SENATE—*Thursday, August 27, 1970*

The Senate met at 8:30 a.m. and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

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

"New mercies each returning day,
Hover around us as we pray;
New perils past, new sins forgiven,
New thoughts of God, new hopes of heaven."

—JOHN KEBLE.

Eternal Father, whose grace is sufficient for all our need, take this day of our lives into Thy keeping. Inform our minds with Thy divine truth. Direct all our energies that no good gift from Thee be wasted. Help us to husband all our resources for constructive work. Strengthen our wills to do Thy will. Keep our eyes fixed on Thy beauty. Make our mouths eloquent in testimony to Thy love. Make this a day of spiritual joy and peace which moves this troubled world a bit nearer to the reality of Thy kingdom.

In the name of Him who came to all mankind as a servant. Amen.

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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 27, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. BYRD of West Virginia thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. KENNEDY. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, August 26, 1970, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under previous order, the Senator from Massachusetts is recognized for 30 minutes.

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

Mr. KENNEDY. Mr. President, I yield to the distinguished Senator from Pennsylvania without losing my right to the floor.

PUBLISHING AS A SENATE DOCUMENT TRIBUTES TO MARK TRICE

Mr. SCOTT. Mr. President, on August 19, 1970, and subsequently, a number of speeches were made on the floor of the Senate in recognition of 50 years of service to the Senate by Mark Trice.

On behalf of the distinguished majority leader and myself, I ask unanimous consent that certain congratulatory letters received by him be printed in the RECORD.

I also ask unanimous consent that the speeches made on the floor and the letters be gathered and published as a Senate document, and that Senators shall have 10 days in which to insert additional material if they so desire.

The ACTING PRESIDENT pro tempore. Without objection, the several requests of the able minority leader are granted.

Mr. SCOTT. I thank the Senator from Massachusetts.

The letters ordered to be printed in the RECORD are as follows:

THE WHITE HOUSE,
Washington, August 13, 1970.

Mr. J. MARK TRICE,
Secretary for the Minority,
U.S. Senate,
Washington, D.C.

DEAR MARK: The satisfaction you must derive as you look back on your impressive career is shared by all who have known you—and particularly by your fellow Republicans.

Your long years on Capitol Hill are as great in number as they are in accomplishment; from Senate Page to Secretary for the Minority is a most noteworthy advancement. You have set standards that will remain an inspiration for all who succeed you.

With warmest personal regards from a President who continues to cherish your friendship and your support,

Sincerely,

RICHARD NIXON.

THE VICE PRESIDENT,
Washington, August 19, 1970.

Mr. MARK TRICE,
Secretary to the Minority,
U.S. Senate,
Washington, D.C.

DEAR MARK: I had very much hoped to be able to participate in the celebration of your 50th Anniversary on Capitol Hill; but, as you may know, the President has called a Cabinet meeting for this evening. This, coupled with those things which must be done before I leave for the Far East, make it impossible for me to join with you and your many friends.

However, I do wish to commend you for your many years of meritorious service to the Party and to the United States Senate. Also, you have my sincere thanks for your valuable assistance to me as President of the Senate.

Sincerely,

TED.

THE SECRETARY OF STATE,
Washington, August 19, 1970.

Mr. J. MARK TRICE,
Secretary for the Minority,
U.S. Senate.

DEAR MARK: I should like to join your many friends in expressing my sincere congratulations on your record of dedicated service in the Senate and to the nation. Few can aspire to and still fewer attain the achievement which is being marked today. The tributes are justly deserved and I second them without qualification.

With warm regards,

Sincerely,

WILLIAM P. ROGERS.

AUSTIN, TEX.,
July 24, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: I have envied very few men in my life, but I do envy your fifty years of service in the United States Senate. Some of the happiest days of my career were spent in the Senate—and some of the most satisfying as well.

One of those satisfactions was my close working relationship with you. We represented different parties—and you served the Republican Party proudly and well—but first and foremost, we represented America. You always had my respect, my admiration and my affection.

Congratulations on passing this milestone. I wish you many more years of success. And I salute the years of service you have given to your government.

Sincerely,

LYNDON B. JOHNSON.

INDEPENDENCE, MO., *July 29, 1970.*

Mr. J. TRICE,
U.S. Senate,
Washington, D.C.

DEAR MR. TRICE: I have just learned that you are now in your fiftieth year of service in the United States Senate, and I join with much pleasure your many friends in congratulating you on this momentous occasion in your life, and of so long a dedication to public service.

With every good wish and high regard.

Sincerely yours,

HARRY S. TRUMAN.

JULY 23, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: Congratulations on fifty years of service to the United States Senate.

You have demonstrated over those years a dedication and devotion to your country, your Party, and the Senate itself. Your unselfishness and spirit of cooperation have gained for you the respect and admiration of Vice Presidents, Senators, and former Senators.

I share with you a love for the Senate and hope to return there next year to shake your hand and offer my congratulations to you in person. In the meantime, my very best wishes to you and your family.

Sincerely,

HUBERT H. HUMPHREY.

COLUMBUS, OHIO, *July 24, 1970.*

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: You have long been a most valuable person on the staff of the Senate. When returning, I have always looked you up because of my deep affection for you and your great help to me during my service in

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the Senate. It does not seem possible that you have been there fifty years, for you are so full of energy and always so cheerful. I know yours has not been an easy job at times.

Your contribution to the Senate and your Country has been a great one.

Sincerely,

JOHN W. BRICKER.

MR. J. MARK TRICE,
U.S. Senate.

DEAR MARK: It seems hardly possible that you are completing fifty years of service in the Senate. You are a young looking man to have a Golden anniversary.

However, since the fact is upon us, I hasten to send you a word of congratulation. To this I add a word of appreciation of all that you have done for our Senators over these many years. I attest that you were extremely helpful to me personally and for that I have always been grateful.

I like to look back too upon the happy hours spent in your offices during night sessions, having a glass of bourbon with perhaps a piece of New Hampshire cheddar which Norris Cotton would provide . . . waiting for the bell to summon us back to the floor for a vote. Yes, happy hours they were when friendships became warmer, and we could talk unguardedly safe in the confidence and company of good friends.

I wish you the best, Mark. With warm appreciation of our friendship, I am

Faithfully,

PRESCOTT BUSH.

JOHN M. BUTLER,
BALTIMORE, MD.,
July 26, 1970.

DEAR MARK: I have just learned through the good offices of Senator Smith of Maine that you are now in your fiftieth year of service in the United States Senate. What a great privilege has been yours over so many years, more especially in the latter years of your service, to be the friend, confident and in many instances the advisor of the men and women who shaped and are now in large measure shaping the destiny of the Republic. Yours has indeed been the privilege not only to know them and work with them but to be known and respected by them as a man of the highest integrity and intelligence and unerring judgment. And Mark, my dear and enduring friend, you are a great asset to the great institution that is the United States Senate and to us whose privilege it has been to serve in the Senate during your tenure.

Sincerely yours,

JOHN.

JULY 30, 1970.

MR. J. MARK TRICE,
U.S. Senate.

DEAR MARK: Lady Margaret of Maine has written to astound me by saying that you are about to conclude half a century of service to the Senate of the United States.

I saw you most recently on the day when the Senate took affirmative action on the Cooper/Church Amendment, and it couldn't then occur to me that you had served so long. You looked and were acting as though another 50 years of duty was easily attainable. Yours has been an extraordinary achievement to this point in time. It is an understatement for me to wish you well during the years that lie ahead.

We first met in late 1945 when I became a member of the Senate from Washington State. You recognized me as being a neophyte with a minimum understanding of where I was. You, together with Carl L and Winnie B, were patient and unusually considerate in shortening my apprenticeship. I was grateful to you then, and the passage of time has not diminished my respect for you as a public servant of the highest order. In addition, I have long considered you to be my personal friend. One of my few regrets is that I have been too seldom in your company in recent years.

Again, I salute you for the constructive manner in which you have served our beloved country and assisted the political party to which we belong. The Senate, in its entirety, has a precious asset in your good self.

Admiringly,

HARRY P. CAIN.

P.S.—My prediction: The future is certain to treat you well in many ways. It could, and I hope does, see you operate again as Secretary for the Majority. Hasten that day!

INDIANAPOLIS, IND.,
July 27, 1970.

HON. J. MARK TRICE,
U.S. Senate, Washington, D.C.

DEAR MARK: There is an old saying, Mark, that to know a man you must work with him.

We worked together, as you well know, for 18 years. During that time I learned to have great respect for your integrity, ability and particularly your outstanding personality.

We need more men such as you in government.

I wish you the greatest success and happiness.

Sincerely,

HOMER E. CAPEHART.

CONCORDIA, KANS.,
July 24, 1970.

MR. J. MARK TRICE,
U.S. Senate

DEAR MARK: During my eighteen years in the U.S. Senate, I can think of no one that I was more indebted to than you for advice and personal favors.

This is a note to express my sincere thanks for those many favors. Your kindness and your ever willingness to help will never be forgotten.

Again many thanks.

Sincerely,

FRANK CARLSON.

KANSAS CITY, KANS.,
July 30, 1970.

MR. J. MARK TRICE,
Secretary for the Minority,
U.S. Senate, Washington, D.C.

DEAR MARK: It is a distinct honor and pleasure for me to be included among your many friends who are extending you their warmest congratulations and best wishes in honor of your Golden Anniversary in the Senate where you have served so capably and faithfully as Secretary for the Minority as well as in other beneficial capacities.

I know that you are greatly thought of by all who have been associated with you in the Senate and also by many other friends and associates in Congress. Those of us who worked with you in the past as well as those who work with you now and in the future will alway remember your many thoughtfulnesses and kindnesses.

I'll never forget the fine job you did during 1949 and 1950 while I was there. Your competence, friendship, loyalty and cooperation were certainly a great asset, and I'm glad to have this opportunity to thank you for your devoted interest in and dedication to your work—you're to be commended on a very productive fifty years.

Mrs. Darby joins me in wishing you an abundance of good health and many more years of happiness and success.

Sincerely,

HARRY DARBY.

U.S. SENATE,
Washington, D.C., July 27, 1970.

HON. AND MRS. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK AND MARGARET: The saying goes "behind every wonderful man is a lovely woman" and I think this is true in your circumstance, so I address this to the both of you.

Mark, words are so inadequate to express the respect and affection which Everett and I shared about you. Whenever he had a sticky problem or something that bothered him we would get out the little black book and call you. Whether it was Sunday or a holiday you would be there to help.

Your long years of service and your devotion to your country and the Senate which you serve has earned you the admiration from Republicans and Democrats alike. May the years that lie ahead bring you peace and tranquility and may you find satisfaction in a job well done. With every good wish,

MRS. EVERETT M. DIRKSEN.

U.S. COURT OF MILITARY APPEALS,
Washington, D.C., August 7, 1970.

MR. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: Your many years of service in the Senate and the many kindnesses, and your dedication to the United States through your service in the Senate, certainly warrants an appreciation which words alone will not adequately express. But it is the best which I can do in a letter. You were always ready to give advice and through your knowledge of the workings of the Senate were a great aid to me when I first arrived and as I continued through my years as Senator from Michigan.

May you have many more years there and I certainly wish you health and happiness while you are continuing to serve our Government.

Sincerely,

HOMER FERGUSON.

DOVER, DELAWARE,
July 24, 1970.

MR. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: Although nearly ten years have passed since it was my cherished privilege to serve as a United States Senator, the memories and recollections of my association with you continue to be vivid and refreshing.

To visit with you in your office was always interesting, educational and relaxing. The girls at the Secretaries desks reflected your sincerity in their welcome. The colleagues disclosed their philosophies in amplified tones. You could, without undue persuading, add many personal comments in an extremely enjoyable manner—such as having to use the ladder to get into your home. I could not have enjoyed all these things had it not been for your close friendship.

Personal congratulations for fifty years of FULL service to the United States Senate. The members of the Senate and the people of the United States are indebted to you for a lifetime of continuous and devoted assistance.

It is an honor for me to say, "Mark Trice is a true friend."

Most sincerely,

ALLEN.

CHEVY CHASE, MD.,
July 23, 1970.

MR. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: It seems that the years roll around faster than any of us appreciate but there is a special compensation for service rendered, and your half-century of service to the United States Senate is one of the great records of that body. I am proud that, up to the time I retired, I had served with you for a little over half the period of time you

had served, and I benefited from your friendship and advice.

I don't know what has happened to the Twilight Lodge, but I sometimes wonder if its unity has not been fractured just a little, for various reasons not of your making.

In any event, for your half-century of service to the Senate, the country and to all of us who served with you, please accept my congratulations and my best wishes for many future happy years.

Sincerely yours,

BOURKE B. HICKENLOOPER.

INDIANAPOLIS, IND.,
July 31, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: Word has reached me that you are in your 50th year of service in the United States Senate.

Honestly, I don't know whether to congratulate you or extend you deep, heartfelt sympathy. How have you stood it?

Seriously, Mark, I would say that you deserve a medal, and I hope they will present you with one!

I shall always treasure our friendship and most pleasant association during my years in the United States Senate, and certainly I want to be counted among your many, many friends expressing their appreciation for all your kindnesses and gracious assistance.

Janet joins me in sending you our warmest good wishes.

Sincerely,

WILLIAM E. JENNER.

EMBASSY OF THE UNITED STATES OF AMERICA,
New Delhi, India, July 22, 1970.

DEAR MARK: Although, due to the lack of vision of the New York electorate, it looks as if I would not be able to complete fifty years of service in that body, I certainly was astonished when I learned that anyone as young looking and vigorous as you had rounded out a half century of devoted service to the Senate and to the country. I am happy to have been afforded the opportunity to join in a tribute to you for your dedication and to express my deep gratitude for the many, many ways in which you were so helpful to me during my tenure. If I run again and am elected in 1980 or 1990, I know I can count on you for your continued cheerful cooperation. I wish you many years of happiness and deep satisfaction from the knowledge that you are held in such high and respectful regard by the Members of the Senate of all parties and colorations of viewpoint. Warm personal regards,

Very sincerely yours,

KENNETH B. KEATING.

OAKLAND TRIBUNE,
Oakland, Calif., July 30, 1970.

Hon. J. MARK TRICE,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR MARK: I have learned that you are about to celebrate your 50th anniversary of service to the United States Senate. As one who had the opportunity to serve as a United States Senator for 13½ years and as both Majority and Minority Leader of the Senate, I want to join your many other friends in extending my best wishes.

I hope that you will have many more years of service. I know that the individuals who have been privileged to serve in the United States Senate, the staff of that institution, the government and people of the United States are in your debt for all that you have done during this half century of time.

With warm personal regards, I remain

Sincerely yours,

WILLIAM F. KNOWLAND.

WYMAN, BAUTZER, FINELL, ROTHMAN & KUCHEL,
Washington, D.C., July 24, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: With all your friends, I share your family's pride as you have reached a unique and imposing milestone of faithful service to the American people. To have served in the United States Senate, on the Republican side, for a half century, to have participated during that time as an important part of the nation's legislative machinery, and to have discharged your duty with devotion and honor and tact is a singular achievement, perhaps unmatched in all the history of the Congress. At any rate, it surely is most unusual in its duration, and I personally trust it will not be concluded for many years and until many additional milestones are reached.

One of the remarkable things about your career is that you have made so many friends, and have kept so many friendships, in a sometimes highly emotional legislative atmosphere which depends on division and dispute in seeking to make progress.

Betty joins me in sending to you and Margaret our prayers and best wishes for long and happy years ahead.

Sincerely,

THOMAS H. KUCHEL.

BEVERLY, MASS.,
August 5, 1970.

Hon. J. MARK TRICE,
U.S. Senate, Washington, D.C.

DEAR MARK: You have a right to look back on your fifty years of service in the United States Senate with deep satisfaction. During my more than thirteen years as a Senator, I had almost daily opportunties to see you at work and to benefit by the talented and valuable services which you rendered. You were always intelligent, always polite and always helpful. Few can equal such a record and none can surpass it. In extending my congratulations to you on this Fiftieth Anniversary, I also send you my warm personal wishes for health and happiness in the future.

With warm regards,

As ever yours,

HENRY CABOT LODGE.

LAS CRUCES, N. MEX.,
July 20, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: A thoughtful person has reminded me that you will be finishing 50 years of service to the Senate soon. You must have been quite large for your age when you went to work.

My short time on the Hill was made much more pleasant and rewarding by the fine service you rendered and the many acts of friendship you performed for me.

I just hope that your reign is much longer and that we can address you before long as the Clerk of the Majority.

Sincerely,

E. L. MECHEM.

LOUISVILLE, KY.,
July 22, 1970.

Mr. J. MARK TRICE,
U.S. Senate.

DEAR MARK: I am proud to be among your many friends who salute you for fifty years of faithful service in the United States Senate.

I suppose congratulations are in order but frankly, I think the United States Senate and particularly the Republican members thereof are to be congratulated for all that you have done over the years.

You and the members of your staff certainly were of untold help to me when I first went to the Senate and in the twelve years that followed. I have no regrets about leaving the Senate except that I miss all of those with whom I enjoyed a delightful camaraderie. My friendship with you is something that I shall treasure always.

Belle Clay asked me the other day what I missed most about Washington. My reply was three-fold: The Finance Committee, The Senate Gym and the Twilight Lodge.

With best wishes always,

Sincerely yours,

THRUSTON B. MORTON.

WALDOBORO, MAINE,
July 31, 1970.

Hon. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: As one who has had the extreme good fortune to have had a rather close and wonderful relationship with you during my service in the Senate of the United States, it is with the greatest of pleasure that I know you now have been wed to that body for 50 years, and are celebrating your Golden Anniversary this year.

My most sincere congratulations to you on attaining a distinction shared by few persons in the history of that most "Exclusive Club".

Mark, no person has ever been more highly dedicated to his work than you. No individual could have possibly extended greater courtesy and kindness to the many members of the United States Senate over the years than you. Every wish or desire has been handled with ease, tact and a great sense of devotion, regardless of whether it came from one high or low on the "totem pole". With you, it was always a question of trying to be of real help and service. Nothing else mattered.

Some of the most pleasant hours of my service there, were due to your friendship, hospitality and patience. You taught me the ways of the Senate and what to do and what not to do. Your door was always open, and during lengthy sessions lasting into late evening, your quarters seemed to be a "haven" for some of us who enjoyed "good fellowship" and a chance to be spared a bit of the lengthy oratory taking place on the floor of the Senate.

Yes, Mark, I have prized and always shall your friendship and all the wonderfully kind and thoughtful things you did for me and many like me. It is simply my one hope now, that I may live to see you again Secretary to the Majority.

Mrs. Payne joins with me in sending our very best, to one of the greatest persons we have ever known. May the next "50" be just as wonderful as the last.

Sincerely,

FREDRICK G. PAYNE.

POTTER & KORNMEIER INTERNATIONAL,
July 22, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: I wish to join with your host of friends in extending my congratulations to you for fifty years of service in the United States Senate.

Mark, you have been privileged to have witnessed hundreds of men and women who have sat in the United States Senate during your one-half century of duty. I am sure your thoughtfulness and willingness to be helpful is deeply appreciated by all of those who have had the privilege of working with you.

Betty joins me in wishing Margaret and yourself our best wishes for your continued health and success.

Kind personal regards on this memorable occasion.

Sincerely,

CHARLES E. POTTER.

FROSTBURG, MD.,
July 24, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: I want to join with your multitude of friends from all over the United States in congratulating you on the completion of 50 years service in the United States Senate.

You can quite deservedly look back with pride on a career of dedicated service to our Country, the Senate and the Republican Party.

I consider myself extremely fortunate to have been able to work with you for 12 of those 50 years.

With many thanks for your help in the past, and with every good wish for the future, I am

Sincerely yours,

J. GLENN BEALL.

OLD SAYBROOK, CONN.,
July 29, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: A half century of service in the United States Senate is a record of which one can properly be proud but years only is a small measure of your service. Your dedication to your duties and the cheerful and friendly manner in which they were discharged by you meant much. Even more meaningful than the years served are the friendships given and received. The thoughtful, kind help always willingly extended by you are fond memories of my service with you.

Mark, in my book, you are one GREAT GUY and so my sincere congratulations to you on this 50th Anniversary.

Sincerely,

WILLIAM A. PURTELL.

BOSTON, MASS.,
July 20, 1970.

Mr. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MARK: As one of your good friends over the twenty-two years that I served with you in the United States Senate, I want to join with your many friends to tell you how much I appreciated the many thoughtful little acts that you did to help me over those years and your extraordinary memory of details that made our actions more helpful in present day problems. Certainly, I hope that your 50th year mark will just be a new step forward for more years of service not only to members of the Senate, but to the nation.

May I add that I have some idea how much Mrs. Trice was of assistance to you and through you to us all. I recall particularly the many telephone calls to your home and to the other occasions on which Mrs. Saltonstall and I had such pleasant meetings with you both.

Congratulations and the best of luck!

Sincerely yours,

LEVERETT SALTONSTALL.

CONCORD, N.H.,
August 11, 1970.

Hon. J. MARK TRICE,
U.S. Senate,
Washington, D.C.

DEAR MR. TRICE: It was my privilege to serve in the U.S. Senate in 1954 having been appointed to fill the vacancy created by the death of Senator Tobey and during my service was grateful to you for your personal consideration and kindness. I failed re-election at the primary held in September and had no opportunity to say farewell. I have recently learned through the Senator from Maine that you have now served the Senate for fifty years and I decided to congratulate both you and the Senate. I take this opportunity to express my appreciation with thanks for your dedicated service and trust that it may long continue.

With my best wishes, I am

Very truly yours,

ROBERT W. UPTON.

S. 4297—INTRODUCTION OF THE HEALTH SECURITY ACT

Mr. KENNEDY. Mr. President, on behalf of Senator YARBOROUGH, Senator COOPER, Senator SAXBE, and myself, as well as Senators MCGOVERN, MONDALE, PELL, YOUNG of Ohio, HART, CRANSTON, HUGHES, BAYH, METCALF, MUSKIE, and MCCARTHY, I introduce the Health Security Act, a legislative proposal to establish a program of comprehensive national health insurance to provide better health care for all our people. We commend this legislation to our colleagues in the Senate for favorable consideration and early action.

Today in the United States, it is widely recognized that the American people are confronted with a crisis in the availability and the delivery of essential health services. In spite of the broad agreement that our population has a right to health care, the evidence is overwhelming that this right cannot be adequately exercised by most of our people. The nature and the dimensions of our national need for a system of better health care are well known. If we are to avoid the collapse of our health services and the disastrous consequences that would ensue for tens of millions of our people, we must take action.

We therefore offer today a health security program that will enable our Nation to make the right to health care not merely a principle or a social goal, but a living and functioning reality.

The primary purpose of our legislation is to establish a program to serve all who need health care and all who are qualified to provide the needed health services. Through a system of national health insurance, the program will guarantee orderly, budgeted, and stable financing of health services. In addition, a major part of the program will help to guarantee that the necessary national resources are available for the delivery of health care. Finally, through a program of innovative supports and incentives, the legislation will generate urgently needed improvements in both the organization and delivery of health care.

The health security program will emphasize the maintenance of health as well as the treatment of illness. By improving the efficiency of organization and by strengthening professional and financial controls, the program will restrain the steeply mounting costs of health care, while providing fair, reasonable, and adequate compensation and support to the individuals and the institutions that furnish health services.

One of the most useful and valuable innovations of the health security program is the resources development fund, which is part and parcel of the overall plan. During the 3 years before the benefit program becomes operational, the resources development fund will generate over 1 billion Federal dollars to improve and strengthen our health care system and to assure the availability and the effectiveness of the covered services when the benefit program begins. The fund will increase manpower and resources, and create new programs of organized health care throughout the Nation.

The goal of the program is to insure that all persons residing in the Nation have the opportunity to receive good health care—without barriers to the care they need, and without the crushing financial burdens that too often accompany the delivery of health services today. We believe that the health security program is a major step toward accomplishing that goal.

CURRENT PROBLEMS

America faces many serious and critical domestic problems, but none is more pervasive or more difficult than the deterioration of our once proud system of health care. In the United States of 1970, health care is the fastest growing failing business in the Nation—a $63 billion industry that fails to meet the urgent needs of our people. In spite of the dramatic recent increases in the Federal health budget and the large amounts we are all now spending for health care, there is almost no one today who believes that the Federal Government and the private citizen are getting full value for their health dollars.

The need for better health care is felt by every individual and family in the Nation. It cuts across all political, social, economic, and geographic lines—rich and poor, black and white, old and young, urban and rural.

As a nation, we have long been committed to fulfilling the potential of good health care for all our people. Yet, despite the dedication of many persons, despite large efforts and enormous expenditures, good health care is not yet even available to millions of people, and it is not actually being received by tens of millions more each year.

At the same time, we are devoting an increasing share of our national economic resources to health care. The cost is increasing, but the quality is declining. Our rates of sickness, disability, and mortality already lag far behind the potential of modern health care and the reality of such care in many foreign nations. Our record is getting no better. It may be getting worse. The consequences are serious. The challenge can no longer be denied.

We know very well the dismal health record of the United States compared to the other major industrial nations of the world. Year after year, the statistics tell us how little progress we have been making in health care in recent decades.

In spite of the fact that our vaunted research and technology is unequalled by any other nation in the history of the world, America is an also-ran in the delivery of health care to our people. In the midst of the rising cost of health care, we have endured a decline in the overall quality of the care we give our citizens. The figures are shocking:

In infant mortality, among the major industrial nations of the world, the United States today trails behind 12 other countries, including all the Scan-

dinavian nations, most of the British Commonwealth, and East Germany.

