKER. Mr. President, I thank the Senator from Wisconsin for yielding, and I compliment him for his early efforts, as well as for his follow-up, on the very serious and very critical procurement crisis that is typified by the C–5A.

I should like to speak for just a moment with reference to the charge of the Senator from Georgia (Mr. TALMADGE) that our amendment bypasses or somehow thwarts the Senate Armed Services Committee.

I am a member of the Senate Armed Services Committee, and this is the last, most remote, prospect that we had in mind in drafting this particular amendment.

The reason that we inserted the particular provision to which the Senator from Georgia referred was severalfold.

First of all, the GAO has a resource capability of some 5,000 men, many of whom are trained in exactly this kind of work—auditing and fiscal control work. Some 5,000.

The Senate Armed Services Committee has a staff of 2 dozen men and women, including clerks and typists, overall—2 dozen against 5,000. They are not geared up to do a quick, on-the-spot fiscal auditing operation, such as required by our amendment. It is a matter of using the resources necessary to do the job. It certainly was not a slight to the distinguished chairman or the other distinguished members of that committee.

Let me say, while I am on that subject, that a number of members of our committee agreed with my position in the committee and agreed, by an 11 to 5 breakdown, that the $200 million should not be paid. So there was a substantial body of thought in the committee that we should not pay the $200 million under any circumstances.

Our amendment goes far beyond that rather abrupt cut off of the $200 million, by making three conditions. Indeed, replying to the Senator from Georgia on his contention that it bypasses the committee, the third of these modifications specifically provides that, after making a GAO audit of whether the $200 million is necessary, it then goes on and makes another determination about how much this airplane will really cost, how much will the price tag be, and then it reports back to Congress. At that point in the cycle, the Armed Services Committee is really very much involved again. The next fiscal year authorization, they will be right on the spot, considering the same problem again, only this time they will have the availability of the GAO expertise and financial report.

So, far from excluding, it includes the committee, and provides that they are going to use the GAO information to make a determination for the next fiscal year.

So let us lay to rest the argument that we are bypassing or thwarting or somehow belittling the committee's efforts.

I should like to discuss some of the things that I feel are essential in the amendment offered by the Senator from Wisconsin (Mr. PROXMIRE) and me.

First, I think that the Senator has very ably summed up the first point I want to make. I think that Deputy Secretary of Defense Packard underscored it himself by his own statement, and I concur with it, that the C–5A undoubtedly is the worst procurement situation in modern military history, bar none. It is the worst procurement situation that we have seen in modern military history.

We are talking about 81 planes, originally estimated to cost $2.6 billion. Now, as of the end of last year, according to the selected acquisition reports, the cost has escalated to $4.6 billion, a $2 billion increase in the cost of those 81 planes. That was as of last year. That is not even figuring what cost increases have come this year.

No doubt features such as the "golden handshake clause," which is really a license to be inefficient, a license to overrun and hand the Government the bill, a license to do anything except watch costs, are also a basic issue in this contract.

I want to be fair and say that, unfortunately, those involved in the administration of this contract in the Defense Department are no longer there. I think this is tragic, because, in essence, the wrong men are taking the blame for the present situation, and a new group has come in which certainly does not deserve to be saddled with the rather atrocious procurement policies that so far have been obvious in this particular procurement.

In addition, even the Air Force's military personnel are no longer there, which points out how some of the rather foolish procurement policies of rotating procurement personnel every several years contributed to the rather great debacle known as the C–5A procurement situation. I think that this in itself testifies to why we have to change the system. The people who originated it in the DOD are not there; the military people who were charged with shepherding the proj-

ect are not there; and the question becomes, who is there who really knows and cares about this particular project?

We in Congress have a responsibility, too, which we have not used. We have a responsibility in terms of our oversight, and the reason why I have cosponsored this amendment with Senator PROXMIRE is to help Congress exercise that responsibility. We, in essence, are saying here that the direction of our procurement policy will be determined by the decision the Senate makes on this particular issue. We are saying here that the ultimate result of the buy-before-you-fly policy has been so disastrous that we have to reverse that climate to really change the situation. This is a test vote of whether we are willing to reverse the climate of buying sight unseen, buying before you fly, continuing the most wasteful kind of procurement practices imaginable.

Until the present time, we have always had the policy, in preceding administrations, of writing a blank check, of bailing the company out, with no questions asked. When are we going to change that policy, to come to grips with the issue, in which we have a responsibility, and in which we have to define some limits and guidelines and meet that test? This is the issue, that is what the fight is all about.

We have no quarrel with the need for the C–5A. We are not arguing that at all. Nor are we even saying that we should jeopardize the production line of the C–5A. The latest modification we made was specifically to avert the practical situation that might be confronted on that issue. So we do not quarrel with the need. We agree that the planes should continue to be built, that the lines should be operating, and that 20,000 employees in Georgia should be kept on the job. We are not arguing that issue at all. The amendment is designed on a reasonable and rational basis to keep all that happening.

I think it is important to review the Department of Defense position in this area. The interesting part about the whole C–5A contract is that the Air Force acknowledges that we do not owe the money we are trying to give them. Let me read a few statements made by Deputy Secretary Packard.

On March 10 of this year, before the Armed Services Committee, in answer to a question by the Senator from Mississippi (Mr. STENNIS), Secretary Packard said:

> The $344 million for the procurement—

The $200 million is not in that. That is just the normal amount due this year—

> The $344 million for the procurement of the C–5A in the fiscal year 1971 budget is what the Air Force would be obligated to pay under their interpretation of the contract.

So here we have the ironic situation in which the Deputy Secretary of Defense, the Secretary of the Air Force, the Air Force, and the Government say we do not owe the contractor a cent more than that $344 million; yet, we are being strongly urged to give them that $200 million or some fraction thereof.

I would like to read from another statement by Deputy Secretary Packard, once again acknowledging that we do not owe this money to Lockheed. This statement also was made before our committee:

> This $200 million, if authorized, would be available to apply against the $600 million gap we have between the Air Force position and what the company says its costs are going to be.

That brings me to the next point I should like to make.

The next point is that this $200 million is only the first step. This is not the end in itself. It is only the first step. Here we have a plane that was going to cost $2.6 billion. It is now up to $4.6 billion. We are asked to give them $200 million we do not owe them. The company says that they need $600 million more, and even the Department of Defense says they really need $800 million more to proceed.

What a series of tragic events. The $200 million is just a starter. It is just the beginning. It is just like an iceberg.

The whole point of this amendment is to get from the Comptroller General an honest-to-goodness definition of what the cost of this plane is—not to feed it, in pieces and dribs and drabs, $200 million this year and $400 million next year; and only then will the public and the Government really wake up to what we paid Lockheed for this particular plane.

Let me read from another statement by Deputy Secretary Packard:

> There is going to be additional money. The $200 million is not going to be the end of it.

Believe me, not the end of it by far. So we are really being asked to buy a pig in a poke. We are being asked to buy something whose cost we do not know. We are being asked to have blind faith that somehow this thing is going to work out all right, that it is $200 million now, and let them negotiate the difference, and then we will see what the bill really is. We are asked to buy the whole thing on faith, and we are $200 million over on faith already.

I should like to read from an article published in the Sunday Star of June 7, referring to a Securities and Exchange Commission investigation of Lockheed in connection with this situation. I should like to read from the article relating to the lower bid of Lockheed, as to how it was handled initially.

> "Lockheed wanted the contract badly and apparently knew they had to come in with a low bid to get it," the SEC report says. As a result, they cut estimates sharply—but figured the firm still would make a profit of 3 percent of costs.

Yet they were so naive, so ill-informed, so unknowing about this contract and its ramifications that they still thought they would make a profit here, and we are $2 billion in the hole already, with another $1 billion in sight.

Talk about mismanagement and inefficiency.

So the issue is, Are we going to reward that mismanagement, are we going to reward that inefficiency, are we going to give them a pat on the back and let them negotiate exactly what they want, in order to solve the problem?

There are hundreds of defense contractors watching to see if that will be our policy, because if it is, then the line will form right here and dozens of requests will come in to do exactly the same thing, to bid in low and bail out high. That is what the issue is all about.

Are we going to measure up to our responsibilities and stop this practice?

It is true that this has been the policy and the climate that has gone on for some time here. That is why we specifically designed this amendment so that we would not penalize Lockheed, so that we would not throw 20,000 people out of work, so that we would not cut them off without a red cent literally. We designed a reasonable amendment that would protect the taxpayers, keep the production line rolling, and still leave the responsibility where it belongs, namely, in Congress, to decide what to do subsequently, when the GAO report is available on the situation.

I was told that the Contract Board of Appeals, the normal person to arbitrate this dispute, will probably take more than 12 months to decide this issue, and because of that, we wrote in this other modification that would not trigger the bankruptcy of Lockheed. We bent over backwards to make sure that the production line would continue to work, that the people would not be thrown out of work, and that the Comproller General could rule, as early as November 15 that, if they need that money to keep the production line rolling and to keep the planes coming out, they do not have to wait 12 months but, at the same time, it would give Congress an authoritative report that we in the Armed Services Committee could use in the next fiscal year, to meet the same issue, the same problem and, really, get an honest picture and an honest count—which we have not had at any point in this process—as to what the airplane will cost by the time it is completed.

One of the arguments the opponents, of course, have been making is that we should not tie the hands of the Government, that they want to negotiate this contract, that they want to settle it outside of a dispute, that they want to be free to do what they see fit. To me, that is the real issue here. What they will say is, "Do not bother us. Do not disturb us. Do not rock the boat. We want to settle for another billion dollars, if that is what it is going to take. We want to be free."

The PRESIDING OFFICER (Mr. YOUNG of Ohio). The time of the Senator has expired.

Mr. PROXMIRE. I yield whatever time the Senator requires.

The PRESIDING OFFICER. The Senator from Pennsylvania may proceed.

Mr. SCHWEIKER. The argument is made that the Government should be free to negotiate a settlement with Lockheed. That is exactly what the Senator from Wisconsin and I are against, because if we leave a loophole there, to make an end run through the whole system, every defense contractor will know that whenever it is in trouble, all they have to do is pull out the Lockheed precedent and do exactly the same thing, and come in with a bad-looking balance sheet of cash resources, say that they

cannot complete the job, shed a few crocodile tears, and negotiate the contract again.

What is the sense of having any bids, what is the sense of having any procurement system, what is the sense of having any cost controls, if all we do is negotiate the whole deal again?

I cannot imagine a worse conception of how to run a procurement policy than to let them do that. They will pull out the argument that they have the right to do this. Well, no Government department should have the right to do that. If an industry goes $2 billion in the red, with another possible billion dollars additional, someone should blow the whistle on them. It is up to the Members of this Senate to blow the whistle and say, "Go this far, but not any farther than that because we will, at last, exercise our own legislative oversight. We are going, at last, to bring in an independent party, an outside fiscally competent agency, to decide whether they really need the money as they claim they do. They will tell us what that iceberg really looks like, whether it is $400 million, $500 million, $800 million, or $1 billion more."

Do not be surprised to see those figures come rolling out the next year, the next time, right here on the Senate floor. That is what we have a right to know, what it is going to cost.

The amendment simply provides for certain things to happen. Until we know what the price is, and the Armed Services Committee, and the Senate, can make a responsible judgment, with some meaningful fiscal information about the whole picture.

I want to say that this is a critical issue. It relates to whether we will reverse the whole procurement policy that has been so badly mishandled in the past two decades. We want a procurement policy that will recognize the taxpayers, and one that will make a military judgment based on an honest price tag of a weapons system, which we certainly do not have now.

Mr. PROXMIRE. First, I congratulate the Senator from Pennsylvania on an extremely able and powerful speech. It is hard to dispute the notion that without our amendment this giveaway is going to set a precedent. It not only says we will be giving away a substantial amount, in this case $200 million as a starter, but the committee says $800 million, before the plane is completed. As the Senator has brought out, that $800 million is a guess. It may be $1 billion. It may be more than that. Our guesses have been wrong in the past. They have often been too low. On the basis of past experience, we can assume the taxpayer gift will be considerably more. We not only give them that, we give them that without knowing, or having information, or making it public as to whether they even need it, in order to complete the contract.

What a situation for the taxpayers, if we are giving almost $1 billion away to a defense contractor just because they say they need it to finish the contract. In the amendment, all our amendment requires as modified is that the General Accounting Office determines they need it. Opponents dispute this because the GAO in their view is not competent to make the decision, that the Senate should make it, then argue we should make it without adequate knowledge; is that correct?

Mr. SCHWEIKER. That is correct. The tragedy is that this is probably the only real issue this year when we will have an opportunity to make that determination and assess our responsibility and measure up to that job of legislative oversight.

If we go along on this negotiated settlement, we will be writing another blank check all over again. As it is, this policy has been proven wrong time and time again. That is it. The Senator is absolutely correct.

Mr. PROXMIRE. What the Senator from Pennsylvania and I have tried to do is to avoid damage to anyone. In the first place, we tried to provide, if the court or the Board of Contract Appeals makes a finding that the $200 million is due Lockheed then the funds are released at once. I have documented the fact that the finding can be made in a few weeks and not in 12 months. In the second place, if Lockheed does go into bankruptcy, we provide that funds can be freed promptly.

In the third place, we provide that even if they go into bankruptcy, if a competent accountant—the Comptroller General—says they need this money in order to complete their contract, then the funds are freed. Under the circumstances, who is being damaged? Certainly not the 20,000 workers. They will not be laid off. Management will get the funds, if their word is shown to be correct. They will not be put through bankruptcy. They are not even faced with that prospect, even though they are over the contract by $800 million or $1 billion. They still will be permitted to go along.

It seems to me that this is an extraordinarily modest amendment that does its best to avoid any serious damage to anyone. As the Senator from Pennsylvania made abundantly clear, if we are to draw the line anywhere, or have any discipline over procurement, the least we can do is to avoid this kind of giveaway of taxpayers' money. We should go at least as far as this amendment would.

Mr. SCHWEIKER. I thank the Senator from Wisconsin. I would like to say that I do not know how we can devise a more moderate or a more reasonable approach. We are not quarreling about whether they ultimately get the $200 million. We say that if they need it, they can have it. They can have it, if it is determined, as the Senator from Wisconsin has pointed out, on the basis of the Comptroller General's ruling as early as November 15 of this year that they can have it, if they need it to keep the line open.

We are saying in our amendment that if the Board of Contract Appeals finds that the Air Force is wrong in its assessment that the money is not owed to Lockheed, they keep the money. Third, we are saying that if the worst should happen and the forecasts are not accurate and they should have to go into bankruptcy proceedings, we specifically authorize the money under those conditions and even direct the Secretary of Defense to give the C–5A production priority.

I do not honestly see how much more reasonable an amendment could be. But the important thing is that we are blowing a whistle and saying, "We are not going to write blank checks any more. We are not just going to pour money down a hole without knowing where it is going. We are going to have some independent auditor come in to advise the Congress or the Senate Armed Services Committee where we are going, because we do not know where we are going now."

There is a $2 billion overrun now and the bill asks for $200 million over the contract. The Defense Department says:

It is likely that we will need $800 million.

The company itself says:

We will need at least $600 million.

I predict that next year it will be admitted on the floor that they need $1 billion additional. Wait and see if that is not correct.

Let us get an honest appraisal from an independent auditor. How reasonable a proposal could we have? I do not see that the Senate has any other responsibility than to go ahead and adopt the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 10 minutes.

Mr. STENNIS. Mr. President, I address myself primarily to what is in the bill presented to the Senate, what the committee did, what the committee stands on, and what the committee asks the Senate to affirm.

Mr. President, in the first place this contract is in no way defended, so far as the type of contract is concerned. It is a contract that did produce a good plane, a plane that has been tested satisfactorily, as will be shown, and a plane that is needed.

There was not any corruption involved. None has ever been charged. The company is not getting a windfall in any way or making money out of this matter. It looks as if they are losing money. It is a question of just how much. So we start with a clean bill of health, so to speak, in this situation.

To get value for the money we have already spent and to get a plane we need, we may have to spend some more money than is currently interpreted as called for in the contract. Frankly, we do not know as yet how much money that will be.

There are two reasons why we do not know. The Air Force and the contractor are not together on what the respective liability of each is. There has not been a reasonable time to determine that. It would be highly impracticable anyway and would occasion a loss if we were to stop the wheels from turning until that matter could be adjudicated.

Nothing has been waived. The Gov-

ernment still has all of its rights, and they will be respected and rigidly maintained.

There is $344 million of what we might call a regular run, a routine amount of authorization for this year. There has been no contest over that amount. We included that in the bill.

There was a small sum allowed for spares in the bill. The $200 million is a matter that was before the committee for determination. That is the additional money that is necessary now to get the planes. I will give the details later. However, everyone agrees that is necessary.

Mr. President, there is no amendment to knock out that $200 million. There is an admission here, it seems to me, by all that that money is needed and that it should be kept in the bill.

I was really expecting to be attacked on that front. But there is no opposition here to that matter, and no proposal to take that money out of the bill.

To that extent, we apparently have a unanimous judgment that the committee made the right decision in putting it in the bill, although there was some honest opposition to it by some committee members at the time. Unless some other measure is filed, it apparently is unanimous that the committee should have put that money in the bill.

The question is how it will be safeguarded. That is the only question. The committee itself very carefully and laboriously wrote in some amendments directed to the problem of protecting this $200 million or whatever sum might be needed in addition to that.

I insisted that all of the facts be brought out and that we not come here with a piecemeal policy, this year so much and then stop. We went on to show how much money might be needed next year. I think we will not need that much next year, the $600 million, but we may. However, that is to be left open.

We included these safeguards to protect the $200 million. I am referring to protecting the Federal Government. I am not interested in what the Defense Department or the Air Force says about this. They had nothing in the world to do with the restrictions we included. Those were drawn by competent staff members with the assistance of competent legal guidance. It was a very laborious undertaking. I think they did a very splendid job.

There is one human factor in this that goes with these two amendments the committee is asking the Senate to stand by. That concerns the fact that we assigned Secretary Packard this problem, and it is a problem. We asked him to give it his best attention and advice and counsel and then to report to the committee. He did this. We had all of that testimony. It is in the record.

I said to Mr. Packard:

If we approve this $200 million, we expect you to give it your personal attention, your personal surveillance.

We found him to be an extremely competent man and, I think, an honest man.

I said:

We expect you to give this your attention and surveillance and keep in touch with us. We hold you morally responsible as far as we can to follow up on this matter and see that this money is spent exclusively for this purpose and that it is spent in the right way and that the plans be sound.

He assumed that obligation. He meant exactly what he said. That lends considerable strength to the whole solution of this problem. As I say, it is a problem.

I personally did not like the idea of the committee having to assume this obligation. The report explains it. So I will read from page 16 of the report near the bottom:

(The Committee in Section 504(a) provides that the $200 million will not be obligated until the Secretary of Defense has presented a plan that has been approved by the House and Senate Committees on Armed Services.)

In other words, we thought we ought to be willing—and that is not a happy note—to assume some special obligations in this matter.

I continue to read from the report:

In effect this means that the proposed contractual arrangement both for the use of the $200 million and the completion of the entire C–5A program—

Those are broad words—

will require approval of the two Committees. Through this method there will be the opportunity of a complete review by the committees on this problem.

Mr. President, that is about as far as you can go so far as senatorial surveillance is concerned. That is an obligation. This is not in the House bill now, but this is our guarantee, as we believe there will be a special surveillance with respect to this contract.

There would be the General Accounting Office role, if any. If the committee felt it needed the General Accounting Office to check on any item we have authority under the general law to call on the General Accounting Office for those services. I do not have to cite that law, but I have it available if anyone is interested. That is what the General Accounting Office is for; primarily to serve the committee. They can serve individual Senators, and I do not disagree with that. But this group is available under the law on the call of the committee for any phase of this matter. If a plan is submitted, and these two committees are not satisfied, all we have to do is reject it, or hold it up and call on the General Accounting Office to take any steps, such as that, as we see fit.

The second provision the committee put in for the Senate's consideration is:

Strict statutory guidelines which will insure that the $200 million in contingency funding will be used only for the C–5A program insofar as the contractor is concerned and not possibly intermingled or diverted to other uses among the various other programs of the company. The bill in section 504(b) expressly excludes other uses for the $200 million.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. STENNIS. Then there comes Mr. Packard with respect to his special responsibility. Then comes the General Accounting Office, if we call on them for their statutory responsibility.

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

Mr. STENNIS. I yield.

Mr. PROXMIRE. With reference to section 504(b), page 22 of the bill, the Senator is absolutely right. The Senator from Pennsylvania (Mr. SCHWEIKER) and I both support this purpose to prevent the $200 million from being diverted to any other contract or material.

The difficulty is, although it may be the payments of the $200 million could be audited in such a way that the $200 million would go only to the C–5A, there is more. There is no discipline over the $344 million in this bill, presumably for the C–5A, that could be diverted to the airbus.

Mr. STENNIS. It better not be.

Mr. PROXMIRE. We were told by Air Force officials who came to my office that the reason Lockheed was in trouble was their commercial airbus. Here is where the money losses have gone, not to the C–5A. It would seem to me there is no effective way you can be sure the $200 million would go for this purpose.

Mr. STENNIS. There is some discretion in orderly procurement practices that would take care of that; but I do not propose to let this money go into other activities or contracts. If Mr. Packard does not bring in a plan that we think protects us in that field, I would be in favor of rejecting the plan. That is all I can say now.

Mr. President, I am glad to yield now to the Senator from North Dakota (Mr. YOUNG), a member of our Appropriations Subcommittee, on this subject for 20 minutes.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. YOUNG of North Dakota. Mr. President, as I understand it, the proponents of this amendment, among other things, want to make sure there will be no more C–5A-type contracts. With this I am in full agreement.

The former Secretary of Defense who entered into this contract, Mr. Robert McNamara, is no longer with the Department of Defense. The proponents of the amendment can heap all the criticism on him they wish, and I will help them out because this is one of the worst contracts the Government has ever entered into. I see no possibility of this type contract ever being entered into again. Among other things, this is so disastrous to Lockheed, what industry would want that type of contract?

The real question now is, Do we want to get the rest of these planes we need so badly, which means we help keep this company from going bankrupt and shutting down? It is in the best interest of the Federal Government now to get these planes at the least possible cost.

Mr. President, one of the important military decisions before us is whether to authorize the $200 million in contingency funds which are necessary to insure continued production of the C–5A aircraft during the last half of fiscal year 1971.

President Nixon has indicated that

fewer U.S. forces will be stationed abroad in the future. This is a decision long overdue. I note now that plans are being made to bring over 60,000 troops back from South Korea, so more planes will be needed in the future. Bringing back these troops will save hundreds of millions of dollars and, more importantly, it will put the United States in a much more favorable financial position through easing our balance-of-payments problem and reducing the gold drain. At the same time he has made it clear that this Nation will honor its commitments to its allies and protect our interests wherever threatened.

This new foreign policy makes it more necessary than ever before that we acquire the number of C–5A aircraft that is deemed necessary to give us the required airlift capabilities. One C–5A cargo plane will carry 80.8 tons in cargo as compared with 24.4 tons for the C–141, which has previously been our biggest cargo plane. The C–5A not only will carry a much heavier load, but it can carry the much larger military equipment necessary for deployment of forces overseas.

The program to acquire the C–5A aircraft has been subjected to unusual scrutiny and has been the source of continuing controversy. Last year a decision to reduce the procurement from the originally planned 120 C–5A aircraft to only 81 was made principally because of increased costs and budgetary constraints. The current proposal of 81 production aircraft leaves us with a deficit in our strategic airlift capability, but with a substantial gain over what our position would be without any C–5A's. Reductions below 81 would seriously erode our military capability and our overall national security.

At present, the development of this plane is nearly completed and the company is well into the production phase of its contract. Congress has already authorized $3.4 billion for the program, and the Air Force has requested $544 million for C–5A production in fiscal year 1971. This sum includes $200 million in contingency funds.

If this request is not approved, Lockheed, because of financial problems, would be in no position to continue production of the C–5A and this at a time when only 17 aircraft have been completed. The unit cost of these aircraft would be prohibitive, over $200 million per unit, and the Nation would be denied further production of a superb cargo plane so badly needed for both our national security and foreign policy.

Similarly, if only $344 million were authorized for fiscal year 1971, the Air Force would receive only 30 or 31 aircraft at a unit cost of approximately $125 million per aircraft; still too small a force to provide the needed airlift capability.

In either of these instances where funding is denied, the contract would be terminated for the convenience of the Government and the Government would probably have to pay termination costs which would result in even higher cost per aircraft. On the other hand, if we continue with the 81 aircraft program to which the Government is already committed, the cost would be approximately $4.6 billion or about $57 million per unit under the Air Force's interpretation of the existing contract.

The Government has invested a large amount of money in this program for the last 5 years and is now beginning to receive a return on its investment. A case in point is the cost of the last 51 aircraft. Beyond the $344 million in this year's request, the cost to complete these 51 aircraft would only be $800 million.

The $344 million portion of the fiscal year 1971 request is expected to last only about the first half of the fiscal year. Generally this represents payments to cover most of the expenditures up to a level that reflects the interpretation of the contract which is most favorable to the Government.

An additional $200 million is needed to cover remaining projected expenditures for the latter part of the fiscal year to insure production continuity. Normally it would be the contractor's responsibility to provide such funding, but the amount in dispute, over $600 million, is more than the contractor can manage. Lockheed has not been able to obtain private financing in this amount. Thus, if the Government does not provide the funds, production will undoubtedly have to cease.

Back of the problems of Lockheed and the necessity of this $200 million item in the defense procurement bill is accelerated costs of all kinds going into the production of this plane and other military equipment and the resultant very large overrun. Overruns are the result of higher interest rates, higher wages, the alarming rate of inflation of the cost of everything, and some unwise provisions in the Defense Department's contract with Lockheed.

Most Air Force officials I talk with agree that this contract which was entered into by former Secretary of Defense McNamara required far more sophisticated manufacturing techniques and capabilities than were necessary. Some of these would be very difficult and expensive for any manufacturer to comply with. If the Defense Department were to enter into a new contract with Lockheed—and this may be the case sometime in the future—I understand that some of these highly sophisticated ideas will be dropped. It would still be a great plane and would meet most, if not all, of our requirements.

Mr. President, there has been a large cost overrun on the C–5A aircraft—far too much—and this speech is not intended in any way to approve of the C–5A type of contract or the procedures used. This was a bad deal both for Lockheed and the Defense Department.

The recommendations resulting from the Fitzhugh Commission investigations of Pentagon procedures will go a long way toward correcting bad contract procedures such as took place here. The prototype procedure, popularly called by Secretary Laird as the "fly-before-buy" approach, represents a much more economical approach and should result in better weapons systems.

The average person reading all of the publicity of the cost overrun on the C–5A cannot help but get the opinion that Lockheed had made a huge profit. This is far from the true situation. Lockheed lost very heavily and, as a result, is in deep trouble financially. Fortunately, the C–5A is a superb plane and more than meets the expectations of Air Force authorities.

Mr. President, there are huge overruns in most other military procurement. For example, the overrun in the F–111 percentagewise is far greater than the C–5A. It is important to note, however, that the C–5A contract was different than almost any other procurement contract entered into by the then Secretary of Defense Robert McNamara with other defense suppliers.

Cost overruns are very common in other segments of our economy. A good example is the John F. Kennedy Center for the Performing Arts here in Washington. The first estimated cost was $46.4 million. With the construction now more than half completed, it is now estimated to cost $66.2 million. Last December in the first supplemental appropriations bill for fiscal year 1970, Congress appropriated its share of this cost overrun. If we had followed the argument of many with respect to the C–5A, Congress would have refused to appropriate the last increment for the John F. Kennedy Center for the Performing Arts.

Anyone interested could also check Corps of Engineers projects over the last several years. The bids they have received have oftentimes been far in excess of the estimated cost of the projects. Regrettable as cost overruns are either in private business or government, there is nothing unique about them.

If production is not continued on the C–5A, nearly 20,000 employees will be adversely affected at the Lockheed Georgia Co. Feeder plants in Chattanooga, Tenn.; Uniontown, Pa.; Logan, Ohio; Charleston, S.C.; Shelbyville, Tenn.; Martinsburg and Clarksburg, W. Va., would likewise be adversely affected. In addition, an estimated 20,000 more jobs at subcontractors facilities in 42 States would be jeopardized.

The Air Force advises that there is a total of 2,388 different suppliers for the C–5A program, 644 of whom employ over 250 persons. General Electric is a prime contractor for the engines and employs approximately 6,500 persons in this endeavor. GE also has many subcontractors and suppliers who would also be adversely affected by program termination or delay.

In summary, we cannot ignore our considerable previous investment and the need for the C–5A. We should approve this request and obtain the planes at this more reasonable price. If we deny the $200 million, then Lockheed would undoubtedly have to stop production, the number of aircraft delivered would be less than required, and many thousands of employees would be jobless. If we approve the request and continue production, we will obtain the aircraft required to provide the strategic airlift capability so essential to our national security.

In reporting out the authorization bill, the Armed Services Committee has incorporated restrictive language to insure that the Government's best interests will be protected. The Secretary of Defense must obtain the approval of both the House and Senate Armed Services Committees prior to obligation of the $200

million. In addition, the authorization bill provides strict statutory guidelines to insure that the $200 million in contingency funds will be used solely for the C–5A program. These measures provide adequate safeguards over the expenditure of these funds.

Mr. President, it is important that we understand just what this $200 million contingency represents. There are a number of disputes over the original contract between the Air Force and Lockheed, one of which involves the total price for the production of the C–5A aircraft. The contractor contends that the total price for these aircraft may exceed the estimate under the Air Force's interpretation of the contract by as much as $500 million.

This is a matter that has to be settled through the established procedures for handling disputes of this nature, and the matter is now pending before the Armed Services Board of Contract Appeals. This $200 million contingency represents an advance to the contractor against his claim under the contract, and would be an offset against any amount that the contractor might be awarded in the pending proceedings.

In the event it is determined that the Air Force's position is correct, the recovery of this $200 million is a matter that will have to be handled in the plan for the disbursement of these funds required under section 504(a) of the pending bill.

The $200 million is necessary if the C–5A program is to continue. I believe it is in our best interest to complete this vital defense program. To liquidate the C–5A contract at this juncture would mean most of the billions of dollars we have already spent would have been wasted.

Mr. STENNIS. Mr. President, if the Senator will yield, if he has time, let me commend him highly for his presentation of this matter with clarity and substance.

A question was raised about it not being in the plan to give Mr. Packard surveillance over the $344 million and that it could not be used in connection with any other manufacturing process.

In the first place, I think the answer to that is that if he gives careful surveillance to the $200 million, that will take care of the $344 million not being diverted. But, anyway, the $344 million is strictly within the contract we already have with the manufacturer. After something is already set up under contract, it is an altogether different thing than legislation making a certain demand. When he controls the $200 million, he controls the $344 million that goes along with it.

I submit that to the Senator from North Dakota and to the Senator from Wisconsin.

Mr. YOUNG of North Dakota. I thank the Senator. I think these funds have been tied down very carefully by the House and Senate Armed Services Committees and by the statements made by the Secretary and Under Secretary of Defense.

Mr. STENNIS. I thank the Senator. Mr. President, whatever time the Senator from North Dakota did not use is yielded back, I am sure.

I now yield 10 minutes to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I do not intend to discuss the amendment at any length at all, although I will have to say that it does provide protection. But I feel that the committee approach provides just as much protection as the amendment, and I have as much confidence in Mr. Packard's ability to carry this out as I have in that of any one man or committee organization in this Capital.

I would like to talk about the airplane itself, Mr. President, because it is probably the most important airplane for the armed services of the future that we have in being, or even planned.

I would remind my friends from Pennsylvania and Wisconsin, who are deserving of praise for their constant interest in reducing costs, that if the army of the future turns out to be what I think it is going to be, and what General Westmoreland is talking about, we are looking at savings, in this one area alone, of from $5 billion to $10 billion.

What we are asking for is just $200 million, to make sure that this C–5A does come into the inventory, so that we can provide the fast, heavy lift that is needed to keep our troops at home, but put them any place in the world that we have to.

Mr. President, we hear four categories of commentary critical of the C–5A program. These categories pertain to: First, the basic requirement for the C–5A; second, the performance of the aircraft relative to changes in specification requirements; third, operating costs; fourth, acquisition costs and the financial problems of the contractor. Each of these areas of criticism has been addressed by me in the past. My views are a matter of record.

In this regard, it is particularly misleading to state that the reasons for buying the currently planned C–5A force are obscure. Even the most superficial examination of the legislative history of the airlift program reveals the fact that the Congress has for many years pressed upon the Defense Department the urgent need for a major expansion in our military airlift capacity. Therefore, congressional initiative as well as efforts within the Department of Defense provided the initial impetus toward the achievement of that objective.

With regard to the C–5A requirement, itself, the authors of the report are apparently aware that it grew out of a series of airlift studies conducted during the early 1960's, which culminated in September 1964 with a joint Army-Air Force study called AIRTRANS—1970's. It was from this last mentioned study that the specific requirement for six squadrons of C–5A's—96 U.E. aircraft—emerged. And, it was this program which was presented to the Congress in tentative form in early 1965, and reaffirmed in its final form in early 1966.

Mr. President, I have described this aircraft before, but it is the world's largest airplane. It will be able to transport heavy equipment, which we cannot do today. It will be able to do so quickly, to any part of the world. The fact that the basic general purpose forces strategy has been changed from 2½ wars to 1½ wars—whatever that means, Mr. President; it does not make a lot of sense to me, but that is the intention; it has been changed from the 2½-war McNamara plan to the 1½-war Laird plan; and some day I think we will have that explained—does have a bearing on the airlift requirement.

But it should be noted that the Congress has refused to approve the FDL program, leaving the full weight of the quick response lift requirement on the airlift. In late 1969, during the course of the fiscal year 1971 budget review, Secretary of Defense Laird decided to hold the C–5A force at four squadrons and the total buy at 81 aircraft. He did so because of the tight budgetary constraints, the rising cost of the C–5A, and the overall reappraisal of defense requirements. Accordingly, there is nothing inconsistent in the JCS position, still validating a six-squadron C–5A requirement.

I have remarked about the uses of this airplane. Let me give an example of what I mean.

For example, in the case of a war in Europe, a typical reinforcement of our forces there might consist of 300,000 men, 105,000 tons of bulk cargo, and 66,000 tons of outsize cargo. With 97 C–5A's in operational units, plus all of the C–141's and 75 percent of the CRAF aircraft, this reinforcement can be moved to Europe in 20 days, fully ready for combat. With 70 C–5A's, the number expected to be available for operating units from a total buy of 81, this reinforcement could be moved to Europe in 28 days. Thus, it is perfectly clear why the JCS still validates a requirement for 120—that is, 96-unit equipment—C–5A's, and why the Defense Department still insists that a total of at least 81 aircraft should be bought.

Mr. President, another criticism that is leveled at this aircraft is that it has not met specifications and requirements. Mr. President, I have stayed rather close to this airplane. I flew it myself over a year ago. I went through the program then with the chief test pilot and his crew, and they pointed out to me the aerodynamic mistakes which Lockheed had discovered, and at their own expense, and at no expense to the Government, had corrected.

They had made an aerodynamic mistake in believing, in my opinion, that the wing root section of the C–141 enlarged would work on the C–5A, and it did not turn out that way. But they have corrected it.

The airplane is ahead of its testing program. We now have, I am not sure what number it is—it might have changed since I was last visiting with these gentlemen—about five or six have already been delivered to the Air Force, and deliveries across the waters have been accepted, and training is proceeding.

At a visit to Edwards Air Force Base earlier this summer, at which time I had the good fortune to again discuss with

the flight test crew and the chief pilot any progress being made, they were more enthusiastic then, after having performed especially desert tests, which tests are conducted on the dust-covered, dry lakes of California, and the engines are put into reverse to pick all the dust up they can. They were surviving these very rigid tests beautifully.

There has been one criticism of the wing. As I said earlier, I think Lockheed should be congratulated for having come up with this kind of trouble. The wing is really too strong, but it is too strong at a point just upward of the aileron. That is giving it some trouble in maintaining the flexibility needed in that type of wing. But that can be easily corrected. In fact, the Secretary of the Air Force has received the results of an analysis made by a study group appointed for this purpose, and I quote just one part of it:

> The flight performance of the C–5A meets the guarantees of the contract within the accuracy limitations of good flight test measurement.

Mr. President, we have tested this aircraft to 128 percent of stress. We would like to test it to 150 percent of stress, and we will do that.

This, I might say, is higher than we test commercial aircraft. We have always done this in the Air Force, and that is one of the reasons that the Air Force, in spite of what people might believe, has a very fine safety record.

The problems reported with the landing gear are not serious problems. This is possibly the most unusual landing gear ever developed, and why it did not have more troubles is again, I think, a credit to the Lockheed Co., for having been able to solve the problems. If Senators can imagine an aircraft of 750,000 pounds being able to kneel, after it gets on the ground, just like a big camel, so that we can drive our big trucks, tanks, jeeps, and other things into the aircraft, they can have some idea of the problems involved.

Mr. President, this is not a personnel-carrying airplane. It could carry a thousand people if you wanted to stuff them into it. It will carry heavy equipment, wheeled equipment, and the troops needed to operate that equipment, to any place on the globe. Again I stress, as I did at the outset, for those who are really interested in saving money, that when we look at the possible savings of billions and billions of dollars by the new Army of the 1980's, geared to the C–5A and the new heavy-lift helicopters that we have not even begun to build yet—I am not talking about 22-ton helicopters—and when we recognize the proven ability of our electronic sensors to detect the enemy forces, I think that when all this is laid out to the American public, they will have a fine understanding of why we can talk about a smaller standing army for the 1980's and even the late 1970's.

This gets back to our argument of yesterday, as to why we will have to go to a volunteer approach to our services, so that we can attract the highly intelligent type of person we feel we can to operate the things we will have to have in the Army of the future.

Mr. President, I hope this amendment is rejected. I hate to see anything happen that would jeopardize the delivery of these airplanes. I would hate to see us wake up the first day of January and discover that Lockheed-Marietta has closed down because the $200 million was not available to them. I recognize full well that this is a step aside from normal procedure. It is not a step that I particularly like to take. I would much prefer to have seen Lockheed get along without this money coming from the Government in this form. But I think the acquisition of the weapons system is more important than what I consider to be other justifications for not approving it, and I would hope that the committee bill, the way it has been reported, after the study we have given it, will pass.

The PRESIDING OFFICER. The Senator from Mississippi has yielded time to the Senator from Georgia. The Senator from Georgia is recognized.

Mr. TALMADGE. I thank the Chair.

Mr. President, only two basic issues are involved in the C–5A controversy:

First. Is there a military need for the aircraft? That is, is the C–5A vital to our defense?

Second. Can this airplane be produced under the terms of the pending amendment?

So many red herrings have been drawn across the path—all of them apparently for the purpose of discrediting the military, or the company, or the aircraft in a way that would gain maximum public attention.

It is true that there has been a tremendous cost overrun. There is a controversial legal case that resulted from poor military contracting procedures. Mistakes have been made, both by the contractor and by the military. But they have been blown all out of proportion to the facts.

I concede that the cost of C–5 has far exceeded anyone's expectations, and I deplore that as strongly as anyone. I too wish to get the maximum return from each defense dollar. It should be clear to everyone by now that this contract was good for no one—not for the Air Force, not for Lockheed, and not for the taxpayers.

But I fail to see how it would help anyone now to bankrupt the company at this stage of development and production, with the end in sight and the cost per plane dropping with each one that is produced.

Moreover, so immersed have we become by the financial and emotional side of the issue, there has been little or no recognition of the unexpected conditions and the unforeseen circumstances which helped to cause most of these problems.

The C–5 is a jumbo-sized aircraft. It has provided a jumbo-sized opportunity for the critics of national defense—a number of writers especially—to appear as knights on a white charger saving the taxpayers from the Pentagon and alleged contract waste.

What they are doing in reality is to propose a course of action that itself would produce far more waste than they purport to save.

The C–5 has been made a vehicle for talking about a reordering of national priorities. I share everyone's concern about the multitude of social and economic problems that plague our people. But I fail to see how the waste of a billion dollars of unfinished airplanes in a production pipeline all over the country would solve these problems.

The fact of the matter is, Mr. President, that we have been diverted from the main issue. The matter with which we ought to be concerned—national security—has been obscured.

I carry no brief for Lockheed Aircraft Corp., although I would be less than honest if I did not express concern for the 20,000 employees at the Lockheed plant in Marietta, Ga., and another 20,000 C–5A workers all across the country. I make no apology for not wanting to throw some 40,000 people out of work in one fell swoop.

I carry no brief for the Air Force. The Government must also share part of the blame for this contractual arrangement.

But I do strongly advocate national security. Throughout the legislative history of this issue, this has been, as it should be, the prime concern.

Mr. President, in considering production of the C–5 last April, the House of Representatives recognized that the central issue is the fact that the aircraft is vital to national security.

A question arose in the House about cutting off $200 million from the C–5 program, to limit production to just 30 or 31 planes, as opposed to the required 81.

I have carefully studied the House debate. Chairman RIVERS of the House Armed Services Committee reduced it to simple terms that none of us can fail to understand. He told the House:

> If you want to cut off $200 million and destroy a whole airlift system for which you have already paid $2 billion, you can do so, but who is going to lose? American security . . . That is how simple it is.

The House in its wisdom was not disposed to gamble with the requirements of national defense.

Then the dispute came to the Senate. In its report on the military procurement bill, the Senate Armed Services Committee also emphasized that the basic issue was whether or not the C–5 aircraft were needed. That was what the committee had to decide. This is what the committee reported:

> The fact is that additional C–5As are essential for national defense purposes.

The committee, therefore, quite properly primarily addressed itself to this essential need. It recommended that the C–5 program be funded in order to produce the required number of aircraft.

The committee was concerned with the contract disputes and with the cost overrun. But, first of all, it was concerned with national security.

That was the issue before the House. That was the issue before the Senate Armed Services Committee. This now is the fundamental issue before the Senate.

The issue boils down to a close examination of the amendment offered by the Senator from Wisconsin and the Senator

from Pennsylvania, laying down certain conditions for funding completion of the C–5 program. As I will discuss in more detail later, the first condition is impossible to meet.

Mr. President, the reason why it is impossible to meet is that it requires the Board of Contract Appeals to make a determination in this fiscal year, which has only 10 months to run, that the money is actually owed.

I ask unanimous consent to have printed at this point in the RECORD a schedule of events that would occur if the Board of Contract Appeals were to make a decision on it—the authority for this is the Pentagon itself—that it would require a minimum of 10 months, without any regard whatever for appeal, and an appeal probably would require another 2 years. Yet, we are legislating on a bill that will relate only to fiscal year 1971.

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

Rule 4 process: Air Force files on C5A compiled, transferred to Lockheed, documents and files studied by Lockheed, April to July of this year.

Discovery motions prepared and filed by both parties. Probable date of submission, September to October 1970.

Compliance with discovery requests will take about 60 days.

Study of discovery data and preparation for trial, about 60 days. The trial will take about 2 weeks to 1 month. Preparation of briefs will take about 60 days. Preparation of reply briefs, about 30 days.

Board deliberates and writes its opinion, about 60 days.

Time required, under the most optimum conditions, from date that discovery motions are filed, 10 months.

Mr. TALMADGE. I also have a statement of the chairman of the Board of Contract Appeals, Mr. Solibakke, wherein he says that the minimum time would be another 8 months in order to consider the matter without any reference whatever to an appeal on the part of either party.

Mr. President, I ask unanimous consent that the entire statement be printed at this point in the RECORD, as a part of my remarks.

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

NOTES FROM CONVERSATION WITH MR. RICHARD C. SOLIBAKKE, CHAIRMAN OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

1. The first item discussed was the question of whether both parties to a case before the ASBCA have the right to appeal to the Court of Claims. The answer is that both parties do have such a right, but a Government appeal almost never occurs. In effect, the ASBCA is acting for the Secretary of Defense and therefore, an appeal by the DOD would be, in this sense, an appeal from the DOD's own decision. However, the DOD occasionally does appeal the decisions, sometimes for the purpose of having the decision reviewed by a higher judicial body for the sake of appearances as well as for the purpose of having a stronger position. Mr. Solibakke estimated that less than 1% of ASBCA cases are appealed by the DOD.

2. The next question discussed was the average length of time required by the ASBCA to reach a decision. Mr. Solibakke indicated that this, of course, depended on the complexity of the case and the volume of material that had to be reviewed. He said he had known of cases that were decided by the ASBCA in less than 1½ years from the date of the case being docketed, but the average time required would be over 2 years.

In the C–5A case now before the ASBCA, he stated that his opinion is that the minimum time required for an ASBCA decision would be approximately 8 months from this date—and this could only occur if extremely expeditious handling were given to the case. He felt the urgency and importance of the C–5A case is such that all parties would give expeditious handling to the procedures—but the procedures would still require in his opinion a minimum of another 8 months.

He described in some detail the various procedural steps that are required by ASBCA rules and the procedural rights that each contending party has in an ABSCA case. The net result of such procedures led to his opinion that 8 more months would be required even with expeditious handling.

Mr. Solibakke indicated that he could be quoted freely with respect to his statements of opinion about the time required for consummation of an ABSCA case.

3. The next question discussed with Mr. Solibakke was the matter of time consumption required for a decision by the Court of Claims following an appeal to the Court of Claims from an ASBCA decision. Of course, Mr. Solibakke is not connected with the Court of Claims in any way, but he has had a great deal of experience in observing the actions of that Court which frequently follow ASBCA decisions.

He first noted that an appeal to the Court of Claims from an ASBCA decision requires that DOD attorneys turn the Government case over to the Department of Justice. This obviously means that the new group of attorneys would have a certain amount of time required to become familiar with the Government's case, thereby giving an appeal an inherent beginning delay.

Next, he noted that the time required by the Court of Claims would be, as in the ASBCA, dependent on two general factors. The first factor would be the complexity of the case and the volume of material to be reviewed, and the second factor would be the procedures of the Court of Claims. The net result of these, in the opinion of Mr. Solibakke, is that the minimum time required for a decision in a case like the C–5A would be 2 years from the date the appeal was made. He believes this is a conservative estimate and notes that this estimate is based on the most expeditious possible handling of the case in the Court of Claims. Obviously, he said, this would take a decision on the C–5 case by the Court of Claims at least to mid-1973 and more probably to the latter part of that year.

Mr. TALMADGE. Mr. President, I would point out that the volumes of detail, contracts, work reports, and so forth, involved in the C–5A contract are as large as this Chamber reaching all the way to the Capitol dome. It is absolutely impossible to make a determination very speedily.

The second condition that the Senator from Wisconsin and his colleague would require to make the money available is bankruptcy for the Lockheed Aircraft Co. I would point out that, under this condition, we would be operating a company under a court order. The trustee in bankruptcy might decide that this is a bad contract and, since he would want to conserve the assets of the company, the entire contract would necessarily be junked.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter which my legislative assistant, Michael McLeod, has received from an outstanding Washington law firm, describing the alternatives under a bankruptcy proceeding and pointing out that the C–5A would never be acquired by the Government.

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

SELLERS, CONNER & CUNEO,
*Washington, D.C., August 18, 1970.*

Mr. MICHAEL MCLEOD,
*Old Senate Office Building,*
*Washington, D.C.*

DEAR MR. MCLEOD: Reference is made to your telephone conversation with my partner, Herbert L. Fenster, on August 13, 1970, in which you requested that we provide you with certain information relating to the alternatives posed in the Proxmire–Schweiker amendment to the military procurement authorization bill.

We are presenting in as brief a form as possible, certain information relating to the two referenced alternatives which we think will be helpful to the Senator. Obviously, it is not possible to present any detailed statement of procedures in bankruptcy or reorganization. Rather, we are presenting information which represents our opinion as to how reorganization or bankruptcy would operate in connection with the Lockheed matter.

In the telephone conversation on August 13, we indicated that there was perhaps an inconsistency in the information available relating to the first alternative posed by the referenced amendment. Specifically, Senator Talmadge indicated in his speech that an appeal proceeding before the Armed Services Board of Contract Appeals would not be concluded until the middle or latter part of 1971. We understand that the Chairman of the Armed Services Board indicated to Mr. Shillito that with a highly expedited proceeding, the appeal might be concluded in nine months. We do not believe that there is any substantial discrepancy between the two time estimates.

With reference to the first alternative, which refers to the expenditure of the contingency fund only to the extent of a determination by the Armed Services Board or to the extent determined by a court upon appeal from an Armed Services Board decision, we believe such alternative to be wholly unrealistic.

It is quite clear that the funds will be needed long before an appeals board decision can be expected. This is true all the more if judicial review of a board decision is necessary.

Passage of the amendment therefore would leave only the second alternative which contemplates bankruptcy or reorganization. In reviewing the salient features of a reorganization action, it must be kept in mind that any such action with respect to Lockheed would involve the entire Lockheed Aircraft Corporation not just the Lockheed Georgia Company.

Corporate reorganization is provided for under what is known as "Chapter X" of the Bankruptcy Act. The basis for and purpose of reorganization is the rehabilitation of the company. If reorganization is determined not to be possible, or fails, the only alternative is bankruptcy and the liquidation of the company.

In brief summary, a reorganization would proceed somewhat as follows: A petition would be filed by the company, in the case of a voluntary proceeding, or by three or more of its creditors in an involuntary proceeding. This petition would be submitted to a Federal District Court in whose jurisdiction the corporation has its principal place of business or its principal assets. Creditors and certain other interested parties could

answer this petition, indicating their interests or objections. The Federal District Judge would then enter an Order approving the petition if he were satisfied that all requirements of Chapter X had been complied with in good faith. We should point out that the petition would not be approved and the reorganization would not proceed if it were clear that the reorganization would fail.

Upon approval of the petition, if noncontingent debts which were liquidated as to amount exceeded $250,000, the Judge would appoint one or more Trustees to oversee the reorganization. The Trustee, in effect, would both reorganize and, during the reorganization period, manage the affairs of the company. His efforts could include the retention of existing management or the appointment of new management. The Trustee would be a disinterested party.

A principal function of the Trustee is to prepare and submit a plan of reorganization which would indicate some procedure in which the corporation could satisfy its obligations and develop sufficient capital and assets to continue as a viable business.

Of particular relevance to the matter at hand, it should be noted that in a reorganization the court might permit the rejection of contracts held by the corporation, except those which are characterized by the Bankruptcy Act as being "in the public authority." There is no clear judicial ruling as to whether this exception includes Government prime contracts so we cannot definitely say whether the Trustee could reject such contracts. As you will appreciate, the determination by the Trustee as to whether prime contracts could and should be rejected could involve any or all of the corporation's contracts not just those of the Lockheed Georgia Company.

Even assuming that Government prime contracts could not be rejected by the trustee in the course of reorganization—and we believe this is the probable interpertation—if performance of these contracts appeared excessively onerous, the Trustee or the Court might determine that reorganization was not feasible. The result would then be bankruptcy and liquidation of the corporation's assets.

The profound and chaotic effects of a reorganization of Lockheed under a Chapter X proceeding could perhaps be best appreciated by considering the impact on the complex array of subcontractors and suppliers which are an essential part of its various programs. The corporation has approximately 35,000 first-tier subcontractors and suppliers holding nearly 185,000 open orders with Lockheed, with a value of about two billion, one hundred twenty million dollars (the C–5A program alone involves about 2,300 first-tier suppliers furnishing material directly to the program). On virtually all major programs there are hundreds of suppliers, large and small, who furnish unique components that could be obtained from another source only after great delay and expense, if at all. Any indication that Lockheed was to be forced into reorganization or bankruptcy would have an immediate and disastrous effect on the ability and willingness of these firms to continue to perform. The ability of these firms to secure necessary credit to continue their businesses and pay lower tier subcontractors and suppliers undoubtedly would be severely impaired. Any failure by Lockheed to make prompt payment or otherwise fulfill its obligations under its orders would excuse suppliers from further performance, and even those who are not so excused would be under no obligation to accept new orders. The disruption of the complex procurement structure which would inevitably follow passage of the proposed amendment could not subsequently be remedied through election by the Trustee to require performance of open orders. Considering the straitened circumstances of the Aerospace Industry generally, before he could take such action critical suppliers might themselves have been forced into bankruptcy or might have found legal grounds for refusing to continue if this would reduce their losses.

Among other agreements of the corporation which might be affected are its collective bargaining contracts since such agreements might be subject to rejection by the Trustee.

Another effect of a Lockheed reorganization would be the automatic termination of long-term leases covering many of the buildings occupied by the Lockheed Missiles and Space Company (LMSC) at Sunnyvale, California. Some of these buildings are committed in their entirety to the performance of the Poseidon program and a number of classified Air Force space programs. Performance by LMSC of virtually all of its Government space programs would be seriously endangered and perhaps discontinued in the event of loss of these buildings. One of the buildings, used in the development and production of Government space craft and boosters, includes a thermal vacuum chamber, an altitude simulation chamber and an anechoic chamber which are essential to performance of Government space programs.

Essential work on Lockheed missile programs would also be seriously impacted by the loss of an additional leased building as a consequence of the initiation of reorganization proceedings. This building is used for fabrication of experimental Poseidon vehicles, as well as development, modification and check-out of the Safeguard System Target vehicles and Air Force reentry vehicles.

Other buildings covered by long-term leases include a building which houses LMSC's large computer complex used extensively on Government programs and the research laboratories in Palo Alto which perform a significant amount of research on Government programs.

Some additional buildings that are held under shorter term leases (*i.e.*, with initial terms expiring no later than 1974) are also subject to termination in the event of Lockheed reorganization or bankruptcy proceedings. Government programs performed in these buildings include Air Force special programs, advanced tactical missile and defense systems, missile systems logistics and publication.

Particularly on the long-term leases, even if the Trustee could negotiate new lease agreements, there would be major costs to these Government programs as a result of disruption and rent increases reflecting the appreciated value of these facilities.

A significant foreign sales program would also be impaired by a Chapter X proceeding. Without regard to the Lockheed commercial programs, there is a substantial foreign market, both actual and potential, for Hercules and Orion aircraft which might be eliminated under a Chapter X proceeding. We are advised that there are approximately $50 million in open foreign orders for Hercules aircraft under which the buyer would have the right to terminate in the event of a reorganization. In addition, there are almost $400 million of potential orders, about one-half of which appear to present excellent prospects for sales.

There is one other matter in connection with the amendment which we wish to bring to your attention. If, as we have indicated, reorganization becomes necessary, and even assuming that the company is able to stay in business, under the regulations of the Department of Defense (Defense Procurement Circular, No. 3, dated 4 March 1964; Armed Services Procurement Regulation 1–903) the company would be declared "not responsible" and would be ineligible to bid on or receive any new defense contracts. The result of the enforcement of these regulations would be, as a practical matter, the loss to the Government of its largest defense contractor whose work is critical to the national interest.

We have been pleased to provide the foregoing information to you. If we may be of any further assistance, please do not fail to call upon us.

Very truly yours,

GILBERT A. CUNEO.

Mr. TALMADGE. Mr. President, the Senator from Wisconsin came in this morning, without any knowledge or notice to anyone concerned with this fight, and set up a third condition, which is that the Comptroller General of the United States make a determination of this issue and report to the Congress by November 15, 1970.

I would point out that this condition, likewise, is probably impossible to meet.

The House of Representatives is in recess until September 9. The bill deals with a great many complex issues. Upon examination of the original House bill and the committee bill, we find that there are 14 major funding changes——

The PRESIDING OFFICER (Mr. GOLDWATER). The time of the Senator has expired. The Senator can yield on his own time.

Mr. TALMADGE. Mr. President, has the Senator from Mississippi left instructions with the Chair to yield time to anyone else?

The PRESIDING OFFICER. He has.

Mr. TALMADGE. Then, Mr. President, I yield the floor.

Mr. PROXMIRE. Did the Senator say that his time is limited? I would be very happy to yield him some limited time, if it will be helpful to finish his remarks.

Mr. TALMADGE. I am very grateful to the Senator from Wisconsin.

Mr. President, with the House of Representatives in recess and not coming back until September 9, and 14 major changes already in controversy between the House and Senate on the bill, and the possibility that the McGovern-Hatfield amendment could be agreed to, an amendment that would complicate the bill still further, and the fact that a conference between the House and Senate could run into weeks, there is the possibility that the bill might not even get to the White House until October 15 or November 1, so that it would be utterly impossible for the Comptroller General to make an examination of any records.

The PRESIDING OFFICER (Mr. GOLDWATER). If the Senator will permit the Chair to interject at this point, the Senator may have misunderstood my answer. The Senator from Mississippi has now returned to the Chamber, and he could yield him time.

Mr. TALMADGE. I thank the Chair. The Senator from Wisconsin was very generous to yield me additional time, and I thank him very much for it.

Mr. President, in addition to tampering with national defense, which I regard as the most important question before us, the Proxmire-Schweiker amendment would have the Senate prejudging Lockheed's legal case and preclude any possibility for a negotiated, compromise settlement.

Such an agreement between the company and the Air Force, if reached, would certainly be difficult for Lockheed

financially. But it would allow them to continue normally in business to complete their various military obligations, the C–5 program and others that are so vital to national defense. But negotiation is barred by the Proxmire-Schweiker amendment.

The amendment set up only two conditions under which the $200 million contingency fund can be spent to continue C–5A production. The first condition, the completion of proceedings of the Armed Services Board of Contract Appeals, is impossible to meet and the second condition is bankruptcy for Lockheed.

Other opponents of the pending amendment will deal more thoroughly with the issue of bankruptcy, but I would like to quickly review a few points. The only way that the sponsors of this amendment could guarantee that the C–5A would be produced under bankruptcy conditions would be to amend our Federal bankruptcy laws themselves.

The pending amendment refers to bankruptcy under chapter X, which means that the company would be reorganized so that, hopefully, it would continue to carry out production of the aircraft. However, a chapter X bankruptcy can proceed only if the trustee or the court determines that reorganization is feasible.

The Lockheed Corporation has already suffered a $290 million loss due to the C–5A program, and it may continue to suffer losses even if the $200 million contingency fund is provided. Faced with such a continuing unsatisfactory financial arrangement, the trustee might well determine that reorganization is not feasible. The result would be the liquidation of all the corporation's assets, with the termination of the C–5A program.

However, the most profound and chaotic effect of a bankruptcy proceeding would be its impact on the complex arrangements and contracts that Lockheed has with its vast array of subcontractors and suppliers. The corporation has approximately 35,000 first-tier subcontractors and suppliers holding nearly 185,000 open orders with Lockheed with a value of about $2,120 million.

Many of these subcontractors and suppliers are suffering the same kind of inflation and cost problems that have plagued Lockheed. Should Lockheed be forced into bankruptcy, many of these firms would no longer be able to secure credit to continue their business and to pay their own lower-tier subcontractors and suppliers. Moreover, any failure by Lockheed to make prompt payment or otherwise fulfill its obligations under its order would excuse these subconstractors from further performance. Hundreds of these suppliers furnish unique components which could be obtained from other sources only after great delay and expense, if at all.

The sponsors of this amendment are fond of comparing the C–5A program to the Penn Central bankruptcy. They like to point out that the Penn Central trains are still running.

Mr. President, there is a great deal of difference between running a train and building the largest, most complex airplane in existence. Should the complex structure of arrangements with subcontractors and suppliers be destroyed by bankruptcy proceedings, it is doubtful that we would ever obtain the C–5A airplanes which are so badly needed for our defense. If we ever would obtain them, it would be only after a great delay and a waste of millions of dollars of taxpayers' money.

The distinguished Senator from Wisconsin, although he is not a member of the Armed Services Committee, has a right to his own views. The distinguished Senator from Pennsylvania is likewise entitled to his own views, and he is a member of the Armed Services Committee.

However, the Senate must take note of the fact that the views of the Senators from Wisconsin and Pennsylvania are contrary to the overwhelming weight of evidence and judgment that has been presented to the Senate up to now.

Their views run contrary to those of the President of the United States.

Their views run contrary to the Secretary of Defense, who has utilized all the military expertise at his command to carefully study and analyze the need for the aircraft.

Their views run contrary to the Deputy Secretary of Defense, who has testified to the military need for the C–5.

Their views run contrary to the Joint Chiefs of Staff who also say the plane is required for national security.

The Armed Services Committee of the House of Representatives took a view opposite to that of the distinguished Senators from Wisconsin and Pennsylvania.

The House of Representatives voted overwhelmingly to the contrary. It regarded the military airlift capabilities of the C–5 as a prime defense item.

The Senate Armed Services Committee reported to the full Senate that the C–5A aircraft is an essential military need.

All of these have jurisdiction over the question. Each has carefully studied it, and acted after full investigation.

This indicates to me, as it should to the Senate, that the evidence is compelling on the importance of the C–5 program to national defense.

The proposal to wreck the C–5 program comes wrapped in a cloak of respectability. Everyone wants to save on defense expenditures. But it should be clear to everyone by now that destroying the C–5 is not an economy measure.

We cannot achieve economic security by cutting back on development of an aircraft that is vital to the Nation's Defense Establishment.

We cannot save the taxpayers' money by abandoning incomplete aircraft, valued at $1 billion, on a scrap pile. This would be like trying to trade a measure of economy for a billion dollars worth of waste.

In view of the alternatives, we have no real choice. We must build these airplanes because they are needed. To do otherwise would jeopardize national security. We must fund completion of the full complement of 81. To do otherwise would be fiscally irresponsible to the extreme.

For those who are concerned about reducing defense spending, let me suggest how savings can be affected. We can stop trying to police the whole world with American troops.

It has been estimated that bringing our troops home from farflung stations throughout the world could amount to savings of several billion dollars, or even go as high as between $15 and $20 billion.

The C–5 aircraft has been called "a major instrument of national policy." It is precisely that. It has opened up and made possible the concept of "remote presence" which would allow the United States to bring home several divisions of military personnel from overseas positions.

With the C–5, these troops could be maintained here in the United States on a combat-ready basis, and be speedily deployed by airlift should the necessity present itself.

Measured against this, the cost of acquiring, operating and maintaining adequate C–5 squadrons would be small in comparison with the tremendous savings that they could help bring about.

At the present time, the United States has some 15 to 17 treaties and commitments to about 42 nations throughout the world. For about 25 years since the conclusion of World War II, the United States has relied upon overseas bases, overseas armies, and sometimes uncertain allies in order to help preserve world peace.

We need only to look at the multibillion dollar balance of payments deficit year after year, the drain upon our financial and manpower resources, and the depletion of our gold reserves to see the results of this policy.

I do not say that it has not been a necessity. For many years following the war, U.S. presence was required. But I submit that this is no longer the case.

I contend that the maintenance of ground forces to honor treaties and keep the peace has virtually become a thing of the past because of technological capabilities for massive airlifts.

This after all is the mission of the C–5—to enable the United States to keep our commitments and to guard against aggression.

Through airlift, we can obtain these objectives. We can do so at great savings. We can avoid political difficulties and embarrassment in whch we often find ourselves by having too many American troops in too many foreign countries, where they are no longer needed nor welcomed.

We do not want and we should not be expected to forever maintain large contingents of American troops—like the more than 200,000 in Western Europe and some 60,000 in Korea—at stations all over the world. We do not want to dominate the affairs of foreign governments, or to become directly involved in their internal problems.

The crux of the "remote presence" concept is that we can keep our foreign commitments better and cheaper by bringing most of the troops home, and by providing for an airlift capability that could put them wherever they may be needed.

In the final analysis, the crucial issue is the unique capability of the C–5 to fulfill a defense need that exists today, and which will exist in even larger scale in the years ahead.

I hope that the Senate will reject the Proxmire-Schweiker amendment.

Mr. President, I yield the floor.

Mr. PROXMIRE. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 7 minutes.

BOARD COULD ACT

Mr. PROXMIRE. Mr. President, last Thursday, August 20, 1970, at the conclusion of my prepared remarks, the Senator from Georgia objected to our amendment partly on the grounds that the first condition of our amendment was impossible to meet. The condition referred to by the Senator from Georgia provided that Lockheed could get the $200 million in the contingency fund if the Armed Services Board of Contract Appeals ruled that the Government owed them the money under the terms of their contract. To me and my cosponsors, this seemed a perfectly reasonable stipulation. On the other hand, the Senator from Georgia contended that the Armed Services Board of Contract Appeals could not possibly process this matter during the current fiscal year despite the fact that the matter has been before the Board formally since January 9, 1970. In support of this contention, the Senator from Georgia inserted a schedule of proceedings of the ASBCA which I would like to repeat here:

Rule 4 process: Air Force files on C5A compiled, transferred to Lockheed, documents and files studied by Lockheed, April to July of this year.

Discovery motions prepared and filed by both parties. Probable date of submission, September to October 1970.

Compliance with discovery requests will take about 60 days.

Study of discovery data and preparation for trial, about 60 days. The trial will take about 2 weeks to one month. Preparation of briefs will take about 60 days. Preparation of reply briefs, about 30 days.

Board deliberates and writes its opinion, about 60 days.

Time required, under the most optimum conditions, from date that discovery motions are filed, 10 months.

Until I studied this summary of the series of planned events, I simply could not understand why the matter which had been before the ASBSA for 7½ months had not already been dealt with.

Now I understand perfectly.

BUREAUCRATIC RIGIDITY

The schedule of proceedings of the ASBCA given to us by the Senator from Georgia is a perfect example of unthinking bureaucratic rigidity. I had suspected before that the Pentagon was stalling on this case. Now I am convinced.