We trail six other nations in the percentage of mothers who die in childbirth.

Tragically, the infant mortality rate for nonwhites in the United States is twice the rate for whites. And nearly five times as many nonwhite mothers die in childbirth as white—shameful evidence of the ineffective prenatal and postnatal care our minority groups receive.

The story told by other health indicators is equally dismal. The United States trails 17 other nations in life expectancy for males, 10 other nations in life expectancy for females and 15 other nations in the death rate for middle-aged males.

Almost every family knows the cruel burden of worry, frustration, and disappointment that mark our search for better health care. The average American citizen lives in dread of illness and disability. He lives with the uncertainty of not knowing whether to seek medical care, or when to seek it, or how to obtain it. He lives with postponements and delays.

Above all, he lives in fear of the cost of health care. How many millions of Americans have gambled with their health to avoid the high cost of care they need? How many have endured suffering that might have been relieved? How many have had to sacrifice their hopes and plans because of the high price they had to pay for the care they received?

Despite massive sales of private health insurance, most of the expenditures for personal health services must still be borne out of pocket by the patient at the time of illness or as a debt thereafter. Nearly all private health insurance is partial and limited. In 1968, in spite of the fact that health insurance was a giant $12 billion industry, benefit payments in the aggregate met only about one-third of the private costs of health care, leaving two-thirds to be paid outside the framework of health insurance.

Private health insurance—through a thousand private carriers competing with each other, and through a bewildering array of insurance policies—had done no more than this to ease the impact of the cost of medical care on American families.

The private health insurance industry has failed us. It provides sickness insurance, not health insurance; acute care, not preventive care. It gives partial benefits, not comprehensive benefits. It fails to control costs. It fails to control quality. It ignores the poor and the medically indigent.

Far too often, the catastrophe of serious illness is accomplished by the very real fear of financial ruin. Health insurance coverage in America today is more loophole than protection. In 1968, of the 180 million Americans under 65, 20 percent had no hospital insurance, 22 percent had no surgical insurance, 34 percent had no inpatient medical insurance, 50 percent had no outpatient X-ray and laboratory insurance, 57 percent had no insurance for doctors' office visits or home visits, 61 percent had no insurance against the cost of prescription drugs, 97 percent had no dental care insurance.

These problems are not the problems of some small sector of our society. They are not the problems of only the poor, the disadvantaged, the handicapped, or the chronically ill. They are not the problems of only those in the inner city, or in the small towns or the rural areas.

These are the problems of families throughout the Nation. They do not have to read the statistics to know the crisis of our unmet needs. They know the problems firsthand, and they look to us for preventive measures and for remedies.

In our effort to achieve the goal we set today, I believe we will have the strong support of an increasing number of the providers of health care. We know the dedication of the health professions, the heroic efforts of hospitals and other institutions, the conscientious efforts of Federal, State, and local governmental agencies and their health personnel. We know the limitations under which they struggle today to meet the national need for health care. We know that at its best, medical care in the United States is second to none in the world, but we also know that the best is completely inaccessible to the vast majority of our people. More important, we know that if we are to succeed in our effort to improve the quality of health care for all, we must have the active support and assistance of all the health professions.

Our primary concern is not with allocating praise for what is good or blame for what is bad in our current health care system. Our primary concern is with identifying the needs and designing a program capable of meeting the needs we find.

There are three causes of our current health crisis that dominate all the rest:

There is a national shortage of health manpower and institutions.

Rising costs are pricing medical care beyond reach.

There are serious inadequacies in the system by which we organize and deliver health care.

If we are to meet the health needs of the Nation, we must insure that we have the needed health manpower, hospitals, and other institutions. We must keep the costs within reasonable bounds. And, we must develop a system which provides more efficient use of our existing health resources, and which encourages the availability of increased resources for the future.

If we are to succeed in alleviating our health crisis, however, we must attack each of these three problems simultaneously. Producing more health manpower or more hospitals or other institutions without improving the financing and organization of health care would simply exacerbate the already serious problem of the misallocation of our health resources. Changing the financing system alone by pouring more purchasing power into the existing channels would simply escalate the costs still further. And, attempting to deal with the organization system alone would be an invitation to decades of lag and disappointment. Such divided and categorical approaches have been tried under governmental or private sponsorship in the past, and they have met with uniform frustration and defeat. We propose that we should not repeat those mistakes.

Instead, we offer a comprehensive program that is intended to be a balanced and well-proportioned attack on each of the basic problems we face. At every point, we will provide professional and administrative protections and controls to limit the cost and safeguard the high quality of the health care services that will be made available.

NATIONAL HEALTH INSURANCE IN THE PAST

Proposals for national health insurance have a long history in the United States. The need for such a program was recognized at least two generations ago. At that time, medical care was becoming increasingly effective and valuable. Specialization was multiplying. Hospital services were becoming highly complex. Most important, the rising cost of adequate health care was threatening to price good care beyond the reach of millions of people.

It is not surprising, therefore, that health benefits were considered as a part of the original Social Security Act in 1935. Although these benefits were not included at the time, they were reserved for possible future extension of the social security program.

Additional proposals for national health insurance were made in Congress in the late 1930's and in the 1940's. These proposals were extensively studied and debated, but the time was not yet ripe for action. The earliest bills advocated Federal grants for State programs of health insurance. Nothing came of these proposals except the gradual provision of Federal support for State public assistance plans to pay for the costs of medical care—first for indigent persons and later also for medically indigent persons.

As our social security program grew in popularity and demonstrated its successful operation, the proposals in the Congress took the form of recommendations to include health benefits as an integral part of the Social Security Act. These proposals were also extensively studied and debated—over a period of more than 20 years. Out of those studies and debates eventually came, in 1965, the enactment of medicare as a limited program of national health insurance for persons 65 and over, and medicaid as a Federal-State medical care program on a means-test basis for indigent and medically indigent persons.

In those enactments of 1965, and in their subsequent amendments, Congress was guided by a policy of providing Federal financial support for the cost of private medical services. This partnership—governmental financial support and private provision of services—was sound in concept but deficient in practice.

The experience of medicare and medicaid has demonstrated that money alone and medical care insurance alone are no longer adequate to deal with the health care needs of the Nation. So long as the resources are insufficient and the organizational arrangements are inadequate, money alone will only make the problem worse. National health insurance is still necessary, but it must now and for the

years ahead be part of a broader program of health security.

THE NEED FOR NATIONAL HEALTH INSURANCE NOW

Today, the United States is the only major industrial Nation in the world that does not have a national health service or a program of national health insurance.

We know from recent experience that changes in the organization and delivery of health care in the United States will come only by an excruciating national effort. Throughout our society today, there is perhaps no institution more resistant to change than the organized medical profession. Indeed, because the crisis is so serious in the organization and delivery of health care, there are many who argue that we must make improvements in the organization and delivery system first, before we can safely embark on changing the financing system through national health insurance.

I believe the opposite is true. We must use the financing mechanism to create strong new incentives for the reorganization and delivery of health care. Thomas Paine declared at the founding of our American Republic, echoing the words of the ancient Greeks, "Give us a lever and we shall move the world." I say, give us the lever of national health insurance, and together we shall move the medical world and achieve the reforms that are so desperately needed.

The fact that the time has come for national health insurance makes it all the more urgent to pour new resources into remaking our present system. The organization and delivery of health care are so obviously inadequate to meet our current health crisis that only the catalyst of national health insurance will be able to produce the sort of basic revolution that is needed if we are to escape the twin evils of a national health disaster or the federalization of health care in the seventies.

To those who say that national health insurance will not work unless we first have an enormous increase in health manpower and health facilities and a revolution in the delivery of health care, I reply that until we begin moving toward national health insurance, neither Congress nor the medical profession will ever take the basic steps that are essential to reorganize the system. Without national health insurance to galvanize us into action, I fear that we will simply continue to patch the present system beyond any reasonable hope of survival.

The need for comprehensive national health insurance and concomitant changes in the organization and delivery of health care in the United States is our single most important issue of health policy today. If we are to reach our goal of bringing adequate health care to all our citizens, we must have full and generous cooperation between Congress, the administration, and the health profession. We already possess the knowledge and the technology to achieve our goal. All we need is the will. The challenge is enormous, but I am confident that we are equal to the task.

PROPOSALS FROM THE COMMITTEE FOR NATIONAL HEALTH INSURANCE

Recently, a new chapter began in the long history of national health needs and social policy. Walter Reuther was among the first to see that financing programs like medicare and medicaid, or extensions of private health insurance, could not resolve the crisis of disorganization and the spiraling costs of health care. Walter Reuther understood that the Nation needed to take a bold step forward. In November 1968, he announced the formation of the Committee of One Hundred for National Health Insurance. As he said, in establishing the mandate of the committee:

> I do not propose that we borrow a national health insurance system from any other nation. No nation has a system that will meet the peculiar needs of America. I am confident that we have in America the ingenuity and the social inventiveness needed to create a system of national health insurance that will be uniquely American—one that will harmonize and make compatible the best features of the present system, with maximum freedom of choice, within the economic framework and social structure of a national health insurance system.

Joining Walter Reuther on that committee were Dr. Michael E. DeBakey, Mrs. Mary Lasker, Mr. Whitney M. Young, Jr., and other outstanding citizens from the fields of medicine, public health, industry, agriculture, labor, education, the social services, youth, civil rights, religious organizations, and consumer groups. I have had the honor of serving on that committee along with my Senate colleagues, RALPH YARBOROUGH, JOHN SHERMAN COOPER, and WILLIAM SAXBE.

In its efforts over the past 2 years, the committee has worked to develop a sound program for improving the organization, financing, and delivery of health services to the American people. The committee's deliberations were based upon the premise that progress toward a more rational health system should be orderly and evolutionary. They felt that a better system of health care for America should rest upon the positive motivations and interests of both consumers and providers of health services. They believed that no system could succeed if it were imposed by fiat through rigid legislation and administrative regulations.

The bill that we introduce today is based on the recommendations of the committee. Throughout its deliberations, the committee was guided by the work of its distinguished technical subcommittee, chaired by Dr. I. S. Falk, professor emeritus of public health of Yale University and the most eminent authority in the field of health economics in the Nation. The committee consulted extensively with representatives of professional associations, consumer organizations, labor unions, management, and many other interested groups. The plan that the committee has proposed for a national health security program gives careful consideration to the recommendations of all of these groups.

The tragedy of Walter Reuther's death is compounded by the knowledge that he was on the threshold of presenting the committee's program, one of his greatest social visions. Now, as we transfer the debate from the halls of the universities to the hearing rooms of Congress, the committee is fortunate to have the able leadership of Leonard Woodcock. We know, therefore, that the strong and forceful guidance of the committee will continue as its work enters this new stage of activity.

MAJOR PROVISIONS OF THE PROPOSED LEGISLATION

The Health Security Act is intended to be comprehensive and extensive. At the conclusion of my remarks, I shall include a section-by-section analysis of the bill and the text of the bill itself, so that the details of its provisions may be widely available to all.

At this time, however, I would like to call attention to the major principle on which the bill is premised, and to summarize its main provisions.

First. Three basic principles have served as guidelines for this legislation, and they deserve special notice:

The health security program does not envisage a national health service, in which Government owns the facilities, employs the personnel, and manages the finances of the health system. On the contrary, the program proposes a working partnership between the public and private sectors. There will be Government financing and administrative management, joined with private provision of personal health services through private practitioners, institutions, and other providers.

The health security program will be carried out in a gradual process, moving in an evolutionary course from where we are today to the goals we have set for the future.

The comprehensive services covered by the health security program will be financed on a budgeted basis. Funds will be provided from a pool of national resources, with reasonable limitations on the hitherto unlimited expenditures demanded from the national economy.

Second. The benefits of the health security program will be available, with only minor exceptions, to all persons residing in the country, beginning in the middle of 1973. Eligibility will require neither an individual contribution history as in social security nor a means test as in medicaid.

Third. The benefits of the program are intended to embrace the entire range of services required for personal health, including services for the prevention and early detection of disease, for the care and treatment of illness, and for medical rehabilitation. With only four exceptions, there are no restrictions on needed services—no cutoff points, no coinsurance, no deductibles, and no waiting periods. The four exceptions are dictated by inadequacies in existing resources or in management potentials; they deal with nursing home care and other custodial care, psychiatric care, dental care, and certain medicines and appliances.

Fourth. Providers of health services will be compensated directly by the health security program. Individuals will not be charged for covered services.

Hospitals and other institutional providers will be paid on the basis of approved prospective budgets. Independent practitioners, including physicians, dentists, podiatrists and optometrists, may be paid by various methods which they elect: By fee-for-service, by capitation payments, or in some cases by retainers, stipends, or a combination of methods. Comprehensive health service organizations may be paid by capitation, or by a combination of capitation and methods applicable to payments to hospitals and other institutional services. Other independent providers, such as pathology laboratories, radiology services, pharmacies, and providers of appliances, will be paid by methods adapted to their special characteristics.

Fifth. The financial and administrative arrangements are designed to move the medical care system toward organized programs of health services, with special emphasis on teams of professional, technical, and supporting personnel. The resources development fund—containing up to 5 percent of the total amount in the trust fund—will be available to support the most rapid practicable development toward this goal of strengthening and improving the Nation's health resources. Federal law will supersede State statutes which restrict or impede the development of group practice plans. Thus, the program will do its best to assure increased availability of covered health services. It will not be content with merely contributing further strains on our already overburdened resources.

Sixth. The health security program includes various provisions to safeguard the quality of health care. The program will establish national standards more exacting than medicare for participating individual and institutional providers. Independent practitioners will be eligible to participate if they meet licensure and continuing education requirements. Specialty services will be covered if, upon referral, they are performed by qualified persons. Hospitals and other institutions will be eligible for participation if they meet national standards, and if they establish utilization review and affiliation arrangements.

Seventh. In the area of health manpower, the health security program will supplement existing Federal programs. It will provide incentives for comprehensive group practice organizations. It will encourage the efficient use of personnel in short supply. It will stimulate the progressive broadening of health services. It will provide funds for education and training programs, especially for members of minority groups and those disadvantaged by poverty. Finally, it will provide special support for the location of needed health personnel in urban and rural poverty areas.

Eighth. Various Federal health programs will be superseded, in whole or in part, by health security. Since all persons 65 and over will be covered by the program, medicare under the social security system will be terminated. Federal aid to the States for medicaid and other Federal programs will also be terminated except to the extent that benefits under such programs are broader than under health security. However, the bill does not revise the current provisions for personal health services under the Veterans' Administration, temporary disability, or workmen's compensation programs.

Ninth. The administration of the health security program will be concerned primarily with the availability of services, the observance of high quality standards, and the containment of costs within reasonable bounds. Policy and regulations will be established by a five-member full-time Health Security Board, appointed by the President with the advice and consent of the Senate. Members of the Board will serve 5-year terms, and will be under the authority of the Secretary of Health, Education, and Welfare.

A statutory National Advisory Council will assist the Board on general policy, the formulation of regulations and the allocation of funds. Members of the Council will include representatives of both providers and consumers of health care.

Administration of the program will be carried out through the 10 existing HEW regions as well as through the approximately 100 health subareas that now exist as natural medical marketplaces in the Nation. Advisory councils on matters of administration will be established at each of these levels. Through its regulations, the Board will guide the overall performance of the program. It will coordinate its activities with State and regional planning agencies, and it will account for its activities to Congress.

Tenth. The program will be financed through a health security trust fund similar to the social security trust fund. Income to the fund will derive from three sources: 40 percent from Federal general revenues, 35 percent from a tax of 3.5 percent on employers' payrolls, and 25 percent from a 2.1-percent tax on individual income up to $15,000 a year.

Employers may pay all or part of their employees' health security tax, and they would be expected to preserve obligations under existing collective-bargaining agreements.

Each year, the Board will make an advance estimate of the total amount needed for expenditure from the trust fund to pay for services, for program development, and for administration. The Board will allocate funds to the several regions, and these allocations will be subdivided among categories of services in the health subareas. Advance estimates, constituting the program budgets, will be subject to adjustments in accordance with guidelines in the act. The allocations to regions and to subareas will be guided initially by the available data on current levels of expenditures. Thereafter, they will be guided by the program's own experience in making expenditures and in assessing the need for equitable health care throughout the Nation.

Eleventh. On the basis of data from fiscal year 1969, the most recent year for which complete statistics are available, the health security program we are proposing would have paid for a total of $37 billion in personal health care services in the United States. Had the program been in existence in 1969, therefore, it would have paid approximately 70 percent of the $53 billion in total personal health expenditures for that year, or about twice the percentage that existing forms of public and private health insurance now pay.

Overall, expenditures under the health security program will not create a new round of Federal health expenditures, layered on top of existing public and private expenditures for health care. Instead, the health security program is designed to achieve a rechanneling of expenditures already being made, so that existing funds may be allocated more efficiently. In essence, health security expenditures will replace the large amount of wasteful and inefficient expenditures already being made by private citizens, by employers, by voluntary private agencies, and by Federal, State, and local governments. Only in this way can we begin to guarantee our citizens better value for their health dollar.

CONCLUSION

In sum, the Health Security Act we submit to the Senate and to the people of the United States differs from all previous proposals for national health insurance. It is not just another proposal for insurance. It is not just another design for pouring more purchasing power into our already over-strained and overburdened "nonsystem" for the delivery of medical care. It is not just another proposal to generate more professional personnel or more hospitals and clinics, without the means to guarantee their effective utilization.

Ours is a proposal to give us a national system of health security. Under this program, the funds we make available will finance and budget the essential costs of good medical care for the years ahead. At the same time, these funds will be building new capacity to bring adequate, efficient, and reliable medical care to all families and individuals in the Nation.

I invite all members of the Senate to study this proposed legislation and to join with us in seeking its early enactment.

I ask unanimous consent that the bill and a section-by-section analysis of its provisions be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill and the analysis will be printed in the RECORD, in accordance with the Senator's request.

The bill (S. 4297) to create a health security program, introduced by Mr. KENNEDY (for himself and other Senators), was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 4297

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Health Security Act."

DECLARATION OF PURPOSE

SEC. 2. The purpose of this Act is—

To create a national health security program which, through a system of national health insurance, will make health services available to all residents of the United States, and

Through the operation of the program, to effect modifications in the organization and methods of delivery of health services which will increase the availability and continuity of care, will emphasize the maintenance of health as well as the treatment of illness and, by improving the efficiency and the utilization of services and by strengthening professional and financial controls, will restrain the mounting cost of care while providing fair and reasonable compensation to those who furnish it.

INITIATION OF HEALTH SECURITY PROGRAM

SEC. 3. Health security taxes will become effective on January 1, and health security benefits on July 1, of 1973. Except for the benefit and related fiscal provisions, title I of this Act is effective upon enactment. Certain Federally financed or supported health programs will be terminated or curtailed when health security benefits become available. Effective dates of the several provisions of this Act are set forth in sections 142, 203, 213, 301, 302, and 303.

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TITLE I—HEALTH SECURITY BENEFITS

PART A—ELIGIBILITY FOR BENEFITS

BASIC ELIGIBILITY

SEC. 11. Every resident of the United States and every non-resident citizen thereof is eligible, while within the United States, to receive the benefits of the health security system created by this Act; except that an alien employee of a foreign government, of an instrumentality of a foreign government exempt from the tax imposed by section 3111 (b) of the Internal Revenue Code of 1954; or of an international organization is eligible only in accordance with an agreement under section 12. An alien admitted as a permanent resident and living within the United States, or an alien admitted for employment and employed within the United States, is for the purposes of this title a resident of the United States.

AGREEMENTS FOR ELIGIBILITY OF OTHER PERSONS

SEC. 12. The Health Security Board (hereafter referred to as "the Board"), with the approval of the Secretary of Health, Education, and Welfare and the Secretary of State, is authorized to enter into agreements with foreign governments, international organizations, or other entities to extend the benefits of this title to persons within the United States not otherwise eligible therefor, in consideration of payment to the United States of the estimated cost of furnishing the benefits to such persons, or of an undertaking to furnish in a foreign country similar benefits to citizens of the United States, or of a combination of payment and such an undertaking.

STUDY OF THE PROVISION OF HEALTH BENEFITS TO UNITED STATES CITIZENS IN OTHER COUNTRIES

SEC. 13. The Secretary of Health, Education, and Welfare, in consultation with the Secretary of State and the Secretary of the Treasury, shall study (a) the practicability and the means of making prepaid health services (or prepaid indemnification for the cost of health services) available, more widely than can be done under section 12, to citizens of the United States who are resident in other countries or are temporarily visiting such countries, by supplementing the authority for reciprocal arrangements under section 12 with authority for payments from the Health Security Trust Fund, and (b) means of equitably financing such services (or indemnification) through the extension of health security taxes; and not later than June 30, 1975, shall report to the Congress his findings and recommendations.

PART B—NATURE AND SCOPE OF BENEFITS: COVERED SERVICES

ENTITLEMENT TO HAVE PAYMENT MADE FOR SERVICES

SEC. 21. Every eligible person is entitled to have payment made by the Board for any covered service furnished within the United States by a participating provider if the service is necessary or appropriate for the maintenance of health or for the diagnosis or treatment of, or rehabilitation following, injury, disability, or disease Covered services are the services described in this part (subject to the exclusions stated in section 28); participating providers are providers described in part C.

PHYSICIAN SERVICES

SEC. 22. (a) Professional services of physicians, furnished in their offices or elsewhere, are covered services except to the extent otherwise provided in this section and section 28. Covered physicians' services include services and supplies of kinds which are commonly furnished in a physician's office, without separate charge, as an incident to his professional services.

(b) Covered physicians' services consist of (1) primary medical services, which are the

services (as defined in regulations, but including preventive services) ordinarily furnished by physicians (whether general practitioners or specialists) engaged in general or family practice for adults or the children or for both, and (2) specialized services. Major surgery and other specialized services designated in regulations are covered services only if they are furnished by an appropriately qualified specialist and, to the extent specified in regulations, on referral by a physician engaged in general or family practice, or if they are emergency services.

(c) Psychiatric (mental health) service to an ambulatory patient is a covered service (1) only if it constitutes an active preventive, diagnostic, therapeutic, or rehabilitative service with respect to emotional or mental disorders, and (2) only to the extent of 20 consultations during a spell of illness (as defined in regulations); but the limitation in clause (2) is not applicable if the service (A) is furnished by a comprehensive health service organization, by a hospital to an outpatient, or by a community mental health center or other mental health clinic which furnishes comprehensive services, or (B) is furnished to a patient of a day care service approved by the Board for this purpose.

DENTAL SERVICES

SEC. 23. (a) Professional services (described in subsection (b)) of a dentist, furnished in his office or elsewhere, are (subject to the provisions of section 28) covered services if they are furnished to a person born after June 30, 1958; or if they are furnished—after June 30, 1974, to a person born after June 30, 1957; after June 30, 1975, to a person born after June 30, 1956; after June 30, 1976, to a person born after June 30, 1955; after June 30, 1977, to a person born after June 30, 1954; or after June 30, 1978, to a person born after June 30, 1953.

Covered services include services, materials, and supplies which are commonly furnished in a dentist's office, without separate charge, as an incident to his professional services.

(b) Covered dental services are preventive services (including personal dental health education), diagnostic services, therapeutic services (exclusive of orthodontic services other than for handicapping malocclusion), and services required for rehabilitation following injury, disability, or disease.

(c) It is the intention of the Congress that the coverage of dental services under this title be extended to persons born before July 1, 1958, as rapidly as the availability of funds and of facilities and personnel makes possible, and the Board, in its annual reports to the Congress on the administration of this Act, shall review the operation of this section and recommend extension of the entitlement specified in this section as rapidly as the Board deems feasible. Not later than January 1, 1980, the Board shall submit its recommendation with respect to the scope and conditions of availability of covered dental services to all persons not already entitled thereto.

INSTITUTIONAL SERVICES

SEC. 24. (a) Inpatient and outpatient hospital services, skilled nursing home services, the service of home health service agencies, and other institutional health services approved by the Board, which are ordinarily furnished by the institution to patients for the purposes stated in section 21, are covered services except to the extent otherwise provided in this section and section 28. Covered services include services furnished generally to the patients served by an institution, including pathology and radiology services and all other necessary services, whether they are furnished by the institution or by others under arrangement with the institution. To the extent provided in regulations, inpatient services of a Christian Science sanatorium are covered services.

(b) Covered services do not include personal comfort items or, unless required for medical reasons, the additional cost of accommodations more expensive than semiprivate accommodations; and do not include domiciliary or custodial care, or institutional care of a person while he is not receiving active medical treatment.

(c) Covered services do not include care in a skilled nursing home for more than 120 days in a spell of illness (as defined in regulations), except that the Board is authorized to liberalize or eliminate this limitation whenever it finds that adequate funds and resources are available therefor and that such action will not lead to excessive utilization of skilled nursing home services.

(d) Covered services do not include institutional care of a person as a psychiatric patient while the patient is not receiving active treatment for an emotional or mental disorder; and do not include care of a person as a psychiatric patient for more than 45 consecutive inpatient days in either a psychiatric or a general hospital during a spell of illness (as defined in regulations).

(e) Covered services do not include institutional care of an inpatient unless a physician has certified to the medical necessity of the patient's admission to the institution, and do not include such care (during a continuous stay in the institution) after such period (if any) as may be specified in regulations unless a physician has certified to the continued medical necessity of such care. Regulations may specify the classes of cases in which certification of continued necessity is required, may specify different periods for different classes of cases, and may permit retroactive certification under such circumstances and to such extent as the Board deems appropriate.

(f) Covered services do not include the services of a general or psychiatric hospital or a skilled nursing home, during a spell of illness (as defined in regulations), after the third day following receipt by the institution and the patient of notice of a finding by a utilization review committee pursuant to section 50(e) that further stay in the hospital or further stay in the nursing home, as the case may be, is not medically necessary.

DRUGS

SEC. 25. (a) The Board, with the approval of the Secretary, shall establish and disseminate (and review, and if necessary revise, at least annually) (1) a list of drugs for use in participating institutions and comprehensive health service organizations, and (2) a list (for use outside such institutions and organizations) of diseases and conditions for the treatment of which drugs may be furnished as a covered service, and a specification of the drugs that may be so furnished for each disease or condition listed. Subject to the provisions of subsections (b) and (c) and of section 28, the furnishing of a drug to an eligible person is a covered service if it is furnished by or on prescription of a participating physician or dentist, or by or on prescription of a physician or dentist acting on behalf of a participating institutional or other provider.

(b) The list of drugs referred to in subsection (a)(1) shall be designed to provide physicians and dentists with an armamentarium necessary and sufficient for rational drug therapy incident to comprehensive medical services or incident to covered dental services. The furnishing of a drug on this list is a covered service if it is furnished to a person who is enrolled in a participating comprehensive health service organization, or is administered within a participating hospital to an inpatient or an outpatient, or is administered to an inpatient of a participating skilled nursing home having in effect an affiliation agreement in accordance with section 51(b).

(c) The list of diseases and conditions referred to in subsection (a)(2) shall include those chronic diseases and conditions for which drug therapy, because of its duration and cost, commonly imposes substantial financial hardship; and may include other diseases and conditions for which the Board finds exceptionally costly drug therapy to be commonly required and effective. To assure proper utilization of drugs for specific diseases or conditions, the Board may require that the physician or dentist furnishing or prescribing a listed drug be a specialist qualified to diagnose and treat that disease or condition. The furnishing of a drug (although not to a person or under circumstances described in subsection (b)) is a covered service if (1) the physician or dentist furnishing or prescribing it identifies the disease or condition for which it is furnished or prescribed, and the disease or condition is one appearing on the Board's list, (2) the physician or dentist meets specialist qualifications, if any, required by the Board, and (3) the drug is specified on the Board's list as one available for treatment of the disease or condition identified by the physician or dentist.

(d) The Board shall not list a drug under this section unless (1) the Secretary has found that it is safe and efficacious for the purposes for which it is recommended and (on the list established under subsection (c)) for the treatment of each disease or condition for which it is specified on the list, and (2) the Board finds that it is available at a reasonable cost (considering, among other factors, the existence or absence of competition in the production, distribution, and sale of the drug). Drugs shall be listed by their established names (as defined in section 502(e) of the Federal Food, Drug, and Cosmetic Act) and also, to the extent the Board deems appropriate, by trade names.

(e) In reviewing and revising lists established under this section the Board shall take into consideration (1) current information about the safety and efficacy of listed drugs, and about their cost, (2) the results of review of drug utilization under this title, (3) experience bearing on the determination of what diseases and conditions meet the criteria stated in subsection (c), and (4) such other factors as the Board deems pertinent. Drugs shall be added to or eliminated from the lists as the Board finds best calculated to effectuate the purposes of this section.

DEVICES, APPLIANCES, AND EQUIPMENT

SEC. 26. (a) The Board, with the approval of the Secretary, shall establish and disseminate (and review, and if necessary revise, at least annually) lists of the therapeutic devices, appliances, and equipment (or classes thereof) which it finds are important for the maintenance or restoration of health or of employability or self-management. The Board shall take into consideration the efficacy, reliability, and cost of each item listed, and shall attach to any item such conditions as it deems appropriate with respect to the circumstances under which or the frequency with which the item may be prescribed. In establishing and revising lists under this section the Board shall seek to avoid a rate of expenditure for the furnishing of devices, appliances, and equipment in excess of 2 percent of the rate of expenditure for all covered services.

(b) The furnishing of a device, appliance, or equipment prescribed by a participating physician or dentist, or by a physician or dentist on behalf of a participating institutional or other provider, is (subject to the provisions of section 28) a covered service if the item appears on a current list of essential items and the prescription falls within any conditions attached to the prescribing of that item on the list. The furnishing of any other device, appliance, or equipment so prescribed is also a covered service if, in accordance with regulations, the furnishing of it has been approved in advance by the

Board. Regulations under this section may list items or classes of items which, because of lack of efficacy or reliability or because of cost, the Board has determined may not be furnished as covered services.

MISCELLANEOUS AND SUPPORTING SERVICES

Sec. 27. (a) To the extent provided in regulations (but subject to the provisions of section 28) the following are covered services:

(1) the professional service of optometrists in refractive measurement of the eye and in prescribing eyeglasses;

(2) the professional services of podiatrists;

(3) the diagnostic services of independent pathology laboratories, and diagnostic and therapeutic radiology furnished by independent radiology services;

(4) the care of a psychiatric patient in a mental health day care service (A) for not more than 60 full days (or its equivalent) during or following a spell of illness (as defined in regulations), when furnished by a hospital or a service affiliated with a hospital, or (B) if furnished by a comprehensive health service organization or by a community mental health center or other mental health center which furnishes comprehensive services; and

(5) ambulance and other emergency transportation services.

(b) Supporting services (such as psychological, physiotherapy, nutrition, social work, or health education services) are covered services when they are a part of institutional services or when, with the approval of the Board, they are furnished by a comprehensive health service organization meeting the requirements of section 47, or by an organization, agency, or center with which the Board has entered into an agreement pursuant to section 48 (a), (b), or (c).

EXCLUSIONS FROM COVERED SERVICES

Sec. 28. (a) Health services furnished or paid for under a workmen's compensation law of the United States or a State, or legally required to be so furnished or paid for, are not covered services. Such services, if furnished by a participating provider, shall nevertheless be treated as covered services in accordance with this part unless and until a determination has been made pursuant to the workmen's compensation law that the services are covered by that law, and any resulting overpayment under this Act shall be recouped in the same manner as other overpayments.

(b) Health services furnished in a primary or secondary school are not covered services.

(c) Surgery performed solely for cosmetic purposes (as defined in regulations), and hospital or other services incident thereto, are not covered services.

(d) The furnishing of a drug otherwise than in accordance with section 25 is not a covered service. The furnishing of a device, appliance, or equipment otherwise than in accordance with section 26 is not a covered service unless it is furnished, in accordance with section 22(a) or section 23(a), as an incident to professional services.

(e) The Board may by regulation exclude from covered services medical or surgical procedures (and services incident thereto) which it finds are essentially experimental in character and which, because of cost or because of shortage of qualified personnel or facilities, it finds cannot practicably be furnished on a nationwide basis.

(f) Except as provided in regulations, services are not covered services if (1) they are furnished by another provider to a person enrolled in a comprehensive health service organization, and are within the range of services which the organization has undertaken to furnish, or (2) they are primary physicians' services or covered dental services and are furnished by another provider to a person on the list of a physician or a dentist who has elected to be paid by the capitation method.

(g) The services of a professional practitioner are not covered services if they are furnished in a hospital which is not a participating provider.

PART C—PARTICIPATING PROVIDERS OF SERVICES

IN GENERAL; AGREEMENTS WITH THE BOARD

Sec. 41. A person, corporation, or other entity furnishing any covered service is a participating provider if he or it (a) meets such qualifications and conditions as are established by or pursuant to this part for providers of that service, (b) furnishes the service as an independent provider and not (as employee or otherwise) on behalf of another provider entitled under part E to payment for the service, and (c) has filed with the Board an agreement (1) that services to eligible persons will be furnished without discrimination on the ground of race, color, or national origin, (2) that no charge will be made for any covered service other than for payment authorized by this title, and (3) that the provider will furnish such information as may be reasonably required by the Board for utilization review by professional peers, for the making of payments under this title, and for statistical or other studies of the operation of the title, and will permit such examination of records as may be necessary for verification of information on which payments are based.

PROFESSIONAL PRACTITIONERS

Sec. 42. (a) A physician, dentist, optometrist, or podiatrist, legally authorized on June 30, 1973, to practice his profession in a State, is a qualified provider of covered services within the State; subject, however, to the provisions of subsections (c) and (d). A practitioner first so authorized by a State after June 30, 1973, is a qualified provider if, in addition, he meets national standards established by the Board (taking into consideration the criteria applied by any recognized national testing organization) for the practitioner's profession. A practitioner who is a qualified provider in one State, if he meets the national standards, is also in any other State (in accordance with section 56 (a)(1)) a qualified provider of services which (1) are covered services to persons entitled thereto under this title, and (2) are of a kind which such other State authorizes to be furnished by practitioners of his profession.

(b) For the purposes of this title—

(1) A doctor of osteopathy legally authorized to practice medicine and surgery in a State is a physician.

(2) A dentist qualified in accordance with subsection (a) is a physician when performing oral surgery or other procedures which, in accordance with generally accepted professional standards, may be performed by either a physician or a dentist.

(c) Not later than July 1, 1975, the Board shall establish for professional practitioners such requirements of continuing education (taking into consideration standards approved by appropriate professional organizations) as it finds reasonable and necessary to maintain and enhance the quality of professional services to eligible persons. A professional practitioner who fails to meet a requirement established under this subsection shall, if the deficiency persists after notice and a reasonable opportunity to correct it, cease to be a qualified provider.

(d) A physician qualified in accordance with subsection (a) is not qualified to perform major surgery as a covered service, or to furnish as covered services other specialized services designated in regulations, unless he holds a certificate from the appropriate national specialty board or possesses the qualifications requisite to such certification; except that a physician may be found qualified to furnish any specialized services as covered services if (1) prior to July 1, 1973, he has engaged in furnishing such services as a specialist or as a substantial part of his medical practice, (2) he meets standards established by the Board, and (3) where appropriate, a finding that he is so qualified is recommended by a participating hospital in which he has engaged substantially in furnishing such services.

GENERAL HOSPITALS

Sec. 43. Subject to the provisions of section 52, a general hospital is a qualified provider if it is an institution which—

(a) is primarily engaged in providing to inpatients (other than mentally ill persons) diagnostic, therapeutic, and rehabilitation services, furnished by or under the supervision of physicians, for medical diagnosis, treatment, care, and rehabilitation of injured, disabled, or sick persons;

(b) maintains adequate clinical records on all patients;

(c) has bylaws in effect with respect to its staff of physicians, and has filed with the Board an agreement that in granting or maintaining medical staff privileges it will not discriminate on any ground unrelated to professional qualifications;

(d) has a requirement that every patient must be under the care of a physician;

(e) provides twenty-four-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times;

(f) has a pharmacy and drug therapeutics committee which establishes policies for the selection, acquisition, and utilization of drugs;

(g) has in effect a hospital utilization review plan which meets the requirements of section 50;

(h) meets all applicable requirements of the law of the State in which it is situated; and

(i) meets such other requirements as the Board finds necessary in the interest of the quality of the care and the safety of patients in the institution.

PSYCHIATRIC HOSPITALS

Sec. 44. Subject to the provisions of section 52, a hospital which is primarily engaged in furnishing psychiatric services to inpatients who are mentally ill is a qualified provider if it (or a distinct part of it) is an institution—

(a) in which diagnostic, therapeutic, and rehabilitative services with respect to mental illness are furnished by or under the supervision of physicians;

(b) which satisfies the requirements of subsections (b) through (i) of section 43;

(c) which, on the basis of staffing and other factors it deems pertinent, the Board finds is qualified to furnish active treatment;

(d) which maintains such records as the Board finds necessary to determine the degree and intensity of the treatment furnished; and

(e) which is accredited by the Joint Commission on the Accreditation of Hospitals.

SKILLED NURSING HOMES

Sec. 45. Subject to the provisions of sections 51 and 52, a skilled nursing home is a qualified provider if it (or a distinct part of it) is an institution which—

(a) is primarily engaged in providing to inpatients (other than mentally ill persons) skilled nursing care and related services for patients who require medical and nursing services;

(b) has written policies, which are developed (and reviewed from time to time) with the advice of a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the services it provides;

(c) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(d) operates under the supervision of an administrator licensed by the State in which such institution is situated;

(e) has a requirement that the health care of every patient be under the supervision of a physician, and provides for having a physician available to furnish necessary medical care in case of emergency;

(f) maintains adequate clinical records on all patients;

(g) provides twenty-four-hour nursing service sufficient to meet nursing needs in accordance with the policies developed as provided in subsection (b), and has at least one registered professional nurse employed full time;

(h) provides appropriate methods and procedures for the dispensing and administering of drugs;

(i) has in effect a utilization review plan which meets the requirements of section 50;

(j) meets all applicable requirements of the law of the State in which it is situated, and (unless the Board finds that such law provides equivalent protection) meets the provisions of the Life Safety Code of the National Fire Protection Association applicable to nursing homes; and

(k) meets such other requirements, including requirements relating to the physical facilities, as the Board may find necessary in the interest of the quality of care and the safety of patients in the institution.

HOME HEALTH SERVICE AGENCIES

SEC. 46. Subject to the provisions of section 51, a home health service agency is a qualified provider if it is a public agency or a nonprofit private organization, or a subdivision of such an agency or organization, which—

(a) is primarily engaged in furnishing, on an intermittent and visiting basis in patients' homes, skilled nursing and other therapeutic services to patients (other than mentally ill persons) who are under the care of physicians;

(b) has policies developed (and reviewed from time to time) by a group of professional personnel associated with the agency or organization, including one or more physicians and one or more registered professional nurses, to govern the services which it furnishes, and provides for supervision of such services by a physician or registered professional nurse;

(c) maintains adequate clinical records on all patients;

(d) meets all applicable requirements of the law of the State in which it furnishes services; and

(e) meets such other requirements as the Board may find necessary in the interest of the quality of care and the safety of patients of the agency or organization.

COMPREHENSIVE HEALTH SERVICE ORGANIZATIONS

SEC. 47. A comprehensive health service organization is a qualified provider of covered services if—

(a) the organization furnishes health services to an identified population (enrolled in the organization) in or near a specified service area, through arrangements which embody prepaid group practice (as defined in regulations) or other definitive arrangements which the Board finds will so far as practicable provide to enrollees the benefits of prepaid group practice;

(b) the furnishing of services is assured through a contract between the Board and a nonprofit provider of all the services to be furnished by the organization, or through a contract between the Board and a nonprofit provider of some of the services and subcontracts or other arrangements between such provider and providers (profit-making or nonprofit) of the other services;

(c) the organization furnishes, as a minimum, all covered services described in part B (including such supporting services as the Board may have approved under section 27(b)), other than institutional services, mental health services, or dental services; and with the approval of the Board it may furnish covered services which it is not required by this subsection to furnish, and may furnish health services not covered by this title;

(d) the organization furnishes services in such manner as to provide continuity of care and (when services are furnished by different providers) ready referral of patients to such services and at such times as may be medically appropriate, and to the maximum extent feasible makes all services readily accessible to enrollees who live in the specified service area;

(e) all eligible persons, living in or near a specified service area, are eligible to enroll in the organization, except that (1) the number of enrollees may be limited to avoid overtaxing the resources of the organization, and (2) such restrictions upon enrollment may be imposed as are approved by the Board as necessary to prevent undue adverse selection;

(f) the organization provides for periodic consultation with representatives of its enrollees regarding the policies and operation of the organization;

(g) the organization encourages health education of its enrollees and the development and use of preventive health services, and provides that a committee or committees of physicians associated with the organization promulgate medical standards, oversee the professional aspects of the delivery of care, perform the functions of a pharmacy and drug therapeutics committee, and monitor and review the utilization and quality of all health services (including drugs);

(h) the organization, to the extent practicable and consistent with good medical practice employs allied health personnel and subprofessional and lay persons in the furnishing of services;

(i) premiums or other charges by the organization for any services not paid for under this title are reasonable; and

(j) the organization undertakes, to the extent required by regulations, to arrange for reciprocal out-of-area services by other comprehensive health service organizations, or to pay for health services furnished to its enrollees by other participating providers, in emergencies, within or outside the specified service area of the organization.

OTHER HEALTH SERVICE ORGANIZATIONS

SEC. 48. Pursuant to an agreement with the Board containing such terms and conditions with respect to the qualifications of personnel and other matters as the Board may deem appropriate, any of the following is a qualified provider of such services as are specified in the agreement—

(a) a public or other nonprofit agency or organization which furnishes health services as comprehensive as those specified in section 47(c), but does not meet all other requirements of section 47;

(b) a public or other nonprofit center which (1) furnishes, as a minimum, the services of two or more physicians engaged in general or family practice, the services of nurses and supporting personnel, and basic laboratory services, which the Board finds sufficient for the primary medical care of a substantial population living in the vicinity of the center, and (2) has arrangements with other providers of services which the Board finds assure to the population served by the center, on a coordinated basis, all components of health services as comprehensive as those specified in section 47(c);

(c) a public or other nonprofit mental health center or mental health day care service; or

(d) a State or local public health agency furnishing preventive or diagnostic services, a medical or dental group practice or clinic, a diagnostic and treatment center, or another organization or agency furnishing health services to ambulatory patients.

MISCELLANEOUS PROVIDERS

SEC. 49. (a) An independent pathology laboratory is a qualified provider of diagnostic pathology services if (whether or not it is engaged in transactions in interstate commerce) it meets the requirements established by or pursuant to section 353 of the Public Health Service Act. An independent radiology service is a qualified provider of diagnostic and therapeutic radiology if it meets all applicable requirements of the law of the State in which the services are furnished, and such other requirements as the Board finds necessary in the interest of the quality of care and the safety of eligible persons.

(b) A provider of drugs, devices, appliances, or equipment is a qualified provider if he meets all applicable requirements of the Federal Food, Drug, and Cosmetic Act and of the law of the State in which the provider is situated, and such other requirements as the Board finds necessary in the interest of the quality of care and the safety of eligible persons.

(c) A provider of ambulance services is a qualified provider if he meets all applicable requirements of the law of the State in which the services are furnished, and such other requirements as the Board finds necessary in the interest of the quality of care and the safety of eligible persons.

(d) A Christian Science Sanatorium is a qualified provider of services specified in regulations prescribed under section 24(a) if it is operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

UTILIZATION REVIEW

SEC. 50. A utilization review plan of a general or psychiatric hospital or a skilled nursing home shall be considered sufficient if it provides—

(a) for the periodic review on a sample or other basis (and the maintenance of adequate records of such review) of admissions to the institution, the duration of stays, and the professional services (including drugs) furnished, (1) with respect to the medical necessity of the services, and (2) for the purpose of promoting the most efficient use of available health facilities and services; and provides for periodic reports, to the institution and the medical staff (and, when requested, to the Board), of statistical summaries of the review;

(b) in the case of a general or psychiatric hospital, for such review to be made either (1) by a staff committee of the hospital composed of two or more physicians with or without participation of other professional personnel, or (2) by a group outside the hospital which is similarly composed and which, if practicable, is established by the local medical society and hospitals in the locality, or is established in such other manner as may be approved by the Board; but clause (1) of this subsection shall be inapplicable to any hospital where, because of its small size or for such other reason as may be specified in regulations, it is impracticable for the hospital to have a properly functioning staff committee for the purposes of this section;

(c) in the case of a skilled nursing home, for such review to be made by a committee, composed as provided in subsection (b), established by the State or local public health agency pursuant to a contract with the Board, or by such a committee established by the Board;

(d) for such review, in each case of inpatient hospital services or skilled nursing home services furnished to a patient during a continuous period of extended duration, as of such days or such period (which may differ from different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible after

each day so specified, and in no event later than one week following such day; and

(e) for prompt notification to the institution, the patient and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any admission, further stay, or furnishing of particular services in the institution is not medically necessary.

TRANSFER AND AFFILIATION AGREEMENTS

SEC. 51. (a) A skilled nursing home is a qualified provider only if it has in effect (or there is in effect a finding under subsection (c) temporarily dispensing with) a transfer agreement with at least one participating hospital, providing for the transfer of patients and of medical and other information between the institutions as medically appropriate.

(b) After June 30, 1975, a skilled nursing home or a home health service agency will be a qualified provider only if it has in effect (or there is in effect a finding under subsection (c) temporarily dispensing with) an affiliation agreement with a participating hospital or a participating comprehensive health service organization, under which the medical staff of the hospital or organization (or a committee thereof) will furnish, or will assume responsibility for, the professional services in the skilled nursing home, or the professional services furnished by the home health agency, as the case may be.

(c) The requirement of a transfer agreement under subsection (a), or of an affiliation agreement under subsection (b), shall not be applicable in any case if there is in effect a finding by the Board that the lack of a suitable hospital or organization within a reasonable distance makes such an agreement impracticable, and that the services of the skilled nursing home or the home health agency are essential to the furnishing of adequate services to eligible persons. Such a finding shall be reviewed periodically, and shall be revoked whenever the Board finds it practicable to do so.

NEWLY CONSTRUCTED FACILITIES

SEC. 52. A general or psychiatric hospital or a skilled nursing home the construction or substantial enlargement of which (whether or not in replacement of another institution) was undertaken (as defined in regulations) after December 31, 1970, is not a participating provider unless the construction or enlargement has been found, by a State agency designated by the Governor of the State for this purpose, or has been found by the Board, to be needed for the furnishing of adequate services to persons residing in the area to be served by the institution.

CONSIDERATION OF PROFESSIONAL ASSOCIATION STANDARDS

SEC. 53. In establishing requirements necessary in the interest of the quality of care and safety of eligible persons, pursuant to section 43(i), 45(k), 46(e), 49(a), 49(b), or 49(c), the Board shall take into consideration standards or criteria established or recommended by any appropriate professional or other association or organization.

COMPLIANCE WITH DIRECTIONS FOR BETTER ORGANIZATION AND COORDINATION OF SERVICES

SEC. 54. If the Board finds that any participating provider of services (other than an individual professional provider) has, without reasonable cause, failed to comply with a direction issued pursuant to section 131, the provider shall, at such time as may be specified by the Board, cease to be a participating provider.

EXCLUSION: FEDERAL PROVIDERS OF SERVICES

SEC. 55. No institution of the Department of Defense, no institution of the Veterans Administration, no institution of the Department of Health, Education, and Welfare engaged in the provision of services to merchant seamen or to Indians or Alaskan natives, and no employee of any of the foregoing acting as employee, is a participating provider. The Board shall, however, reimburse the proper appropriation for any services furnished by any such institution or employee to an eligible person who is not, under any Act other than this Act, eligible to receive the service from the institution or employee.

RESTRICTIVE STATE LAWS INOPERATIVE

SEC. 56. (a) In the furnishing of covered services to eligible persons (any law of a State or political subdivision to the contrary notwithstanding)—

(1) A physician, dentist, optometrist, or podiatrist who is legally authorized by a State to practice his profession and who meets national standards established by the Board pursuant to section 42(a) is hereby authorized to furnish in any other State, either as an independent participating provider or on behalf of an institutional or other participating provider, the services which such other State authorizes to be furnished by practitioners of his profession.

(2) A professional nurse, or a practitioner of another health profession or occupation designated in regulations, who meets national standards established by the Board for his profession or occupation is hereby authorized to furnish in any State, on behalf of participating providers of services, the services which that State authorizes or permits to be furnished by practitioners of his profession or occupation. National standards applicable to professional nursing, or to any other profession or occupation the practice of which is subject in all States to licensure or similar authorization, shall contain a requirement of licensure or authorization by at least one State.

(3) In a participating public or other nonprofit hospital or a participating comprehensive health service organization, a practitioner of any health profession other than medicine or dentistry or of any nonprofessional health occupation who meets national standards established by the Board for his profession or occupation, and meets any additional qualifications established by the Board for the performance of particular acts or procedures, is hereby authorized to perform, under the supervision and responsibility of a physician or dentist, such of the acts which might lawfully be performed by the physician or dentist as are specified in regulations.

(4) A participating public or other nonprofit hospital or a participating comprehensive health service organization is hereby authorized (whether or not the arrangement may be deemed to constitute corporate practice of a profession) to employ physicians, dentists, or other professional practitioners, or to obtain and compensate their services in any other manner, and the practitioners are authorized to serve such a hospital or organization as employees or in any other manner; but only if the employment or other arrangement is not of a kind which the Board finds is likely to cause lay interference with professional acts or professional judgments.

(b) If the Board finds that a proposed corporation will meet the requirements of section 47 for participation as a comprehensive health service organization (or as the principal contractor for such an organization), but that it cannot be incorporated in the State in which it proposes to furnish services because the State law requires that a medical society approve the incorporation of such an organization, or requires that physicians constitute all or a majority of its governing boards, or requires that all physicians in the locality be permitted to participate in the services of the organization, or makes any other requirement which the Board finds incompatible with the purposes of this title, the Board may issue a certification of incorporation to the organization, and it shall thereupon become a body corporate. The powers of the corporation shall be limited to the furnishing of services under this title, and the doing of things reasonably necessary or incident thereto. So far as the Board finds to be compatible with the purposes of this title, the certificate of incorporation shall accord with, and the corporation shall be subject to, provisions of the State law which are applicable to non-profit corporations generally.