Of course the ASBCA could take another year to process this case. They could take 2 years or 3, or more, under their routine. That is just the problem. This exceptional matter is being processed routinely through the lengthy, tedious bureaucratic system. This is being done despite the fact that Mr. Packard has said that the matter is to be given top priority.

I am convinced that Mr. Packard, the experienced and skillful Deputy Secretary of Defense, understands exactly how to accelerate this decision if he chooses to do so. To illustrate, let me quote to you from Mr. Packard's recent speech before the Armed Services Management Association in Los Angeles:

Every time we want something done in a hurry and want it done right, we have to take the project out of the system.

Quite obviously, if the Pentagon really wishes to accelerate the ASBCA proceedings, it would take the matter out of the routine, plodding system that has been established. They themselves understand this problem and understand it well, if I have read Mr. Packard correctly. Yet if the Senator from Georgia's information was correct, they plan to follow the same routine, the same leisurely and cumbersome procedures they usually do.

HOW TO SPEED UP

Later on in this same speech, Mr. Packard gave an example of how projects could be speeded up by cutting through the mass of nonproductive redtape in the Pentagon. I quote from Mr. Packard's speech:

In one case, a small, dedicated Air Force team developed the gunships which have been so successful in Vietnam. The Air Force decided to put this program into its formal system. About a month ago, I asked when we would be able to get some more gunships. The answer was in two years. That program is now out of the Air Force system and we will have more gunships in six months.

It appears to me that Mr. Packard and other high officials at the Pentagon know they can speed up lethargic and ponderous procedures. Apparently they just have not chosen to remove the Lockheed case from the ASBCA's laborious routine.

Clearly, any number of people could play at the game the ASBCA has mapped out for the Senator from Georgia. Any amount of time could be consumed. All one need do to have interminable delays occur in such cases as ASBCA's Lockheed deliberations is to let nature take its course. On the other hand, almost every segment of the Federal bureaucracy has demonstrated remarkable speed on occasion. I particularly remember the speed with which the Pentagon moved to commit the Government to the second buy of C–5A's on the last working day of the previous administration. The usually lengthy sequence of reviews, briefings, analysis, approvals and legal processes was telescoped from a typical period of several weeks or even several months to several days.

I have often marveled at the speedy handling of matters contrary to the taxpayers' interests, and the glacial movement of matters benefiting the people who pay the bills.

PROTECTS AGAINST DEFAULT

Mr. President, the second provision in the amendment stipulates that in the event Lockheed carries out its threat to default and goes into bankruptcy, the trustees could recover the $200 million on request, but it has been said that the corporation would disintegrate. Jobs would disappear. Production would stop.

I note that the same thing was said about Penn Central, that if they could not get the $200 million they said they needed to stay out of bankruptcy, the trains would not run, hundreds of thousands of people would be put out of work, the transportation system would be paralyzed, and there would be catastrophic economic effects.

What happened?

Penn Central did not move into bankruptcy. No one was thrown out of work. No one lost their jobs. No trains were delayed. The trains ran on time, or at least on their usual time.

GAO BEST EXPERT

The third point made by the Senator from Georgia related to the third condition, that the GAO should make a study. The Senator said that they could not possibly begin that study or might not be able to begin that study—might not—in the event the bill is delayed, and that it could be delayed, and that the House does not return until the middle of September.

We would have to have a conference and then the President would have to act on the bill and sign it. Only then could the Comptroller General act. But what is the actual situation? The GAO could not act tomorrow or today. He could begin this study on the basis of the determination of the U.S. Senate today on this amendment. The Comptroller General could certainly take action.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, I yield myself an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for an additional 3 minutes.

Mr. PROXMIRE. Mr. President, certainly if the Senate of the United States passed this amendment today, the GAO could proceed with a preliminary study and preliminary action.

As I have pointed out, and as the Senator from Pennsylvania has pointed out, they have a great deal of information on the C–5A and on Lockheed. There are competent GAO personnel at the Marietta plant and have been for a long time. They are in a position to act swiftly, just as the Contract Board of Appeals can, if it wishes, act promptly.

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

Mr. PROXMIRE. I yield.

Mr. TALMADGE. Mr. President, the Senator on several occasions tried to compare the Lockheed case with the Penn Central case.

I point out that the Penn Central had no contract with the Government to build planes. They claim no damages from the Government and do not claim that the Government owes them anything. That comparison has absolutely no relation to this matter.

Mr. PROXMIRE. Mr. President, the point I was making was that the Penn Central went into bankruptcy. It was able to continue, as hundreds and hundreds of large corporations have been able to do. In the thirties we had many corporations go into bankruptcy and continue uninterrupted in production. When a large corporation goes into

bankruptcy there is no reason for the interruption of production or service to the public.

We want to prevent such a thing from happening.

Mr. TALMADGE. Mr. President, I point out that there is a vast difference between running a railroad and building the most sophisticated airplane on the face of the earth.

Mr. PROXMIRE. But it is not relative as far as bankruptcy proceedings are concerned.

Mr. TALMADGE. It certainly is. Furthermore, a large number of subcontractors are involved throughout the United States. Thousands of individual orders are dependent upon the integrity and the solvency of Lockheed.

As I pointed out in my remarks a moment ago, Lockheed has approximately 35,000 first-tier subcontractors and suppliers. If Lockheed goes into bankruptcy, the subcontractors and suppliers might decide that it was a bad contract and they would have legal grounds to avoid the contract. The trustee might want to stop production of the C5–A because Lockheed will continue to lose money on the contract. The Government would then lose billions of dollars on airplanes that had not been completed and would only be fit for junk.

Mr. PROXMIRE. Our amendment was designed in the event Lockheed went into bankruptcy. We have it already documented that they made that threat. Under those circumstances, we wanted to continue to have the production of the C–5A plant and we wanted them to operate.

We have provided that they can get the money if they need it. The GAO is certainly a competent agency. If the GAO finds that the company needs funds with which to provide the planes, they do not have to go into bankruptcy.

Mr. TALMADGE. Mr. President, the Senator's amendment does not purport to amend the Federal bankruptcy law.

Mr. PROXMIRE. No.

Mr. TALMADGE. Then, he could not determine what view the trustee in bankruptcy would take, because the bankruptcy law would control. The Senator would have to amend the bankruptcy law.

Mr. PROXMIRE. But the amendment does direct the Secretary of Defense to use his very extensive powers to keep the C–5A in production. I refer the Senator to lines 14 through 20 of page 4 of the amendment.

Mr. President, I yield such time to the Senator from Pennsylvania as he might require.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I would like to address myself to several additional points that have been raised in the debate on the C–5A amendment that the Senator from Wisconsin and I have offered.

The first point concerns the matter raised by the distinguished chairman of the Senate Armed Services Committee, who has been quite fair and certainly very equitable in the hearings and in the consideration of the amendment in the committee.

I would like to raise the question as to how much option and how much real opportunity for discussion there really is here.

I have here a statement from Deputy Secretary Packard. He made several statements in the committee indicating that $200 million is really needed, that it is a sort of open and shut case as to whether the $200 million is required or not. In his view, the $200 million is needed.

Let me quote from the statement of Secretary Packard before our committee on May 27. In the committee report he said:

> Under any possible solution of the Lockheed problem which I can see, the $200 million will be required for work which must be done for the remainder of fiscal year 1971.

There is no option, no discretion, no judgment on the part of the Armed Services Committees of the House or Senate.

Secretary Packard has said the money is needed. So all of this hocus-pocus about watchdog committees is irrelevant. The Secretary said that the money is needed, according to his definition.

He goes on to say, subsequently, on the same day:

> There is no possible solution to the Lockheed problem which will not require $200 million for payments for the C–5A in fiscal year 1971.

So there is no question about it. We are simply setting up a board that will rubberstamp Secretary Packard's determination that the $200 million is needed according to his own judgment. He said as much before our committee several times. So any discretion or judgment is simply contradictory to everything that Secretary Packard and the Department of Defense have said we want.

It is interesting to hear Secretary Packard's changing view concerning this $200 million. When he appeared before our committee on the 10th of March, he was then talking about the $200 million as a contingency fund. Back in March he was saying that if it is needed, we want to stand by this discretionary proposition on the $200 million only if certain contingencies related to Lockheed's fiscal problems arise—the contingency fund.

Now listen to what he said a few months later when he came back before our committee on May 27. He said:

> Under any possible solution to the Lockheed problem which I can now see, the $200 million will be required for progress payments for the work.

Two months ago it was a contingency fund. Now it is progress payments. I think we certainly might ask, "What kind of progress is this when we pay $200 million we don't owe? What kind of progress is that? There are no planes and no progress, but we are going to pay them $200 million for progress payments."

All I can say is that the argument I made a moment ago about the iceberg is proven by their own statements. Slowly but surely we are seeing the bottom of the iceberg.

First it is a contingency fund of $200 million and then it is progress payments.

I do not know what it will be next year, but I know that it will go up and the words will be a little more refined.

I have quoted from the statement Secretary Packard gave before our committee. Very interestingly in the committee record itself, the words "progress payment" are omitted. They knew they had a bad point, and they deleted those words. It is interesting that the change from the actual statement, the verbatim statement, and the statement delivered to all of the members of the committee contains that phrase, "$200 million will be required for progress payments."

However, if we read the sanitized version of the committee report—and this is a quotation on exactly the same point from Secretary Packard and relating to the same statement but with a little deletion—it reads:

> Under any possible solution to the Lockheed problem which I can see, the $200 million will be required for work which must be done for the remainder of fiscal year 1971.

There is not a word about progress payments. And that is exactly the way this illusory situation has been.

Mr. President, you see a little bit of it, then you see a little less of it, and then you see a little more. I think that despite all of that we do not have any restraint at all in this situation. The amendment is designed to serve several purposes, but one of the most important is to prevent a negotiated deal between the Government and Lockheed. There is evidence that that is what they are working on, that they are secretly negotiating and they are going to present a fait accompli fiscally and come to the committee and say, "We have agreed to settlement and adjudication with Lockheed," and we are going to have to pay millions more for the contract.

So contrary to what the Senator from Georgia indicated, who was bypassing whom? The negotiated deal would bypass everyone, and once again the Senate and Congress will be presented with a situation where we will be rubber stamping a fait accompli, something that has been accomplished, and we will go along and give them the $200 million because they need $200 million to settle the situation.

The only loophole this plugs up is that loophole whereby the executive department and Lockheed negotiated a deal and then present it to Congress and say, "This is it," whether it is $400 million, $600 million, $800 million or $1 billion, which has been hinted.

All we are trying to do is to keep everybody honest and above board so we will know the contract price and have a projection next year.

I cannot emphasize too much that after the Comptroller General determines whether they really need the $200 million we will have the option to prevent them from going into bankruptcy; after he has made that determination he is to supply a second report to give some fair estimate as to what the plane will really cost.

Congress and the Committee on Armed Services can make intelligent decisions based on realistic cost figures in this sit-

uation, realistic cost figures which have eluded us so far.

We have made no argument against the need for these planes. We have not questioned that. In spite of some severe technical difficulties that they are having, including a wing that will not fly for the job required, we have not even questioned that. So we are not arguing merits of that particular technical question, and maybe we should make that argument, but we are not.

We are saying it should be on the basis of a reasonable approach, on the basis of doing something fairly so everybody knows what the deal is other than just big government and a big contractor sitting down and working out a deal secretly and handing it to the taxpayers.

To me this is a very important precedent we are trying to establish. If we do not succeed and there is a negotiated secret deal, and it is given to the Department of Defense and our committee as a fait accompli, we will again have totally abdicated our responsibility and walked away from our responsibility in terms of legislative oversight on these contracts.

We cannot possibly assume our responsibility under those conditions.

So our amendment is merely designed to protect the taxpayers, to pull the water away from the rest of the iceberg and show everybody what it is, and let Congress work its will after it has the facts and not present a fait accompli or a fiscal coup d'etat in this situation.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I am glad to yield 5 minutes to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. BAKER. Mr. President, I thank the Senator for yielding to me for 5 minutes so that I may address myself to a point or two in the amendment offered by the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Pennsylvania (Mr. SCHWEIKER), especially on the bankruptcy aspect of this situation. It might be appropriate to consider for a moment, not in great detail, the purpose of the Bankruptcy Act applicable to this situation. The statement is made that if Lockheed chooses to go into bankruptcy, they get the money.

First of all, as I read the amendment, section (2) provides that in case of voluntary or involuntary bankruptcy, they can get the money.

The statement is made that this would in no way prejudice the interests of the United States, as I understood the distinguished Senators to say, or the production of these airplanes in the pipeline, or the 20,000 jobs at the plant in Georgia, or the thousands of jobs around the country, or the procurement of this defense system.

That is why I suggest we consider the provisions of the Federal bankruptcy statute because the Federal Government, including the Department of Defense, will only be a party to that proceeding by intervention.

The bankruptcy statute provides that the prime responsibility of the trustee in bankruptcy is not to protect the Government of the United States or any intervener, but rather, the creditors and the stockholders of that company; and to conserve the assets of that corporation so there will be a maximum realization of those assets, to protect them, and to pay the remainder to the stockholders. The Bankruptcy Act was to provide for arrangement for payment of creditors and to provide conservation of resources for payment to the equity owners, the stockholders.

It seems to me if we are to judge the second paragraph of this amendment, we must do it on the basis of whether we are going to protect the interests of the United States by preserving that company as a going concern, or whether we are going to provide for protection of the creditors and stockholders.

I believe I will choose to protect the best interest of the United States.

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

Mr. BAKER. I yield.

Mr. PROXMIRE. The Senator from Pennsylvania (Mr. SCHWEIKER) and I are very anxious to keep them out of bankruptcy. But we say if they go into bankruptcy—and they have threatened to go into bankruptcy—we want to do all we can to protect the interests of the U.S. Government.

We provide another condition which states they will be given the money if the Comptroller General says they need it to complete the plane.

Mr. BAKER. Mr. President, how much time do I have remaining? I think I was yielded 5 minutes by the Senator from Mississippi.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. BAKER. Mr. President, with reference to paragraph 1, the point was made that by removing this procedure, that is, review of this contract, from the system, the bureaucracy, it could be expedited, and the example of Under Secretary Packard's efforts to do so in the case of the gunships was cited. That is true. I doubt there is any greater champion of government efficiency or anyone who tries to keep this nameless bureaucracy on its feet, than the Senator from Wisconsin (Mr. PROXMIRE). I am with him. I think he is right.

But undoubtedly we are overlooking one other fact. The Senator from Pennsylvania (Mr. SCHWEIKER) said to "pump the water away from the iceberg" or get this matter away from the bureaucratic maze—and this might expedite that portion of the procedure—the Department of Defense can control timely review by the Board of Contract Appeals.

There is no way I know of unless there is a modification of the Judicial Code that you can deprive either party of the right to appeal to the Federal judiciary. Unless that is done, either of them would have the right to appeal, and there is no way we can change that.

Mr. PROXMIRE. I yield myself 1 minute.

The answer is that if the Board of Contract Appeals finds in favor of Lockheed, on the basis of our precedents there would not be any appeal, and Lockheed would get the money. If they find against them, there would be time for an appeal.

It is true under any circumstances that if the Board of Contract Appeals finds against Lockheed, it would take substantial time to appeal the case, but if they have it coming, they would get it right away.

Mr. BAKER. They would. That is like saying if you win a lawsuit you are in good shape; if you lose, you are sunk. That is right, because if you——

Mr. PROXMIRE. If they lose the lawsuit they are not sunk. This is such a modest amendment that even if they do not have a legal leg to stand on and no money is owed, if the Comptroller General finds this money is necessary to build the C–5A, they will get it.

Mr. BAKER. Mr. President, will the Senator from Mississippi yield me 2 additional minutes so I may speak on the point just brought up by the Senator from Wisconsin?

Mr. STENNIS. I yield 2 minutes to the Senator from Tennessee.

Mr. BAKER. This does, in fact, bring us to the third proviso of the amendment, and that is the determination by the Comptroller General that the money is needed.

I think it probable that the Comptroller General could very quickly act in the matter. I think it is probable that the Comptroller General, as the Senator from Pennsylvania (Mr. SCHWEIKER) has suggested, would find that the money is needed, if that is the test.

The test in the third proviso, for the review and determination of the Comptroller General, does not tell me what the conditions precedent are that the Comptroller General must find in order to permit the disbursement of the $200 million contingency fund. If it means it is needed, as we have discussed, then I doubt that there would be great difficulty with time or anything else; but if it means the balancing of equities, the judgment of the interests of the Government and the need of the airplane, and the total concept of the defense needs—if that is what is meant by "needed"—it may take years before that is concluded.

I have studied the provisions of this amendment carefully. I am in frank admiration of the sponsors of it for taking this approach rather than deleting the money. However, I feel the intendment of the three conditions precedent under which this money might be made available to Lockheed requires one of two things, neither of which I can support: that is, the stopping of the construction of the rest of the planes, or a petition for voluntary bankruptcy by Lockheed, neither of which would be in the interest of the United States. Our duty now is to make good of a bad situation.

Mr. STENNIS. Mr. President, I yield 4 minutes to the distinguished Senator from Missouri (Mr. SYMINGTON).

Mr. SYMINGTON. Mr. President, many years ago I became convinced that military airlift was important to the security of the United States, especially from the standpoint of conserving our resources and at the same time maintaining an entirely adequate security.

Under the theory that the British have adopted, a central reserve, as against having thousands of bases all around the world, we need this C–5A plane.

No one has more respect than I, as I have repeatedly stated, for the mighty fine work that has been done by the distinguished senior Senator from Wisconsin in pointing out where waste could be eliminated in many aspects of our Federal budget, especially the military budget.

Therefore, it is with regret that in this case I must disagree with him and my distinguished colleague from Pennsylvania, with whom I have the honor of serving on the Armed Services Committee.

As I see it, one of the most important things we are talking about is psychology, and perhaps as much as anybody in the Senate I have had some experience in industry. Right now, if we do something when, in effect, could destroy the morale of this corporation, or even seriously impair it, we may be extending the length of time, by many months if not years, necessary to obtain planes I believe important to our security.

The United States today, in my opinion is heavily overcommitted, all around the world. Therefore, one of the chief reasons why for years I have been hoping we would develop a plane comparable to the C–5A is that I believe it will result in our being able to reduce many of the thousands of installations that are costing the American people billions of dollars every year.

I am glad to see this amendment to the proposed amendment, and believe it improves it. On the other hand, there are thousands of people involved in producing this plane. We need it. I would hope, therefore, that we continue with a program that does not impair their morale. If that happened, the losses could be far greater than any possible saving under this amendment.

Accordingly, I shall vote against the amendment of my distinguished colleagues, the able senior Senator from Wisconsin and the able junior Senator from Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 3 minutes to the Senator from California (Mr. CRANSTON).

Mr. CRANSTON. Mr. President, this amendment raises questions of critical importance to our national defense and our national economy.

There have been serious problems in connection with the C–5A program. Mistakes have been made at Lockheed and mistakes have been made at the Pentagon. Perhaps the most fundamental mistake of all was the adoption of the total package procurement contract procedure. This contract concept was devised by the executive branch of the U.S. Government—not by Lockheed. It did not happen under the present Republican administration. It happened under the preceeding Democratic administration. This unrealistic procedure was tried for the first time when the C–5A contract was let. Hopefully, it will be the last time.

Without question, the C–5A program has been a costly, wasteful mess. The question now is how to clean up the mess without creating even more of a mess in the process.

I believe we need the C–5A. This is at issue since the amendment threatens our Nation's ability to acquire it. The C–5A is one of the few weapons systems that can help us disengage from forward military bases around the world while at the same time give us the ability to move back in quickly if the need arises. This concept of remote presence will increase national security and, in time, save millions of dollars.

It will eliminate the balance-of-payments drain caused by our maintaining large numbers of American troops in Europe, Japan, Korea, and elsewhere around the globe. It will enable us to reduce our overall military budget and cut excessive military spending, which I strongly oppose.

I am also deeply concerned by the adverse effects this amendment could have on the national economy and on the production of other needed weapons systems.

The adoption of this amendment will put the U.S. Senate in the position of clouding Lockheed's prospects of corporate survival while threatening to create a tremendous waste both in manpower and in dollars represented by the incomplete C–5's still in the pipeline.

Many statements are made about the certainty of keeping planes coming and the certainty of keeping the tens of thousands of employees working if this amendment is adopted. These statements about certainties must necessarily be loose and fuzzy, the only thing certain about threatened bankruptcy is its uncertainty.

The Lockheed Corp. is by far the Nation's largest defense contractor. Its other divisions include the Missiles and Space Co. in Sunnyvale, Calif., where the Polaris and Poseidon missiles and the Agena military satellites are built—the Lockheed-California Co. in Burbank, Calif., where the P–3 and S–3 antisubmarine aircraft and the company's new commercial liner, the L–1011, are built—the Lockheed Electronics Co. in Plainfield, N.J., where the all-important Mark 86 gunfire control system is built for the Navy—the Lockheed Propulsion Co. in Redlands, Calif., where a new technological breakthrough in rocket motors has been achieved for use in the Air Force-Boeing SRAM missile—and the Lockheed Shipbuilding and Construction Co. in Seattle, Wash., where many ships are under construction for the U.S. Navy.

If this amendment forces bankruptcy on Lockheed, it is all these and more—not just the C–5 producing division in Marietta, Ga.—which will go under.

The first uncertainty out of bankruptcy is the uncertainty of whether the trustees under bankruptcy would be required by bankruptcy laws to complete the Government contracts now held by Lockheed, such as those programs mentioned before, and hundreds more. It is true that the Bankruptcy Act does not permit rejection of contracts held by the corporations which are "in the public authority." But there is no clear judicial ruling as to whether this exception includes Government prime contracts.

But even assuming the current Government contracts could not be rejected—and this seems to be where the preponderance of legal opinion lies—if the performance of these contracts appeared to be excessively onerous to the corporation, the trustees or the court might determine that a successful reorganization of the corporation was not feasible. In this event, the result would be liquidation of the corporation's assets.

So the first point made by the sponsors of the amendment—that it is a "keep building the planes" proposal—is hardly an accurate description of it. If this amendment passes, we may end up with economic chaos and no C–5A's at all.

But this is by no means the only uncertainty.

One of the more important uncertainties under bankruptcy is the sanctity of the corporation's collective bargaining agreements with union organizations. All such agreements could be subject to rejection by the trustees, which could void most or all of the protections the workers have under those hard-won agreements.

Another very important uncertainty would be the availability of many buildings and facilities leased by Lockheed, with the leases automatically terminated in the event of Lockheed bankruptcy. These include, for example, facilities that are essential to the Poseidon missile program and to the highly classified and highly important Agena satellite program.

Still another effect which is not so uncertain, according to eminent legal authorities, is the adverse effect on Lockheed efforts to get new Government business. If Lockheed is reorganized under bankruptcy, it then could not meet the financial requirements contained in the armed services procurement regulations. Lockheed would be declared "not responsible," and would be ineligible to bid on or receive any new defense contracts. That is a fairly drastic result, I would say, for a company that has fought for and won first place among defense contractors for most of the last 10 years.

And, of course, it would be a disastrous result for the 87,000 workers who hope to continue their employment with Lockheed, and with the benefits of seniority, retirement plans, and so on.

More is involved than the possible bankruptcy of a single company. Bankruptcy for Lockheed would affect more than that company's 87,000 employees and 50,000 stockholders—Lockheed has 35,000 first-tier subcontractors for all its programs. Some 25,000 of these subcontractors are small businesses, employing less than 500 people.

Subcontractors of Lockheed hold contracts totaling $2,120,000,000, of which $465,000,000 are held by those small businesses.

The effect of Lockheed bankruptcy on these subcontractors is almost incalculable, according to legal authorities. The rights of a group of bankruptcy trustees to alter subcontractor relationships could become a chaotic cloud over the more

than 185,000 subcontracts now in force with Lockheed. The ability of the subcontractors to finance their work-in-progress through loans or equity capital could be severely curtailed by the relative financial irresponsibility of the prime contractor. The possible lack of willingness of some subcontractors to continue their share of the production with even a short delay in progress payments during the initial period of bankruptcy reorganization could endanger the whole program.

Some subcontractors have the automatic right to "walk" if the prime contractor is in bankruptcy, and so the whole team effort could be lost.

All this constitutes a matter that cannot be dealt with lightly or carelessly, or without long detailed studies of what the social, economic, and political consequences for the country will be.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield 2 additional minutes to the Senator from California.

Mr. CRANSTON. The C–5A is not a local issue. I oppose wasteful and counterproductive spending in the guise of national defense no matter where the affected industries are located, in California or elsewhere. I have consistently voted against the ABM and other weapons systems I believe to be unproven and unnecessary even though major components are built in California. In fact, it is virtually impossible to find any major sophisticated weapons system which is not built, in part, in California. Yet my position in favor of reducing our excessively high level of defense expenditures is well known.

In a like vein, I am opposed to the development of the SST, in which California's aerospace industries have a major stake. I regard the SST as a dangerous threat to our environment which should never be allowed to get off the drawing boards, let alone off the ground. Moreover, I oppose adding still further to our long list of Government subsidies to commercial interests.

If a commercial venture like the SST cannot be economically developed and produced by private industry, it should not be developed and produced at taxpayer expense.

The C–5A involves enormously important national interests. Too much uncertainty already surrounds the fate both of the C–5A and the Lockheed Corp. At a time like this, when the Nation is in an economic recession with high unemployment, the Government dare not risk deliberately sinking a giant corporation which could take hundreds of other businesses and thousands of jobs down with it.

It is imperative that we make certain that these planes are delivered to the Government.

This amendment is undoubtedly well intentioned. But its practical effects could be chaotic militarily and devastating economically. I urge its defeat.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 8 minutes to the Senator from South Carolina. Again I regret that I do not have more time.

Mr. THURMOND. Mr. President, I would like to take a few minutes today to discuss briefly the C–5A program that is included in this year's authorization request. The budget request for this program totals $622.2 million identified as follows: $344.4 million for unfunded prior year production commitments; $66.2 million for initial spares; $11.6 million for research and development; and $200 million contingency funding. Mr. President, the principal item with which we are faced in this program request is the $200 million identified as a contingency requirement.

With this introduction, I would like to present some of the pertinent facts relating to this program that the Armed Services Committee considered in approving this budget request. I would first like to say, Mr. President, that the committee went deep into this program and studiously studied the issues. In fact, the committee called the Deputy Secretary of Defense over on three different occasions to discuss matters on this program. I would like to emphasize, as we are all well aware, that varying inputs are considered in making decisions on these major weapon systems and that cost figures can be added to different totals, depending on the method of presentation and the data included. This is to say, that any input on its own merit is not right or wrong, but must be considered in the overall decision and that is what the committee has attempted to do. The committee has also tried to present cost data that is consistent with the data presented in our quarterly reporting system and consistent with data used in hearings that the committee held last year on this program.

To briefly summarize the initial cost data on this program, Mr. President, the original estimate of cost for a projected 120 aircraft at the time of contract award in October 1965 was $2.985 billion. At hearings held by the Armed Services Committee last year, the cost estimate had been increased to $4.348 billion or an estimated cost growth of about $1.363 billion. These costs did not include an estimated $855 million for support equipment for 120 aircraft. The cost figures that are currently being considered are for only 81 aircraft and on a comparative basis are estimated at $3.463 billion or a cost growth of $1 billion over the original estimate for a like number of aircraft. This figure also does not include about $747 million of support equipment that is being estimated for these 81 aircraft. I want to say also that as we now understand it some additional costs may be added when a revised delivery schedule is finalized and when the cost to resolve current technical problems is determined. These estimated program costs do not consider the possible cost to produce the aircraft nor the litigation that has arisen on this program. Current estimates indicate that the cost to produce the C–5A aircraft that will be incurred by the prime contractor is about $648 million more than the contract ceiling costs estimated by the Air Force and included in the cost figures that I have presented.

Mr. President, with regards to the performance of this aircraft, I am aware of certain wing structural problems and developmental problems with the avionics and landing gear and am following the progress in these areas closely. I do not intend to put off lightly these technical problems, although some of the areas seem normal in development of an aircraft of this size. We have seen no indication to date, however, that would preclude the aircraft from meeting its basic mission requirement.

Mr. President, the original scheduling of the Air Force planned a rollout of the first aircraft in February 1968, the first flight in June 1968, and delivery of the last of 120 production aircraft in April 1972. While the rollout of the first aircraft and the first flight were on schedule, the remaining delivery schedule has slipped. The Air Force is currently estimating a final delivery of 81 production aircraft in February 1973 although this has yet to be finalized.

Now, Mr. President, I would like to discuss the funding for this program briefly as it relates to the financial problems of the prime contractor. Through fiscal year 1970, the Congress has authorized and appropriated about $3.4 billion for the development and production of C–5A aircraft.

As it now appears, the Air Force will receive about 17 complete aircraft plus other aircraft or material in various stages of completion for this money. If production is to continue with fiscal year 1971 funding of $344.4 million, an additional 13 aircraft can be completed through December 1970.

The $200 million budget request for contingency funding is intended for continued production of aircraft during the remainder of fiscal year 1971. It is estimated that an additional 12 aircraft can be completed during this period. Mr. President, without the fiscal year 1971 funding, we will receive very few aircraft and a large amount of unfinished work in process for our effort and money.

I believe, Mr. President, that it is proper to say something briefly here about the contractual litigation on this program without entering any judgment on the merits of this litigation. As I understand it, the prime contractor has raised several issues regarding possible ambiguities in the contract that would reflect on the amount of reimbursement the contractor would receive. The prime contractor has requested the Department of Defense to provide interim financing on this program until the litigation is settled because the contractor does not have the financial resources to continue the program while awaiting a legal determination. I understand that the issues concern over $600 million.

Mr. President, I don't think this presentation would be complete without a few words on the need for this aircraft. Last year the Senate had a fine debate on the need for the four squadrons of 81 C–5A aircraft and I believe, at that time, we firmly established a need for these planes when all things were considered.

To summarize this need, Mr. President, the C–5A is intended as an airlift aircraft designed to provide a fast reaction capability to airlift combat or sup-

port units to meet worldwide commitments. Since its inception, this aircraft has been primarily intended to provide the airlift capability for combat and support equipment outsized by dimension or weight to the present or planned airlift aircraft capability. This equipment, such as tanks, self-propelled howitzers, helicopters, et cetera, and in the case of an armored division, constitute about 75 percent of the heavy firepower. The C–5A aircraft is intended for use in complement with other airlift and commercial aircraft in meeting the rapid deployment requirements of the Department of Defense. We are all aware of this deployment requirement that has been discussed many times in connection with proposed reductions of overseas forces. The C–5A aircraft plays a vital role in providing the capability to meet the deployment requirements.

This leads us, Mr. President, to the main and only issue in this authorization request for the C–5A program that can be raised—the $200 million contingency fund. This issue was raised in the Armed Services Committee deliberation on the C–5A program and some very good data was presented. Considering all aspects of this issue, however, the committee approved this amount because there was no other reasonable solution that could be presented that would meet the airlift requirements of the C–5A at the estimated cost to complete this program. I can assure you that all issues relating to this difficult matter were discussed in the committee's deliberation. In fact, in approving the budget request for $200 million, the committee placed specific restrictions on any use of these funds.

In addition, the committee stipulated that the funds cannot be obligated until the Department of Defense presents a plan to resolve this issue in such a way to best protect the public's interest for approval of the House and Senate Armed Services Committees. As you can see, Mr. President, the committee did not intend in any way that this would establish a precedent or "bailout" for the contractor as has been reported in some media. The committee did consider, however, the current and future potential investment in this program and weighed this heavily against the requirement for the aircraft.

The committee arrived at the only possible solution to meet this airlift requirement and approved the funding request pending presentation of a reasonable plan by the Department of Defense. I urge the Senate to also consider the present and potential future investment in this program in their deliberation and to also consider the alternative ways of meeting the airlift requirements associated with the rapid deployment necessary as a deterrent capability in meeting our commitments.

Mr. President, again, the many ramifications of the C–5A program are being subjected to intense but justified scrutiny by Senators from both sides of the aisle. The distinguished Senator from Wisconsin and the distinguished junior Senator from Pennsylvania have submitted an amendment to restrict the use of the $200 million in contingency funds as it relates to continued production of C–5A aircraft. According to news releases I have seen, this amendment has been referred to as a keep-building-the-planes proposal.

Mr. President, I intend to devote the next few minutes to voicing my objections to this proposed amendment. I will base these objections on two prime points: First, the amendment cannot possibly achieve its stated purpose, due to the prime contractor's apparent need for the contingency funds to continue production beyond December of this year; second, the restrictive nature of the amendment eliminates any flexibility that the Department of Defense might have in restructuring the contract with the Lockheed Corp.

I am not the first to recognize the deficiencies in this amendment. My able colleague, Senator TALMADGE, addressed this topic most forcibly on the 12th of August. I commend the distinguished Senator for his discerning analysis and penetrating comments. I will tailor my comments in light of the auspicious start provided by my able friend and colleague.

Mr. President, as I see it, the proposed amendment would not only create another veil of confusion around the C–5 contract dispute, but more importantly would place a completely unfair and unrealistic time constraint on the adjudicative process now underway within the Armed Services Board of Contract Appeals. The language of the amendment, as I understand it, limits the use of the $200 million to three situations. The first situation requires the settlement of the outstanding contract disputes which exist between Lockheed and the Air Force. Specifically, the language of the amendment requires a decision in favor of Lockheed by the ASBCA or by a court of law. The second situation stipulated in the amendment is one wherein Lockheed has been forced into bankruptcy or reorganization. The third situation would require the General Accounting Office to decide on Lockheed's need for the money.

Now, forestalling for the moment consideration of the consequences of the second and third situations, let us focus on the unreality of the first situation identified in the proposed amendment. I emphasize the deficiency in this element of the amendment, because we are completely without precedent in presuming that the Armed Services Board of Contract Appeals will reach a decision on the complex C–5 dispute by the end of this year. Furthermore, it is not inconceivable that the adjudication of these issues could reach a higher level of appeal, namely the court of claims or even the Supreme Court. It has been estimated that the entire process, including the appellate procedures, could take as much as another 3 years. So, in effect the first situation outlined in the proposed amendment is an illusory objective unattainable by the time that Lockheed apparently needs the funds.

Therefore, since it is highly unlikely that a judgment on the contract dispute can possibly be rendered in time, the only operating sense of the proposed amendment is contained in the second and third provisions. The second provision, bankruptcy for Lockheed, presents several objections. First, by passing the amendment, the Congress in effect could be voting in favor of the bankruptcy or reorganization of the Lockheed Corp. Second, the trustee under bankruptcy is not obliged to protect the best interests of the firm's customer, in this case the Government. To the contrary, the trustee's duties are to protect creditors and then stockholders. Therefore, under this second provision we would have no assurance that the trustee would "keep building the planes."

The third situation, submitted only this morning, to subject the $200 million to a review of Lockheed's financial needs by GAO before November 15, 1970, is redundant and an unnecessary expense of taxpayers' moneys. As pointed out by Secretary Packard during May and June in testimony before the Armed Services Committee, the Department of Defense has already made a comprehensive analysis of Lockheed's financial condition and its ability to obtain necessary financing of the C–5A programs. This DOD analysis clearly indicates that Lockheed does not have the financial capability to support continued production of the C–5A pending the settlement of disputed issues. I find it hard to justify the use of GAO resources simply to verify something we already know.

I believe it should also be pointed out that language in the current bill presently before us provides for continued GAO review of all moneys flowing to Lockheed out of the $200 million contingency. Further, after each review by GAO a report is to be submitted to the Congress on the status of the $200 million contingency. I feel this continued GAO review, as well as the other controls in the present bill, provide sufficient safeguards on the $200 million to protect the public interest and prudent use of the taxpayers' funds.

Now, Mr. President, I do not wish to dwell too long on the inadequacies of this proposed amendment, without providing specific rationale as to an alternative course of action. The action I propose is in keeping with the spirit of the Proxmire-Schweiker amendment. In fact, it not only abides by the intent of their adopted slogan, "keep building the planes"; but also provides the foundation for an orderly continuation of the C–5 procurement program.

My proposal is that we should allow the Department of Defense sufficient latitude in their efforts to restructure the contract with Lockheed. Now, let me be perfectly clear in this regard. The restrictive language in the bill reported by the Committee on Armed Services requires the Secretary of Defense to have the approval of the appropriate committees from both the House and Senate before the contingency funds can be obligated. This restriction provides the Congress the appropriate degree of control in these contractual matters. It serves notice to both the Executive and to Lockheed that the Congress fully intends to abide by its responsibility in protecting the taxpayers' interests.

Now, when this restriction is in effect, it seems to me that the Executive should be allowed to pursue every potential

avenue of negotiation which might result in a satisfactorily restructured contract and, above all, permit the delivery of the much needed aircraft.

Mr. President, I hope the Senate will defeat this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I certainly thank the Senator from South Carolina, and wish I had more time to give him.

Mr. President, I thought perhaps the Senator from Wisconsin wished to use some time at this point. We are down to 14 or 15 minutes.

Mr. PROXMIRE. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Wisconsin has 21 minutes. The Senator from Mississippi has 14 minutes.

Mr. PROXMIRE. Mr. President, I yield myself 1 minute. I say to the Senator from Mississippi that I have discussed this with the Senator from Pennsylvania (Mr. SCHWEIKER), and he and I are pretty much ready to sum up, unless the Senator from Pennsylvania has another short statement he would like to make before his summary.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 4 minutes.

I have given an outline of the issues here and of the committee's position. I do not need to repeat it simply for the sake of repetition. I want to refer to what the Senator from Pennsylvania said about the $200 million.

Yes, it is now a fact that this $200 million will have to be used. That is why we put it in the bill—in order to recover on what we already have spent. The question is, How is it going to be protected and how is it going to be used? That is why we put this restrictive language in here.

Contrary to our desires, we assume the responsibility of requiring a plan to come back to the two committees, whereby we would have to assume additional responsibility.

This is an amendment offered against the $200 million. I think it is admitted that it will have to be spent—that much, anyway. I am frank to say that I think it will probably be more than that, in order for us to recover on what we have already spent. But what I am concerned about is that we not stop the wheels until all the processes can be gone through to determine which one is right about this controversy between the Air Force and the contractor, under the contract, that we have the safeguards, and I believe we do have them.

I mention the one that is not written in, and that is the responsibility Mr. Packard assumes, where he has made special assumptions for us before, he has come through in a mighty fine way—and we have it written in here, too—that this money must be spent in such a way as not to become commingled and not to be used for any purpose but the product in which the Government has a stake. Unless that can be done, and Mr. Packard can recommend a plan to us that does, this money is not going to be spent.

I want to say this again to the Senate: This provision that we already have in the bill, which now would be substituted for by something else, is the tightest statutory language ever drawn for a defense contract with respect to precluding any possible intermingling or diversion of these funds to other programs of a contractor. The committee got that language up under its own responsibility, coupling it with their special responsibility under the other amendment, coupling it with Mr. Packard's special responsibility on his promise, and coupling it with the fact that we already have the authority to call on the General Accounting Office. For my part, they need not expect to escape being called on unless we are satisfied with this plan.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Time is running equally.

Mr. STENNIS. I yield 4 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Senator from Mississippi for yielding so that I can continue with remarks I started earlier in this colloquy on the pending amendment.

As I pointed out at that time, the three conditions precedent, it seems to me, are not really in fact conditions precedent to obtaining disbursement of this $200 million contingency fund, but, rather, conditions that will lead inexorably to bankruptcy of Lockheed or the cancellation of the production run of the C–5A. That is the net effect of the amendment, in the humble judgment of the junior Senator from Tennessee.

Mr. President, I do not serve on the Armed Services Committee. I have no vested interest in the production of this airplane. So far as I know, no major parts or assemblies are manufactured in my State. I am trying to take—and I believe I am taking—the broadest view of the importance of this weapons system to the formulation of the first genuinely new foreign policy that the United States has attempted to formulate since the postwar era. Some are not aware that this we are doing, but we are doing it anyway.

So if we are trying to examine whether we continue to maintain a presence in the Asian crescent or in Western Europe or in the Middle East, and if so, how, the C–5A is a weapons system that becomes vitally important to that, because it gives us the flexibility to move with strength and to maintain a substantial presence for the United States, in its peacekeeping efforts, in any part of the world, without maintaining extremely costly fixed bases, without maintaining the irritant of American troops on foreign soil.

It seems to me that it is vital to our flexibility in determining how and how soon we can disengage from wars such as the war in Southeast Asia and Vietnam and how we can successfully come to terms with our responsibility as a great, moral, and free nation without committing millions of troops to positions of permanent strength overseas.

I have flown the C–5A, not as an accomplished pilot. Having some experience in this field, I wanted to see firsthand what sort of weapons system this was. I wanted to see the hardware. I was permitted to sit in the right seat of the biggest airplane on earth and to see it perform. The fact alone that it is a highly complex and sophisticated system is not justification for continuing our production of this machine, but it is nonetheless an impressive array. The fact that it is a marvelous performing airplane is not a justification for expending this $200 million in contingency funds, but it is a marvelous performing machine, the largest airplane on earth. The fact that it will permit us to have the mobility for the transport of troops, with front and rear loading, in a kneeling position, is not justification in itself for authorizing, appropriating, and expending under certain circumstances the $200 million contingency fund. But they are important items in our consideration.

The single most important point is this: There is a need for a strategic weapon of this sort. There is a need in the new and evolving foreign policy of the United States for a machine of this type and design. There is no other machine of this type and design in the world; and if we stop, if we do not authorize the continuation of the full production run on the C–5A, we will have to start over, because there is no other airplane that can fulfill this need.

If is unfortunate that there are cost overruns. They are due to many factors, and I do not defend them. The fact is that we are faced with a bad situation, but we necessarily must have this sort of weapons system if we are to have the flexibility to respond and the flexibility of defense that I think we all need.

I do not believe it is in the best interests of the United States to adopt an amendment which creates three untenable alternatives: One, to test the determination and review of the propriety of the paying of this contingency fund with the Board of Contract Appeals and a review through the judiciary; two, for the voluntary or involuntary bankruptcy of Lockheed, in which event the responsibility of the trustee in bankruptcy will be to conserve the assets and protect the debtors and the stockholders, not the Government; or three, until we create the situation where the Comptroller General has to pass on whether we need to pay the money.

I believe that we have got to face up to the fact that this is an expensive weapon system. We have been unfortunate in the cost overruns, but the cheapest thing that can be done now is to continue with the present production run.

Mr. STENNIS. Mr. President, I have only 10 minutes remaining. One of the speakers is delayed for some reason.

Mr. PROXMIRE. I will yield myself some time, and then shall yield to the Senator from Pennsylvania, but just let me answer the Senator from Tennessee who has just spoken, and also the Sen-

ator from Missouri and other Senators who have spoken about the great advantages of the C–5A.

IRRELEVANT POINT

Mr. President, that point is totally irrelevant. It has nothing to do with this amendment. There is nothing in this amendment that would foreclose the C–5A from being produced.

All we are trying to do by this amendment is to protect the taxpayer. In addition we provide additional circumstances not provided in the bill for the funds to be paid. That is without this amendment if the Lockheed Co. went into bankruptcy, there would be no provision in the bill that the trustees could call on the Federal Government for the money necessary to continue production of the C–5A.

We provide for that in this amendment.

No one—in spite of the fact that some of the ablest Members of the Senate are on the other side of this—has argued that the GAO is incompetent to determine financial capability. If the GAO is competent and finds that this money is needed in order to keep the airplane in production, they get the money.

What could possibly be fairer than that?

It would seem to me that we have tried hard in this amendment to meet the objections which have understandably been raised against those Senators—there were five members of the Armed Services Committee of this body who said that we should cut out the $200 million, period.

That was the position of five members of the committee who were familiar with the problem, and sat through the hearing, and concluded that we simply should authorize this $200 million at all.

Mr. STENNIS. If the Senator will yield briefly on that, those members do not say that now. There is no amendment to this——

Mr. PROXMIRE. No, there is no amendment on that, but they said that in the vote on the Schweiker amendment in committee.

Mr. SCHWEIKER. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. SCHWEIKER. I should like to state that that amendment offered in committee was much more arbitrary, much more inflexible, and much more rigid than what we are doing here. That was strictly to delete the $200 million, period.

Thus, with the three contingencies we allow, with the $200 million being paid, we actually have picked up some support. This is a most reasonable amendment that will still protect the taxpayers, yet not give a blank check on a Government contract, with no questions asked.

C–5A PROGRAM CALLED MESS

Mr. PROXMIRE. To listen to the opponents of the amendment, one would think that this was just a routine procurement of an important weapons system and that no problems have developed. Secretary Packard was right when he spoke on Thursday night and singled out the fact that the C–5A was the most scandalous and serious procurement problem in a situation which he called a mess, in which he said that we have made serious blunders, spent far too much money, overorganized, and overspent.

Under these circumstances, it seems to me that the Senate is bound to take some action to protect the taxpayers.

NEED INDEPENDENT FINDING

With the greatest of respect for the committee, I would say to the Senator from Mississippi that he has tried hard to write into the bill protective language. But all we are asking is that an independent agency make a finding of fact that has never been made to the Members of this body or to the public, to find that Lockheed needs this money in order to keep in production.

Mr. CRANSTON. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. CRANSTON. The Senator has referred to Under Secretary of Defense David Packard in his presentation today. He is a man for whom I have the greatest of respect. He is a fellow Californian. I gather that he is not a supporter of this amendment. Is that correct?

Mr. PROXMIRE. Of course he is not. No indeed. Mr. Packard is not a supporter of the amendment. We feel that the Department of Defense, with the greatest respect for Mr. Packard, Mr. McNamara, Mr. Laird, Mr. Charles, and other able men, has made blunders in the past on this, it has made mistakes, but this is not a partisan or an individual matter.

We are saying, under the circumstances, and the record which we have, that we should not be fooled again. Therefore, we should get from the GAO some assurance that these funds are needed.

Mr. President, I reserve the remainder of my time.

Mr. JACKSON. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield 4 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 4 minutes.

Mr. JACKSON. Mr. President, I believe that the pending amendment is an unwise alternative to the careful arrangements secured by your Committee on Armed Services—arrangements designed to protect the interests of both the taxpayer and the needs of the armed services. I should like to take but a moment of the Senate's time to summarize the arrangement established by the committee and the substitute approach contained in the amendment introduced by the Senator from Wisconsin.

First, as a result of an understanding reached with the Deputy Secretary of Defense, the Senate has been assured that the funds in question will not be released unless the joint objectives of fiscal responsibility and the needs of the armed services are thereby realized.

Second, the Armed Services Committee has received solemn assurances that these funds will not be used for any purpose other than to facilitate the essential completion of the construction of 42 C–5A aircraft.

Third, and again by careful arrangement, we have been assured that any plan for the disposition of these funds for the purpose of acquiring the aircraft will be submitted to the Committee on Armed Services.

I believe, Mr. President, that these unusual arrangements are adequate to secure the interests of economy and prudent expenditure while, at the same time, making adequate provision for a wise decision with respect to the procurement of an important element in our national defense.

We are all concerned at the difficulties posed by cost overruns in Government procurement. The multiple causes of cost growth, particularly in areas of high technology and where operational specifications are subject to change in the course of development, require careful consideration by the legislative, as well as the executive branch. The complexity of the present dispute between the Government and the contractor should surely suggest how difficult determinations are in this area.

The alternative suggested by the pending amendment has two essential provisions. The third, which would make the funds available in the event that they are found legally owing to Lockheed, is simply gratuitous.

The first would leave the determination as to the necessity of releasing the contingency funds to the Comptroller General, whose decision would be based upon a necessarily hasty and possibly inconclusive study. The ability of the Comptroller General to make such a finding by November 15 after weighing all relevant considerations is questionable. In any event, it seems to me preferable that the determination be made by the Department of Defense and subject to the approval of the Committee on Armed Services.

The second method for reaching a decision on the disposition of the contingency funds—and that is all that is at issue here—would assign this responsibility to a trustee in bankruptcy—an unidentified individual whose competence, under the amendment, would substitute for that of the Department of Defense and the Committee on Armed Services.

Neither of these avenues to decision seems to me, Mr. President, as likely to result in a decision reflecting the national interest as the arrangements secured by the Committee on Armed Services. If anything they would entrust a most complex and difficult decision to institutions whose expertise provides only partial qualifications to make a judgment.

While I share the concern of many Senators at the rising costs of defense procurement, I simply cannot agree that the proposed amendment would be a wise or sensible corrective measure, either as a means of coping with the overrun in the C–5A program or as a model for the future. I would hope that we will set about the important task of finding answers to the overrun problem that will enable us to devise methods for correcting or minimizing it. We must not allow our displeasure at a general problem to lead us to unwise and uncertain action in a specific instance.

Mr. PROXMIRE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 5 minutes.

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

Mr. PROXMIRE. I yield.

Mr. YARBOROUGH. Mr. President, what amount of money has been spent on the C–5A by the Federal Treasury?

Mr. PROXMIRE. Mr. President, on page 18 of the committee report the following statement appears:

> If no additional funding is authorized we will have 17 aircraft at a cost of about $3.4 billion or approximately $200 million per aircraft.

Mr. YARBOROUGH. $3.4 billion has already been paid out for the aircraft.

Mr. PROXMIRE. It has been authorized to be paid out.

Mr. YARBOROUGH. We have actually appropriated $3.4 million, have we not?

Mr. PROXMIRE. The committee report language says that $3.4 billion has been authorized. As I understand, $2.5 billion has been paid out.

Mr. YARBOROUGH. Mr. President, I have recently had some unfortunate personal experience with Lockheed. One of their directors ran against me in the primary this spring and defeated me. He spent money in an amount that is triple any amount ever seen before in Texas primaries.

If we keep pouring money into such corporations, they will be able to buy the whole Senate. I have just been through that experience.

Mr. PROXMIRE. I think that is a point extremely well taken.

Mr. President, in this debate we have overlooked some important facts about this contract. The original contract called for 120 planes to be built at a cost of $3.4 billion. But 20 months ago, hearings before my subcommittee brought to light the fact that there was a $2 billion overrun. That is fact No. 1.

At the end of this year, the Air Force and the contractors will have spent every dollar coming to them under the original contract—including the added funds in the contract for inflation, target ceiling provisions, and the supplementary agreements. According to the committee, this amounts to $3.75 billion.

But instead of 120 planes, we will have only 30. Instead of costing $27 million a copy, these 30 airplanes will cost $125 million per aircraft, according to the committee report. That is fact No. 2.

That is the size of the scandal on this airplane. Let me repeat. We will have spent $3.75 billion at the end of this year, yet we will have only 30 airplanes completed instead of the 120 planes that should have been provided $300 million ago.

In addition, there has been concealment, suppression, and downright falsehoods told to congressional committees and the public.

Furthermore, contrary to repeated claims, the plane does not meet its original specifications. The Whittaker report listed 12 items which had been degraded and which, taken together, indicated a weakening of the structure of the airplane, a condition which has been very unhappily demonstrated since.

The crack in the wing, for example, limits the ability of the plane to land on unimproved airports, as originally specified. Now it is being said that it can be used on "lightly paved" runways. Those are the facts.

I can recall very well that on an NBC–TV program recently the C–5A was shown coming in for a landing. Awaiting the plane were some generals and the distinguished chairman of the House Armed Services Committee. As the plane touched the runway, a wheel rolled off. Then a tire rolled off. It was embarrassing for the distinguished Representative from South Carolina, Mr. RIVERS, and for the generals, as well.

This has been the history of the plane. It is true that it has potential. But it is not true that this is a plane which has been demonstrated in its excellence.

Nevertheless, this amendment does not go nearly as far as five members of the Armed Services Committee of the Senate felt we should have. This is a much more moderate amendment. I repeat, because I think it is important to repeat and to emphasize, that this amendment provides that $200 million will be paid providing one of the following conditions is met.

First. The Armed Services Board of Contract Appeals or a court should decide that part or all of the $200 million is owing to Lockheed under the contract.

Second. A trustee in bankruptcy determines that all or part of the $200 million is necessary to complete the production of the 42 C–5A planes this bill would fund.

Third. The Comptroller General determines, after a study that must be completed by November 15, 1970, that all or part of the $200 million is necessary to complete production of the 42 C–5A planes.

The third condition is a modification of the original amendment. It would permit the $200 million to be paid to Lockheed, but only after a competent, independent finding that could assure the Congress that the funds were needed to make production of the plane possible.

It would avoid what otherwise would be a precedent set in the bill that would give a defense contract $200 million that the Air Force itself says the Government does not owe, and would give the funds without any independent determination that the money is necessary to produce the planes or that the $200 million would be adequate to permit the planes to be produced. The bill without the amendment would make the Government liable for a total of $800 million above the contract, not owed by the Government, before the contract is completed, and perhaps much more.

The amendment would require the Comptroller General to determine how much will be necessary to complete the contract.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

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

Mr. PROXMIRE. Mr. President, I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I was very much concerned about the amendment in its original form. However, in its modified form, I feel that a reasonable and rational approach has been taken. I am happy to indicate my support of the amendment.

I think I should also commend the Senator from Pennsylvania and the Senator from Wisconsin because not only does their amendment focus attention on a very serious problem, but it also has accomplished another purpose. Under the leadership of these two distinguished Senators, we have adopted a new policy.

The new policy enunciated by the Secretary of Defense is a result of their own bitter experience in these problems.

I commend the distinguished Senator from Wisconsin for the contribution he has made and indicate again my support for the amendment.

Mr. HATFIELD. Mr. President, the amendment we are offering today is an overture to the administration. We are seeking an approach which we believe will be most reasonable to all parties concerned.

What we are proposing is this: Let us complete the withdrawal of American Armed Forces from Vietnam by the end of 1971; yet we have no intention of setting any inflexible deadline. If the President discovers that for any reason, our troops cannot be withdrawn by that date, then the President may extend this period by 60 days. Thus, he has complete flexibility to do what is necessary to safely complete this withdrawal.

Furthermore, if the administration advocates an alternative course of policy, then he need only to request an extension of this period for the approval of the Congress.

Thus, we are giving the administration full authority to carry out its withdrawal program, to be completed by the end of 1971. If the administration differs with the course of action, then they need only to justify an alteration of the timetable to the Congress.

I do not know why the administration should find this to be an unreasonable proposal.

In my view, it certainly would be unreasonable to propose that the administration be given full authority for any course of continued military activity in Vietnam without congressional approval beyond 1971.

Therefore, I would hope that all the Members of the Congress as well as the administration will carefully consider this revised amendment with an open mind. In my view this represents a most sensible approach for guiding our future course of action in Vietnam; it is the responsible way for the legislative and executive branches to cooperate together in this process.

There is no excuse for men of reasonable mind to reject such an overture.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 2 minutes.

Mr. STENNIS. Mr. President, I want to discuss for a few minutes amendment No. 853 introduced by Senator PROXMIRE and Senator SCHWEIKER and point out what I believe to be serious deficiencies in the meaning and intent of this amendment.

This amendment is being identified by these Senators as the "Keep building the planes" amendment. While this appears to be another catchy slogan, a detailed analysis of the amendment and its ramifications appears to have just the opposite effect.

The amendment proposes to restrict obligation and expenditure of the $200 million contingency fund to be authorized and appropriated to the following one or two conditions:

First. If the Armed Services Board of Contract Appeals—ASBCA—has made a determination that the United States is obligated to the contractor for the amount currently in litigation.

2. If a trustee appointed in bankruptcy under chapter 10 of the Bankruptcy Act determines that all or part of this contingency fund is needed.

The amendment also proposes to require the Comptroller General of the United States to conduct a study of the financial capability of the prime contractor with a view toward determining the contractor's ability to meet the contract terms.

The amendment proposes that the Secretary of Defense be instructed to insure that, in the event of any bankruptcy or corporate reorganization proceeding involving the prime contractor, the financial interests of the United States are protected and priority is given to expeditious completion of the C–5A aircraft contract.

The amendment finally proposes that none of the funds authorized to be appropriated by this or any other act for any purpose other than the C–5A program may be transferred to or used for the C–5A program. This section is intended to preclude programing from other programs.

In response to this amendment, the following points should be considered:

One of the intentions of this amendment is to preclude negotiated settlement of disputes or restructuring of the contract. The amendment precludes any use of the $200 million unless there is a dispute for the Armed Services Board of Contract Appeals to settle or there is a bankruptcy proceeding. Under the first clause, without a dispute, the money could not be used; under the second, without a trustee in bankruptcy, the money could not be used.

The first condition that the amendment proposes—that the $200 million cannot be used until the Armed Services Board of Contract Appeals makes a determination—appears to be an impossible condition with respect to the time factor involved in this program. The $200 million funding is required for continued production approximately at the end of December 1970. The contractor complaint appealing the contracting officer decision on the litigation issue was filed before the Armed Services Board of Contract Appeals in January 1970. Significantly large quantities of paperwork are being reviewed in this case.

The optimum schedule with a highly expedited proceeding as indicated by the Chairman of the Armed Services Board of Contract Appeals is estimated at about 10 months after discovery motions are filed sometime in September or October 1970. This would place the time of determination about June or July 1971 even without an appeal of the determination which could further prolong the issue. It appears fairly evident that under the best and fastest of circumstances the decision of the Armed Services Board of Contract Appeals would not be handed down in time to meet the funding requirements to continue production after December 1970.

It appears evident, therefore, that since the first condition of the amendment could not be met, the funds would not be available for continued production and the contractor would have the obvious choices of defaulting on the contract, which would probably ultimately result in bankruptcy proceedings, or declaring bankruptcy itself. The latter does not appear to be a desirable or feasible course of action.

Based on available data, therefore, it appears that passage of this amendment would force a bankruptcy proceeding. It also appears from all available information that any bankruptcy proceeding in this case would be under chapter 10 of the Bankruptcy Act. This would lead into the second condition of the amendment under which the $200 million could be obligated and expended.

Chapter 10 of the Bankruptcy Act provides the means for debtor reorganization. This section of the Bankruptcy Act, in essence, provides that a trustee appointed by the court to operate the corporation would draft a plan for reorganization for court approval and subsequent approval by the creditors whose interests are affected. The Secretary of the Treasury acts for the United States if the United States is a creditor.

The amendment would allow the use of the $200 million contingency fund if the trustee determined that all or a part of the fund was needed to assist the prime contractor in completing the contract.

The amendment does not require that a plan of reorganization be approved or that the trustee even have formulated a plan of reorganization prior to use of the $200 million. The amendment just provides that the trustee can use all or any part of the $200 million if he determines it is needed.

In summary, therefore, if the amendment passes, the $200 million could be used by a trustee with or without a plan of reorganization. The plan of reorganization would be subject only to the approval of the executive branch through the Secretary of the Treasury.

In comparison, it is stipulated in the authorization bill that the $200 million emergency fund could only be used after a plan submitted by the Secretary of Defense is approved by the Armed Services Committees of the Senate and the House of Representatives.

It is also important to note that this amendment would only cover the availability of funds to the trustee up through June 1971. While I do not intend to prejudge any issue of a potential bankruptcy, I do not believe that a responsible trustee, in formulating a reorganization plan, could consider maintaining a contract without some assurance of funding availability through the contract completion. The amendment does not make any provision for this issue and it can only be assumed that this contract would not be considered in a reorganization plan.

It is apparent, therefore, to me, Mr. President, that this amendment will not be a "Keep building the planes" amendment but would be one of the quickest ways to stop building the planes and deny us the capability that everyone agrees is required.

Mr. President, I ask unanimous consent to have a letter from Deputy Secretary Packard to me under date of August 25, 1970, put in the RECORD at this point.

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

THE DEPUTY SECRETARY OF DEFENSE,
*Washington, D.C.*

Hon. JOHN STENNIS,
*Chairman, Senate Armed Services Committee, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I have examined the proposed amendment to the Military Procurement Authorization Bill concerning the C–5A, which has been characterized by its authors as one to "Keep Building the Planes." In my opinion, this amendment would assure that we could not "keep building the planes."

Under the amendment the contingency funds for the C–5A could only be expended under one of the following conditions:

1. If the Armed Services Board of Contract Appeals (ASBCA) determines that a part or all of the money is owed to Lockheed, *or*

2. If a trustee in bankruptcy or reorganization under Chapter X determines that the funds would be needed in completing those aircraft scheduled to be delivered by the end of the fiscal year.

I wish to express my objections to the amendment for the reasons stated below.

The amendment does not achieve its stated purpose; that is, the continued production of the C–5A. Based on the present expenditure rate, the funds requested for FY 1971 will be exhausted shortly after the end of calendar year 1970. The ASBCA will not have reached a decision on the extremely complex issues by this date. Therefore, once the funds appropriated for the contract are expended, Lockheed would have to carry the burden of providing financing for this contract until a decision is rendered by the ASBCA. Present indications are that ASBCA cannot reach a decision before mid-1971.

As I have testified before your Committee on several occasions, the company lacks the cash resources to carry this obligation. In short, production of the C–5A aircraft would therefore cease with the expenditure of the FY 1971 appropriation.

Moreover, should the amendment pass and should Lockheed subsequently prevail before the ASBCA or the Court of Claims, the Department of Defense would be in serious danger of having created yet another litigation issue; that is, a charge of breach of contract for failure to continue making payments, which the Board or Court determined were due Lockheed.

I am particularly concerned that the amendment, if passed, would impair our flexibility to seek alternative solutions to this

problem. As I informed the Committee during my testimony in May and June, we are trying to negotiate our disputes and restructure the C–5A contract in a manner which will create a better working arrangement for management by the Air Force.

As I also have testified, the present contract is fraught with several clauses subject to divergent interpretation and not conducive to intensive management on the part of the Air Force. The repricing formula, the abnormal escalation clause, and the production option dispute have all tended to obscure and divert attention from that which is most needed—management by both the Air Force and the contractor to assure continued production at reasonable future incremental costs. It has become my conviction that a restructuring of this contract to eliminate these problems and to promote improved management is mandatory.

I must emphasize that whether the solution is ultimately reached through litigation or settled by negotiation, the funds will be needed in early calendar year 1971 to continue production of the C–5A. Since a decision by the ASBCA is not likely to occur before the funds are needed, passage by Congress of the amendment would halt production of the airplanes.

As I have informed your Committee, I would not use any of the $200 million involved in this issue without again appearing before both your Committee and the House Armed Services Committee to explain in detail my proposed course of action and recommended solution.

Sincerely,

DAVID PACKARD.

Mr. STENNIS. Mr. President, I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOK. Mr. President, under normal circumstances I would like to vote for the amendment. I must say that I think it is a bad contract. I think it has been badly handled.

I disagree with the Senator. This can in no way stop the production of the C–5A. The amendment says that the trustee in bankruptcy can make up his mind whether they need the funds.

A court of bankruptcy has two responsibilities, to see to the interests of the creditors and the stockholders.

The U.S. Government would be last. If this corporation were to go into bankruptcy, it would be the determination of the bankruptcy court whether it should stay in business or not stay in business. If he should say that it should not stay in business, the C–5A would not be built, Poseidon would not be built, the SAM would not be built, the SR–71 would not be built, and the U–2's would not be built.

This is a determination that the trustee makes for the benefit of the stockholders and the creditors and not for the U.S. Government.

I will give a good example. We are now faced with the bankruptcy of the Penn Central. If they cannot pay their debts and they quit, if the Federal Government wants this company to operate, it will then have to subsidize it.

I do not like it. I think it is a bad contract. I think that everyone admits that. However, we cannot say to the American people that we are saving them $200 million because if we need these 81 aircraft and have to have them, we will have to pay for them. If it costs too much, we will have learned a lesson. But we cannot go to the American people and say that we are saving something for them when in the long run we will have saved them nothing at all.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. I yield the remainder of my time to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I thank the Senator from Wisconsin for giving me a further opportunity to sum up the arguments that he and I have made.

We have pointed out that this is probably the worst illustration of military procurement practices in modern history. Rightly or wrongly it has become a test case. The amendment gives us the opportunity to permit this to continue or to blow the whistle and reverse these policies.

As the Senator from Wisconsin has pointed out, we can cite this example as the worst one we have ever come across.

So this is not in dispute. What is in dispute is how we are going to get out of the mess we got into. The original price was $2.6 billion. The latest figure from the selected acquisition reports indicate that it has gone up to $4.6 billion. For 81 planes we are up $2 billion, or nearly a 100-percent overrun.

Now we come to the situation where there is requested another $200 million which Secretary Packard said is actually needed to keep the company from going bankrupt, but in the next breath he said, and the chairman of the committee also said, that is just the beginning; that $200 million is just a part of it. No one knows how much must be supplied after the $200 million. But both of them pointed out that the company said it needs $600 million. Yet the Department of Defense said it really needs $800 million more. Where will all this come to an end?

Now they want us to, in essence, rubberstamp the procedure, as if we have not made enough mistakes, and as if this is a wonderful policy and this is what we should be doing, when the reverse is true.

Mr. President, the only way we will change the policy is to blow the whistle somewhere, and I hope this body today has the courage and the conviction to blow the whistle.

The Senator from Wisconsin and I have offered a reasonable amendment that will not put anyone out of business; it will not put anybody into bankruptcy and it treats them the way the committee would in this regard. There is no question about our amendment triggering that. We give the Comptroller General the right to give them the $200 million, if it is necessary.

We are going to reverse the policy and not permit companies to bid in low and bail out high. If this amendment is rejected, I can imagine that one result will be that we will invite other contractors to bid in low and bail out high. We would set a terrible precedent and invite everyone to do what Lockheed has done.