PART D—TRUST FUND; ALLOCATION OF FUNDS FOR SERVICES

HEALTH SECURITY TRUST FUND

SEC. 61. (a) Section 1817 of the Social Security Act (creating the Federal Hospital Insurance Trust Fund and appropriating to the fund the proceeds of the hospital insurance payroll taxes and the hospital insurance self-employment tax) is amended—

(1) By striking out the section heading, and the name of the trust fund appearing in subsection (a), and in each case inserting in lieu thereof: "Health Security Trust Fund";

(2) By striking out paragraph (2) of subsection (a) (appropriating to the trust fund the proceeds of the self-employment tax for hospital insurance) and inserting in lieu thereof:

"(2) The taxes imposed by section 1403 of the Internal Revenue Code of 1954 with respect to health security non-wage income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code."

(3) By striking out subsections (g) and (h) and inserting in lieu thereof:

"(g) On July 1, 1973, there shall be transferred to the Trust Fund all of the assets and liabilities of the Federal Supplementary Medical Insurance Trust Fund. The Trust Fund shall remain subject to the liabilities of the Federal Hospital Insurance Trust Fund existing immediately prior to July 1, 1973.

"(h) In addition to the sums appropriated by subsection (a), there are authorized to be appropriated to the Trust Fund from time to time, out of any moneys in the Treasury not otherwise appropriated, a Government contribution equal to 66⅔ percent of the sums appropriated by subsection (a). There shall be deposited in the Trust Fund all recoveries of overpayments, and all receipts under loans or other agreements entered into, under title I of the Health Security Act.

"(i) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Health Security Board certifies are necessary to make payments provided for by title I of the Health Security Act, and the payments with respect to administrative expenses in accordance with section 201(g)."

(b) Section 201(g) of the Social Security Act (providing for annual authorization by the Congress of payment, from the respective trust funds, of the cost of administering the several national systems of social insurance) is amended—

(1) By striking out in paragraph (1)(A) "the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund" and inserting in lieu thereof: "the Health Security Trust Fund";

(2) By striking out the words "title XVIII" wherever they appear in the subsection and inserting in lieu thereof: "title I of the Health Security Act".

ANNUAL DETERMINATION OF FUND AVAILABILITY

SEC. 62. (a) For each fiscal year the Board shall, not later than March 1 next preceding the beginning of the fiscal year, fix the maximum amount wihch may (except as provided in subsection (c)) be obligated during the

fiscal year for expenditure from the Trust Fund. The amount so fixed—

(1) shall not exceed 166⅔ percent of the expected net receipts during the fiscal year (as estimated by the Secretary of the Treasury) from the taxes imposed by sections 1403, 3101(b), and 3111(b) of the Internal Revenue Code of 1954, and

(2) for any fiscal year beginning after June 30, 1974, shall not exceed the aggregate obligations (as estimated by the Board) incurred and to be incurred by the Trust Fund during the fiscal year current at the time when the determination is made, adjusted to reflect (A) any estimated change expected in the consumer price index, (B) the expected change in the number of eligible persons, (C) any expected change in the number of participating professional providers, or in the number or capacity of institutional or other participating providers, and (D) any change in the cost of administration of this Act indicated in the President's budget estimate pursuant to section 201(g) of the Social Security Act.

(b) In fixing the amount available for obligation during a fiscal year, pursuant to subsection (a)—

(1) if and to the extent that (A) the Board estimates that the amount in the Trust Fund at the beginning of the fiscal year will be less than one-quarter of the obligations incurred and to be incurred during the fiscal year current at the time when the determination is made, and (B) the Board finds that restriction of the amount available for obligation will not materially impair the adequacy or quality of services to eligible persons, the amount fixed under subsection (a) shall be less than the maximum stated in paragraph (1) of that subsection; and

(2) if and to the extent that the Board finds that improvement in the organization and delivery of services or in the control of their utilization has lessened their aggregate cost (or has lessened an increase in their aggregate cost), the amount fixed under subsection (a) shall be less than the maximum stated in paragraph (2) of that subsection.

(c) The amount available for obligation during a fiscal year, fixed pursuant to subsection (a), may be modified before or during the fiscal year if the Secretary of the Treasury finds that the tax receipts referred to in subsection (a)(1) will differ from the estimate by 1 percent or more, or if the Board finds that any of the factors of expected change referred to in subsection (a)(2), or action on the budget estimate for the cost of administration, will differ from the estimate by 5 percent or more; or if an epidemic, disaster, or other occurrence increases the need for health services to an extent which the Board finds requires the expenditure of additional funds. If the amount fixed pursuant to subsection (a) is increased, the Board, through the Secretary, shall promptly report its action to the Congress with a statement of the reasons therefor.

HEALTH SERVICES ACCOUNT, HEALTH RESOURCES DEVELOPMENT ACCOUNT, AND ADMINISTRATION ACCOUNT

SEC. 63. (a) There shall be established in the Trust Fund a Health Services Account, a Health Resources Development Account, and an Administration Account.

(b) For each fiscal year there shall be transferred to the Health Resources Development Account the following percentage of the amount available for obligation during that year (as determined pursuant to section 62(a)): for the fiscal year ending June 30, 1974, and for the next succeeding fiscal year, 2 percent; for each of the next two succeeding fiscal years, 3 percent; for each of the next two succeeding fiscal years, 4 percent; and for each fiscal year beginning after June 30, 1979, 5 percent. Funds in the Health Resources Development Account shall be used exclusively for the purposes of part F, and shall remain available for such uses until expended.

(c) The remainder of the amount available for obligation during a fiscal year, after deducting the amount of the President's budget estimates for the cost of administering this Act, shall be transferred to the Health Services Account. Funds in the Health Services Account shall be used exclusively for making payments for covered services in accordance with part E, and shall remain available for such payments until expended.

(d) When the amounts available for a fiscal year for the administration of this Act have been determined by the Congress, the amount available for the administration of this title shall be transferred to the Administration Account, and any necessary adjustments shall be made in the amount transferred to the Health Services Account and in allocations previously made from that Account.

REGIONAL ALLOCATIONS FROM HEALTH SERVICES ACCOUNT

SEC. 64. (a) For each fiscal year the Board shall, not later than March 1 next preceding the beginning of the fiscal year, make allocations to the regions of the Department from the funds available for the fiscal year in the Health Services Account. The allocation to each region shall be equal to the aggregate expenditures for services described in part B as covered services, in the most recent twelve-month period for which reliable data are available, adjusted to reflect the factors of change referred to in clauses (A), (B), and (C) of section 62(a)(2), and further adjusted in accordance with subsections (b) and (c) of this section.

(b) It shall be the objective of the Board to reduce gradually, and ultimately to eliminate substantially, existing differences among the regions in the average per capita cost of health services, except as such differences reflect regional differences in the consumer price index. To this end the Board shall modify the allocations determined under subsection (a) in order (1) to reduce, or to lessen any increase in, the cost of covered services in regions in which the average per capita cost is higher (to an extent greater than the difference in the consumer price index) than the national average per capita cost, to such extent as the Board finds practicable without impairing materially the adequacy or quality of services to eligible persons, and (2) to stimulate, to such extent as the Board finds practicable and desirable, increase in the availability and utilization of covered services in regions in which the average per capita cost is lower (to an extent greater than the difference in the consumer price index) than the national average per capita cost.

(c) If the sum of the regional allocations determined pursuant to subsections (a) and (b) is greater than the amount available (after withholding such reserve for contingencies as the Board deems necessary) in the Health Services Account, the allocations shall be reduced proportionately.

(d) Allocations under this section may be modified before or during a fiscal year if the amount available for obligation is modified pursuant to section 62(c). Either from the contingency reserve or from additional funds made available for obligation, one or more allocations may be increased if an epidemic, disaster, or other occurrence increases the need for health services to an extent which the Board finds requires the expenditure of additional funds.

DIVISION OF REGIONAL FUNDS BY CLASSES OF SERVICES

SEC. 65. (a) For each fiscal year the Board shall, not later than April 1 next preceding the beginning of the fiscal year, divide the allocation to each region into funds available, respectively, to pay the cost within the region of the following classes of services: (1) institutional services, (2) physician services, (3) dental services, (4) the furnishing of drugs, (5) the furnishing of devices, appliances and equipment, and (6) miscellaneous services.

(b) The content, for purposes of the division of funds, of each class of services shall be defined in regulations. Within the funds available for miscellaneous services, the regulations shall establish sub-funds available, respectively, for the making of incentive payments not otherwise provided for, for supporting services described in section 27(b), for payments to optometrists, for payments to podiatrists, and for such other purposes as the Board may determine.

(c) The amounts assigned to the several funds and sub-funds in each region shall be determined in accordance with regulations, which shall take into account, in addition to the factors considered in making the regional allocations, trends in utilization of the several services and, to the extent the Board finds it practicable, the creation of incentives to the improved utilization thereof.

FUNDS FOR HEALTH SERVICE AREAS

SEC. 66. (a) for each fiscal year the Board shall, not later than April 1 next preceding the beginning of the fiscal year, allot among the health service areas in each region, each of the funds established for the region pursuant to section 65 for a class of services. If an interstate health service area lies partly in each of two or more regions, appropriate allotments of funds from each region shall be made to it.

(b) The amount allotted to each health service area from each regional fund shall be equal to the aggregate expenditures in the area for services of the class for which the fund is available, as determined (or, if necessary, estimated) by the Board for such 12-month period as may be specified in regulations; modified to take account of the factors considered in making regional allocations and in dividing such allocations by classes of services (including modifications designed to further the objective of equalization within each region, in the manner set forth in section 64(b) with respect to interregional equalization).

(c) Payment for services, in accordance with part E, shall be made in each health service area by such officer of the Board as it may designate for the purpose. There shall be established in each area such accounts as the Board may find convenient for making payment to providers of more than one class of services (such as an account for payment to hospitals, or an account for payment to comprehensive health service organizations), in which shall be deposited the appropriate portions of the funds for the several classes of services to be furnished by such providers.

MODIFICATION OF FUND ALLOTMENTS

SEC. 67. Before or during a fiscal year the division of funds by classes of services pursuant to section 65, or the allotment of funds to health service areas pursuant to section 66, may be modified if the amount available for obligation or the regional allocations are modified, or if the Board finds that newly acquired information makes modification essential.

PART E—PAYMENT TO PROVIDERS OF SERVICES IN GENERAL

SEC. 81. Payment shall be made to participating providers, in accordance with this part, for covered services furnished to eligible persons (or, in the case of dental services, furnished to persons entitled thereto under section 23). Payments shall be made from the amounts allocated from the Health Services Account in the Trust Fund, in accordance with part D, for the respective areas and purposes.

METHODS AND AMOUNT TO PROFESSIONAL PRACTITIONERS

SEC. 82. (a) Every independent professional practitioner shall be entitled, at his election, to be paid by the fee-for-service method, consisting of the payment of a fee for each separate covered service.

(b) Every physician engaged as an independent practitioner in the general or family practice of medicine, and every dentist engaged as an independent practitioner in the furnishing of covered dental services, shall be entitled, at his election, to be paid by the capitation method if he has filed with the Board an agreement (1) to furnish all necessary and appropriate primary medical services (as defined in regulations) or covered dental services, as the case may be, to persons on a list of persons who have chosen to receive all such services from the practitioner, (2) to maintain arrangements for referral of patients to specialists, institutions, and other providers of covered services, and (3) to maintain such records and make such reports of services furnished as may be required by regulations for purposes of medical audit. A practitioner electing the capitation method is entitled to be paid by the fee-for-service method for services furnished to persons who are not on his list.

(c) When the Board deems it necessary in order to assure the availability of services or for other reason, the Board (1) may pay an independent practitioner a full-time or part-time stipend in lieu of or as a supplement to the foregoing methods of compensation, and it may reimburse a practitioner for special costs of continuing professional education and of maintaining linkages with other providers of services (such as costs of communication and of attendance at meetings or consultations), and (2) may pay for specialized medical services (including services referred to in section 42(b)(2)) a stated amount per session or per case or may utilize a combination of the methods authorized by this section.

(d) The capitation method of payment for a specified kind and scope of covered services consists of the payment, to a provider of such services, of an annual capitation amount for each person who has chosen to receive all such services from the provider.

(e) The amounts allotted for a fiscal year pursuant to part D for each health service area for physician services, for dental services, for optometrist services, and for podiatrist services, respectively, shall each be used (1) to provide for payments for professional services (made either directly to practitioners or as reimbursement to hospitals or other providers for the compensation of practitioners) to be made by the Board on a budget or stipend basis or any basis other than capitation, fee-for-service, or per case, and (2) from the remainder, to make available (for each kind of professional services) an equal per capita amount for each person resident in the area who is entitled to such services. In any area in which the Board finds that a substantial volume of services is furnished to nonresidents, it may reduce the per capita amount to such extent as it finds necessary to effect an equitable distribution of funds. The per capita amount shall constitute the annual capitation amount for purposes of payment to an organization or other provider furnishing all covered services (described in part B) of the kind for which the allotment is available. Lesser capitation amounts shall be fixed (on the basis of the relative cost of the services) for primary medical services and, as may be required, for any scope of services (less than comprehensive) which is furnished by any institutional or other provider. The remainder referred to in clause (2) of this subsection shall, after providing for capitation payments, be available for making fee-for-service and per case payments.

(f) The amounts of fees payable to independent professional practitioners shall be determined by fee schedules or relative value scales prescribed by the Board after consultation with representatives of the respective professions in the region or the area, and the amounts of payments per case shall be prescribed by the Board after such consultation as it finds appropriate. If at any time during the fiscal year it appears that the aggregate of fees and per case payments for the year will exceed the amount available therefor in the health service area, all fees and payments for services furnished thereafter shall be reduced, proportionately, to such extent as the Board finds necessary to avoid a deficit for the year. The Board may, on such terms as it deems appropriate, delegate to a professional society or to an agency designated by representatives of a profession in the region or the area the payment of fees and per session amounts.

(g) The Board may, on an experimental or demonstration basis, enter into an agreement with a statewide or local professional society or other organization representative of independent professional practitioners to substitute another method of compensation for those set forth in this section (either for all such practitioners, or for all who have elected the fee-for-service, the per case, or the per session method of payment), if the Board is satisfied that the substitute method will not increase the cost of services and will not encourage overutilization or underutilization of covered services. The Board shall review from time to time the operation of such an agreement, and shall, after reasonable notice, terminate it if the Board finds it to have led to increased cost or to overutilization or underutilization of covered services.

PAYMENT TO GENERAL HOSPITALS

SEC. 83. (a) A participating general hospital shall be paid its approved operating costs (determined in accordance with regulations) in the furnishing of covered services to eligible persons, as such approved costs for a fiscal year are set forth in a prospective budget approved by the Board. Regulations under this section shall specify the method or methods to be used, and the items to be included, in determining costs, and shall prescribe a nationally uniform system of cost accounting.

(b) The costs recognized in each hospital budget shall be those, determined in accordance with subsection (a), of furnishing the covered services ordinarily furnished by the hospital to inpatients or outpatients, and of performing any other function ordinarily performed by the hospital, except as the scope of services or of other functions may be modified by agreement of the Board and the hospital or by direction of the Board pursuant to section 131. The budget shall recognize any increase or decrease of cost resulting from a modification of the scope of services or of other functions, or resulting from compliance with any other direction issued pursuant to section 131.

(c) The costs recognized in the budget shall include the cost of reasonable compensation to (and other costs incident to the services of) pathologists, radiologists, and other physicians and other professional or nonprofessional personnel whose services are held out as generally available to patients of the hospital or to classes of its patients, whatever the method of compensation of such physicians and other personnel, and whether or not they are employees of the hospital.

(d) The Board shall review, through such of its officers and employees or through such boards, and in such manner, as may be provided in regulations, proposed budgets prepared and submitted to it by hospitals, and may provide for participation in such review by representatives of the hospitals in the region or in the health service area in which the hospital is situated. Each officer of the Board charged with final action on hospital budgets shall receive and consider written justifications of budget proposals, and may provide oral hearings thereon.

(e) A hospital budget approved under this section for a fiscal year may, in such manner as is provided in regulations, be amended before, during, or after the fiscal year if there is a substantial change in any of the factors relevant to budget approval.

PAYMENT TO PSYCHIATRIC HOSPITALS

SEC. 84. A participating psychiatric hospital which is primarily engaged in furnishing covered services shall be paid in the same manner as a general hospital. Any other participating psychiatric hospital shall be paid an amount determined in accordance with regulations for each patient day of covered services to an eligible person. Such regulations shall take into account, with respect to any distinct part of the hospital which meets the requirements of section 44, the factors to be considered in the approval of the budgets of general hospitals, but with such adjustments as are necessary to provide equitable compensation to the hospital.

PAYMENT TO SKILLS NURSING HOMES AND TO HOME HEALTH SERVICE AGENCIES

SEC. 85. (a) A participating skilled nursing home or home health service agency shall be paid, in the same manner as a general hospital except as provided in subsection (b) of this section, its approved operating costs in the furnishing to eligible persons of skilled nursing home services or home health services, as the case may be.

(b) Regulations under this section shall, for skilled nursing homes and for home health service agencies, respectively, specify the method or methods to be used, and the items to be included, in determining costs; may, to the extent the Board deems desirable, specify nationally uniform systems of cost accounting; and, taking into account the prevailing practices of such homes or such agencies, may specify services which will be recognized in budgets and services which will not be so recognized.

PAYMENT FOR DRUGS

SEC. 86. (a) For each drug appearing on either of the lists established pursuant to section 25, the Board shall from time to time determine a product price or prices which shall constitute the maximum to be recognized under this title as the cost of the drug to a provider thereof. All product prices shall be so fixed as to encourage the acquisition of drugs in substantial quantities, and differing product prices for a single drug may be established only to reflect regional differences in cost or other factors not related to the quantity purchased.

(b) Payment for a drug furnished by an independent pharmacy shall consist of its cost to the pharmacy (not in excess of the applicable product price) plus a dispensing fee. The Board, after consultation with representatives of the pharmaceutical profession, shall establish (and from time to time review and revise) schedules of dispensing fees, designed to afford reasonable compensation to independent pharmacies after taking into account variations in their cost of operation resulting from regional differences, differences in the volume of drugs dispensed, differences in services provided, and other factors which the Board finds relevant.

PAYMENT TO COMPREHENSIVE HEALTH SERVICE ORGANIZATIONS

SEC. 87. (a) Payment to a comprehensive health service organization, other than for hospital or skilled nursing home services, shall consist of basic capitation payments plus additional payments (if any) determined in accordance with subsection (d).

(b) The basic capitation payment shall consist of a basic capitation rate multiplied

by the number of eligible persons enrolled in the organization. The basic capitation rate shall be the sum of the appropriate capitation rate or rates for professional services (determined under section 82(e)) and a capitation rate fixed by the Board, on the basis of the average reasonable and necessary cost per enrollee, for each other service or class of services (exclusive of hospital and skilled nursing home services) to be furnished by the organization in accordance with section 47(c).

(c) If the organization furnishes hospital or skilled nursing home services through one or more institutions operated by it, payment for those services shall (subject to the provisions of subsection (e)) be made in accordance with section 83 or section 85. If with the approval of the Board the organization furnishes such services through arrangements with other providers to which the organization undertakes to make payment for the services, the Board may reimburse the organization for such payments on the basis of patient-days of service utilized by persons enrolled in the organization.

(d) If it appears to the satisfaction of the Board (1) that the average utilization of hospital and skilled nursing home services by eligible persons enrolled in the organization (whether or not such services are furnished by the organization, either directly or through other providers) has, during a fiscal year, been less than the average utilization of such services under comparable circumstances by comparable population groups not enrolled in comprehensive health service organizations, and (2) that the services of the organization have been of high quality and adequate to the needs of its enrollees, the Board shall (subject to the provisions of subsection (e)) make an additional payment to the organization equal to 75 per centum of the amount which the Board finds has been saved to the Trust Fund by such lesser utilization of hospital and skilled nursing home services.

(e) In lieu of payments under subsections (c) and (d), the Board may pay the comprehensive health service organization on a capitation basis for hospital services, or for hospital and skilled nursing home services. The capitation amount for such services shall be determined by the Board on the basis of the average cost of such services under comparable circumstances to comparable population groups not enrolled in comprehensive health service organization, reduced by such amount as the Board finds (on the basis of past experience of the organization) is calculated to yield to the Trust Fund 25 per centum of any saving resulting from average utilization of hospital and skilled nursing home services by persons enrolled in the organization which is less than the average utilization of such services by such comparable population groups.

(f) The amount of any additional payment under subsection (d), or the excess of aggregate payments under subsection (e) over the cost of furnishing hospital and skilled nursing home services to eligible persons enrolled in the organization, may be used by the organization for any of its purposes, including the applications of such amounts to the cost of services not covered by this title.

PAYMENT TO OTHER PROVIDERS

SEC. 88. (a) An agency, organization, or other entity with which the Board has entered into an agreement under section 48 shall be paid by such method (other than the fee-for-service method) as, in accordance with regulations, may be set forth in the agreement.

(b) An independent pathology laboratory or an independent radiology service shall, at its election, be paid by the fee-for-service method in accordance with a fee schedule approved by the Board, or on the basis of a budget so approved, or on such other basis as may be specified in regulations.

(c) Payment for devices, appliances, and equipment, payment for ambulance or other emergency transportation services, and payment for the services of a Christian Science sanatorium shall be made on such basis as may be specified in regulations.

METHODS AND TIME OF PAYMENT

SEC. 89. The Board shall periodically determine the amount which should be paid under this part to each participating provider of services, and the provider shall be paid, from the Health Services Account in the Trust Fund, at such time or times as the Board finds appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, the amounts so determined, with adjustments on account of underpayments or overpayments previously made (including appropriate retrospective adjustments following amendment of approved institutional budgets). Payment may be made in advance in such cases and to such extent as the Board finds necessary to supply providers with working funds, on such terms as it finds sufficient to protect the interests of the United States.

PART F—PLANNING; FUNDS TO IMPROVE SERVICES AND TO ALLEVIATE SHORTAGES OF FACILITIES AND PERSONNEL

PURPOSE OF PART F; AVAILABILITY OF FUNDS

SEC. 101. (a) The purpose of this part is—

(1) prior to July 1, 1973, to inaugurate a program of strengthening the Nation's resources of health personnel and facilities and its system of delivery of health services, in order to enable the providers of health services better to meet the demands on them when health security benefits become available, and to that end (A) to expand and intensify the health planning process throughout the United States, with primary emphasis on preparation of the health delivery system to meet the demands of the health security program, and (B) to provide financial and other assistance in alleviating shortages and maldistributions of health personnel and facilities in order to increase the supply of services, and in improving the organization of health services to increase their accessibility and effective delivery; and

(2) after June 30, 1973, to reenforce the operation of the health security program as a mechanism for the continuing improvement of the supply and distribution of health personnel and facilities and the organization of health services, and to that end (A) to coordinate the health planning process throughout the United States with a view to the continuing development of plans for maximizing capabilities for the effective delivery of covered services, and (B) to assist in meeting those costs of improvement of personnel, facilities, and organization that are not met either through the normal operation of the health security program or from other sources of public or private assistance.

(b) For the purposes of subsection (a)(1), there are hereby authorized to be appropriated $200,000,000 for the fiscal year ending June 30, 1971, $400,000,000 for the fiscal year ending June 30, 1972, and $600,000,000 for the fiscal year ending June 30, 1973. Funds appropriated under this subsection shall remain available until expended.

(c) For the purposes of subsection (a)(2), the Board is authorized to make expenditures from the Health Resources Development Account in the Trust Fund, established pursuant to section 63.

PLANNING

SEC. 102. (a) In collaboration with State comprehensive health planning agencies approved under section 314(a) of the Public Health Service Act, the Secretary shall promote and support, and as necessary shall conduct within the Department of Health, Education, and Welfare, a continuous process of health service planning for the purpose of improving the supply and distribution of health personnel and facilities and the organization of health services. Except for planning with respect to the national supply of professional health personnel, the planning shall proceed primarily on a State-by-State basis but without excluding more particularized planning for portions of States, for metropolitan or interstate areas, or with respect to health facilities, health manpower development, or other particular aspects of health care. If a State comprehensive health planning agency does not undertake and carry out the responsibility for utilizing and coordinating all health planning activities within the State (including coordination with planning for interstate areas), and for coordinating health planning with planning in related fields, the Secretary shall assume the responsibility for correlating the product of such planning activities within the State.

(b) Prior to July 1, 1973, the planning process shall give first consideration to identification of the most acute shortages and maldistributions of health personnel and facilities and the most serious deficiencies in the organization for delivery of covered services, and to means for the speedy alleviation of these shortcomings. Thereafter, it shall be directed to the continuing development of plans for maximizing capabilities for the effective delivery of covered services.

(c)(1) Section 314(a) of the Public Health Service Act (authorizing grants for comprehensive State health planning) is amended—

(A) by striking out "and" before the phrase "$15,000,000 for the fiscal year ending June 30, 1970" in subsection (a)(1), and inserting immediately after that phrase, $30,000,000 for the fiscal year ending June 30, 1971, and for each of the succeeding four fiscal years, so much as may be necessary"; and

(B) by redesignating paragraphs (D) through (K) of subsection (a)(2) as paragraphs (E) through (L), respectively, and by inserting immediately after paragraph (C) a new paragraph:

"(D) provide that the State agency will place emphasis on the achievement, in collaboration with the Secretary, of the purposes set forth in section 102 of the Health Security Act, and will utilize and coordinate all local or particularized health planning activities within the State (including coordination with planning for insterstate areas), and coordinate health planning with planning in related fields;"

(2) Section 314(b) of the Public Health Service Act (authorizing project grants for areawide health planning) is amended—

(A) by inserting immediaely after the second sentence, "In approving grants under this subsection the Secretary shall take into consideration the extent to which the agency or organization will supplement or otherwise contribute to the effectiveness of the planning conducted by the State agency pursuant to paragraph (D) of subsection (a)(2);" and

(B) by striking out "and" before the phrase "$15,000,000 for the fiscal year ending June 30, 1970" in the last sentence, and inserting immediately after that phrase, "$30,000,000 for the fiscal year ending June 30, 1971, and for each of the succeeding four fiscal years, so much as may be necessary."

GENERAL POLICIES AND PRIORITIES

SEC. 103. (a) In providing assistance under this part, the Board shall give priority to improving and expanding the available resources for, and assuring the accessibility of, services to ambulatory patients which are furnished as part of coordinated systems of comprehensive care. To this end the Board shall encourage and assist (1) the development or expansion of comprehensive health service systems meeting the requirements of

section 47, (2) the development or expansion of agencies, organizations, and centers described in section 48(a) or (b) (including centers established by public and other nonprofit hospitals) to furnish services to persons in urban or rural areas who lack ready access to such services, (3) the recruitment and training of professional personnel to staff such organizations, agencies and centers, (4) the recruitment and training of subprofessional and nonprofessional personnel (including the development and testing of new kinds of health personnel) to assist in the furnishing of such services, to engage in education for personal health maintenance, and to furnish liaison between such organizations, agencies, or centers and the people they serve, and (5) the strengthening of coordination and linkages among institutional services, among noninstitutional services, and between services of the two kinds, in order to improve the continuity of care and the assurance that patients will be referred to such services and at such times as may be medically appropriate.

(b) In administering financial assistance under this part the Board shall be guided so far as possible by findings and recommendations of appropriate health planning agencies.

(c) Funds available to carry out this part shall not be used to replace other Federal financial assistance, or to supplement the appropriations for such other assistance except to meet specific needs of the health security system (such as the training of physicians or medical students for the general or family practice of medicine). In administering other programs of Federal financial assistance the Secretary and other officers of the Executive Branch, on recommendation of the Board, shall to the extent possible utilize those programs to further the objectives of this part. To this end the Board, on such terms as it finds appropriate, may lend to an applicant or grantee not more than 90 per centum of the nonfederal funds required as a condition of assistance under any such program, and may pay all or part of the interest in excess of 3 percent per annum on any loan made, guaranteed, or insured under any such program.

ORGANIZATIONS FOR THE CARE OF AMBULATORY PATIENTS

SEC. 104. (a) The Board is authorized to assist, in accordance with this section, the establishment, expansion and operation of (1) comprehensive health service organizations which meet or will meet the requirements of section 47, and (2) public or other nonprofit agencies and organizations, described in section 48(a) and (b), which furnish or will furnish care to ambulatory patients.

(b) The Board is authorized to make grants (1) to any public or nonprofit agency or organization (whether or not it is a provider of health services), for not more than 90 percent of the cost (excluding costs of construction) of planning, developing, and establishing an organization or agency described in subsection (a), or (2) to an existing organization or agency described in subsection (a), for not more than 80 percent of the cost (excluding costs of construction) of planning and developing an enlargement of the scope of its services or an expansion of its resources to enable it to serve more enrollees or a larger clientele. In addition to grants under this subsection, or in lieu of such grants, the Board is authorized to provide technical assistance for the foregoing purposes.

(c) The Board is authorized to make loans to organizations and agencies described in subsection (a) to assist in meeting the cost of constructing (or otherwise acquiring, or improving or equipping) facilities which the Board finds will be essential to the effective and economical delivery, or to the ready accessibility, of covered services to eligible persons. No loan to a newly established agency or organization shall exceed 90 percent, and no loan to any other agency or organization shall exceed 80 percent, of such cost, or of the nonfederal share if other Federal financial assistance in meeting such cost is available.

(d) The Board is authorized to contract with an organization or agency which is described in subsection (a) and which has been either newly established or substantially enlarged, to pay all or a part of any operating deficits, for not more than five years in the case of an organization described in subsection (a)(1), and until not later than June 30, 1973, in the case of an agency or organization described in subsection (a)(2). Any such contract shall condition payments upon the contractor's making all reasonable effort to avoid or minimize operating deficits and (if such deficits exist) making reasonable progress toward becoming self-supporting.

RECRUITMENT, EDUCATION, AND TRAINING OF PERSONNEL

SEC. 105. (a) In consultation with State comprehensive health planning agencies, the Board shall promptly establish (and from time to time review and, if necessary, revise) schedules of priority for the recruitment, education, and training of personnel to meet the most urgent needs of the health security system. The schedules may differ for different parts of the United States.

(b) The Board is authorized to provide to physicians and medical students training for the general or family practice of medicine and training in any other medical specialty in which the Board finds that there is, for the purposes of this title, a critical shortage of qualified practitioners.

(c) The Board shall provide education or training for those classes of health personnel (professional, subprofessional, or nonprofessional) for whom it finds the greatest need, if other Federal financial assistance is not available for such education or training; and if other assistance is available but the Board deems it inadequate to meet the increased need attributable to the health security system, it may, with the approval of the Secretary, provide such education or training pending action by the Congress on a recommendation promptly made by the Secretary to increase the authorization of appropriations (or, if the authorization is deemed adequate, to increase the appropriations) for such other assistance.

(d) The training of personnel authorized by this section includes the development of new kinds of health personnel to assist in the furnishing of comprehensive health services, and also includes the training of persons to provide education for personal health maintenance, to provide liaison between the residents of an area and health organizations and personnel serving them, and to act as consumer representatives and as members of advisory bodies in relation to the operation of this title in the areas in which they reside. The Board may make grants to public or other nonprofit health agencies, institutions, or organizations (1) to pay a part or all of the cost of testing the utility of new kinds of health personnel, and (2) until June 30, 1973, to pay a part of the cost of employing persons trained under this subsection who cannot otherwise readily find employment utilizing the skills imparted by such training.

(e) Education and training under this section shall be provided by the Board through contracts with appropriate educational institutions or such other institutions, agencies, or organizations as it finds qualified for this purpose. The Board may provide directly, or through the contractor, for the payment of stipends to students or trainees in amounts not exceeding the stipends payable under comparable Federal education or training programs.

(f) The Board shall undertake to recruit and train professional practitioners who will agree to practice, in urban or rural areas of acute shortage, in comprehensive health service organizations referred to in section 47 or in agencies or organizations referred to in section 48 (a) or (b). A practitioner who agrees to engage in such practice for at least five years and who enters upon practice in the area before July 1, 1973, may until that date be paid a stipend to supplement his professional earnings, and in an appropriate case the Board may make a commitment to compensate the practitioner after that date in accordance with section 82(c).

(g) In administering this section the Board shall seek to encourage the education and training, for the health professions and other health occupations, of persons disadvantaged by poverty, inadequate education, or membership in ethnic minorities. To this end the Board may, through contracts in accordance with subsection (e), provide to such persons remedial or supplementary education preparatory to or concurrent with education or training for the health professions or occupations, and may (directly or through such contracts) provide to such persons stipends adequate to enable them to avail themselves of such education or training.

SPECIAL IMPROVEMENT GRANTS

SEC. 106. (a) The Board is authorized to make grants to public or other nonprofit health agencies, institutions, and organizations to pay part or all of the cost of establishing improved coordination and linkages among institutional services, among noninstitutional services, and between services of the two kinds.

(b) The Board is authorized to make grants to organizations and agencies described in section 104(a) to pay part or all of the cost of installation of improved utilization review, budget, statistical, or records and information retrieval systems, including the acquisition of equipment therefor, or to pay part or all of the cost of acquisition and installation of diagnostic or therapeutic equipment.

LOANS UNDER PART F

SEC. 107. Loans authorized under this part shall be repayable in not more than 20 years, shall bear interest at the rate of 3 percent per annum, and shall be made on such other terms and conditions as the Board deems appropriate. Amounts paid as interest on any such loan or as repayment of principal shall, if the loan was made before July 1, 1973, be covered into the Treasury as miscellaneous receipts, and if the loan was made after June 30, 1973, be deposited in the Trust Fund to the credit of the Health Resources Development Account.

RELATION OF PARTS E AND F

SEC. 108. Payments under this part pursuant to any grant or loan to, or any contract with, a participating provider of services shall be made in addition to, and not in substitution for, payments to which the provider is entitled under part E.

PART G—ADMINISTRATION

ESTABLISHMENT OF THE HEALTH SECURITY BOARD

SEC. 121. (a) There is hereby established in the Department of Health, Education, and Welfare a Health Security Board to be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than three members of the Board shall be members of the same political party.

(b) Each member of the Board shall hold office for a term of five years, except that (1)

a member appointed to fill a vacancy occurring during the term for which his predecessor was appointed shall be appointed for the remainder of that term, and (2) the terms of office of the members first appointed shall expire, as designated by the President at the time of their appointment, at the end of one, two, three, four, and five years, respectively, after the date of enactment of this Act. A member who has served for two consecutive five-year terms shall not be eligible for reappointment until two years after he has ceased to serve.

(c) The President shall designate one of the members of the Board to serve, at the will of the President, as Chairman of the Board.

(d) (1) Section 5315 of title 5, United States Code (relating to executive pay rates for positions at level IV), is amended by adding at the end thereof the following new clause:

"(94) Chairman of the Health Security Board, Department of Health, Education, and Welfare."

(2) Section 5316 of title 5, United States Code (relating to executive pay rates for positions at level V), is amended by adding at the end thereof the following new clause:

"(130) Members of the Health Security Board, Department of Health, Education, and Welfare."

DUTIES OF THE SECRETARY AND THE BOARD

SEC. 122. (a) The Secretary of Health, Education, and Welfare, and the Board under the supervision and direction of the Secretary, shall perform the duties imposed upon them, respectively, by this title. Regulations authorized by this title shall be issued by the Board with the approval of the Secretary, in accordance with the provisions of section 553 of title 5, United States Code (relating to the publication of and opportunity to comment on, proposed regulations).

(b) The Board shall have the duty of continuous study of the operation of this Act and of the most effective methods of providing comprehensive personal health services to all persons within the United States and to United States citizens elsewhere, and of making, with the approval of the Secretary, recommendations on legislation and matters of administrative policy with respect thereto. The Board shall make, through the Secretary, an annual report to the Congress on the administration of the functions with which it is charged. The report shall include, for periods prior to July 1, 1973, an evaluation by the Board of progress in preparing for the initiation of benefits under this title, and for periods thereafter, an evaluation of the operation of the title, of the adequacy and quality of services furnished under it, and of the costs of the services and the effectiveness of measures to restrain the costs.

(c) In performing his functions with respect to health education and research, environmental health, disability insurance, vocational rehabilitation, the regulation of food and drugs, and all other matters pertaining to health, as well as in supervising and directing the administration of this title by the Board, the Secretary shall direct all activities of the Department toward complementary contributions to the health of the people. He shall include in his annual report to the Congress a report on his discharge of this responsibility.

(d) The Secretary shall make available to the Board all information available to him, from sources within the Department or from other sources, pertaining to the functions of the Board.

EXECUTIVE DIRECTOR; DELEGATION OF AUTHORITY

SEC. 123. (a) There is hereby established the position of Executive Director of the Health Security Board. The Executive Director shall be appointed by the Board with the approval of the Secretary (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) and shall receive a salary at the rate fixed for Level V of the executive pay schedule. The Executive Director shall serve as secretary to the Board, and shall perform such duties in the administration of this title as the Board may assign to him.

(b) The Board is authorized to delegate to the Executive Director or to any other officer or employee of the Board or, with the approval of the Secretary (and subject to reimbursement of identifiable costs), to any other officer or employee of the Department, any of its functions or duties under this title other than (1) the issuance of regulations, or (2) the determination of the availability of funds and their allocation, under sections 62, 63, and 64.

REGIONS AND HEALTH SERVICE AREAS

SEC. 124. This title shall be administered by the Board through the regions of the Department and, within each region, through such health service areas as the Board may establish. Each health service area shall consist of a State or a part of a State, except as the Board finds that patterns of the organization of health services and of the flow of patients make an interstate area a more practical unit of administration.

NATIONAL HEALTH SECURITY ADVISORY COUNCIL

SEC. 125. (a) There is hereby established a National Health Security Advisory Council, which shall consist of the Chairman of the Board, who shall serve as Chairman of the Council, and twenty members, not otherwise in the employ of the United States, appointed by the Secretary on recommendation of the Board, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall include persons who are representative of providers of health services, and of persons (who shall constitute a majority of the Council) who are representative of consumers of such services. Each appointed member shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring during the term for which his predecessor was appointed shall be appointed for the remainder of that term, and (2) the terms of the members first taking office shall expire, as designated by the Secretary at the time of appointment, five at the end of the first year, five at the end of the second year, five at the end of the third year, and five at the end of the fourth year after the date of enactment of this Act. Members of the Council who are representative of providers of health care shall be persons who are outstanding in fields related to medical, hospital, or other health activities, or who are representative of organizations or associations of professional health personnel; members who are representative of consumers of such care shall be persons, not engaged in and having no financial interest in the furnishing of health services, who are familiar with the needs of various segments of the population for personal health services and are experienced in dealing with problems associated with the furnishing of such services.

(b) The Advisory Council is authorized to appoint such professional or technical committees, from its own members or from other persons or both, as may be useful in carrying out its functions. The Council, its members, and its committees shall be provided with such secretarial, clerical, or other assistance as may be authorized by the Board for carrying out their respective functions. The Council shall meet as frequently as the Board deems necessary, but not less than four times each year. Upon request by seven or more members it shall be the duty of the Chairman to call a meeting of the Council.

(c) It shall be the function of the Advisory Council (1) to advise the Board on matters of general policy in the administration of this title, in the formulation of regulations, and in the performance of the Board's functions under part D, and (2) to study the operation of this title and the utilization of health services under it, with a view to recommending any changes in the administration of the title or in its provisions which may appear desirable. The Council shall make an annual report to the Board on the performance of its functions, including any recommendations it may have with respect thereto, and the Board, through the Secretary, shall promptly transmit the report to the Congress, together with a report by the Board on any administrative recommendations of the Council which have not been followed, and a report by the Secretary of his views with respect to any legislative recommendations of the Council.

(d) Appointed members of the Advisory Council and members of technical or professional committees, while serving on business of the Council (inclusive of travel time), shall receive compensation at rates fixed by the Board, but not exceeding $100 per day; and shall be entitled to receive actual and necessary traveling expenses and per diem in lieu of subsistence while so serving away from their places of residence.

REGIONAL AND LOCAL ADVISORY COUNCILS

SEC. 126. (a) The Board shall appoint for each of the regions of the Department and for each health service area a regional or local advisory council, consisting of the regional or local representative of the Board as chairman and (in such numbers as the Board may determine) representatives of providers of health services and representatives (who shall constitute a majority of the members of each council) of consumers of such services. It shall be the function of each such council to advise the regional or local representative of the Board, as the case may be, on all matters directly relating to the administration of this title in the region or area.

(b) The provisions of section 125(d) shall be applicable to the members of councils appointed under this section.

PROFESSIONAL AND TECHNICAL ADVISORY COMMITTEES

SEC. 127. (a) The Board shall appoint such standing professional and technical committees as it deems necessary to advise it on the administration of this title with respect to the several classes of covered services described in part B. Each such committee shall consist of experts (in such number as the Board may determine) drawn from the health professions, from medical schools or other health educational institutions, from providers of services, or from other sources, whom the Board deems best qualified to advise it with respect to the professional and technical aspects of the furnishing and utilization of, the payment for, and the evaluation of, a class of covered services designated by the Board, and of the relationship of that class of services to other covered services.

(b) The Board is authorized to appoint such temporary professional and technical committees as it deems necessary to advise it on special problems not encompassed in the assignments of standing committees appointed under subsection (a).

(c) Committees appointed under this section shall report from time to time to the Board, and copies of their reports shall be transmitted by the Board to the National Advisory Council.

(d) The provisions of section 125(d) shall be applicable to the members of committees appointed under this section.

DISSEMINATION OF INFORMATION; STUDIES AND EVALUATIONS; SYSTEMS DEVELOPMENT

SEC. 128. (a) The Board shall disseminate, to providers of services and to the public,

information concerning the provisions of this title, the persons eligible to receive the benefits of the title, and the nature, scope, and availability of covered services; and to providers of services, information concerning the conditions of participation, methods and amounts of compensation to providers, and other matters relating to their participation. With the approval of the Secretary, the Board may furnish to all professional practitioners information concerning the safety and efficacy of drugs appearing on either of the lists established under section 25, the indications for their use, and contraindications.

(b) The Board shall make, on a continuing basis after June 30, 1973, a study and evaluation of the operation of this title in all its aspects, including study and evaluation of the adequacy and quality of services furnished under the title, analysis of the cost of each kind of services, and evaluation of the effectiveness of measures to restrain the costs.

(c) The Board is authorized, either directly or by contract—

(1) to make statistical and other studies, on a nationwide, regional, State, or local basis of any aspect of the operation of this title, including studies of the effect of the title upon the health of the people of the United States and the effect of comprehensive health services upon the health of persons receiving such services;

(2) to develop and test methods of providing, through payments for services or otherwise, additional incentives for adherence by providers to standards of adequacy and quality; methods of peer review of the utilization of drugs, and of services not subject to utilization review under section 50; and methods of peer review of the quality of services;

(3) to develop and test, for use by the Board, records and information retrieval systems and budget systems for health services administration, and develop and test model systems for use by providers of services;

(4) to develop and test, for use by providers of services, records and information retrieval systems useful in the furnishing of health services, and equipment (such as equipment for the monitoring of patients' functions, or for multiphasic screening) useful in the furnishing of preventive or diagnostic services;

(5) to develop, in collaboration with the pharmaceutical profession, and test, improved administrative practices or improved methods for the reimbursement of independent pharmacies for the cost of furnishing drugs as a covered service; and

(6) to make such other studies as it may consider necessary or promising for the evaluation, or for the improvement, of the operation of this title.

EXPERIMENTS AND DEMONSTRATIONS

SEC. 129. The Board is authorized, pursuant to agreement with providers of services, to undertake experiments for the purpose of developing and testing alternative methods of compensating providers (in lieu of the methods otherwise prescribed by this title) which offer promise, through financial incentives or otherwise, of improving the coordination of services, improving their quality or their accessibility, or decreasing their cost; and to undertake demonstrations of the results of such experiments. Any such experiment or demonstration with respect to independent professional practitioners shall be undertaken only on the manner specified in section 82(g).

DETERMINATIONS; HEARINGS AND JUDICIAL REVIEW

SEC. 130. (a) Determinations of entitlement to benefits under this title, determinations of who are participating providers of services, determinations whether services are covered services, and determinations of amounts to be paid by the Board to participating providers, shall be made by the Board in accordance with regulations. If the Board finds that a participating provider of services no longer meets the qualifications established by or pursuant to part C for services of the kinds furnished by him (or for some classes of such services), or that he has intentionally violated the provision of this title or of regulations, or that he has failed substantially to carry out the agreement filed by him pursuant to section 41(c), the Board may issue an order terminating the participation of the provider (or terminating it with respect to particular classes of services); but unless the Board finds that eligible persons are endangered, no such order shall be effective until after the provider has been afforded a hearing, or an opportunity therefor, under subsection (b).

(b) A person who is dissatisfied with a determination that he is not an eligible person or that a service furnished him is not a covered service, or a provider of services who is dissatisfied with a determination that he is not a participating provider or with an order terminating his participation (in whole or in part), or a participating provider who alleges that the amount of a payment to him by the Board is less than the amount required by this title and regulations prescribed under it, shall be entitled to a hearing in accordance with section 205(b) of the Social Security Act. A person or provider who is dissatisfied with the decision after such a hearing shall be entitled to judicial review in accordance with section 205(g) of the Social Security Act.

DIRECTIONS BY THE BOARD FOR THE BETTER ORGANIZATION AND COORDINATION OF SERVICES

SEC. 131. (a) The Board is authorized, in accordance with this section, to issue to any participating provider of services (other than an individual professional provider) a direction, as a condition to the provider's continuing after a specified future date to be a participating provider, that the provider shall—

(1) discontinue (for purposes of payment under part E) one more service which the provider is currently furnishing;

(2) initiate one or more covered services which the provider is not currently furnishing;

(3) initiate the furnishing of one or more covered services at a place where the provider is not currently furnishing the services; or

(4) enter into arrangements with one or more other providers of services (A) for the transfer of patients and medical records as may be medically appropriate, (B) for making available to one provider the professional and technical skills of another, or (C) for such other coordination or linkage of covered services as the Board finds will best serve the purposes of this Act.

(b) If the Board finds (1) that the services furnished by a provider of services (other than an individual professional provider) are not necessary to the availability of adequate services under this title and that their continuance as covered services is unreasonably costly, or (2) that the services are furnished inefficiently and at unreasonable cost, that efforts at correction have proved unavailing, and that necessary services can be more efficiently furnished by other providers, the Board may issue a direction that on a specified future date the provider shall cease to be a participating provider.

(c) No direction shall be issued under this section except on the recommendation of, or after consultation with, the State health planning agency (referred to in section 102(a)) of the State in which the direction will be operative. No direction shall be issued under subsection (a) unless the Board finds that it can practicably be carried out by the provider to whom it is addressed.

(d)(1) No direction shall be issued under this section until the Board has published notice, in the service area of the provider or providers affected, describing in general terms the proposed action, giving a brief statement of the reasons therefor, and inviting written comment thereon. The notice shall be published in at least one newspaper circulating in the area, and the Board shall use such other means as it finds calculated to inform residents of the area of the proposed action.

(2) If objection to the proposal is made by any interested provider of services (other than an individual professional provider) or by an interested health planning agency or by a substantial number of interested professional providers or of residents of the area, the Board shall call a public hearing at which it shall present evidence in support of the proposal, and any interested provider of services or health planning agency or any other interested person shall be entitled to participate in the hearing and to present evidence or argument or both. On the basis of evidence presented at the hearing the Board shall make findings of fact, and shall make a final determination either to issue the proposed direction, to modify and issue it, or to withdraw the proposal.

(e) Within thirty days after the issuance of the Board's final determination, any interested provider, planning agency, or person who participated in the hearing may file, with the United States court of appeals for the circuit within which is situated any provider of services affected by the determination, a petition for review of the determination. The second and third sentences of paragraph (3), and paragraphs (4) and (5), of section 1116 of the Social Security Act shall apply to the proceedings in the court of appeals (except that references therein to the Secretary shall be deemed to relate to the Board).

PART II—MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 141. When used in this title—

(a) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(b) The term "United States" when used in a geographical sense means the States, as defined in subsection (a).

(c) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare.

(d) The term "Department" means the Department of Health, Education, and Welfare, except when the context otherwise requires.

(e) The term "Board" means the Health Security Board established by section 121.

EFFECTIVE DATES OF TITLE I

SEC. 142. Entitlement to health security benefits under this title shall commence on July 1, 1973, and no service or thing furnished prior to that date shall constitute a covered service. Part D shall be effective with respect to fiscal years beginning after June 30, 1973, except that action pursuant to section 201(g) and section 1817(h) of the Social Security Act, as amended by section 61 of this Act, to make funds available on and after July 1, 1973, is authorized to be taken by the Congress prior to that date. In all other respects this title is effective upon enactment.

EXISTING EMPLOYER-EMPLOYEE HEALTH BENEFIT PLANS UNAFFECTED

SEC. 143. (a) No provision of this Act, and no amendment of the Internal Revenue Code of 1954 made by this Act, shall affect or alter any contractual or other nonstatutory obligation of an employer to provide health services to his present and former employees and their dependents, or to any of such persons, or the amount of any obligation for payment (including any amount payable by an em-

ployer for insurance premiums or into a fund to provide for any such payment) toward all or any part of the cost of such services.

(b) If notwithstanding subsection (a) the availability after June 30, 1973, of benefits under this title shall result in a diminution in the cost to an employer of his aggregate obligations (including his liability for taxes imposed by section 3111(b) of the Internal Revenue Code of 1954, as well as any contractual or other undertaking to pay the taxes imposed on his employees by section 3101(b) of the Code) to provide or pay for health services to persons referred to in subsection (a), it is the sense of the Congress that, at least to the extent of such diminution in costs, and at least for the duration of any non-statutory obligation to provide health benefits subsisting on June 30, 1973, equity and fair dealing require the employer to undertake an equivalent cost, either by paying without deduction from their remuneration part or all of the taxes imposed by section 3101(b) of the code on his employees, or by increasing their remuneration, or by providing other benefits to them, or by a combination of these methods, as may be agreed between the employer and his employees or their representatives.

TITLE II—HEALTH SECURITY TAXES

PART A—PAYROLL TAXES

RATES AND COVERAGE

SEC. 201. (a) Section 3101(b) of the Internal Revenue Code of 1954 (imposing a hospital insurance tax on employees) is amended by striking out all that follows clause (1) and inserting in lieu thereof:

"(2) with respect to wages received after December 31, 1972, the rate shall be 2.1 percent."

(b) Section 3111(b) of the Code (imposing a hospital insurance tax on employers) is amended by striking out all that follows clause (1) and inserting in lieu thereof:

"(2) with respect to wages paid after December 31, 1972, the rate shall be 3.5 percent."