If we reject the amendment we are going to show everyone that the United States is not going to regulate its own house and put its procurement in order, and that we are not going to meet the issue head on, but give the $200 million to Lockheed because Secretary Packard told the committee that.

In addition, now there are discussions going on between the Government and Lockheed to settle the matter out of the normal process. They want to bypass Congress and the appeals procedure, and sweep us aside once again, whether the figure is $600 million, $800 million, or $1 billion. Then, once again, we will be presented with a fait accompli or a fiscal coup d'etat, and we will go along.

I concede we need the planes, but through our amendment we would be saying, for once, that we should stand on our feet and say there is a limit; that we are going to meet our responsibility today; and that we are not going to condone and sanction the bad military practices that have gone on before.

Mr. President, this vote is vital to determine the future of our procurement policy, whether we have the old blank check approach, the old "give it to them if they need it" philosophy, the bid-in-low and bail-out-high policy; or whether good auditors with fiscal responsibility will deal with military contracts, as is done with every other contract in this Government.

Mr. SCOTT. Mr. President, I am pleased to support the Proxmire-Schweiker amendment controlling the expenditure of funds for the C–5A transport. This amendment provides that the $200 million provided for the C–5A would not be payable to the prime contractor, in this case Lockheed Aircraft Co., unless one of certain conditions are met.

The important modification of this amendment which leads me to support it is that provision directing the Comptroller General of the United States to complete an independent study by November 15, 1970, to determine whether all or part of the $200 million is necessary to complete production of the current contract for the C–5A aircraft. I believe this modification is sound and deserves support by the Members of the Senate.

Mr. President, this debate marks the end of a year in which military expenditures have been given the closest scrutiny ever. I support that effort. We should not be paying $1 more than we have to for military procurement.

It is inconceivable that American taxpayers must foot bills for unwise procurement procedures. For that reason, I support the Proxmire-Schweiker amendment and urge Senators to do the same.

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time.

Mr. STENNIS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. STENNIS. Mr. President, what is the matter pending before the Senate?

The PRESIDING OFFICER. The matter pending before the Senate is the

amendment of the Senator from Wisconsin and the Senator from Pennsylvania.

Mr. STENNIS. Mr. President, the yeas and nays have been ordered; is that correct?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. STENNIS. This is straight up and down on the amendment.

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the amendment (No. 853), as modified, offered by the Senator from Wisconsin and the Senator from Pennsylvania.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HATFIELD (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the distinguished Senator from California (Mr. MURPHY). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. SPARKMAN (after having voted in the negative). Mr. President, I answered the rollcall and voted in the negative. However, I have a live pair with the Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "yea." If I were permitted to vote I would vote "nay." I withdraw my negative vote.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from New Mexico (Mr. MONTOYA), and the Senator from North Dakota (Mr. BURDICK), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Michigan (Mr. GRIFFIN), the Senator from California (Mr. MURPHY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

On this vote, the Senator from Ohio (Mr. SAXBE) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Ohio would vote "yea" and the Senator from South Dakota would vote "nay."

The pair of the Senator from California (Mr. MURPHY) has been previously announced.

The result was announced—yeas 30, nays 48, as follows:

[No. 273 Leg.]

YEAS—30

| | | |
|---|---|---|
| Brooke | Kennedy | Percy |
| Byrd, Va. | Mansfield | Proxmire |
| Case | Mathias | Ribicoff |
| Church | McGovern | Schweiker |
| Cooper | Mondale | Scott |
| Eagleton | Moss | Smith, Ill. |
| Goodell | Muskie | Spong |
| Hart | Nelson | Williams, N.J. |
| Hughes | Pastore | Yarborough |
| Javits | Pell | Young, Ohio |

NAYS—48

| | | |
|---|---|---|
| Aiken | Eastland | McClellan |
| Allen | Ellender | McGee |
| Allott | Ervin | McIntyre |
| Anderson | Fannin | Miller |
| Baker | Goldwater | Pearson |
| Bellmon | Gurney | Prouty |
| Bennett | Hansen | Randolph |
| Bible | Harris | Russell |
| Boggs | Holland | Smith, Maine |
| Byrd, W. Va. | Hollings | Stennis |
| Cook | Hruska | Symington |
| Cotton | Jackson | Talmadge |
| Cranston | Jordan, N.C. | Thurmond |
| Curtis | Jordan, Idaho | Tower |
| Dole | Long | Williams, Del. |
| Dominick | Magnuson | Young, N. Dak. |

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY ANNOUNCED—2

Hatfield, for.
Sparkman, against.

NOT VOTING—20

| | | |
|---|---|---|
| Bayh | Gravel | Mundt |
| Burdick | Griffin | Murphy |
| Cannon | Hartke | Packwood |
| Dodd | Inouye | Saxbe |
| Fong | McCarthy | Stevens |
| Fulbright | Metcalf | Tydings |
| Gore | Montoya | |

So the amendment (No. 853) was rejected.

Mr. STENNIS. Mr. President, I move to reconsider the vote whereby the amendment was rejected.

Mr. TALMADGE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, may we have order? I ask Senators to stay, because we are going to try to see if we can expedite the business, on both sides.

The PRESIDING OFFICER. Under the order previously agreed to by unanimous consent, amendment No. 853, the McGovern-Hatfield end-the-war amendment, is to be laid before the Senate at this time.

Mr. MANSFIELD. Mr. President, before the amendment is laid before the Senate, I wonder if it would be possible to determine whether any Senators have amendments they would like to offer this evening, under a time limitation.

Mr. STENNIS. Mr. President, will the Senator yield to me?

Mr. MANSFIELD. Yes, indeed.

Mr. STENNIS. If it is at all possible to get up another amendment, I think we should do it—one that we can dispose of today.

Mr. MANSFIELD. That is what I mean. Mr. President, it is my understanding that the senior Senator from Illinois (Mr. PERCY) will now agree to a 1-hour limitation on his amendment, which will come up at approximately 11:30 tomorrow morning.

Mr. STENNIS. Mr. President, if the Senator will yield, debate would start at——

Mr. MANSFIELD. On the amendment, it would be changed from 2 hours to 1 hour, with the time to be equally divided between the Senator from Illinois and the Senator from Mississippi.

Mr. STENNIS. Mr. President, reserving the right to object, the Senator from Illinois tells me he thinks he is going to get an agreement on his amendment. If he should, frankly, we would not oppose it, because it is an administrative matter, dealing with detoxification. So, if we could have something else right behind it, it would be helpful.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time limitation on the amendment of the Senator from Illinois be changed from 2 hours to 1 hour, the time to be equally divided.

The PRESIDING OFFICER (Mr. BENNETT). Is there objection? Without objection, it is so ordered.

Mr. MANSFIELD. Following the amendment of the distinguished Senator from Illinois (Mr. PERCY), on the amendment offered by the distinguished Senator from Wisconsin (Mr. NELSON), again having to do with herbicides, he indicates that he is willing to agree to a 30-minute limitation.

Mr. STENNIS. Mr. President, reserving the right to object, I want to cover this point: The amendment of the Senator from Illinois may be agreed to. I want it fixed where we can move immediately, then, into the next amendment, without having to wait an hour.

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

Mr. STENNIS. I yield.

Mr. GOODELL. I am going to offer that amendment, coauthored by the Senator from Wisconsin and myself. We have discussed it, and I believe we can be prepared at any time tomorrow to take it up.

Mr. STENNIS. Let us take it up now.

Mr. GOODELL. The Senator from Wisconsin is not on the floor. I am perfectly willing to take it up now.

Mr. STENNIS. We had the same speech made this morning, Mr. President. We are all familiar with it. The same Senators are here.

Mr. MANSFIELD. That is why they are willing to agree to a reduced time limitation. But apparently we can get nowhere.

We do have a 1-hour limitation on the Percy amendment, after which time, hopefully, the Nelson-Goodell amendment will be brought up. I would like to get a half hour time limitation on it now. If not, apparently we can get it tomorrow.

Mr. STENNIS. Reserving the right to object on this matter tomorrow, as I understand, now, the Goodell amendment would follow immediately after the amendment of the Senator from Illinois has been disposed of.

Mr. GOODELL. Right.

Mr. STENNIS. Let us make that 20 minutes to a side.

Mr. MANSFIELD. All right. Mr President, on the Nelson-Goodell amendment, which will follow the Percy amendment, I ask unanimous consent that there be a time limitation of 40 minutes, the time to be equally divided between the Senator from New York (Mr. GOODELL) and the Senator from Wisconsin (Mr. NELSON) on

the one side, and the manager of the bill (Mr. STENNIS) on the other.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Mr. President, reserving the right to object one more time now, I understand that one of these amendments is not even printed yet.

AMENDMENT NO. 863

Mr. GOODELL. We will submit it for printing today.

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

Mr. STENNIS. Has the amendment of the Senator from Illinois been printed?

Mr. PERCY. My amendment is a printed amendment.

The PRESIDING OFFICER. Without objection, the order is entered.

The unanimous consent agreement, later reduced to writing, is as follows:

*Ordered,* That during the further consideration of H.R. 17123, military procurement bill, debate on various amendments thereto be limited as follows:

Debate on the amendment by the Senator from South Dakota (Mr. McGOVERN) and others, the so-called "end-the-war" amendment, numbered 862 (which became the pending business following the disposition of the Proxmire amendment (No. 853 on C–5A)) to be limited to 6 hours of controlled time, with a vote coming at 10 o'clock a.m. on Tuesday, September 1. Five hours of the controlled time will begin at 12 o'clock noon on Monday, August 31, and the other hour will occur on Tuesday, September 1 following the prayer, with all of the controlled time to be equally divided and controlled by Mr. McGOVERN and the manager of the bill, Mr. STENNIS. Any amendments to the amendment or motions or appeals relative to the amendment—except a motion to table, if offered—shall be limited to 30 minutes, to be equally divided and controlled between the proponents and Mr. McGOVERN; if Mr. McGOVERN is not opposed to any such amendments, motions, or appeals, the time in opposition will be controlled by Mr. STENNIS or the majority leader or his designee.

The amendment by the Senator from Wisconsin (Mr. PROXMIRE) (No. 861) relative to reduction of military funds by $5 billion, shall be laid down before the close of business on Thursday, August 27; on Friday, August 28, after the prayer, debate on this amendment to be limited to 3 hours, to be equally divided and controlled by Mr. PROXMIRE and the Senator from Mississippi (Mr. STENNIS) with the vote occurring immediately thereafter.

Debate on an amendment by the Senator from Wisconsin (Mr. PROXMIRE) on draftees (No. 754) will become the pending business on Tuesday, September 1 following the disposition of the so called "end-the-war" amendment by the Senator from South Dakota (Mr. McGOVERN), to be limited to 1 hour, to be equally divided and controlled by Mr. PROXMIRE and the Senator from Mississippi (Mr. STENNIS); debate on any amendment to the amendment shall be limited to 20 minutes, to be equally divided and controlled by the mover of the amendment and Mr. PROXMIRE, or Mr. STENNIS if Mr. PROXMIRE is not opposed to the amendment.

Debate on an amendment to be offered by the Senator from Illinois (Mr. PERCY) to be limited to 1 hour, with the time to be equally divided and controlled by Mr. PERCY and the manager of the bill (Mr. STENNIS); any amendments to the amendment will be limited to 10 minutes each, to be equally divided and controlled by the mover of the amendment and Mr. PERCY, or Mr. STENNIS if Mr. PERCY is not opposed to the amendment. Following the disposition of the above amendment, debate on an amendment to be offered by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. GOODELL) to be limited to 40 minutes, with the time to be equally divided and controlled by Mr. NELSON and the manager of the bill, Mr. STENNIS.

Debate on two amendments to be called up by the Senator from Massachusetts (Mr. BROOKE) (by unanimous consent if the McGovern amendment, No. 862, is pending) to be limited to 3 hours each, to be equally divided and controlled by Mr. BROOKE and Mr. STENNIS with any amendments thereto to be limited to 10 minutes each, to be equally divided and controlled by the mover of the amendment and Mr. BROOKE, or Mr. STENNIS if Mr. BROOKE is not opposed to the amendment.

The PRESIDING OFFICER. The McGovern-Hatfield amendment will be stated.

The legislative clerk read as follows:

AMENDMENT No. 862

At the end of the bill add a new section as follows:

"SEC. — (a) In accordance with public statements of policy by the President, no funds authorized by this or any other Act may be obligated or expended to maintain a troop level of more than 280,000 armed forces of the United States in Vietnam after April 30, 1971.

"(b) After April 30, 1971, funds herein authorized or hereafter appropriated may be expended in connection with activities of American Armed Forces in and over Indochina only to accomplish the following objectives:

"(1) the orderly termination of military operations there and the safe and systematic withdrawal of remaining armed forces by December 31, 1971;

"(2) to secure the release of prisoners of war;

"(3) the provision of asylum for Vietnamese who might be physically endangered by withdrawal of American forces; and

"(4) to provide assistance to the Republic of Vietnam consistent with the foregoing objectives.

"*Provided, however,* That if the President, while giving effect to the foregoing paragraphs of this section, finds in meeting the termination date that members of the American armed forces are exposed to unanticipated clear and present danger, he may suspend the application of paragraph 2(a) for a period of not to exceed 60 days and shall inform the Congress forthwith of his findings; and within 10 days following application of the suspension the President may submit recommendations, including (if necessary) a new date applicable to subsection (b)(1) for congressional approval."

Mr. McGOVERN. Mr. President, the proposal we present today is the fruition of several months of effort to offer Congress a practical alternative to the course now being followed in Vietnam and in Indochina as a whole, and at the same time to bring into play the legitimate responsibilities of Congress on questions of war and peace.

The amendment has gone through several revisions since it was first offered on April 30, shortly before the dispatch of U.S. troops into Cambodia. The sponsors of the amendment have maintained from the very beginning that the initial draft or any subsequent version could be modified to meet reasonable suggestions designed to strengthen the base of support for our essential purpose.

We have sought, we have received, and we have incorporated the suggestions of a number of Senators and the numerous private individuals who have expertise on the issues we are raising.

On last Wednesday, a week ago today, we announced that the original sponsors of the amendment had agreed to some modifications in our first proposal. We felt then, and we feel now, that because several months have passed since we first introduced the amendment, it was advisable to modify the termination date for withdrawal to reflect the fact that several months had passed since the amendment was first introduced. But the amendment continues a terminal date approximately 1 full year after the pending amendment could be enacted. The superfluous reference to a declaration of war was dropped from the original language, and the language was changed to provide a uniform terminal date for U.S. military operations in all the Indochinese states.

Finally, we eliminated the provision which would have prohibited expenditures after December 31 of this year on offensive combat operations. We eliminated that out of a desire to avoid any unnecessary problem of definition and to assure that the President would have full flexibility as Commander in Chief to establish strategies best suited to meet the overall policy limitations called for by the amendment.

Mr. President, the amendment we formally introduce today incorporates some further modifications based primarily on valuable suggestions of members of the Committee on Foreign Relations. Outside of adjustments in form, there are three substantive alterations that would have significant legislative effect.

First of all, a new paragraph has been added to codify the withdrawal schedule already announced by the President to reduce the American troop strength in Vietnam to no more than 280,000 men by next April 30.

We believe that that withdrawal schedule, if combined—and this is a very important quotation "if"—with the commitment to full withdrawal, is a highly worthwhile initiative, and we endorse it.

Second, we have added a provision which would allow the President to suspend the December 31, 1971, deadline for up to 60 days and to do that on his own motion, without the consent of Congress, but upon his finding that American troops were subjected to a clear and present danger.

Third, if the President did exercise the authority to extend the deadline, and if he believed that additional time would be needed beyond the 60 days, the amendment provides that he could submit recommendations to Congress within 10 days, including a revised deadline. Such recommendations are to be submitted to Congress within 10 days after the President exercises his option to extend the withdrawal date, so that we would eliminate any doubt that delays

inherent in the congressional process might prevent timely action. The President would, of course, be free to submit recommendations to Congress at any time, as he is now.

These changes do not alter the basic purpose or the central policy objective of our amendment. In fact, they clarify it.

We appreciate the important contributions of key members of the Committee on Foreign Relations with whom we have worked, including the Senator from New York (Mr. JAVITS), who has been one of the leading members of that committee in working out substantive provisions in this amendment that would get the concurrence of a significant number of members of the committee.

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

Mr. McGOVERN. I am happy to yield to the Senator from New York.

Mr. GOODELL. Mr. President, I think it is important that we emphasize that, although there are modifications in the original amendment to end the war, the two major substantive thrusts of the amendment to end the war are retained.

When I introduced the bill last year, S. 3000, it was a one-sentence bill which said that we are cutting off all funds for American military personnel in Vietnam by December 1 of 1970. That set a fixed date and used the congressional power to cut off funds. That approach was embodied in our amendment to end the war. It is embodied in this modification.

The original concept that I had and that the other Senators had who sponsored the amendment to end the war was that we were not calling for immediate withdrawal, which is unrealistic and unattainable. One cannot just wave a wand and get all the men out of Vietnam. There is a time factor here, in which the troops must be withdrawn with full attention to their safety and the orderliness of the withdrawal. In addition, there is a notice to the Saigon government, to the North Vietnamese, to the Vietcong, and to the world, in advance, that by a fixed date in the future we are going to be out completely. So those features are retained.

Last fall, we could say December 1, 1970, which was essentially a year hence from the date of introduction. Last spring, we could say July 1 or June 30 of 1971, essentially a year hence. Now we are saying December 31 of 1971, which still gives approximately a year's time for withdrawal of the troops in a safe and orderly way, with the President retaining his power as Commander in Chief to protect the troops in the interim period. Other Senators, as the Senator from South Dakota has indicated, have come forward with very important and substantive suggestions.

It is my view that what is incorporated as a modification in the amendment was implicit in the amendment to end the war and my proposal last fall; namely, that we could provide asylum for the South Vietnamese, if necessary, and that we would give the President full authority to protect the troops in the interim period.

Of course also, if the President felt this was an unattainable objective, he could come back to Congress, which he can do in any event, and request an extension of whatever deadline date we had set. That obviously is implicit, that the President can come back on his own, but we have provided that specifically here and we have also provided specifically to continue to give arms aid to the Vietnamese which, of course, was implicit in the original amendment, and that we can provide asylum.

Those are important additions, simply to underscore the fact that we are not saying, "Abandon everything. Pull out. Leave with no continuing concern, no continuing responsibility there." We are saying that we cut off our responsibility for combat troops and military personnel, with aid to go on, and to provide asylum, if necessary. The President can come back and suggest or propose to Congress extending the date, and Congress will then exercise its rightful responsibility in assessing whether the extending date is necessary, and whether it should be approved by us.

Thus, I join the Senator from South Dakota in praising the members of the Foreign Relations Committee for their contribution, particularly my senior colleague Mr. JAVITS, who has been the leader in this endeavor, and has been active in negotiating an approach that retains the viability of the amendment to end the war. The operative provisions of the amendment to end the war bring forth the other substantive aspects of the issue that are dealt with directly in the amendment.

I think this is a good modification and I join the Senator from South Dakota, the Senator from Oregon, the Senator from California, the Senator from Iowa, and the other cosponsors, in this modification.

Mr. McGOVERN. I concur completely in the Senator's elaboration on what it is we are attempting to accomplish with the modifications. They certainly go to the heart of what the junior Senator from New York has had in mind for a long period of time. To the best of my knowledge, he was the only Member of Congress, either in the House or Senate, to submit legislation calling for termination of U.S. military operations in Vietnam, and he did that many months ago. I was proud to be a cosponsor with him on the measure at the time. I am very much pleased to be a cosponsor with him on this modified amendment today.

Mr. CRANSTON. Mr. President, will the Senator from South Dakota yield?

Mr. McGOVERN. I yield.

Mr. CRANSTON. The Senator from South Dakota is in the process of presenting to the Senate what I believe historians will look upon as the most important matter we will have an opportunity to vote upon during this session of Congress.

There are two points I should like briefly to stress.

First, in revising the amendment, great care and wisdom have been exercised in removing language that might have led to the feeling in some quarters that there was some challenge to the President's responsibilities as Commander in Chief. There is nothing in the amendment that does that in any way in its revised form. What is now at issue here is a sharing of the constitutional responsibility that is quite clear, between Congress and the President, in determining what the American Armed Forces shall do, where they shall do it, and whether or how they shall be financed.

The second point—which I will develop later in the course of this debate but wish only to mention now—is that the amendment provides far greater assurances as to the safety of our men in Vietnam and, hence, for the safety and security of this country, than in the present situation, where we have no time table, and an erratic withdrawal program of great uncertainty. The President, in seeking to withdraw troops—and no one challenges him on that point, as to how far or how fast he can go—could lead us into a dangerous situation, having reduced the number of American troops in Vietnam in the course of withdrawal under that approach.

That, I think, is one of the most vital reasons for giving careful consideration to the merits of the amendment, in providing greater protection to American troops in Vietnam.

Mr. McGOVERN. The point the Senator makes is especially important because once we have set a definite, published timetable for withdrawal, we have removed most of the reason the enemy might have for attacking our forces. He knows that every American soldier is going to be out of there by such and such a date. It seems to me that that eliminates the temptation to make that withdrawal difficult. But the present formula that we are following, where we say that we will reduce our forces to such and such a level by next spring, would leave open ended the length of time the remaining forces may stay there, which would be an invitation to the enemy to step up his military operations as long as we have combat forces in the field.

Mr. CRANSTON. That is the exact point. The feeling of the Senator, and my feeling, too, is that if Vietnamization proved not to be working and if, as we withdrew many of our men, they were more and more dependent, as they, of course, would be on the South Vietnamese forces for their protection, and if their forces proved unable to provide that protection, then the failure of Vietnamization would mean a blood bath for the American troops left in Vietnam without adequate American reenforcement to insure their safety.

Mr. GOODELL. Mr. President, in addition to the impact on the North Vietnamese, they would have no motive—reasonable or unreasonable—to attack American forces once a fixed date was set. We know that we are withdrawing completely, and that should have a salutary effect upon Saigon, upon the Thieu-Ky government, because, after all, if there is going to be any negotiated settlement among the Vietnamese, the South Vietnamese leaders must be more realistic about their approach here. This, I think, would make them somewhat more realistic.

One vital point with reference to that

raised by the Senator from California, as to the safety of our troops, at a public meeting that I participated in last spring, a group of sincere individuals in the audience were waving a sign disagreeing with those of us speaking on the platform. The sign read, "Defend the safety of our men in Vietnam."

There was a young veteran who had just returned from Vietnam, who spoke from the platform, and he pointed to the sign and those who were conscientious and sincere in their belief about it, and he said, "The best way to protect the safety of our men in Vietnam is to bring them home."

That is exactly what this would do.

Mr. McGOVERN. The Senator's point is well taken.

Mr. President, I made reference here a while ago to the consultation with the Senator from New York (Mr. JAVITS), and other members of the Foreign Relations Committee, in agreeing that the amendment has not formally been considered by that committee, as was the case with the Cooper-Church amendment. We are hopeful that a majority of the committee will be prepared to support the revised amendment following the return of the committee chairman, the Senator from Arkansas (Mr. FULBRIGHT), who unfortunately has been called away from the Senate this week because of a death in his family.

Throughout the period since we first proposed action of this kind we have held to one central belief—that the interests of the United States would be best served by establishment of an orderly timetable for the removal of all U.S. Forces from Vietnam. We remain firmly convinced that such a commitment is the best available means of terminating the tragic conflict in Indochina, of ending its enormous drain on our human, material, and spiritual resources, and of recapturing the respect of nations throughout the world that look to the United States for leadership.

I think this formula that we offer in the pending amendment can release American policy from arbitrary control by others, either from Saigon or Hanoi, as the Senator from New York (Mr. GOODELL) has just underscored, and place it back in American hands; namely, in the control of Congress and the President of the United States. And it can stimulate the negotations which have been stagnating so long in Paris while the killing has been going on.

At the same time the amendment raises another issue of paramount importance. It seeks to reassert the declining role of Congress in decisions whether or not to commit American forces to battle. I emphasize in this connection that we do not pose a confrontation with any particular President. Rather we confront a dangerous trend which goes back many years, in violation of what we take to be the clear intent of the Constitution. If anyone sees provocation of a "constitutional crisis" in what we are doing, that is perhaps the best illustration of the distance we have strayed from the Constitution itself. Neither the legislative history nor the language of that document allows the interpretation that the Executive alone can initiate war or that, once begun, a war becomes his prerogative alone to end or to expand and continue indefinitely without reference to the wishes of Congress. On the contrary there rests with the Congress an affirmative duty—more than a power—to regularly review every military activity in which the Nation is engaged. The notion of an unbridled executive war power is as foreign to our system as would be an assertion that the President can simply dissolve the Congress and run the country by one-man rule.

Although they will be discussed in more detail as the debate progresses, I do want to make brief reference at this point to several provisions in the amendment that affect central points of concern about the consequences of withdrawal.

No one would be so foolish as to suggest that any kind of a plan, a withdrawal formula or any other formula, for dealing with this war is entirely free from risk.

Among the most serious problems we must face is the status of prisoners of war now held by North Vietnam in a manner which defies standards of decency, including those established in the Geneva accords to which North Vietnam is a signatory. We believe a timetable for withdrawal would facilitate their release by opening the way to meaningful negotiations and by allowing concentration of our strategy on this specific problem in place of its inclusion in a broad range of other goals. The amendment leaves the President with full authority to pursue this issue in any manner he deems appropriate.

Another matter of great concern to all of us is the safety of our forces in Vietnam. On this point, the language explicitly states that the withdrawal shall be conducted in a safe and systematic manner, and it would not hamper the President's power to determine the tactical arrangements and deployments by which this objective can be best achieved within the broad time limitation.

This gives the safest and most systematic disengagement possible within this broad time limitation extending to the end of 1971 and with an emergency clause that would permit the President the right to go ahead in an emergency for a 60-day period beyond that.

It is my conviction that if the amendment is adopted there will be little likelihood of forcing withdrawal under combat pressure.

If one stops to think about it, an adversary would have little or no incentive to attack troops that are being removed. As a matter of fact, it would be in his interest to enhance that withdrawal process if he were certain all the forces would be out by a certain date, provided he did not interfere. The enemy would have a greater incentive to see that that withdrawal is conducted safely lest they risk a longer U.S. presence.

This amendment would permit that to take place in the event there was serious interference with the safe withdrawal of our forces.

The effects of American withdrawal on the people of South Vietnam has also been widely discussed. In my view the predictions of a "bloodbath" have been greatly inflated. But if this is a concern, we suggest a diligent effort, in combination with other nations, to find asylum for those South Vietnamese who might be endangered.

Let me just say parenthetically, Mr. President, that there are tens of thousands of South Vietnamese being killed as this war proceeds. We talk about a bloodbath. We need to keep in mind that not only have thousands of combat forces been killed on both sides, but also hundreds of thousands—I have seen estimates running up to 2 million—of South Vietnamese civilians that have been killed as a result of this war. Many of the deaths have been unintentional. However, it is the direct and indirect result of the kind of massive firepower that has been introduced into this conflict. So, the question is how to terminate this with a minimum continuing danger to the people of Vietnam.

I think that likely there are people prominently identified with the government, either with the military or the political side of that government, who might feel that they are the targets of reprisals in the event the American forces were to be withdrawn. I feel that those people and others who might have the feeling that their lives and well-being are in danger should have some assurance that we will do everything we can to see that asylum is offered in various parts of the world.

My guess that is in view of the French speaking character of the people of Vietnam, many of them would follow their countrymen who have already gone to France in previous months.

The amendment does not oblige the President to take this course and it does not prevent him resources needed to explore the possibilities. Surely such an approach is preferable to the situation now, in which we practice the chilling paradox of staying in Vietnam to prevent a bloodbath while innocent civilians continue to die by the tens of thousands each year because of our own massive firepower.

I again want to stress that most of these deaths are unintentional. I do not think that American artillerymen or American pilots are trying to slaughter innocent people. However, when they pursue enemy guerrillas into areas or towns marked for interdiction or as free fire zones, it is quite obvious that some innocent people are going to be killed in the process.

Beyond these provisions, the amendment specifies that funds will remain available for general assistance to South Vietnam both during and after the withdrawal of U.S. forces, in amounts authorized under ordinary constitutional process. We do not draw a distinction between military and civilian aid. This language further emphasizes that our single purpose is to complete the withdrawal of American Armed Forces both on the ground and in the air by December 31 of next year. And it assures that even then the South Vietnamese will not be denied supplies and equipment from the United States unless Congress makes a separate determination on that issue.

Mr. President, we make no claim that the course we advocate will be convenient or painless. A Vietnam policy with such attributes will never be found. Cer-

tainly they cannot be claimed for the course that is promised if our alternative is rejected.

All we ask is that our proposal be fairly compared with existing policy, and that the Congress exercise its own responsibility for bringing this terrible conflict to an end.

Mr. President, I ask unanimous consent that the text of the amendment now pending and discussed earlier this afternoon be printed in the RECORD.

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

At an appropriate point in the bill insert the following:

"1. In accordance with public statements of policy by the President, no funds authorized by this or any other act may be obligated or expanded to maintain a troop-level of more than 280,000 armed forces of the United States in Vietnam after April 30, 1971.

"2. After April 30, 1971, funds herein authorized or hereafter appropriated may be expended in connection with activities of American armed forces in and over Indochina only to accomplish the following objectives:

"(a) the orderly termination of military operations there and the safe and systematic withdrawal of remaining armed forces by December 31, 1971;

"(b) to secure the release of prisoners of war;

"(c) the provision of asylum for Vietnamese who might be physically endangered by withdrawal of American forces; and

"(d) to provide assistance to the Republic of Vietnam consistent with the foregoing objectives.

*"Provided, however,* That if the President, while giving effect to the foregoing paragraphs of this section, finds in meeting the termination date that members of the American armed forces are exposed to unanticipated clear and present danger, he may suspend the application of paragraph 2(a) for a period of not to exceed 60 days and shall inform the Congress forthwith of his findings; and within 10 days following application of the suspension the President may submit recommendations, including (if necessary) a new date applicable to section 2(a) for Congressional approval."

Mr. McGOVERN. Mr. President, in connection with the amendment an important brief has been prepared by a number of lawyers, law professors, and law students. A part of the brief was printed earlier in the RECORD. But for the convenience of Senators and others who will be following this debate over the next few days, and because the amendment does raise certain constitutional questions that will especially concern Members of the Senate, I ask unanimous consent that the entire text of the brief be printed at this point in the RECORD.

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

THE AMENDMENT TO END THE WAR: THE CONSTITUTION QUESTION

(Material submitted by the Senate Steering Committee of the Congressional Committee for a Vote on the War: Hon. GEORGE MCGOVERN, Democrat, of South Dakota; Hon. MARK HATFIELD, Republican, of Oregon; Hon. CHARLES GOODELL, Republican, of New York; Hon. ALAN CRANSTON, Democrat, of California, and Hon. HAROLD HUGHES, Democrat, of Iowa).

*May 13, 1970*

Mr. MCGOVERN. Mr. President, there are two profound issues involved in the amendments which have been proposed to limit U.S. activities in Southeast Asia.

The merits of whether it is politically, militarily, or morally sound for us to be entangled in that conflict will be debated at length, as they have been debated for many years. Most of us have strong opinions.

The other issue has received less attention, and for that reason alone it deserves a special focus. Regardless of how any Senator feels about the wisdom of our involvement, he has good reason for deep interest in the procedures through which it has come about, and particularly in the role Congress has or has not played. Concern has been expressed about a possible constitutional crisis over the war power. In truth that crisis already exists, and the Vietnam war is the best possible illustration of that fact.

The complementary amendments introduced by Senators CHURCH and COOPER, on Cambodia, and by Senators HATFIELD, GOODELL, HUGHES, CRANSTON, myself, and other Senators on Vietnam, Cambodia, and Laos, are practical attempts to assert proper congressional involvement. In fact, they use the only vehicle—limitations on spending appropriated funds—that we have available to enforce our decisions on the use of American military power abroad. Moreover, it is a vehicle which the founders of our Republic believed should be vigorously employed.

In this connection, Mr. President, I would like to make available to Members of the Senate an analysis of the constitutional issues broached by these amendments. Entitled "Indochina: The Constitutional Crisis," it supplies an excellent historical description of the war power and a concise discussion of the legislative actions which have been used to justify our posture in Southeast Asia.

With respect to our amendment, it concludes that:

"Proposed restrictive provisions (such as those advanced by Senators McGovern, Hatfield, Hughes, Goodell and Cranston) are not only a legitimate exercise of Congress' money power, but pose no danger of inflexibility committing our policy to a hazardous course because (1) they include exceptions which insure the safety of our forces and (2) they may be overridden by future congressional action if circumstances change."

Mr. President, the authors of this memorandum include prominent legal scholars and former government officials. I should like to read their names:

Alexander M. Bickel, Professor of Law, Yale Law School.

Bruce Bromley, Attorney, New York City; former Judge, New York Court of Appeals.

Elias Clark, Professor of Law, Yale Law School.

Ramsey Clark, former Attorney General.

William T. Coleman, Attorney, Philadelphia, Pa.

John Doar, President, Bedford-Stuyvesant D&S Corporation, Brooklyn; former Assistant Attorney General.

John W. Douglas, former Assistant Attorney General.

George N. Lindsay, Attorney, New York City.

Burke Marshall, Professor of Law, Yale Law School; former Assistant Attorney General.

Louis F. Oberdorfer, former Assistant Attorney General.

Robert M. Pennoyer, Attorney, New York City.

Stephen J. Pollak, former Assistant Attorney General.

Paul C. Warnke, former Assistant Secretary of Defense.

Edwin M. Zimmerman, former Assistant Attorney General.

In addition, Mr. President, I want to note that the basic research and drafting for the memorandum was done by the 12 Yale Law School students: David Cooke, Reid L. Feldman, Gary Fontana, Frank Hamsher, Gertrude Hamsher, Howard O. Hunter III, Christopher Lunding, David Marks, Jeffrey Orleans, Randall Shepard, Eric Stauffer and John M. Townsend.

Their outstanding work on this project provides a graphic demonstration of how students are doing important, useful, and constructive work on behalf of the peace effort.

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

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

INDOCHINA: THE CONSTITUTIONAL CRISIS

The dispatch of American troops into Cambodia by the President, without specific authorization by Congress, raises serious questions about the constitutional allocation of power between the legislative and executive branches. The most significant factor in the resolution of such questions is the presence or absence of action by each branch.

The power to commit American forces to combat was originally entrusted to Congress, which retained it almost unchallenged for over a century. But in the twentieth century, Congress has passively allowed the effective ability to engage the United States in hostile actions abroad to be assumed almost entirely by the Presidency.

Proposals now before Congress invoke the money power as a means of asserting control over the Indochinese War. If Congress exercises its money power to prohibit specific uses of the armed forces, it will reassert its long dormant capacity firmly and constitutionally to limit the President's ability to use the armed forces for purposes which Congress does not approve.

*I. The language of the constitution*

The power to commit American troops to battle was allocated by the Constitution between the President and Congress. (The relevant clauses of the Constitution are quoted in the Appendix.) The President is entrusted with the executive power,[1] made Commander in Chief of the Army and Navy,[2] and, with the advice and consent of the Senate, empowered to make treaties and appoint ambassadors.[3] The Congress is empowered to lay taxes to provide for the common defense,[4] to define and punish offenses against the law of nations,[5] to declare war,[6] to raise and support armies (but not to finance them for more than two years at a time),[7] to provide and maintain a navy,[8] to make rules for the land and naval forces,[9] and to provide for calling up and organizing the militia.[10]

*II. The original understanding*

The Constitution does not say explicitly whether the army may be sent into battle when Congress has not declared war, or if it may, under what circumstances and by whose decision. In interpreting the Constitution on this point, it is helpful to look at the intent of the Framers and to the understanding of the men who first put the Constitution into practice.[11]

The Constitutional Convention debated the clause giving Congress the power to declare war on August 17, 1787.[12] The clause originally empowered Congress "to make war." [13] Some delegates objected that the power should lie with the executive, as it did in England.[14] Most of the Convention seemed firmly of the opinion that the power should lie with Congress, but that the President should have the power to defend against a sudden attack. The Convention decided to "insert 'declare,' striking out 'make' war, leaving to the executive the power to repel sudden attacks." [15] The Framers had in mind a division of functions. The President, as Commander in Chief, was charged with the conduct of hostilities after they are legally begun. He was also expected to take measures

Footnotes at end of article.

to repel any actual attack upon the United States, as an incident of his executive power. But the power to initiate hostilities was clearly meant to be served to the Congress, with the President participating in that initiative only so far as his signature was necessary to compete an act of Congress. Thus, *the President, unless his veto is overridden, may prevent war, but he cannot constitutionally act alone to begin a war.*

*The judicial branch was also quick to conclude that Congress alone can declare war.* Delivering the opinion of the Supreme Court in an 1801 prize case, Chief Justice John Marshall concluded that the "whole powers of war" were "vested in Congress."[16]

There may, however, be hostilities which fall short of requiring an actual declaration of war. Ten years after the adoption of the Constitution, the naval trouble between the United States and France which had begun under Washington became so acute that American shipping was greatly endangered.[17] President Adams had to decide what to do. Alexander Hamilton advised the administration against action without Congressional authority:

"In so delicate a case, in one which involves so important a consequence as that of war, my opinion is that no doubtful authority ought to be exercised by the President."[18]

Adams decided to wait for Congress to act, and it passed laws authorizing him to protect American commerce.[19] Similarly in 1801, President Jefferson was faced with hostilities on the Barbary Coast, but felt that he could order only defensive measures until Congress authorized him to commit forces to offensive action.[20]

*In the first two limited wars in which the United States found itself, both Adams and Jefferson had the means to order retaliatory action immediately. Perhaps some lives and property would have been saved had they done so. But both clearly felt that the decision to commit American forces was not constitutionally theirs to make, and preferred the preservation of the Constitutional process to the pursuit of a temporary military advantage.*

*III. Historical development of the war power*

A. Wars and Limited Wars in the 19th Century

If the President's power to engage American forces in hostilities on his own initiative is limited to defensive action by a strict construction of the Constitution, the question of the proper role of Congress arises. Congress clearly has the power to engage the United States in formal war, as it did in 1812 with the President reluctantly assenting.[21] It may declare war at the request of the President.[22] And the Congress may also ratify after the fact hostilities begun by the President.[23]

*The executive branch very early recognized the exclusive power of Congress to declare war.* In the course of a dispute with Spain in 1805, President Jefferson told Congress:

Considering that Congress alone is constitutionally invested with the power of changing our position from peace to war, I have thought it my duty to await their authority before using force in any degree which could be avoided.[24]

Similar deference to the sole power of Congress to make any decision to commit the United States to war was voiced by President James Monroe,[25] Secretary of State John Quincy Adams,[26] and Secretary of State Daniel Webster.[27]

*The Congress itself was jealously aware of its war power, and on one occasion nearly censured the President for invading it.* In 1846 it had declared, after the fact, that a state of war existed with Mexico. But the debate was bitter and the war unpopular. At the end of the war, the House of Representatives voted its thanks to General Taylor, but amended its resolution to note that he had won a war unnecessarily and unconstitutionally begun by the President of the United States.[28]

Among the Congressmen supporting the amendment were former President John Quincy Adams and future President Abraham Lincoln.

Congress also has considerable power, short of a declaration of war, to authorize and regulate limited hostilities, as it has done on a number of occasions, with and without executive approval, since 1798.[29]

*During the nineteenth century, the executive branch frequently recognized the need for congressional authorization even for limited military actions.* In 1857 the Secretary of State refused to send ships to help a British expedition in China, because he lacked congressional authority to do so.[30] The next year President Buchanan pleaded with Congress for authority to protect transit across the isthmus of Panama, but refused to act without it.[31] Nor in 1876 would the State Department use force to help Americans in Mexico, because it felt it lacked the power to do so.[32] As late as 1911 President William Howard Taft felt that he had enough power to move troops to the Mexican border, to be ready in case Congress told him to protect American lives and property endangered by the revolution there, but refused to send them in on his own authority.[33]

B. Erosion of the Congressional Warmaking Power in the 20th Century

In the early part of the twentieth century, the executive began to exercise greater discretion in the use of American armed forces abroad. For instance, without specific congressional approval, President Theodore Roosevelt sent American troops into Panama in 1903 and President Wilson sent troops into Mexico in 1916 in pursuit of the Pancho Villa bandits.[34]

Since 1945, the executive has regularly used military force abroad as a tool of diplomacy. Aside from Indochina, the greatest use of American force was in Korea, where several hundred thousand troops were committed to combat and major casualties were incurred. There was neither a formal declaration of war, nor any other specific congressional sanction for the Korean conflict.[35] American forces were sent into the Formosan Strait in 1955, into Lebanon in 1958, and into the Dominican Republic in 1965. The Navy was used to blockade Cuba during the missile crisis in 1962. And, most recently, naval vessels were dispatched to the vicinity of Haiti and Trinidad in response to internal conflicts in those countries. Prior congressional resolutions were obtained by the President for the Formosan and Lebanese actions, but both the validity of those resolutions and the degree to which President Eisenhower relied on them has been questioned.[36]

*The application of prior historical precedents to unilateral executive use of armed force abroad in the mid-twentieth century can, however, be misleading.* For instance, as precedents for the Vietnam War, a State Department Memorandum cites a long series of military actions ordered by the President alone.[37] The majority of the cited military actions undertaken by the executive without congressional approval took place in the nineteenth century. Most of them were not actions that involved conflicts with foreign states; rather, the bulk of them involved the protection of individuals, police actions against pirates or actions against primitive peoples. Furthermore, the United States did not have a significant standing army during peacetime until after 1945, and the President was limited in the military actions that he could take by the need to approach Congress to ask for any increase in the size of the armed forces. *Today, with a tremendous military machine and modern transport at his immediate disposal, the President is under little practical pressure to seek congressional authorization for his actions, and therefore he is unlikely to seek it unless Congress insists that he do so.*[38]

*IV. The theoretical bases for unilateral Presidential action*

The theories on which various Presidents have relied for the use of military force abroad without congressional approval may be divided into three general categories: (1) the sudden attack theory; (2) the neutrality theory; and (3) the collective security theory.[39]

(1) *The Sudden Attack Theory.*—The President as the Chief Executive has the inherent power to defend the sovereignty and integrity of the nation itself and to respond to an armed attack on the territory of the United States without requesting congressional approval. For example, we do not question the constitutional authority of the President to order a retaliatory strike in the event of an atomic attack on the territory of the United States. In the absence of an armed attack on American territory proper, the power of the President is more closely circumscribed.[40]

(2) *The Neutrality Theory.*—Also known as "interposition," the neutrality theory was developed during the nineteenth century as a justification for American military involvement abroad to protect American citizens and property. When American armed forces were sent into a foreign nation, their presence was supposed to be "neutral" with respect to any conflicts there. *The executive, in taking such action, was not necessarily "making war" but merely dispatching troops to act as security guards for American citizens and their property. The real difficulty, clearly, was in remaining neutral and avoiding conflict.*[41]

(3) *The Collective Security Theory.*—Since 1945, the United States has entered into many security treaties with foreign nations. Many of these agreements have clauses which indicate that the security of each signatory is vital to the security of each other signatory. Unilateral presidential action under these agreements may be justified as necessary for the protection of American security even though the conflict may arise thousands of miles from American shores, but, *carried to its extreme, the collective security theory would justify almost any unilateral presidential use of armed force abroad,*[42] *a result contrary to Constitutional standards.*

*V. The justifications for unilateral executive action in Indochina*

The involvement of the United States in Vietnam, the commencement of an air war in Laos, and the expansion of the ground war into Cambodia have resulted almost entirely from executive decisions and actions. The executive branch of the government has justified its action primarily on the grounds of: (1) the presidential prerogative to protect American security interests abroad by whatever means necessary. (2) the SEATO treaty; and (3) the Gulf of Tonkin Resolution.[43] *It cannot be said that the recent actions by the executive in Cambodia or the earlier actions in both Vietnam and Laos are clearly contrary to the Constitution. However, the expansion of the war into Cambodia is the latest in a long series of acts which, taken together, have nearly stripped Congress of its war power.*

(1) *The Presidential Prerogative.*—Undoubtedly, the speed with which crises develop in the modern world necessitates a strong executive who can respond quickly to such crises. The need for a speedy response, the need for secrecy, the need to protect American citizens and property abroad, and the need to protect American security interests in the balance of power are all used to legitimize the use by the executive, without congressional approval, of American armed forces abroad. Recent United States

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actions, especially in Korea and Indochina, are cited to support great executive discretion in the use of American military force abroad. The recent invasion of Cambodia without prior congressional approval or even notice is not without historical precedent and not without justification under a broad interpretation of the collective security theory.[44]

However, the real question is whether the balance has shifted too far in favor of the executive.[45] A war, such as the one in Indochina, requires great sacrifices on the part of great numbers of the American people. It is difficult, if not impossible, to predict the ultimate outcome of any American intervention. Consequently, when there is a possibility of large scale American involvement and even a limited risk of war, Congress should pass on the desirability of American military action.[46]

The executive has also placed reliance on the power of the President as chief formulator of foreign policy and as Commander in Chief of the armed forces. *Granted that the President does have primary responsibility in the modern world for the handling of foreign policy, he should not have the discretion to initiate war as an instrument of foreign policy.*

Finally, the Commander in Chief provision of the Constitution is an expression of civilian control over the military; it does not give the war power to the President.[47]

(2) *The SEATO Treaty.*—The Southeast Asia Treaty Organization is one of the many multilateral collective security treaties which the United States has signed. Neither South Vietnam nor Cambodia is a signatory, but both countries are within "protocol areas" which the signatories consider to be vital to their security interests.[48] The terms of the treaty are ambiguous, and it is at least questionable whether the United States was obligated by the terms of the treaty to come to the aid of South Vietnam.[49]

More importantly, the SEATO agreement cannot help answer the constitutional questions, because it specifically states that action by a signatory in response to an attack on another signatory or a "protocol country" is to be made only after a decision made according to the "constitutional process" of the signatory.[50]

The more relevant issue is the power of the President to involve American forces in foreign combat on the basis of a treaty. The Constitution requires that the Senate must give its advice and consent to any treaty before it can become effective.[51] Once approved, the treaty is of the same nature as any other duly passed law which the executive is bound to execute faithfully.[52] If, however, the war power is a congressional prerogative, the decisions regarding the initiation of war should be made by both houses of Congress and not just the Senate.[53]

(3) *The Tonkin Gulf Resolution.*—Following reported attacks on American naval vessels in the Gulf of Tonkin in August of 1964, Congress passed a joint resolution which gave the President broad discretion to respond to "aggression" in Southeast Asia.[54] Congressional action which does not amount to a formal declaration of war may be a valid congressional authorization of hostilities,[55] and some commentators think that the Tonkin Gulf Resolution is an adequate congressional authorization for the Vietnamese War.[56]

There are two factors, however, which make the Tonkin Gulf Resolution an invalid basis for continued Congressional inaction. First, it was passed with great speed and in the heat of emotion that resulted from the reported attack on American naval vessels in the Tonkin Gulf.[57] Secondly, there were few American troops in Vietnam in the American ground combat forces there.[58]

It has also been argued that congressional inaction and failure to repeal the Tonkin Gulf Resolution give implicit authorization to the Indochinese War. The logical outcome of such an argument is that the President can do whatever he wishes and the Congress has the affirmative duty to try to stop him. This shifts the presumption of the Framers in favor of congressional control over war-making and gives the initial and continued upper hand to the executive.[59]

*VI. The opportunities for reassertion of congressional power*

The power of the purse is the last bastion of popular control of the government.[60] Congress now has the opportunity to use this power to restore the constitutional balance by including in authorization acts any of a number of restrictions on the use of American funds and forces in Indochina. More forcefully than a resolution of one or both houses,[60a] enacting specific restrictions on the use of our military forces in Indochina and directing their withdrawal would effectively assert congressional control of the limited war in which we are now engaged. Proposed restrictive provisions (such as those advanced by Senators McGovern, Hatfield, Hughes, Goodell and Cranston)[61] are not only a legitimate exercise of Congress' money power, but pose no danger of inflexibility committing our policy to a hazardous course because (1) they include exceptions which insure the safety of our forces and (2) they may be overridden by future congressional action if circumstances change.

A. Specifically restricting the use to which military forces may be put is a legitimate exercise of congressional power

There is no doubt that under the Constitution Congress has complete control over governmental use of funds. Historical precedent, textual analysis of the Constitution, the intent of the Framers, and judicial construction unambiguously indicate that the money power may be used to restrict the President's control of the armed forces.

*Past congressional success in the restriction of military policy through the use of specific provisions in money acts offers conclusive support for the legitimacy of such a measurable to control the military actions of the President.* Riders and amendments on appropriation and authorization acts traditionally have been a device favored by Congress to restrict and to control executive action.[61a] The most recent example is Section 643 of the Defense Appropriation Act for the current fiscal year, passed in 1969, which states that "none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos and Thailand."[62] *Last year's rider alone serves as clear precedent for similar restrictions on use of forces or funds in Cambodia or in Vietnam itself.*

An almost identical restriction was enacted by Congress in the Selective Service and Training Act of 1940, which included the proviso that:

"Persons inducted into the land forces of the United States under this Act shall not be employed beyond the limits of the Western Hemisphere except in the Territories and possessions of the United States, including the Philippine Islands."[63]

*It appears that in the past Presidents have always complied with such restrictions, even when they originally expressed an intention to ignore them.*[64] Compliance by the executive is, in fact, clearly dictated by the Constitution.

The general grant to the President of the executive power[65] is qualified by the admonition that "he shall take care that the laws be faithfully executed."[66] The powers of Congress to raise and appropriate revenues, to raise and support armies, and to provide and maintain a navy, are all law-making powers.[67] *An appropriation rider enacted into law would therefore impose a clear constitutional obligation on the President to abide by its provisions.*[68] In addition, it would constitute a *pro tanto* repeal of previous statutes granting the President discretion to use funds for military purposes.

The President's power as Commander in Chief does not free him from enacted restrictions. The Constitution has granted to Congress the fundamental power to create the resources employed by the branches of the government. *The Commander in Chief clause merely entitles the President to the supreme command of the armed forces within the limits established by the legislation which created those forces,* provided the limits are reasonable.[69]

The fundamental importance of the money power is evident from the determination of the Framers to place this power firmly in the hands of Congress. Particular care was taken to maintain under congressional control the use of funds for military purposes, as indicated by the constitutional provision that no money may be appropriated for the army "for a longer term than two years."[70] The rationale for the allocation of power made by the Framers of the Constitution is basic to our concept of demoracy: that the legislators, as representatives of the people, should have complete control over the nation's resources. Madison described the money power in these terms:

"This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people."[71]

The wisdom of this grant of power is borne out by recent history. The conduct of the Indochina War has precipitated a widespread disillusionment with the government, and attendant loss of respect for law. *If the people, through their representatives, have no control over the commitment of their resources to war-making, the result is inconsistent with the democratic principles of the Constitution.*

The Supreme Court spoke most directly to the issue in the *Steel Seizure Case,*[72] concluding that the powers of the President, both as Commander in Chief and in his executive capacity, were not unlimited and could be restrained by another branch of the government.[73] All the Justices in the majority indicated that the extent to which Congress had acted to control the action taken by the President, seizure of most of the nation's steel mills, was significant in determining the constitutionality of his action.[74] The opinions imply that *When Congress speaks on the question of what form executive action may take, such power to act alone as the President may have will be circumscribed.* In the *Steel Seizure Case,* the Justices disagreed on the proper interpretation of Congress' failure to act on relevant legislation; in contrast, *if Congress enacts a clear prohibition on military action in specified areas of Indochina, the meaning would be clear, and presidential power would be effectively limited.*

*B. Continuing congressional control and the inclusion of adequate exceptions to restrictions on military action insure that military policy will remain flexible*

There is, of course, a possibility that changed circumstances will force a reconsideration of the wisdom of certain specific limitations. But the assertion of congressional control by enacting the proposed restrictions merely shifts from the President to Congress power over future military involvement in Indochina.

The President would retain the power to engage in immediate self-defense under the executive power to repel sudden attacks. In addition, exceptions to the restrictions of the McGovern-Hatfield-Hughes-Goodell-Cranston proposal permit full executive free-

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dom to protect our troops and prisoners during withdrawal.[75] *But major decisions would be reserved for Congress, which is fully capable of making major decisions quickly and competently. And by asserting its proper role in decisions of war-making, Congress would act to re-establish the traditional constitutional balance.*

*VII. Conclusion*

The current unlimited freedom enjoyed by the executive to engage in military action is largely the result of inaction by Congresses past. As Supreme Court Justice Jackson stated:

"We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers."[76]

FOOTNOTES

[1] Constitution of the United States of America, Article 2, § 1.

[2] *Ibid,* Article 2, § 2, cl. 1.

[3] *Ibid,* Article 2, § 2, cl. 2.

[4] *Ibid.* Article 1, § 8, cl. 1.

[5] *Ibid.* Article 1, § 8, cl. 10.

[6] *Ibid.* Article 1, § 8, cl. 11.

[7] *Ibid.* Article 1, § 8, cl. 12.

[8] *Ibid.* Article 1, § 8, cl. 13.

[9] *Ibid.* Article 1, § 8, cl. 14.

[10] *Ibid.* Article 1, § 8, cl. 15 and cl. 16.

[11] For an exhaustive analysis of the historical development of the war power see the article by Francis D. Wormuth, "The Vietnam War: The President versus the Constitution," on which this paper draws heavily. It is reprinted in Falk, ed., *The Vietnam War and International Law,* Princeton University Press, 1969.

[12] James Madison, *Notes of Debates in the Federal Convention,* Ohio University Press edition, 1966.

A transcript of Madison's notes on the debate on the war power is included in the appendix to this paper.

[13] *Ibid.,* debate of August 17, 1787 (Ohio edition page 476).

[14] *Ibid.,* remarks of Mr. Butler (see appendix). For a discussion of the English allocation of power, still accurate when the Constitution was written, see John Locke, *Second Treatise on Government* (1960), chapters 12 and 13, § 145.

Mr. Gerry remarked that he "never expected to hear in a republic a motion to empower the Executive alone to declare war."

[15] *Ibid.,* the motion passed eight states to one, Massachusetts absent (see appendix).

[16] *The Amelia,* 1 Cranch (5 U.S.) 1 (1801). Chief Justice Marshall wrote:

"The whole powers of war being, by the Constitution, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry."

The case involved a ship whose seizure would have been legal under the President's privateering proclamation, but whose seizure the Court held was illegal under the terms of the Act of Congress which authorized the proclamation. The privateer was made to pay damages to the ship's owner.

[17] After the outbreak of the war between France and England in 1792, American shipping was molested by the blockades of both nations. President Washington met the challenge with his famous Neutrality Proclamation, which kept the United States out of the conflict. By 1798, however, French depredations on American commerce had become so menacing that action was needed to protect it. The question was whether President Adams could do so on his own authority or whether he needed the authority of Congress.

[18] Alexander Hamilton to James McHenry, the Secretary of War, May 17, 1798 (quoted in Wormuth, *op. cit.*)

[19] Congress suspended commercial intercourse with France in the Act of June 13, 1798, augmented by the Act of February 9, 1799. (1 Stat. 565, 1 Stat. 613).

It denounced the treaty with France in the Act of July 7, 1798 (1 Stat. 578).

It created the Department of the Navy by the Act of April 27, 1798 (1 Stat. 553).

And it established the Marine Corps by the Act of July 11, 1798 (1 Stat. 594).

The controversy with France is described in note 17, above.

[20] The Barbary States, particularly Tripoli, had been marauding American shipping, in an attempt to exact a payment of tribute from the United States. When the promised tribute was not paid, Tripoli declared war on the United States. President Jefferson sent ships to the Mediterranean, but authorized them only to defend themselves and other American ships. The Navy captured a Tripolitan ship, but released it after disarming it, as the President told Congress:

"Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our force on an equal footing with that of its adversaries."

Thomas Jefferson, First Annual Message, December 8, 1801, *Messages and Papers of the Presidents* (1908) vol. I, p. 326.

[21] Act of June 18, 1812 (2 Stat. 155).

[22] Act of April 20, 1898 (30 Stat. 738), containing the ultimatum to Spain, and the Act of April 25, 1898 (30 Stat. 364), declaring that a state of war had existed since April 21.

[23] Act of May 13, 1846 ( Stat. ), and Act of August 6, 1861 (12 Stat. 326).

[24] *Messages and Papers of the Presidents,* vol. I, p. 389.

[25] In 1824 Colombia notified the United States that it was threatened by France, and asked for protection. The Monroe Doctrine had been announced the year before, but the administration would not commit itself to defend Colombia. President Monroe wrote to Former President Madison that:

The Executive has no right to compromit the nation in any question of war."

Letter of August 2, 1824, quoted in Wormuth, *op. cit.*

[26] Three days after Monroe's letter to Madison, Secretary of State Adams formally wrote to the Minister of Colombia to the United States:

"By the Constitution of the United States, the ultimate decision of this question belongs to the Legislative Department of the Government."

John Quincy Adams to Jose Maria Salazar, August 6, 1824.

[27] In 1851 Hawaii asked the United States for protection from France. Secretary of State Daniel Webster refused to help:

"I have to say that the war-making power rests entirely with Congress and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws. By these no power is given to the Executive to oppose an attack by one independent nation on the possessions of another."

J. B. Moore, *Digest of International Law,* Washington, G.P.O. vol. 7, p. 163.

[28] *Congressional Globe,* 30th Congress, 1st Session, page 95, January 3, 1848.

The Mexican War had been precipitated in 1846 by President Polk's dispatch of American troops into a territory whose possession was disputed with Mexico. After hostilities erupted, Congress reluctantly declared that a state of war existed between the United States and Mexico.

The resolution referred to was a vote of thanks to General Zachary Taylor, the Commander of the successful American forces. The clause censuring the President was moved as an amendment to that resolution. The amendment was adopted on January 3, but was dropped when the resolution came up for a final vote.

[29] For the 1798 legislation, see note 19, above.

Congress authorized the President to act against Tripoli in the Act of February 6, 182 (2 Stat. 129).

In 1839, in the course of a dispute over the boundary of Maine, Congress authorized the use of force against England in the Act of March 3, 1839 (5 Stat. 355). Force was never needed.

In 1890 the Congress passed an act, which became law without the President's signature, authorizing the use of force to extract an indemnity for the seizure of American ships off Venezuela. Act of June 17, 1890 (26 Stat. 674). The indemnity was secured by arbitration.

[30] Secretary of State Lewis Cass wrote the British Government that:

"Under the Constitution of the United States, the executive branch of this Government is not the war-making power. The exercise of that great attribute of sovereignty is vested in Congress, and the President has no authority to order aggressive hostilities to be undertaken. . . . Military expeditions into the Chinese territory cannot be undertaken without the authority of the National Legislature." Moore, *op. cit.* vol. 7, p. 164.

[31] President Buchanan told Congress that: "The executive government of this country in its intercourse with foreign nations is limited to diplomacy alone. When this fails it can go no further. It cannot legitimately resort to force without authority of Congress, except in resisting and repelling hostile attacks." *Messages and Papers of the President,* vol. 5, p. 616: Message of December 6, 1958.

[32] Acting Secretary of State Hunter wrote: "The President is not authorized to order or approve an act of war in a country with which we are at peace, except in self-defense. This is a peculiarity of our form of government which at times may be inconvenient, but which is believed to have proved and will in the future be found in the long run to be wise and essential to the public welfare." Moore, *op cit.* vol 7, p. 167.

[33] In his Third Annual Message, President Taft told Congress: "The assumption by the press that I contemplate intervention on Mexican Soil to protect American lives or property is of course gratuitous, because I seriously doubt whether I have such authority under any circumstances, and if I had I would not exercise it without express congressional approval."

Despite presidential protestions to the contrary, a diluted but similar recognition of the need for Congressional approval of limited hostilities lay behind the requests for the Formosa Resolution of 1954, the Middle East Resolution of 1957, and the Gulf of Tonkin Resolution of 1964.

[34] See generally, Reveley, "Presidential War-Making: Constitutional Prerogative or Usurpation?" 55 Va. L. Rev. 1243, 1257–63 (1969). President Wilson sent American troops into Vera Cruz in 1914 on his own authority, but he had asked Congress for an enabling act the day before the troops were used, and the day after the landing Congress ratified his action.

[35] See, "Congress, The President and the Power to Commit Forces to Combat," in *The Vietnam War and International Law,* v. 2 (Falk ed. 1969) at 616, 636–37. This article originally appeared as a Note in the Harvard Law Review, 81 Harv. L. Rev. 1771 (1968). Much of the content and many of the arguments in this memorandum have been drawn from this Note. Hereinafter it will be cited as the "Harv. Note" with page citations to the Falk collection.

[36] See, Moore, "The National Executive and the Use of Armed Forces Abroad," in Falk, supra (n. 35) at 809, 817. This was originally an address given by Professor Moore at the Naval War College on Oct. 11, 1968. (Herein-

after cited as "Moore Address" with page citations to the Falk collection); and see Harv. Note at 637.

[37] U.S. Department of State, "The Legality of United States Participation in the Defense of Viet-Nam," 54 Department of State Bulletin 474 (1966), reprinted in "Symposium—Legality of United States Participation in the Viet Nam Conflict," 75 Yale L.J. 1084 (1966). [Hereinafter cited as State Department Memo.]

[38] As precedent for Vietnam, however, the majority of the nineteenth century uses of force do not survive close scrutiny. Most were minor undertakings, designed to protect American citizens or property, or to revenge a slight to national honor, and most involved no combat, or even its likelihood, with forces of another state. To use force abroad on a notable scale, the President would of necessity have had to request Congress to augment the standing army and navy.

Reveley, supra, n. 8, at 1258.

[39] See generally, Harv. Note.

[40] See generally Harv. Note at 624, 631.

In the event of an armed attack on the territory of the United States proper, there is little question that the executive possesses the power to respond with all means at his disposal. Congressional approval of such action would probably be immediate. When, on the other hand, an attack is made on American persons or property abroad, then the response should generally be proportional to the attack. The recent "Pueblo Incident" is a striking example of the fact that not every use of force against the United States is an act which places the country at war and that a variety of factors should enter into the development of an appropriate response. Short of an attack which threatens the life of the country, therefore, it seems that the President's power under the sudden attack theory is fairly limited.

There is also the danger of provocation, either planned or accidental. The mere presence of American forces near a hostile nation may provoke a "sudden attack." Consider, for instance, the U–2 incident in 1960, the various RB–47 incidents, then the "Pueblo Incident." If the response to such an attack is not limited, then the country may become involved in a much larger conflict with little or no executive-legislative collaboration.

[41] See generally, Harv. Note at 634; Reveley, supra (n. 34) at 1257 et seq.; and Velvel, "The War in Viet Nam: Unconstitutional, Justiciable and Jurisdictionally Attackable," 16 Kan. L. Rev. 449 (1968). (Caveat: Prof. Velvel's article is highly one-sided.)

Modern analogies of the "neutrality theory" were the landing of troops in the Dominican Republic in 1965 and the recent dispatch of American naval vessels to the area around Haiti and Trinidad.

The real problem with the neutrality theory is remaining neutral. "Interposition" may easily lead to "intervention" and the Congress may be faced with a fait accompli. President Roosevelt accomplished an actual "intervention" in Panama in 1903 by "interposing" American troops there under an executive order, ostensibly to protect American property and citizens, but actually to support a friendly government.

However, American citizens who live or own property abroad probably should be able to expect some degree of aid from their government in time of conflict. But if the President has an unfettered right to employ the American military anywhere at anytime to protect American property, Congress may be left without an opportunity to assert its views. And, in many cases, the risks of deployment may be greater than the risks of restraint.

[42] See generally, State Department Memo, Alford, "The Legality of American Military Involvement in Viet Nam: A Broader Perspective," 75 Yale L.J. 1109 (1966); Harv. Note at 627 et seq.; cf., Memorandum of Lawyers' Committee on American Policy toward Viet Nam, 112 Cong. Rec. 2552–59 (daily edn. Feb. 9, 1966).

Almost every national in the world has become classified as friendly, hostile, or neutral, and conflicts which might have seemed minor fifty or a hundred years ago are now often viewed as dangerous because they tend to upset the precarious world order and balance of power. Consequently, the idea of American security has expanded greatly so that an armed conflict in a far part of the world may appear to be a threat to the security of the United States itself. Unilateral Presidential employment of armed forces abroad, under the collective security theory has, therefore, been justified on much the same grounds as unilateral executive action under the sudden attack theory. The physical territory of the United States may be in no immediate, or even distant, danger.

There may be no immediate threat to American forces, citizens, or property, but a conflict may seem to endanger the worldwide security system of the United States. The argument for Presidential action under the collective security theory is that the executive must have the power to respond quickly and forcefully to attacks which are considered important, for a variety of reasons, to the maintenance of the balance of power.

The executive action in Indochina has been premised largely on the collective security theory. The Indochinese War and other recent American military actions serve to indicate that the neutrality theory is no longer viable. In a world which is divided into friendly, hostile, and neutral countries, most armed conflicts will probably affect the existing order. It is difficult, if not impossible, therefore, for American intervention in such conflicts to remain wholly neutral.

The notion that the United States possesses extraterritorial security interests is not novel. The Monroe Doctrine of 1823 is a clear example. But the proliferation of bilateral and multilateral security agreements since the end of World War II has widened American security interests to include most of the world.