(c) Section 3121 of the Code (containing definitions applicable to payroll taxes) is amended by adding at the end thereof the following subsections:

"(r) WAGE BASE FOR PURPOSES OF HEALTH SECURITY TAXES.—For the purpose of section 3101(b), the term 'wages' shall have the meaning set forth in subsection (a) of this section except that in applying paragraph (1) of that subsection the figure '$15,000' shall be substituted for the figure '$7,800'. For the purpose of section 3111(b); the term 'wages' shall have the meaning set forth in subsection (a) of this section except that paragraph (1) of that subsection shall not be applied.

"(s) EMPLOYMENT FOR PURPOSES OF HEALTH SECURITY TAXES.—For the purposes of sections 3101(b) and 3111(b), the term 'employment' shall have the meaning set forth in subsection (b) of this section except that—

"(1) the exclusions contained in the following paragraphs of subsection (b) shall not be applied: paragraph (1) (relating to foreign agricultural workers), paragraphs (5) and (6) (relating to employment by the United States or its instrumentalities) other than paragraph (6)(C)(i) (relating to the President, the Vice President, and members of Congress) and paragraph (6)(C)(iii) through (v) (relating to certain minor employments), paragraph (8) (relating to employment by charitable and similar organizations), paragraph (9) (relating to employment covered by the railroad retirement system), and paragraph (17) (relating to employment by subversive organizations),

"(2) subsection (m) of this section (including services by members of the uniformed services in the term 'employment') shall not be applied, and

"(3) for the purposes of section 3101(b), the exclusion contained in paragraph (7) of subsection (b) of this section (relating to employment by States and their political subdivisions and instrumentalities) shall not be applied, other than paragraph (7)(C)(i) through (iv) (relating to certain minor employments by the District of Columbia)."

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 202. (a) Subsection (b) of section 3101 and subsection (b) of section 3111 of the Code are further amended by striking out "HOSPITAL INSURANCE" in the headings and inserting "HEALTH SECURITY TAX" in lieu thereof, and by striking out "section 3121(a)" and "section 3121(b)" in each subsection and inserting in lieu thereof "section 3121(r)" and "section 3121(s)", respectively.

(b) Section 3121(1) of the Code (relating to the coverage of services performed in the employ of foreign subsidiaries of domestic corporations) is amended by striking out "sections 3101 and 3111" in paragraph (1)(A) and inserting in lieu thereof "sections 3101(a) and 3111(a)", and by inserting at the end of the subsection the following paragraph:

"(11) Notwithstanding the provision of any agreement entered into under this subsection, no domestic corporation shall be under any obligation to pay to the Secretary, with respect to services covered under the agreement and performed after December 31, 1972, amounts equivalent to the taxes which would be imposed by sections 3101(b) and 3111(b) if such services constituted employment as defined in section 3121."

(c) Sections 3122 and 3125 of the Code are amended by striking out "section 3111" wherever it appears and inserting in lieu thereof "section 3111(a)".

(d) Section 6413(c)(1)(D) of the Code is amended by inserting "(i)" immediately after "(D)", by striking out "section 3101" and inserting "section 3101(a)" in lieu thereof, and by inserting immediately before the period at the end thereof: "; and (ii) during any calendar year after the calendar year 1972, the wages received by him during such year exceed $15,000, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101(b) and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $15,000 of such wages receives in such calendar year".

(e) Section 218 of the Social Security Act (relating to agreements for the coverage of services performed in the employ of States and their political subdivisions and instrumentalities) is amended—

(1)(A) by striking out, in subsection (e)(1)(A), "sections 3101 and 3111" and inserting in lieu thereof, "sections 3101(a) and 3111(a)";

(B) by adding at the end of subsection (e) the following paragraph:

"(3) Notwithstanding the provisions of any agreement entered into under this section, no State shall be under any obligation to pay to the Secretary of the Treasury, with respect to service covered under the agreement and performed after December 31, 1972, amounts equivalent to the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such service constituted employment as defined in section 3121 of such Code."; and

(2) by striking out in subsection (h)(1), "and the Federal Hospital Insurance Trust Fund", and striking out in such subsection "subsection (a)(3) of section 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively" and inserting in lieu thereof "subsections (a)(3) and (b)(1) of section 201".

EFFECTIVE DATES OF PART A

SEC. 203. The amendments made by section 201, and the amendments made by subsections (c) and (d) of section 202, shall be effective only with respect to remuneration received, and remuneration paid, after December 31, 1972, and section 3121(s) of the Internal Revenue Code of 1954 (as added by section 201(c) of this Act) shall be applicable only with respect to remuneration for services performed after that date. The amendments made by section 202(a) shall be effective on January 1, 1973. The amendments made by subsections (b) and (e) of section 202 shall be effective only with respect to remuneration for services performed after December 31, 1972.

PART B—TAX ON NON-WAGE INCOME

IMPOSITION OF TAX

SEC. 211. (a) Subsection (b) of section 1401 of the Internal Revenue Code of 1954 (imposing a hospital insurance tax on self-employment income) is repealed.

(b) Section 1403 of the Code is redesignated as section 1404, and the following new section is inserted immediately after section 1402:

"SEC. 1403. (a) HEALTH SECURITY TAX.—In addition to other taxes, there shall be imposed for each taxable year beginning after December 31, 1972, on the income of every individual residing in the United States whose health security non-wage income (as defined in subsection (b)) for the taxable year is $400 or more, a tax equal to 2.1 percent of the amount of such health security non-wage income for such taxable year.

"(b) DEFINITION OF HEALTH SECURITY NON-WAGE INCOME.—The term 'health security non-wage income' means an amount determined by deducting from the adjusted gross income of an individual for the taxable year any part of such income in excess of $15,000, and deducting from the remainder any part of the adjusted gross income which—

"(1) consists of wages taxable under section 3101(b), or

"(2) consists of remuneration for services performed in the employ of the United States as President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress, or as a member of a uniformed service on active duty, or

"(3) consists of remuneration (not taxable under section 3101(b)) for service performed by an alien in the employ of a foreign government, an instrumentality of a foreign government, or an international organization, or

"(4) consists of payments excluded by section 3121(a)(6) from wages taxable under section 3101(b)."

CONFORMING AND TECHNICAL ADMENDMENTS

SEC. 212. (a) The heading and the table of contents of chapter 2 of subtitle A of the Internal Revenue Code of 1954 are amended to read as follows:

"CHAPTER 2—TAXES ON SELF-EMPLOYMENT INCOME AND NON-WAGE INCOME

"SEC. 1401. Rate of tax on self-employment income

"SEC. 1402. Definitions relating to self-employment income

"SEC. 1403. Tax on health security non-wage income.

"SEC. 1404. Miscellaneous provisions."

(b) Section 1401 of the Code, as amended by section 211(a) of this Act, is further amended by striking out the heading of the section and inserting in lieu thereof, "SEC. 1401. RATE OF TAX ON SELF-EMPLOYMENT INCOME," and by striking out "(a)" at the beginning of the section.

(c) Section 1404 of the Code (as redesignated by section 211(b) of this Act) is amended by striking out "Self-Emplyoment Contributions Act of 1954'" and inserting in lieu thereof, "'Self-Employment and Health Security Contributions Act'".

(d) Section 6015 of the Code (relating to declarations of estimated income by individuals) is amended by striking out in sub-

section (c)(2) "the amount of the self-employment tax imposed by chapter 2" and inserting in lieu thereof "the amount of the taxes imposed by chapter 2".

(e) Section 6017 of the Code is amended—

(1) by striking out the heading of the section and inserting in lieu thereof, "SEC. 6017. SELF-EMPLOYMENT AND HEALTH SECURITY TAX RETURNS.";

(2) by inserting, immediately after the first sentence of the section, the following sentence: "Every individual residing in the United States and having health security nonwage income of $400 or more for the taxable year shall make a return with respect to the health security nonwage income tax imposed by chapter 2."; and

(3) by striking out "the tax" in the second sentence of the section and inserting in lieu thereof, "the taxes," and by inserting immediately before the period at the end of that sentence, ", or on the separate health security nonwage income of each spouse, as the case may be."

EFFECTIVE DATES OF PART B

SEC. 213. The amendments made by section 211 and section 212(d) and (e) shall be effective with respect to taxable years beginning after December 31, 1972. The amendments made by section 212(a), (b), and (c) shall be effective on January 1, 1973.

TITLE III—REPEAL OR AMENDMENT OF OTHER ACTS

REPEAL OF MEDICARE AND FEDERAL EMPLOYEE HEALTH BENEFIT STATUTES

SEC. 301. (a) Effective July 1, 1973—

(1) Title XVIII of the Social Security Act, except section 1817 thereof, is repealed.

(2) The Act of September 28, 1959 (5 U.S.C., Chap. 89) and Public Law 86-724 are repealed.

(b) Subsection (a) shall not affect any right or obligation arising out of any matter occurring before July 1, 1973, or any admintrative or judicial proceeding (whether or not initiated before that date) for the adjudication or enforcement of any such right or obligation.

MEDICAID STATUTE

SEC. 302. After June 30, 1973, no State (as defined in section 1101(a)(1) of the Social Security Act) shall be required, as a condition of approval of its State plan under title XIX of that Act, to furnish any service which constitutes a covered service under title I of this Act, and any amount expended for the furnishing of any such service to a person eligible for services under title I of this Act shall be disregarded in determining the amount of any payment to a State under such title XIX. The Secretary of Health, Education, and Welfare shall by regulation prescribe the minimum scope of services required (in lieu of the requirements of section 1902(a)(13) of the Social Security Act) as a condition of approval, after June 30, 1973, of a State plan under such title XIX. Such minimum scope of services shall, to the extent the Secretary finds practicable, be designed to supplement the benefits available under title I of this Act, with respect to the duration of skilled nursing home services during a spell of illness and with respect to the furnishing of dental services and of drugs (appearing on the list established under section 25(b) of this Act) to persons not entitled to such services, or not entitled to such drugs, under title I of this Act.

VOCATIONAL REHABILITATION ACT; MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

SEC. 303. Funds made available under the Vocational Rehabilitation Act or under title V of the Social Security Act shall not be used, after June 30, 1973, to pay for personal health services available under title I, of this Act; but they may, in accordance with regulations of the Secretary of Health, Education, and Welfare, be used (a) to pay for institutional services which are either more extensive or more intensive than the services recognized in institutional budgets approved under title I of this Act, or (b) to pay for special medical or other procedures peculiar to vocational rehabilitation, or peculiar to the correction or amelioration of defects or chronic conditions of crippled children, as the case may be.

The section-by-section analysis presented by Mr. KENNEDY is as follows:

HEALTH SECURITY ACT—SECTION-BY-SECTION ANALYSIS

TITLE I

Part A—Eligibility for benefits

(Sections 11-12-13)

Every resident of the U.S. (and every non-resident citizen when in the U.S.) will be eligible for covered services. Reciprocal and "buy-in" agreements will permit the coverage of groups of non-resident aliens, and in some cases benefits to U.S. residents when visiting in other countries. Further provision for U.S. residents in other countries will be studied.

Part B—Nature and scope of benefits: Covered services

(Section 21)

Every eligible person is entitled to have payments made by the Board for covered services provided within the United States by a participating provider.

(Section 22)

All necessary professional services of physicians, wherever furnished, are covered including preventive care, with two important restrictions:

(1) specialist services are covered only when performed by a qualified specialist—except in emergency situations—and generally only on referral from a primary physician. This is intended to protect the public from inadequately trained practitioners and to restore the primary or family practitioner to the role of the manager of health services.

(2) Psychiatric services to an ambulatory patient are covered only for active preventive, diagnostic, therapeutic or rehabilitative service with respect to mental illness. If the patient seeks care in an organized setting (such as a comprehensive health service organization, a hospital out-patient clinic, a community mental health center or other mental health clinic) there is no limit on the number of consultations. In these kinds of organized settings, peer review and budgetary controls can be expected to curtail unnecessary utilization. If the patient is consulting a solo practitioner, there is a limit of 20 consultations per spell of illness.

(Section 23)

Comprehensive dental services (exclusive of most orthodontia) are covered for children under age 15, with the covered age group increasing by two years each year until all those under age 25 are covered. This benefit is limited initially because, even with full use of dental auxiliaries, there is insufficient manpower to provide dental benefits for the entire population. It is the declared intention, however, to extend dental benefits to older persons as rapidly as this becomes feasible.

(Section 24)

Inpatient and outpatient hospital services, and services of a home health agency are covered without arbitrary limitation. Pathology and radiology services are specifically included as parts of *institutional* services, thus reversing the practice of Medicare. Domiciliary or custodial care is specifically excluded in any institution, thus necessitating the two important restrictions on payments for institutional care:

(1) Payment for skilled nursing home care is limited to 120 days per spell of illness. It is not practical to assume that the majority of nursing homes and extended care facilities in the country will be able to implement effective utilization review and control plans in the first years of Health Security. The demand for essentially domiciliary or custodial care in nursing homes is so overwhelming, that an initial arbitrary limit on days of coverage is necessary. Extension of the benefit is authorized when this becomes feasible.

(2) Many state hospitals do not provide optimal active treatment to their psychiatric patients but rather maintain them in a maintenance or custodial setting. If Health Security provided unlimited coverage for patients in these hospitals, it might tend to freeze the current level of care instead of stimulating these institutions to upgrade their medical-care performance. Therefore the psychiatric hospital benefit is limited to 45 consecutive days of *active treatment* during a spell of illness.

(Section 25)

The bill provides coverage for two categories of drug use: prescribed medicines administered to inpatients or outpatients within participating hospitals, or to enrollees of comprehensive health service organizations, and drugs necessary for the treatment of specified chronic illnesses or conditions requiring long or expensive therapy. This will provide coverage of most drug costs for individuals who require costly drug therapy.

The bill requires the Board and the Secretary of HEW to establish two lists of approved drugs, taking into account the safety, efficacy and cost of each drug. There will be a broad list of approved medicines available for use in institutions and by comprehensive health service organizations and a more restricted list which is available for use outside such organized settings. The restricted list shall stipulate which drugs on it shall be available for treatment of each of the specified chronic diseases. No such restrictions shall be placed upon drug therapy within an institutional setting.

Use of the restricted list will meet the most urgent needs for drug therapy while restraining unnecessary utilization. The benefit is more liberal where adequate control mechanisms exist.

(Section 26)

The appliances benefit is similar in concept and operation to the drug benefit, subject to a limitation on aggregate cost. The Board shall prepare lists of approved devices, appliances or equipment which it finds are important for the maintenance or restoration of health, employability or self-management (taking into consideration the reliability and cost of each item). The Board will also specify the circumstances or the frequency with which the item may be prescribed at the cost of the Health Security program.

(Section 27)

The professional services of optometrists and podiatrists are covered, subject to regulations, as are diagnostic or therapeutic services furnished by independent pathology laboratories and radiology services. The care of a psychiatric patient in a mental health day care service is covered for up to 60 days per spell of illness (day care benefits are unlimited if furnished by a comprehensive health service organization or by a community mental health center). Ambulance and other emergency transportation services are covered.

Supporting services such as psychological, physiotherapy, nutrition, social work and health education are covered if they are part of institutional services or are furnished by a comprehensive health service organization. This establishes the important principle that these and other supporting services should be provided as part of a coordinated program of health maintenance and care. Psychologists, physical therapists, social workers, etc. will not be permitted to establish independent

practices and bill the program on a fee-for-service basis. This is intended to assure that whenever services of this nature are provided they are under appropriate medical supervision and are germane to the over-all care of the patient.

(Section 28)

Health services furnished or paid for under a workmen's compensation law are not covered. Reimbursement for loss of earnings is so closely interlocked with the health services aspects of workmen's compensation that absorption of the health services portion of workmen's compensation by Health Security could have the effect of delaying findings of eligibility for income payments. Also, health services furnished in a primary or secondary school are excluded, being generally organized, administered and financed through the education systems.

The Board may exclude from coverage medical or surgical procedures which are essentially experimental in nature. Individuals who enroll in a comprehensive health service organization or enroll themselves with a primary practitioner accepting capitation payments are not entitled to seek covered services from other providers of services (except as specified in regulations). Surgery primarily for cosmetic purposes is excluded from coverage.

The services of a professional practitioner are not covered if they are furnished in a hospital which is not a participating provider. This is intended to discourage physicians from admitting patients to hospitals which cannot or will not meet standards for participation in the program.

Part C—Participating providers of services

(Section 41)

Participating providers are required to meet standards established in this title or by the Board. In addition, they must agree to provide services without discrimination, to make no charge to the patient for any covered service, and to furnish data necessary for utilization review by professional peers, statistical studies by the Board, and verification of information for payments.

(Section 42(a))

Professional practitioners licensed when the program begins are eligible to practice in the State where they are licensed. All newly licensed applicants for participation must meet national standards established by the Board in addition to those required by his State. While stopping short of creating a Federal licensure system for health professionals, this will guarantee minimum national standards. A State-licensed practitioner who meets national standards will be qualified to provide Health Security covered services in any other state. (See also Section 56(a)(1)).

(b) For purposes of this title a doctor of osteopathy is a physician, as is a dentist when performing procedures which, in generally accepted medical practice, may be performed by either a physician or a dentist.

(c) Participating professional providers shall be required to meet continuing education requirements established by the Board (in consultation with appropriate professional organizations.)

(d) Major surgery and certain other specialty services shall be covered only when provided by a board certified or board eligible physician (except in emergency circumstances). Physicians who do not meet these standards but who are providing such services as a substantial part of their practice when the program begins may be found qualified if they meet standards established by the Board and, where appropriate, if recommended by a participating hospital.

(Section 43)

This section establishes conditions of participation for general hospitals similar to those required by Medicare. Two requirements not found in the Medicare program are: (1) that the hospital must not discriminate in granting staff privileges on any grounds unrelated to professional qualifications; and (2) that it establish a pharmacy and drug therapeutics committee for supervision of hospital drug therapy. Medicare allows any hospital accredited by the Joint Commission on the Accreditation of Hospitals (if it provides utilization review) to participate in the program, thus in effect delegating to the Commission the determination whether the standards are met. This title requires all participating hospitals to meet standards established by the Board.

(Section 44)

Psychiatric hospitals will be eligible to participate only if the Board finds that the hospital (or a distinct part of the hospital) is engaged in furnishing *active* diagnostic, therapeutic and rehabilitative services to mentally ill patients. Psychiatric hospitals are required to meet the same standards as those prescribed for general hospitals in Section 43, and such other conditions as the Board finds necessary to demonstrate that the institution is providing active treatment to its patients. These standards will exclude costs incurred by state mental institutions to the extent they serve domiciliary or custodial functions. In addition, psychiatric hospitals must be accredited by the Joint Commission on the Accreditation of Hospitals. (As in Medicare, accreditation is an *additional* requirement in the case of psychiatric hospitals, as further assurance that they meet the requirements of an active treatment program.)

(Sections 45 and 46)

Section 45 establishes conditions of participation for skilled nursing homes similar to those established for extended care facilities under Medicare. Important differences, however, are the requirement for affiliation by 1975 with a participating hospital or comprehensive health service organization (see Section 51(b)) and changes in the requirements for utilization review (see Section 50). Under section 46 participation by home health agencies will be limited to public agencies and non-profit private organizations—proprietary home health agencies are specifically excluded.

(Section 47)

This section describes a comprehensive health service organization which undertakes to provide an enrolled population either with complete health care or, at the least, with complete Health Security services (other than institutional services, mental health or dental services) for the maintenance of health and the care of ambulatory patients. The bill, in its aim to improve the methods of delivery of health services, places much emphasis on the development of new organizations of this kind and the enlargement of old ones.

The section is designed to accommodate forms of organization typical of existing prepaid group practice plans, but also to be flexible enough to permit experimentation with somewhat different forms. In some urban or rural areas, for example, it may be impracticable to bring all of the various services together in one place, and the section has been designed to encompass what has been described as "comprehensive group practice without walls"; the basic essential is the assumption of responsibility for a reasonably comprehensive range of services (including health maintenance), on a continuing and coordinated basis, to a group of persons who have chosen to receive all or nearly all their health care from the organization.

Other requirements are spelled out in this section: The organization must furnish services through the prepaid group practice of medicine, or as near an approximation to prepaid group practice as is feasible. It must be a nonprofit organization, or if several providers share in the furnishing of services the prime contractor with the Board must be nonprofit. All persons living in or near a specified service area will be eligible to enroll, subject to the capacity of the organization to furnish care and subject to minimal underwriting protections. Services must be reasonably accessible to persons living within the specified service area. Periodic consultation with representatives of enrollees is required. Professional policies and their effectuation, including monitoring the quality of services and their utilization, is to be the responsibility of a committee or committees of physicians. Health education and the use of preventive services must be stressed, and lay persons are to be employed so far as is consistent with good medical practice. Charges for any services not covered by Health Security must be reasonable. Finally, the organization must agree to pay for services furnished by other providers in emergencies, either within the service area of the organization or elsewhere, but may meet this requirement to the extent feasible through reciprocal service arrangements with other organizations of like kind.

(Section 48)

This section deals with several classes of health organizations that vary widely, even within a single class, in their structure and in the scope of the services which they offer. Because statutory specifications cannot well be tailored to so many variables, the section sets forth only a general statement of the kinds of organizations to which it relates and leaves participation of each organization to a case-by-case decision of the Board.

Subsection (a) permits the participation of community health centers or the like which, though furnishing services as comprehensive as are required by section 47, do not serve an enrolled or otherwise predetermined population and may not meet some other requirements of section 47. Subsection (b) authorizes the Board to deal separately with the primary care portion of a system of comprehensive care where it is necessary to rely on arrangements with other providers, rather than on a unified structure, to round out the other elements of the system. Where organizations meeting the extensive requirements of section 47 are not available, these two subsections will give the Board flexibility in furthering one of the bill's prime objectives, the development and broad availability of comprehensive services furnished on a coordinated basis.

Because of the extent to which mental health services are separated from other health care, subsection (c) permits the Board to contract directly with public or other nonprofit mental health centers and mental health day care services.

Subsection (d) deals with a miscellany of other health care organizations, public, nonprofit, or proprietary. If a State or local public health agency is providing preventive or diagnostic services, such as immunizations or laboratory tests, the Board may contract with it for the continuance of these services. In the field of private practice, physicians or dentists or other practitioners may group themselves in a clinic, nonprofit or proprietary, or in any number of other ways, and it may be more convenient both to them and to the Board to regard them as an entity than to deal with each practitioner separately. The Board will have wide discretion in contracting with such entities subject only to the limitation that, like other organizations described in section 48, the entity may not (under section 88(a)) be paid on a fee-for-service basis. Practitioners who elect that method of payment may of course pool their bills for submission to the Board, but there is no reason to contract with a unit for the payment of fees to it.

(Section 49)

This section specifies the broad and general conditions under which independent

pathology laboratories, independent radiological services, providers of drugs, devices, appliances, equipment, or ambulance services may qualify as providers under Health Security. As under Medicare, a Christian Science Sanatorium qualifies if operated, or listed and certified, by the First Church of Christ, Scientist, Boston.

(Section 50)

The requirements of utilization review in hospitals and skilled nursing homes are in the main similar to those which Medicare has, since 1966, imposed with respect to services to aged patients. In Health Security the requirements will of course apply to the entire patient population. As in Medicare, the review is designed to serve a dual purpose: identification of certain specific misuses of the institutional services with a view to their termination, and a focusing of continuing attention and concern of the medical staff on the necessity for efficient utilization of institutional resources. Section 50(a) strengthens the educational aspect of the process by requiring specifically that records of reviews be maintained and statistical summaries of them be reported periodically to the institution and its medical staff (and, on request, to the Board). As under Medicare, the review committee will consist of two or more physicians, with or without other professional participation; and in the case of hospitals, will normally be drawn from the medical staff unless for some reason an outside group is required. For skilled nursing homes, on the other hand, section 50(c) departs from Medicare by requiring that the committee be established by the State or local public health agency under contract with the Board, or failing that, by the Board. Like Medicare, section 50(d) calls for review of specific long-stay cases as required by regulations, and section 50(e) for notice to the institution, the attending physician, and the patient when a decision adverse to further institutional services is made.

(Section 51)

Subsection (a) of Section 51 is also like Medicare in requiring a participating skilled nursing home to have in effect an agreement with at least one participating hospital for the transfer of patients and medical and other information as medically appropriate. Subsection (b) introduces a requirement, applicable by 1975 to both skilled nursing homes and home health service agencies, of affiliation with a participating hospital or comprehensive health service organization. Unless the medical staff of the hospital or organization undertakes to furnish the professional services in the nursing home or the professional services of the home health service agency, that medical staff or a committee of it must assume responsibility for these services. Subsection (c) allows the Board to waive the application of either of these requirements to a skilled nursing home or a home health agency which the Board finds essential to the provision of adequate services, if (but only for as long as) lack of a suitable hospital or organization within a reasonable distance makes a transfer or an affiliation agreement impractable.

(Section 52)

If the construction or substantial enlargement of a hospital or skilled nursing home has been undertaken after December 31, 1970, without prior approval by a planning agency designated by the governor of the state or the Board, section 52 precludes the institution from participating in the Health Security program. This should greatly strengthen state and local planning authorities.

(Section 53)

This section requires the Board in fixing, for institutional and other providers, standards beyond those specified in the statute, to take into consideration criteria established or recommended by appropriate professional organizations.

(Section 54)

If the Board issues a direction, as it is authorized by section 131 to do after opportunity for a hearing, that any provider of services (other than an individual practitioner) should expand, curtail, or otherwise modify the covered services which it furnishes, this section stipulates that failure of the provider to comply with the direction will terminate its entitlement to participate in the program.

(Section 55)

Institutions of the Department of Defense and the Veterans Administration, and institutions of the Department of Health, Education, and Welfare serving merchant seamen or Indians or Alaskan natives, are excluded by section 55 from serving as participating providers, as is also any employee of these institutions when he is acting as an employee. The Board will, however, provide reimbursement for any services furnished (in emergencies, for example) by these institutions or agencies to eligible persons who are not a part of their normal clientele.

(Section 56)

This section overrides, for purposes of the Health Security program, State laws of several kinds which inhibit the utilization or the mobility of health personnel, cloud the legality of so-called "corporate practice" of health professions, or restrict the creation of group practice organizations. The authority of Congress to do this, in conjunction with a program of Federal expenditure to provide for the general welfare, flows from the Supremacy Clause of the Constitution and seems now to be clearly established. (*Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275 (1958); *King* v. *Smith*, 392 U.S. 309 (7968).)

The first three paragraphs of subsection (a), while stopping short of creating a system of Federal licensure for health personnel, will greatly facilitate both the interstate mobility of State licensees and the effective use of ancillary personnel in the furnishing of health care. The dispensations contained in these paragraphs will be available to persons who meet national standards established by the Board.

Paragraph (1) permits a physician, dentist, optometrist, or podiatrist, licensed in one State and meeting the national standards, to furnish Health Security benefits in any other state, the scope of his permissible practice being governed by the law of the State in which he is practicing. This paragraph obviates the difficulty and cost which a practitioner may encounter, especially where reciprocity of licensure is not available, in taking up practice in a State in which he has not been licensed.

Paragraph (2) grants a similar authority to other health professional and nonprofessional personnel. For occupations such as pharmacy and professional nursing, which are subject to licensure in all States, a person can avail himself of this paragraph only if he is licensed in one State and meets the national standards; in other cases, where licensure is not universally required, compliance with national standards is sufficient. Here again, impediments to mobility created by existing licensure laws will be removed.

The restrictions which many professional practice acts impose on the use of lay assistants, and the legal uncertainties which often deter such use, discourage practices that can increase greatly, without sacrifice of safety, the volume of services which professionals can render. Accordingly, paragraph (3) of subsection (a) enables the Board to permit physicians and dentists, participating in public or nonprofit hospitals and comprehensive health service organizations, to use ancillary health personnel, acting under professional supervision and responsibility, to assist in furnishing Health Security benefits. Such assistants may do only things which the Board nas specified, and may be used only in the context of an organized medical staff or medical group. Persons employed as assistants must not only meet national standards for their respective occupations, but must also satisfy special qualifications that the Board may set for particular acts or procedures.

In the interest of encouraging salaried practice and the integration of professional practitioners into well-structured organizations for the delivery of health services, paragraph (4) of subsection (a) does away with the "corporate practice" rule insofar as concerns participating public or other nonprofit hospitals and comprehensive health service organizations. These institutions may employ physicians or make other arrangements for their services, unless in the unlikely event that lay interference with professional acts or judgments should be threatened. No conflict of interest results from such arrangements; in the nonprofit setting loyalty to employer and loyalty to patient run parallel.

Some state laws place restrictions of one kind or another on the incorporation of group practice organizations. When these restrictions prevent the State incorporation of an organization meeting the strict requirements of the Health Security Act, section 56 (b) empowers the Secretary to incorporate it for purposes of the Act. Except for the special restrictions, State law will govern the corporation.

Part D—Trust fund; allocation of funds for Services Health Security Trust Fund

(Section 61)

This section establishes the Health Security Trust Fund, to receive the net assets of existing (Medicare) funds taken over by the Health Security program, the yield of the Health Security taxes, and the Government's contribution from general revenues amounting to 66⅔% of the yield from these taxes.

Accordingly, this section amends the Social Security Act to convert the present Hospital Insurance Trust Fund (Medicare, Title XVIII, Part A) into the Health Security Trust Fund, and to provide that the appropriations that would have gone into the former (increased by the new tax provisions) shall go into the latter. In addition, on July 1, 1973, the assets and liabilities of the Federal Supplementary Medical Insurance Trust Fund (Medicare, Title XVIII), Part B) will be transferred to the Health Security Trust Fund. Also, a Government contribution to the new Trust Fund is authorized to be appropriated, equal to 66⅔% of the aggregate yield from the payroll taxes on employees and employers and the tax on non-wage income (including self-employment and unearned income), imposed for Health Security under Title II of this Act. The Fund will also receive recoveries of overpayments, and receipts from loans and other agreements. To implement the role of the Trust Fund, the Managing Trustee (the Secretary of the Treasury) will make payments from the Trust Fund provided for under Title I, as the Board certifies, and with respect to administrative expenses as authorized annually by the Congress.

(Section 62)

The Health Security program is intended to operate on a budget basis overall. Accordingly, subsection (a) requires the Board to determine for each fiscal year the maximum amount which may be available for obligation from the Trust Fund. The amount so determined in advance (by March 1 preceding each fiscal year) shall not exceed the smaller of two stated limitations. The first limit is fixed on 166⅔% of the expected net receipts from all the Health Security taxes (i.e., the tax receipts augmented by 66⅔%

thereof, to be appropriated into the Fund from general revenues of the Government.) The second limit, applicable to each fiscal year after June 30, 1974 (i.e., after a year's availability of covered services), is an amount equal to the estimated obligations of the current year (within which the estimate is being made), subject to certain adjustments. Such adjustments will reflect change expected in: (A) the consumer price index; (B) the number of eligible persons; (C) the number of participating professional providers, or the number or capacity of institutional or other participating providers so far as such changes are not already adequately reflected; and (D) the expected cost of program administration.

In the interest of prudent fiscal management, subsection (b) requires the Board to restrict its estimate of the amount available for obligation in the next fiscal year (in accordance with subsection (a)) if the Board estimates that the amount in the Trust Fund at the beginning of the next fiscal year will be less than one-quarter of the total obligations to be incurred for the current year, and that such restriction will not impair the adequacy or quality of the services to be provided. Also, the Board is required to reduce its alternative estimate of the maximum amount to be available if it finds that the aggregate cost to be expected has been reduced (or an expected increase has been lessened) through improvement in organization and delivery of service or through utilization control.

Subsection (c) provides against various other contingencies which may result in increase or decrease in the estimate of the maximum amount to be available for obligation in a next fiscal year. The amount may be modified before or during the fiscal year: if the Secretary of the Treasury finds that the expected Health Security tax receipts will differ by 1 percent or more from the estimate used under subsection (a); or if the Board finds that either its factors of expected change or the cost of administration is expected to differ from the estimate by 5 percent or more; or if an epidemic, disaster or other occurrence compels higher expenditure than had been expected. If, as a result, the maximum estimate has to be increased (rather than being decreased), the Board (through the Secretary) shall promptly report its action to the Congress with its reasons.

(Section 63)

Subsection (a) provides that three separate accounts shall be established in the Health Security Trust Fund—a Health Service Account, a Health Resources Development Account, and an Administration Account. Subsection (b) provides that in each of the first two years of program operation, 2% of the Trust Fund shall be set aside for the Health Resources Development Fund; and the allocation shall increase by 1% at two-year intervals to 5% within the next 6 years. The money in this account will be used exclusively for the planning and system improvement purposes described in part F.

(c) (d) After deducting the amount appropriated by the Congress into the Administration Account, the remainder of the monies shall be allocated to the Health Services Account, and shall be used exclusively for making payment for services in accordance with part E.

(Section 64)

This section provides for allocation of the Health Services account among the regions of the country. (a) The allocation to each region shall be based on the aggregate sum expended during the most recent 12-month period for covered services (with appropriate modification for estimated changes in the consumer price index, the expected number of eligible beneficiaries, estimated change in the number of participating providers). (b) In allocating funds to the regions the Board shall seek to reduce, and over the years gradually eliminate, existing differences among the regions in the average per capita amount expended upon covered health services (except when these reflect differences in the consumer price index). To accomplish this, the Board will curtail increases in allocations to high expenditure regions and stimulate an increase in the availability and utilization of services in regions in which the per capita cost is lower than the national average. (c) If funds available are inadequate, allocations will be reduced pro rata. (d) Allocations may be modified before or during a fiscal year if the Board finds this is necessary.

(Section 65)

The Board will divide the allocation to each region into funds available to pay: institutional services; physician services; dental services; furnishing of drugs; furnishing of devices, appliances, equipment; and miscellaneous services. The percent allocated to each category of service may vary from region to region. In determining allocation to these funds they will be guided by the previous year's expenditures for each category of service but also take into account trends in the utilization of services and the desirability of stimulating improved utilization of resources. They will encourage a shift from heavy reliance on institutional care to better utilization of preventive and ambulatory services.

(Section 66)

These regional funds will be subdivided among the health service areas in each region, primarily upon the basis of the previous year's expenditure for each kind of service. Again, the Board will gradually attempt to achieve the equalization of services within each region by restraining the increase of expenditures in high cost areas and channeling funds into health services areas with a low level of expenditures.

(Section 67)

Before or during a fiscal year, the division of regional funds by classes of service or the allotments to health service areas may be modified if necessary or if indicated by newly acquired information.

Part E—Payment to providers of services

(Section 81)

Payments for covered services provided to eligible persons by participating providers will be made from the Health Service Account in the Trust Fund.

(Section 82)

This section delineates methods of paying professional practitioners. Every independent practitioner (physician, dentist, podiatrist, or optometrist) shall be entitled to be paid by the fee-for-service method (subsection (a)), the amounts paid being in accordance with fee schedules or relative value scales prescribed after consultation with the professions (subsection (f)). Each physician engaged in general or family practice of medicine in independent practice may elect to be paid by the capitation method if he agrees to furnish individuals enrolled on his list with all necessary and appropriate primary services, make arrangements for referral of patients to specialists or institutions when necessary, and maintain records required for medical audit; and independent dentist practitioners may elect the capitation method of payment similarly (subsection (b)).

The requirements in this section are intended to assure that the physician (or dentist) provides to his patients all professional services within the range of his undertaking and secures other needed services by referral. Through regular medical audits, the Board will monitor the level and quality of care provided.

When necessary to assure the availability of services in a given area, the Board may pay an independent practitioner a full-time or part-time stipend in lieu of or as a supplement to other methods of compensation. This method of payment will be used selectively by the Board, mainly to encourage the location of practitioners in remote or deprived areas. Practitioners may also be reimbursed for the special costs of continuing education required by the Board and for maintaining linkages with other providers—for example, communication costs. Incentives operative under this provision will encourage physicians to improve the quality and continuity of patient care, even if the physician does not participate in a group practice. The Board may pay for specialized medical services on a per session or per case basis, or may use a combination of methods authorized by this section.

Subsection (e) of this section describes the method to be used in applying, as between practitioners electing the various methods of payment, the monies available in each health service area for payment to each category of professional providers. From the amount allocated to each service area, the Board will earmark funds sufficient to pay practitioners receiving stipends and for the professional services component of institutional budgets, such as hospitals. The remainder of the money will be divided to compute the amount available per capita in the eligible population of the area for each category of service (i.e. physicians, dentists, podiatrists, optometrists). This per capita amount in each category will fix the capitation payments to organizations that undertake to provide the full range of services in that category to enrolled individuals. Lesser amounts will be fixed for more limited services. For example, if the per capita amounts available for physician, dental and optometric services are $65, $25, and $5 respectively, primary physicians accepting capitation payments will receive the percentage of that $65 which is allocated for primary services, and a comprehensive health service organization which undertakes to provide all physician, dental and optometric services to enrolled individuals will receive $95 for each enrolled individual. After per capita allocations have been made to physicians and dentists who have elected to be paid on a capitation basis and to comprehensive health service organizations, the remainder of the money will be available in each category to pay fee-for-service and per case bills, subject to proration if the aggregate bills exceed the amounts available. This assures that comprehensive health service organizations and individual practitioners accepting capitation payments or a stipend, and professional practitioners on salary in an institutional setting, will not be in jeopardy of having their income diminished by the exhaustion of their service fund by reason of fee-for-service or per case payments.

Subsection (g) authorizes the Board to experiment with other methods of reimbursement so long as the experimental method does not increase the cost of service or lead to overutilization or underutilization of services.

(Section 83)

Hospitals will be paid on the basis of a predetermined annual budget covering their approved costs. To facilitate review of these budgets, the Board will institute a national uniform accounting system. Subsection (b) stipulates that the costs recognized for purposes of the budget will be those incurred in furnishing the normal services of the institution except as changed by agreement, or by order of the Board under section 131. This will enable the Board, on the basis of State and local planning, to eliminate gradually any wasteful or duplicative services, and also to provide for an orderly expansion of hospital services where needed.

Physicians and other professional practi-

tioners whose services are held out as available to patients generally (such as pathologists and radiologists) will be compensated through the institutional budget, whatever the method of compensation of such practitioners and whether or not they are employees of the hospital. This departs from the practice in Medicare which allowed independent billing by such physicians. Hospital budgets will be reviewed by the regional administrative agency of the Board, which may permit participation by representatives of the hospitals in each region. Budgets may be modified before, during, or after the fiscal year if changes occur which make modification necessary.

(Section 84)

If an entire psychiatric hospital is found by the Board to be providing active treatment to its patients, and the institution is therefore primarily engaged in providing covered services to eligible beneficiaries, it will be paid on the same basis as a general hospital (on the basis of an approved annual budget). Otherwise the Board will negotiate a patient-day rate to be paid for each day of covered service provided to an eligible beneficiary.

(Section 85)

This section provides that skilled nursing homes and home health agencies will be paid in the same manner as a general hospital (on an approved annual budget basis). The Board may specify use of nationally uniform systems of accounting and may prescribe by regulation the items to be used in determining approved costs and the services which will be recognized in budgets.

(Section 86)

Reimbursement for drugs will be made to the dispensing agent on the basis of an official "product price" for each drug on the approved list plus a dispensing fee. The official product price will be set at a level which will encourage the pharmacy to purchase substantial quantities of the drug (this should result in significant reductions in the unit cost of each drug). The official price may be modified regionally to reflect differences in costs of acquiring drugs. The Board will establish dispensing fee schedules for reimbursing independent pharmacies. These schedules will take into account regional differences in costs of operation, differences in volume, level of services provided and other factors.

(Section 87)

A comprehensive health service organization will be paid for other than hospital or skilled nursing home services, on the basis of a fixed capitation rate multiplied by the number of eligible enrollees. The amount of the capitation rate will be determined by the per capita amounts available for the several professional services in the area, and a rate fixed by the Board as the average reasonable and necessary cost per enrollee for such other covered services as the organization undertakes to provide (exclusive of hospital and skilled nursing home services) such as physical therapy, nutrition, etc.

A comprehensive health service organization which undertakes to provide for hospital or skilled nursing home services for its enrollees may be paid on an approved annual budget basis or on a capitation basis. An organization which arranges for such services through other providers may be reimbursed on the basis of patient days of service utilized by enrollees. The organization will also be entitled to share in up to 75% of any savings which are achieved by lesser utilization of such institutional services. Entitlement to such savings is conditional upon a finding by the Board that the services of the organization have been of high quality and adequate to the needs of its enrollees, and that the average utilization of hospital or skilled nursing services by enrollees of the comprehensive health service organization is less than use of such services by comparable population groups under comparable circumstances. This money may be used by the comprehensive health service organization for any of its purposes, including the provision of services which are not covered under the Health Security Program.

(Section 88)

Subsection (a) provides that organizations or agencies with which the Board has entered into an agreement under section 48 (such as a neighborhood health center, a nonprofit mental health center, or a state or local health agency furnishing preventive or diagnostic services) may be paid by any method agreed upon other than fee-for-service. Subsection (b) provides that independent pathology or radiology services may elect reimbursement by fee-for-service (with a fee schedule approved by the Board), an approved budget or other basis. Subsection (c) leaves the method of payment for other types of miscellaneous providers of service to be specified in regulations.

(Section 89)

All participating providers will be paid from the Health Services Account in the Trust Fund at such time or times as the Board finds appropriate (but not less often than monthly). The Board may make advance payment to supply providers with working funds when it deems advisable.

Part F—Planning; funds to improve services and to alleviate shortages of facilities and personnel

(Section 101)

This section sets forth the general purposes of Part F and authorizes appropriations, and subsequently expenditure from the Trust Fund, for these purposes. The part envisages a substantial strengthening of the health planning process throughout the country with an eye, first, to the special needs for personnel, facilities, and organization which inauguration of the Health Security program will entail, and thereafter, to continuing improvement of the capabilities for effective delivery of health services. Beyond this, the part enables the Board, through selective financial assistance, to stimulate and assist in the development of comprehensive health services, the education and training of health personnel who are in especially short supply, and the betterment of the organization and efficiency of the health delivery system. For the three-year "tooling-up" period, appropriations of $200, $400, and $600 million are authorized for financial assistance. Beginning in 1973, percentages of the Trust Fund expenditures will be earmarked for such assistance (section 63). From 1973 on, the leverage of these expanding funds will supplement and reinforce the incentives, which are built into the normal operation of the Health Security program, for improvement of the organization and methods of delivery of health services.

(Section 102)

This section directs the Secretary, in collaboration with State comprehensive health planning agencies, to institute a continuous process of health service planning. Prior to July 1, 1973, the planning process must give first consideration to the most acute shortages and needs for delivery of covered services under this Act. Thereafter, planning shall be focused on maximizing continuing capability for delivery of these services.

This section places primarily on the State agencies the responsibility for coordinating the work of the many health planning agencies within the States, and for coordination with interstate agencies and with agencies planning in other fields related to health, but charges the Secretary with this function in any State that fails to meet the responsibility. The section amends the Public Health Service Act to increase the authorized appropriations for State and for local health planning ($30 million in each case for fiscal 1971, as against $15 million authorized for fiscal 1970), and to condition grants upon collaboration for these national purposes. Thus the section, strengthening State planning agencies, focuses in them a responsibility, visualized in the "partnership-for-health" legislation but in many States not yet an operating reality, for pulling together all health planning efforts within their territories. The task will not be easy, but it is one that is lent new urgency by the Health Security program. It belongs more properly to the States than to the national Government, but if any State proves unequal to the task it must and will be assumed by the Secretary.

(Section 103)

In administering part F, this section stipulates, the Board will give priority to improving comprehensive health services for ambulatory patients through the development or expansion of organizations furnishing such services, the recruitment and training of personnel, and the strengthening of coordination among providers of services. Financial assistance will be dispensed, so far as possible, in accordance with recommendations of the appropriate health planning agencies. Funds will not be used to replace other Federal financial assistance, and may supplement other assistance only to meet specific needs of the Health Security program. Other Federal assistance programs are to be administered when possible to further the objectives of part F, and the Board may provide loans or interest subsidies to help the beneficiaries of other programs to meet the requirements for non-Federal funds.

(Section 104)

Help of several kinds will be available under this section for the creation or the enlargement of organizations and agencies providing comprehensive care to ambulatory patients—either organizations to serve an enrolled population on a capitation basis, or agencies such as neighborhood health centers which need not require enrollment in advance. Grants may be made to any public or other nonprofit organization (which need not be a health organization) to help meet the cost, other than construction cost, of establishing such a health service organization, and to existing health service organizations to help meet the cost of expansion; the maximum grants being, in the former case 90 percent of the cost, in the latter 80 percent. The Board may also provide technical assistance for these purposes. Loans may be made for the cost of necessary construction, subject to the same 90 and 80 percent limitations on amount. Finally, start-up costs of operation of these organizations may be underwritten, for five years in the case of organizations which must build up an enrollment to assure operating income, and in other cases until the Health Security program begins payment for services in 1973. The effect of these several provisions is to reduce sharply, if not eliminate, the financial obstacles which have heretofore impeded the growth of comprehensive group practice organizations.

(Section 105)

This section contains a series of provisions to assist in the recruitment, education, and training of health personnel. The Board will establish priorities to meet the most urgent needs of the Health Security system, but the priorities will be flexible both as between different regions and from time to time. Professional practitioners will be recruited for service in shortage areas, both urban and rural, and in comprehensive health service organizations, and such practitioners may be given income guarantees. Other Federal assistance for health education and training will be availed of, but the Board may supplement the other assistance if the Board

believes it inadequate to the needs, until Congress has had opportunity to review its adequacy. The training authorized includes the development of new kinds of health personnel to assist in furnishing comprehensive services, and the training of area residents to participate in personal health education and to serve liaison functions and serve as representatives of the community in dealing with health organizations. Grants may be made to test the utility of such personnel, and to assist in their employment before 1973. Education and training are to be carried out through contracts with appropriate institutions and agencies, and suitable stipends to students and trainees are authorized. Finally, special assistance may be given, both to institutions and to students, to meet the additional costs of training persons disadvanaged by poverty, membership in minority groups, or other cause.

(Section 106)

This section authorizes special improvement grants: first, to any public or other nonprofit health agency or institution to establish improved coordination and linkages with other providers of services; and, second, to organizations providing comprehensive ambulatory care, to improve their utilization review, budget, statistical, or records and information retrieval systems, to acquire equipment needed for those purposes, or to acquire equipment useful for mass screening or for other diagnostic or therapeutic purposes.

(Section 107)

This section provides that loans under Part F are to bear 3 percent interest and to be repayable in not more than 20 years. Other terms and conditions are discretionary with the Board. Repayment of loans made before 1973 from general appropriations will go to the general fund of the Treasury; repayment of later loans will revert to the Health Resources Development Account in the Trust Fund.

(Section 108)

This section specifies that payments under Part F shall be in addition to, and not in lieu of, payments to providers under Part F.

Part G—Administration

This part of the bill creates an administrative structure within the Department of Health, Education and Welfare with exclusive responsibility for administration of the Health Security program. Program policy will be made by a five-member Board serving under the Secretary of HEW. The Board will be assisted by a National Health Security Advisory Council which will recommend policy and evaluate operation of the program, and an Executive Director who will serve as Secretary to the Board and chief administrative officer for the program. Administration of the program will be greatly decentralized among the HEW Regional Offices. Regional and local health services advisory councils will advise on all aspects of the program in their regions and local areas. The Board may also appoint such professional or technical committees as it or the National Advisory Council may deem necessary.

(Section 121)

This section establishes a five-member full-time Health Security Board serving under the Secretary of Health, Education, and Welfare. Board members will be appointed by the President, with the advice and consent of the Senate, for five-year overlapping terms. Not more than three of the five appointees may be members of the same political party. A member who has served two consecutive terms will not be eligible for reappointment until two years after the expiration of his second term. One member of the Board shall serve as chairman at the pleasure of the President.

(Section 122)

This section charges the Secretary of HEW and the Board with responsibility for performing the duties imposed by this title. The Board shall issue regulations with the approval of the Secretary. It is required to engage in the continuous study of operation of the Health Security program; and, with the approval of the Secretary, to make recommendations on legislation and matters of administrative policy, and to report to the Congress annually on administration and operations of the program. The report will include an evaluation of adequacy and quality of services, costs of services and the effectiveness of measures to restrain the costs. The Secretary of HEW is instructed to coordinate the administration of other health-related programs under his jurisdiction with the administration of Health Security, and to include in his annual report to the Congress a report on his discharge of this responsibility.

(Section 123)

This section creates the position of an Executive Director, appointed by the Board with the approval of the Secretary. The Executive Director will serve as secretary to the Board and shall perform such duties in administration of the program as the Board assigns to him. The Board is authorized to delegate to the Executive Director or other employees of HEW any of its functions or duties except the issuance of regulations and the determination of the availability of funds and their allocations.

(Section 124)

This section provides that the program will be administered through the regional offices of the Department of Health, Education, and Welfare. It also requires the establishment of sub-regional (service area) offices. These will in most instances be a state or a part of a state except where patterns in the organization of health services and the flow of patients indicate that an interstate area would provide a more practical administrative unit.

(Section 125)

Subsection (a) establishes a National Health Security Advisory Council, with the Chairman of the Board serving as the Council's Chairman and 20 additional members not in the employ of the Federal Government. A majority of the appointed members will be consumers who are not engaged in providing and have no financial interest in the provision of health services. Members of the Council representing providers of care will be persons who are outstanding in fields related to medical, hospital or other health activities or who are representatives of organizations or professional associations. Members will be appointed to four-year over-lapping terms by the Secretary upon recommendation by the Board.

Subsection (b) authorizes the Advisory Council to appoint professional or technical committees to assist in its functions. The Board will make available to the Council all necessary secretarial and clerical assistance. The Council will meet as frequently as the Board deems necessary, or whenever requested by seven or more members, but not less than four times each year.

Subsection (c) provides that the Advisory Council will advise the Board on matters of general policy in the administration of the program, the formulation of regulations and the allocation of funds for services. The Council is charged with responsibility for studying the operation of the program, and utilization of services under it with a view to recommending changes in administration or in statutory provisions. They are to report annually to the Board on the performance of their functions. The Board, through the Secretary, will transmit the Council's report to the Congress together with a report by the Board on any administrative recommendations of the Council which have not been followed, and a report by the Secretary of his views with respect to any legislative recommendations of the Council.

(Section 126)

To further provide for participation of the community, the Board will appoint an advisory council for each region and for each sub-region. Each such council would have a composition parallel to that of the National Council; and each will have the function of advising the regional or local representative of the Board on all matters directly relating to the administration of the program.