Accepting the general premise of the collective security theory, the question is: who determines when the security interest of the United States is threatened, the President or Congress? And who determines what response is to be taken to protect that interest?

[43] See generally, State Department Memo.

[44] See Text and notes, supra.

[45] If the balance has shifted too far in favor of the executive, then Congress must share the blame for its failure to act in the past. Is there any real concern or is it acceptable for the President to have primary responsibility for the use of American forces abroad?

There is certainly a strong argument in favor of giving the executive the ability to respond with speed and force to crises which constitute a *direct* threat to the security of the United States. (See Harv. Note at 640.) But, there are equally strong, if not stronger, arguments in favor of increased congressional control over executive actions which may involve the United States in lengthy conflicts that are costly both in terms of lives and economic resources.

[46] See generally, Moore Address.

[47] Velvel, supra (n. 41) at 457.

[48] The full text of the SEATO Treaty may be found in 6 U.S. Treaties 81; T.I.A.S., No. 3170; 209 U.N. Treaty Series 28; and Falk, supra (n. 35) at 561 and seq. The signatories were: Australia, France, New Zealand, Pakistan, Philippines, Thailand. the United Kingdom, and the United States.

The Protocol to the SEATO Treaty provides in pertinent part that:

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."

6 U.S. Treaties 87; T.I.A.S., No. 3170; 209 U.N. Treaty Series 36; Falk, supra (n. 35) at 564.

Laos was removed from the "protocol area" by the Geneva Accords of 1962. See: Protocol to the Declaration on the Neutrality of Laos, T.I.A.S. 5410; Falk, supra (no. 35) at 568.

Article IV goes to the core of the collective security agreement:

"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 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.

"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."

[49] See generally, Falk, "International Law and the United States Role in the Viet Nam War," 75 Yale L.J. (1966); Falk, "International Law and the United States Role in Viet Nam: A Response to Professor Moore," 76 Yale L.J. 1095 (1967); but cf. Moore, "International Law and the United States Role in Vietnam: A Reply," 76 Yale L.J. 1051 (1967).

[50] Art. IV, ¶1 of SEATO Treaty, supra (n. 48).

[51] Constitution, Art. 2, § 2, cl. 2.

[52] Id, Art. 2, § 3.

However, the treaty is rendered of no effect if it conflicts with subsequent legislation, since the lawmaking power of Congress is equally as potent as the treaty power.

"A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty. *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 621 (1870); accord. *Pigeon River Co.* v. *Cox Co.*, 291 U.S. 138, 160 (1934); *Moser* v. *United States*, 341 U.S. 41, 45 (1951).

[53] See Harv. Note at 643–46.

The possibility of giving the war power to the Senate alone was specifically considered and rejected by the Farmers. See, Appendix on the debate in the Constitutional Convention.

[54] Southeast Asia Resolution, Aug. 10, 1964, Public Law 88–408 (H.J. Res. 1145); 78 Stat. 384. The Resolution is also reprinted in Falk, supra (n. 35) at 579.

[55] See e.g. opinion of Chief Justice Marshall in *Talbot* v. *Seeman*, 5 U.S. (1 Cr.) 1, 25 (1801). And, as former Secretary of Defense McNamara has said, "There has not been a normal declaration of war—anywhere in the world—since World War II." Address to American Society of Newspaper Editors, May 18, 1966, *New York Times*, May 19, 1966, p. C–11, col. 1 (city edn.) at col. 2.

[56] See generally, Moore Address; Alford, supra, (n. 42); Moore and Falk articles, supra (n. 49).

Whether the Tonkin Resolution is sufficient authority for the Cambodian invasion and the air action in Laos has not been con-

sidered by the legal commentators thus far, but the language of the Resolution is so broad that it could, arguably, authorize almost any American action in the Western Pacific area. See, remarks of Senators Fulbright and Cooper during debate on the Resolution, 110 Cong. Rec. 18409–410 (1964).

[57] One commentator, however, does argue that Congress had sufficient information to form a reasonable opinion about the possible consequences of the Resolution, and that it was perhaps an unfortunate, but not unconstitutional abdication of responsibility. See, Moore Address at 821, and see generally, Moore and Underwood, "The Lawfulness of United States Assistance to the Republic of Viet Nam," 112 Cong. Rec. 14943, 14960–67, 14983–89 (daily edn., July 14, 1966).

[58] It is at least questionable whether a resolution passed in response to a relatively minor attack on American warships was sufficient authorization for a war which has resulted in more American casualties than any war except the Civil War and World Wars I and II.

It has also been argued that Congress has given its implied approval to the Indochinese War because it has passed military authorization bills for the area. The argument based on enactment of military appropriations legislation is specious. The authorization of expenditures for the support of the soldiers in Southeast Asia War necessitated by the executive fait accompli in dispatching forces there. And, if the Framers had thought that the money power by itself gave Congress sufficient control over the military, there would have been no need to grant Congress the explicit war power. See generally, Harv. Note at 646.

[60] The power of the purse was the weapon used by the English parliament to combat the exercise of despotic power by Charles I and James II. The Framers of the Constitution were certainly aware of its utility as a guarantee of the powers and privileges of the legislature.

[60a] The resolutions now before Congress, though carrying important political impact, would affect the constitutionality of subsequent executive action. If a resolution were made before the initiation of hostilities, Presidential commitment of American forces or significant expansion of the war would be precluded because the resolution would be a clear assertion of the primacy of Congress in the making of war. See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring). Once forces were involved in combat the resolution would prohibit expansion of hostilities.

[61] Such restrictions should be distinguished from the so-called "legislative veto," which reserves to Congress or one of its components the right to determine the actual effect of the restriction by subsequent action falling short of actual legislation, such as disapproval by committee action or a resolution of one or both houses.

It is arguable that the inclusion of specific dates on which these restrictions take effect is an invasion of the inherent powers of the President as Commander in Chief. According to a strict construction of the Constitution, the President's inherent power may be limited to the power to repel sudden attacks only by immediate and temporary action. The expansion of his power through its unopposed exercise may be determinative of its constitutionality when Congress does not act, but it may be limited by Congressional action. The important question is whether the proposed limitation is reasonable. Since there is no indication that compliance with these restrictions is not fully feasible, there is no reason why the will of Congress should not be respected on this issue. The authors thus reject the argument.

[61a] Harris, *Congressional Control of Administration*, 213–215 (1964); Huzar, *The Purse and the Sword*, 211, 220, 240 (1950).

[62] 83 Stat. 469 (1969).

The inclusion of the phrase "in line with the expressed intention of the President of the United States," whatever its value as a face-saving device for the President, detracts not at all from the force of this proviso. The full text of the amendment reads:

"In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand."

[63] Act of September 16, 1940 (54 Stat. 885).

[64] In 1955, for instance, Congress attached a rider, § 638, to the Defense Appropriation Act prohibiting use of funds appropriated therein "for the disposal or transfer by contract or otherwise of work that has been . . . performed by civilian personnel of the Department of Defense unless justified to the Appropriations Committee(s) . . . ." 69 Stat. 321 (1955). A threat to Congress' constitutional powers arose when, in a message to Congress, the President stated that § 638 was unconstitutional and declared that "to the extent that this section seeks to give to the Appropriations Committees of the Senate and the House of Representatives authority to veto or prevent executive action, such section will be regarded as invalid by the executive branch of the government . . . unless otherwise determined by a court of competent jurisdiction." 101 Cong. Rec. 10459–60, 10416, 84th Cong., 1st Session (July 13, 1955).

But despite this threat, the Defense Department complied in full with the provisions of Section 638. The Department reported, as required by the Act, and agreed to delay action to accommodate Congress. And after the Armed Services Subcommittee of the House Appropriations Committee formally denied permission to dispose of several operations employing civilians, the President and the Defense Department followed its directions during the time that § 638 remained law. Carper, *The Defense Appropriation Rider* (1960).

The response of the Comptroller General to this crisis adds further support to the position of Congress. A month after the President had made his threat, the Comptroller General informed Congress that—

"On the fundamental basis that it is for Congress to say how and on what conditions public monies should be spent, the position of the GAO, as the agent of Congress, must be, in this case and always, to accord full effect to the clear meaning of the enactment by the Congress so long as it remains unchanged by legislative action and unimpaired by judicial interpretation. *Id.*"

Therefore, he concluded, where a violation were found he would exercise his power as Comptroller General to disallow credits in the agencies accounts and hold the officers personally liable for the cost of the illegal activity. *Id.* Although § 638 was an example of the use of the legislative veto, it serves as a valid indication of expectable executive response to an unequivocal restriction, particularly since the legislative veto is open to possible attack as a circumvention of the constitutionally required lawmaking process.

[65] U.S. Constitution, Art. II, § 1.

[66] U.S. Constitution, Art. II, § 3.

[67] U.S. Constitution, Art I, §§ 8, 9.

[68] Even if the President acts beyond the constitutional limits of his powers, "Congress has not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution in the Government of the United States, or any Department of officer thereof." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 588–89 (1952).

Whatever the merits of the arguments about the President's power to impound funds, such practices under which the executive exercises discretion within the limits set by Congress in appropriations acts can be clearly distinguished from a more clearly unconstitutional breach by the executive of restrictions on positive action. See, e.g., Fisher, "Presidential Impoundment of Funds," 38 Geo. Wash. L. Rev. 124, 130 (1969); Davis, "Constitutional Power to Require Defense Expenditures," 33 Fordham L. Rev. 39, 40–41, 55 (1964).

[69] In the words of Justice Black:

"The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. . . . The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control. . . . The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times."

*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 587–89 (1952).

Other judicial pronouncements on the "raise and support" and appropriations clauses have construed them to give Congress power to control the creation of military forces. One early opinion stated the argument succinctly:

"The power of congress to raise and support armies . . . is clear and undisputable. The language used in the constitution in making this grant of power is so plain, precise and comprehensive, as to leave no room for doubt or controversy, as to where the supreme control over the military force of the country resides."

*In re Griver*, 16 Wisc. 423, 431 (1863).

Another court has stated the conclusion more forcefully:

"The purpose of the appropriations, the terms and conditions under which said appropriations were made, is a matter in the hands of Congress and it is the plain and explicit duty of the executive branch of the government to comply with the same."

*Spaulding* v. *Douglas Aircraft Co.*, 60 F. Supp. 985, 988 (S.D. Cal. 1945), affirmed 154 F. 2d 419 (9th Cir. 1946).

[70] U.S. Constitution, Art. I, § 8.

[71] *The Federalist.*

[72] *Youngstown Sheet & Tube* v. *Sawyer*, 343 U.S. 579 (1952).

[73] For instance, Justice Frankfurter felt that the absence of Presidential power would have been beyond contention "had Congress explicitly negated such authority in formal legislation." *Id.* at 602.

Rejecting the view that the Commander in Chief clause supports "any Presidential action, internal or external, involving the use of force," Justice Jackson concluded that "Congress alone controls the raising of revenues and their appropriation and may determine in what manner and by what means they shall be spent for military and naval procurement." *Id.* at 643.

[74] The much-noted concurring opinion of Justice Jackson stated the proposition in more detail:

"Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. . . . When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb. . . . Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting on the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for, what is at stake is the equilibrium established by our constitutional system. *Id.* at 635–638."

[75] Exceptions broader than these are not required by the Constitution, since Congress could authorize at any time military action beyond immediate self-defense.

[76] *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 654 (1952).

THE CONSTITUTION OF THE UNITED STATES

(Clauses related to war)

*Article I*

Section 1. All legislative power herein granted shall be vested in a Congress of the United States . . .

Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to . . . provide for the common Defences . . .

To declare War, grant letters of Marque and committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant letter of Marque and Reprisal, and make rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of money to that Use shall be for a longer term than Two years;

To provide and maintain a Navy;

To make rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia . . .

To provide for organizing, arming, and disciplining the Militia . . .

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, . . .

*Article II*

Section 1. The executive Power shall be vested in a President of the United States of America. . . .

Section 2. 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; . . .

He shall have power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors . . . and all other Officers of the United States . . .

(The appropriations clause)

*Article I*

Section 9. No money shall be drawn from the Treasury, but in consequence of Appropriations made by law; . . .

THE DEBATE ON THE WAR POWER IN THE CONSTITUTIONAL CONVENTION

(From Madison's notes)

Friday August 17th in Convention.

"To make war"

Mr. PINKNEY opposed the vesting this power in the Legislature. Its proceedings were too slow. It would meet but once a year. The House of Representatives would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in the Senate, so as to give no advantage to large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.

Mr. BUTLER. The objections against the Legislature lie in great degree against the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

Mr. MADISON and Mr. GERRY moved to insert "declare," striking out "make" war; leaving to the Executive the power to repel sudden attacks.

Mr. SHARMAN thought it stood very well. The Executive should be able to repeal and not to commerce war. "Make" better than "declare" the latter narrowing the power too much.

Mr. GERRY never expected to hear in a republic a motion to empower the Executive alone to declare war.

Mr. ELLSWORTH. There is a material difference between the cases of making *war* and making *peace*. It should be more easy to get out of war than into it. War also is a simple and overt declaration, peace attended with intricate and secret negotiations.

Mr. MASON was against giving the power of war to the Executive, because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred "declare" to "make."

On the motion to insert *declare*—in place to *make*, it was agreed to.

N.H. no.

Mas. absent

Cont. no (On the remark by Mr. King that "make" war might be understood to "conduct" it which was an Executive function, Mr. Ellsworth gave up his objection, and the vote of Connecticut was changed to—ay.)

Pa. ay.

Del. ay.

Md. ay.

Va. ay.

N.C. ay.

S.C. ay.

Geo. ay.

Mr. Pinkney's motion to strike out the whole clause, disagreed to without call of States.

COMMENTS ON THE ROLE OF CONGRESS AND THE PRESIDENT IN MILITARY AND FOREIGN AFFAIRS

JAMES MADISON: "The management of foreign relations appears to be the most susceptible of abuse of all the trusts committed to a government, because they can be concealed or disclosed in such parts and at such times as will best suit particular views; and because the body of the people are less capable of judging, and are more under the influence of prejudices, on that branch of their affairs, than of any other. Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad."—Letter to Jefferson, May 13, 1798.

THOMAS JEFFERSON: "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided."—Message to Congress, December 6, 1805.

JOHN MARSHALL: "The whole powers of war being, by the Constitution, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry."—Opinion in *The Amelia*, 1801.

JUSTICE SAMUEL P. CHASE: "Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in object, in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws.—Opinion in *Bas v. Tingey*, 1800.

DANIEL WEBSTER: "In the first place, I have to say that the war-making power in this Government rests entirely with Congress; and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws. By these no power is given to the Executive to oppose an attack by one independent nation on the possessions of another. We are bound to regard both France and Hawaii as independent states, and equally independent, and though the general policy of the Government might lead it to take part with either in a controversy with the other, still, if this interference be an act of hostile force, it is not within the constitutional power of the President; and still less is it within the power of any subordinated agent of government, civil or military."—Statement while Secretary of State, 1851.

JAMES BUCHANAN: "The executive government of this country in its intercourse with foreign nations is limited to the employment of diplomacy alone. When this fails it can proceed no further. It cannot legitimately resort to force without the direct authority of Congress, except in resisting and repelling hostile attacks. It would have no authority to enter the territories of Nicaragua even to prevent the destruction of the transit and to protect the lives and property of our own citizens on their passage. It is true that on a sudden emergency of this character the President would direct any armed force in the vicinity to march to their relief, but in doing this he would act upon his own responsibility."—Message to Congress, December 6, 1858.

ABRAHAM LINCOLN: "Let me first state what I understand to be your position. It is that if it shall become necessary to repel invasion, the President may, without violation of the Constitution, cross the line and invite the territory of another country, and that whether such necessity exists in any given case the President is the sole judge. . . . Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such a purpose, and you allow him to make war at his pleasure. Study to see if you can fix any limit to his power in this respect, after having given him so much power as you propose. . . .

The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing oppression upon us. But your view destroys the whole matter, and place our President where kings have always stood."—Letter to Herndon while in Congress.

*May 19, 1970*

Mr. CRANSTON. Mr. President, the Senate debate and public discussion of the Church-Cooper amendment have been replete with references to an alleged interference with the President's powers as Commander in Chief. In terms of the manner of action it proposes, this legislative vehicle is, of course, identical to amendment No. 609 to the military procurement authorization bill, the "amendment to end war," and we should not doubt that the same questions will be repeated when that measure is the pending business.

The assertion is that if we deny him the wherewithal he needs to conduct his war policy, the Congress will interfere with the constitutional prerogatives of the President.

It is simply not true, Mr. President, and those who raise such arguments are avoiding—through inadvertence or design—the core of the issue raised by these measures. What we propose is that the Congress fulfill its long-neglected constitutional obligation to decide whether this war shall continue.

In this connection, I would like to call to the attention of the Senate a "Legal Memorandum on the Amendment To End the War" which has been prepared by students of the Harvard Law School under the direction of members of the Harvard Law Review. I understand that it will be released in the near future with the endorsement of a number of prominent legal scholars and members of the legal profession.

On the power of the Commander in Chief, the memorandum points out that the Constitutional Convention had two objectives in mind:

"First, the Convention desired to concentrate in a single civilian leader the tactical control of armies engaged in battle.

"Second, the framers sought to transfer to the President a check on an overly martial legislature so as to insure further against any precipitate commitment of our forces."

Neither purpose presumes a plenary grant of power to conduct wars over the opposition of Congress. On the contrary, again quoting from the memorandum:

"The debates in the Constitutional Convention clearly indicate one thing: Congress was to be given ultimate control over the warmaking power, with a variety of means at its command to enforce its views. At the minimum the framers would have viewed an appropriation restricted in use to disbanding an army and bringing it home as a proper exercise of Congressional power.

"Congress will have abdicated its own powers over war policy, however, if it remains inactive once the question of troop commitment is formally raised."

Let us, therefore, debate the wisdom of continuing the conflict in Vietnam. Let us consider as well the implications in terms of the role of Congress if we allow the war to go on without a positive grant of specific, understandable authority.

But let us avoid the grave error of pitching the debate on issues that do not exist. These amendments have nothing to do with the powers of the President as Commander in Chief; rather, they ask each Member on the Congress to exercise his affirmative duty to approve or disapprove American participation past next June in the Vietnam conflict.

Mr. President, I commend the authors of this "Legal Memorandum on the Amendment to End the War," and I ask unanimous consent that it be printed at this point in the RECORD.

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

LEGAL MEMORANDUM ON THE AMENDMENT TO END THE WAR

(This memorandum was prepared under the general direction of several members of the "Harvard Law Review."

(Faculty Advisers: Abram Chayes, Professor of Law; Frank Michelman, Professor of Law.

(General Editors: Jerry Shulman, Joel Klein.

(Contributors: Philip Bakes, Jr., Robert Denham, Ed Glazer, Robert Gordon, Rob Hager, William Kolasky, Frank Kramer, Ira Lupu, James McGibbon, Mark Moskowitz, William Pizzi, Michael Seidman.)

"* * * the doctrine of the separation of powers was adopted by the convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy."—*Meyers v. United States*, 272 U.S. 252, 293 (1926) (Brandeis, J. dissenting).

"* * * Congress can alone raise armies; and may put them down, whenever they choose."—2 J. Story, Commentaries on the Constitution of the United States, section 1187 (4th ed. 1873).

*A. Introduction*

This memorandum examines the constitutional basis for the Amendment to End the War. Most constitutional debate heretofore has focused on the President's authority to engage American troops in hostilities abroad without congressional approval. We do not address this question. Rather, we address the question of congressional power. Regardless of the President's power, Congress may exercise its independent judgment on the use of American forces abroad, indeed, it has an obligation to do so.

There is no doubt that Congress has the competence and responsibility, though not exclusive of presidential competence and responsibility, to make decisions regarding the commitment of U.S. military forces in foreign hostilities. By Article I, section 8, Congress is given the power "To declare War," "To make Rules for the Government and Regulation of the land and naval Forces," and "To provide and maintain a Navy." Nor is there any doubt as to the power of Congress to use the appropriations process to carry out congressional policy on matters within the congressional competence and responsibility. Under Article I, section 8 of the Constitution, Congress is empowered "to lay and collect taxes, . . . to pay the Debts and provide for the common Defense and general Welfare of the United States . . ."; and it is provided by Article I, section 9 that "no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . ." Moreover, the link between congressional responsibility to oversee our military commitments and congressional power over appropriations is explicitly forged by the provision in Article I, section 8 that Congress shall have power "to raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years."

It cannot, then, be contended that in conditioning appropriations upon the orderly withdrawal of American forces from a foreign field, Congress would be acting beyond the scope of its powers under the Constitution. The objection, if there be one, must rather be that for Congress by this means to deny the President resources required for the support of troops in the field would be to encroach upon his prerogatives under Article II, section 2, as "Commander in Chief of the Army and Navy of the United States." The Constitution seems to endow both branches with some relevant competence and responsibility; the question is whether legislative appropriations powers may prevail over executive powers of military command when the policies of the two branches are in conflict.

It is possible to define, if somewhat crudely, the respective spheres of supremacy of Congress and the Presidency in "substantive" terms—in terms, that is, of the issues to be decided. The band of division appears to lie between, on the "congressional" side, decisions as to whether a war is a justified and desirable means of pursuing some United States objective (or of how much and what sort of war is to be waged in pursuit of what objectives); and, on the "presidential" side, decisions as to how those resources committed by Congress to warmaking ought to be managed so as to achieve the contemplated objectives. In light of this analysis an explicit congressional decision that no interests of the United States justify continued American military activities in Indochina, and that accordingly we should withdraw, ought to prevail over a contrary presidential judgment.

A perspective limited to the doctrine of separation of powers, however, yields an incomplete analysis of presidential and congressional prerogative and responsibility. The Constitution, while it sought to provide a harmonious framework for intraction, also aimed at a system of checks and balances among the three branches of government. Underlying this doctrine of checks and balances is the notion that each branch of the government has sufficient power to check the actions of the other branches that it deems unwise. The idea is starkly simple, and is the purest rendition of the constitutional text: only the President may deploy and command the troops, while only Congress may appropriate the wherewithal for their subsistence, equipage, and transport. What the President chooses not to command, Congress cannot well buy; what Congress chooses not to buy, the President cannot well command.

The interplay of these two contending powers illustrates the wisdom of the framers. The commitment of men and treasure to extended foreign war is the gravest exaction a government can make of its people. The constitutional allocation of powers insures that only when both branches—executive and legislative—concur can such an exaction be maintained.

*B. The constitutional understanding*

Congressional power to enact the Amendment to End the War must ultimately derive from the powers granted the legislative branch by the Constitution. The conflict over the constitutionality of the bill arises because the Constitution divides authority over military affairs between Congress and the President. Article II, section 2 denominates the President as "Commander in Chief of the Army and Navy." Article I, section 8, however, grants Congress the powers to "provide for the common Defence," "To declare War," "To raise and support Armies," and "To make rules for the Government and Regulation of the land and naval Forces."

The phrases on their face establish both a shared and divided power with exclusive Presidential control over troops in the field, and the larger areas of war policy decision-making falling within the domain of Congress.

The original constitutional undertaking did not occur in a historical vacuum, but against the backdrop of the 17th century English struggles between King and Parliament. These struggles were in large part over the power to conduct foreign relations, most especially the power to maintain and use a standing army. Detailed knowledge of this history was part of the common intellectual heritage of the framers.

At the beginning of the 17th century political men accepted almost without question the doctrine that the conduct of foreign affairs, and above all, the making of peace and war, were mysteries of state, the exclusive business of the crown. By the end of the century—a century of the Stuarts, the Commonwealth, the Restoration, and the Glorious Revolution—all this had changed. Parliament had assumed an important role in the policy-making process.

The device Parliament developed for asserting its control was the power to vote revenue.

Before 1624 Parliament had, in time of war, granted the King subsidies without restriction as to how they could be spent. In the Subsidy Act of 1624 the Commons for the first time conditioned the grant. The money was to be spent only for defending England and Ireland, financing the Navy, and aiding the Dutch. Such restrictions were not yet ripe for success; the Lords protested. But Parliament did wring from King James the promise to make no treaty without its "advice and consent." Charles I, successor to James I, tried to wage war without Parliament's help. When nothing was voted for war in 1626 he sought to finance his policy through forced loans. But the impossibility of continuing the war without a parliamentary grant forced him to yield to the Petition of Right (1628), which declared illegal the collection of taxes without Parliamentary consent. The issue was again contested over Ship Money, a tax on towns in lieu of building ships for the navy. This attempt ultimately failed, however, and in 1641 Parliament emphaticaly reasserted its right to a measure of control over the raising and deploying of armies by outlawing Ship Money. Charles I was beheaded shortly thereafter.

The early years of the Restoration monarchy were notorious for Charles II's secret pacts with foreign powers. Parliament once again used the money power to invade this closed policy-making process. In 1666 Parliament revived the technique of placing conditions on its grants of revenue by making a grant of £380,000 and specifying that if the treasurer of the Navy diverted the grant to anything but wages of seamen he should forfeit treble the value of the money. By 1678 the technique of imposing restrictions on the grants of revenue was standard practice. In that year Charles II sought freedom to maintain or disband his army in Flanders as he saw fit. Parliament insisted on retaining general control over basic military policy. It responded with the Supply Act of 1678 which granted a sum of about £206,000 and specified that this sum must be applied to disbanding the Flanders forces and to no other purposes the Act even specified the date of disbandment, a date less than three months from the date of the act. It was, indeed, Parliament's Amendment to End the War.

The Founding Fathers were well aware of this exercise of parliamentary power over military decisionmaking. They were also aware that Parliament's role in foreign affairs had deteriorated just prior to the American Resolution. Alexander Hamilton reported in Federalist No. 26 that Americans derived their ideas about the control of the military "from the nation from whom the inhabitants of these states have in general sprung." Men like Hamilton, a strong advocate of executive power, and James Otis were determined that the American Congress would maintain the authority over warmaking that Parliament had once achieved but was then in danger of losing.

The aims of the Constitutional Convention in making the President the Commander in Chief were two: First, the Convention desired to concentrate in a single civilian leader the tactical control of armies engaged in battle. But this was no plenary grant of power to maintain troops in a particular theater of war once Congress had decided to disengage. As Hamilton interpreted the power, it "amounted to nothing more than the supreme command and direction of the military forces, as first General and Admiral of the Confederacy." This clause places the civilian President at the top of the military command. It contains no grant of power to define the purposes for which the President may exercise his command over the troops.

Second, the framers sought to transfer to the President a check on an overly martial legislature so as to insure further against any precipitate commitment of our forces. They remembered all too well the very broad delegation of responsibility for warmaking conferred by the Articles of Confederation on Congress Mason, arguing for the proposition that someone, either the President or a council of revision, should be given the power to veto legislative action, stated that "The purse and sword must not be in the same hands; if this is true, and the Legislature are able to raise revenues and make and direct a war, I shall agree to a restraining power of the Legislature either in the Executive or a council or revision." The President's check, of course, was by no means intended to grant the executive any exclusive and unrestrainable power over the disposition of the army and navy.

The debates in the Constitutional Convention clearly indicate one thing: Congress was to be given ultimate control over the warmaking power with a variety of means at its command to enforce its views. At a minimum the framers would have viewed an appropriation restricted in use to disbanding an army and bringing it home as a proper exercise of Congressional power. Parliament had exercised this much power in 1678 and the conscious design of the Constitution was to give Congress more power over foreign affairs and warmaking than Parliament had possessed. The Constitution, read in light of the historical context and the framers' fear of a military establishment, thus established that the President could command the tactical operations of an army while engaged, but that Congress had the power through appropriations to provide an army, to disband it, or to disengage it from a particular theater of operations.

The reading is confirmed by the discussion of the relevant constitutional provisions in the Federalist papers. The colonists had seen how easy it was for a king, with a standing army at his disposal, to engage his subjects in foreign conflicts. Thus many objected to this Constitution drafted at Philadelphia because it failed to prohibit a standing army. Hamilton argued that such a prohibition was unnecessary because the Constitution gave the legislature the power to check the President in his capacity as Commander-in-Chief through the control over appropriations attendant on the power to raise and support armies. The requirement, unique in the Constitution, that "no Appropriation of Money to that Use Shall be for a Longer Term than Two Years" was designed to insure review by each new Congress of presidential exercise of command over the armed forces. In the Federalist No. 26, Hamilton said:

"The legislature of the United States will be *obliged*, by this provision [two-year appropriation], once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents. They are not *at liberty* to vest in the executive department permanent funds for the support of an army. . . ."

A definitive practical gloss on the intentions of the constitutional framers is provided by the early relationships between Presidents and Congresses in times of crisis. President Adams sought Congressional authority to respond to French attacks on American ships even though he did not seek to declare war. President Jefferson, too, felt compelled to call on Congress to make a judgment on our response to attacks on our vessels by Tripolitan ships. He indicated this in his first annual message to Congress, in recounting the capture of a Tripolitan cruiser:

"Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defence, the vessel being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that in the exercise of this important function confided by the Constitution to the Legislature exclusively their judgment may form itself in a knowledge and consideration of every circumstance of weight."

Again, in deciding how to respond to the potential Spanish threat in Florida, Jefferson asked Congress to take certain steps, acknowledging that "the course to be pursued will require command of means which it belongs to Congress exclusively to yield or to deny."

Jefferson's successors—Madison, Monroe and even Jackson—all acknowledged executive deference to the legislature on questions of troop deployment and armed hostilities. Indeed, the nineteenth century in general is replete with acknowledgments of congressional preeminence. Lincoln, for example, when he was a member of Congress, stated:

"The provision of the Constitution giving the war making power to Congress, was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our Convention understood to be the most oppressive of all Kingly oppressions; and they resolved to so frame the Constitution that no one man should hold the power of bringing oppression upon us."

Moreover, Congress was quick to protect its war powers whenever these were challenged. After President Polk dispatched an army to Mexico in "hot pursuit" of an invading Mexican force, but without Congressional approval, the House passed a resolution stating that the war had been "unnecessarily and unconstitutionally begun by the President . . ."

The twentieth century particularly during the crisis moments of the Cold War, saw increasing congressional acquiescence to broad presidential assertions of power. The high-water mark of this trend came when President Truman committed troops to Korea without prior or subsequent approval by Congress. Thereafter Eisenhower in 1955 (Formosa) and 1957 (Lebanon), Kennedy in 1962 (Cuba) and Johnson 1964 (Tonkin), all sought approval of military action by congressional resolution. Some members of Congress have felt the legislative role in these cases was simply to rubber-stamp executive action. Senator Morse, for example, viewed the Tonkin Gulf Resolution as a carte blanche for presidential discertion. But no one has agreed that this sort of resolution exhausted congressional power.

Even when there is need for rapid response (*e.g.*, the Cuban missile crisis), an accommodation between the President and Congress can be reached. Congress' responsibility is to evaluate the costs and priorities of military abroad. Congress can exercise this most serious decisionmaking function *after* the initial executive commitment has been made as well as before. Indeed only then can Congress get possession of all the data relevant to the commitment involved and make a considered evaluation of it. To allow the President to persist in military action abroad because he deems it essential to the national security even after Congress, on the basis of a full evaluation of the threat and the costs of meeting it, has concluded otherwise, is to extend the President's "defensive" power beyond limitation. The decision to terminate a war is different from one to declare a war, it is nonethelesss within congressional power. It gives the legislature a needed negative check against unbridled executive action.

In sum, the present legislation attempting to establish broad timetables of U.S. withdrawal is an appropriate way for Congress to enforce its policy regarding national priorities and the removal of U.S. military presence from Southeast Asia. It is a mandate of national will which the President as Commander in Chief must follow. Congressional action will not usurp the President's power: he may still decide what is tactically the safest and most effective way to withdraw consistent with spirit of the congressional mandate. Congress will have abdicated its own powers over the war policy, however, if it remains inactive once the question of troop commitment is formally raised.

*C. Appropriations power*

The means most readily available to Congress to assert congressional power is its authority over appropriations. This power provides a particularly apt negative check on the executive. Historically, there has never been any doubt that Congress has the power to limit executive action through control of the purse. The Constitution explicitly states that "no money shall be drawn from the treasury but in consequence of appropriation made by law," and both branches of Congress have on occasion used this power

to exercise detailed control over the minutiae of executive action.

Richard H. Fenno, Jr., states:

"To criticize Congress for intervening in a specific and detailed fashion is to attack it for doing the only thing it can do to effectively assert its influence. Specifics and details are the indispensable handles which Congressmen use to work inductively toward broader kinds of oversight judgments . . . Congressional control is or is not appropriate in the context of the realities of legislative and executive decisionmaking. The legislator ought not to be criticized for using those controls which are available to him and which his experience tells him bring the greatest influence over executive activity."

Supreme Court Justice Robert Jackson, formerly Attorney General to Franklin Roosevelt, reaffirmed plenary Congressional power over appropriations, with particular reference to control of the armed forces. He wrote:

"Congress alone controls the raising of revenues and their appropriations and may determine in what manner and by what means they shall be spent for military and naval procurement . . . While Congress cannot deprive the President of the command of the army or navy, only Congress can give him an army or a navy to command."

The general power of Congress over appropriations is reinforced by the specific reference to the appropriations power in the Article I, section 8 grant of power to Congress to "raise and support Armies."

There are numerous precedents of carefully placed Congressional restrictions on military appropriations sanctioning the use of appropriations as a vehicle for achieving substantive policy. In 1909, President Theodore Roosevelt sought by executive order to restrict the use of the Marine Corps to onshore bases, apparently in an effort to raise the morale of the Navy. Congress disagreed and sought to force the retention of the Marine Corps on board battleships and cruisers. The House of Representatives' version of the Naval Appropriations Bill of 1909, H.R. 26394, 60th Cong., 2nd Sess. (1909), included the following proviso:

*Provided,* That hereafter officers and enlisted men of the Marine Corps shall serve as heretofore on board all battleships . . . in detachments of not less than eight per centum of the strength of the enlisted men of the navy on said vessels."

The proviso was written as a directive, with no clear penalty for executive noncompliance.

The Senate Committee on Naval Affairs amended the above proviso so as to make the entire Marine Corps appropriation contingent upon fulfillment of the condition. Senate debate focused on the division between legislative and executive warmaking powers. Senators Lodge, Cummins, and Borah all opposed the particular conditional appropriation. However, under questioning it became clear that the stand these critics took against Congress' power was a very limited one. Senator Bacon asked them whether Congress could order the President to remove troops from the District of Columbia after the President had placed them there. Senator Cummins and Senator Borah both acknowledged that Congress had the constitutional power to do so; Senator Lodge also admitted that his objections were on policy grounds, not on whether Congress had the requisite power to so restrict the use of appropriations.

Some Senators went considerably further in defining Congress' power. Senator Fulton said:

"[N]o doubt . . . Congress has the power to say that money should not be expended on payment of a particular corps of the army if it should be stationed in a particular place.

"And the simple fact that the President in advance had sent the army there would not preclude Congress from still exercising its constitutional function of ordering it removed from there."

In an effort to draw the hazy line between Congressional and Presidential power, Senator Fulton continued:

"I concede that Congress cannot absolutely control and fetter the President, but that is simply when and while he acts as commander in the field and has charge of the movements of military forces and matters of that character that pertain distinctly and peculiarly to the duties of a Commander in Chief. In those matters he is supreme, but after all he is subordinate in all cases to such rules and regulations as Congress shall make. . . . [H]e is nothing more than any other commander in point of power, except that he is the supreme commander. . . . Is the proposed amendment anything more than a regulation? It is a regulation of the navy and provision as to in what manner the Marine Corps shall serve the Nation, where it shall be placed, how long it shall remain at sea, or whether it shall go at all or not."

Following this debate, the amendment containing the conditional appropriation passed both houses of Congress and was part of the bill signed into law by President Roosevelt. If the matter had gone no further, we would have only Congress' side of the power struggle. However, the Secretary of the Navy took the proviso to the Attorney General, George Wickersham, for a ruling on its constitutionality. The Attorney General held the conditional appropriation constitutional, saying:

"If, therefore, in the discharge of his powers and duties as Commander in Chief, the President desires to direct the Marine Corps to perform and function which shall involve the application of the appropriation made by the Act . . . he must direct [that the corps] shall serve as heretofore on board all battleships. . . .

"Inasmuch as Congress has power to create or not to create, as it shall deem expedient, a marine corps, it has power to create a marine corps, make appropriations for its pay, but provide that such appropriation shall not be available unless the marine corps be employed in some designated way, and I therefore am of the opinion that the provision of the statute to which you direct my attention is constitutional."

The parallel here to the Amendment to End the War is obvious. Congress would be exercising its control over expenditures to enforce its policy decisions as to where troops should and should not be without detailing their use by the Commander in Chief while there engaged. Congress would be exercising its historic and constitutional mission as a check on the executive's power to engage American forces in major conflict. It would in no way be interfering with the President's tactical control over the troops during the disengagement process.

A more recent example of Congressional efforts to use the appropriations power to control military policy is provided by the RS–70 manned bomber conflict. The House Armed Services Committee wanted to insure that the Secretary of Defense instituted development of a supersonic manned bomber instead of relying exclusively on guided missiles. The Committee unanimously asserted the power for Congress to use appropriations restrictions to require affirmative policy decisions by the executive. Certainly the power to require affirmative executive action is even greater than the negative power implied in an appropriation which merely reverses prior Presidential action.

A final, and most relevant, example of Congress' conditioning appropriations in order to affect military action is the Defense Appropriations Act of 1970. The Act provides:

"In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand."

Thus Congress has already used its appropriations power with the acquiesence of President Nixon, who signed the bill without constitutional objection, to restrict presidential use of military appropriations in a way that expresses Congressional policy regarding the conduct of U.S. military involvement in Southeast Asia.

*D. Conclusion*

Members of Congress face the solemn duty of deciding whether to allocate further national resources to the war in Southeast Asia. We do not argue here on the merits of that question—that is for Congress to decide. What we do argue is that Congress has the power—indeed, the duty—expressly to make that decision. The Constitution was drafted to allocate governmental power. Once allocated, that power remains, even though lying occasionally dormant, within the branches originally receiving it. The President received power as Commander in Chief to direct all American troops. His actions in employing those troops may or may not have been excessive in recent times; that question is irrelevant to this study. What is relevant is that Congress, too, received warmaking power, the power to determine when and where the United States will commit its armies and its resources to a major conflict.

The Constitution also allocated duties. The President has the duty of protecting American troops during an engagement. He must therefore be accorded by Congress a certain leeway in controlling tactical decisions affecting the safety of American soldiers. The President, however, also has the duty of making sure that the laws are faithfully executed. He must therefore accord to Congress the lawmaking power that is constitutionally theirs to exercise, and he must respect any congressional mandate on the allocation of American resources.

The applicability of these conclusions and of the research and analysis upon which they are based, to the various amendments now before Congress can be succinctly put as follows:

First, it is entirely appropriate under the Constitution for Congress to define the scope and objectives of commitment of military forces to combat abroad. It has acted accordingly in the past two decades. The 1969 National Commitments Resolution asserts the sense of the Senate that no such commitment shall be made without explicit congressional approval.

Second, Congress may constitutionally effect its policy determination by appropriations acts that condition the appropriation upon a specific use of the money granted.

Third, Congress under the Constitution should accord the President enough leeway as Commander in Chief to safeguard the withdrawal of American forces—leeway which the Amendment to End the War carefully preserves. But it is for Congress to decide how restrictively to exercise the appropriations power.

Finally, it is incumbent upon each member of Congress to fulfill his constitutional role by exercising the congressional power to determine the military policy of the United States.

In the twentieth century strong Presidents have exercised their powers to the fullest, while Congresses all too often have quietly acquiesced. That such power has sometimes lain dormant does not mean that it has been abandoned, for in the constitutional scheme of things Congress cannot abandon it. The power must always rest in Congress to decide when the nation has had all the war that it can afford to endure.

If Congress does indeed wish to restore the historic balance between Congress as arbiter

of American military policy and the President as Commander in Chief, it must now seek to implement its decisions by use of the key tool it was given for this purpose: the power to allocate money for national endeavors.

*May 13, 1970*

Mr. GOODELL. Mr. President, a bipartisan group of Senators purchased prime television time to explain the amendment to end the war—amendment No. 609 to H.R. 17123—to the American public and to seek support for it.

The half-hour broadcast marks the first time that a congressional group has produced such a nationwide program.

The program—"The Amendment to End the War"—was broadcast on Tuesday, May 12, at 7:30 p.m. over the NBC television network.

Senators GEORGE MCGOVERN, MARK HATFIELD, HAROLD HUGHES, FRANK CHURCH, and I participated in the program.

The amendment to end the war was drafted by Senators MCGOVERN, HATFIELD, HUGHES, and me and was introduced on May 5, 1970. It states that unless Congress shall have declared war, no moneys appropriated under the act to which it is attached, or under any other law, shall be used in Vietnam after December 30, 1970, except for the withdrawal of all American forces. It requires that the withdrawal of American forces from Vietnam be completed—that all American military personnel be pulled out—by June 1971, unless the President of the United States requests and Congress passes a joint resolution extending that deadline.

The amendment provides that no money shall be used for military operations in Laos after December 1970. And it provides that no moneys shall be authorized for any military operations in Cambodia or for military aid for that country 30 days following the adoption of the amendment.

I ask unanimous consent that the transcript of the program be printed in the RECORD.

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

THE AMENDMENT TO END THE WAR: A NETWORK TELEVISION BROADCAST, MAY 12, 1970, NBC

(Participants: Senator George McGovern, Senator Mark O. Hatfield, Senator Charles E. Goodell, Senator Harold E. Hughes, Senator Frank Church)

NARRATION. Today, in the bright springtime of 1970, the United States of America has been ripped apart. Citizens bludgeon each other in the streets of New York. Students die in campus eruption. Buildings explode. Banks burn. The Nation's colleges are shut down. The population is polarized, and there are parades of protest everywhere. Not since the days of the Civil War have Americans treated each other like this.

At the heart of the trouble lies the war in Vietnam. It is a strange war—a war that we have to keep explaining to ourselves year after year after year. And it is a difficult war to explain—particularly to the people who have to go and fight on its inconclusive battlefields.

But while all the talk goes on, the war goes on, too. It continues tonight, as it has continued for a decade. Tonight, Americans will die in Vietnam. Tonight, Americans will die in Cambodia.

What can we do?

Last week, amendment No. 609 was introduced on the floor of the United States Senate. It was co-sponsored by a bi-partisan coalition of twenty Senators. These Republicans and Democrats call it *the amendment to end the war*. They regard it as a realistic new thrust for peace. The Senate debate on it will begin in just a few days.

In the next half hour, five of these Senators will make a case for this amendment. If the American people can effectively urge its passage upon the Members of the House and Senate, if "the amendment to end the war" is passed, then the traditional right of declaring whether or not we shall commit Americans to battle will be returned to the Congress—where it belongs.

Through protest . . . petition . . . and an act of *law*, we shall have at last ended the Vietnam war.

And now, Senator George McGovern of South Dakota.

Senator MCGOVERN. There is no way under the Constitution by which the Congress of the United States can act either to continue this war or to end it, except by a decision on whether we will appropriate funds to finance the war.

Article I, Section 8 of the Constitution reads as follows: "The Congress shall have power to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

Senator HATFIELD. Our amendment to end the war fulfills the obligations that we have under the Constitution. The amendment clearly states that unless the Congress shall have declared war, that no monies appropriated on the act to which we attach the amendment, or any other law, shall be used in Vietnam after December the 30th, 1970, except for the withdrawal of American troops and other provisions.

It provides that no money shall be used for military operations in the country of Laos after December of 1970. It provides that no monies shall be authorized for the use of any military operations in Cambodia, thirty days following the adoption of the Amendment; and that all troops shall be withdrawn from Vietnam, all American troops, by June 1971 unless the President of the United States shall deem that it is important enough to extend that time by requesting the Congress to pass a Joint Resolution authorizing such extension time.

Senator HUGHES. The Amendment to End the War provides continuing funding for full protection of American troops during the total period of our withdrawal. It also provides adequate funding to provide political asylum for all those South Vietnamese and other civilians for which there may be great concern about a bloodbath; and there are adequate provisions that these civilians may be placed in other places for their own protection.

It also provides for a continuing negotiation of exchange of prisoners.

Senator CHURCH. Very soon the Senate will be acting on another Amendment offered by Senator Cooper and myself, which is addressed to the Cambodian situation and sets the limits on that adventure to those declared by the President.

But this End the War Amendment takes the full step, and provides an orderly method for the extrication of the United States from the war in Vietnam, itself.

Senator MCGOVERN. And so what we're looking for is a reasonable way to accomplish that withdrawal, and I think that the principal stumbling block now is that we're somehow worried about losing face. We're worried about embarrassing the policy makers that sent us in there. We're worried about admitting that perhaps we made a mistake.

Actually, I think it would contribute to the greatness of the United States if, as a free people, we could just admit that we're capable of making a mistake; and then do the best we can to put an early end to it.

Senator HUGHES. Vietnamization is not a change in policy at all. It's a continuation of the old, old policy. It is dedicated to war, not to peace. It means that the war will go on and continue to go on for years to come. It means that there has been no one speaking, in this Administration or the last, of an end to our support commitment in Vietnam.

It means that we can look into the future for at least a decade, in all probability, to a quarter of a million men involved in Vietnam. I think every mother and father in America who has a son right now that's five, or six, or seven years old, or anywhere up to 15 or 16, should well realize that that boy is going to be involved in our future commitment in Vietnam under existing policy.

Senator GOODELL. We have come to the point where we realize, and I think the President realized when he went into Cambodia, that Vietnamization will not work; and it was an admission of the failure of Vietnamization.

I think it's time that the American people recognize that the President doesn't have the power to declare war or make war, alone. He can ask Congress to declare that power; and I think that's why what we are discussing here, and urging support from the American people for, is so important.

Congress can do this, and it's not an irresponsible action; and with the walls all falling down around American prestige and power in the world if we decide we're going to get out, Congress would simply be saying, "Okay, we've fought for seven years, we've bled and died, and we've spent our resources on this; and now the time has come to say to the South Vietnamese, 'take it over. We'll give you time. Over a period of time we're going to be withdrawing and you can go on getting aid if you fight for yourself in your own civil war. We're not going to stay there and fight and bleed and die for you any longer.'"

Senator HATFIELD. But the point is simply this: It's no longer the opinion of Presidents, and no longer the opinion of Senators; it's the evidence of history, of over 40,000 deaths, and this amount of resource expended that has proven each one of those escalations to be wrong. And I say, how many more American men have to be heaped upon that funeral pyre of war to disapprove a theory or a doctrine of military action that has been proven wrong each time that it's been acted upon.

Senator CHURCH. After all, the United States is not going to impose any permanent solution in Asia to settle Asian problems among Asian people on the Asian mainland. Now, the idea that we are going to do that is—runs against the whole current of history.

Now, what's happening in Asia is that the western powers are moving out, and that the Asians are taking over for themselves; and Vietnamization, as it's been pointed out here, is not the method for extricating us from this morass. It will merely perpetuate our involvement in this war. Half of the troops may come home; the other half will stay indefinitely; and it does not serve the interests of the United States to maintain a permanent military base in Southeast Asia.

Senator GOODELL. The President reiterated the other night that he was going to continue to bring back these 150,000 men in the next 12 months. Now, many Americans may feel that that means they're all going to be coming back, and nobody's going to be going.

Under a policy of bringing back 150,000 men in the next 12 months, we will send to South Vietnam 276,000 men who are not there now, who are now in the military or about to go into the military; and we'll bring back more, 150,000 more than we send, but in the rotation process there will be this 276,000 men go over there to fight, and perhaps die.

Senator MCGOVERN. And what would we have accomplished, or what evidence is there based on past history, to lead us to believe that we would be in any better position, or that South Vietnam would be in any better position, 1 year or 5 years or 10 years hence, after tens of thousands of additional Americans have been killed, than we are now? What would we have gained?

Senator CHURCH. We have created a "crisis

of confidence," and a deep disillusionment and an alienation that doesn't just affect a narrow fringe of radicals on campus. Anyone who goes to the campuses knows that this feeling extends to millions of young Americans.

Now, if they grow up without a belief in this system, that, it seems to me, has far greater bearing upon the future of the United States than anything we have now, or have ever had at stake out in Indochina.

Senator HUGHES. I think one of the great, tragic byproducts of all of this has been the spiritual scarring of our own people. The questioning in our own minds of why we're involved in a body-count war with total military supremacy, with indiscriminate bombing and far-ranging effects on the ecology of those nations by spraying chemicals and driving the people off of the land into the cities, completely changing the complex of that little nation involving sixteen to eighteen million people.

And we ask ourselves, can we be happy about the fact that we've killed 10,000 Vietnamese and suffered 300 deaths ourselves and in the process that this complete psychology that we have of destroying life, you know, at any expense, and what the results of it are—

Senator CHURCH. It's brutalizing our own society.

Senator HUGHES. It's brutalizing us internally, and we find our young people turning away from it, fleeing to Canada to avoid a war they consider immoral and attitudes that they consider unrealistic in a time, in an age when we really are questioning ourselves to find national purpose again.

Senator MCGOVERN. What we need to understand is that there is no way to separate the cost of this war in Asia, from the cost of our own society. Now, there were stories in the press recently that some of our poor people, some of the black citizens and other minority groups, have shied away from participating in protests against the war on the ground that their concerns are with hunger and with racism and with poverty.

But what I think all of our fellow Americans need to understand is that the answer to these other problems will not come until we put this war behind us, and the enormous drain that it's taking here in our society. The person who's worried about inflation ought to realize that war is a principal cause of it. The man who's worried about the stock market skidding ought to realize that the stock market jitters are associated, to a great extent, with the war.

And as you've said so many times, the Governors and the city councilmen and the others who are worried about where the money is going to come from for those new schools or new sewage projects or other things, they have to understand that the war is robbing them of those possibilities.

Senator HUGHES. We're talking about 16 to 18 million people in South Vietnam. There are 23 million blacks in America who have not been able to find justice in this great country. Untold thousands of American Indians who have never been brought to their fulfillment. You who have worked so long and so energetically in the field of hunger in America, and poverty, with some 35 million people living in poverty, with the very foundations shaking of every major city in the Nation, with the great, basic, undergirding of this Nation that has always kept it stable, with those minorities is now being drained off and siphoned off in the name of somehow saving face in Southeast Asia, you know.

So when we talk, I think you would agree that there seems to be a great paradox in this.

Senator GOODELL. The cost of the war last year was $23 billion, so you can say in just about specific terms that 1 year's cost of this war would clean up all our waters in the United States.

Senator HATFIELD. The half hour that this program is being telecast to the American people, to reduce that or to translate that into terms of the cost of the war; the Federal Government will be spending $1 million just in this one-half hour period.

Senator GOODELL. In Vietnam.

Senator HATFIELD. In Vietnam. Just in Vietnam.

Senator CHURCH. Mark, you know the argument is made that the world will think we're weak if we withdraw from Vietnam. I think that of all the arguments that are made, that is the least impressive. Actually, the world knows that we have the power to exterminate every living inhabitant of Vietnam. If we unleashed that power we could salt it over the way Rome salted over Carthage.

It's not our power that's in question out there. It's the wisdom of our policy; and the world sees the biggest, richest, strongest nation dropping more bombs on North Vietnam than we dropped on all Europe in the Second World War. They see this tremendous disproportion of strength and wealth, and that puts us in a very bad light in the world.

In fact, this war has done more to undermine America's moral leadership in the world than anything that's ever happened to us, and the faster we put the matter right in Southeast Asia and end this war, the sooner we will begin to win back again the respect that this country ought to have throughout the world.

Senator HUGHES. What do you say to people who are really concerned, and I know they're concerned, about the fact that we'll lose face in the world, you know, that we'll really not be a first rate power, as has been implied by our Chief Executives in the past and in the present? And the concern of honest Americans who want to get out of the war, who want to stop the killing and the dying, and yet they say this is America's place in the world, that unless we accept this challenge we're somehow failing in world leadership.

I think this is the question in the minds of millions of Americans today.

Senator HATFIELD. What constitutes leadership? Not just power of armament, but power of ideals. And I say that we are losing in the world today by continuing to be in Vietnam.

It's not a matter of national pride. It's a matter of whether we're practicing what we preach. It's a matter of whether our ideals that were embodied in the Constitution, in the hearts of the American people, are really at the center of our policy, or whether we're out here with some peripheral object of face-saving, and so forth. I say, if it's to be humiliated to admit we're wrong and to save lives, then the sooner we do this, the better it's going to be for our nation. But I don't consider it humiliation. I consider it greatness, because only the powerful can take the chance of admitting error, and we're that powerful today.

Senator GOODELL. And most civilizations that have died, have died from within; and that is happening now in the United States of America if we don't get out of this war.

Senator CHURCH. We clothe this war in the sacred words of "justice" and "freedom" and "peace." But justice and freedom and peace aren't at stake out there. You know, the Government that we're supporting is not a democratic government, it's an incompetent and corrupt military dictatorship; and it's involved in a war with another dictatorship. This is a war between two dictatorships for control of Vietnam.

So I think we make a grave mistake when we try to clothe such a war in terms of the ideals for which this country should stand. Freedom is not at issue for the people of Vietnam. One way or the other, the kind of freedom that we know is not going to be the gift of this war out there.

Senator HUGHES. I think the gut question, though, Frank, and particularly George, when we're talking about this Amendment to End the War, to most Americans is, how can I support this Amendment and at the same time support my country in an involvement we've had over the last 15 years. And I think if people could resolve this in their own minds, you know, they'd very willingly bring this war to an end through this Amendment.

Senator MCGOVERN. Now, the President said the other night that if we leave Vietnam now, we're going to be through, or I think he said we're going to be finished as a peacemaker in Asia. Well now, I think we ought to quit trying to be the policeman for Asia. Let's quit trying to be a solo policeman and banker and pacifier in Asia alone. How ironic it would be if at long last we succeeded in pacifying Southeast Asia and couldn't pacify our own society.

Senator HUGHES. The invasion of Cambodia, I think, was truly the straw that broke the camel's back. They're writing to me at about 8 to 10 to one against the President's posture right now in Southeast Asia; and in the belief and the hope that the Senate of the United States will offer the leadership, you know, to alter this posture.

Senator GOODELL. Everything we have said here tonight is completely unpartisan. I think we have all been as critical of the Democratic Presidents as we have of Republican Presidents, and we should not be considering this in terms of political or partisan advantage one way or the other. This war transcends partisanship, and I know a great many Republicans as well as Democrats who think our policy now is wrong, and we ought to get out. I think the overwhelming number of all Americans, whatever their political party, believe this.

Senator MCGOVERN. I think what we're trying to do with our Amendment to End the War, is to say that that is too important a decision to place on the shoulders of one man. It's too big a risk to ask one man to decide alone. The President ought not to have to make that judgment alone, and under the Constitution, he's not supposed to make that decision alone.

What we're proposing to do is to share that responsibility, and whatever political risk, whatever opportunity, whatever hazard is involved in making the decision to end this war, we're prepared, as elected officials, to stand up on that question and answer yes or no, and then take whatever blame or whatever credit is involved.

Senator GOODELL. In effect, we're providing a situation where the President can withdraw faster, where he can make a determination the war is going to end by a fixed date, and he will not bear the whole onus, himself. We recognize that when you've made such a tragic mistake, there's no painless way to get out of that mistake. We're saying. "We'll share that pain, we'll share that responsibility. But let's recognize the mistake and get out of it."

Senator HUGHES. What do we say to the American parents who have sons fighting in Vietnam? Is this a patriotic move that we are taking in this Amendment to End the War? Is this support of their sons and of our fighting men in Vietnam?

Senator GOODELL. There is no better way to protect the young men who are fighting over there than to bring them home; and I don't know of any military person in any responsible position, who doubts that if we made our declaration, "we're coming out," that they would be brought home safely then.

As long as we stay there, the casualties are going to go up, and if President Nixon's program works, over the next three years, we are talking about a minimum of 5,000 more American dead, and probably closer to

20,000. Four or five times that many casualties, and four or five times that many Vietnamese deaths in the process. Not to mention the billions of dollars involved.

Senator McGOVERN. But now what we're proposing is not a disorganized and uncoordinated outcry. We're proposing a specific legislative Act that will have the full force of law, and it will say in effect, no more money for Southeast Asia for any purpose other than arranging for the systematic and safe withdrawal of our forces, for the exchange of prisoners, for asylum for those people that might be threatened by our withdrawal. It's an orderly, Constitutional procedure for bringing about an end to this war.

Senator CHURCH. Now, this brings the Congress back to the role that it should have been playing all along. It asks the Congress to assume its responsibility to the American people, and it brings our democratic system back to life again in a balanced, Constitutional manner; and that in itself is as important in the long run to the life of this Republic as ending the war in Vietnam.

Senator HATFIELD. What do we say to the American people who have been watching, and who would say, "Well, we agree with you, but our voice is not very loud. I'm only one person, I'm just a little person, so-called little person." You hear that many times. Does that voice have a place in this whole great issue of war and peace?

They say, "We're tired of speeches. We want some action." A lot of the young people say this to us. A lot of the older people say, "All right, turn it off. We agree with you, but what have you done about it? What can you do about it, what can we do?"

Senator CHURCH. We're asking people to make their views known responsibly to their Congressmen, and we are asking the Congress and the Senate of the United States particularly, to begin to assume its responsibility under the Constitution. For years and years now we've abdicated. We've given all the power to the President when it came to war. We've sat on our hands and done nothing, and hoped that the people would look the other way.

Well, the time has come to reassert our responsibility and to stand up and vote on the question of war or peace.

Senator HATFIELD. You know, we've sort of enshrined silence as the virtue of patriotism in the last year or so; and actually, I think the highest patriotic duty that any citizen has is to speak up, to speak his convictions and his mind. That's the hope that we've got to give to all American people. That there is this method, there is this channel open to them, and that we, and others like us on this end of the power structure, so to speak, are receptive. We're not only receptive, but we're inviting them to participate in this Amendment to end the War.

Senator HUGHES. This is what we must do. We need their help. Even if we had 40 Senators presently on this Amendment, we need the help of the people of the United States. There's no other way that we can succeed; and the voice of the people counts in the final analysis. If I'm to exercise my judgment and to follow my conscience in a position of responsibility, I must tell the people when I think we're right, and I must tell them when I think we're wrong; and expect them to support those positions, or to oppose them. But for Lord's sake, don't be quiet. Write, support or oppose, but do something in this critical time.

Senator HATFIELD. If you want to cast your vote to end the war in Indochina, there is something you must do in the next few days. Write to your Congressman or your own Senator, just the simple words, "I vote for the Amendment to End the War in Southeast Asia."

Senator GOODELL. And there's something else you can do. Take a sheet of paper and write on the top, "We, the undersigned, favor the Amendment to End the War." Leave room for names and addresses; and then go out to work, to the church, to the supermarket, where ever you can collect signatures, and get people to sign who agree with you. Send those petitions to your Congressman and to your Senators.

Senator HUGHES. The President of the United States rightfully can command all media to bring a message to the people of the United States any time he deems he has a message of importance. For those of us who have differing viewpoints, and wish to express those to you, the American people, it requires that we seek your assistance.

Senator CHURCH. Remember that 66 cents out of every tax dollar now goes for war. A dollar for peace could go a long way. So send your contribution, whatever it may be, in order that we can continue to speak out. Make your checks out to "Amendment to End the War," post office Box 1A, Ben Franklin Station, Washington, D.C. 20044.

Senator McGOVERN. Let me close this broadcast on a very concrete and specific point. What we are proposing here is that for the first time in the long history of this war, the Senate of the United States stand up and be counted yes or no, on the question of whether we wish the war to continue, or to be ended. We propose to do that in a vote that will come in a very short time. We pledge you that that vote will be held. This is not a sense of the Congress Resolution, it is not a debator's point; it is an act of law, which if carried, will put an end to this war in a systematic way. We ask earnestly tonight for your support in that effort.

President NIXON. Strive in every area of the world——

General WESTMORELAND. In 1968, a new phase is now starting.

President JOHNSON. General Westmoreland's strategy is producing results.

General WESTMORELAND. The enemy's hopes are dim.

President NIXON. If, when the chips are down, the world's most powerful nation acts like a pitiful, helpless giant——

Closing NARRATION. In just a few days, debate on the amendment to end the war will begin on the floor of the United States Senate.

If the American people can effectively urge its passage upon the Members of the House and Senate, if the amendment to end the war is passed, then the traditional right of declaring whether or not we shall commit Americans to battle will be returned to the Congress—where it belongs.

Through protest, petition, and an act of law, we shall have at least ended the Vietnam war.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## ROUTINE MORNING BUSINESS

By unanimous consent, the following routine morning business was transacted.

## COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. McGOVERN) laid before the Senate the following letters, which were referred as indicated:

REPORTS OF FOREIGN-TRADE ZONES BOARD

A letter from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Foreign-Trade Zones Board for the fiscal year ended June 30, 1969, together with the reports covering the activities during the same period of Foreign-Trade Zones Nos. 1, 2, 3, 5, 7, 8, and 9, located respectively at New York, New Orleans, San Francisco, Seattle, Mayaguez, Toledo, and Honolulu (with accompanying reports); to the Committee on Finance.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report on the audit of financial statements of the St. Lawrence Seaway Development Corporation, calendar year 1969, Department of Transportation, dated August 26, 1970 (with an accompanying report); to the Committee on Government Operations.

REPORTS OF THE BOARD OF ACTUARIES OF THE CIVIL SERVICE RETIREMENT SYSTEM

A letter from the Chairman, United States Civil Service Commission, transmitting, pursuant to law, the 46th and 47th annual reports of the Board of Actuaries of the Civil Service Retirement System for the fiscal years ended June 30, 1966 and 1967 (with accompanying reports); to the Committee on Post Office and Civil Service.

## REPORT OF A COMMITTEE

The following report of a committee was submitted:

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

H. Con. Res. 675. Concurrent resolution expressing the sense of the Congress with respect to the conquest of cancer as a national crusade.

## EXECUTIVE REPORTS OF A COMMITTEE

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

By Mr. MAGNUSON, from the Committee on Commerce:

Saul Haas, of Washington, to be a member of the Board of Directors of the Corporation for Public Broadcasting.

By Mr. PASTORE, from the Committee on Commerce:

Frank E. Schooley, of Illinois, John Hay Whitney, of New York, and Jack Wrather, of California, to be members of the Board of Directors of the Corporation for Public Broadcasting;

Rudolph A. Peterson, of California, to be a member of the Board of Directors of the Communications Satellite Corporation; and

Thomas W. Moore, of Connecticut, to be a member of the Board of Directors of the Corporation for Public Broadcasting.

## BILL INTRODUCED

A bill was introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. MOSS:

S. 4291. A bill to amend the Railroad Retirement Act of 1937 to provide that the amount of the annuity payable thereunder to a widow shall not be less than the amount of the annuity which would have been payable to her deceased husband if he were living and otherwise qualified to receive an employee's annuity thereunder; to the Committee on Labor and Public Welfare.

## ADDITIONAL COSPONSORS OF BILLS

S. 4106

Mr. KENNEDY. Mr. President, at the request of the Senator from Washington (Mr. MAGNUSON), I ask unanimous consent that at the next printing of S. 4106, the National Health Service Corps Act of 1970, the following Senators be added as cosponsors: The Senator from Texas (Mr. YARBOROUGH), the Senator from Missouri (Mr. EAGLETON), the Senator from Minnesota (Mr. MONDALE), the Senator from New York (Mr. JAVITS), the Senator from Vermont (Mr. PROUTY), the Senator from Michigan (Mr. HART), the Senator from Massachusetts (Mr. BROOKE), the Senator from Indiana (Mr. BAYH), the Senator from Hawaii (Mr. INOUYE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Nevada (Mr. BIBLE), and the Senator from Oklahoma (Mr. HARRIS).

The PRESIDING OFFICER (Mr. YOUNG of Ohio). Without objection, it is so ordered.

## AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES—AMENDMENTS

AMENDMENT NO. 862

Mr. McGOVERN (for himself, Mr. HATFIELD, Mr. CRANSTON, Mr. GOODELL, and Mr. HUGHES) proposed an amendment to the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes, which was ordered to be printed.

(The remarks of Mr. McGOVERN when he proposed the amendment appear earlier in the RECORD under the appropriate heading.)

AMENDMENT NO. 863

Mr. GOODELL (for himself and Mr. NELSON) submitted an amendment, intended to be proposed by them, jointly, to House bill 17123, supra, which was ordered to lie on the table and to be printed.

(The remarks of Mr. GOODELL when he submitted the amendment appear earlier in the RECORD under the appropriate heading.)

## ANNOUNCEMENT OF FUELS AND ENERGY COMMISSION HEARINGS

Mr. MOSS. Mr. President, on behalf of the Subcommittee on Minerals, Materials, and Fuels of the Senate Interior Committee, I announce that public hearings have been scheduled for September 10 and 11 on S. 4092, a measure introduced by the distinguished Senator from West Virginia (Mr. RANDOLPH), for himself and some 52 cosponsors.

The title of the bill states clearly its purpose: "To establish a Commission on Fuels and Energy to recommend policies and programs intended to insure that the U.S. requirements for low-cost energy will be met, and to reconcile environmental quality requirements with future energy needs."

Thus, Mr. President, the far-reaching mission of the commission is to find ways and means of meeting the twin crises that are upon us. These crises are, on the one hand, our requirements for ever greater supplies of energy to meet the needs of our people, and, on the other, to protect and to ameliorate the quality of our environment while meeting these increased energy needs.

The commission to be established by S. 4092 is designated as the National Commission on Fuels and Energy, and its membership will be a most high-level one, composed of members of the Senate and the House and Presidential appointees from agencies of the executive branch that have key responsibilities in the field of energy supplies and environmental quality control and, in addition, persons from private life who have particular knowledge and expertise of the subject matter.

This prestigious group is to make a full and complete investigation and study of the energy demands and of the fuels and energy resources, requirements, and policies of the United States. In particular, it shall evaluate all possible alternative methods of energy production and the relative merits of all energy sources, including fossil fuels, synthetic fuels derived from natural fossil fuels, nuclear, and any other practical sources. Based on such study, it shall recommend those programs and policies which are most likely to insure, through maximum use of indigenous resources, that the Nation's rapidly expanding requirements for low-cost energy will be met, and in a manner consistent with the need to safeguard and improve the quality of the environment.

The commission must submit to the President and to Congress a report of its findings and recommendations within a year from the date of its organization.

Mr. President, all too often we establish commissions or other entities with responsibility for but a single phase, or aspect, of a problem, such as for control of pollution but not for needed production, or for production and not for pollution. The National Fuels and Energy Commission to be established by the bill of the distinguished Senator from West Virginia will have the mission to consider both our needs for increased production and our needs for environmental quality protection.

Mr. President, it is recognized that the broad subject matter of S. 4092 cuts across the jurisdictional lines of several committees of the Senate, including those of the Committee on Public Works, of which the sponsor of the bill is chairman, and the Committee on Commerce, of which Senator MAGNUSON is chairman and who is a cosponsor of the measure, as well as that of the Interior Committee.

Accordingly, on behalf of the Minerals, Materials, and Fuels Subcommittee, I invite members of Commerce and Public Works Committees as well as other members of Interior Committee to participate in our September 10 and 11 hearings. The hearings will be held in the Interior Committee room, 3110 New Senate Office Building. The first day's hearing, that on the 10th, will open at 11 a.m., and those of subsequent days at 10 a.m.

## ADDITIONAL STATEMENTS OF SENATORS

## AWARD OF DD–963 DESTROYER CONTRACT TO LITTON INDUSTRIES, INC.

Mrs. SMITH of Maine. Mr. President, on June 29, 1970, I expressed in this Chamber my concern about the circumstances of the award of the DD–963 destroyer contract to Litton Industries, Inc. One concern that I expressed was about the leaks of vital information, including prices, and the effect of this industrial espionage on the DD–963 procurement.

I said then:

> The very heart of the competitive process has been nullified in the DD–963 bidding by apparent flagrant discussions of proprietary data. This situation cannot be permitted to go unchallenged and be continued in the future.
>
> It has been alleged to me that personnel of shipping lines, for whom Litton has built, or is building, merchant ships, told a member of the House of Representatives at a golf and country club that Litton had underbid Bath by nine million dollars a ship or two hundred and seventy million dollars on the thirty-ship contract—and that this disclosure was made more than two months before the award of the contract.

On July 1, 1970, I wrote the Attorney General reporting this to him and giving him the name of the person making the allegation to me and the name of the U.S. Representative reportedly making the statement to my informant—and I asked that the matter be fully investigated for potential violation of the law.

Not until 41 days later after a second letter and two telephone calls did I receive a response from the Department of Justice—a letter of August 10, 1970, from Will Wilson, the Assistant Attorney General in charge of the Criminal Division. Even after that amazing length of time it took to even get an acknowledgment of my letter, the long delayed response was incredible. The chronological negativeness of the response was matched by the content negativeness of the response.

Mr. Wilson wrote that there was "insufficient basis for any investigative action by this Department" and stated specifically:

> We have found no indication that any Government employee was the source of the statements described in your letter.

How naive can Mr. Wilson be? Or how naive does he think I am? For where else could the original information come from than from an employee or officer in the Navy Department or Defense Department handling the bidding on this procurement?

Mr. Wilson further stated about the statements that I reported specifically:

> Such statements could have been conjectural in origin or as the result of hindsight flowing from publicity attending the award of the contract.

This portion indicates that Mr. Wilson did not carefully read my letter of July 1, 1970, for there was nothing conjectural about the statements I reported nor were

the statements a result of hindsight after the award of the contract. This was quite clear from my letter.

What I reported was not conjectural at all—to the contrary, it was specific and solid coming from James L. Goodrich, the president of the Bath Iron Works, and Representative WILLIAM D. HATHAWAY, the Congressman from the Second Congressional District of Maine. I gave the names of these two responsible individuals to the Attorney General and yet the Department of Justice apparently and arbitrarily decided not to contact or question either of them.

What I reported was not hindsight after the award had been made—to the contrary, what I reported were alleged statements made more than 2 months before the contract award was made—and the amounts were extremely accurate, both per unit ship and overall. I informed the President, the Secretary of Defense, and the Secretary of the Navy as early as April 24, 1970, by my letter of that date to them, of the report of such statements that were made more than 2 months before the contract award was made.

In his extremely tardy letter of August 10, 1970, to me, Assistant Attorney General Will Wilson further stated:

> In addition, it is not clear whether the information allegedly disclosed is the type of information contemplated under 18 U.S.C. 1905.

One of his assistants subsequently told my assistant that they had concluded that there was no violation under 18 U.S.C. 1905—and yet they made this conclusion without any investigation at all.

As I wrote Mr. Wilson on August 12, 1970, I found his letter of August 10, 1970, to be incredible. In response to inquiry by my office, the cognizant Navy Department official has stated that there are several statutes that would cover pre-award disclosures of the type reported in this case and one of the applicable statutes listed by the Navy Department official is 18 U.S.C. 1905—a statute rejected in this case by Assistant Attorney General Will Wilson without even making an investigation of the matter. Other potentially applicable statutes cited by the Navy Department official are 18 U.S.C. 371, 18 U.S.C. 201, 18 U.S.C. 203, and 18 U.S.C. 641.

The brushoff by the Criminal Division of the Department of Justice and its failure to contact either Mr Goodrich or Representative HATHAWAY about these statements attributed to them is shocking.

Assistant Attorney General Wilson's record on this is:

First. His fallacious conclusion that the statements were conjectural when the specific names of James L. Goodrich, president of the Bath Iron Works, and WILLIAM D. HATHAWAY, U.S. Representative from the Second Congressional District of Maine, were given and his office apparently had made no attempt to interview them on their statements—when the time is clearly set as at least 2 months before the contract was awarded—and when the place is specifically set as the Congressional Golf and Country Club;

Second. His fallacious conclusion that the statements resulted from hindsight after the award of the contract when the specific time is given as more than 2 months prior to the award of the contract;

Third. His rejection of the possibility that 18 U.S.C. 1905 is applicable—when the cognizant Navy Department official himself cites 18 U.S.C. 1905 as applicable to the situation, if the allegations are true;

Fourth. His fallacious conclusion that no Government employee was the source of the alleged statements—when obviously only a Government employee could have been the original source if the statements were made; and

Fifth. His refusal to have an investigation in spite of the very specific information supplied to the Department of Justice.

This pattern of the leaks on Bath's prices is neither sudden nor "hindsight" after the award of the contract. Bath officials have repeatedly reported the leaks to the Secretary of the Navy and other Navy officials. Their contract requires that they report apparent industrial espionage. They have done so on January 13, 1970, to Captain Henning—on April 1, 1970, to Rear Admiral Sonenshein and Rear Admiral Weschler—and later to the Secretary of the Navy.

Specifically, the Bath officials reported to the Secretary of the Navy that they had reason to believe that their February 2, 1970 price was known in the industry before March 26, 1970—that is 3 months prior to the contract award.

Let us examine the significance of this. On March 20, 1970, the Navy directed the competitors to propose a new type of contract. Such leaks are an example of the way Bath could have bid to take irregular advantage of the reset point and is the only logical explanation for any substantial variation in cost submittals on February 2, 1970, and March 26, 1970. Audits had been conducted after each proposal and cost negotiations had occurred from December 5, 1969, to March 20, 1970. As Bath officials pointed cut to Rear Admiral Sonenshein, such a bid would be in violation of the regulations and hence nonresponsive. Bath officials were informed by Government auditors that Mr. Rule was conducting a special audit involving "cost traceability."

If the Litton low offer is credible, then the March 20, 1970, letter of the Navy to the competitors directing them to propose a new type of contract actually permitted an auction insofar as target cost is concerned. Let, in accordance with the Navy's March 20, 1970, letter and Department of Defense regulations, the fourth round could reflect only the third round plus the "clarifications" thereof plus a reduction in profit because of increased ceiling and the new sharing formula.

As a result of the leaks, the prices were known to the industry, and there were no technical changes which would cause a change in cost from the third round of proposals. Litton's apparent drastic reduction in the target cost could only have been on an auction basis to take advantage of the reset point and to get substantially below Bath.

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## SLOWDOWN AND CUTBACK IN SPACE PROGRAM

Mr. SPARKMAN. Mr. President, I have been concerned with the slowdown and cutback in our space program. I suppose this concern arises from my being close to the program because of the extensive operations carried on in my hometown of Huntsville, Ala., and the presence there for the last 20 years of the highly competent team centered around the German scientists who came to this country shortly after the end of World War II and have rendered such outstanding service since that time. One thing that disturbs me greatly in the present reduced space program is the breaking up of that team and the loss of many of those who have been outstanding leaders in this work.

On August 21 the Birmingham News published an article entitled "Top scientists left stunned, confused by space cutback". Two days later another article, entitled "At Huntsville emotions run high at NASA cutback," appeared in the Birmingham News.

I feel that this problem is dealt with understandingly in these two articles. 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:

TOP SCIENTISTS LEFT STUNNED, CONFUSED BY SPACE CUTBACK

HUNTSVILLE.—The old "Operation Paperclip" team soon will be gone.

The team of top German scientists, headed by Dr. Wernher Von Braun, rose to international fame as the backbone of the U.S. space program.

The some 130 "team" members were brought to the United States in 1945 to direct the program that would eventually see the U.S. win a space race to the moon.

After 25 years, federal belt-tightening on the space program is breaking up the team.

VON BRAUN already has been shifted to Washington as a top executive in the National Aeronautics and Space Administration.

Now his colleagues at NASA's Marshall Space Flight Center in Huntsville are coming under the economy axe. Seven are expected to lose their jobs by Oct. 1, four others have retired before being forced out, and several others have applied for retirement.

At least two others are to be downgraded to lesser positions.

The cutbacks in federal spending come almost exactly 25 years after the team of German scientists entered U.S. Service as a part of "Operation Paperclip."

THAT NAME emerged late in the war. The Pentagon had obtained the names of key German scientists it wanted to bring to this country if they could be found after V-E Day.

The Pentagon files on these men were singled out by paperclips.

The name on one of those paperclipped files was "Wernher Von Braun." At the time he was selected to head the team of scientists, he and a hand-picked team were developing the V-2 rocket.

When Germany surrendered, the United States moved Von Braun and almost his entire team to this country, where they continued their research.

Von Braun directed high-altitude firing of

captured V–2 rockets at White Sands Missile Range in New Mexico, and later became project director of a guided missile development unit in Texas which employed about 120 of his former colleagues.

In 1950, the whole team moved to Huntsville. Early 1970 saw about 50 of the team members still at the Alabama space center. Of the others, eight were at other space agency installations, 21 were in private industry in the United States, 16 had returned to Europe, 14 had retired and 11 were dead.

Now, the remainder of the team probably will either leave or fall victim to the spending cutback.

The seven being forced out are stunned, confused and exasperated. So are the others, who can see more cutbacks coming.

The men had believed the government would protect them in their jobs, no matter how serious manpower cutbacks might become. All but one had accepted the U.S. offer of "excepted positions"—that is, outside civil service—before they became U.S. citizens.

The government is trying to soften the let-down for those men, who are reluctant to leave the only business they know. The only way the German specialists could leave now with full benefits would be if the space agency abolished their jobs—which is exactly what has happened. "Paperclip" team members will get full benefits on the way out.

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AT HUNTSVILLE EMOTIONS RUN HIGH AT NASA CUTBACK

(By Pat Houtz)

HUNTSVILLE.—Although only 121 of the almost 6,000 workers at Marshall Space Flight Center have been notified that they will lose their jobs, emotions over the cutback have run high as many of those given walking papers are highly placed workers, with long years of service.

There are seven to be retired that were part of the original Werner von Braun "Operation Paperclip" team, a group of German scientists brought to this country to get a U.S. space program off the ground 25 years ago.

Six of the seven, however, held alien-accepted positions—that is they have long been offered a chance to become a part of the United States Civil Service and have chosen not to.

As a result, they were eligible in the RIF (reduction in force).

Since six of the seven Germans slated to lose their jobs are in the alien-position, they are not allowed to transfer to another career civil service job since they do not have veterans' preference.

"The only way I could stay would be if they would give me credit for my time in the German air force," one of the retirees quipped last week. The humor, however, failed to produce any smiles among the American coworkers.

Officials said the men will receive special consideration for full retirement benefits because their jobs are being abolished.

The seven represent more than 200 years of time in space technology, going all the way back to when they worked on the V–2 rockets at Peenemünde, Germany during World War II.

Four of the original Von Braun team, which numbered 130, have recently retired voluntarily. Most of the Germans are not young men as they were top scientists when they arrived in this country 25 years ago.

In June of this year 48 of the original team were still employed at Marshall.

Their leader, Dr. Von Braun, has been transferred to Washington in a top planning position for NASA.

According to top public information officials at Marshall, no further cutbacks in personnel have been announced or hinted at for the near future.

The officials refused to publicly disclose the names of the German space pioneers whose jobs will be abolished.

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## THE CRISIS OF A POWER SHORTAGE

Mr. MUSKIE. Mr. President, in recent weeks the Subcommittee on Intergovernmental Relations has heard testimony on legislation concerned with the need for adequate, dependable electric power. The crisis of a power shortage in the New York area highlighted the problem very dramatically. Of equal significance, however, is the fact that the power problem was joined by a severe air pollution condition—one which held for several days. The combination of air pollution and electric power reduction now threatens to become a commonplace item in our lives. The question is whether we will establish appropriate national policies intended to recognize problems when they occur and to offer remedies, or whether we will continue to drift along and try to muddle our way through to their solution.

An editorial by the noted journalist Edward P. Morgan realistically raises points concerning air pollution and power facilities and the need for national planning effort to avoid this one and promote the other.

I ask unanimous consent that Mr. Morgan's comments be printed in the RECORD.

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

STATEMENT BY EDWARD P. MORGAN

This is Edward P. Morgan in Washington with the Shape of One Man's Opinion. A look at a four-letter word after this word. (60)

For generations, one of the most obscene terms in the American lexicon has been a four-letter word spelled p-l-a-n, plan. If cleanliness was next to godliness, planning was a sin, the very thought of which produced goose-bumps on the rugged physiognomy of American private enterprise because it raised the spectre of creeping socialism.

It is hard to think of an area in which this bogey was raised more threateningly than in the field of electrical power. In the New Deal days, private utilities had periodic seizures of apoplexy over the creation of the rural electrification administration, bringing light and power to farmers, extension of service to whom was not considered "profitable" enough to private firms.

The power lobby fought tooth and nail the conception and construction of TVA, Hoover, Grand Coulee, Bonneville and other giant multipurpose dams. Even today, private utilities still propagandize against public power and co-op systems, writing off such advertising costs as "business expense," thus enjoying tax deductions—all of which is another way of saying that rate payers and taxpayers helped finance the power companies' propaganda campaign against their "public" competitors.

Furthermore, private utilities have systematically bucked the application of a national power policy and a system of regional grids whereby power could be pooled and routed, in emergencies, to regions suffering shortages caused by overloads or technical difficulties. True, consumer demand for power has increased staggeringly and paradoxically companies have been seriously stymied by public opposition to their projection of nuclear power plants and other expansions. But here again wise advance planning could have done much to clear such obstacles.

Now, to nobody's surprise, a day of reckoning has arrived, New York City is struggling with a brownout and facing a repeat of the northeast's massive power blackout of a few years ago. Ironically, New York's Consolidated Edison has kept its juice flowing by purchasing extra power from as far away as Canada and, of all subversive instrumentalities, the Tennessee Valley Authority.

Nature has compounded the emergency with an eye-burning smog in wilting weather. But is nature the real villain? Who planned the traffic jam exhausts and other contributors to the smog by pollution belching from industrial chimneys—even those of Con. Edison itself?

I'll be back with a footnote. First this.

The weather readily conspires with urban non-planners to make city life miserable elsewhere. Washington is on the edge of an air pollution alert. This town's principal product is politics, which produces its own pollution but a more palpable kind emerges from garbage dumps, traffic jams and uncoordinated suburban growth.

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## WOMEN HAVE WON THE RIGHT ON MERIT TO FULL PARTNERSHIP WITH MEN

Mr. RANDOLPH. Mr. President, in 1854, three women were employed as copyists by the U.S. Patent Office. In the following year, when they were about to be dismissed, a Representative wrote to the Secretary of the Interior on behalf of one of them.

The Secretary reportedly replied:

There is every disposition on my part to do anything for the lady in question except to retain her, or any of the other females who work in the rooms of the Patent Office. I have no objections to the employment of females in the performance of such duties as they are competent to discharge, but there is such obvious impropriety in the mixing of the sexes within the walls of a public office that I have determined to arrest the practice.

Let me add, as a historical footnote, that the "lady in question" was Clara Barton, who a few years later went to work on the Civil War battlefields and, as founder of the American Red Cross, became one of the most illustrious women in American history.

Today, August 26, marks the 50th anniversary of women's suffrage, a true legislative landmark that has had an incalculable impact on the course of our Nation.

On this date in 1920 the Secretary of State certified that the 19th amendment had become a part of the Constitution. West Virginia ratified the amendment on March 10, 1920.

The enfranchisement of women to participate in the political life of our country was only the first major step in escalating the so-called battle of the sexes. Today, women seeking equal opportunity hold honored positions in all levels of business and government. Employment officers are abandoning the shopworn phrase, "Can you type?" and are asking, "Can you think?"

Ever mindful of the fact that there are 3 million more women voters than there are men voters, I pay due homage to the American women. She has come a long way from the days when nursing and teaching were considered the only proper occupations.

Working conditions for women in years past left much to be desired. Back in the 1880's, there was published a listing of duties for nurses which seems both laughable and tragic today.

Nurses were told that they must:

First. Bring in a scuttle of coal each day.

Second. Report every day at 7 a.m. and leave at 8 p.m., except on the Sabbath "on which day you will be off from 12 until 2 p.m."

Third. Graduate nurses in good standing will be given an evening off each week for church services.

Fourth. Any nurse who smokes, uses liquor, goes to the beauty shop, or frequents dance halls will give the director a good reason to suspect her worth, her intentions, and integrity.

Fifth. The nurse who performs faithfully and without fault for 5 years will be given an increase of 5 cents a day, providing there are no hospital debts outstanding.

At that time, women comprised only 17 percent of all workers. Today, one in every three workers outside the home is a woman. Her achievements and progress toward job equality and opportunity have been aided and abetted by understanding males.

Today, I fear, this progress is being retarded by a strange and strident voice that professes to speak for all women—everywhere. It parades under a banner of odd acronyms claiming "oppression" and screams for an ill-defined liberation. It calls for a strike when none is needed.

Even to suggest today that there might—just might—be a physiological difference between women and men draws waves of venomous wrath. The small band of bra-less bubbleheads who consider free and unlimited abortions an absolute "right" are not the valid voice for the American woman, any more than the fashion designers or makers of slimmer cigarettes and more kissable lipsticks.

Passage of the so-called equal sexual rights amendment is morally laudable, but it could create a jungle of jurisprudence that might result in such inanities as maternity leave for male employees. Women today must be encouraged to prepare for whatever jobs they are interested in and aspire to do. No field is closed to the capable and well-trained woman. Those who want to play professional football or dig ditches may do so; it is not a matter of competition with men but rather permitting each person to make fullest use of his or her talents.

## FRANK BORMAN'S TRIP TO INDIA IN BEHALF OF PRISONERS

Mr. DOMINICK. Mr. President, there are news reports this morning that Frank Borman, the astronaut-turned-diplomat, has arrived in New Delhi, India, in his round-the-world efforts to help American prisoners held by the North Vietnamese. As President Nixon's personal envoy on this mission, he has contacted world leaders to urge their help in putting pressure on the Communists to treat American prisoners in a more humane, more decent manner.

In India he has a great opportunity. Prime Minister Indira Gandhi is a woman with great compassion and great understanding. She has demonstrated her feeling for the personal problems of humans in trouble, both in her homeland and abroad. It can be hoped that the President's emissary can convince Mrs. Gandhi of the need for her intervention in this grave matter.

I feel strongly that only worldwide public opinion pressure can force the Communists to change their tactics and reverse the stand they have taken that is so detrimental to our men. Mr. Borman has been assigned the task of helping to muster that world opinion, and is doing it well.

But we cannot depend on others alone to do the job. We must continue our own efforts at every possible diplomatic and personal contact level to bring the Communists to a more realistic and a more tractable position.

## ADDRESS BY DOUGLAS R. SMITH, CHAIRMAN, NATIONAL SAVINGS & TRUST CO.

Mr. BYRD of Virginia. Mr. President, at the annual meeting of the Army Mutual Aid Association, Douglas R. Smith, chairman of the board and president of the National Savings & Trust Co. of Washington, D.C., delivered an enlightening and wide-ranging address.

Mr. Smith talked not only about economic matters, but also about many other problems that face our country at home and abroad.

I feel that Mr. Smith's remarks should be brought to the attention of Senators. I, therefore, ask unanimous consent that the text of his speech be printed in the RECORD.

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

ADDRESS BY MR. DOUGLAS R. SMITH

I have been told that one of the most graceful compliments that you can ever receive is to be asked to share your thinking on a return engagement and I can tell you with all sincerity that I could never have been more pleased than to have Kirk Martin invite me to again participate in the annual meeting of the Army Mutual Aid Association. The relationship between our two organizations is one of such importance to us that I could never properly exaggerate it, one that has been in existence since 1892, and I would hazard a guess that our bank has very few relationships that have preceded our treasured association with you. I can only pray that it will continue to flourish for ever and ever. Kirk was not only so generous in inviting me to be with you today, but he was kind enough to not lay down the guidelines of what I should say. I am sure as a banker you expect me to have some very wise advice and sophisticated knowledge of current economic conditions, and I will hasten to tell you that I have as mixed emotions about the world today as anybody.

It is awfully difficult to try to explain or assess the variety of elements that exist. We have had a government in office for 15 months, a government that is committed to cool the inflationary trends that have such a sinister effect on every segment of our economy. We have seen the implementation of tight money policies, high interest rates, some form of, I guess you would say, rationing of credit, an increase in unemployment rate, a declining stock-market, and yet the inflationary trends have been very nearly disaffected.

We were pleased with what was believed to be a proposed balanced budget, but the temperament of the Congress and appropriations since indicated that this is a faint hope only, if even that. We find from the heavy industry areas concern over reduction in sales, the impact of strikes and a hope for easier money to accelerate the economy. We in Washington, I think, are in a unique situation. We are so limited in the effect of general national economic conditions because of the very large, virtually one-industry community—the stable government payroll that generates the wide variety of service industry to our Federal City—so that we are not as sensitive to the impact of broad economic conditions as are other areas. Also, we find ourselves in the fortunate position of being able to visit with some frequency with high ranking government officials, but perhaps I wonder if sometimes we find ourselves believing to be fact what in reality are the hopes of these policy makers.

As I am sure you are aware, the prime rate has just been reduced from 8½ to 8% which should be an indication that there will be some loosening of money, yet so far I have seen very little signs of return to the banking structure of the deposits that have flown into other areas through disintermediation with the net result that with the reductions in rates there is not any strong indication that there are any substantial new funds available for creative loans. There is an urgent need for triggering some action to generate adequate funds for the home building segment of our economy, and yet as of now there are virtually no signs of this coming about. Certainly, after our major government industry, the second most important to us here in Metropolitan Washington is the building industry, and all of us, I am sure, would like to see a stimulation in this field to not only generate a more vital economy but to see some real forward strides made in meeting the desperate housing needs.

And we, certainly here in the Federal City proper, can feel only distress over the inertia displayed in bringing about a renaissance to our inner city which, I think, should have a priority over many projects being undertaken elsewhere. If we do not have a healthy, thriving Capital there is very little room for optimism that the revitalization of inner cities throughout the country will take place. Indeed I think that Washington, D.C., the Capital of the world, should be a showcase community in every way, shape and form. I urge you as concerned Americans to give a sense of leadership so that every single citizen of our country will feel a real proprietary interest in demanding that their town be what it should be.

Perhaps I should be like Mrs. Mitchell and engage a public relations counselor to guide me in more gracefully expressing myself, but strange as it may seem, as a banker I think our economic concerns should be secondary today. I think the avalanche of destructive elements that have taken possession of our country should receive our concern and action before anything else, that if we can get our country back on the right track I think the economic problems will solve themselves.

I would assume you all would know that I am a conservative, that I deeply believe in and love the fundamental strengths that have made our country what it is, and that I am so disheartened by the variety of forces that are unceasingly working to downgrade or eradicate all of these fundamental truths to such a degree that our country finds itself today in the position it is. I am assuming, too, that in the main we think in common on many subjects, and I am taking the liberty of addressing you on that basis.

The Army Mutual Aid so far, far ahead

of its time evolved a program of taking care of its own through concert action of providing the foundation for security and emergency needs to bring peace of mind for so many tens of thousands of people. This is one of the great evidences to me of what I call the strengths of our country, and you all should be so proud of the glorious history of service that you have given, but I wonder every day how many organizations and individuals are completely dedicated to the very destruction of the Army Mutual Aid. I get so disheartened with the constant attacks on the Viet Nam War and wonder what really are the political motivations of many of the people who give their leadership to condemnation of our country. An "unpopular war" it is called, yet I am dumb enough to think there really never was anything such as a popular war. I can assure you World War II wasn't very popular with me when I left my wife and children to go to the South Pacific, but the only thing I would have hated more than going was not going, and I think the insidious propaganda that has given respectability to draft dodgers and flag burners denotes a tragedy beyond words. I think the exaggerated extension and distortion of civil rights philosophy that is permitted to dominate our country is beyond defense: to find virtually every college campus controlled by destructive radicals, to see wanton destruction and vandalism permitted, filth and obscenity not only permitted but encouraged, the contempt for our judicial system—these are all so serious that they defy exaggeration. Certainly indeed we know in Washington that the deterioration of our courts, the complete lack of respect for police and all forms of authority, have brought our City to such a low that it is heartbreaking. Convention, good manners, respect and consideration for others, patriotism, plain boy scout decency have all become descriptions of contempt. I can honestly say I believe I am not a reactionary. I have never in any way approved or identified with any of the extreme right wing elements because they too can be just as destructive. But I believe that unless these virtues are brought back into the mainstream of our country we are going to end up in a disaster that will make other governmental collapses pale in comparison.

I am an absolute integrationist from my heart and I believe so strongly in equality and justice for all, but we are on a one-way street that provides equality and justice for every radical in every area yet denies justice and safety to the decent real American. We have heard and read so much about the silent majority, and I think the day has come that we can no longer be the silent majority. Most assuredly I don't believe in counter-demonstration and riots, but I believe in actively participating in every program, in every organization, every election that will work toward bringing sanity and serenity to our beloved country. I think that forceful expression at the ballot box and constant communication to all levels of elected officials will bring a pressure that can prayerfully correct so many of these desperate conditions that exist; that we should demand that the American way be brought back into the proper perspective, that the conjured up blasphemies such as Anti-God, "The Establishment", the military-industry complex and so forth be completely discredited. I believe that each of us who feels as I do should become truly dedicated missionaries in really spending our energy toward overcoming the false power of influence that has come to dominate our country:

Devotion to our country, respectability, decency, honest law and order and real justice, at least a fairly objective press, must be again made to the elements we look up to. And I can assure you gentlemen unless we place these objectives as our primary ones we will never get our economic structure into one of stability, soundness and security.

I long for the future of the Army Mutual Aid to be as bright, compassionate and as constructive as it has been in the past. I have every ambition for the National Savings and Trust Company to prosper and advance as a public service organization that continues to stand for what it has stood for for 103 years, but I most earnestly believe that unless all of us who share similar hopes and beliefs join hands and give the leadership and the vitality to the very truths in which we believe, we all are living in a house of cards.

## MARK TRICE

Mr. AIKEN. Mr. President, I want to join my colleagues in paying tribute to Mark Trice as testimony to his 50 years of service in the Senate.

It takes only one look at Mark to convince me that there were no child labor laws in effect at the time he began this service; but regardless of whether his first employment would have constituted a violation of present day child labor laws, we are all appreciative of the fact that we have had the benefit of his acumen and energy for 50 years.

Certainly during the time that I have been a Member of this body, Mark has been always on the job and is a reliable source of information of what is going on in the Senate from day to day and hour to hour.

And while we are congratulating ourselves, let us also congratulate Margaret Trice for the many years during which she has had the benefit of Mark's advice—and vice versa.

I close this statement by simply saying, "Thank you, Mark."

## THE WOMEN'S EQUAL RIGHTS AMENDMENT

Mr. NELSON. Mr. President, today citizens of the United States observe the 50th anniversary of the 19th amendment to the Constitution, which granted women the right to vote. Activities are planned throughout the country to mark this historic occasion and to call attention to the fact that in these subsequent 50 years, women as a group have made very slow and uncertain progress toward the goals of equal rights under the law, equal opportunity in employment and education, and equal dignity and status as human beings. Women, as many other groups in society, are becoming highly aware of this situation, and are demanding long-overdue measures to correct the inequities.

Women today find themselves in a changed role, which technology and an ever-opening society have made possible for them, but not allowed them to fulfill. Society now allows a woman to take up a career, and encourages her to chart her own destiny to a certain extent. But at every step it places before her almost insurmountable barriers to real achievement. While she is expected to educate herself, at least to a certain level, and support herself for a certain period of time, as well as contribute to the support of her family, she is invariably placed in a subordinate position in the working world and must accept lower paying jobs, and positions of limited challenge with little chance for advancement into decisionmaking and executive capacities.

Realistically, it is impossible, and it always has been impossible, for all women to live a sheltered life, serving her family by the hearthside. This is not a satisfying life for many women—nor should it be. The idea of the weaker female being totally dependent upon the male is not only outmoded, but also self-defeating for society. It is a blight upon many more lives than it brings contentment to.

Liberation for women does not mean the usurping of one person's place by another, any more than civil rights means that the black man usurps the place of the white man. It simply means giving everyone, men and women alike, the chance to find and to live the life they find personally fulfilling. In the long run, the winner will be society.

One major step we can take toward correcting the present inequities which women encounter, is to swiftly pass the women's equal rights amendment. Theoretically, such an amendment should not be necessary, as equal rights under the law are the birthright of every American citizen. However, experience has shown that this measure is indeed necessary, and I urge its early passage by the Senate.

## SOVIET UNION INVASION OF CZECHOSLOVAKIA

Mr. HANSEN. Mr. President, it was 2 years ago, on August 21, that the forces of the Soviet Union invaded Czechoslovakia. This year it has been a very dismal summer in Prague, with the Czechs pretending that the Warsaw Pact invasion never happened and the Soviet viceroys making sure it was a success. Caught between these opposing forces, the Czechslovak leadership is promoting the Soviet-sponsored "normalization" program through the "political purification" of dissidents. One popular anecdote expresses the party's attitude toward occupation:

Question: What is the most neutral country in the world?

Answer: Czechoslovakia. She doesn't even intervene in her own internal affairs.

A reluctant resignation to the realities of power politics is the prevalent mood in Prague after 2 years of occupation. Outrage, fear, anger, disillusionment, all the outward signs of protest that filled Prague when Soviet tanks entered the city in August 1968 have been spent. These emotions have been frustrated so often that it would be masochism to continue to express them. Such are the political facts of life in Prague.

The Soviet Union provides the primary incentive for normalization. Its occupation forces, estimated at 70,000 to 75,000 troops, are discreetly garrisoned in villages and forests outside the major cities and along the Czechoslovak-West German frontier. Construction of officers' quarters and schools to accommodate the families of Soviet brass indicate that the

troops intend to stay indefinitely. The Russian diplomatic staff monitors political trends and public opinion from its conspicuous yellow-walled villa in Prague. The recent visit of Brezhnev and Kosygin worked to the mutual advantage of the Soviet and Czechoslovak leadership. The Russians got their new friendship treaty with Czechoslovakia. Party Secretary Gustav Husak got this visible Soviet acknowledgment of their confidence in him. The citizens of Prague greeted Brezhnev and Kosygin in silence as their black Chaika limousines and security cars drove through the city. But the Soviet leaders are hardly concerned about their popularity index in Czechoslovakia. For the country is subdued. The party is again "in control." Czechoslovakia is again a loyal member of the Warsaw Pact. Its economy is reoriented toward the Soviet Union. These, after all, were the objectives of the invasion. Not the gratitude of the people. To the Soviets, it is sufficient that the Czechs are quiet.

A number of secondary motives prompt them to take safe refuge in silence. After the dismantling of the former liberal coalitions, the active reformists do not have organizations to support dissent. Now that their articles have been labeled "revisionistic," Czech journalists, who once encouraged reform, are resigned to their eventual expulsion from the Party without an interview. Few liberals who retain tenuous party posts wield effective power. Because the major vehicles of public opinion have been subverted by the post-invasion leadership, critical comment no longer has a forum. Theater performances are now being censored for improper audience reaction. Even the old Dubcek signs have been painted over.

After a recent trip to Prague, Journalist K. C. Cole expressed the current effort to erase the invasion this way:

> Two years ago, when the Russians first came to Czechoslovakia, a young girl named Maria was shot down while crossing the street by a panicky Russian soldier. A small plaque was mounted on a cement wall to commemorate her death. Recently, the plaque was removed and tall flowers were planted to hide the bare spot on the wall. The girl never died. The invasion never happened.

Mr. President, free people everywhere must remember the people of Czechoslovakia and the small nation that was forced to bow to the military might of its colossal neighbor. These events did happen, and we must all work for the day when the people of the world can live in peace and freedom.

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## THE ATOM: ITS DANGEROUS AFTERMATH—PART VI: ATOMIC POWER AND ATOMIC SAFETY

Mr. CHURCH. Mr. President, on April 16 of this year, in a keynote address opening Earth Week activities at the University of Pennsylvania, a noted nuclear scientist, Dr. Ralph E. Lapp, delivered an address which places in remarkably clear perspective the power needs of our Nation in the future and alternatives we face as a nation in providing for those needs. Dr. Lapp points out that we must begin to think in terms of the needs of future generations and not simply in terms of the next 5 to 10 years:

> Like the Dutch who make half-century plans for reclaiming land from the sea, we need to plan for our thermal future now.

In his remarks, Dr. Lapp points out four dangers that we face regarding the use of nuclear power and suggests how they may be overcome. Any accident hazard, he points out, may be overcome by long-range plans as to the central siting of reactors away from large centers of population. Thermal pollution, caused by the release of heated water used to cool the reactor to the environment, must also be dealt with in considering the long-range development of nuclear power. Effluent discharges from nuclear plants must also be carefully followed and monitored, and Dr. Lapp suggests the possibility of monitoring from sources other than the AEC as a check upon the consolidated power of one agency in this field.

In regard to this subject, I was pleased to read recently that Westinghouse Electric has announced the development of a nuclear power facility which "eliminates any discharge of radioactivity to the environment during normal operating conditions." If the claims made by Westinghouse are true, this certainly is welcome news that bodes well for future development of nuclear power facilities.

Dr. Lapp also points out that our Nation has never developed a long-range program for "burying the atom's ashes." This is a matter which I have repeatedly stressed in past speeches on this subject in the Senate. I feel that greatly intensified research programs in this area are essential. In my own State of Idaho, the National Reactor Testing Station would be an ideal site to conduct such studies and experiments. I suggest the NRTS because I am familiar with its facilities in Idaho and the expertise available there to undertake such a program. I do not suggest that this is the only site which could be utilized, for obviously this is a field of inquiry which will take the combined efforts of many laboratories and experimental stations throughout the country.

Dr. Lapp discusses a number of possibilities, including the development of the elusive fusion reactor, to provide for our future power needs. Because his remarks bear so directly on this whole area and because they place the problems of environmental pollution and power production in such clear focus, I ask unanimous consent that his speech be printed in the RECORD.

I also ask unanimous consent that a press release I received from Westinghouse Electric Corp. asserting their claim of having perfected a nuclear plant which eliminates radioactive discharge appear following Dr. Lapp's remarks.

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

### POLLUTION, POWER AND POLICY

(Keynote address by Dr. Ralph E. Lapp)

The key words in dealing with environmental problems for the rest of the century and for centuries to come must be "control and planning."

In the last third of the 20th century we are going to have to pay for the lack of control and lack of planning in the first two-thirds. I shall focus on the problems of pollution by concentrating on man's lust for power. From an effluent viewpoint, we may symbolize this as the smokestack and the tailpipe. Others in this series of discussions will talk about the non-power aspects of pollution.

A good way to put pollution in perspective is to survey the century in terms of fuel consumption. In the dim gas-lighted days of 1900 our energy needs were met almost exclusively (92%) by burning coal. But coal is difficult to dig out of the ground and its transportation is costly. Now that its use is being restricted to low sulfur types, it does not appear as the fuel of the future, although it is still highly valued for generating central station electrical power. Over the span of a century—as I have plotted it on a semi-logarithmic scale—the use of coal is almost a flat line.

The United States currently mines about half a billion tons of coal per year and roughly half of this is used to produce electricity. Coal remained the dominant source of energy in U.S.A. until mid-century when it was displaced by petroleum. The automobile, of course, accounts for the spectacular rise of petroleum consumption after the turn of the century. I have plotted the growth in gasoline sales as well as that of automotive horsepower from 1905 to 1970. If we keep burning gasoline at comparable levels, then by 1980, we will consume 100 billion gallons per year—that's well over 1,000 gallons per U.S. family per year.

Looking back along the growth curve of gasoline consumption, it must seem that we were incredibly short-sighted not to have anticipated our present pollution problems emanating from the tailpipe. Surely some medium-bright individual in the thirties must have wondered about the cleansing capacity of the atmosphere. And then was the time that long range highway planning and traffic controls could have been started at very reasonable costs. Today we are on the verge of a great expansion in jet travel. Consumption of jet fuel is rocketing upwards and now is the time to think through jet pollution before we end up paying excessive costs for remedies. As a general rule, every government agency concerned with resource alteration ought to be required to make exhaustive studies of possible adverse effects of an emerging technology before the nation is plunged into its exploitation.

The use of natural gas in the United States follows the growth curve for petroleum and could, were it not for limited reserves, overtake it as the prime fuel of the year 2,000. At the present time the U.S. energy consumption has the following percentage origin:

| | *Percent* |
|---|---|
| Petroleum | 43 |
| Natural gas | 30 |
| Coal | 23 |
| Hydropower | 3 |
| Nuclear power | 1 |

The total energy, measured in British Thermal Units or Btu, for 1970 amounts to about 64 million billion Btu or $6.4 \times 10^{16}$ Btu. By the end of the century it is expected that this will double. All in all, from one end of the century to the other, the total energy consumption of all fuels will increase 16-fold. If we regard the population of the U.S.A. as quadrupling in this century that means the

per capita energy consumption will go up four-fold.

Such an energy increase is considerable but it does not signal calamity merely on the basis of statistics. It is in the specific use of this energy and in its localization that we must look for our pollution woes. Currently, the split-up among energy sources for the generation of electrical power is:

| | Percent |
|---|---|
| Coal | 53 |
| Natural gas | 18 |
| Hydropower | 16 |
| Petroleum | 6 |
| Nuclear power | 5 |

The U.S. appetite for electrical kilowatts is prodigious. From 1900 to the year 2000 the U.S. kilowatt-hours will probably jump 2,000-fold. This means a doubling of electrical power every 9 years over the course of the century. If we assume four times as many people at the end of the century as at the beginning we have a 500-fold per capita increase in electricity in 100 years.

We can illustrate the incandescent America of the year 2000 by projecting a 9,000 billion kilowatt-hour consumption of electricity. This would be roughly 100,000 kw-hr of electricity per family per year. On the basis that 2/3 lb of coal will be burned to produce 1 kw-hr of electrical power, we find that each family will demand the combustion of 33 tons of coal per year just to supply electrical power. That figures out to be almost 3 billion tons of coal!

Obviously, we can't use this much coal to produce electricity, especially if we demand low-sulfur coal. Yet if we examine the fuel requirements for the year 2000 we face a most complex and perplexing problem. What is to be the make-up of the energy sources we tap to produce electrical power then? Looking back to our 1970 energy source break-down, we can systematically examine each energy source and estimate how each may contribute to power production. We need to consider not just the pollution factors, but also fuel reserves and what I call the RDUs—the research and development unknowns. For example, one RDU is that of converting coal to gas. Another is the power-breeder that will allow nuclear powerplants to tap more fully the energy of uranium. Still another is the feasibility of light element power i.e. nuclear fusion.

Up to now man has supplied his thermal and power needs largely by chemical means—by the oxidation of fossil fuels. The U.S. has imense reserves of coal but its sulfur content and availability and transportability make it necessary to taper off our dependence of solid coal as a combustible in powerplants.

Natural gas reserves today are estimated as 300 trillion cubic fet. This could conceivably double by the year 2000 but again an RDU makes estimation uncertain. Much natural gas is locked into gas-bearing formations that could be released by nuclear explosives. However, the radioactive content of such gas poses very real dilemmas for the U.S.

What level of radioactivity in pipeline gas should be permissible? The problem is easy to dismiss by answering "no radioactivity" but our energy demands, especially for gas, may force some compromise. For example, if one takes the historic growth pattern for natural gas and represents it as a straight line on a semi-logarithmic chart, the 1900 value of 128 billion cubic feet soars to 20,000 billion cu. ft. by 1970—a 150-fold increase. If continued at this rate we will run through our gas reserves well before the year 2000. Even if we moderate our demand for natural gas, merely doubling our consumption by the turn of the century, we will have exceeded the reserve supply.

One thing seems very clear when the 20th century is laid out on a logarithmic scale—not everything can be consumed at the pace set by the past. The curves have to bend over. This is easy to say but such curve-bending has the most profound implications for our society. Almost all projections are keyed to a rising Gross National Product. Looking back the only significant dip in the energy curve occurred during the 1930s when the Great Depression abated man's lust for power.

It is very difficult to believe that any reasonable year 2000 energy projection can be met by consuming fossil fuels, however they may be made available through solid-to-gas conversion or by new means of exploitation. Significantly the energy prospects are altered when we crank the atom into our calculations.

The uranium atom was first split in December 1938. The chain reacting nuclear assembly was first initiated four years later. In 1945 it was claimed that atomic energy was just around the corner and prophets predicted that electricity would be produced so cheaply you would not bother to measure its cost. However, the engineering realities of converting the atom's energy through thermal processes into electricity have delayed the debut of the economic atom. Nonetheless, the prospects are such that it is reasonable to assume that by the year 2000 some 45% of electrical power will be atom-produced. If so, we can then make a split-up as follows:

[In percent]

| | |
|---|---|
| Nuclear power | 45 |
| Fossil-fueled power | 48 |
| Hydropower | 7 |

It would appear that nuclear power has come along just in time to rescue man from an energy deficit. However, some critics feel that uranium power is more an anchor than a life saver.

We have already mentioned the biggest unknown in the uranium atom's future, namely whether or not a power reactor can be made to produce economic power and breed more nuclear fuel than it consumes. If breeding doesn't work—and this remains to be proved in practice—then nuclear power will exhaust cheap uranium ore in less than two decades. Resort to more costly uranium ores will drive up the power costs and cause utilities to place greater reliance on fossil-fueled plants.

From a hazards viewpoint, atomic plants involve four district categories of dangers.

First, there is the catastrophic hazard, more technically known as a "nuclear excursion" or a "core melt-down". Reactor designers take many precautions to obviate such nuclear disasters. In the event of such an accident, designers believe that the resulting release of radioactive debris can be contained by the plant structure. I believe that a prudent policy of reactor siting requires that no nuclear power plants be located close to metropolitan populations. Additionally, I believe that prudence dictates restricting the population allowed to reside near nuclear power installations.

Second, we have the problem—not unique to nuclear plants but present to a higher degree in them—of thermal pollution. In a nuclear plant, the uranium core substitutes for the fuel box of a coal-fired steam boiler. The difference is that nuclear plants do not release oxidation products up a stack (a means of heat dissipation but also a severe source of pollution) and they are less efficient on a heat conversion basis. Thus a nuclear plant may generate 40 or more percent more heat than a conventional plant. This heat has to be dissipated and it is often done by simply passing cooling water from a river or lake around the coils of a heat exchanger.

The discharge water is heated up and can thermally alter the river or other body of water into which it flows or is pumped. Such heat inputs into a marine environment may significantly alter it. Even though the objections of local critics may be marginal in technical validity so far as present power installations are concerned, there is little doubt that the swift escalation of nuclear power requires that careful consideration be given to future reactor sitings. Here forward planning on a long range scale becomes an absolute necessity.

Looking at the energy curves for the 20th century it is clear that the upward growth of the kilowatt curves aims them at intersecting the total energy curve sometime around the year 2030. This would mean an all-electric economy in sixty years. Then the energy consumption in the U.S., whether all-electric or not, would involve the generations of something like $3 \times 10^{17}$ Btu. A not unreasonable estimate, assuming a 50%-electric economy and 90% of this serviced by nuclear fuels, would be $10^{17}$ Btu of waste heat per annum. Much of this would be concentrated at a relatively few sites in U.S.A.

The year 2030 is not that far distant that we can dismiss its thermal tragedies lightly. Like the Dutch who make half-century plans for reclaiming land from the sea, we need to plan for our thermal future now. Proper planning calls for a very broad approach to the energy problem, viewing it in full perspective and taking into account fuel logistics and energy logistics. For example, it may become national policy to promote long-lines distribution of electrical power. The RDUs cloud this prospect right now but it should be possible to transport large amounts of electrical power over great distances and isolate the powerplants. Indeed, one can think of federal power reservations where population is excluded and only nuclear installations are allowed. Such reservations would be located in areas where thermal energy can be dissipated with minimum impact on the ecology. For example, huge nuclear plants may be sited on offshore islands.

Third, there is the matter of effluent discharges in routine operation of nuclear reactors and fuel reprocessing plants. Here the problem is one of being sure that effluents do not exceed wisely-set standards for radioactive pollutants. The U.S. Public Health Service needs to rid itself of its inferiority complex with regard to the Atomic Energy Commission. Self-regulating agencies like the A.E.C. readily succumb to the disease of arrogance and need to be "kept honest" by external forces. We have recently seen that a handful of concerned citizens can constitute a corrective force; I have in mind the word of a few scientists in Colorado; they brought the AEC into confrontation on a number of radiation hazards and very effectively used the antiseptic of criticism to make their points.

Fourth, we must face up to the challenge of burying the atom's ashes. Once nuclear fuel elements have been reprocessed, there remains a residue of long-lived fission products. Once the voluminous liquids have been reduced to some solid form, they need to be given permanent burial. As yet—a quarter century after the expedient of storing radioactive wastes in buried tanks—the Federal Government has not ennunciated a real policy on this waste disposal. It appears that solidified, probably vitrified, wastes will be consigned to salt mines, these being the tightest geologic formations available to man. But which States are to become the permanent sites for such atomic burials? Is the mode of storage truly adequate to confine the contamination for thousands of years? Are the sites capable of handling wastes when volumes swell to levels of the next century?

One thing should be evident from this discussion—we need to make national systems analyses of our energy problems. Our research and development activities should be patterned to these needs. Plunging ahead so rambunctionsly in one field, such as atomic energy, while neglecting research on fossil fuels has turned out to be a very short-sighted policy. Presumably, things might im-

prove if the Atomic Energy Commission were reoriented to be a National Energy Commission with a broader responsibility in research but not in regulation. Much research needs to be done on means of energy tranmission so that plants can be sited far from cities. In addition, a means of direct conversion of fission or fusion energy to electrical power should be a high priority item of our national energy agenda.

When we reach the end of this logarithmic century and look back on our exploits in energy conversion, we will probably reckon that our exploitation of fossil fuel reserves has been profligate. Pollution woes serve to draw attention to the problem. Over the span of one hundred years we will have burned up fossil fuels equivalent to 200 billion tons of coal!

If we continue as a nation to demand thermal energy as in the past, escalating for new population and new per capita demands, then in a quarter century after the year 2000 we can burn up the equivalent of another 200 billion tons of coal. Of course, we will probably resort to nuclear energy to supply these needs for power. However, unless we can power-breed in our reactors, we will run through available low-cost uraniferous ores and be forced to import our uranium and pay higher costs. Hopefully, we will by then have learned how to imitate the stars and burn light elements in fusion reactors. But this is a great RDU and no one can forecast fusion's future with any accuracy.

In conclusion, the nation needs to adopt a new attitude of respect and concern for energy, treating it as a unified and national problem with a century-wide depth of focus. Short-term and long-term pollution parameters must be incorporated into the nation's plans for energy systems. We have for many decades rapaciously looted a one-time only heritage of natural fuel and we must now substitute a wise policy for plunder and plan for the future.

I think that I would be remiss in my responsibilities as a scientist today if I did not mention the strategic arms limitation talks (SALT) now beginning in Vienna. We have been dealing with what I call "slow forms" of pollution—by products and wastes resulting from energy conversion and manufacturing processes. The supreme and acute pollutant of our times is nuclear war and it is therefore appropriate to discuss the criticality of the SALT discussions as they relate to control of the arms race.

The United States engages in the SALT talks as the world's No. 1 nuclear power but to judge from its behavior it appears to be a nervous nuclear giant. The U.S. has the power to hurl some 4,200 nuclear weapons at Soviet aim points and it is in the process of replacing land-based Minuteman ICBMs with a multiple warhead or MIRV system—and substituting 10 MIRV Poseidon warheads for every 3 Polaris A–3 MRVs. The U.S. strategic stockpile will double by 1974 and it could triple shortly thereafter. The arms race spirals upward. That is what SALT is all about—it is an attempt to cool off the arms madness and leave each side with a sense of nuclear sufficiency.

The U.S. nuclear giant is nervous about its vulnerability to a first strike, fearing that the mighty Soviet SS–9s could throw MIRVs at our 1,000 Minuteman silos and destroy the U.S. power to retaliate, thus unhinging the whole system of nuclear deterrence. Ten years ago I testified before a Congressional committee, urging that no land-based missiles be deployed. I argued that with the passage of time offensive missiles would become increasingly accurate and our land-based ICBMs would become vulnerable. Moreover, I testified that our ICBMs would attract enemy fire and the fallout from a Soviet attack on missile bases would cloak northeastern states in a mantle of lethal radioactivity. This would be the most acute and lethal form of atmospheric pollution imaginable.

We are now stuck with this "attractive hazard" in the form of 1,000 Minuteman bases. The U.S. Air Force has invested $17 billion in the total Minuteman program and now we are deploying the Safeguard ABM system to protect Minutemen. From an arms control viewpoint land-based missiles are an anathema, not only because they make each nation psychotic about a first-strike, but because their fire-power cannot be assayed except by on-site inspection. No orbital cameras can look under the silo cover and count warheads. Since the Soviet SS–9 has at least five times the throw-power of our Minuteman III, this asymmetry perturbs the whole arms control equation.

A risk-free agreement cannot be produced at the SALT talks. Some risks will have to be taken, but these should be acceptable risks when one realizes how much excessive capacity has been built into the sea-based and bomber strike forces of the U.S.A. The alternative is to plunge ahead into ever more costly weapons systems and into levels of armament which promise no more, probably less, security than we have now.

Half of the U.S. research and development budget presently goes to arms development. From a standpoint of resource conservation this $8 billion each year represents a low-yield investment of the nation's brainpower and funds. Given the prospect of a depleted fuel bin and mounting pollution, there is an urgent need to apply our scientific and technical talent to preserving the subtle balance of the air-land-water interface upon which all life depends.

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WESTINGHOUSE NUCLEAR PLANT ELIMINATES RADIOACTIVE DISCHARGE

PITTSBURGH, May 6.—A major advance in nuclear power plant design that eliminates any discharge of radioactivity to the environment during normal operating conditions has been developed by Westinghouse Electric Corporation.

Joseph C. Rengel, executive vice president, nuclear energy systems, said the new design is now being offered on new plants to electric utility companies.

"We feel strongly that existing federal radiation standards for nuclear plant discharge levels more than adequately protect the health and safety of the general public," he declared. "At the same time, from the beginning of the nuclear industry, we have sought methods for reducing radioactive releases from our nuclear plants to the lowest levels attainable through technological advances."

"The experience gained from operating and maintaining the nine plants we have already placed in operation, plus recent technological developments, now make it possible for Westinghouse to offer what is essentially a zero release plant under normal operating conditions." Mr. Rengel said.

He explained that the new system enables plant operators to concentrate and contain radioactivity within the reactor system itself for long periods of time.

"Radioactive gases will be contained within the system and either stored on-site or shipped off the site periodically. The quantity of gases involved yearly is an amount small enough to be shipped in five normal sized oxygen tanks such as those used by welders," Mr. Rengel said.

The new design completely eliminates the release of tritium (an isotope of hydrogen) from the plant during normal operations. Tritium, in the form of tritiated water, is confined within the system and need be processed for off-site disposal only once or twice during the approximate 40-year lifetime of a nuclear plant.

Mr. Rengel said that Commonwealth Edison Company of Chicago will install a comparable system for minimizing radioactive liquid discharge to Lake Michigan from two one million one hundred thousand-kilowatt nuclear plants now under construction at the Zion Station about 40 miles north of Chicago.

Existing nuclear power plants now discharge minute quantities of radioactive wastes into the air and cooling water. Release levels from all nuclear plants have rarely exceeded one percent of the maximum allowable limits established by the Federal Radiation Council to assure public safety.

The Westinghouse executive said the new radioactive waste system would add about $1 per kilowatt to the cost of a new nuclear power plant.

Mr. Rengel said the phrase "during normal operating conditions" refers to plant operation within design basis with no significant leakage of primary plant water. "Our plants have routinely operated well within these criteria," he added.

He said the only discharge of radioactive gases from the new plant design could occur when the containment structure is ventilated during once-a-year refueling operations.

"Such discharges would be barely detectable above natural background radiation levels," he added.

In addition to the nine plants Westinghouse has placed in operation since 1957, the company has orders for an additional 35 plants now under construction or in the design stage.

"We have felt for some time that the production of electricity with nuclear power was one of the best things that happened to the environment in decades," Mr. Rengel said. "This new development will make it even better."

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## SHORTAGE OF OIL IN NEW ENGLAND

Mr. MUSKIE. Mr. President, summer is drawing to a close, and the fall and winter seasons will soon be upon us.

The colder weather coming in New England requires the heating of homes, of institutions, of schools, and of businesses, and it will put new strains on the shortage of oil which exists at this time.

The burden of the shortage will be, as always, on the back of the consumer. The homeowner who has to heat his home, the small businessman who has to heat his store, the school district which must have warmth for the children, the hospital which must keep patients comfortable during the fall and winter months, will suffer.

The Concord Monitor, of Concord, N.H., published an excellent editorial in a recent issue which pointed up the critical nature of this fuel shortage in most pointed terms. I was glad to note this editorial's comments about the efforts of the distinguished Senator from New Hampshire (Mr. MCINTYRE) to do something about this shortage. All of those from New England are working hard to see that we have adequate fuel oil at a price which compares with that paid by the rest of the country.

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Concord Monitor, Aug. 3, 1970]

NEW ENGLAND'S OIL SHORTAGE WOES

New England is on the brink of a critical shortage of fuel oil. After a record-breaking

heat wave, the consequences of this short supply are not readily apparent. But if present conditions continue, it will spill over into winter.

The category currently causing consternation is number 6, or residual, fuel oil. It is used in large manufacturing plants, institutions and most importantly in power generating furnaces.

The oil shortage problem is four-fold:

(1) The demand for oil is nearly double the expected increase. Officials had planned a two and a half per cent increase; it is closer to five per cent.

(2) Restrictions on the sulfur content of oil have resulted in lower supplies of conforming fuel, since major refineries have not completed construction of sulfur-removing facilities.

(3) The war between the Arab nations and the Israelis in the Middle East has closed the Suez Canal and limited the supply from that major oil-producing area. In addition, the long trek around the southern tip of Africa has boosted the per barrel price of Middle East oil by 75 cents.

(4) An acute shortage of tankers, mostly of foreign ownership, touched off by the diversion to the demands of the Middle East fighting.

The then-chairman of the New Hampshire Public Utilities Commission said a month ago he had been assured by the Public Service Company of New Hampshire there was no prospect of a power shortage in the state for the next three years.

But Atty. Francis J. Riordan said this was "barring unexpected contingencies."

Since then, the critical nature of the supply problem has deepened.

A crisis has hit New York, where power supplies have been reduced a total of eight percent after a Consolidated Edison Co. generator failed. New England power has been diverted to New York to help take up the slack.

New Hampshire's Sen. Thomas J. McIntyre, a tiger on the backs of the major oil companies, called today for a phasing out of the oil import quota system, which clobbers New England, and replacing it with a tariff system.

The McIntyre proposal would implement the recommendations of President Nixon's Cabinet-level Task Force on Oil Imports, which the President has not yet put into force.

McIntyre charged that the oil import quota was costing U.S. consumers about $5 billion a year.

The oil shortage, which applies to home-heating fuel as well as residual, is making the market ripe for oil price increases. And because oil is so widely used in power-generating plants, this could lead, in turn, to increases in the consumer price of electricity.

Apparently Concord is in no immediate danger of a power shortage. Most electricity serving the city is generated by coal from the Bow plant of Public Service Co.

And while the U.S. Office of Emergency Preparedness says coal reserves are down a bit, the supply locally is considered adequate at least through the coming winter.

What is more ominous, however, is that coal is under increasing assault as a source of air pollution. With growing emphasis on environmental quality cleanup, legislative pressure may be applied to replace coal with sulfur-free (2 percent or less) oil for generating purposes.

This is not only would be a costly undertaking, it would require a temporary shutdown of the Bow facilities.

The oil supply problem—not only in New England, but worldwide—is under intense scrutiny by public as well as private sources.

How the major oil companies handle it will determine whether they are re-oriented to the interests of the public, or will capitalize on a growing crisis for private gain.

## NATIONAL TELEPHONE COOPERATIVE ASSOCIATION ENDORSES RURAL COMMUNITY DEVELOPMENT BANK

Mr. PEARSON. Mr. President, on March 19 of this year I introduced a bill (S. 3607) to create the Rural Community Development Bank. This Bank would make loans to job-creating industries locating in rural areas and would also make loans and provide technical assistance to public bodies for the purpose of developing community facilities needed to sustain an expansion in industrial activity.

I have been encouraged by the reception the bill has received. The most recent indication of support comes in the form of an endorsement of the bill by the National Telephone Cooperative Association. Mr. President, the 19 cosponsors of the bill and I welcome this endorsement.

I ask unanimous consent that the association's resolution be printed in the RECORD.

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

RURAL COMMUNITY DEVELOPMENT BANK BILL

Whereas, S. 3607, the Rural Community Development Bank Bill has been introduced into the United States Senate by Senator James Pearson, and

Whereas, this legislation would work to improve the resources of rural America, and

Whereas, this bill would establish a bank which would make loans to:

Job creating enterprises which would serve to expand and improve the community's economic base;

Public and quasi-public bodies for the development of industrial sites and for the expansion and improvement of those public services and facilities necessary to support a community's overall development effort;

Recreational and cultural facilities;

Developer of public housing where needed; and

Whereas, passage of this legislation would be in the best interest of telephone cooperatives, rural America and the nation as a whole,

Now therefore be it resolved, that the National Telephone Cooperative Association go on record as favoring passage of this legislation, and

Be it further resolved, that the staff of NTCA is hereby authorized and requested to expand such time as possible to work toward this end.

## TAXING THE WISDOM OF SOLOMON

Mr. CHURCH. Mr. President, the tax code is a literary abomination. It is a nightmare which even the tax experts puzzle over.

In an article entitled "The Sheer Hell of the Internal Revenue Code," published in the August 1970 issue of the American Bar Association Journal, Mr. Allen D. Choka examines in some detail his view of the code. He points out that for a retired person to take advantage of a $228.60—$457.20 for a couple—tax credit, the taxpayer must fill in—or consider—46 entries on schedule R of form 1040. Mr. Choka notes that some sentences in the code run as high as 506 words. Sentences of 150 to 200 words are commonplace. The language of the code is couched in painful legalese. Definitions refer to other definitions rather than substantive explanation. Mr. Choka concludes his article with a suggestion for rewriting one section of the code to make it understandable.

Mr. President, it adds insult to injury to require American taxpayers to be bookkeepers and then provide them with a set of rules too complex to follow. If experts shudder at the code, how must the average taxpayer feel?

I ask unanimous consent that Mr. Choka's excellent article be printed in the RECORD.

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

THE SHEER HELL OF THE INTERNAL REVENUE CODE

(By Allen D. Choka)

The June 11 *Wall Street Journal* quotes Wilbur D. Mills, Chairman of the House Ways and Means Committee, as describing the proposed "Deadwood Bill" as "an attempt to simplify the [Internal Revenue] Code by deleting the deadwood". The bill apparently would repeal some 150 obsolete sections of the code and make deletions in about 885 others.

Laudable as this effort may be, it falls far short of what the code desperately needs—a thorough overhauling. It is so complex, so involuted, so convoluted that even the experts are bewildered. Consider this:

*Item*: In the April 13, 1970, issue of *The Wall Street Journal* Edwin S. Cohen, Assistant Secretary of the Treasury, disclosed the results of a survey of tax returns on which annuities and pensions were reported. He stated that more than 6,000,000 people receive such payments. A study of the tax returns in which these were reported disclosed that 75 per cent were reported incorrectly. Two thirds of those incorrectly reporting overstated their tax.

*Item*: The retirement income credit permits older taxpayers a credit against their tax. This runs $228.60 for a single person and $457.20 for a couple. To get this credit the taxpayer must fill in (or consider) forty-six entries on Schedule R of Form 1040.

*Item*: Commenting on the Tax Reform Act of 1969, Mortimer Caplin, former head of the Internal Revenue Service, said in *Fortune* for March, 1970: "It is going to take us at least ten years to comprehend everything that is in this bill."

Just what kind of tax laws have we spawned that causes 75 per cent of the annuities to be reported wrong, requires forty-six entries to earn a $457.20 credit and is amended in such a way that ten years will be required to understand the amendment? Something more than rummaging about the code's deadwood is in order. I recommend an effort to: (1) simplify the code wherever possible, making even substantive changes if necessary; (2) eliminate the prissiness and paranoia that seems to run endemic through legislative draftsmen; and (3) rewrite the code completely in a style that is targeted toward understanding, not obfuscation.

Let me show you with examples—all from the 1969 act—what makes the code so difficult to understand, even for trained lawyers and accountants. Any number of examples could be chosen for this purpose; I doubt that the ones I cite are the worst.

*Sentence Length.* Almost twenty-five years ago Rudolf Flesch showed in his book, *The Art of Plain Talk*, that short sentences are understandable and long sentences are not. This assumed we hadn't learned this in grammar school. Any sentence of twenty-nine words or more was classified by Mr.

Flesch as "very difficult". Even presupposing that lawyers and accountants are superhuman in dealing with long sentences, it is conceivable that sentences that run 385 words, 397 words and 506 words can be handled by anyone? (Sections 6651(a), 170(b)(1)(A) and 7701(a)(19) respectively.) Almost at random in the code you find sentences running 150 to 200 words.

*Strangulated Conceptuality.* In an effort to bring tax justice to a precision that would appear to the rational mind as not only impossible but undesirable, we find ourselves confronted with such provisions as Section 1250(f)(2):

For purposes of paragraph (1), the amount taken into account for any element shall be the sum of—

(A) the amount (if any) determined by multiplying—

(i) the amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)(1) for the section 1250 property as the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by

(ii) the applicable percentage for such elements, and . . .

Is it possible that the conceptualization of the tax structure has completely gotten out of hand when tax justice depends on such language?

*Definitionitis.* Though definitions are essential to any law, nowhere are they used with such vengeance as in the Internal Revenue Code. In Section 167(1) public utilities are granted a "reasonable allowance" for depreciation. This must be defined. One of the definitions of this term is "the applicable 1968 method." This must then be defined. One of *its* definitions is a "subsection (1) method". And obviously this must be defined. And all this can be used only if a "normalization method of accounting" is used. Defined? Of course. And it can't be used unless a "flow-through method of accounting" is in effect. Also defined. We encounter definitions of definitions of definitions—subject to two other definitions.

*Boldly Meaningless.* For the blatantly impossible sentence we could pick any number of examples. Here is the first sentence of Section 1348(b)(1):

The term "earned income" means any income which is earned income within the meaning of section 401(c)(2)(C) or section 1911(b), except that such term does not include any distribution to which section 72(m)(5), 72(n), 402(a)(2), or 403(a)(2)(A) applies or any deferred compensation within the meaning of section 404.

Does anyone in this world know what this means standing by itself?

*Prissiness and Precision.* The 1969 act reduced the amount of accumulated earnings credit for certain groups of corporations under common control. This "credit", in effect, is an amount a corporation can accumulate without fear of being accused of accumulating "excessively". As such, the credit is a kind of floor on a presumption of unreasonableness. This presumption is amended for the year 1970 to $83,333 and for 1971 to $66,667. It is likely the timbers of our tax foundation would have splintered if this presumption in 1970 had been $83,300, or even $84,000?

Similarly, the multiple surtax exemption is reduced for 1970 to $20,833 and for 1971 to $16,667. Would any real difference had been made if, in 1970, the exemption were $21,000?

To take an example from the pre-1969 period, the retirement income credit is based upon 15 per cent of $1,524—not $1,500 or even $1,520, but $1,524.

We have indeed polished and honed tax justice to perfection when we can say that the accumulated earnings presumption should be exactly $83,333, the surtax exemption exactly $16,667 and an elderly taxpayer should get a credit on exactly $1,524.

*The Dating Game.* Different provisions of the 1969 act go into effect on different dates: January 1, January 10, January 29, April 18, April 30, May 26, May 27, June 30, July 11, July 24, July 25, July 31. August 6, August 7, October 9, November 30, December 19 and December 29.

Frankly, I may have missed a few dates in my search. But I question what injustice might have occurred if the May 26 date had been made May 27, the July 24 date, July 25, and the August 6 date, August 7. Or, for that matter, if the entire law had gone into effect on one date.

*Paranoia.* Like trust indentures, the code is rapidly entombing the fears of generations of tax draftsmen. For example, the 1969 act decreed that if a corporation uses appreciated property to redeem its shares, a tax must be paid on the appreciation. (Section 311(d).) It then lists seven exceptions to the rule. The conference report added four more. We now have a basic rule with eleven exceptions. The effect on revenue, according to the Senate Finance Committee report (page 279), is: "This provision will prevent the loss of substantial revenue which *would occur in the future if there were to be* a substantial expansion of practice now beginning of buying stock with appreciated property." (Emphasis added.)

Note the future contingencies. Note also the inability to quantify the effect on revenue. But the end result is that a rule with eleven exceptions now clutters up the code.

*Labyrinths.* The Labyrinthian nature of the code has been epitomized, perhaps inadvertently, in a recent law review article. In the March, 1970, issue of *The Practical Lawyer*, Norman A. Sugarman has brilliantly broken down the fourteen categories of charitable foundations under the 1969 act. In tabular form he has then applied to each of these fourteen the thirty-four different benefits and burdens under the law. This makes 476 different combinations. Did tax justice really demand a law for foundations that requires a tax chart with 476 combinations in order to begin to understand it?

I have taken the extreme liberty of rewriting one of the never-ending sentences I mentioned: Section 6651(a). My rewrite has 190 words instead of 385. No sentence within it numbers more than twenty-eight words. You will be told that laws aren't written in this style. They aren't. They should be.

SECTION 6651(*a*)

You're penalized if you're late filing your tax return or paying your tax under Subchapter A of the following:

Chapter 61, except Part III—(Spirits, Wines and Beer)

Chapter 52—(Tobacco, Cigars and Cigarettes)

Chapter 53—(Firearms)

1. If you don't file your return on time, you're penalized 5% of the tax due on the return for each month (or fraction) you're late.

2. If you don't pay the tax shown in your return on time, you're penalized one-half of 1% on the tax due for each month (or fraction) you're late.

3. If you haven't paid the full tax you owe, you're penalized one-half of 1% of the additional tax for each month (or fraction) you're late paying it. This starts 10 days after our notice to you of the additional tax.

4. You're not late if we've given you an extension of time and you file and pay within this time. If you show us that your lateness was due to reasonable cause and not willful neglect, you won't be penalized. None of these penalties can exceed 25% of the tax due.

## REVENUE-SHARING PLAN DESERVES CONSIDERATION

Mr. BENNETT. Mr. President, throughout the postwar period, State and local governments have found themselves in increasing financial difficulty. These governments carry the burden of the provision of basic services necessary to the maintenance and well-being of any society—police and fire protection, health, education and welfare services, highway construction, and so on—the demand for all of which has increased at record levels in the past decade alone.

Tax Foundation Inc., in Facts and Figures on Government Finance 1969, reveals that local expenditures may be nearly five times larger than local revenues, that since 1950 State debt has increased 303 percent, local debt 579 percent, and that current State and local debt averages at levels close to $600 per capita throughout the United States.

Last year this body discussed proposals, notably that of Senator BAKER, for the sharing of Federal revenues with the States. Unfortunately, these proposals were put aside. I believe now is the time for another consideration of a no-strings-attached revenue-sharing measure.

State and local governments find themselves in a situation today which has deteriorated substantially from their position a year ago. We have, since the initial date of these proposals a year ago, launched a massive war on pollution, which can only be effective if local governments cooperate fully, a new crime measure, which must be emulated at State and local levels, but which will require large sums for police forces of increased size, additional officer training, a revamping of local court systems and juvenile detention facilities. We have increased the need for State and local educational and health funding, and we constantly hear the call for new social welfare measures, which, invariably, must begin at local levels. Our population has continued to grow and we have mass demands for services on all sides. Obviously, the Federal Government is not intended nor equipped to handle all the demands at State and local levels—it cannot, for example, be expected to discharge the administration of Utah schools, nor the provision of a firefighting unit for a small Utah county. The point is, these small units of governments are ill equipped to handle the increased demands for these services. If they cannot provide their own services the Federal Government may have to provide them for them.

Mr. President, a revenue-sharing proposal is sorely needed to enable beleaguered State and local units of government to meet the demands of their citizens. Earlier I cited some statistics. We have all seen and heard these figures time and time again. Joseph Pechman of the Brookings Institution tells us, the First National City Bank of New York tells us, that State and local governments will experience an aggregate revenue-expenditure gap of $15 billion by 1975, even when all State attempts to balance their budgets have been considered.

I would like to review for a moment, the reasons why State and local governments cannot continue to provide the financing for all of their public services.

First. State and local officials are politically handicapped in terms of raising needed revenues, even though citizens may be demanding more services. An official who wants to retain his position cannot force tax increases upon an unwilling populace. As Governor of Iowa, our colleague, Senator HUGHES, said it well in his estimation of public reaction to State and local tax increases. He said:

> We governors are afraid of tax increases. We sit there, and we face the people every day. We sit on the firing line and we come down and recommend a $100 million tax increase, and we know we have signed our resignation right along with it. Whereas the federal government can sit here with a tax increase, with not total immunity, but a little immunity as to local effects, and as to what effect it has on individual pocketbooks.

Many more have agreed with Senator HUGHES, and local officials are even more vulnerable to pressure from the taxpayers.

Second, from the standpoint of tax equity and long-range economic policy, it is undesirable to finance long-range needs by property and consumer taxes, the sources upon which State and local governments largely depend. The regressive nature of these taxes is only too well known, and as our inner cities continue to be pockets of low income, the revenue garnered from these sources will continue to diminish in relation to the needs of the areas. The inhabitants of poor areas cannot be expected to bear the brunt of the taxes intended to provide the bulk of services to these nonproducing areas. The question here becomes one of taxing jurisdiction—the relation of the size of the taxing jurisdiction as compared to the size of the economy as a whole.

In each State, in contrast with the Federal Government, the taxing jurisdiction embraces only a limited portion of the American economy, and although it may be a sizable portion of economic activity, no State, and especially no city, is an economically independent unit. "Federal Revenue Sharing With the States," a publication of the National Industrial Conference Board puts the essence of this problem clearly:

> The Federal Government, relying for the most part on personal and corporate income taxes, has shown itself a much more efficient taxing unit in the postwar years than state and local governments which rely largely on property and sales taxes. The reason is that taxing ability depends to some extent on the size of the taxing jurisdiction in relation to the size of the economy.

Cities find themselves in an even weaker position. They may derive their taxing power from the State and have to rely heavily on the property and sales tax to finance their public services. Their tax base is also under a constant state of flux as industry moves in and out of areas. According to both Heller—author of "New Dimensions of Political Economy and Revenue Sharing and the City"—and Pechman, in a Federal system of government where the provision of public services is divided between two or more levels of government, but the taxing power of the different levels is highly unequal, economic decisionmaking will not be rational. Not without reason are slums mainly in areas with weak taxing powers. In addition, these taxes do not fluctuate with the state of the economy. They do not provide an adequate basis for long-range planning of vital services.

My second concern rests with the current grant programs. Certainly we could attempt to meet new demands by an expansion of grant in aid programs, but indications are that it may not be desirable to do so. The grant program is large and growing and its administration is often found wanting. Harvey Lutz, in the Wall Street Journal of December 12, 1966, highlighted some of the problems of the grant system, and if anything, the well-nigh impenetrable administrative jungle he describes has become thicker since the article appeared.

> From the beginning a chain reaction has intensified proliferation of the grant system. As results fell short of expectations and prophecies, more grant programs were devised and more agencies or sub-agencies were set up to operate them. There have been both inter and intra-departmental power struggles to get or keep control, and all kinds of pressure tactics have been employed. A new type of professional has developed in Washington, whose expertise is in advising states and communities regarding the kinds of grants for which they are eligible and the amounts of money they can obtain.
>
> Confusion, duplication, and overlap are characteristic of a government too big to be managed efficiently. The grant system has provided an excellent opportunity for the development of this well-nigh impenetrable administrative jungle. In some cases administrative costs absorb more than half of the available funds for any one program.

To increase grant-in-aid in many instances would be to increase waste, duplication, and inefficiency.

Revenue sharing itself is a simple proposal, made all the more attractive by its simplicity. Revenues shared with lower levels of government will enable them to operate independently, without Federal controls. To a much greater extent local officials will be free from Federal domination and redtape involved in meeting the stringent matching requirements and other conditions required to qualify for Federal assistance under grant-in-aid. Many programs which are currently administered from Washington could be performed at the State and local level by officials who are most familiar with their own particular needs and problems, and who thus can probably make the wisest allocation of these funds in the interests of their own citizens. This increased local autonomy is, perhaps, the greatest advantage of a revenue-sharing proposal. Revenue sharing provides an increased federalism, an increased sense of responsibility at the State and local level, and an increased efficiency in meeting the problems of our Nation when those problems are met by the people who must live with the solutions.

There are other advantages to the proposal also—the distribution formula is especially advantageous to small States, such as Utah, who have small populations but a high level of tax effort. The measure proposed earlier by Senator BAKER provides for a per capita distribution to give large States with large problems the largest share of the intended revenues. In addition, giving smaller States with high tax effort a proportion of the revenues based on their revenue effort provides an added incentive for these States to continue to attempt to meet their own problems out of their own resources. As an example, Utah would receive $30,396,736 under this formula, 0.6 percent of all Federal funds shared with the States, although on a straight population-based formula she would only receive $25,870,000, or 0.5 percent, of the funds so distributed.

Murray L. Weidenbaum, Assistant Secretary of the Treasury, has succinctly summed up the advantages of a revenue sharing proposal:

1. Revenue sharing is a simple program, it would require no new administrative machinery or additional costs to implement.
2. It is automatic in the distribution of the funds.
3. It is equitable—funds go to every city, county, and State in the Nation on a formula basis.
4. It has no strings attached—it provides increased independence to local and state governments.
5. It is neutral—the State-by-State distribution is based primarily on where people reside. The allocation among governments within a State is based on the existing distribution of financial responsibilities among the various units of government as decided in each area.

A no-strings-attached revenue sharing proposal today would demonstrate the commitment of Congress to a reordering of priorities and a return of power to the States. The solution to our growing problems of crime, pollution, traffic congestion and a host of others, must be met at the level at which they exist by the people that they affect at the State and local level. They cannot be met without an additional provision of funds. I endorse revenue sharing legislation and urge early congressional consideration.

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## EDITOR OF THE CANADIAN RECORD, CANADIAN, TEX., CHALLENGES THE EFFICIENCY OF THE POSTAL SERVICE'S PROGRAM FOR THE ELIMINATION OF RURAL POSTMARKS

Mr. YARBOROUGH. Mr. President, the Canadian Record for August 13, 1970, contains a well written and timely editorial which challenged the Postal Service's claim that the elimination of canceling mail in small cities and towns will insure more efficiency in mail service. As the editor, Mr. Ben Ezzell, so correctly points out:

> Channeling increasing loads of mail into the sectional centers has been the biggest boondoggle ever devised by a government bureau which has been known for some whoppers. When the sectional centers are unable to handle, efficiently and speedily, the volume of mail which is already being unnecessarily channeled through them, increasing the volume obviously isn't going to improve the situation.

Mr. President, throughout my State, small cities and towns are losing their identity through elimination of their

postmarks, and the citizens of these communities are being subjected to outrageous and ridiculous delays in service.

For example, in Tulia, Tex., a town of over 6,000 people, a letter intended for in-town delivery, was mailed at the local post office, taken on a 150-mile journey, and finally placed in the post office box of the person to whom the letter was addressed in the same post office 3 days after it was mailed. On first consideration, situations such as this might seem humorous if not so widespread; however, on closer examination, this type of inefficiency shows a callous indifference to the needs of those citizens of our country who reside in the rural areas. This administration, by allowing such practices as this to continue, is expressing its disinterest in the problems and interests of these Americans and its intention to treat them as second-class citizens.

Mr. President, I do not believe that the people of America will tolerate this inefficiency much longer. Therefore, I submit that it is the duty of every Member of Congress to make every effort possible to insure that rural America receives prompt and efficient postal service.

I ask unanimous consent that the editorial, entitled "Less Efficiency, Please," be printed in the RECORD.

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

LESS EFFICIENCY, PLEASE

In an interview with a Hereford Brand reporter, carried by that newspaper last week, Postal Service Officer Mel Benesch, the man in charge of Amarillo's regional postal center, declared that cancelling all mail from outlying small-town post offices in the Lubbock Regional Center "is going to save $50,000 a year."

Benesch was assuring the Hereford interviewer that the changes already put into effect in the Lubbock region . . . where all out-of-town letters are carried into Lubbock for rapid cancellation with a Lubbock postmark . . . had not been put into effect yet in the Amarillo region. Benesch said "there is no indication yet when it will be but the time is coming."

We don't know how Mel Benesch arrived at that nice round $50,000 figure, but even assuming that it may be correct, there is no accurate way of estimating how much the resulting delay in mail service may be costing the businessmen of the Lubbock postal region.

Mel Benesch, of course, will quickly deny that there is any delay . . . but every postal patron who has had any extensive business with the United States Post Office in recent years can attest to the fact that there is, and that every centralized "improvement" instituted by the postal service has made it worse.

Channeling increasing loads of mail into the sectional centers has been the biggest boondoggle ever devised by a government bureau which has been known for some whoppers. When the sectional centers are unable to handle, efficiently and speedily, the volume of mail which is already being unnecessarily channeled through them, increasing the volume obviously isn't going to improve the situation.

Mr. Benesch is proud of the high-speed cancelling machines which his department has installed at the Amarillo Sectional Center. "We don't even know we've got 10,000 pieces of mail," he told The Brand reporter, "it goes through so fast . . . its just absorbed."

And "absorbed" may be a good word for what's happening to much of the mail in the sectional centers these days. It is absorbed so well that it sometimes disappears for days.

Mr. Benesch is the postal officer who explained to the staff of this newspaper at great length a couple of years ago how it was actually going to speed delivery of our newspapers to places like Allison and Briscoe and Wheeler and Lipscomb . . . all of them served by routes which originate in the Canadian post office . . . to carry them into the sectional center in Amarillo on Thursday afternoon and bring them back to the Canadian post office the following morning to be transferred to the route carriers. We couldn't understand how hauling those newspapers on a 200-mile round trip and processing them through the Amarillo sectional center was going to be an improvement over simply holding them overnight in the Canadian post office for carrier dispatch the next morning. but Mr. Benesch assured us that it was going to save the government a lot of money and also speed up the service.

We didn't believe it then, and we don't believe it now. Our disbelief is frequently strengthened when we find that our newspapers failed to make it through the Amarillo Sectional Center on their overnight Thursday journey, and don't get back until Saturday morning to be transferred to our subscribers in neighboring communities.

The mail service just can't stand many more "improvements" of the type that Mr. Benesch and his fellow post office experts keep instituting. And we can ill-afford many more of those "savings" which keep bringing increased postal rates and slower delivery times, either. Can't we please have a little less efficiency and a little more service, Mr. B.?

## VOTING RIGHTS IN WYOMING

Mr. HANSEN. Mr. President, today is the 50th anniversary of the 19th amendment to the Constitution granting equal suffrage to women.

We in Wyoming are particularly proud to recognize this accomplishment because Wyoming led the Nation, and indeed the world, when it granted equal suffrage to women in 1869, at the time the Wyoming Territory was organized. In 1890, Wyoming became the first State to give women equal voting rights.

The women of Wyoming enjoyed equal voting rights a full 51 years before these rights were included in the Constitution of the United States.

In 1924, Nellie Tayloe Ross was elected Governor of Wyoming and became the first woman Governor in the country. She then served three Presidents as Director of the U.S. Mint, and to this day is vitally interested in the affairs of her State and Nation. Since 1890, women have served in every elected State office and as Speaker of the Wyoming House of Representatives.

In this day, when many of us advocate lowering the voting age below 21, there is a tendency by some to believe that Federal legislation should set a standard of 18, implying that at the Federal level there exists some great power which makes the Federal Government all knowing in determining the proper voting age. I believe it is appropriate to note at this time that if the women of Wyoming had to wait for Congress and the Nation to wake up and act on women's suffrage, they would not have enjoyed the one-half century of equal rights granted to them by Wyoming.

There is much to be said for the system that has permitted the States the flexibility to take progressive steps to expand the voting franchise, and the benefits we have received from that flexibility are the strongest argument for refusing to preempt State responsibility by Federal statute and applying any change nationally by means of an amendment to the Federal Constitution.

As Governor of Wyoming, I called for the adoption of an amendment authorizing voting by 18-year-olds. This year the State of Wyoming is again in the front ranks and is voting on an amendment to the State Constitution to lower the voting age in Wyoming to 19. I am confident that such action by the State of Wyoming will be as rewarding as that of granting equal suffrage to women.

## SOVIET UNION INVASION OF CZECHOSLOVAKIA

Mr. TOWER. Mr. President, the invasion of Czechoslovakia by the Soviet Union 2 years ago last Friday sent a shock wave through the civilized world which belied the popular image of Soviet mellowing. We were shaken to a renewed memory of Hungary, Poland, and the Katyn massacre, the "annexation" of the Baltic states and, indeed, the total scope of brutality and oppression which has characterized the history of Soviet Russia.

In January of 1968, Antonin Novotny, one of the last remnants of Stalinism in Eastern Europe, was removed as first secretary of the Czechoslovakia Communist Party under pressure from liberal reformers, principally writers and intellectuals. Alexander Dubcek was installed as first secretary and the Czech Government embarked on a series of moderate reforms. Censorship was eased. In a speech in Brno, Dubcek promised the widest possible democratization for Czechoslovakia and hinted that, while Czechoslovakia would maintain her alliance with the Soviet Union, she would take a more independent stance in world affairs.

By May of 1968, relations between Czechoslovakia and the Soviet Union were tense. Soviet troops were engaged in military maneuvers near the Czechoslovak frontier. Soviet Premier Kosygin went to Prague for talks with the Dubcek government. Moscow was determined to retard the reformist movement but when Kosygin departed from Prague after 8 days no agreement had been reached. Since Kosygin's visit was ostensibly a "vacation" no official communique was issued and reports indicated that the visit was more amicable than perhaps actually it was.

Reform continued, and Dubcek held the balance in his party between the more radical progressives and Novotny elements. In June, Soviet troops were engaged in military exercises on Czechoslovak territory, a display of military might obviously for the purpose of intimidating the Dubcek regime. Under this threat, the Prague government was brought into conference with the Soviets at Cierna by the end of July. At the conference, Czech leaders reasserted their loyalty to the Soviet Union and Warsaw Pact allies, but insisted upon their rights to guide the internal affairs of Czecho-

slovakia. Finally the Soviets, unsatisfied with the assurances of the Czech Government poured a force of Soviet and Warsaw Pact troops, variously estimated at 200,000 to 650,000 men, into Czechoslovakia. The reform leaders were arrested, and the iron hand of Soviet occupation was clamped down on Czechoslovakia.

Mr. President, the deep sympathy of the American people and of all people who value freedom goes out to the people of Czechoslovakia, who twice in 30 years succumbed to invasion by a superior force. But the lesson of Czechoslovakia is clear: A people who would be free must be strong. The independent spirit of the Czechoslovak people has not been crushed; they have passively resisted the Soviet occupation. But it is clear that only sufficient strength can discourage the use of force by the Soviet Union. The lesson in Soviet diplomacy provided by events in Eastern Europe of 2 years ago is well worth remembering.

## THE 50TH ANNIVERSARY OF VOTE FOR WOMEN: ITS REAL MEANING

Mr. PROXMIRE. Mr. President, today is the 50th anniversary of the ratification of the 19th amendment to the Constitution. It is the amendment which gave women the right to vote. It is a good time to pause and actually reflect on how much equality women have today.

Women comprise more than half of the country's population but are still treated as second-class citizens in many important ways. This morning the Washington Post published an article entitled "A Half-Century of Suffrage for Women" which pointed up many of the inequalities which still exist. The Post story points out for example that:

> On the average, a woman with a college degree earns little more than a man with an eighth-grade education. Women constitute only 9% of all professions, 7% of the doctors, 3% of lawyers, and 1% of the engineers. Average starting salaries are lower for women in these fields than for males. Almost all the elementary school teachers are women—but almost all the elementary school principals are male.

The vote for women did not bring equality. Today is not a time to look back, but to look ahead toward eliminating inequalities which still exist. While women do have the vote, it is revealing that, according to Gallup, only 66 women have been elected or appointed to the House and 10 to the Senate. The current Congress has 11 female Members, 10 in the House and one in the Senate. Full political rights for women include equal opportunity to seek elective office. One of the most important steps which the Senate can take to guarantee women of all nations equal political rights is to ratify the convention on political rights for women. Action on this treaty is long overdue. If we are really sincere in our desire to guarantee women equal rights, then the time has come to take action on this treaty. Words will not satisfy the women demanding their rights. They want to see concrete action. Ratification of the Political Rights for Women Convention is one important way in which the Senate could demonstrate to American women that it is really interested in their cause.

## WOMEN'S STRIKE FOR EQUALITY

Mr. GOODELL. Mr. President, the Women's Strike for Equality, called for today, August 26, brings an end to the era of dormancy in the women's rights movement.

The date of the strike is significant because it represents the 50th anniversary of the 19th amendment which guaranteed women's suffrage.

This "golden anniversary" does not, unfortunately, represent 50 years of equality. The path to equality has been boobytrapped with delays and frustrations. For example, in 1963, I authored the Equal Pay for Women Act. It provided for a very simple equality that equal pay should be given for equal work regardless of sex. Today, the median income of a woman is $4,200 while a man receives nearly double that amount—$7,200—for comparable work. Lack of progress as in the case of this law, has characterized the movement for women's rights.

That era has ended. The women's rights movement has been revolutionized—charged—with a new spirit and strength that will no longer tolerate inequality and discriminatory institutions. The strike is a dramatic example of this new spirit.

I support the Women's Strike for Equality. It is designed to promote unity among women and to demonstrate that women have the power to make changes in this world. It is designed to encourage women to reflect on the ambiance of inferiority that has limited their life choices. It employs for women the tried and true tactic of organization that has worked so effectively for labor and minority groups in achieving their demands. The strike will enable women to take full advantage of this important tool to meet their own articulated demands.

Yesterday, I had the opportunity to meet with the women who represent the coalition which is organizing the strike in New York City and across the Nation. The actions to be taken in New York City and other cities will be in support of the major demands of the coalition which include free abortions, universal child care centers, and equal opportunity in jobs and education.

While testifying before the Senate Judiciary Committee in support of the equal rights amendment I stated then that the amendment would be meaningless unless accompanied by legislation which would put muscle into the constitutional guarantee of equality. I suggested that such legislation would include the repeal of restrictive abortion laws, the creation of adequate day care centers, and equality of education and occupational opportunity.

As a result of the discussion yesterday, I will be introducing a legislative package within the next few weeks which will implement many of the suggestions made in our meeting.

This legislation and any other legislation designed to provide choices for women will not pass the Congress or the State legislatures for that matter unless women present a united front in support of the efforts. The Women's Strike for Equality represents such a united front. I applaud the efforts of these dedicated women. I sincerely hope that it is the beginning of a new awareness and motivation among both women and men to fight for the equality women have a right to.

In this new spirit of awareness, the men and women graduates of the 1970 class at Vassar College invited Miss Gloria Steinem, a noted journalist and leader of the women's rights movement, to present the commencement address at the June graduation exercises. Miss Steinem's message emphasized that today's women's liberation movement is an integral part of the revolt against social injustice in this country and urged each of the graduates to discard the old prejudices—racial and sexual—which inhibit individual growth and freedom.

In recognition of the strike today, I ask that the full text of Miss Steinem's address be printed in the RECORD.

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

LIVING THE REVOLUTION

President Simpson, members of the faculty, families and friends, first brave and courageous male graduates of Vassar—and Sisters.

You may be surprised that I am a commencement speaker. You can't possibly be as surprised as I am. In my experience, commencement speakers are gray-haired, respected creatures, heavy with the experience of power in the world and with Establishment honors. Which means, of course, that they are almost always men.

But this is the year of Women's Liberation. Or at least, it's the year the press has discovered a movement that has been strong for several years now, and reported it as a small, privileged, rather lunatic event instead of the major revolution in consciousness—in everyone's consciousness, male or female—that I believe it truly is.

It may have been a part of that revolution that caused the senior class to invite me here—and I am grateful. It is certainly a part of that revolution that I, a devout nonspeaker, am managing to stand before you at all. I don't know whether you will be grateful or not. The important thing is that we are spending this time together, considering the larger implications of a movement that some call "feminist" but should more accurately be called humanist; a movement that is an integral part of rescuing this country from its old, expensive patterns of elitism, racism, and violence. The first problem for all of us, men and women, is not to learn, but to un-learn. We are filled with the Popular Wisdom of several centuries just past, and we are terrified to give it up. Patriotism means obedience, age means wisdom, woman means submission, black means inferior—these are preconceptions imbedded so deeply in our thinking that we honestly may not know that they are there.

Unfortunately, authorities who write textbooks are sometimes subject to the same Popular Wisdom as the rest of us. They gather their proof around it, and end by becoming the theoreticians of the status quo. Using the most respectable of scholarly methods, for instance, English scientists proved definitively that the English were descended from the angels, while the Irish were descended from the apes. It was beautifully done, complete with comparative skull-measurements and it was a rationale for the English domination of the Irish for more

than 100 years. I try to remember that when I'm reading author Jensen's current and very impressive work on the limitations of black intelligence. Or when I'm reading Lionel Tiger on the inability of women to act in groups.

The apes-and-angels example is an extreme one, but so may some of our recent assumptions be. There are a few psychologists who believe that anti-Communism may eventually be looked upon as a mental disease.

It wasn't easy for the English to give up their mythic superiority. Indeed, there are quite a few Irish who doubt that they have done it yet. Clearing our minds and government policies of outdated myths is proving to be at least as difficult. But it is also inevitable. Whether it's woman's secondary role in society or the paternalistic role of the United States in the world, the old assumptions just don't work anymore.

Rollo May has a theory that I find comforting. There are three periods in history, he says—one in which myths are built up, one in which they obtain, and one in which they are torn down. Clearly, we are living in a time of myths being torn down. We look at the more stable period just past, and we think that such basic and terrifying change has never happened before. But, relatively, it has. Clinging to the comfortable beliefs of the past serves no purpose, and only slows down the growth of new forms to suit a new reality.

Part of living this revolution is having the scales fall from our eyes. Everyday, we see small obvious truths that we had missed before. Our histories, for instance, have generally been written for and about white men. Inhabited countries were "discovered" when the first white male set foot there, and most of us learned more about any one European country than we did about Africa and Asia combined.

I confess that, before some consciousness-changing of my own, I would have thought the Women's History courses springing up around the country belonged in the same cultural ghetto as home economics. The truth is that we need Women's Studies almost as much as we need Black Studies, and for exactly the same reason: too many of us have been allowed from a "good" education believing that everything from political power to scientific discovery was the province of white males. I don't know about Vassar, but at Smith we learned almost nothing about women.

We believed, for instance, that the vote had been "given" to women in some whimsical, benevolent fashion. We never learned about the long desperation of women's struggle, or about the strength and wisdom of the women who led it. We heard about the men who risked their lives in the Abolitionist Movement, but seldom about the women; even though women, as in many movements of social reform, had played the major role. We knew a great deal more about the outdated, male-supremacist theories of Sigmund Freud than we did about societies in which woman had equal responsibility, or even ruled.

"Anonymous," Virginia Woolf once said sadly, "was a woman."

I don't mean to equate our problems of identity with those that flowed from slavery. But, as Gunnar Myrdal pointed out in his classic study, *An American Dilemma*, In drawing a parallel between the position of, and feeling toward, women and Negroes, we are uncovering a fundamental basis of our culture." Blacks and women suffer from the same myths of childlike natures; smaller brains; inability to govern themselves, much less white men; limited to job skills. Identity as sex objects, and so on. Ever since slaves arrived on these shores and were given the legal status of wives—that is, chattel—our legal reforms have followed on each other's heels. (With women, I might add, still lagging considerably behind. Nixon's Commission on Women concluded that the Supreme Court was sanctioning discrimination against women—discrimination that it had long ago ruled unconstitutional in the case of blacks—but the Commission report remains mysteriously unreleased by the White House, An Equal Rights Amendment, now up again before the Senate, has been delayed by a male-chauvinist Congress for 47 years.) Neither blacks nor women have role-models in history: models of individuals who have been honored in authority outside the home.

I remember when I was interviewing Mrs. Nixon just before the 1968 election. I asked her what woman in history she most admired and would want to be like. She said, "Mrs. Eisenhower." When I asked her why, she thought for a moment, and said, "Because she meant so much to young people."

It was the last and most quizzical straw in a long difficult interview, so I ventured a reply. I was in college during the Eisenhower years, I told her, and I didn't notice any special influence that Mrs. Eisenhower had on youth. Mrs. Nixon just looked at me warily, and said, "You didn't?" But afterwards, I decided I had been unfair, After all, neither one of us had that many people to choose from. As Margaret Mead has noted, the only women allowed to be dominant and respectable at the same time are widows. You have to do what society wants you to do, have a husband who dies, and then have power thrust upon you through no fault of your own. The whole thing seems very hard on the men.

Before we go on to other reasons why Women's Liberation is Men's Liberation, too—and why this incarnation of the women's movement is inseparable from this larger revolution—perhaps we should clear the air of a few more myths.

*The myth that women are biologically inferior, for instance.* In fact, an equally good case could be made for the reverse. Women live longer than men. That's always being cited as proof that we work them to death, but the truth is: women live longer than men even when groups being studied are monks and nuns. We survived Nazi concentration camps better, are protected against heart attacks by our female hormones, are less subject to many diseases, withstand surgery better, and are so much more durable at every stage of life that nature conceives 20 to 50 percent more males just to keep the balance going. The Auto Safety Committee of the American Medical Association has come to the conclusion that women are better drivers because they're less emotional than men. I never thought I would hear myself quoting the AMA, but that one was too good to resist.

Men's hunting activities are forever being pointed to as proof of tribal superiority. But while they were out hunting, women built houses, tilled the fields, developed animal husbandry, and perfected language. Men, isolated from each other out there in the bush, often developed into creatures that were fleet of foot, but not very bright.

I don't want to prove the superiority of one sex to another. That would only be repeating a male mistake. The truth is that we're just not sure how many of our differences are biological and how many are societal. In spite of all the books written on the subject, there is almost no such thing as a culture-free test.

What we do know is that the differences between the two sexes, like the differences between races, are much less great than the differences to be found within each group. Therefore, requirements of a job can only be sensibly suited to the job itself.

It deprives the country of talent to bundle any group of workers together by condition of birth.

A second myth is that women are already being treated equally in this society. We ourselves have been guilty of perpetuating this myth, especially at upper economic levels where women have grown fond of being lavishly maintained as ornaments and children. The chains may be made of mink and wall-to-wall carpeting, but they are still chains.

The truth is that a woman with a college degree working fulltime makes less than a black man with a high school degree working fulltime. And black women make least of all. In many parts of the country—New York City, for instance—a woman has no legally guaranteed right to rent an apartment, buy a house, get accommodations in a hotel, or be served in a public restaurant. She can be refused simply because of her sex. In some states, women cannot own property, and get longer jail sentences for the same crime. Women on welfare must routinely answer humiliating personal questions; male welfare recipients do not. A woman is the last to be hired, the first to be fired. Equal pay for equal work is the exception. Equal chance for advancement, especially at upper levels or at any level with authority over men, is rare enough to be displayed in a museum.

As for our much-touted economic power, we make up only 5% of all the people in the country receiving $10,000 a year or more. And that includes all the famous rich widows. We are 51% of all stockholders, a dubious honor these days, but we hold only 18% of the stock—and that is generally controlled by men. The power women have as consumers is comparable to that power all of us currently have as voters: we can choose among items presented to us, but we have little chance to influence the presentation. Woman's greatest power to date is her nuisance value. The civil rights, peace, and consumer movements are impressive examples of that.

In fact, the myth of economic matriarchy in this country is less testimony to our power, than to the resentment of the little power we do have.

You may wonder why we have submitted to such humiliations all these years; why, indeed, women will sometimes deny that they are secondclass citizens at all.

The answer lies in the psychology of secondclassness. Like all such groups, we come to accept what society says about us. And that is the most terrible punishment of all. We believe that we can only make it in the world by "Uncle Tom-ing," by a real or pretended subservience to white males.

Even when we come to understand that we, as individuals, are not secondclass, we still accept society's assessment of our group—a phenomenon psychologists refer to as Internalized Aggression. From this stems the desire to be the only woman in an office, an academic department, or any other part of the man's world. From this also stems women who put down their sisters—and my own profession of journalism has some of them. By writing or speaking of their non-conformist sisters in a disapproving, conformist way, they are essentially saying, "See what a Real Woman I am," and expecting to be rewarded by ruling-class approval and favors. That is only beginning to change.

It shouldn't be surprising that women behave this way, too. After all, Internalized Aggression has for years been evident in Negroes who criticized each other ("See what a Good Nigger I am"), or in Jews who ridiculed Jewishness ("See how I am different from the other Jews"). It has been responsible for the phenomenon of wanting to be the only black family in the block, or the only Jew in the club.

With women, the whole system reinforces this feeling of being a mere appendage. It's hard for a man to realize just how full of self-doubt we become as a result. Locked into suburban homes with the intellectual com-

panionship of three-year-olds; locked into bad jobs, watching less-qualified men get promoted above us; trapped into poverty by a system that supposes our only identity is our sex motherhood—no wonder we become pathetically grateful for small favors.

I don't want to give the impression, though, that we want to join society exactly as it is. I don't think most women want to pick up slimline briefcases and march off to meaningless, de-personalized jobs. Nor do we want to be drafted—and women certainly should be drafted: even the readers of *Seventeen* Magazine were recently polled as being overwhelmingly in favor of women in National Service—to serve in an unconstitutional, racist, body-count war like the one in Indochina.

We want to liberate men from those inhuman roles as well. We want to share the work and responsibility, and to have men share equal responsibility for the children. Probably the ultimate myth is that children must have fulltime mothers, and that liberated women make bad ones. The truth is that most American children seem to be suffering from too much mother and too little father. Women now spend more time with their homes and families than in any past or present society we know about. To get back to the sanity of the agrarian or joint-family system. We need free universal day-care. With that aid, as in Scandanavian countries, and with laws that permit women equal work and equal pay, men will be relieved of their role as sole breadwinner and stranger to his own children. No more alimony. Fewer boring wives, fewer childlike wives. No more so-called "Jewish mothers," who are simply normal, ambitious human beings with all their ambitiousness confined to the house. No more wives who fall apart with the first wrinkle, because they've been taught their total identity depends on their outsides. No more responsibility for another adult human being who has never been told she is responsible for her own life, and who sooner or later says some version of, "If I hadn't married you, I could have been a star." And let's say it one more time because it's such a great organizing tool—no more alimony. Women's Liberation really is Men's Liberation, too.

The family system that will emerge is a great subject of anxiety. Probably, there will be a variety of choice. Colleague marriages, such as young people have now, with both partners going to law school or the Peace Corps together; that's one alternative. At least they share more than the kitchen and the bedroom. Communes, marriages that are valid for the child-rearing years only . . . there are many possibilities, but they can't be predicted. The growth of new forms must be organic.

The point is that Women's Liberation is not destroying the American family, it is trying to build a human, compassionate alternative out of its ruins. Engels said that the paternalistic, 19th Century family system, was the prototype of capitalism—with man, the capitalist; woman, the means of production; children, the labor—and that the family would only change as the economic system did. Well, capitalism and the mythical American family seem to be in about the same shape.

Of course, there are factors other than economic ones. As Margaret Mead says: No wonder marriage worked so well in the 19th Century; people only lived to be fifty years old. And there are factors other than social reform that will influence women's work success. "No wonder women do less well in business," says a woman executive. "They don't have wives." But the family is the first political unit, and to change it is the most radical act of all.

Women have a special opportunity to live the revolution. By refusing to play their traditional role, they upset and displace the social structure around them. We may be subject to ridicule and suppression, just as men were when they refused to play their traditional role by going to war. But those refusals together are a hope for peace. Anthropologist Geoffrey Gorer discovered that the few peaceful human tribes had a common characteristic: sex roles were not polarized. Boys weren't taught that manhood depended on aggression (or short hair or military skills), and girls weren't taught womanhood depended on submission (or working at home instead of the fields).

For those who still fear that Women's Liberation involves some loss of manhood, let me quote from the Black Panther code. Certainly, if the fear with which they are being met is any standard, the Panthers are currently the most potent male symbol of all. In *Seize the Time*, Bobby Seale writes, "Where there's a Panther house, we try to live socialism. When there's cooking to be done, both brothers and sisters cook. Both wash the dishes. The sisters don't just serve and wait on the brothers. A lot of black nationalist organizations have the idea of regulating women to the role of serving their men, and they relate this to black manhood, but a real manhood is based on humanism, and it's not based on any form of oppression.

One final myth: that women are more moral than men. We are not more moral, we are only uncorrupted by power. But until the leaders of our country put into action the philosophy that Bobby Seale has set down—until the old generation of male chauvinists is out of office—women in positions of power can increase our chances of peace a great deal. I personally would rather have had Margaret Mead as President during the past six years of Vietnam than either Johnson or Nixon. At least, she wouldn't have had her masculinity to prove. Much of the trouble this country is in has to do with the Masculine Mystique: the idea that manhood somehow depends on the subjugation of other people. It's a bipartisan problem.

The challenge to all of us, and to you men and women who are graduating today, is to live a revolution, not to die for one. There has been too much killing, and the weapons are now far too terrible. This revolution has to change consciousness, to upset the injustice of our current heirarchy by refusing to honor it, and to live a life that enforces a new social justice.

Because the truth is none of us can be liberated if other groups are not. Women's Liberation is a bridge between black and white women, but also between the construction workers and the suburbanites, between Nixon's Silent Majority and the young people they hate and fear. Indeed, there's much more injustices and rage among working class women, than among the much-publicized white radical.

Women are sisters. They have many of the same problems, and they can communicate with each other. You only get radicalized as black activists always told us, "on your own thing." Then we make the connection to other injustices in society. The Women's Movement is an important revolutionary bridge, and we are building it.

I know it's traditional on such an occasion to talk about "entering the world." But this is an untraditional generation: You have made the campus part of the world. I thank you for it.

I don't need to tell you what awaits you in this country. You know that much better than I. I will only say that my heart goes with you, and that I hope we will be working together. Divisions of age, race, class and sex are old-fashioned and destructive.

One more thing, especially to the sisters, because I wish someone had said it to me; it would have saved me so much time.

You don't have to play one role, in this revolutionary age above all others. If you're willing to pay the price for it, you can do anything you want to do. And the price is worth it.

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## INNOVATIVE POLICE PRACTICES

Mr. ALLOTT. Mr. President, today's New York Times carries an interesting front-page story on some innovative police practices that are being instituted in various communities around the Nation.

I am pleased to note that the story bears the dateline of Lakewood, Colo., and that the Lakewood Public Safety Department is prominently featured in the story.

So that all Senators may inform themselves of such innovative and new police methods, 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:

BLAZERS AND SLACKS: NEW POLICE IMAGE

(By Martin Arnold)

LAKEWOOD, COLO.—They are called agents, not policemen, and all of them, including the men directing traffic, wear Navy blue blazers and gray flannel trousers.

They do not wear badges, but like prep school boys, wear patches over their left blazer pocket, which say, in light blue and gold, "Police Agent Lakewood Public Safety Department."

Recruits have to have college degrees; experienced officers joining the department must have at least two years of college.

For in an era in which "law and order" has become a rallying cry and a political issue, many cities, like this one, are re-examining the traditional police role in the community and are experimenting with their law enforcement procedures.

The Lakewood police experiment is probably the most radical in the country.

But educational standards are rising and innovations are being tried in such diverse law enforcement agencies as the police departments in Dallas and Victoria, Tex., in Dayton, Ohio, and in Syracuse, N.Y., Berkeley, Calif., and in the Multnomah County Sheriff's Office in Oregon.

While the tendency to experiment with police departments is increasing, it is still mostly confined to the smaller cities. For while standards for the police are rising in some cities, the apparent national concern with "crime in the streets" and the political pressure this concern generates have, ironically, contributed to the lowering of standards in other cities.

Thus, in New York City, for instance, where the public's demand for more uniformed policemen can seemingly never be satiated, the standards have, in some ways, been lowered, according to a recent federally financed report.

While it is true that 78 per cent of the men entering the city's police department last year had high school diplomas, against 65 per cent in 1960, the average I.Q. of the recruits has dropped.

And, the report said, there was also a significant decline last year in the social and economic backgrounds of the new policemen. Moreover, this decline had nothing to do with minority group recruitment because blacks and Puerto Ricans, the city's ghetto dwellers, were still not joining the department in significant numbers.

PHILADELPHIA IS CITED

In Philadelphia, the lowering of standards s even more dramatic. At a time when police experts and sociologists are calling for better trained, more mature police officers, a boy of 19 can become a full-fledged, sworn, uniformed, gun-carrying policeman with unlimited power to arrest.

Despite these examples from the larger urban areas, however, national standards for the police are rising and, unlike 10 or even five years ago, serious thought is being given to the problem of who should be a policeman and what the role of the police should be in a viable, democratic society.

"We are sitting around trying to figure out the role of the police," said Mark Furstenberg, associate director of the Police Foundation in Washington, funded by the Ford Foundation. "Has the police role changed in the last 10 years—or is it that we didn't really know what police work was all about? I tend to think we didn't know."

TWO BASIC CONCEPTS

Whatever the answer, nearly all police experimentation in the country is predicated on two basic concepts—that police agencies are, first, general service departments rather than mere crime control units, and that despite all the publicity given to court rulings, criminal justice starts on the streets with a cop on the beat.

It is that officer who has first contact with the public, and, therefore, the new theory goes, to attract better men to become the cop on the beat the police department of the future will have to give each man greater discretionary powers.

"Eighty per cent of police work does not involve crime at all," said Mr. Furstenberg. 'It's mainly family crisis intervention, with husband and wife fighting. Or it's fights on the corner between two people. Or it's a cat caught in a tree. Or it's just a lonely lady who calls the police station late at night. That's police work."

So here, in this politically conservative city of 100,000, adjacent to Denver, the most completely experimental police agency in the country went into operation in May.

A SLUMLESS CITY

Lakewood was created because of a police problem. Until the first of the year it was an unincorporated "bedroom" suburb depending for police protection on the able but understaffed and over-extended Jefferson County Sheriff's Office.

Although it is a white, slumless, middle-class city, with Mexican Americans and blacks comprising only one-five hundredth of a per cent of its population, its geographic position led to many problems.

Lying between Denver and the Rockies, its main thoroughfare, West Colfax Street, is mostly a garish, neon-lit potpourri of motels and bars and hamburger stands that attract troublemakers from surrounding areas. And, like other middle class urban areas, Lakewood has a drug problem.

Last year the residents started agitating for their own police force, and to get it Lakewood had to become an incorporated municipality.

One of the first persons hired by the new municipality was Ronald Lynch, 37 years old, a former lieutenant in the Dade County, Fla., sheriff's office, who had been working on the staff of the International Association of Chiefs of Police in Washington.

Mr. Lynch, the son of a retired New York City police lieutenant, grew up on the Lower West Side of Manhattan, and earned a B.A. degree and law degree from the University of Miami.

The man who interviewed him for the position was Walter C. Kane, 35, the Lakewood City Administrator.

"WE HAVE THE CHANCE"

He told the 10-man city council—nine businessmen and a professional woman—that "we have the chance to try something new.

"We don't have to overcome the built-in problems of a hundred-year-old organization. There's a lot of junky, honky-tonk, garish stuff. But still we can do something to save ourselves some of the problems of the urban sprawl," he said.

So Mr. Lynch was hired to head the Public Safety Department, and to set up a police force.

"I was always convinced the paramilitary system of most police departments had a lot of pitfalls," Mr. Lynch says. "And not just the way the policeman approaches the public, but internally within the department also.

"The public really wants a policeman to be used fully. In most areas they hire a guy, train him four months and then put him out on the street where he's not allowed to make any decisions for five to 10 years," Mr. Lynch said.

"The top people—and the sergeants and lieutenants—make all the decisions, but they are furthest from the street problems and the least qualified to make them," Mr. Lynch said. "There had to be a way to take good intelligent individuals and tell them they could go out in the streets and think and act on their own."

COLLEGE GRADUATES WANTED

The first thing Mr. Lynch did was insist that all recruits be college graduates, and all experienced men have at least two years of college—although the department has set a limit—42—on the number of agents it will accept laterally from other departments.

He then did away with the traditional police uniform. "This way the community gets the idea the man is a professional and in time of trouble will assist the agent because they respect them as professionals. And the blazer concept gives the man an image to uphold. He says to himself, "I dress like a professional. I am a professional. I must conduct myself like a pro."

There are, of course, other, equally subtle reasons for taking the policeman out of his military type of uniform: If the policeman dresses like a civilian, the theory goes, he is more likely to behave like one. At a time when a large number of Americans, particularly the young, are opposed to everything military, a civilian attitude by the police might go a long way toward reducing police-student and police-minority group confrontations.

Still, most police officials in the country cling to the historic uniform concept. This attitude springs from two beliefs. They believe that the uniform lends itself better to the paramilitary quality and the pride they think are necessary in a large urban police force, and they believe that, if all of the police are put in blazers and flannels, they have, in essence, been put in uniform.

There are no ranks such as sergeant or lieutenant in the department. Everyone is an agent, although the city was divided into two police areas, similar to precincts, and each area was placed under an Agent in Charge.

The 33 Lakewood agents are all generalists. Each patrols in a regularly marked police car, one man to a car, and each directs traffic in his own area when needed.

Unlike traditional police departments, where there are specialists in such things as robberies and homicides, each agent conducts his own robbery and homicide investigations.

Other communities, besides Lakewood, have done away with the paramilitary feature of their police.

UNIFORM IS KEPT

In Victoria, Tex., for example, a city of 40,000 persons (20 per cent are Mexican Americans and 8 per cent are black) there are no sergeants or lieutenants in the 60-member (six are women) department, although the force does wear the traditional police uniform.

The policemen and police-women (one black, four Mexican Americans) are called "public safety officers" and, after 18 months probation, are promoted to "public safety technicians."

They also are generalists, and although only five are college graduates, the manager of the Public Safety Division, which is what the police department is called, John J. Guseman, encourages his men to take all college courses they can.

Lakewood, like every community, has a gathering place for the not-too-quiet young. Here it is called Holbrook Park, where each evening, teen-agers gather on their motorcycles.

Instead of chasing them away, Agent Gary M. Lindstrom often sets up the public address system he carries in his patrol car and plays rock and roll music for them. "It pays off, too," Agent Lindstrom said.

"One night recently a kid came up to me and told me about a guy selling narcotics in the city. The kids get to trust the police here."

WAIT AND SEE ATTITUDE

If the Lakewood agents are happy with the experiment, the people in the community have a wait and see skepticism. The teenagers at Holbrook Park refer to the "groovy" cops—although all the agents wear rather short neatly trimmed hair—but Lea Leak, an owner of a Lakewood hobby and art supply store, says, "I'm a woman. When a guy swings out of that car in a uniform I feel more secure."

"I think a lot of the people tend to laugh at the blazers here. The whole idea behind the new police department is that the agents stand there and say we can't do anything about it. Too permissive," she said.

C. S. Sherman, who has been a resident of the Lakewood area for nine years, says, "It remains to be seen whether the police can command any respect without regular uniforms. It may work as far as the young people are concerned. The youth of today don't approve of uniforms and anything military."

While other police experiments around the country are not as dramatic as Lakewood's, they are generally just as important.

Starting in November, the Multnomah sheriff's office in Oregon, an enforcement agency, will only accept recruits who have had two years of college.

BLACK INTERNS SOUGHT

The educationally disadvantaged, such as Portland's ghetto blacks, will be able to enter the sheriff's office as interns and after taking 20 hours of college courses become recruits.

"We feel we can't make it too restrictive," said Sheriff J. Bard Purcell, who holds a master's degree in education. He added that "if we are restrictive a lot of disadvantaged youngsters who would make good interested police officers won't be able to get into the department.

Besides attempting to raise the educational standards of police officers, the most common police experiment seems to be aimed at giving the policeman on the beat more discretion in his work.

This is often done through what are called "crime control teams."

Syracuse has one team in operation and two more nearly ready to go.

Under the Syracuse plan, a sergeant and eight other officers, working in shifts, take responsibility for controlling crime in a single sector of the city. Other policemen working in the same area of the city handle the routine traffic and service calls. The crimes the team is concerned with are investigated from beginning to end. They are not turned over to a specialist.

"There's a lack of delay in this kind of operation," a spokesman for the Syracuse department said. "And the men on the team become known in the community. They're not here one day, gone the next. They develop personal contacts and sources which are helpful in solving the crimes, and they also take pleasure in having the responsibility of doing all the police work."

Dayton has gotten some Federal seed

money from the Law Enforcement Assistance Agency of the Justice Department to try team crime control. Police Chief Robert M. Igleburger says, "every officer on the team will be a generalist working with the community. We're not going to skim off the interesting police work and give it to specialists."

## INCREASE IN BOMBINGS IN THE UNITED STATES

Mr. TOWER. Mr. President, there has been a drastic increase recently in the number of bombings within the confines of our borders, with major activity in the New York area and on the west coast. The Bureau of Mines lists only 14 States as having good to excellent laws regulating the sale of explosives. Seven States are rated as having fair laws and 23 have what are considered poor regulations or none at all.

Those States having no laws or restrictions are making it possible for terrorists to obtain dynamite and other better grade explosives, putting in jeopardy the lives of all Americans. Senators will recall that authorities discovered dynamite purchased in a New England State amidst the wreckage of the so-called bomb factory which exploded in New York City last March. The dynamite had been purchased under an assumed name.

I think it is important for States to realize the danger which unrestricted sales of explosives pose not only for their own citizens but for the rest of the Nation. A very valuable summary of this issue was published in the New York Times of August 16.

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:

MANY STATES ARE ADOPTING STIFF LAWS TO CURB TERROR BOMBINGS

WASHINGTON, August 15.—Tough new laws and regulations are being proposed and accepted in many states to combat a national increase in terror bombings.

The most common action is to impose licensing rules or requirements for permits on dealers and buyers to keep high explosives out of the hands of potential bombers. Thirty states have some form of permit or license control over the sale of explosives—nearly double the number in 1968.

But thefts of explosives from civilian and military sites are growing at a rate that offsets the curbs on sales.

Typical of comments by state officials advocating the new state controls over explosives is that of the Iowa Attorney General, Richard C. Turner.

A LOCAL RESPONSIBILITY

"If the states cannot respond effectively," he said, "law enforcement will be left more and more to Federal authorities. We will thus violate another of our basic precepts: that law enforcement is a local responsibility."

Interviews in 15 states and with Federal officials and bomb experts also found the following:

While public alarm centers on bombings attributed to the radical left and black extremists, a large number of blasts can be traced to right-wingers, white protests against Negro activities, labor disputes and individuals seeking revenge.

New York City and the West Coast are experiencing the most dramatic increase in explosive bombings. Southern Florida shows a decrease. The Middle West reports little change.

Homemade bombs can be fashioned from easily obtained chemicals. Dynamite and other explosives can be bought or stolen near most large cities, but they are much more difficult to make than firebombs.

The new regulations that the states are adopting vary from a requirement that a buyer pay $2 and sign a statement of legal intent to stricter recordkeeping by licensed dealers, and fingerprinting and investigation of potential buyers. They all seem to have some effect in helping the police trace explosives.

William L. Kinzel, a prosecutor in King County, which includes Seattle, said that a 1969 Washington law requiring a license to purchase explosives was of "invaluable assistance in the investigation of criminal cases involving explosives."

Among the other states that have recently adopted or strengthened requirements for permits are Alabama, New York, Illinois and New Jersey. Still other states, such as Michigan, Texas and Ohio, are considering similar legislation.

14 STATES CITED

The need for stricter state regulations was shown in a survey by the Bureau of Mines in April.

It listed only 14 states as having good to excellent regulatory laws. Seven states were rated fair, and 23 had what were considered to be poor regulations or none at all. Six states were not rated because of difficulties in getting satisfactory responses.

The bureau survey, conducted by Dr. Glenn H. Damon, staff director of safety research, was taken in an effort to provide Federal agencies with the first known summary of such regulations. A similar, uncompleted survey by the explosives industry says that 30 states have laws or regulations and 20 do not.

Attempts to limit sales of explosives to legitimate users have been offset by the growing number of thefts of explosives from civilian and military supplies.

California officials report that more than five tons of explosives were stolen from a northern California dam site in recent years, and the explosives were later found selling for $200 a box in the San Francisco Bay area.

Charles A. O'Brien, California's Deputy Attorney General, called the Government a major supplier of explosives to militants through thefts from military installations. He estimated that more than 70 tons of Army munitions had been stolen from California posts and from supplies heading for Vietnam.

A staff study of the Senate Permanent Investigations Subcommittee showed that dynamite thefts from construction and quarry sites had risen from 12,381 pounds in all of 1969 to 18,989 pounds in the first five months of 1970.

Some states have increased the penalties for the illegal use of explosives in an attempt to curb the bombings.

The Maryland Legislature raised the maximum jail term for illegal manufacture, transportation or possession of explosives from six months to five years within 30 days after two bombings—resulting in two deaths—that appeared to be connected with the trial of H. Rap Brown, the black militant.

The new antibomb law, which passed with little debate, also increased the maximum term for bombing from 20 years to life.

The Iowa Attorney General has asked Iowa legislators for broader authority to investigate extremists and for higher pay and modern equipment for those investigating bombings.

Other states considering raising the penalties for bombings include Massachusetts, Washington and California. The Los Angeles County District Attorney, Evelle Younger, has called for the death penalty for those who threaten or commit bombings.

Law enforcement officers and elected officials generally placed the blame for recent bombings on the radical left and black extremists.

Clarence M. Kelly, the Kansas City, Mo., Chief of Police, said: "We think we do have a pattern here. We know that shortly before the bombings we had visits from some of the national figures in the Weatherman group of the S.D.S."

Kansas City has had about twice the yearly average of seven bombings in the first six months of this year with a series of seven explosions in city government and business buildings between April 13 and April 17.

A Treasury Department study of bombings from Jan. 1, 1969, to April 15, 1970, found that the local police attribute more than half of the bombings they can trace to campus disturbances, 19 percent to black extremists and 14 percent to white extremists.

In North Carolina, which suffered the third highest property damages in the nation from bombings, according to the Treasury study, law officers have been unable to pin bombings on any extremist groups.

"Grudges" are cited by the director of the State Bureau of Investigation, Charles Dunn, as the reason for the high number of bombings in his state.

Mr. Dunn and other law enforcement officers were unable to pinpoint the reason for so many bombings but noted that thefts of explosives from the large number of military bases in North Carolina were not rare.

Florida, however, has experienced a decline in the number of bombings, especially in Dade County, which includes Miami. Figures for the county show that there were 44 explosive bombings in 1968, 15 last year, and only four so far in 1970.

According to Thomas G. Brodie, head of the county bomb squad, the decrease can be attributed in part to arrests in the last two years, "putting the bombers out of business."

NEW YORK FIGURES

The statistics for New York City show a rise in explosive bombings and a decrease in firebombings in the last two years.

There were 93 explosions in New York last year and 52 in the first five months of this year. Incendiary weapons were set off 34 times in 1969 but only six times so far this year.

The trend is being watched by city and Federal officials because the explosive bombs are felt to be a sign of sophistication. They are harder to make and they are considered to be more destructive and more dangerous in that they lack the warning time given by firebombs.

In the eight Far West states, there was an average of seven bomb "incidents" a day during the first three months of 1970, according to Maj. Carl R. Hitchcock of the Sixth Army Bomb Detachment.

He said that these incidents were cases in which his men were actually sent out and picked up or defused something.

Acknowledging some decline in the number of incidents recently, Major Hitchcock still listed 1,006 explosive-bomb incidents in the West from Jan. 1 through July 25 of this year.

The reason given for the trend toward explosive bombings is that potential bombers are realizing how easily they can buy, steal, or make bombs.

Major Hitchcock said that Army analysis of devices defused this year proved that "we are now dealing with people who have the ability to make explosives themselves."

Homemade bombs are almost as easy to make as explosives are to steal or buy and they are harder to trace. But they usually lack the purity and stability of professionally made explosives so they are more likely to backfire on their makers.

Explosive bombs are easily made from chemicals readily and cheaply sold at drugstores if the bomb maker has information

that is available in a number of military and leftist and right-wing publications.

For more exotic explosives, extremists have only to buy or steal from local chemical outlets. In one recent northern California case, militants associated with the Students for a Democratic Society were arrested in the process of making 25 pounds of nitroglycerin.

Almost all the law officers interviewed agreed that if city fire or police ordinances hampered buyers of explosives, they could go to neighboring rural counties or states and buy dynamite across the counter. In Michigan, two young United Press International reporters drove 13 miles outside of Lansing and bought 12 stocks of dynamite for $3.

The reporters wrote that at a drugstore next to the hardware store selling dynamite they were required to prove they were over 21 and sign a pharmacy drug book before they could buy a two-ounce bottle of cough syrup containing codeine.

Since at least 23 states have few restrictions or none on the sale of dynamite, according to the Bureau of Mines study, it would be equally easy to obtain the explosive in these states.

Although New York has strict regulations, the dynamite recovered from a Greenwich Village townhouse after an alleged "bomb factory" there exploded, was found to have been purchased in Keane, N.H., under an assumed name.

## APPOINTMENT OF HARRY L. PARRISH AS EXECUTIVE DIRECTOR OF THE REGIONAL TRANSPORTATION DISTRICT

Mr. ALLOTT. Mr. President, the regional transportation district was created by the State Legislature of the State of Colorado and encompasses not only the city and county of Denver, but also Adams, Arapahoe, Jefferson, Boulder, Douglas, and Weld Counties.

The regional transportation district is extremely fortunate, in my judgment, to have obtained the services of Harry L. Parrish as its executive director.

Mr. Parrish was the transportation engineer for Simpson and Curtin, a Philadelphia transportation consulting firm, for 18 years and served as director of improved projects for the large southeastern Pennsylvania Transportation Authority. Mr. Parrish has worked on most of the major urban transportation developments in the United States over the past two decades and is one of the most highly respected experts in the field.

In two interviews published in both Denver Sunday newspapers on August 16, 1970, Mr. Parrish articulately expresses his vision of transportation in the Denver area in the future. I ask unanimous consent that both articles be printed in the RECORD.

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

### PUBLIC ATTITUDE, SHORT TIME CHALLENGE TRANSIT PLANNERS

(By Gary Gerhardt)

A bad attitude toward public transportation and lack of time are two of the most challenging factors facing the Regional Transportation District (RTD), Harry Parrish, executive director, believes.

The RDT was established by a 1969 law and is charged with the responsibility of planning and developing a public transportation system for the seven-county region surrounding and including Denver.

Parrish said the lack of time presents a challenge because the act creating the district calls for an election before July 1, 1974. The election will determine whether the district can issue bonds to finance a mass transportation system; a negative vote will dissolve the district.

"It is a real 'self-destruct' arrangement," Parrish said.

"If we can't come up with a sound, feasible plan that the voters in the district like by 1974, it's all over."

#### PRESENT ATTITUDE

Parrish believes one of the greatest obstacles facing the district is the present attitude of residents in the district toward public transportation.

"The private automobile is almost solely relied upon by the people and we've got to design a public transportation system which can and will compete," he said.

Parrish is a firm believer in developing a public transportation system (he doesn't like to call it a mass transit system). He has 18 years experience in the field.

He came to Denver from Philadelphia where he was director of Improvement Projects responsible for the planning and implementation of the South Eastern Pennsylvania Transit Authority's $613 million, 6-year transportation program.

Parrish was staff engineer for Simpson and Curtin Engineers, a Philadelphia transportation engineering consultant firm, and while with the company, he participated in transit consulting work in more than 30 cities.

#### "MAXIMUM LOAD"

"One of the big problems with exclusive use of private vehicles," he said, "is that by the time a freeway is completed, it is obsolete.

"Freeways are designed to carry a maximum load the day they open and there is no way for them to expand as the need arises."

But more important, Parrish feels public transportation is needed for ecological reasons.

"Automobiles definitely contribute to the air pollution problem and we must find other methods of travel in cities than by the gasoline engine," he said.

Parrish said he accepted the job in Denver (knowing full well it might abruptly end in four years) because "legislation here told me there was a need and, more important, a desire to do something about the problem of public transportation.

"The really great thing about Denver is this city doesn't have a sizable investment already in a system.

"This is an opportunity to plan an entirely new system.

"In Philadelphia, for example, we had to contend with existing subways and had to fit a new plan in to utilize existing facilities.

"It was a situation when we worked on BART (Bay Area Rapid Transit in San Francisco).

#### "HAD TO COORDINATE"

"At BART, there were two existing transit systems and we had to coordinate them and then sort of superimpose BART over them both," he said.

Parrish said studies on the Denver situation show commuters should be using the Denver Tramway system three to four times as much as they are given the size of the city's population.

He said the people must be convinced the proposed system his district is working on is for their own good.

"We don't really have an air pollution problem in Denver, yet," he said.

"But, you'd think the people here would realize it and jealously guard against destroying their atmosphere. They must understand a public transportation system could help them do that."

The district now is in a stage of major planning and the plan being developed now should be ready for implementation by the first of next year, Parrish said.

"We have to look at the big picture," he said.

#### "IT DOESN'T STOP

"When you think of transportation, you have to realize it doesn't stop at lines, political, county, or any other kind.

"We're not planning a public transportation system for 1970, but looking to 1980 and beyond. This doesn't mean, however, nothing is going to be done in the interim."

Parrish said one real problem is that there is a great deal of new technology now becoming available on new and better motors and engines that cut down on pollution.

"However, I think the bus will always be a means of public transportation," he said.

"Diesel fuel has far less pollutants than gasoline," he said.

Parrish said everything is in the planning stage now, but that the probable outcome might be a "fixed-facility system" with buses feeding it.

He concluded that he believes Denver and the district must have a balanced transit system and that Denver, now, is definitely out of balance.

Parrish said the district now has less than four years to design the system, find financing, and most important, to try to sell it to a generation of voters who probably will be too old to use it when completed.

Yet, he said he feels the job definitely can be done.

### RTD GOAL: PREVENT TRANPORTATION CHAOS IN DENVER

(By Charles Roos)

Harry Parrish's office at 1050 Yuma St. is about 100 feet from the Valley Highway, close enough to hear the steady whine of traffic if not to smell its fumes.

Parrish's job is to try to see to it that Denver doesn't need quite so many more of these expensive, noisy freeways in the future.

Parrish, 47, came here in June from Philadelphia to be the first executive director of the Regional Transportation District (RTD), a Denver-centered public agency also responsible for Adams, Arapahoe, Boulder, Douglas, Jefferson and Weld Counties.

RTD's board of directors, representing the seven counties, is aiming toward development of a board system of public transportation to complement the area's existing auto network.

#### 18 YEARS EXPERIENCE

Harry Parrish himself is oriented toward public transportation as a result of 18 year's experience as engineer for Simpson and Curtin, Philadelphia consulting firm, and as director of improvement projects for the large Southeastern Pennsylvania Transit Authority (SEPTA).

With Simpson and Curtin, Parrish worked in more than 30 cities in the United States and Canada. He was involved in private and public aspects of mass transportation, looking at the auto-vs-public transit question from both sides of the fence.

#### CHOICE IN 4 YEARS

Within four years, people of the RTD area will have a choice of which direction to take in future transportation.

"Should we continue," Parrish asked in an interview, "to devote massive amounts of money to the automobile and to the construction of facilities to serve the automobile? And if we do, what will be the total investment, the total cost?"

That total cost, he said, in addition to the obvious things must include such things

as environmental destruction and the loss of taxable property to freeways and interchanges.

"Los Angeles is a good example," he said. "They chose the route of a completely auto-oriented metropolitan area, and now they know it just is not the answer."

COMPARE COST

The alternative, he said, is to consider an investment in public transportation—"a well-designed facility that does the job"—and to compare the total community cost of the two approaches.

He's sure what the answer will be.

"It's just that I've recognized over the years, and I've worked both sides of this thing—I was in highway work as well as public transportation—and I just came to realize that this continued growth of the automobile and its facilities was not the right way to go."

It wouldn't be realistic, of course, to think of eradicating existing freeways or to expect that no new freeways will be built. They will.

REMINDER

Parrish's own job requires that he use a car.

The bustling traffic on the highway just outside his office is a constant reminder of the flexibility and popularity of the personal motor car.

But at the same time the RTD director hopes the district can have some influence on the future of the automobile in the seven-county district to bring about "a better balance in the transportation picture."

If public transit can divert only a portion of the future demand for future highways facilities, the investment will be worth it "many, many times over," he said.

"Highway facilities are designed for peak hours," he said. "That's when most traveling is done.

OUT OF ROOM

"But for every additional 2,000 to 2,500 trips that occur in a peak hour, you need to add a lane to that type of facility out there," Parrish said, motioning toward the Valley Highway.

And, as he noted, there isn't room left in the Valley right-of-way now to add much of anything.

Parrish, who's been in Denver only a matter of weeks, frankly admits one thing has impressed him here—"the real challenge we have in convincing the people of this area what public transportation can do for them."

Translation: he has discovered that traffic in the Denver area is moving surprisingly well right now in comparison with many other cities.

Congestion is a relative thing, he said, and there's certainly some congestion in Denver. Any time a motorist sees a traffic light turn green at the next corner but can't reach the corner before the light changes to red again, that's congestion, according to Parrish.

"But as I see it here," he said, "it doesn't compare with what I've seen in other places. I think that from the standpoint of mobility, Denver is very well organized. Trafficwise, it operates beautifully now.

RELATIVELY EASY

"Oh, sure, you've got some spots like this Valley Highway, certain parts of which are terribly underdesigned for the volume (of cars) using them. The interchanges for example, in many cases are very poor. But for the most part, moving about the city is relatively easy.

"In other words," said Parrish, breaking into a chuckle, "I just wasn't aware that from the standpoint of traffic, Denver was so attractive. Put it that way."

This naturally makes it a little harder to convince people they will need to make a major investment in public transportation. But Parrish is convinced that as time goes on, because of the continued increase in the use of the automobile and the increasing number of auto registrations, the situation "will deteriorate, will get much worse."

Between now and the middle of 1974, RTD's staff and board will be working on a comprehensive plan for public transit in the future. A major contract for consulting work is expected to be awarded about the end of 1970.

10 YEARS TO BUILD

If the voters approve a bond issue in 1974, it will still take 7 to 10 years to design, engineer and build a new system.

And if the voters reject RTD's bond issue in 1974, the district, by law, will simply go out of existence.

That provision in the 1969 RTD law is what Parrish calls the "self-destruct" clause.

On the one hand it certainly has a tendency to spur RTD into action. On the other hand it has a tendency to discourage recruitment of the type of technical staff Parrish is searching for.

TRANSIT STUDY

In other activities, RTD has already applied for a federal grant for a demonstration project involving electric-powered, air-cushioned "personal transportation" vehicles. They may or may not fit into the future area-wide system.

RTD is cooperating in a transit study of the Boulder Valley area and working on other common plans with the Denver Regional Council of Governments (COG).

RTD is highly interested in the city of Denver's negotiations to buy and improve the bus system of the Denver Tramway Corp.

Unfortunately for Denver, RTD can't help finance or operate any such system until the district gets approval for its own long-range plan from the voters, probably not before 1974.

Assuming the city buys Tramway and improves service, Parrish says, that system will certainly be a "major element" in development of RTD's plans for future transport in the seven-county district.

The present Tramway bus fleet won't necessarily be the backbone of RTD's future system, though.

PUBLIC ACCEPTANCE

Parrish believes the RTD board will first look for some form of fixed-line transportation—by rail, air-cushion or some other fixed guideway—to supply the fast, reliable basic service necessary to win public acceptance.

RTD also will need buses, or some other mode resembling buses, to supplement and connect the fixed-line service. But by the time RTD gets into full operation, Parrish thinks a better, more attractive type of bus may be available.

RTD officials, nevertheless, hope Denver's Tramway purchase can be completed without interruption or major cutbacks of service.

Experience in other cities has shown, Parrish said, that "every rider you lose today is just that much harder to win back the longer you wait."

## NATIONAL OPPOSITION TO THE DISTRICT OF COLUMBIA CRIME BILL

Mr. ERVIN. Mr. President, the District of Columbia crime bill is now law. Despite the urgings of many Senators that the bill was bad legislation, that it played havoc with the Constitution, and that it should be defeated, a majority of this body disagreed. The President has signed the measure. However much I regret the result, Congress and the President have discharged their responsibilities to assess the legislation in terms of public policy and constitutionality. That, for the time being, ends the legislative role on the issues raised by the bill. The responsibility now rests with the courts and the law-enforcement officials of the District to apply the legislation, and to determine whether it is constitutional. I am confident that our courts will not treat preventive detention, no-knock, and other constitutional infirmities of the bill in the same cavalier manner as did the executive and legislative branches of our Government.

I am also hopeful that the debate on the bill, and the general public outrage against the violence done to constitutional principles, will result in measured and careful application by the police and the prosecutors during the time it remains on the law books. In this respect, I was greatly heartened by the remarks of Chief of Police Jerry Wilson, who recently said that he intended to use no-knock very sparingly, perhaps no more than a dozen times a year.

Chief Wilson's remarks highlight one of the points we tried to make in the debate. That is that no-knock is of limited usefulness to the police, and certainly not warranted when compared to its great opportunities for abuse, and the danger it poses both to police and citizen. We in the District may be thankful that the no-knock law will be administered by a responsible man like Chief Wilson. But we have no assurance that all future police chiefs in Washington or in the rest of the country will be as responsible as he is. Public safety and constitutional principle should not depend on the vagaries of the men on whom we confer power. Ours is, after all, a government of laws, not men.

In the few days since the Senate vote on the District of Columbia crime bill, I have received hundreds of letters. Many, of course, come from citizens living in Washington. But I have also heard from Americans all across our land. With the exception of just a few, the citizens I have heard from are unanimous in opposition to the bill. This mail belies the claim that harsh and repressive anti-crime legislation is a politically popular issue. Quite the contrary. My mail demonstrates that the Constitution and the Bill of Rights are more popular than the District of Columbia crime bill. I am convinced from the letters I have received that the citizens of our country want to do something about crime. But they want to do something truly effective. They are not interested in panaceas which promise cures for problems but accomplish nothing.

While to some people, defense of civil liberties and the Bill of Rights may be nothing more than empty rhetoric, those who have written me care about constitutional principles. They recognize that there is nothing mythical about requiring conviction of a criminal act by a jury of one's peers before imprisonment can be imposed. They recognize that more than codification of the common law is involved when police get expansive authority to break into homes like burglars. If the Attorney General wants to see the substance behind the so-called myth of repressive Federal legislation, I would suggest as a good

starting point the text of the District of Columbia crime bill.

I regret very much that Members of Congress did not have an opportunity to listen to the voice of the people before the bill came to a vote. They would have seen that liberals and conservatives, Republicans, and Democrats, Southerners, Westerners, Easterners, all people, including the so-called "silent majority," oppose this sacrifice of the Constitution. They would have seen that the bill is opposed by people living in the middle of Washington, who are the most direct victims of crime. They would have seen that the bill is opposed by people living in the Maryland and Virginia suburbs, who work in the city and who have friends who live here. They would have seen that legislation which says a man's home is no longer his castle and legislation which violates the principle that every man is innocent until proven guilty of an actual crime he has committed—legislation such as this is not only unwise and unconstitutional, but also politically foolish, not just in the Washington metropolitan area, but all over the country.

I am grateful for the many letters expressing support for those of us who opposed the bill. I applaud the many editorials opposing the bill. It is clear to me from this public response that Americans will fight any attempt to apply no-knock, preventive detention, and other such proposals to the entire country. The citizens of the District may take comfort, small as it may be, in the knowledge, that by their sacrifice they have alerted the country against such repressive anti-crime legislation. Should it be so foolishly proposed that this legislation be applied nationally, I have no doubt that it would be soundly and quickly defeated. Opponents of no-knock and preventive detention may be a minority in the Senate, but they are a majority everywhere else.

I have a high respect for the Congress of the United States, but this is one case where I say Thank God that the Congress of the United States is not the supreme ruler of the American people and that we have courts in which a man can invoke the constitutional rights which Congress and the executive branch may undertake to rob him of.

Mr. President, in order that the Senate have some idea of the breadth of national opposition to the District of Columbia crime bill, I ask unanimous consent that a series of editorials and a selection of letters be printed in the RECORD.

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

[From the Mining Journal, Aug. 4, 1970]

THREAT TO FREEDOMS

"Excessive bail shall not be required," states the Eighth Amendment to the Bill of Rights.

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized," states the Fourth Amendment.

Yet the U.S. Senate last week approved (54–33) a bill that denies bail entirely under certain circumstances and allows police to enter homes without knocking. Also provided in the bill is broadening of the wire-tapping practices of the government.

The measure is the District of Columbia crime bill, which is aimed at trying to reduce the excessively high crime rate in the nation's capital. The end is salutary, but the means are questionable, to say the least.

The bill provides the jailing of an accused person for up to 60 days before his trial if the judge thinks the defendant's record indicates he might be a crime risk in the interim. In other words, it denies bail completely in some cases. It also provides for "no-knock" entry, permitting law officers to enter a home without identifying themselves if they think the suspect might otherwise destroy evidence or endanger the officers' lives.

* * * * *

The vote on the bill cut across party lines and the measure found supporters and opponents together at both ends of the political spectrum. Numbered among the supporters, for instance, were several liberal Northern senators, while the principal opponent of the bill was a conservative Southerner.

The Southerner was Sen. Sam J. Ervin Jr., a North Carolina Democrat, who is regarded as the strictest constructionist in the Senate. His description of the D.C. crime bill is something to be savored:

"This . . . is as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas . . . a garbage pail of some of the most repressive, near-sighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented . . . an affront to constitutional principles and to the intelligence of the people of the United States."

One does not have to search far to learn why the measure passed. Some of those who voted for the bill could find sanctuary in its provisions for reforming the crowded court system in Washington and for establishing a public defender program. Others undoubtedly were sincerely concerned with the appalling tide of crime in the District. And some must have feared that a negative vote would not have been politically expedient in this election year.

These are all understandable motives, and no one doubts that the heavy incidence of crime in Washington must be checked, but must this be done at the expense of individual freedoms that are guaranteed to Americans in their Constitution? If the D.C. crime bill were to become a model for the nation as a whole, the United States would have forsaken some of its most precious liberties. Fortunately, the bill will be tested in court, where Sen. Ervin's accusation of unconstitutionality should be proven.

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[From the Independent, Anderson, S.C., July 28, 1970]

JUDGE ERVIN DRAWS A FINE BEAD ON HIGHLY DANGEROUS LEGISLATION

North Carolina Democratic Sen. Sam Ervin has described the Nixon administration's District of Columbia crime bill as "a garbage pail of some of the most repressive, near-sighted, intolerant, unfair, and vindictive legislation that the Senate has ever been presented."

Well, a garbage pail by another name would smell as foul, Attorney General John N. Mitchell to the contrary notwithstanding. Referring to one of the more fetid features of the bill—the so-called "no-knock" authority for federal agents—Mr. Mitchell suggested to the House Ways and Means Committee the other day that the name ought to be changed.

Instead of "no-knock," he said, call it "quick entry." That, he explained, would make it less misleading and prejudicial.

Positively Orwellian. War is peace. Freedom is slavery. Ignorance is strength.

But "no-knock" is still "no-knock," and it is still an invitation to death as well as an unconstitutional invasion of the rights set forth by the charter of our liberies.

It means that federal agents could break into your house without announcing themselves if they have "probable cause to believe" that evidence is likely to be destroyed or that their lives are likely to be endangered.

Attorney General Mitchell explains that no such search could be made without a search warrant obtained from a judge and that the judge would have to be "persuaded" of the existence of that probable cause. Experience with presuadable judges is hardly reassuring.

It is not out of the realm of reasonable surmise that federal agents would not have too much trouble in finding a judge who would, without too much to-do over the matter, give them the authority they requested.

Putting aside the question of the individual's rights in this regard, what about the agents themselves? Would he really be doing them a favor? Or would we not, in actuality, be exposing them to unnecessary risks of counter-attack from Criminals who would have nothing to lose or from ordinary citizens who, for understandable reasons fearful of the unannounced intruders, would defend themselves by shooting first and asking questions later?

In Nebraska, as a matter of fact, a state law, which is probably unconstitutional but has still to be tested in the courts, gives a citizen the right to kill in defense of his person or his property.

"No-knock" is a Gestapo tactic. Like other features in the proposed bill—"preventive detention," for example, which is more Orwellian nomenclature to describe the process by which accused citizens could be locked up for up to 60 days without trial, on a judge's guess that they would be dangerous loose—"no-knock" by any name has no place in a free society.

It goes without saying that crime must be countered, but the way to do so is not by a law which "Judge" Ervin correctly describes as "unconstitutional, unfair, unjust and unworkable."

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[From the Durham (N.C.) Morning Herald, July 22, 1970]

DISTRICT OF COLUMBIA CRIME BILL VIOLATES RIGHTS

Granted that crime is bad in the District of Columbia, but it does not follow that the way to combat it is to enact laws which deprive people of their constitutional rights.

Certain features of the District of Columbia crime bill, the conference version of which has passed the House of Representatives and is now being debated in the Senate, do just that, deny to the residents of the nation's capital protection guaranteed by the Constitution.

The portion of the proposed law which permits police to enter a building, including a home, without knocking or announcing themselves if they have "probable cause to believe" evidence may be destroyed or their lives endangered patently contradicts the Fourth Amendment, which explicitly states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Expanding the authority of police to tap wires to gain information also runs counter to this amendment. And the mandatory minimum sentence of five years for a person con-

victed twice of armed crimes puts that person in double jeopardy, a violation of the Fifth Amendment which prohibits, among other things, putting a person "in jeopardy of life or limb" twice for the same offense. The minimum sentence in effect punishes a person a second time for an offense of which he had previously been convicted.

Senator Ervin of this state is commendably fighting these unconstitutional provisions of the District of Columbia crime bill. That the bill has a strong chance of passing the Senate is disturbing, for these features constitute a long step toward creating a police state.

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[From the Washington Post, July 16, 1970]

THE SENATE AND THE CRIME BILL

The year of maneuvering over President Nixon's anti-crime program for the District of Columbia will come to a climax within the next day or two in the Senate. It is hardly the kind of climax that anyone could have wanted, since it seems quite possible that the Senate will refuse to accept a conference report and will send the whole program, or large parts of it, back to the House for further negotiations.

The dispute between the Senate and the House, as we see it, grows out of fundamentally different approaches by the two bodies toward crime control. The House, especially its District Committee, thinks the tools needed to stop the surge in crime require undercutting individual liberties and include harsh and vindictive treatment of those who are charged with committing crime. The Senate, or at least a substantial group of its members, thinks the crime problem can be brought under control without undermining either the concepts of modern penology or individual liberties.

Unfortunately, the administration has thrown most of its weight on the side of the House in this struggle. As a result, it has helped to put the Senate into the difficult position of being asked to pass a bill containing provisions it has never fully examined or even discussed or of blocking the immediate enactment of the bill's more important and non-controversial provisions. The Senate, for instance, has never acted on preventive detention (a favorite battleground of Senator Ervin and Attorney General Mitchell but the District crime bill authorizes a preventive detention program.

Part of the problem of dealing with this issue, as well as with many others in this bill, is the massiveness of the legislation. The bill is as long as a good-sized novel. It is now in its fourth version, since the conference report differs markedly from the one that passed the House last March and from a group of individual bills that passed the Senate last year. This new version, while vastly improved over the preceding ones thanks to the effort of Senator Tydings and other senators, still covers the whole range of criminal problems—it reorganizes the local courts, changes many provisions of the criminal law, establishes a public defender system, strengthens the bail agency, authorizes preventive detention and wiretapping, and so on. There may be one or two people in Washington who now understand all that is in this bill but not many, particularly since the text of it became available only yesterday.

From our quick reading of that text, it seems to have a good many fewer "fleas," to use Senator Ervin's term for its faults, than the administration's original proposal or the House District Committee's version. But some faults are still there, and some of them are serious. We still don't understand the urgent need of local police for wiretapping authority when the FBI has it. We don't see why all 16- and 17-year-old youths charged with certain crimes must be treated as adults while others the same age—but charged with lesser crimes—may be treated as juveniles. We don't fully understand why rules about "no-knock" searches need to be written into law if they merely codify, as proponents of that section claim, what the law already is. We aren't sure that the preventive detention section contains all the protections against abuse that such legislation needs. We think the idea of mandatory minimum jail terms for specified offenses is basically wrong.

Given all these factors, we sympathize with the efforts of a substantial number of senators to defeat the conference report. But it will not be enough to defeat this report and to leave the District's war on crime suspended in mid-air for another year. The good parts of this legislation—particularly the reorganization of the local courts and the strengthening of the bail agency—are desperately needed. They must be passed by Congress this year. If the Senate rejects the bill as it now stands, a heavy responsibility will rest on each member of Congress and on the administration to work out an accommodation that is acceptable to both houses. The people of the Nation's Capital cannot be asked to endure another year of frustration and rising crime rates while court reform and other noncontroversial measures are held hostage for an assortment of crime control measures which are quite rightly the subject of intense dispute.

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[From the Boston (Mass.) Morning Globe, July 17, 1970]

THE PRESIDENT'S CRIME BILL

"Here," said a U.S. Senate witness testifying against the Administration's anti-crime bill and quoting the Red Queen in Alice in Wonderland, "is the King's messenger. He is in prison now being punished and the trial does not even begin until next Wednesday. And of course the crime comes last of all."

The anti-crime bill, proposed for the District of Columbia as a model for the nation and passed by the House Wednesday 332 to 64 after only one hour of desultory debate, may not be all that bad, but it is not far from it. The bill, the product of a joint conference committee, is now up for debate in the Senate where it is expected to get more than a cursory look, as indeed it should.

Attorney General John N. Mitchell argues that the bill's passage is essential to the control of crime in Washington. There is no doubt that crime there has increased in the last 18 months, and to an alarming degree in some categories, such as muggings. There is serious question, however, as to whether the bill is the best way to fight it, and even more serious question as to the havoc it would raise with the legal rights of persons accused of crime. Sen. Sam J. Ervin Jr. (D-N.C.), former Superior Court Judge in his home state and a constitutional authority many times honored by bar associations, sees it as a possible opening of the door to a police state in America—despite the honesty of Administration intentions.

The bill is a catch-all of good and bad provisions. Of its bad ones, it is hard to say which is the worst.

Under the so-called "no-knock" section, law enforcement officers, after obtaining a warrant on the strength of their belief that evidence they want may be on a certain premises, would be permitted to enter those premises at any hour of the day or night without even announcing their presence at the door. Americans for years have been horrified by accounts of the ominous midnight knock on the door in totalitarian countries. Now, in the capital of our own country, the police would not even knock. Down the drain would go the old English common law maxim that neither the king himself nor any of his troops may cross the threshold of the humblest cottage without permission of the owner.

A man's historic right to privacy in his own home would go out the door as the police, where need be, broke it down lest an announcement of their presence would give the home occupants time to destroy, say, a small pinch of marijuana. The number of police officers who would be resisted and perhaps even shot as housebreakers has not even been considered. The Justice Department says the "no-knock" provision would discourage night searches. Its reasoning is impossible to fathom.

The preventive detention section of the bill is even less concerned with constitutional rights. It, too, perverts one of our legal traditions. It argues, in effect, that it doesn't matter how many innocent persons are unjustly punished so long as the shotgun approach assures that none of the guilty goes free.

On its face and at quick reading (which is all it got in the House), it is reasonable enough. It would apply to persons charged with "a dangerous crime," persons charged with "a violent crime" while on bail or probation, persons charged with "a violent crime" who had been convicted of "a violent crime" within the past 10 years, persons who threaten or injure prospective witnesses or jurors, and narcotic addicts charged with "a violent crime." All of this has an appealing sound.

But the definitions are subject to pretty much whatever interpretation one might find it convenient to give them. and the "substantial probability" of guilt makes a total shambles of the constitutional guarantee that all accused are to be considered innocent until they are proven guilty beyond a reasonable doubt. Out the window would go all of the carefully prescribed rules of evidence. A person could be jailed on the basis of hearsay, gossip and rumor. And in some cases this would be for a longer period (even though the maximum would be for 60 days at one whack) than would be possible were he found guilty as charged. Under the "substantial probability" doctrine a man could be punished for a crime he had not yet committed and might never commit. And Sen. Ervin pointedly asks how fair would be the subsequent trial in the case of any accused of whose guilt a court already had found "substantial probability."

The Justice Department's argument that most of the crimes the bill covers were punishable by death in our long ago does not suggest any proper appreciation of the reasons for civilizing the statutes. And the provision permitting a life sentence on third felony convictions overlooks such comparatively recent legal travesties as the life sentence given a Michigan woman convicted of possessing a pint of whiskey in violation of the prohibition law.

An unfortunate aspect of the above-listed outrages against guaranteed rights is that there is no need for them. One of the few virtues in an otherwise hysterical bill is the one that has been underplayed by its advocates. With lawful and effective police work, it goes to the root of crime. By providing for the appointment of an adequate, or at least a nearly adequate, number of judges, it would deter crime in the recommended way of deterring it—by the certainty of legal arrest and an early and fair trial in a court which neither asks nor gives illegal quarter.

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[From the Courier Journal & Louisville Times, July 26, 1970]

CRIME BILL'S ENACTMENT IS OMINOUS

It is up to the courts now to preserve certain constitutional rights that are threatened by congressional enactment of the District of Columbia "crime bill." By a 54-to-33 vote the Senate has given final legislative approval to the measure, which President Nixon is expected to sign into law.

There are sections of the bill that authorize "no-knock" searches; give legal sanction to jailing suspects without bail; and broaden the use of wiretapping in law enforcement.

A number of Senators had grave reservations about these provisions, including Senators Cooper and Cook of Kentucky and Bayh of Indiana, all of whom voted against the bill. The opposition was led by Senator Ervin of North Carolina, a Southern conservative. The measure's most conspicuous supporter in the Senate was Senator Tydings of Maryland, a liberal. Thus, the ideological lines were blurred.

The controlling factor seemed to be that this is a congressional election year, and those Senators running for re-election in November were afraid to vote against what was billed as a "law and order" proposal.

EYE ON THE BALLOT BOX

The bill applies only to the District of Columbia; indeed, a commendable part of it provides the District with a needed reorganization and improvement of its judicial system. However, as Senator Ervin warned: "The Attorney General holds this bill up as a model for all the states of the nation. All Senators should know he hopes to have it imposed on all their constituents as well as the residents of the District."

Senator Cooper took the Senate floor and strongly condemned the bill's repressive features: "We saw preventive detention in Germany under the Nazi rule, and it prevails in Communist countries throughout the world . . . and in non-Communist totalitarian countries . . . (the bill) would deny the great principles for which we have stood and which are embodied in the Bill of Rights . . . (it) raises the specter . . . of the early history in England and of our colonial days of the detention of one person by the state without the process of law. . . ."

The "procedural safeguards" that supporters of the bill point to are not all that safe. If the judiciary and law enforcement agencies jointly determine to employ "no-knock" searches and preventive detention on a sweeping scale there is nothing in the bill to stop them.

Those who supported this bill are willing to erode precious constitutional rights in the name of fighting crime, and yet no convincing evidence has been produced that these techniques will in fact prevent crime. We are about to sacrifice very much for what might turn out to be very little.

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VIOLATING FREEDOMS TO FIGHT CRIME

The Congress has passed and the President yesterday signed the District of Columbia crime bill. In their concern for the alarming crime rate in the capital—and perhaps with some eagerness to assert an election-year commitment to "law and order"—they have adopted a law which includes provisions that run counter to fundamental rights and to American traditions of long standing.

The reference is to the so-called "no-knock" and "preventive detention" provisions in the measure. The first enables police to burst into a house at any time of the day or night in the alleged search for narcotics evidence, without warning and without identifying themselves as police. Under the "preventive detention" provision, persons accused of crimes and deemed a threat to society could be held without bail for as long as 60 days pending trial.

The leader of the fight against the bill because of these provisions was Sen. Sam J. Ervin Jr., of North Carolina, a conservative who has long been recognized as the Senate's leading constitutional expert. The basis of his unrelenting opposition can readily be seen if one looks at pertinent passages from the Bill of Rights.

These words occur in the Eighth Amendment: "Excessive bail shall not be required . . ." One may ask: What is more "excessive" than an absolute denial of bail under certain circumstances—not because a capital crime is involved, but out of concern lest the accused might possibly commit other crimes pending his trial?

The Fourth Amendment regulates search and seizure in the following clear and definite language: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Ervin has persistently maintained that the "no-knock" provision clearly violates this constitutional guarantee.

None of the above should be taken to imply unconcern for the deplorable crime rate in the nation's capital, or any lack of zeal to attack crime with every legitimate weapon that can be devised. But there must be other and far better ways of fighting crime than to enact statutes which circumvent or violate the fundamental law of the land. Constitutional safeguards against unreasonable search and seizure, and constitutional guarantees of reasonable bail pending trial, have stood us in good stead for nearly two centuries. It is a foreboding day when, even with the best of intentions, we turn our backs on them.

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EXPEDIENCY WINS ON CRIME BILL

The U.S. Senate has passed the District of Columbia crime bill in a triumph of expediency over judgment. The fact that it was a "law and order" bill was apparently too much to buck.

Almost everybody wants to do something against crime and reasonable solutions ought to be approved, but the D.C. crime bill is a case of throwing the baby out with the bathwater.

Sen. Sam J. Erwin Jr. (D-N.C.) had led a vain opposition to the measure, repeatedly charging that it was a step toward destroying constitutional safeguards and arguing that its efficacy in dealing with crime was very doubtful.

Among portions of the measure that were attacked as repressive or unconstitutional were authorization for "no knock searches of citizens' homes"; preventive detention, under which an accused could be jailed for two months if there is belief he "might" commit a crime if released, and such things as authorization of wiretaps by police on an almost unlimited range.

What the D.C. crime bill does is put a foot in the constitutional door for the rest of the nation as it edges toward a repressive society.

Senator Ervin is a conservative man, and he is not one who takes the problem of crime lightly. But his argument that this is the wrong approach wasn't enough to stem the tide in favor of the bill which now goes to President Nixon for signature.

"We are told," the senator observed sadly, "it is necessary for us to throw provisions of the U.S. Constitution into the judicial garbage pail in order to cope with crime in the District of Columbia.

And the question is whether this measure will cope with crime. Even if it does—which is doubtful—it will be a high price for law-abiding citizens to pay.

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FLAWS IN THE CRIME BILL

A man's home under our Constitution, is supposed to be his castle.

But it will become a less vulnerable castle, at least in the nation's capital, under the provisions of the District of Columbia Crime Bill which has been approved by both houses of Congress.

This massive, far-reaching bill is the first Nixon administration crime-control measure which has been approved by Congress.

Most of the bill is good. For instance, it provides for a modernization of the District of Columbia's court system. It authorizes an additional 17 judges for D.C. courts. It creates a commission to supervise the removal of judges for disability or misconduct.

It provides—correctly, we think—for juveniles 16 or older to be tried as adults in crimes of murder, forcible rape, first-degree burglary, armed robbery or assault with the intent to commit any of these offenses.

It stiffens the mandatory sentences for second and third offenders. The bill makes it a crime to possess, make or use molotov cocktails in the District, And it says there is no justifiable reason for forcibly resisting arrest.

All this and many other provisions of the bill are good. And these provisions are expected to be a blueprint for similar laws in the various states.

But the bill also include two provisions which we think are bad and which do serious damage to the Constitution of the United States, if not in letter certainly in spirit.

One is the infamous no-knock provision which entitles policemen to enter a private home without any notice whatsoever—if the police have reason to believe that notice might result in the destruction of evidence sought, or danger to the life or safety of the police or anyone else, or lead to the escape of the person to be arrested.

The bill allows police to so intrude even when they have no authorization in a search warrant if, after they have made their raid, they encounter circumstances which would justify obtaining the authority in the first place.

What all this means is that District of Columbia police will be able to burst into a private home unannounced, and in so doing they may be greeted by a shotgun blast from some unsuspecting resident who fears for his life.

A man's home is his castle—but in Washington not entirely.

Another obnoxious provision of the bill is its preventive detention feature. A person charged with a dangerous or violent crime may be held without bond up to 60 days, without any trial whatsoever, if the judge thinks it advisable to protect the community's safety. This provision opens the way to serious miscarriages of justice, since a judge has no way prior to trial to determine who is or is not likely to respect the limitations of being freed on bond. This is bound to confine many persons to jail who have been convicted of no crime.

As Sen. Sam D. Ervin of North Carolina said, "No person except Almighty God" knows in advance who is likely to commit a crime.

If this bill serves as a blueprint, we hope future state measures will exclude these two unworthy provisions.

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SENATOR ERVIN, FOE OF ANTICRIME BILL, ATTRACTS BIG FOLLOWING

(By Gregg Herrington)

WASHINGTON.—Sen. Sam J. Ervin, a homespun North Carolina Democrat, is attracting a following that stretches across the breadth and ideology of the country.

The affable 73-year-old Tar Heel, whose foremost guide is the U.S. Constitution, is receiving thousands of letters from people who tell him he is their last remaining hope against a computerized police state.

This week, while the veteran of 16 years in the Senate was fighting the District of Columbia crime bill as a document "as full of holes as a mangy dog is of fleas," the anti-computer mail continued stacking up in his subcommittee on constitutional rights.

Letter writers say they are alarmed over Army computer banks on antiwar demonstrators, federal snooping into library records to determine who is reading books on explosives, and customs agents opening personal mail from overseas.

"It is a short step to tyranny if dissent will be intimidated," a New York doctor wrote. A California woman begged him to "prevent 1984 from happening." A Delaware woman

was thankful "you Southerners know your Constitution."

"Freedom of the individual is one thing I've always fought for," Ervin said in an interview. "And, yes, I'm really concerned about us losing it."

"In the case of the District of Columbia crime bill," he said, "you've got the President of the United States wanting to repudiate a law put into effect by the First Continental Congress—the right to bail."

The reference was to preventive detention, a concept Ervin sees as clearly unconstitutional. Proponents say it is needed to keep dangerous criminals from roaming the streets while awaiting trial.

Ervin is equally contemptuous of the no-knock provision permitting warrant-armed police to break into a residence unannounced if there is reason to believe narcotics or other evidence would be destroyed if they waited for the occupants to answer the doorbell.

"It's better for a few people to get away with narcotics than to destroy the rights of all citizens," Ervin said. "I believe a man's home is his castle."

In a Senate speech against the crime bill last week Ervin said with typical emphasis "one of the great hungers of the human heart has been for a place where a man could retreat . . . to converse with his God and family without molestation."

In even the briefest of political discussion Ervin is likely to cite chapter and verse of the Constitution as the only necessary reason for supporting or opposing legislation. It is difficult to get him to go outside of that document and offer his own private reaction to a measure.

Ervin said he thinks the Supreme Court will declare the recently passed 18-year-old vote section of the voting rights act unconstitutional "unless they disregard the Constitution." He said the Constitution clearly leaves it to the states to set their own voting qualifications.

On pornography, Ervin believes local community standards should dictate, not the Supreme Court.

On Vietnam, Ervin says "you shouldn't go into a war unles you're going to win it. We could have won it long ago."

On women's liberation Ervin said he didn't want to get involved, but went on to add some feminists' demands are "about the same as requiring a man to nurse his baby."

Anyway, he said, in his own home Margaret, his wife of 46 years, "lays down the law."

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### Legislators Pass Buck

President Nixon got from Congress the anti-crime bill for the District of Columbia that he wanted, but in the opinion of many able authorities on constitutional law, the legislators themselves violated the law in enacting the measure, the most basic law of all, the Constitution of the United States. For most Americans, the idea that one must violate the law in order to enforce the law is completely unacceptable.

The onesidedness of the vote in both Houses of Congress reflected the political pressure that was applied by the President and the reluctance of members of Congress to vote against any proposal that has been labeled publicly as a measure to combat crime.

As a result of the congressional action, the President has made good on his campaign promise to do something about crime, and the legislators have passed the onus of killing the unconstitutional provisions of the measures to the courts, at some uncertain time in the future when, hopefully, the public will be less emotional about the crime problem.

The measure approved contains among other provisions believed to be unconstitutional, such as permitting law enforcement to force their way into a private residence without knocking and identifying themselves in advance, a provision for what euphemistically has been called "preventive detention."

The idea that a person should be punished for crimes he has not committed and which it is only suspected he might commit is contrary to the most basic concepts of justice and is in conflict with the principle on which the whole American system of criminal law is built, the presumption that a person is innocent of any crime until he has been proven guilty by due legal process.

If the idea ever comes to be accepted that a person can be held in jail at the whim of a judge or some other public official when he has not been convicted of any specific offense, or has not even been charged appropriately with having committed one, then the country will have taken a long step toward establishment of a police state and the long struggle to protect the individual citizen against governmental tyranny will have been lost.

Senator Sam J. Ervin Jr., recognized as an expert in the field of constitutional law, told his fellow senators that one secton alone of the administration's anti-crime bill for the District of Columbia contained five violations of the Constitution. His colleagues simply ignored his statement and passed it anyway, although many of those voting for it knew that some of the provisions were unconstitutional on their face. No profound knowledge of constitutional law was necessary to be aware of this.

The congressional action thus raised once more the question of the moral as well as the legal propriety of lawmakers approving legislation which they know to be unconstitutional and leaving it to the courts to throw the law out.

It is an action that is taken frequently these days, it seems, The legislators are able to appease the public clamor for governmental action, but an uncertain number of people may suffer before the constitutional issue can be brought properly before the Supreme Court and it can be nullified judicially. The practice rates as one of the most reprehensible forms of buckpassing.

It can be argued, of course, that it is a proper function of the Supreme Court to decide a constitutional question, but is it too much to expect that a lawmaker have a sufficient knowledge of the law to recognize what is constitutional and what is not? To pass the responsibility to the courts amounts to a confession of incompetence or lack of qualification on the part of the legislator.

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### Scrapping the Constitution

Sens. Sam Ervin and John Stennis are not radicals. They aren't even liberals. They are Southern conservatives. But they also are former judges and recognized authorities on the American Constitution. Before the Senate passed the so-called anticrime bill, both of them warned their colleagues that numerous sections of the measure were unconstitutional. But the Senate, by a vote of 54 to 33, went ahead to pass the bill anyway.

It isn't that the majority discredited what Ervin and Stennis had to say. Most of the Senate's members probably believed them. But they didn't dare not vote for the bill. They feared that they would risk being accused of coddling criminals.

And so we are to have a law that permits police to break into a dwelling, without knocking, if they think there is good reason to believe that illegal activities are taking place behind the door. The same law will permit judges to keep accused persons in jail if, in the judges' opinion, there is a danger that the accused may commit illegal acts if they are granted bail—despite the fact that as accused persons they have not yet been convicted of any crime and, in the eyes of the law, are presumed still to be innocent. The 8th Amendment to the Constitution says that "excessive bail shall not be required." What is more excessive than denying bail entirely on the flimsy pretext that a suspected person may commit a crime if released?

There is every reason for public debate on the constitutionality of the anticrime bill. It never really was debated in the minds of most of those in the House and Senate who voted for the measure. This is an election year. Crime is very much on the minds of a scared populace. The people want something done to curb crime. Passing a bill of this kind would seem to offer that promise. That it may have little if any effect in halting the rising tide of crime is widely recognized—as is the possibility that whole sections of it are likely to be thrown out by the U.S. Supreme Court when the law gets there, as it inevitably will.

But no matter. Most of the senators and representatives are on record as having voted to deal crime a mortal blow. They will be able to remind their constituents of that many times between now and November.

Ervin and Stennis might as well have saved their whistles for the wind. Votes count. The Constitution can go hang. How cynical can Congress get?

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### Law, Disorder

Well, the U.S. Senate went ahead and approved that crazy "law-and-order" bill this week for the District of Columbia, despite its obvious conflicts with the U.S. Constitution. Among other things, it would permit policemen armed with a warrant to batter down anybody's door without warning; and allow judges to hold people as much as 60 days without trial, on simple "suspicion" they might commit crime if released on bail.

We were happy to see that Kentucky's two senators, John Sherman Cooper and Marlow Cook, voted against it. Mr. Cooper denounced the measure on the floor of the Senate, saying it would "deny the great principles for which we have stood and which are embodied in the Bill of Rights." He charged that the bill's "preventive detention" clause "raises the specter . . . of the early history of England and of our colonial days of the detention of one person by the state without due process of law."

There was a notable reluctance among senators running for re-election this fall to vote against the bill. North Carolina's conservative Sam Ervin nailed them with this pointed comment:

"I hear the siren voice of that old devil, political expediency, whisper in my ear 'You better vote for the D.C. bill because it's a law-and-order bill. It's not politically sagacious, not politically wise, to vote against a law-and-order bill.'"

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### "(No) Knock Knock, Who Is There"

To their everlasting discredit, the Senate approved the controversial District of Columbia crime bill. Everybody knows that the Nixon Administration intends the D.C. bill to be the "model" for the nation.

Among the provisions of the bill are:

—Authorization for "no knock" searches by police in which police could simply break in to private dwellings without announcing their presence.

—Preventive, or pre-trial detention, under which a defendant could be jailed without bail for up to 60 days if a hearing established that he might commit a crime if he were released.

—Authorization for wire taps.

—As Senator Sam Ervin of North Carolina put it: "This bill would be legal if we first repeal the Constitution." Right on, Sam.

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### Hooks in the Crime Bills

Public concern over the soaring rate of serious crime in the United States is fully justified, but it does not follow that con-

stitutional safeguards against injustice must be thrown overboard to resolve the problem. Yet, in some respects, that is Atty. Gen. John N. Mitchell's rationale in pushing the "model" anticrime bills now pending in Congress.

Fortunately, Congress is showing doubts about some provisions of both the administration's anticrime bill for the District of Columbia and its proposed Organized Crime Control Act. These provisions may well violate constitutional guarantees.

The need to stop the rise in crime and roll the rate back to more manageable proportions cannot be denied. But the answer cannot deprive innocent as well as guilty of the historic safeguards against wrongful imprisonment, unwarranted search and seizure, the right to bail and other keystones of individual freedom.

The preventive-detention provision of the District of Columbia bill has been described as a "blueprint for a police state" by Sen. Ervin (D-S.C.), the eminent conservative and constitutional expert. Other provisions of this and the organized-crime measure raise similar specters.

The key to effective crime prevention, as Ervin sees it, lies in speedy trial and swift and sure punishment for the guilty. The history of civilized jurisprudence bears him out, and we need only look at Britain to see what a deterrent swift justice can be. Our own clogged courts make this virtually impossible, and so we seek meaner and more dangerous alternatives.

The country badly needs—especially at the state and local level—more courtrooms, more and better judges, bigger and more capable prosecution staffs, and above all far more and better trained police than are now available. All of these things cost money, but they would be well worth the price in terms of public security.

Meanwhile, Congress is pursuing the proper course by refusing to be pushed any further into rubber-stamping bills that clearly need more study.

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ERVIN'S CHALLENGE TO DETENTION BILL

A tough "preventive detention" proposal by Atty. Gen. John Mitchell is now under scrutiny of a U.S. Senate committee.

It would allow a federal judge to deny bail for 60 days to anyone accused of a specified "dangerous or violent" crime if the judge felt there was a clear danger of additional crime by the accused.

The temper of the time is such that there is widespread belief that potential bombers, arsonists and rioters should be detained.

Even so, the idea of detention without conviction is abhorrent to the American concept of justice. Chances are that even the temper of the time will not reverse it.

Sen. Sam Ervin of North Carolina is a staunch constitutionalist who is a leading opponent of the proposal. He is certainly not one of the "liberals" in Washington. When he speaks about the Constitution, it is well to listen.

Preventive detention is "more than unconstitutional," in his vew. Aside from that, he declares, the rate of repeat crime is "very low, too low to justify preventive detention."

Sen. Ervin cites Justice Department statistics to substantiate his point. They show that 25 per cent of persons arrested for specified dangerous crimes are rearrested and 17 percent of those charged with specified crimes of violence.

These seem to be high percentages. But Sen. Ervin found that most of the rearrests were for such misdemeanors as traffic-law violations. Actually, only five per cent are rearrested for a second dangerous or violent crime; and a little more than one per cent are found guilty of a second major crime while on bail.

The probability of judicial error is great, Sen. Ervin believes.

He proposes a different solution to the target problem.

The Constitution guarantees the right to a speedy trial. Today's crowded court dockets, as well as typical defense tactics of long delay, rather mock the guarantee. Society, too, is entitled to adjudication within a reasonable time.

Sen. Ervin proposes a law that would require trials on such charges to be held within 60 days. He also would impose stiff additional penalties for crimes committed while on bail. The Ervin bill would provide pretrial service agencies to supervise people on bond.

This is a sensible approach which takes into account the public's right to have its case against a defendant presented in court without stepping into the disputed area of imprisonment before trial.

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"FULL OF FLEAS"

Almost a year ago, Attorney General Mitchell hailed the Administration's legislative package for the District of Columbia as a "model anticrime program." It called for a sweeping reorganization of Washington's court system, a much stronger public defender office there, a revision of the city's juvenile code, a system of preventive detention for those awaiting trial, and some other changes in the substance of the District's criminal law. The program was, in the eyes of many observers, the first real evidence of what all the campaign rhetoric concerning the need to do something about crime really meant.

Last March, when this legislation finally passed the House of Representatives in one large omnibus crime bill, Senator Sam Ervin took one look at it and denounced it as "a garbage pail of some of the most repressive, near-sighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented." Not all of the provisions that have raised the hackles of Senator Ervin and many others are of the Administration's making. Some of them are attempts by the House District committee, perhaps the worst committee on Capitol Hill, to write into law the pet ideas of some of its members. The result, however, merits Senator Ervin's conclusion that the bill "is as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas."

This is too bad because much of what is in that omnibus crime bill is good. As it stands, the bill would give the District of Columbia for the first time its own local court system, uniting under one roof activities that now occur in three separate courts and providing enough judicial manpower to allow the administration of justice to work. It would give the District a Family Court, with tools that might allow Washington to begin to make a dent on the juvenile delinquency which is about to overwhelm the city. All this is desirable. But coupled with proposals like those are preventive detention, "no-knock" search authorization, broad wiretapping provisions, mandatory minimum sentences, a reduction in the age limitations of juvenile court, elimination of the right to trial by jury for juveniles, and, of all things, a provision requiring that anyone who sues a policeman for wrongful arrest must pay the officer's fees even if the officer loses the case. These provisions have kept the bill tied up in a conference committee for three months as Senate liberals maneuver to find a way to save the bulk of the bill without having to swallow such affronts to constitutional principles. Whether they can succeed is doubtful and if they don't, the Senate will be faced with a cruel choice—letting another year slip by with nothing done to improve the administration of justice in Washington and taking the rap in an election year of killing anticrime legislation, or passing the bill with its menagerie of evils and hoping that the courts will find the worst of them unconstitutional.

OTHERS ARE SAYING—DANGEROUS PROPOSAL

Sen. Ervin (D-N.C.) is a southern conservative who spent 20 years in or close to the judiciary of his state, including service on its supreme court, before entering the Senate. He has a solid grasp of the principles and spirit of the Constitution and of individual rights under it. He chairs the Senate Judiciary Subcommittee on that subject.

It therefore comes from him with unusual authority and persuasiveness when he denounces Atty. Gen. Mitchell's "preventive detention" scheme. It is "more than unconstitutional," he says, being based in addition on mythical and false notions. It poses impossible criteria for the administration of justice by judges who are not clairvoyant, who can only guess and make more errors than hits.

The preventive detention bill would let a judge deny bail altogether and keep in jail pending trial, up to 60 days, anyone accused of a "dangerous or violent" crime. The judge would have only to raise a possibility that the accused might do something to be rearrested for if he were free on bail.

The bill assumes a high probability that persons arrested for such crimes will repeat them, if they can, while awaiting trial. By the Justice Department's own study, Ervin says, "this turns out to be wrong. The rate is very low, too low to justify preventive detention."

The department cites its study as showing that 25 per cent of persons arrested for specified dangerous crimes are rearrested while out on bail, and 17 per cent of those arrested for specified crimes of violence are rearrested. But Ervin found that most of those rearrests are for misdemeanors or traffic offenses, perhaps; only 5 per cent are rearrested for a second dangerous or violent crime, and scarcely more than 1 per cent are found guilty of two major crimes.

Nothing in the department's study or statement, Ervin noted, supports an assumption that a conscientious judge can zero in on those two or three likely repeaters out of every 200 and accurately predict that likelihood. Instead, to get any worthwhile results from preventive detention, many or most persons accused of dangerous or violent crimes would have to be denied bail and locked up until tried.

That makes it obviously unworkable with even a semblance of justice. Its assumptions are wrong, even if it might possibly be constitutional. And mandatory imprisonment without trial, except for the rare, extreme case, almost certainly is not constitutional—and had better not be if liberty has any meaning left. Congress must quash this repressive idea.

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[From the Sun Times, Chicago, Ill., June 16, 1970]

OPPRESSION WILL NOT STOP CRIME

The respected National Council on Crime and Delinquency has joined in criticism of Nixon administration anticrime proposals.

The council's specific target is surely a vulnerable one—the preventive detention mechanism whereby suspects ruled potentially dangerous could be incarcerated for up to 60 days at the whim of the bench.

This bit of foolishness, which is quite likely unconstitutional, is included both in the organized crime control bill and in the crime bill designed for Washington, D.C., which is now deadlocked in Senate-House conference committee.

The council finds a good deal of fault with preventive detention. For example, procedural matters alone would serve to further clog already overburdened courts (a criticism also voiced last year by a spokesman for the American Bar Assn.).

Fundamentally, however, the council's criticism focused on the detention law's danger to civil and individual liberties guaranteed by the Constitution. And the danger is real.

Sen. Sam J. Ervin Jr., (D-N.C.), who is perhaps the leading constitutional authority in Congress, said of preventive detention:

"Fundamental to due process of law is the tenet that a man is presumed innocent until proven guilty beyond a reasonable doubt. Under our system of justice, the government cannot deprive a man of his liberty on the mere accusation or assumption that he has committed a crime or is likely to do so. In practical effect, preventive detention . . . convicts individuals of 'probable' guilt and 'dangerousness' and sentences them to 60 days' imprisonment without trial and conviction of a crime. Such flagrant violation of due process smacks of a police state."

Preventive detention is not the only aspect of the pending crime legislation that should cause shivers along the spines of believers in justice. There is, for instance, the plan to allow no-knock, no-identification raids on dwellings and offices where drug possession is suspected.

Through the heat of controversy, of course, Atty. Gen. John N. Mitchell, author of these extraordinary provisions, has remained adamant. He insists he needs such extra-constitutional tools in order to fight crime.

We believe he does not need oppressive measures which are as likely to harm the innocent as to convict the guilty.

We submit that Congress must reject all moves to thwart liberty.

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[From the Free Press, Detroit, Mich., June 12, 1970]

CRIME AND PUNISHMENT

A black judge from Detroit and a white senator from North Carolina might seem a strange alliance, but they make good sense in the defense of the Constitution.

Circuit Court Judge Edward Bell told the Senate constitutional rights subcommittee, now laboring over the proposal by Attorney General Mitchell to permit "preventive detention" of a suspect for up to 60 days, that the plan was unconstitutional and a violation of individual rights. The plan would give a judge power to jail a suspect if he considered the suspect a "dangerous person."

"The accused will have been sent to jail for no act of criminality whatsoever," Judge Bell said. Until convicted he is presumed innocent.

Sen. Sam Ervin, a former North Carolina Supreme Court justice, agreed with Judge Bell. By no means is Sen. Ervin considered a liberal. On constitutional matters he fits the President's description of a strict constructionist. He is conceded to have one of the best judicial minds in the Senate.

The Bill of Rights, Sen. Ervin said, grants individual rights "which cannot be assaulted by the majority." No judge,—"no person except almighty God"—has the "prophetic powers to be able to tell" who might be dangerous.

Perhaps, as Sen. Strom Thurmond argued, good judges would use their discretionary powers wisely and would not jail suspects "unless they were convinced in their own hearts" that the suspect might commit a crime while out on bond.

But the judiciary, like all trades and professions, has its bad practitioners as well as its good ones. Which is one reason this is a nation of laws, not of men. Mr. Mitchell's proposal would make unusually bad law.

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[From the Mankato (Minn.), Free Press, July 7, 1970]

INSTRUMENT OF POTENTIAL ABUSE

A great principle of Anglo-American justice, that a man is innocent until proven guilty, is in danger of being compromised by provisions of President Nixon's anti-crime bill permitting preventive detention of persons deemed dangerous to society.

Under the administration proposal, a judge could consider a defendant's "danger to the community" and the "likelihood of flight," both highly subjective factors, in setting conditions for a prisoner's release before his case comes to trial. Upon making such findings, a judge could order a detention hearing for a defendant charged with a "dangerous crime" or a "crime of violence."

For these provisions to apply, the crime would have had to have been committed while the defendant was out on bail, probation, or parole, or within 10 years of a prior conviction for a crime of violence.

Sen. Sam Ervin Jr., D-N.C., the Senate's eminent constitutional lawyer, finds this measure to be a compromise of the fundamental principles of a free system of government.

"If America is to remain a free society," says Ervin, "it will have to take certain risks. One is the risk that a person admitted to bail may flee before trial. Another is the risk that a person admitted to bail may commit crime while free on bail."

"In my judgment," he continues, "it is better for our country to take these risks and remain a free society than it is for it to adopt a tyrannical practice of imprisoning men for crimes which they have not committed and may never commit merely because some court may peer into the future and surmise that they may commit crimes if allowed freedom prior to trial and conviction."

Sen Ervin offers the obvious alternative.

"The real solution to the immediate problem of crime committed by persons on bail and, indeed, the solution to the general problem of crime, lies not in preventive detention . . . but in the speedy trial of the accused and the swift and sure punishment of the guilty."

Such a solution requires a major overhaul of the judicial system and, most important of all, an end to judicial leniency.

This approach is consistent with the principles of a free society. It makes more sense than punishing people not yet proven guilty.

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[From the Chattanooga (Tenn.) Times, July 15, 1970]

DANGEROUS PROVISION

The anti-crime bill for the District of Columbia contains highly dubious if not dangerous provisions which pose a threat to the rights and liberties of all citizens of the capital city.

The measure would, for instance, permit a "no-knock" entry by police if officers have reason to suspect there is evidence that can be destroyed during the time required for normal service of a search warrant.

It would authorize detention of an arrested person for up to 60 days if the court has cause to believe the defendant might commit an offense while on bail. This is called "preventive detention." It could well prove at least a 60-day jail sentence for a person merely accused of a crime and not yet convicted.

Such provisions should not have been passed in the first place, and they wouldn't have, if constitutionalists like Sen. Sam Ervin, North Carolina Democrat, had been heeded.

But in the atmosphere of doing something—anything—which resembled an establishment of controls over "crime in the street," both the House and the Senate passed the measure. The District of Columbia is the only locale where Congress has this kind of authority, most such law enforcement being a matter constitutionally reserved to state and local governments.

The bill shouldn't have received the approval of a conference committee which worked three months to resolve the differences between House and Senate versions. But it did, and now stands only one step—approval by both houses again—short of enactment.

Surely, in the extended time the bill has been in conference, there has been opportunity for some sober second thoughts on what the controversial provisions portend. We have no doubt Sen. Ervin will refocus attention on them. This time, we hope his good sense and unquestioned integrity prevail.

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[From the New York Times, July 17, 1970]

A BAD PACKAGE

After three months of consideration, a Senate-House conference committee has reported out an anti-crime bill for the District of Columbia which has been variously characterized as violative of no less than five Constitutional amendments and as "a blueprint for a police state." Twenty former Federal prosecutors have found the bill's chief provisions of "doubtful constitutionality, questionable necessity and demonstrable ineffectiveness."

The measure passed by the House has been somewhat improved in conference, notably by the deletion of an incredible provision that would have required plaintiffs to pay the attorneys of policemen they had sued for false arrest, even when the policemen lost the case. The bill also calls for a much-needed court reorganization, designed in part to speed up the calendar—a highly desirable objective in a city with a grave crime problem and a judicial logjam.

But the bill's most dangerous and unnecessary provisions remain. Policemen would be empowered to enter houses without knocking, not just in the limited and special instances where that is permissible even now, but on what might amount to no more than a hunch that evidence might be destroyed or that those inside might make an armed attack if given notice of the police presence at the door. Shades of Chicago.

The bill would allow a judge to keep defendants in jail for sixty days if on the basis of their records he thought them likely to commit other crimes while awaiting trial. It is true that high bail permits even longer detentions now, but its imposition for reasons other than its legitimate purpose is often overruled by a higher court. The proposed bill would not replace the inappropriate use of bail in any case; it would only add to the injustice. More important, it would for the first time give legal sanction to the undoing of the most fundamental principle in Anglo-Saxon law—that a man is innocent until proven guilty.

Legislation for the reorganization of the District's courts was ready within weeks of President Nixon's inauguration. It is regrettable that Administration forces saw fit to make it part of a dubious anti-crime "package" instead of getting it enacted into law at once. Opponents of the bill in its present form, led by Senator Ervin of North Carolina, hope to defeat it on the Senate floor and start over again with a bill for court reform. That would perhaps do less to gratify the emotions of the hysterical but more to reduce crime in the District.

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[From the Louisville, Ky., Times, July 17, 1970]

MUST WE DESTROY JUSTICE, TOO?

A House-Senate conference committee has cleared and the House has passed a District of Columbia anti-crime bill that contains harshly repressive features and thus is an "affront to the constitution."

That description was provided by Sen. Sam Ervin, the North Carolina conservative who is as eloquent and outspoken in his defense of civil liberties as he is in his opposition to civil-rights measures. In this case, his position, expressed when the bill was originally before the Senate, is rooted in provisions for "preventive detention" of suspects considered a danger to society and "no-knock" search warrants in cases involving major crimes. The latter is designed mainly for use in narcotics cases.

Neither provision was in the bill that passed the Senate. But the House accepted the administration proposals; thus the conference committee, which toned them down slightly before finally sending them back to the House and Senate.

However, several senators have balked and say they will oppose the compromise measure. Hopefully, they will carry the day.

For the preventive detention and no-knock provisions are not the only undesirable features of what, on balance, is a bad bill. The discretion of judges is reduced by mandatory sentencing requirements; the juvenile age is lowered from 18 to 16 and, finally, there is a provision that would pay attorneys' fees for all policemen accused of making false arrests, whether innocent or guilty.

This is retrograde legislation. Moreover, it is a stalking horse for similar legislation on a national basis.

All this has come about because of the fiercely emotional, politically charged climate that has been raised around the issue of crime. It has resulted, on the one hand, in such contradictions as a plea for more laws to fight crime with and, on the other, statements that the rate of crime is now being brought down by the Nixon administration through strong executive action.

The truth, as always, lies somewhere in between. But there is at stake something more vital and much deeper. That is the course of our society. For, as Sen. Ervin has pointed out, we are in danger of being marked as a people "so zealous in their efforts to enforce the law that they would emulate the example set by Samson in his blindness and destroy the pillars upon which the temple of justice itself rests."

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[From the Greensboro Daily News, June 14, 1970]

A Poor Campaign Issue

President Nixon has, in a roundabout way, called on the voters to defeat members of Congress who refuse to support the administration's omnibus anticrime bill, which includes provisions for preventive detention and a "no-knock" narcotics law.

"I do not charge partisanship in this instance," Mr. Nixon told a group of U.S. attorneys at the White House. But he added: "For the Congress to fail to act and go back to the people will be something that the people will remember."

If the people will take the trouble to examine the 13 administration anticrime bills now pending before Congress and if they value their own liberties, they may be more inclined to reject Mr. Nixon's line of reasoning. The "no-knock" provision of the narcotics bill and, most especially, the preventive detention bill are measures more suited to a totalitarian police state than to a democracy.

Sen. Sam Ervin Jr., chairman of the Senate Constitutional Rights Committee, has led the fight in Congress against both of these proposed "anticrime" laws. He says they are unconstitutional and an affront to the American people.

The "no-knock" law, which has passed the Senate, would permit police officers to raid private homes, without knocking and without warning, to search for narcotics. Clearly, the most practical method of gaining entry under such conditions is to knock down a door or smash a window. As Senator Ervin has pointed out, this would give policemen the right to do legally what burglars do outside the law.

Of the preventive detention bill, the Senator remarked that it is "more than unconstitutional—it is based on unsupported theories of criminal behavior." Briefly, this proposed law would empower a federal judge to deny bail to a suspect charged with a "dangerous crime" or a "violent felony" and hold him in jail for up to 60 days before trial.

Yet a Justice Department study—kept under wraps until Senator Ervin made it public—disclosed that only about 11 per cent of the defendants released before trial were rearrested in the interim. And the study showed that only five per cent of those charged with violent or dangerous crimes were rearrested for second crimes in those categories.

Senator Ervin believes, and we agree, that a better solution is to guarantee defendants charged with dangerous or violent crimes a quick trial—within 60 days. He is co-sponsoring, with Senator Philip Hart of Michigan, a "speedy trials" bill.

One might surmise from the remarks of the President and Vice President Spiro Agnew to the visiting U.S. attorneys that the Nixon administration plans to make law and order a leading campaign issue this fall. Both cited Federal Bureau of Investigation figures to show that crime increased by 16 per cent in 1967, 19 per cent in 1968 and 11 per cent last year.

It could be argued, however, that this regular crime rise is reflected in the annual FBI statistics, prepared under the direction of J. Edgar Hoover, is more of a reason for firing Mr. Hoover than for violating the U.S. Constitution by enacting a preventive detention law. Congress has regularly given Mr. Hoover all the money and manpower he asks for. Just as regularly, the FBI end-of-the-year reports indicate that the criminal element gained substantial yardage during the past 12 months.

Certainly there is crime in the United States today. Crime has probably increased out of proportion to the increase in the population. The streets of too many American cities are unsafe, even in broad daylight.

And it is true that it is easier to control criminals by disregarding the Bill of Rights where the rights of suspected criminals are concerned. But the next step is rigid control of the inoffensive and the law-abiding in the same way and with the same methods. Now is the time for Americans who care about their own freedom to let Congress know they are behind Senator Ervin in this fight.

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[From the Philadelphia Inquirer, July 22, 1970]

Repressive and Indecent

Senator Sam Ervin of North Carolina calls it "a garbage pail of some of the most repressive, near-sighted, intolerant, unfair, and vindictive legislation that the Senate has ever been presented."

Rep. Brock Adams of Washington state says it is "a laundry list of unconstitutional provisions."

What they are referring to is the package of laws intended to crack down on crime in Washington, D.C. If anything their description of the legislation is too mild.

Its provisions for pretrial detention of defendants, and for the unannounced police break-in of a suspect's home, are especially indecent and repugnant.

Attorney General John N. Mitchell, defending the "no-knock" authority sought to strengthen police search powers, has proposed that "no-knock" be renamed "quick entry." The latter term, he said, would be less misleading and prejudicial.

It isn't what name you give to the sledgehammering of a door that counts to the persons inside, but the gestapo tactics involved.

Preventive detention, as Senator Ervin has said, violates the traditional American belief that a man is innocent until proved guilty. The provision in the bill would empower judges to jail accused persons deemed potentially dangerous for up to 60 days while they await their trials.

This would leave it up to the individual judge to determine whether a suspect is too dangerous to set free on bail. In view of the fact that many defendants have to wait a year or more before they are tried, the 60-day clause could be self-defeating.

After being held that time, without conviction, the suspects may be more dangerous than ever, resentful at losing their jobs and in urgent need of money to support their families and pay their lawyers.

The crime bill immediately before the Senate affects the District of Columbia but it could have an impact far beyond the capital city.

It could establish a precedent and become a model for other American cities struggling against crime, and inclined, perhaps, to forget the Constitutional rights that protect not only criminal suspects, but every citizen.

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[From the Tennessean, July 18, 1970]

Crime Bill Full of Danger

Some features of President Nixon's crime bill now being considered by Congress would strike at basic constitutional guarantees and should be rejected.

Perhaps the most dangerous recommendation is one that would permit police in some instances to enter homes without first knocking at the door or identifying themselves.

This measure is proposed for effectiveness in the District of Columbia only, but it is being advanced as a model law, possibly to be extended to the rest of the country at a later date.

If there were any valid reason for singling out the District of Columbia for the initiation of this oppressive law, it has not been made clear what it is. Certainly there is no justification for believing the nation should begin to give up its constitutional protections for the purpose of providing short cuts to law enforcement.

The no-knock measure has its supporters and detractors on both sides of the political fence. But perhaps the most effective opponent is Sen. Sam Ervin, noted conservative from North Carolina, who calls the District of Columbia crime bill "a garbage pail of some of the most repressive, nearsighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented."

It is too early to tell whether Senator Ervin can turn the tide against this unwise bill. But he deserves the gratitude of those who believe it is still possible to have effective law enforcement in the U.S. without chipping away at the basic principles on which the nation was founded.

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[From the Milwaukee (Wis.) Journal, Milwaukee, July 16, 1970]

Police State "Blueprint"

"This . . . is as full of unconstitutional unjust and unwise provisions as a mangy hound dog is full of fleas . . . a garbage pail of some of the most repressive, nearsighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented . . . an affront to constitutional principles and to the intelligence of the people of the United States."

That is what Sen. Ervin (D-N.C.) thinks of the District of Columbia crime bill that has come out of the Senate-House conference committee.

The bill was presented to Congress by Atty. Gen. Mitchell as redemption of a pledge President Nixon had made during his campaign to end crime in the "nation's crime capital." The Senate watered down the measure. The House stiffened it. The conference reported out the bill in much its original form. Among other things, here is what the measure that Ervin calls "a blueprint for a police state" would do:

Let police enter homes or other buildings in a variety of circumstances without knocking or announcing themselves. Give law en-

forcement officers broad wiretapping powers. Let police conduct chemical, scientific and medical tests upon any person found where a search warrant was being served. Allow pretrial detention of accused persons, denying them the constitutional right to bail. The American Bar Association calls preventive detention before trial unconstitutional.

The bill would be particularly destructive of the rights of juveniles. It would deny them right to jury trial. It would allow them to be found delinquent on the basis of a "preponderance of evidence"—something the Supreme Court invalidated a few days after the House bill was passed. Juveniles 15 years old charged with certain crimes could be tried as adults upon motion of the prosecutor. Once a juvenile was tried in an adult court, even if he was acquitted, he could never again be tried as a juvenile.

One of the most vindictive sections provides that if a man is convicted for the third time of a violent crime he would get a mandatory life sentence with no allowance for parole, probation or suspended sentence for 20 years. A violent crime could be a purse snatching. Anyone convicted of an "armed crime of violence" would receive an automatic sentence of three years, even if he had only a toy gun in his pocket and never produced it.

The Fourth Amendment has a guarantee that all citizens shall be "secure in their persons, houses, papers and effects against unreasonable searches and seizures." Thus on the face of it the "no-knock" and wiretapping provisions appear unconstitutional. Rep. Mikva (D-Ill.) says that "the reaction of the average American to an unexpected attempt to break into his home is to fight like hell."

The measure is everything Ervin says it is. It would be headed for almost certain invalidation in the courts. It would, as Ramsey Clark, former attorney general, says, "tinker with the rule of law, with freedom and human dignity in the name of public safety." It should be killed.

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[From the New York Times, July 26, 1970]

IN THE NATION: BEYOND THE "FLAME AND RHETORIC"

(By Tom Wicker)

*If they hang them all, they'll get the guilty,*
*That's what you say we ought to do.*
*If they hang them all, they'll get the guilty—*
*But, remember, they're gonna hang you too.*
—Tom Tee Hall.

WASHINGTON.—Senator Joseph D. Tydings of Maryland, who led the successful effort to impose a punitive anti-crime bill on the District of Columbia, said after the battle that he was glad the measure had survived "all the flame and rhetoric" of its opponents.

It is true that Senator Sam J. Ervin of North Carolina, who led the opposition, is a flamboyant orator and it is equally true that some provisions of the bill evoked impassioned opposition. But this opposition and the points Senator Ervin consistently raised against the bill, however colorfully, were a good deal more than "flame and rhetoric," as the future may disclose to Mr. Tydings and the bill's other supporters, most of whom were Republicans and Southern Democrats.

(Mr. Ervin was joined, however, by three other Southerners, John Stennis of Mississippi, Everett Jordan of North Carolina and J. W. Fulbright of Arkansas, in putting the rights of the individual, even in the voteless, mostly black District, ahead of what Mr. Ervin called "the expediency of law and order.")

There was neither flame nor rhetoric, for instance, in a study by Hans Zeisel of the University of Chicago Law School. Analyzing District of Columbia pre-trial release and rearrest statistics, compiled by the Bureau of Standards at the request of the Department of Justice, Mr. Zeisel concluded that the bill's preventive-detention proposal, had it been in effect when the statistics were gathered, would have resulted in:

"1. Increasing the number of persons not released prior to trial by 46 per cent;

"2. Detaining needlessly—because they would not be rearrested if released—82 per cent of those now detained defendants;

"3. Detaining without any merit 57 per cent of these defendants because they will subsequently be acquitted of their original charge or convicted only of a misdemeanor."

LESS THAN 1 PERCENT

And what would this wholesale imprisonment of innocent people have achieved? "The reduction of the recidivism rate by 0.7 of one percentage point beyond what could be accomplished by the simple expedient of trial within 60 days."

Mr. Tydings and other proponents of the crime bill argued that the court reform needed to speed trials—as urged by Mr. Zeisel and others—could not be pushed through the conservative House of Representatives unless a bill to provide it also contained preventive detention and other stringent measures—which they insist are only minor matters, anyway.

FEAR OF REPRESSION

They could have found an answer to this in Dr. Alexander Heard's wise and courageous report to President Nixon on student and black attitudes. Though not dealing specifically with crime proposals, Dr. Heard recommended "that the President and others undertake to understand the fears of 'repression' among certain groups in our country and to understand the realities underlying those fears; that the President use the moral influence of his office in new ways designed to reduce racial tensions and help develop a climate of racial understanding."

But the D.C. crime bill now is one of those "realities" that underlie the fear of repression; and it is to the spread of that fear that the moral influence of the President—not to mention Mr. Tydings and others—has been lent. The population of the District, after all, is nearly 70 per cent black. That majority is well informed about Black Panthers dead at the hands of the Chicago police. It knows all about the indiscriminate killing of blacks last spring in Augusta, Ga., and at Jackson State; it has seen its own frequent racial clashes in Washington.

So blacks here are not likely to believe that the D.C. police and the Justice Department wanted this legislation in order to break down doors at the Watergate Apartments or to detain preventively the wealthy property owners of Georgetown. Mayor Walter Washington well understands this reaction; he has urged District residents "not to prejudge the effects of this law" but he is seriously concerned that in the six months before its worst provisions take effect, they will do just that. Already, one black leader here has said that District residents would be justified in shooting a policeman who attempted a "no-knock" entry.

But Congress has acted, President Nixon is sure to sign the bill, and Mayor Washington is right that the task now is to calm unreasonable fears and make the law work as equitably as possible. It is the bill itself, not the "flame and rhetoric" of its opponents, that makes this task so difficult.

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[From the Free Press, Detroit, Mich., July 19, 1970]

ABA OBJECTS: RIGHTS, REASON ARE SACRIFICED IN CRIME BILL

(By Clayton Fritchey)

WASHINGTON.—The American Bar Association didn't improve its reputation by its indifferent inquiries into two Supreme Court appointments that were rejected by the Senate, but the ABA is now showing surprising diligence in opposing the administration's bill against organized crime.

It is not surprising that various liberal groups are disturbed by repressive provisions in the bill which threaten individual rights, and which are of doubtful constitutionality. The chronically conservative ABA, however, has now become equally critical, although its attention was called to the legislation in the first place by President Nixon himself, who besought its support in getting the bill through Congress.

This bill is flawed by so many undesirable provisions that it is hard now to believe that it could have passed the Senate by a vote of 73 to 1. The Senate, panicked by the law-and-order clamor, simply stampeded, leaving to the House the thankless job of resisting this subversion of civil liberties.

Fortunately, there is an unspoken understanding in Congress that on some issues one branch will rescue the other when such stampedes occasionally occur. Many senators who had misgivings over the organized crime bill voted for it in the confident belief that the House Judiciary Committee would flag it down, and that is what happened.

The legislation was rushed through the Senate in three days with little or no debate. One member voiced the thought of all when he said, "Everyone's afraid of being called soft on crime." The Senators could count, however, on two dedicated civil libertarians—Rep. Emanuel Celler, D–N.Y., and William McCulloch, R-Ohio—who dominate the House Judiciary Committee, to subject the bill to searching examination.

Conversely, the House itself, in a similar stampede vote, recently rushed through a separate crime bill for the District of Columbia, designed by the administration as a model for the nation. It, too, but in a different way, adds up to an assault on civil liberties. Senate conferees are now holding up its passage, just as the Celler committee is detaining the organized crime bill.

The organized crime bill has 10 provisions in all, five of which have just been disapproved by the ABA.

UNJUST AND UNWISE

Among the most dangerous provisions of the bill are the following: (1) Giving grand juries the power to denounce public officials when there is not sufficient evidence to indict; (2) Permitting grand jury witnesses to be held in jail for up to three years for refusing to testify; (3) Allowing judges to impose prison terms up to 30 years on "dangerous special offenders" on the basis of evidence that might not be admissible in an ordinary criminal trial; (4) Severely limiting a defendant's right to object to the use of evidence admittedly obtained by violating the Constitution, including wire taps, coerced confessions, and illegal searches.

The administration's "model" District of Columbia bill is even more objectionable. It introduces preventive detention, which would allow a judge to lock up a defendant pending trial if he thought (or rather guessed) he might commit another crime in the meantime. It also provides for "no-knock" police entry, which would permit police to break into a house without notice or identification.

Also, a teenager charged with a serious offense would automatically be tried as an adult. Further, a policeman could arrest without warrant any person he believed was about to commit a crime. Finally, a citizen who sues for false arrest must pay for the policeman's attorney, even if the citizen wins the case.

A southern conservative, Sen. Sam Ervin Jr., D-N.C., chairman of the constitutional rights subcommittee, describes the District bill "as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas." It is, he concludes, "a garbage pail of some of the most repressive, near-sighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented."

[From the New York Times, Aug. 17, 1970]

HOME STRETCH FOR CONGRESS

After an exceptonally dilatory session last year, the 91st Congress this year has been reasonably productive. When the House of Representatives recessed Friday for nearly a month, it had acted on a lengthy list of important measures. The Senate remains in session because its prolonged debates over Vietnam, Cambodia and the Carswell nomination to the Supreme Court have used up time which otherwise could have been devoted to ordinary legislative tasks.

A half-dozen major bills have been approved by both houses and signed into law by President Nixon. Prominent among them was the renewal of the Voting Rights Act, which is crucial to the enfranchisement of Negroes in the Deep South. A rider to this bill took the historic step of lowering the voting age to eighteen, but it remains for the courts to determine whether this objective can really be achieved without a constitutional amendment.

The reorganization of the postal service was another historic accomplishment, one on which constitutionality is not in doubt. The ban on cigarette advertising on radio and television, the extension of unemployment compensation and the law tightening control of pollution from oil spills also rank as positive steps. Unfortunately, the farm lobby was once again able to exclude farm laborers from the unemployment compensation system.

Congress yielded too much to reactionaries with unworkable, old-fashioned ideas when it passed the District of Columbia crime law. Its "no knock," preventive detention and mandatory sentence provisions are harmful and regressive. However, several other Administration-sponsored crime bills are languishing in committee, which is where they deserve to stay. Money and ideas, not repressive laws, are needed to combat the difficult problem of increased crime.

The House has acted upon several significant measures which await decision in the Senate. Chief among these is the Administration's far-reaching proposal to reform the welfare system by putting a financial floor under low-income families. Also approved was an increase in Social Security benefits. Both deserve the endorsement of the Senate Finance Committee, which has considered them long enough. Senate action also is needed to move ahead a House-passed constitutional amendment providing for direct election of the President. A go-slow policy is in order, however, for another proposed constitutional amendment. This one "guarantees" equal rights for women, but the potential mousetraps it contains never got any House study before it was whooped through last week.

Despite their more productive record this year, the members of the House frequently betray a lack of self-discipline and self-respect. On Friday the leadership could not scrape up a quorum to act on the bill to regulate campaign television costs. Too many members had decided to begin their vacations a day early.

For most of last week the House dawdled over a bill to reform its own procedures, finally putting off final action until next month. The District of Columbia crime bill was passed after the House District Committee had heard very few witnesses; most Congressmen were absent when the House debated the bill and voted on it. The women's rights amendment languished untouched for nearly half a century, then passed with no committee hearings and only an hour's debate.

Democratic self-government has enough substantive problems to overcome without being weakened by the wayward, arbitrary and irresponsible actions of its elected representatives.

[From the Washington Post, July 9, 1970]

WILL MR. FLANNERY PLEASE CALL MR. MITCHELL

If you are confused now about the "no-knock" provisions of the District of Columbia crime bill which would permit police to break into houses unannounced in certain situations, the following statements ought to straighten it out for you:

*Thomas A. Flannery,* United States attorney for the District of Columbia, commenting on July 8 about the fact that arrests were made during only 8 of 13 gambling raids: "At each of the 13 locations searched by the FBI, agents were required to and did knock, announce their identity and purpose and give the occupant a reasonable time to answer, as required under present law. On several occasions today, they gained entry only to find pans of indistinguishable water soluble paper and charred remnants of flash paper. *Clearly, if the pending 'no-knock' legislation had been in effect, we would have been saved this evidence."*

*Department of Justice,* commenting on May 14 about what it called "an apparent misunderstanding" over the "no-knock" provision: "The department's proposal does not expand the current authority of police under existing law to enter private premises without knocking and announcing their identity and purpose before entering . . . Under current law, police are generally required, with or without a warrant, to knock and announce their identity and purpose before executing the search. Our proposal does not change this standard. *Current law recognizes several exceptions to this last rule of knocking and announcing prior to entry for what are called exigent circumstances. These exceptions . . . include . . . the need to prevent destruction of evidence,* particularly contraband and implements of organized crime such as narcotics and gambling equipment."

Who is kidding whom?

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[From the Atlanta (Ga.), Constitution, June 23, 1970]

NO STAMPEDE ON CRIME BILL

(By Carl Rowan)

WASHINGTON.—President Nixon has fired a heavy broadside at Congress for not approving his crime control bills. A lot of Americans may buy the insinuation that for partisan political reasons a bunch of Democrats have refused to do anything about murderers, rapists, arsonists, dope peddlers, and the lot.

The truth is that these crime control measures raise some critically important constitutional issues, and a band of gutsy Congressmen refuses to be swept along in a tide of anti-crime fear and hysteria.

Sen. Sam Ervin Jr. (D., N.C.) is no raving liberal, and he has voted with the Republicans on so many matters that he can scarcely be labeled a partisan Democrat. But Ervin as much as any man has labored to prevent the Congress from hastily swallowing a crime "cure" that could turn out to be more devastating than the illness.

Consider some of the items of controversy in those 13 bills that President Nixon is trying to prod Congress into approving.

Attorney General John N. Mitchell has said that "the pre-trial release of potentially dangerous defendants constitute one of the most serious factors in the present crime wave." Thus the Administration wants the courts to be able to detain a defendant for 60 days if his release would present "a clear danger to the community."

Ervin argues that "fundamental to due process of law is the tenet that a man is presumed innocent until proven guilty beyond reasonable doubt . . . preventive detention . . . convicts individuals of probable guilt and dangerousness and sentences them to 60 days imprisonment without trial and conviction of a crime. Such flagrant violation of due process smacks of a police state."

Advocates of preventive detention argue that numerous "hard-core" criminals commit many other serious crimes while on bail awaiting trial.

Ervin cites a Justice Department study showing that only one of every 20 persons accused of a serious crime was rearrested for a similar crime while on bail. Ervin argues that the Administration proposal would keep 19 nondangerous persons in jail in order to hold a single dangerous one.

Even more disturbing to some congressmen is the proposed crime bill for the District of Columbia that Mitchell has called a "model anticrime program" that will "point the way for the entire nation."

Even more disturbing to some congressmen * * * unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas."

This bill would grant law enforcement officers broad powers for electronic surveillance, even to the point of eavesdropping on such traditionally privileged conversations as between a priest and a penitent, a lawyer and his client, or a doctor and his patient.

During a search, a policeman could seize any items he believes to be stolen, illegal, used in a crime, or useful in identifying a crime or a criminal—even though such items are not mentioned in his search warrant.

Opponents say the Fourth Amendment is violated by these broad police powers of search, seizure, and wiretapping, and by a bitterly controversial "no-knock" provision.

Mitchell's predecessor, Ramsey Clark, has been a vocal critic of those pushing the new anti-crime legislation. He says "they would violate basic principles, sacrificing liberty on the altar of fear. Safety cannot be purchased at the price of freedom. When one is lost, both are lost. It is not freedom that causes crime."

A lot of senators and representatives are pretty sure that Clark is right, so they drag their heels on the legislation Mr. Nixon is now fighting for—and could make a campaign issue.

But these same congressmen suspect that the public wants the new "tough" anti-crime laws, whatever the risks to individual liberty. So sooner or later the President will probably get his legislation. And the Supreme Court will get some Constitutional challenges.

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[From the Washington Post, June 21, 1970]

CRIME CONTROL: A CASE HISTORY OF WHAT IS WRONG

"A Washington policeman shot and killed a fleeing robbery suspect at New Jersey Avenue and K Street NW," the story on Friday's front page began, adding that the officer had himself been shot twice by the suspect, according to the police. That was all that could be said in one paragraph, in a straightforward news account, and it is not until you examine the background of the dead man that the event becomes something more than a shoot-out between a policeman and a suspect—becomes, in fact, almost a model of what is wrong about our system of crime control. For the fact is that Franklin E. Moyler was more than a "suspect"; he was, from all the evidence, a hardened criminal, at liberty on a very small bond and awaiting trial for two previous offenses involving use of a dangerous weapon. In 1965 he was found guilty of robbery and assault on an officer and was imprisoned for nearly two years. After his release, he was charged with assault on several occasions. Last January he was accused of four offenses including assault with a dangerous weapon, but succeeded in regaining freedom when he put up one-tenth of a $1,500 bond in cash. On June 1 he was arrested again on charges of robbery and carrying a dangerous weapon, and this time

a bonding company put up the $2,000 required for his release.

This is a record which calls into question almost every aspect of our approach to crime and criminals and criminal suspects—the efficacy of correctional institutions and of rehabilitation programs for convicted criminals; the speed, or shocking lack of it, with which accused persons are brought to justice; and, finally, the hard question of how to protect the public from people with demonstrably dangerous criminal tendencies who are set free for prolonged periods while awaiting trial. It is impossible to say precisely what might have been done to rehabilitate Moyler over the past five years even if the most advanced techniques had been available—except that it would have been worth a try. It is also impossible to know what would have been the judgment if he had been brought speedily to trial; he might well have been found innocent of the several crimes of which he stood accused, and released each time. What seems inescapable, however, is that he would not have been at New Jersey Avenue and K Street NW last Thursday with a gun at hand, as the police say he was, if he had been detained or even subjected to close and continuing supervision after his arrest on June 1 and until he could be tried—under a greatly accelerated and reformed judicial process. And some such precaution for the sake of public security would have been justified by the known facts in this case, in our view. The record suggested a pattern of criminal activity involving acute dangers to the community. The bail agency was apparently concerned about that risk. It recommended that he be required to get a job in January, and that he be placed in someone else's custody in June, but the judge ignored both conditions of release.

The chief difficulty with the present law is that it makes no allowance for restraints designed to protect the community, except in capital cases. The conditions of release specified in the act are supposed to be used only for the purpose of assuring the appearance of the defendant at the time of his trial. We think judges should also have discretion to use conditional release and monetary bail where necessary to protect the community and that in some cases, involving extraordinary risks, preventive detention for a limited period would be the lesser of two evils. If preventive detention had been used in this case, it might have saved the life of the accused and prevented suffering and danger of death for a conscientious policeman.

Unfortunately, the Department of Justice has sought to cast too broad a net. In some wide categories of cases it would allow preventive detention to become the rule rather than the exception carefully tailored to defendants with records of violence, bail-jumping or other conduct that may menace the public. The District crime bill now in conference between the Senate and House ought to be revised so that it would give the courts new resources in dealing with known criminals of Moyler's type, without making detention before trial almost a general rule in serious cases.

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[From the Washington Post, June 13, 1970]

WORDS FROM THE WISE ABOUT CRIME CONTROL

There are two reasons why the House-Senate conferees considering the District crime bills ought to give thoughtful attention to a statement on the subject issued Monday by 20 former federal prosecutors. One reason is that the statement affords an extraordinarily lucid, reasoned and compelling analysis of the bills; the opinions expressed are carefully supported by logic and experience. The second reason is that the signers of the statement are peculiarly qualified to judge the practical effect of these bills. "None of us," their analysis declares with justifiable confidence, "considers himself 'soft on crime' or a 'bleeding heart.' As members of the United States Attorney's Office we committed ourselves to the goal of effective law enforcement. We remain committed to that goal. We also believe that this community should not be subjected to measures of doubtful constitutionality, questionable necessity, and demonstrable ineffectiveness."

The statement has no fault to find with the judicial reorganization features of the crime bills. It focuses attention, however, on novel punitive and investigative provisions, particularly in the House version, which disregard the lessons and the high standards of American justice. The fundamental vice of the House approach to the crime problem lies in its apparent supposition that abandonment of civil liberty is the path to police effectiveness and that ruthlessness rather than rehabilitation is the best way to deal with criminals, even when they are no more than children.

The statement by the former prosecutors deals in detail with criminal procedure provisions of the House bill which they call "constitutionally dubious," observing that "it is no service to law enforcement to subject criminal convictions to certain constitutional attack and endless litigation." In this connection, the prosecutors cite the authorization in the House bill of appeal by the prosecution from trial rulings—and even after an acquittal of a defendant—the placing of the burden of proof on the defendant with respect to the issue of insanity, and the so-called "no-knock" provisions of the House bill. In connection with "no-knock," they point out that, apart from constitutional considerations, "it is no benefit to law enforcement officers to expose them unnecessarily to greater risks of resistance or attack by citizens."

The House bill contains a feature as absurd as it is mischievous—a provision that in any civil suit against a police officer for wrongful arrest, the court must order the plaintiff—even if he wins the case—to pay the defendant an attorney's fee." Comment from the former prosecutors: "We have never heard of such a requirement anywhere in the English-speaking world. This provision is obviously designed to deter the bringing of such lawsuits, whether they are meritorious or not."

The statement demolishes the provisions of the bills for pitiless sentencing of offenders. "Mandatory sentencing provisions," it notes, "are contrary to experience in penology and are likely to be counter-productive from the standpoint of law enforcement and corrections . . . deprive trial judges of discretion to make punishment fit the crime and the criminal . . . discourage guilty pleas and force more defendants to take their chances at trial, even though they actually are guilty . . . create serious disciplinary problems for our prison authorities"

But perhaps the ugliest features of the House bill concern the treatment of juvenile offenders. These, the prosecutors say, "would give the District of Columbia one of the most backward juvenile codes in the United States." To consign youngsters of no more than 15 to adult courts, to deny them the right of trial by jury when they are in Juvenile Court and to deprive them of important procedural protections which they would be entitled to as adults, and finally to commit kids recklessly to adult penal institutions is simply to substitute terror for justice and brutality of compassion.

The former prosecutors who prepared this analysis of the crime bills have rendered an invaluable service to the community. It is not too late for Congress to heed their solemn and earnest warning. The capital needs to give the country a model of skillful strategy in the attack on crime, not a model of a retreat to irrationality.

[From the New York Times, July 27, 1970]

NO SHORTCUT

President Nixon now has before him the omnibus District of Columbia crime bill. By reorganizing and expanding the courts, reforming the coroner's office and rationalizing many procedures, this measure should achieve a substantial improvement in the administration of justice in the nation's capital.

But the bill is impaired, and in our view fatally so, by several meretricious provisions. These defects occur in different parts of the bill, but they derive from a common mistaken premise that shortcuts are possible in coping effectively with the complex problem of crime.

The "no knock" provision enables a police officer with a warrant to enter a home or office without knocking or identifying himself if he believes that evidence may be destroyed. It is intended to prevent gamblers and drug dealers from disposing of betting slips or narcotics during police raids. Yet it is worded so broadly as to jeopardize any citizen's protection against arbitrary police intrusions. Does anyone seriously believe that gambling or drug addiction will be reduced by enabling the police to take this shortcut?

Similarly, the "preventive detention" of criminal suspects for up to sixty days to some extent merely regularizes an existing procedure by which judges have kept some defendants incarcerated by setting high bail. But, as Senator Ervin of North Carolina pointed out in his admirable fight against the bill, preventive detention is a practice reeking of the police state. In other societies, it has never suppressed crime but it has often helped stamp out liberty.

Life sentences for those who commit three or more felonies is a panacea that runs counter to everything that progressive penology has learned about managing prison inmates. A mandatory five-year sentence for a second offense involving the use of a firearm is the shortcut of a Congress and an Administration unwilling to confront the gun lobby. The wide expansion of the Police Department's authority to tap telephones to cover virtually every kind of criminal activity is another illusory shortcut.

Crime has many tangled roots. To treat any one of them requires large sums of money, but society cannot expect impressive progress against crime until it is prepared to invest that money. It is doubtful that the Administration and the Congress are prepared to provide sufficient money even to carry out all the reforms set forth in the better sections of this bill.

Let no one suppose that the mandatory sentences, dragnet wiretapping, preventive detention and "no knock" authority will measurably diminish crime. Those shortcuts which the Supreme Court does not seal off as unconstitutional, experience will show, lead only to a *cul-de-sac*.

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[From the Detroit (Mich.) Free Press, July 19, 1970]

AS WE SEE IT: DISTRICT OF COLUMBIA CRIME BILL ASSAILS FREEDOM AND INTELLIGENCE

The administration's bill to combat crime in the District of Columbia is so chilling in its implications that it is incredible that it has advanced so close to passage. Though it is an unvarnished assault on basic American freedoms, it has passed the House and is moving toward approval in the Senate.

The bill includes (1) a provision that permits an accused person to be jailed for up to 60 days before his trial if his record shows in the opinion of a judge, that he would be a crime risk during the pretrial period; (2) a broadening of the wiretapping practices of government; and (3) an extension of the au-

thority of policemen to enter a house without knocking or identifying themselves.

Sen. Sam Ervin, a North Carolina Democrat and a conservative, has had the forensic last word on the bill: "This . . . is as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas . . . a garbage pail of some of the most repressive, nearsighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented . . . an affront to constitutional principles and to the intelligence of the people of the United States."

Never mind the splendid hyperboles. Sen. Ervin makes his point. The bill ought to make any thoughtful American even more purple with rage than the acts of violence and crime that have made members of Congress so willing to restrict our liberties. This, indeed, is a bill to shout down from the house tops.

Are we so frightened of crime that we are willing to sacrifice the sanctity of our home to a policeman's suspicions? Do we really care so little for the privacy of conversations that we are willing to see the tapping of telephones extended? Do we really mean to give a judge the right to slap a man with a previous criminal record into jail without trial if he is considered "dangerous?"

These are questions that must be asked, and they are not academic for any of us. No American can afford to assume that such laws will be used only against clearly definable "criminal types" and not against him. Who is dangerous and who is not? Will a conservative Washington homeowner, for instance, be classed as dangerous and therefore subject to the kinds of police activities being authorized for the district? Will someone who wears his hair long?

We had always felt that the idea of the sanctity of the home would protect Americans from inordinate invasions of privacy. From colonial days we have resisted the nosy intrusions of government into our lives. We have looked on with horror at the reality and later the movie depictions of the invasions by the state into homes in Nazi Germany.

Yet here is the Congress of the United States, urged on by the attorney general and the President, about to pass a bill that is straight out of 1930 Germany. True, it only affects the crime-ridden District of Columbia. But the pattern is spreading.

Somehow it must be stopped, in Congress or in the courts. Surely we cannot approach our 200th anniversary—celebrating Mr. Jefferson and his conferees and the freedom they proclaimed—in such a spirit of repression. It is too much.

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[From the New York (N.Y.) Post, July 29, 1970]

SMOG OVER CRIME

(By James A. Wechsler)

It is a time of fraud; even those cornflakes a man has been eating for so many thousands of breakfasts turn out to be nutritionally suspect. The "Southern strategy" that did not exist, as we were told so often, is now said to be under reappraisal; the recession that never was—according to official accounts—is now described as gently receding.

Now comes the great deception of the District of Columbia's "anticrime" bill, packaged as an answer to your lonely anxieties on dimly-lit streets and in unguarded homes, the dawn of a new age in which the lawless will at last concede that their number is up, a model for all states where "coddling" is allegedly the basic sin.

It was widely noted at the time of Senate and House approval of the bill that legislators facing reelection this fall generally suppressed their doubts about the Constitutionality—and rationality—of key provisions in the measure. They were apparently persuaded that a negative vote would be as hazardous as a condemnation of motherhood (or, in 1970, sisterhood). Those who had the courage to say nay were too few, but they were a distinguished company.

The crucial point—substantively and symbolically—in the Mitchell program is the concept of "preventive detention." Obviously it represents a total reversal of the doctrine of the presumption of innocence that differentiates free societies from despotism. Under this provision a defendant may be jailed without bail for up to 60 days if a judge concludes, after a hearing, that he "might" commit a crime if released.

Perhaps it is old-fashioned to object—as such conservatives as Sen. Ervin of North Carolina did—that this procedure would expose innocents to capricious interment (and even thereby transform some of the aggrieved into hostile outcasts). But even if that consideration is deemed "ritualistic," an epithet now recklessly applied to those who retain a reverence for the Bill of Rights, the detention gambit is a mindless monstrosity in the light—or darkness—of the stifling congestion of both our courts and our jails. The result of the "preventive" procedure must inevitably be a multiplication of chaos in both courts and prisons.

One of those Congressmen facing reelection who dared to vote against the Mitchell formula is Rep. Allard Lowenstein. His opponent in Nassau's Fifth District—State Sen. Norman F. Lent—has predictably accused Lowenstein of "softness" toward criminals and apathy about "the rights of helpless citizens." No doubt others who stood with Lowenstein against the rampage of unreason will be exposed to similar frenzy. As Sen. Ervin warned: "I hear the siren voice of that old devil, political expediency, whisper in my ear: 'You better vote for the D.C. bill because it's a law-and-order bill.' It's not politically sagacious, not politically wise, to vote against a law-and-order bill."

Lowenstein's vote has enhanced the national importance of his fight. Conceivably his constituency will be sufficiently sensitive and sophisticated to discern the "anti-crime" fakery and folly that thickens the oppressive summer smog.

Other controversial provisions include the "no-knock" authorization permitting police searches without warrant or identification if their is "reason to believe" that evidence inside a home may be destroyed. New York already has such a law; it seems to have had no large-scale consequences, possibly because district attorneys in this area are not prone to abuse the power. Its enactment has ugly overtones, however, for black citizens in regions where there are long histories of unrestrained police intrusion.

The saddest fact is that the move is being advertised as a significant secret weapon against crime. It isn't And it is a surrender to the delusion that the use of ancient totalitarian forms can provide serenity and security.

What is really at stake in these arguments is the issue of whether the country will once again turn away from the search for serious, costly solutions by accepting cheap, demagogic answers. That is the gap between Mitchell and his predecessor, Ramsey Clark, whom Mitchell once reproached for an undue concern with the "sociology" of crime rather than the punishment of criminals.

That happens to be the heart of the matter. Desperate drug-addicts will not suddenly abandon crime when they learn that they may be subject to "preventive detention"—nor will they emerge from prison as constructive, cheerful citizens as long as there are no massive treatment and rehabilitation programs. Parents who see drugs peddled to their kids on the streets—while cops look the other way—will derive no solace from the news that the laws are being "toughened." The rate of recidivism that disgraces our jammed, obsolete prison system will not be improved by the prospect of additional crowding.

These are not new propositions, but they remain the valid ones, and they are being obscured by the extravagant deceptions heralding the code of the primitives. We are in danger of succumbing to the madness that there is a simple, positive ratio between public safety and the overpopulation of squalid jails.

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[From the Grand Rapids (Mich.) Press, Aug. 1, 1970]

CRIME AND THE CONSTITUTION

One of our readers missed entirely the point of our recent editorial, "Scrapping the Constitution," which discussed the crime-control Bill Congress has passed for the District of Columbia and President Nixon now has signed into law. This is the measure that would permit police officers to enter a home without knocking if they thought something illegal was going on behind the door and also would permit judges to keep accused persons in jail if, in the judges' opinions, they might commit other crimes if released on bail.

The point of our editorial, as the head indicated, was that the provisions of the bill probably are unconstitutional. The Senate's two leading authorities on constitutional law—Sens. John Stennis and Sam Ervin—both listed several sections they believed to be unconstitutional. Many other authorities on the Constitution made similar observations before the bill was passed. Kent County's prosecuting attorney, James K. Miller, who has as much reason as anyone to applaud so-called new weapons for battling crime, has said that he thinks provisions of the bill are unconstitutional.

Our reader, who did not sign his name, mailed us a copy of the editorial with this comment written in the margin: "Just maybe you are not reading sentiment of public—all citizens have right to walk and drive streets unmolested, which cannot do now . . ."

Obviously our reader is not concerned with observing the niceties of constitutional law. He is disregarding entirely the fact that the Constitution protects his basic rights and that if as a nation we choose to whittle away someone else's rights we shall undermine our own. At the end of that road lie the police state and dictatorship.

Crime is a serious matter in this country and The Press has said so many times. It also has lent its support to every constitutional effort made to halt the rise in crime. It would be easy to suspend the Constitution to get at the criminals. But any person who values his freedom—his right to free speech, to assemble peacefully, to fair and prompt trial before a jury, to elect officials of his own choosing—would find the price unbearable.

Resorting to unconstitutional means to combat crime would be a confession of complete failure and a total loss of faith in the Constitution. We can't believe that our correspondent is ready to admit that the American people no longer are fit to live under constitutional law.

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[From the Washington Post, July 23, 1970]

HOW HIGH A PRICE FOR A CRIME BILL

Ever since the administration unveiled its anticrime program for the District of Columbia more than a year ago, it has been clear that the cost of getting the right tools for the job would be high. The things that the District needs most—court reorganization, juvenile law reform, a working bail system, a public defender—were tied then and are tied now to a host of piggy-back riders which either conflict with enlightened thinking on crime control or infringe upon fundamental civil liberties. The question before the Senate today as it votes on the grab-

bag crime bill is whether its worst features are not too heavy a price to pay for the necessary and useful tools it also contains.

In our judgment, the toll exacted against individual rights and modern penology by the bill as it now stands is too great for the Senate to accept without a fight. A Senate that really wants to do something about crime will defeat the conference report, adopt the cleaned-up versions of the least controversial aspects of that report, get to work immediately on the most controversial matters, and put the burden back on the House of Representatives for responsible, effective crime control legislation.

The trouble with the crime bill as it emerged from conference rests not in its major provisions, most of which are admirable, but in the jokers, the pet theories, tossed in by the Department of Justice and the House District Committee. Senator Tydings labored mightily in conference to strip those jokers out and in many instances he was successful. But he fell short of the goal. In exchange for things they desperately need in the fight against crime, the residents of the District are required by this bill to diminish their individual privacy, the sanctity of their homes, the safeguards provided for their children, and the flexibility allowed their judges in trying to reform their criminals.

If this were the only impact of this legislation, the Senate might be able to hold its nose and send the bill along to the President. After all, it would only affect 800,000 or so people who are plagued with crime and why should they mind a few infringements on their rights and a few misguided provisions? But that is not the only consideration involved in this bill. Those members of Congress who normally shuck their responsibilities as legislature for this city because District bills don't matter back home ought to realize that this bill does matter back home. When the administration first proposed this legislation, it hailed its work as a model for the nation. And if Congress now blesses this particular form of preventive detention, this broad scale authorization of wiretapping, this curtailment of juvenile court, this use of mandatory sentences, and this no-knock provision, it is encouraging state legislatures to follow its lead. In that sense, a vote to apply these provisions in the so-called showcase capital is a vote to apply them sooner or later, in Phoenix and Tallahassee, in Keokuk and Kalamazoo.

What, then, is wrong with this bill? Let us begin with its handling of juveniles. Quite properly, the bill makes it easier for 15, 16 and 17-year-olds to be handled as adults, requiring principally that the juvenile judge determine that there is no reasonable prospect of rehabilitating them in specialized juvenile facilities before turning them over to adult courts. But the bill disregards this standard for *every* 16- and 17-year-old charged with first-degree murder, rape, first degree burgarly, armed robbery, or assault to commit those crimes. They are, the bill says, adults, regardless of their prior records, their chances for rehabilitation if handled as juveniles, or their mental condition. Their classmates, if charged with second degree murder, second degree burglary, unarmed robbery, or plain assault, are not adults. Is this equal justice? Is it even-handed application of the principle that juveniles ought to be given the best possible, not the worst possible, chance for rehabilitation? Of course not. (This kind of provision conflicts with the federal government's own model juvenile act, the Uniform Juvenile Court Act, most state laws, the recommendations of the D.C. Crime Commission, the District government and the Department of Public Welfare.)

That is just one example. There are others. The bill holds out to juveniles the promise of speedy proceedings and does little to ensure them. It takes away a juvenile's right to a jury trial. It authorizes preventive detention for juveniles not only when the judge decides the child needs it but unless the judge specifically decides the child does not need it. It lowers the standard of proof needed to find a child "neglected" or "in need of supervision," thus making it easier to take these non-crime-committing children into custody.

We will touch only briefly on other parts of this legislation.

*Wiretapping:* This bill authorizes taps not only in limited fields like national security and organized crime but also when a person is believed to have committed arson, blackmail, bribery, burglary, destruction of property, gambling, grand larceny, kidnaping, murder, obstruction of justice, receiving stolen property, robbery, extortion, or drug law violations.

*Mandatory prison terms:* In the face of recommendations to the contrary by the National Crime Commission, the American Bar Association, the American Law Institute and a tentative new code of federal criminal laws, this bill imposes mandatory prison terms in certain instances.

*Recidivists:* This bill shortcuts, perhaps unconstitutionally, the procedures used in most states which have such statutes for use against three-time offenders.

*Searches:* The difference between the interpretations placed on the "no-knock" provision of this bill in the House debate and the Senate debate is so great that it is hard to believe anyone knows what it means.

*Preventive detention:* We think a bill to permit some form of detention or closer supervision of dangerous suspects in certain situations can be written. But this is not it; the language is too broad and the possibilities for abuse too great.

These, then, are some of the reasons why we believe the costs of this particular crime bill outweigh the benefits it would bestow. They are sufficient for the Senate to be justified in defeating the conference report and following the course urged by Senator Ervin. The proponents of this bill argue that if it is killed there will be no District crime bill this year. But this need not be so. Faced with a cleaned-up version of its own legislation, the House would have to decide whether it wants a decent crime bill or a campaign issue. And the administration would be faced with the same choice.

It is hard, of course, for a senator to vote against an anti-crime bill just now. The voters are eager for action and such a vote is subject to easy demagogic attack and gross misinterpretation. But the solution is simple in legislative terms and the principles are clear. The costs of this particular anticrime bill are too high—too high in terms of backward-looking penology, too high in terms of individual freedom.

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JULY 25, 1970.

DEAR SENATOR ERVIN: I wanted to express my thanks to you for the fine fight you waged against the repressive measures contained in the D.C. crime bill. It is elected officials such as yourself and your fellow allies that keep my faith in government. I know you will continue to wage such attacks.

Sincerely,

VIRGINIA PHILLIPS.

KINGSTON, N.Y.

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PASADENA, CALIF.,
*July 23, 1970.*

DEAR SIR: I should like to thank you for your vote against the Nixon Administration's crime control bill.

Altho it applies to only the District of Columbia at present there is grave danger that law enforcement agencies over the nation will adopt the same measures.

They seem to think the way to control crime is to trample on the rights of all people which only leads to more resentment and bitterness and thus works directly against what they are trying to accomplish.

With our liberties being curtailed more and more we are fast becoming a police state and if that happens, its the finish of our country.

Again with sincere thanks for your vote, I am

Yours truly,

MARIAN M. STRASSER.

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JUNE 16, 1970.

DEAR SENATOR ERVIN: My husband, a Virginia attorney who practices in the District of Columbia, and I support your defense of the constitutional right of individuals to remain free on bond while awaiting trial that is currently questioned in the D.C. crime bill.

It seems to me that legislation to increase the number of judges and generally create an atmosphere in which those accused would enjoy their right to a speedy trial is the proper answer.

It is good to see a southern statesman champion this constitutional right. The unconstitutional preventive detention section carries with it racial overtones as it would most directly affect the mainly black District population.

Sincerely,

SHEILAH C. PERRIN.

ANNANDALE, VA.

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JULY 30, 1970.

DEAR SENATOR ERVIN: I have just watched you on the Today Show. I have been saying for sometime too many people have forgotten we are all innocent until proven guilty beyond a reasonable doubt. In our zeal to control crime we forget this basic principle. I am glad to know some of our Senators can still understand that some guilty may go free but in this country the innocent may never be imprisoned. Thank you for your efforts for a free America.

Yours truly,

MRS. GRACE B. ANDERSON.

CHESTERTON, IND.

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JULY 16, 1970.

DEAR SENATOR ERVIN: This is just to wish you well in your leadership of the opposition to some of the provisions of the District of Columbia anticrime bill. I know this has been a long-standing concern on your part, and it is very cheering to know you are there to speak up for the way individual persons should be treated by law enforcement authorities. You are striking a timely blow for human rights.

Thank you, and the best of wishes in the battle.

Sincerely,

WILLIAM A. CHRISTIAN.

HAMDEN, CONN.

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JULY 30, 1970.

DEAR SENATOR ERVIN: Fortunately, I was listening to the Today program this morning and found your attitude toward the D.C. Anti-Crime bill to be one of enlightenment and fairness. I would regret to see one evil substituted for another, and, while most of us recognize the need to fight crime, I don't agree with this approach.

In any day, and particularly at this time, it is refreshing to find a leader willing to take a possible unpopular position with his constituents to stand for what he believes in. I salute you and wish you success.

Sincerely yours,

GEORGE W. FAIRFIELD.

RICHMOND, VA.

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SWEET SPRINGS, MD.,
*July 24, 1970.*

DEAR SENATOR: Congratulations on your stand for American rights as they are being threatened in the D.C. anti-crime bill. Time

will prove your stand but the fight now is difficult. We appreciate your courage.

Dr. HELEN H. LONG.

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JULY 24, 1970.

DEAR SENATOR ERVIN: As a former Southerner, now a Westerner, I want to thank you for your efforts to oppose hysteria and extremism in law enforcement methods and the abandonment of U.S. traditional rights and protections of individuals.

Sincerely,

P. HARTUNG.

TUCSON, ARIZ.

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JULY 24, 1970.

DEAR SENATOR ERVIN: Thank you for your vote against the D.C. crime bill with its dangerous "no-knock" and preventive detention provisions. Even though it has been passed into law your opposition has made an impact and possibly these features will be reexamined.

Sincerely yours,

JO ANN G. WEST.

CHAPEL HILL, N.C.

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JULY 30, 1970.

DEAR SENATOR ERVIN: You did well in leading Senate fight against D.C. Crime Bill. We strongly support your stand on this issue. Keep at your pursual of the enforcement of the Bill of Rights.

Dr. and Mrs. H. D. HIBBARD.

CARRBORO, N.C.

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JUNE 18, 1970.

DEAR SIR: I strongly support your stand *against* the repressive anti-crime bill proposed for the District of Columbia.

Sincerely,

Mrs. C. E. JOHNSON.

HONOLULU, HAWAII.

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JULY 27, 1970.

DEAR SENATOR ERVIN. I want you to know that I wholeheartedly support your fight against the unconstitutional provisions of the D.C. crime bill. You should take your position to the country.

Sincerely,

RODNEY C. BRYANT.

WOODBURY, TENN.

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JULY 24, 1970.

DEAR SENATOR ERVIN: I appreciate and approve your stand against "no-knock" police entry and preventive detention and hope you succeed in your effort to prevent passage of the legislation in question.

Sincerely yours,

HELEN LAMDAN.

CHICAGO, ILL.

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JULY 29, 1970.

DEAR SENATOR ERVIN: Thank you for your attempt at upholding the Constitution by your efforts to defeat the D.C. crime bill. I'm sure the Supreme Court will agree with you; I only hope it happens soon enough to prevent much injustice.

Sincerely,

JOHN BRODERICK.

CHARLOTTESVILLE, VA.

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JULY 19, 1970.

DEAR SENATOR ERVIN: I wish to express support and thanks for your efforts to block the D.C. crime bill as presently constituted. The "preventive detention" section is especially dangerous to a democratic society. Keep up the good fight!

Sincerely yours,

DR. NANCY T. CLOSBY.

CORAL GABLES, FLA.

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JULY 28, 1970.

DEAR SENATOR ERVIN: As an old time but many time transplanted Tar Heel (Hertford) let me applaud your fight against the D.C. crime bill and decry its passage. I admire your courage and trust that this action by your peers will in no way diminish your continued efforts against deprivation of civil liberty. I certainly share your feelings concerning the horror of increasing crime but agree that the recent crime bill is not the way to go. Keep up the good work. Many of us average folks share your views.

Sincerely,

ARTHUR R. WOODS.

COPPERAS COVE, TEX.

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JULY 30, 1970.

DEAR SENATOR ERVIN: I have been extremely concerned over the D.C. crime bill and its extension to the rest of the country. Though I am not a constituent of yours, I appreciate your efforts to oppose this bill and sincerely hope you will continue to oppose it. I sincerely appreciate your efforts to protect all U.S. citizens against this infringement and threat to our basic rights as guaranteed by the U.S. Constitution.

Thank you again. I hope your efforts are successful and that more Senators and Congressmen follow your example.

Sincerely,

CHRISTINE A. REIS.

SEGREGANSETT, MASS.

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JULY 30, 1970.

DEAR SENATOR ERVIN: I approve of your stand against the President's no-knock, preventive detention bill.

While our boys fight for freedom, our President recommends the erosion of our freedoms.

Why is there no movement to stop crime by getting at the causes? All of the President's emphasis is to lock the door after the horse is stolen. Has he no real compassion or knowledge of the real ways to prevent crime?

Sincerely,

FORREST D. COMFORT.

LAKE WALES, FLA.

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DURHAM, N.C.,
*July 16, 1970.*

DEAR SENATOR ERVIN: We want you to know that we are in agreement with you in your criticism of the Nixon Anti-Crime Bill particularly in the sections giving the police and Federal Agents "no-knock" powers and in giving the judges too liberal preventive detention powers. This is a move towards an authoritarian police state such as the Fascists had and the Communists still have.

We believe in spending money to obtain and thoroughly train a greater number of local law enforcement officers such as the county and city officers. After serving on a jury recently we do believe that more judges and more courts are needed to speed up law enforcement. Prompt arrest and a speedy trial has the best deterring effect on the criminal.

The war and the resulting inflation and the recent unemployment are some of the root causes of increased criminal activity. These causes have to be attacked also.

Just passing "tough laws" will not solve these problems.

Sincerely yours,

ALDEN W. SWIFT.
MARIE J. SWIFT.

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FORT WORTH, TEX.,
*July 30, 1970.*

DEAR SIR: Over a number of years I have had occasions to differ with your political decisions on certain bills. I do want to say now that I appreciate very much the strong fight you are putting up in Washington against the undermining of certain basic constitutional rights that appear to me to be in jeopardy.

I agree with you that more and more inroads are being made on the individual liberties of people somehow with the hope that these short cuts will prevent crime and further increase the security of our nation. Both of these, as you so well put, are improper assumptions and may well destroy that which they seek to preserve.

Very truly yours,

N. H. KURKO.

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JUNE 18, 1970.

DEAR SENATOR ERVIN: My heartfelt thanks! For your fight against S. 2600 and I know your continued efforts will be always directed against similar legislation. Again thanks.

Sincerely,

GEORGE A. MOELLER.

BALTIMORE, MD.

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MERION STATION, PA.
*July 20, 1970.*

DEAR SENATOR ERVIN: Although I am not a constituent of yours, I wish to commend you on your vigorous opposition to the Administration's Omnibus Crime Bill. The tyranny of a police state usually follows what appears to be a legitimate desire for law and order.

Very truly yours,

BARRY E. UNGAR.

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JULY 24, 1970.

DEAR SENATOR ERVIN: As residents of the District of Columbia, we would like to thank you for your wholehearted, if unsuccessful attempt to defeat the recently approved Crime Bill. There seems to be no doubt that the measure will now become law.

We have only recently moved here from the South and it did not take us long to realize that great steps need to be taken toward curbing the incredible crime rate in the District. We share your reservation, however, concerning such a vast increase of police power. We simply find it hard to believe that the legislature of any State would pass the Crime Bill.

Among the many methods by which liberty errodes, that by due process of law is the saddest, even if it is the slowest, because one can see inevitably what it leads to.

Thanking you again for your stand on this issue, we remain, sincerely,

JEANETTE ALFORD,
TERRY ALFORD, Ph. D.

WASHINGTON, D.C.

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ALEXANDRIA, VA.,
*July 23, 1970.*

DEAR SENATOR ERVIN: I seldom write letters of agreement or disagreement; however, I feel impelled to let you know that I agree wholeheartedly with your stand on the Crime Bill just passed in the Senate.

I think it is not enough to vote against the bill, but a bill should be presented as an alternative. Since it is an accepted fact by all responsible citizens, that crime is rampant in the District of Columbia, as in many other parts of the country, a very drastic approach to the problem should be taken to stop the spread of this disease in our society.

It seems to me, as has been stated by many others, that the best deterrent to crime would be a swift trial. Could not an emergency court be set up for a short period of time to take care of current offenses immediately? A period of swift punishment might show a reduction in crime. If no change were evident, the process of immediate trial and sentence could be taken as of no value. At least it would be worth a trial.

Thanking you, I remain a former resident of North Carolina now residing in Virginia.

Very truly yours,

RUBY L. HARE.

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JULY 18, 1970.

DEAR SENATOR ERVIN: I wish we had a few more Sam Ervin's in the Senate.

On the controversial issues of the Washington, D.C., crime bill, I couldn't agree with you more. If the legislation passes we will be in for many problems ahead.

Our Constitution is as important to me

as the Ten Commandments and I don't know why the Nixon Administration thinks they can whittle away our Bill of Rights so easily.

Just "hang-in-there" and guard Our Constitution.

The freedom-loving Americans appreciate your efforts.

Sincerely yours,

Mrs. R. F. SCHINDELE.

ANNANDALE, VA.

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SEVERNA PARK, MD.,
*July 26, 1970.*

Hon. SENATOR ERVIN: Though not a constituent of yours, nor even in agreement with you on most issues, I nevertheless had to write you to express my deep gratitude to you for your singlehanded efforts in protecting and watching over my civil liberties and those of my fellow citizens. I have long admired you for this and have never taken the time to tell you so before.

In the light of the recent events, however, I felt the time had come to do so. I deeply grieve the passing of the D.C. Crime bill, but grateful to you in your attempt to prevent its passage.

I hope you will continue in your work. May you enjoy a long and fruitful life and may your constituents continue to return you to your office. This country needs more men like you in office.

Sincerely,

Mrs. SELMA GOLDBERG.

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GLENCOE, ILL.,
*July 20, 1970.*

MY DEAR SENATOR ERVIN: We congratulate you on your fight against the "no-knock" crime bill. You are right . . . these are indeed the blueprints for a police state, under the clever, convenient guise of fighting crime. Don't let them get away with it. Don't let the Justice Department eviscerate our precious freedoms. Don't let this repressive administration set such an example to our people, and indeed to the world. If a man's home is truly no longer his castle, then what have we left?

Other than writing letters, tell me what I can do.

Yours fervently,

Mrs. JOHN CHILDE.

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PITTSBURGH, PA.,
*July 19, 1970.*

DEAR SENATOR ERVIN: We wish to thank and commend you and encourage you in your fine work in fighting the Omnibus Crime Bill for the District of Columbia in its House-passed version. We as civil libertarians are horrified that our Congress is contemplating making into law "preventive detention" and the "no-knock entry" clause. These are strong beginnings of a police state. You have our support in fighting this bad legislation.

Mr. and Mrs. ROBERT K. SAYRE.

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ANNANDALE, VA.,
*July 23, 1970.*

SIR: Thank you for your efforts to point out to your colleagues the weaknesses in the D.C. Crime Bill. It is heartening to see an individual who will put himself on the line in order to achieve a long range goal. Your concern for the rights of all people and your efforts to protect those rights through democratic means seems to me an example of the "American way of life."

Very truly yours,

LAURA I. MCDOWALL.

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VIENNA, VA.,
*July 25, 1970.*

DEAR SENATOR ERVIN: I am writing to commend and thank you for your stalwart and eloquent defense of the Bill of Rights against the repression of the so-called D.C. Crime Bill. It is a sad day when the Congress of the United States elects to abridge some of our most cherished liberties. Your stand will remain a bright chapter in the history of the Senate long after the outrages of this legislation have, hopefully, passed into deserved obscurity.

As an active member of the American Civil Liberties Union, my work now seems cut out for me. My hope is that I may approach my task with even a portion of the dedication and zeal with which you have approached yours.

May your voice remain strong in behalf of those individual freedoms which are now so imperiled from many quarters.

Sincerely yours,

ROBERT LOWERRE.

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CINCINNATI, OHIO,
*June 22, 1970.*

DEAR SENATOR ERVIN: I applaud you in your efforts to oppose certain features of President Nixon's crime bill. I agree with you that such provisions as preventive detention and the "no knock" policy are dangerous and unconstitutional. May you continue in your efforts to defend the principles on which our government was based against mounting pressures from all sides.

Sincerely yours,

GREG SALTZMAN.

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JULY 16, 1970.

DEAR SENATOR ERVIN: I'm just writing this note to let you know that you have my wholehearted support in your opposition to the pretrial and no-knock provisions in the D.C. crime bill. I think that even though the bill has several progressive measures providing for D.C. court reorganization *that should come into being,* they should *not* be brought into existence at the expense of rights (such as trial before decision of innocence or guilt) guaranteed to every American by the Constitution.

The only thing I can do is shout Bravo! for your stance from the sidelines as I'm not from your state (I'm a resident of Maryland) and even if I were, I'm 17 not of voting age. So Bravo!! and keep up the good work.

Sincerely,

TERRI WEST.

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JULY 21, 1970.

SIR: Thank you for your effort to obtain a sound crime bill for the District of Columbia. We understand the concern that leads some people to espouse preventive detention, "no-knock" searches, and increased wiretapping. But such measures are neither wise nor just. They violate principles fundamental to this nation and are as dangerous as the crimes they are to fight.

As Americans—believing still that governments derive their "just powers from the consent of the governed"—we find it especially frustrating that such laws can be imposed on us by a government in no way accountable to us.

Having no voice of our own in Congress, we must rely entirely on men like you who will consider our rights as carefully as the rights of their constituents at home.

Sincerely,

Mr. and Mrs. WALTER L. BRYANT.

WASHINGTON, D.C.

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ST. LOUIS, MO.,
*June 19, 1970.*

DEAR CONGRESSMAN ERVIN: May I commend you on your present stand against the Nixon-Mitchell D.C. crime bill. In his determined and misled efforts to repeal the Bill of Rights, Nixon has presented in this crime bill, which is clearly intended as a model for all cities, an illustration of the most primitive kinds of regression in crime control. And it represents another of Nixon's efforts to usurp the constitutional prerogatives of local government and the courts. Please continue your efforts to resist these incursions, which are a terrible threat to us all.

Again, my thanks for your hard-working, intelligent efforts.

Sincerely,

Mr. and Mrs. DAVID FREIVOGEL.

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NASHVILLE, TENN.,
*July 22, 1970.*

DEAR SENATOR ERVIN: I would like to congratulate you on your great stand against the new crime bill for the District of Columbia.

I am sure that we will all agree that law and order is an important part of our society but not the expense of personal liberty. I feel very strongly that this is a very dangerous law and that it should be stopped. I want to encourage you to continue your fight to kill this bill.

With warm personal regards,

Sincerely,

MICHAEL E. GLASSCOCK, III, M.D.

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JULY 26, 1970.

DEAR SENATOR ERVIN: This is to show my appreciation of your battle to preserve constitutional rights, in your fight against the D.C. crime bill. Also, for your past defense of rights, for civilians, and federal workers.

You are a true statesman.

Thank you,

F. MACDONALD.

SILVER SPRING, MD.

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NEWPORT NEWS, VA.,
*August 3, 1970.*

DEAR SENATOR ERVIN: You used to be my Senator when I was a resident of North Carolina.

Frankly, I never voted for you and even since I left the state (a mistake) I have written you in opposition to your policies.

Therefore, I think it is only fair to inform you that I support and admire your position on the recent District of Columbia crime bill.

I do not believe your doubts about the desirability of certain provisions of this bill are mere "legal theory." To the contrary, I think such a notion circumvents the entire concept of rational government.

If I had a pistol, anyone entering my house unannounced would be shot. If I were a criminal and thought my telephone was subject to being tapped, I would have it removed.

When, or if, I ever return to North Carolina and you are still running for office I may be forced to vote for you, in spite of everything.

Kindest regards,

W. J. CRANK.

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FOREST PARK, GA.,
*July 22, 1970.*

DEAR SENATOR ERVIN: Thank you for fighting the D.C. Crime Bill. If people understood what is involved, you would receive many, many letters of thanks.

Congratulations on the powerful statement calling the bill an affront to constitutional principles and a blueprint for a police state. I wish your arguments could be given greater publicity. I did not see this statement in the Atlanta Journal.

With strongest wishes that you may be successful in the fight you are waging,

Very truly yours,

LAVINIA B. GEORGE.

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JULY 27, 1970.

DEAR SENATOR ERVIN: For what it's worth. I think your stand against the D.C. crime bill was a true profile in courage. It's comforting to know that there are some people in the Senate who can separate lawnorder from law-and-order. However, it is very discomforting to know that those people are in a minority. I am gratefully yours.

JEFREY R. MITCHELL.

BALTIMORE, MD.

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JULY 24, 1970.

DEAR SENATOR ERVIN: I am not a constituent of yours, but I wish I was so I could vote

for you. Your valiant and selfless effort to defeat the DC crime bill and preserve the Bill of Rights deserves the highest praise. Throughout the years you have been a staunch defender of our constitutional rights and here I want to take the opportunity to thank you. You are a courageous man who fights short-sighted "panaceas" to the serious crime problem. I applaud your action and realize the courage it took as you represent a state that is largely conservative and for "law and order." I too favor law and order, but not repression. Once we twist the Constitution for mere temporary expediency as has just been done, we are in serious trouble as a nation. Thanks again, Senator, and please realize that there are many more like me who are grateful for men like you who safeguard our liberties even if it means a loss of popularity to some. Please keep up the good work.

Sincerely,

HOWARD FLEISCHMAN.

ADELPHI, MD.

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JULY 24, 1970.

DEAR SENATOR ERVIN: Thank you for your long and hard fight against the D.C. crime bill and in behalf of individual rights.

Needless to say I am quite concerned about the bill's passage, however, there is one flicker of hope left—the courts.

Thank you again.

Sincerely,

Mrs. DAVID R. TAXIN.

HILLCREST HEIGHTS, MD.

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SILVER SPRING, MD.,
*July 24, 1970.*

DEAR SIR: I commend you for your forthright stand taken against the District of Columbia Crime Bill of 1970. I had written about its "no-knock" provisions in a term paper I did on the erosion of our Bill of Rights but I had no idea of how bad some parts of it really were until I read your speech in the July 20 *Congressional Record*. It was very interesting to learn, as I did from your speech, that a defendant could be held in jail for an indeterminate time under the bill's provisions.

I thank you for your past efforts to preserve our rights especially those efforts concerning this bill—which I understand was even worse in the original form as passed by the House of Representatives—and hope that through the efforts of you and other concerned people, I will never have to write another chilling paper as the one I wrote before.

If there is any way I can help in preserving the Bill of Rights, please let me know.

Sincerely,

MARK GRUENBERG.

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JULY 20, 1970.

DEAR SENATOR ERVIN: I am writing to you to express my appreciation as a District of Columbia resident and as a Southerner for your noble defense of the fundamental principles of American liberty.

The threat of a "1984"-style society is the most serious problem which America faces today—notwithstanding that the headlines so often go to other dangers. Future generations of free Americans will owe you a debt of gratitude for warning against the incipient totalitarianism which some of the provisions of the D.C. Crime Bill reveal.

Sincerely,

S. BOBO DEAN.

WASHINGTON, D.C.

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WASHINGTON, D.C.,
*July 24, 1970.*

DEAR SENATOR ERVIN: As a resident of the District of Columbia for the past five years, I would like to thank you for your efforts to defeat the D.C. Crime Bill.

The District of Columbia is sorely in need of understanding and support from members of both the Senate and the House, and your leadership in defending our rights is a fine example for other members of the houses.

I join with you in hoping that the questionable provisions of the act will be brought to the courts quickly. I look forward to more constructive legislation from Congress dealing with the problems of our system of justice, particularly with the proper functioning of our correctional institutions.

Once again, thank you for your leadership in our defense. The citizens of the last colony are in your debt.

Yours truly,

ANTHONY TIGHE.

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## ORDER FOR ADJOURNMENT TO 8:30 A.M. TOMORROW, THURSDAY, AUGUST 27, 1970

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 8:30 a.m. tomorrow.

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

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## ORDER FOR RECOGNITION OF SENATOR KENNEDY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow morning, immediately following the disposition of the reading of the Journal, the able Senator from Massachusetts (Mr. KENNEDY) be recognized for not to exceed 30 minutes.

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

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## ORDER FOR PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the remarks tomorrow by the able Senator from Massachusetts (Mr. KENNEDY), there be a period for the transaction of routine morning business with statements therein limited to 3 minutes.

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

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## NO CALL OF LEGISLATIVE CALENDAR TOMORROW

Mr. BYRD of West Virginia. Mr. President, I am authorized by the able majority leader to say that there will not be a call of unobjected-to items on the legislative calendar tomorrow morning.

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## ORDER FOR RECOGNITION OF SENATOR BROOKE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the remarks tomorrow morning by the able senior Senator from Massachusetts (Mr. KENNEDY), the distinguished junior Senator from Massachusetts (Mr. BROOKE) be recognized for not to exceed 15 minutes.

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

## ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the special orders for recognition of Senators tomorrow, there be a period for the transaction of routine morning business with statements therein limited to 3 minutes.

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

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## PROGRAM

The PRESIDING OFFICER. The Chair notes that the Senator from West Virginia changed his request. Would the Senator restate the request in the proper order.

Mr. BYRD of West Virginia. Mr. President, under the unanimous-consent request, the able senior Senator from Massachusetts (Mr. KENNEDY) will be recognized immediately after the disposition of the reading of the Journal tomorrow for not to exceed 30 minutes; and at the conclusion of his statements the able junior Senator from Massachusetts (Mr. BROOKE) will be recognized for 15 minutes; and at the conclusion of the special orders for recognition there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

The PRESIDING OFFICER. I thank the Senator.

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## ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President. I ask unanimous consent that the order for the quorum call be rescinded.

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

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## PROGRAM—THE NELSON-GOODELL AMENDMENT TO BE LAID BEFORE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the period for the transaction of routine morning business tomorrow, the amendment to be offered by the able Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. GOODELL), concerning which an agreement has already been reached limiting the time thereon to 40 minutes, be laid before the Senate and made the pending business.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

### ORDER FOR AMENDMENT BY MR. PERCY TO BE MADE PENDING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the vote on the amendment to be offered by the able Senator from Wisconsin (Mr. NELSON) and the able Senator from New York (Mr. GOODELL) on tomorow, the amendment to be offered by the able Senator from Illinois (Mr. PERCY), be laid before the Senate and made the pending business.

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

Mr. BYRD of West Virginia. Mr. President, it is my understanding that a request has already been agreed to with respect to a 1-hour limitation on the amendment to be offered by the Senator from Illinois (Mr. PERCY).

### ADJOURNMENT TO 8:30 A.M.

Mr. KENNEDY. Mr. President, if there be no further business to come before the Senate, I move that the Senate stand in adjournment, in accordance with the previous order.

The motion was agreed to; and (at 4 o'clock and 35 minutes p.m.) the Senate adjourned until tomorrow, Thursday, August 27, 1970, at 8:30 a.m.

### NOMINATIONS

Executive nominations received by the Senate August 26 (legislative day of August 25), 1970:

DIPLOMATIC AND FOREIGN SERVICE

William B. Buffum, of New York, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lebanon.

U.S. NAVY

Adm. Ephraim P. Holmes, U.S. Navy, for appointment to the grade of admiral on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

Having designated Vice Adm. Charles K. Duncan, U.S. Navy, for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, I nominate him for appointment to the grade of admiral while so serving.

# EXTENSIONS OF REMARKS

## HAYWARD'S TOPFLIGHT FIRE CHIEF

## HON. GEORGE P. MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, August 14, 1970*

Mr. MILLER of California. Mr. Speaker, the city of Hayward, Calif., one of the most progressive in California, has as its fire chief Matt Jimenez. Chief Jimenez recently was selected as president of the International Association of Fire Chiefs at a meeting which took place in Seattle, Wash.

Matt Jimenez is a man dedicated to his job and one who has made a great contribution in the field of fire prevention in this country.

I include herewith an article from a recent issue of the Oakland, Calif., Tribune giving a short history of Matt's activities:

HAYWARD'S TOPFLIGHT FIRE CHIEF

(By Don Demain)

HAYWARD.—Twenty-five years ago, a young professional boxer gave up a promising career in the ring and decided to become a Hayward policeman.

It was about the only thing that Matt Jimenez set out to do that he didn't accomplish.

At that time shortly after World War II was over, there was no opening on the Hayward Police Department. So the young boxer decided instead to take a "temporary" position with the fire department.

The opening in the police department was slow to arrive, and when it did Jimenez had a change of heart. Firefighting was to become his life work and he set out to be a champion fireman just as he had been a champion fighter.

Seven years later, in 1952, Matt Jimenez was named chief of Hayward's 14-man department.

Under his guidance, the Hayward Fire Department became one of the most modern and efficient firefighting organizations in the country. It has won many awards and citations for its fire prevention work. Today the department numbers 104 in six fire stations.

Jimenez stresses two things in his department, intensive training for his men and widespread public education on fire prevention.

Jimenez has become a popular figure during his 18 years as chief, not only in his own community but throughout the country, because of his travels as a member of the International Association of Fire Chiefs.

As such he developed into a sort of ex officio "ambassador at large" for the city of Hayward. As a result, Hayward has become a popular stopover for traveling firemen from all over the world.

Last Wednesday, in Seattle, Wash., Jimenez attained just about the highest rank a fireman can aspire to.

He took office as president of the international association, pretty good indicator of the esteem held for him by fire chiefs from all over the United States and 31 foreign countries who elected him to the office.

Becoming "World fire chief" was not exactly what Jimenez expected. As a nine-year-old boy, he had shined shoes and sold newspapers on Hayward street corners nearly 40 years ago.

A member of a large Mexican-American family with very modest means whose father worked in the cannery and whose mother could speak no English, young Matt Jimenez at that time was more concerned with survival.

And it was about that time that he decided to become a prize fighter. He was already getting some hard experience fighting, at school and in the streets where the art of self defense had top priority.

Jimenez managed to continue his high school education and was graduated from Hayward High, and then went on to San Mateo Junior College. But World War II erupted and he left college to go to work in the shipyards, then was drafted into the Navy.

Athletic and a physical fitness exponent, Jimenez caught the eye of welterweight Joe Bernal while working out in the gym at Treasury Island.

That started his fighting career. Jimenez entered amateur boxing and then won the 1944 Amateur Athletic Union Pacific Coast Navy heavyweight championship.

This led to a bout with the Coast Guard champion, with Jack Dempsey as referee. Jimenez won, then turned professional and of 22 fights won 19, lost two and had one draw.

By now his ardor for the ring was flagging, a situation abetted by his mother and his fiance, Bernice, who became his wife in September of 1945.

Jimenez readily hung up his gloves, a decision he's never regretted. "If I'd stayed with it, I might still be hearing bells today, but not fire bells."

That's when he decided he'd like to become a policeman. And that's when, fortunately for the Hayward Fire Department, and unfortunately for the police department, there were no openings.

Jimenez, 48, now lives with his wife at their Hayward home at 24844 Canyon View Court. They have four children: Vivi, 9; Valerie, 15; Victoria, 29, a San Jose State College student, and Matt Jr., now in the U.S. Navy.

Jimenez, following his installation as international fire chief is on a tour of Canada and midwestern states.

After he arrives home, he will receive another tribute, a Matt Jimenez testimonial dinner at 6:30 p.m., Aug. 29, at the Holiday Bowl in Hayward. It's to be a toast to the "firemen's fireman."

## SENATOR PROUTY'S RECORD OF ASSISTANCE TO EDUCATION

## HON. HUGH SCOTT

OF PENNSYLVANIA

IN THE SENATE OF THE UNITED STATES

*Wednesday, August 26, 1970*

Mr. SCOTT. Mr. President, my friend, the distinguished Senator from Vermont (Mr. PROUTY), is known as a hard worker. One would have to work hard to do all that he has done to provide educational opportunities for all Americans. His education record is impressive, but he does not stop. He keeps working. I ask unanimous consent that a summary of his record be printed in the Extensions of Remarks.

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

SENATOR WINSTON PROUTY AND EDUCATION—A PROUD RECORD

If you mention education in Congress, one is first apt to think of Senator Winston Prouty. In his years as ranking Republican on the Education Subcommittee, he has forged the programs that have vastly expanded federal support for education.

He has not done this alone, but rather through his ability to work with his colleagues, regardless of party, toward the goal of a quality education for all Americans.

It is interesting to note that another Vermonter, Senator Justin Morrill, first moved Congress to expand the educational opportunities of our nation's young men and women. In 1962, one hundred years after