(Section 127)

The Board is authorized to appoint standing committees to advise on the professional and technical aspects of administration with respect to services, payments, evaluations, etc. These committees will consist of experts drawn from the health professions, medical schools or other health educational institutions, providers of services, etc. The Board is also authorized to appoint temporary committees to advise on special problems. The committees will report to the Board, and copies of their reports are to be made available to the National Advisory Council.

(Section 128)

Subsection (a) charges the Board with responsibility for informing the public and providers about the administration and operation of the Health Security program. This will include informing the public about entitlement to eligibility, nature, scope, and availability of services. Providers would be informed of the conditions of participation, methods and amounts of compensation, and administrative policies. In support of the program's effort to improve drug therapy, the Board is authorized, with the approval of the Secretary, to furnish all professional practitioners with information concerning the safety and efficacy of drugs appearing on either of the approved lists (Section 25), indications for their use and contraindications. Information of this nature is not currently available to practitioners.

Subsection (b) requires the Board to make a continuing study and evaluation of the program, including adequacy, quality and costs of services. Subsection (c) authorizes the Board directly or by contract to make detailed statistical and other studies on a national, regional, or local basis of any aspect of the title, to develop and test incentive systems for improving quality of care, methods of peer review of drug utilization and of other service performances, systems of information retrieval, budget programs, instrumentation for multiphasic screening or patient services, reimbursement systems for drugs, and other studies which it considers would improve the quality of services or administration of the program.

(Section 129)

This section authorizes the Board to enter into agreements with providers to experiment with alternative methods of reimbursement which offer promise of improving the coordination of services, their quality or accessibility.

(Section 130)

This section grants authority to the Board, in accordance with regulations, to make determinations of who are participating providers of service, determinations of eligibility, of whether services are covered, and the amount to be paid to providers. The Board is granted authority to terminate participation of a provider who is not in compliance with agreements or regulations. But unless the safety of eligible individuals is endangered, the provider shall be entitled to a hearing before the termination becomes effective.

This section establishes procedures for appeals in accordance with Section 205(b) and 205(g) of the Social Security Act.

(Section 131)

This section has one of the bill's most important provisions with respect to achieving improvement in coordination, availability, and quality of services. It greatly strengthens state and local planning agencies and gives the Board authority to curtail inefficient administration of participating institutional providers.

The Board is authorized to issue a direction to any participating provider (other than an individual professional practitioner) that, as a condition of participation, the provider add or discontinue one or more covered services. For example, if two community hospitals are operating maternity wards at low occupancy rates, the Board may require that one hospital cease to provide such service. A provider may be required to provide services in a new location, enter into arrangements for the transfer of patients and medical records, or establish such other coordination or linkages of covered services as the Board finds appropriate.

In addition, if the Board finds that services furnished by a provider are not necessary to the availability of adequate services, under this title, that their continuance is unreasonably costly, or that the services are furnished inefficiently (and that efforts to correct such inefficiency have proved unavailing) the Board may terminate participation of the provider.

No direction shall be issued under this section except upon the recommendation of, or after consultation with, the appropriate state health planning agency. And no direction shall be issued under this section unless the Board finds that it can be practicably carried out by the provider to whom it is addressed. The Board is required to give due notice and to establish and observe appropriate procedures for hearings and appeals, and judicial review is provided.

Part H—Miscellaneous provisions

(Section 141)

This section contains definitions of certain terms used in the title.

(Section 142)

This section stipulates that the effective date for entitlement for benefits will be July 1, 1973.

(Section 143)

Subsection (a) provides that an employer will not be relieved, by the enactment of the Health Security Act, of any existing contractual or other non-statutory obligation to provide or pay for health services to his present or former employees and their families. Subsection (b) expresses the sense of Congress that if, nevertheless, inauguration of the Health Security Program lessens the cost of an employer's aggregate obligations for health services to such persons, the savings should, at least for the period of any contract subsisting on June 30, 1973, be applied to the payment of the employees' health security taxes, to wage increases, or to other employee benefits.

TITLE II

Part A—Payroll taxes

(Section 201)

Subsections (a) and (b) abolish the Medicare hospital insurance taxes on employers and employees, and substitute a 2.1 percent (employee) tax on wages received after December 31, 1972 and a 3.5 percent (employer) tax on payroll after December 31, 1972. Subsection (c) raises the wage base for purposes of the Health Security employee tax to $15,000 (from $7,800) and eliminates the corresponding ceiling for the employer tax; it broadens the definitions of covered employment to include foreign agricultural workers, employees of the U.S. and its instrumentalities (other than members of the armed forces, and the President, Vice-President, and Members of Congress), employees of charitable and similar organizations, railroad employees, and (for the employee tax only) employees of States and their political subdivisions and instrumentalities.

(Section 202 and 203)

Section 202 makes a number of conforming and technical amendments. Chief among these are provision for refund of excess taxes collected from an employee, who has held two or more jobs, on wages aggregating more than $15,000 in a year; exclusion of Health Security contributions from agreements with State governments for the social security coverage of State and municipal employees (since these employees will contribute to Health Security through payroll taxes); and exclusion of Health Security contributions from agreements for the coverage of United States citizens employed by foreign subsidiaries of United States corporations (since these employees will not benefit directly from Health Security in its present form). Section 203 makes Part A applicable to wages paid after December 31, 1972, but the changes in coverage will apply only if the services are performed after that date.

Part B—Tax on nonwage income

(Section 211)

Subsection (a) abolishes the hospital insurance tax on self-employment income and imposes a 2.1 percent tax on all non-wage income (unless such income is less than $400 a year). Subsection (b) defines "health security non-wage income" as any adjusted gross income up to $15,000 a year which has not already been taxed as wages for health security purposes (excluding certain taxes which are specifically exempted from the health security tax on employees).

(Section 212)

This section makes appropriate changes in nomenclature and in the requirements of tax returns, including reports of estimated tax liability by non-wage-earners.

(Section 213)

This section makes part B effective on January 1, 1973, or for taxable years beginning on or after that date.

TITLE III

(Section 301)

Subsection (a) repeals Medicare, effective July 1, 1973, but stipulates that this shall not affect any right or obligation incurred before July 1, 1973.

(Section 302)

This section requires that after June 30, 1973, no State shall be required to furnish any service covered under Health Security as a part of its State plan for participation under Medicaid, and that the Federal government will have no responsibility to reimburse any State for the cost of providing a service which is covered under Health Security. After June 30, 1973, the Secretary of HEW shall prescribe by regulation the new minimum scope of services required as a condition of State participation under Title XIX. To the extent the Secretary finds practicable, the new minimum benefits will be designed to supplement Health Security—especially with respect to skilled nursing home services, dental services and the furnishing of drugs.

(Section 303)

This section provides that funds available under the Vocational Rehabilitation Act or the Maternal and Child Health title of the Social Security Act shall not be used to pay for personal health services after June 30, 1973, except (to the extent prescribed in regulations by the Secretary of HEW) to pay for services which are more extensive than those covered under Health Security.

Mr. YARBOROUGH. Mr. President, I want to thank the very distinguished Senator from Massachusetts for his great diligence and his faithful attendance on the committee. He is a hard working Senator. His imprint is on every bill that we report. That is true not only on the Health Subcommittee, on which he has shown probably the greatest interest of all, but also on the Education Subcommittee as well.

I first served on that subcommittee in 1958. That has been nearly 13 years now. During his years on the Committee on Labor and Public Welfare, the distinguished Senator from Massachusetts has put in a great deal of time on the Health and Education Subcommittees, as has the distinguished occupant of the Chair, the distinguished Senator from Montana (Mr. METCALF). The Senator from Montana was a member on those subcommittees before he left the full committee. We know of his great leadership in the House on education and in his home State of Montana before he came to Congress. We miss him on that committee and wish he were back with us. Since I am leaving, not voluntarily, I wish the occupant of the chair would come back on that committee next year as I am sure he will find able Senators, such as the Senator from Massachusetts (Mr. KENNEDY) to help him. I hope that other very able Senators will come on that committee to replace those of us leaving. We need ability on that committee because it is an active committee. I think that committee is more active than any other in the Senate.

I remember a few years ago, when President Johnson was signing one of the health bills, he turned around to me and said—

> That committee you are on reports out 80 percent of all the New Frontier and Great Society legislation—including measures concerning health, education, labor, migratory labor, and Indian education, the hearings on this latter matter which were so ably chaired by the late Senator Robert F. Kennedy.

Mr. President, the committee is preparing its 100-year history. We are proud of the fact that on our committee have served such men as the Democratic nominee for the President in 1960, the Republican nominee for the President in 1964, and the great, late Senator from Illinois, Mr. Dirksen. I served with him, and also with the distinguished Senator from Arizona (Mr. GOLDWATER), with the three Kennedy brothers, and with the distinguished Senator from Kentucky, JOHN SHERMAN COOPER, who helped write the National Defense Education Act of 1968. One of the great privileges of my service in the Senate has been to serve on the Committee on Labor and Public Welfare.

Mr. President, I jointly introduce with the distinguished senior Senator from Massachusetts (Mr. KENNEDY) the Health Security Act, the measure for a national health insurance program. First as a member of the Subcommittee on Health and now as chairman of both the Health Subcommittee and full Labor and Public Welfare Committee. I have long been concerned with the massive health problems which plague this country. Of equal interest and importance to me has

been the improvement of health delivery systems. Throughout my public career, I have sought, as did my predecessor on the Health Subcommittee, Lister Hill, to make adequate health care at a reasonable cost for every citizen, a national goal.

Before becoming chairman of the Subcommittee on Health, I urged and worked for the passage of such major programs as the Hill-Burton hospital amendments, the Health Research Facilities Act, both of the 85th Congress; the Public Health Service Training Act and the International Health Research Act during the 86th Congress; the Nurse Training Act of the 88th Congress; the Heart Disease, Cancer, and Stroke—Regional Medical Program Act and the Child Nutrition Act of the 89th Congress; and the Family Planning Services Act and the Health Manpower Act of the 90th Congress.

Now as chairman of the Health Subcommittee, I have sponsored or cosponsored bills covering virtually every dimension of the health field. In the 91st Congress alone, as chairman, I have worked in the subcommittee for such major pieces of health legislation as community mental health center laws, medical school construction assistance laws, communicable disease control laws, hospital construction authorizations, the medical libraries law, the migrant health law, and the grants to schools of public health law.

During my 2 years as chairman of the Health Subcommittee, we have acted on such measures as the Family Planning Act, the Developmental Disabilities Act, the heart disease, cancer, stroke, and kidney disease amendments, the Training of Personnel in Allied Health Professions Act, a resolution in support of the international biological program, and a resolution authorizing the Committee on Labor and Public Welfare to study research activities on cancer. Furthermore, and in addition, during these 2 years, we have held hearings and reported on bills to amend the Randolph-Sheppard Act to aid the blind, to offer comprehensive control of narcotic addition and drug abuse, to set up a prescription drug identification system, to bolster family practice, and to extend provisions of the Wagner-O'Day Act to severely handicapped individuals who are not blind.

Mr. President, I now rise to cosponsor the most significant, and, I might add, the most imperative piece of health legislation in the history of this country, the National Health Security Act of 1970.

Despite the accomplishments which we have made in the past decade, our Nation is currently facing a health crisis of major proportions. Compared with other industrial countries, the health of the majority of Americans today is worse than it was 15 or 20 years ago. With regard to infant mortality during the first year of life, in the list of nations we rank 13th; we rank seventh with the industrial countries in the percentage of mothers who die in childbirth; we are no better than 18th in the life expectancy of males; and we stand at a lowly 14th among all the countries of the world in infant mortality rates. In all instances, the United States ranked better 15 or 20 years ago.

The United States, Mr. President, has a gross national product of nearly $1 trillion a year. There is no reason—no reason whatsoever—why we cannot do better for our people's health needs. We spend in the thirties of billions of dollars yearly in Vietnam; we purchase a useless ABM system. Why, in the face of this can we not provide decent health to our own citizens? Why must we pour $110 billion into Vietnam in 10 years, but in those 10 years slip backward in terms of life expectancy in comparison with the other industrialized nations?

Our failings in health care are not due to scrimping on the part of our citizens. Americans paid some $63 billion out of their pockets for health care in 1969—about 7 percent of the gross national product. This expenditure exceeded 1950 figures by over 500 percent. Since 1950, when health spending amounted to $12 billion, the total health expenditures have risen at an average of 8.8 percent per year—an average of 12.2 percent in the past 3 years.

This increase in spending does not indicate any improvement in health care. Rather, it reveals exactly the opposite, a deterioration of the ability of the health delivery system to provide adequate care at a reasonable cost.

Hospital costs, in the past few years, have gone up 100 percent faster than the cost of living increase; doctors' fees have gone up 50 percent faster. It has been estimated that unless we have large-scale reforms for the health care delivery system, it will cost us twice as much for health insurance by 1975 as it cost us in 1969.

It seems that we can no longer afford to be sick. How can, and moreover, how will, Americans be able to pay for the luxury of health treatment in the coming years? Hospital rooms will cost $400 to $600 a day by the end of the decade, unless there are drastic improvements in our health care system. Who but the wealthiest of us would be able to get hospitalization at these enormous costs?

Mr. President, the first part of any solution to this awesome problem must be a recognition of the waste that a part of the $63 billion which Americans pay represents. Fourteen billion dollars of that figure, experts maintain, is sheer waste. In the current system where insured medical payments are only insured and paid if you are in a hospital, we hospitalize far too many people who would be treated as well, or even better on an outpatient basis. Hospital overuse runs from 25 percent upward. Testing and acute treatment could be done in many cases outside of the hospital at a tremendous savings to patients. Group practice organizations have also yielded savings to patients by coordinating more efficiently, and more effectively, the dissemination of health services. Health advisers tell us that hospital reforms alone would have saved us $4.5 billion last year.

Mr. President, we are, then, a Nation in poor health, relative to our resources, and a Nation spending tremendous amounts of money for that poor health. We must reverse this trend. We must provide decent health care for all Americans; we must provide an adequate system to bring good health for all Americans; and we must accomplish this goal at a cost which this country can afford without overburdening our citizens.

The Health Security Act of 1970 is a plan originally, in substance, developed by the Committee for National Health Insurance, a committee of 100 set up in 1968 under the leadership of the late Walter Reuther, Dr. Michael DeBakey and others. I am proud to have served for some time as a member of this committee of 100, and I believe that this proposal offers the types of solutions needed to meet our health requirements.

The major advantage of this act would be the provision, through a system of national health insurance, of health services to all residents of the United States. The maintenance of health, the improvement of those health standards to which I referred earlier, would be emphasized as strongly as the treatment of illness. Modification and improvement of the organization and methods of delivery of health services will enable us to reach these ends by improving the efficiency and the utilization of services and by strengthening professional and financial controls. By motivating proper medical care, treatment commensurate with the nature of the medical problem, we will be able to create a positive, successful delivery system. Thus, we should expect by the end of this decade, when this act will have been in effect for 10 years, quality health treatment for all of our people.

The benefits of national health security will be manyfold. Physician, hospital and institutional, psychiatric, dental, and miscellaneous services, plus the use of various medicines and certain types of therapeutic devices and equipment—all will be covered by this program.

Thus, instead of the average American spending close to $300 a year for health, he would spend now less than $200, and the coverage in terms of insurance would be remarkably better.

A brief look at the figures dealing with gaps in current health insurance programs substantiates the degree of improvement that the Health Security Act would bring to health treatment in this country. Of the 177 million noninstitutional civilians in the United States in 1968 under 65, 36.3 million, or 20.5 percent had no hospital insurance; 38.8 million had no surgical insurance; 61 million had no in-the-hospital medical expense insurance; 102 million had no insurance for visits to doctor's offices or doctor visits to their homes. The figures go on and on, but the fact remains the same: most people in this country, even accounting for the huge amounts spent on health, have little or no health insurance coverage.

Not only, then, is it true that few Americans hold the necessary health insurance, but it is also the case that the small amount of insurance meets only a small percent of consumer health expenditures. According to the Department of Health, Education, and Welfare, only 36 percent of consumer health expendi-

tures were covered by health insurance in 1968.

Mr. President, it is my conviction, as a citizen and as a public official who has dealt with health matters for most of his public life, that the passage of this health security program will bring about a reversal in recent health trends. Instead of spending exorbitant amounts for mediocre coverage, we will be able, through the mechanics of this measure, to spend a more reasonable sum for excellent health coverage and a fine, serviceable health delivery system.

We will be able to replace medicare, medicaid, the civilian health and medical program of the uniformed services, certain maternal and child health programs, and certain aspects of the temporary disability program. We will be able to eliminate the vast quantity of programs that today overlap, underlap, or form serious gaps and, thus, provide, with this act, comprehensive health benefits to all citizens in a systematic, advantageous and comprehensive program. For instance, new group practice programs, which have proven effective in this country, would be encouraged which would allow fewer doctors in some instances to service the health needs of a larger population. Furthermore, we would be approaching our health problems and the delivery of care in a systematic way, rather than a piecemeal attempt to patch and shore up a deteriorating system which produces medical care at an ever-increasing cost.

The need for reform is, by now, absurdly obvious. And the advantages and benefits of the health security program are equally clear. The obtaining of health care must be brought to the point that it is a right, not a privilege of only the advantaged.

The poor of this country have no or little accessibility to health facilities today. The life expectancy of a nonwhite American is 7 years less than that of a white. Part of that difference is due undoubtedly to the economic unavailability of medical services to some of our American citizens.

But, the problem is not isolated to lower-income people. The middle class is beginning to feel the pinch. Dissatisfaction with the archaic, ineffective, and costly system spreads throughout all classes, all races, and all types of people in this country. We must have reform and significant change. And we must have it immediately.

Mr. President, I intend, as long as I am a Member of the Senate and as long as I remain on this good earth, to fight for the day when good health care for all Americans will be a reality. I cannot do it alone, nor can the Congress do it alone. But, with the support of the people of this great land, we can take a major step toward that goal with the enactment of this Health Security Act.

When the framers of our Constitution had the insight to realize that their actions had implications for themselves as well as their posterity, they demonstrated admirable foresight and wisdom. We, today, must look far into the future and understand that our action, or inaction, will have a distinctive impact on our posterity. The life and health of tomorrow's America depends on our substantial action today.

Mr. President, let us as a nation, and as men, win this race for life.

Again I commend the Senator from Massachusetts for his work on the health and education subcommittees, for his diligence, and for his faithfulness in attendance. He is always there. That is the way we pass legislation by being there, on the job, and knowing what is in the legislation and being able to work it out.

Mr. COOPER. Mr. President, I rise to commend the senior Senator from Massachusetts and the senior Senator from Texas upon the statements they have made this morning with respect to the objectives of the Health Security Act. I am glad to be associated with them and with my colleague on this side of the aisle, the junior Senator from Ohio (Mr. SAXBE).

I look forward to the hearings on this bill, and I hope that we will be able to make substantial progress this year.

Mr. KENNEDY. I thank the Senator from Kentucky.

As we mentioned earlier, the distinguished Senator from Kentucky served on the committee of 100 that has done a great deal of the work in the development of this program. The distinguished Senator from Texas (Mr. YARBOROUGH), who now is the chairman of the Health Subcommittee, also served on the committee, as did the Senator from Ohio (Mr. SAXBE).

So, Mr. President, the measure we introduce today has gone through the process of much consideration and much deliberation. I am sure that there will be improvements and that the proposed legislation will be strengthened in the process of hearings and debate in the Senate.

This measure was given great thought prior to the time of its introduction. Similar legislation is pending in the House of Representatives, and I know it will receive wide hearing and wide interest in the other Chamber.

Other health insurance programs have been introduced recently by the Senator from New York (Mr. JAVITS) and other Members of this body. Although their proposals differ in their approach to the problem, they help to focus attention on one of the very desperate needs in our society and our country today—the need to reorganize the health delivery system and to mobilize more health manpower.

Mr. President, I could not conclude at this time without recognizing the extraordinary contributions that have been made in the entire field of health by the distinguished chairman of the Subcommittee on Health, the Senator from Texas (Mr. YARBOROUGH).

During the time that I have had the opportunity to serve under the chairmanship of Senator YARBOROUGH, the Subcommittee on Health has handled some of the most important pieces of health legislation that have ever been passed by this body. This year alone, I think of the mental health bill, the mental retardation bill, and a number of other health measures. They have gone through the Senate with virtually no dissent. I think this record is a great tribute to the work Senator YARBOROUGH has done and to the bipartisan approach of the members of the health subcommittee in the development of legislation.

As we begin the long and difficult road toward achieving national health insurance, we are going to miss the extraordinary wisdom, understanding, and comprehension that the distinguished Senator from Texas has brought to the many health measures before this body during the period of his service. But we are gratified that the legislation we are introducing today will alway bear his imprint. I want to commend him for his interest in this program, and I know that he will continue to support it. I also want to say how much we appreciate the strong efforts of the distinguished Senator from Kentucky (Mr. COOPER), the distinguished Senator from Ohio (Mr. SAXBE), and other cosponsors in support of this legislation, and how much we will rely upon them in its future development.

Mr. CRANSTON. Mr. President, our country and its people face countless crises today—and not the least of these is in medical care.

Soaring costs of private care now put this portion of preventive and curative medicine totally beyond the reach of tens of millions of our fellow citizens.

Skyrocketing costs of public programs—like medicare—are absolutely staggering.

We are in a health crisis for endless reasons—and no one is expert enough to predict how much worse the crisis can get because wholly unfathomable factors are involved. Who knows, for example, what health hazards we really face today, and will face tomorrow, because of the poisons and pollutions that endanger the air, water and food we depend upon for our very lives?

I join in sponsoring this health insurance legislation because we must come to grips with this crisis.

Undoubtedly this measure will be revised in many small and large ways before it finally becomes the law of the land. It must be given the most detailed and careful study and scrutiny. Surely, there will be many suggestions, some of them sound, some of them unsound, regarding ways to improve the financial and medical aspects of this bill.

Our final objective must be to insure the best possible medical care for the people of our United States and the least possible cost.

I trust that today the U.S. Senate is launching an effort that will lead our Nation to that end.

Mr. BROOKE. Mr. President, I cannot let this opportunity pass without saying how much respect I, and I am sure all my colleagues in the Senate, have for RALPH YARBOROUGH who has served this body so courageously and who has made so many courageous decisions since he came to the Senate.

I am sure that the time will come when we will have an opportunity at length and in depth to speak in commendation and appreciation for what RALPH YARBOROUGH has meant not only to the Senate but also to the United States of America.

The Senator mentioned that he was leaving, and I want him to know that there are those of us on the other side of the aisle, too—as I know there are on his side of the aisle—who have great respect and admiration for him and great appreciation for his valuable and yeoman service to the Senate.

Mr. COOPER. Mr. President, I want to associate myself with what my colleague from Massachusetts (Mr. BROOKE) has just said. I had the honor to serve with RALPH YARBOROUGH on the Committee on Labor and Public Welfare. Beyond that, in his political life and service in the Senate, I always think of him as one of whom it can be truly said, although it may be called a cliche, he has always stood for the people and the common man. We always know where RALPH YARBOROUGH stands.

Mr. YARBOROUGH. Mr. President, I am deeply grateful to the Senator from Massachusetts (Mr. BROOKE) and the Senator from Kentucky (Mr. COOPER) for their kind words. It has been a privilege to serve with each of them. They are the kind of Senators who work to accomplish good for the people. I remember no serious disagreements with any of them on any measures we have worked on, even though we may have differed in our votes.

The Senator from Kentucky (Mr. COOPER) possesses the true courtesy of the great gentleman from Kentucky that he is. We miss him on the committee, too.

I appreciate the kindness of the Senator from Massachusetts. He and the Senator from Kentucky are the kind of Senators who make this body the greatest legislative body in the world.

We hear it called the greatest deliberative body in the world, but I want to change that and say that it is the greatest legislative body in the world, as well.

I have attended interparliamentary meetings since 1962, sometimes twice a year. I have watched the leaders of legislative bodies of the world as they have debated at meetings. Thus, I believe that mine is not an uninformed statement when I say that the Senate of the United States is the greatest legislative body in the world. I have been to the Parliamentary meetings at Brasilia, Canberra, Tehran, Dublin, Lima, Vienna, New Delhi, and other places, and have listened to the world's legislators who are known to have great reputations in their own country, and I believe that I can say without being self-serving, that undoubtedly it is recognized around the world that the Senate of the United States—these 100 men in this small room, constitute the greatest legislative and deliberative body on earth.

Right now, in this Chamber, and occupying the chair, are great Senators who are serving their country. I believe that to serve in the Senate is the highest honor that can come to any American. Perhaps the office of President, or Chief Justice of the United States may be a step higher, so far as serving this great people is concerned, but with that exception, I think nothing else can exceed the public service opportunity for any American, than to serve in this great body.

I am very grateful to my colleagues for their great generosity to me.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time of the Senator from Massachusetts (Mr. BROOKE) not start running until I complete the following unanimous consent requests.

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

ORDER FOR RECOGNITION OF SENATOR McINTYRE TODAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. McINTYRE) be recognized for 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR YOUNG OF OHIO

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the Senator from New Hampshire (Mr. McINTYRE) today, the Senator from Ohio (Mr. YOUNG) be recognized for 10 minutes.

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

ORDER FOR RECOGNITION OF SENATOR FANNIN

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the Senator from Ohio (Mr. YOUNG) today, the Senator from Arizona (Mr. FANNIN) be recognized for not to exceed 10 minutes.

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

ORDER FOR LIMITATION OF TIME FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the morning business not exceed 30 minutes today.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Massachusetts (Mr. BROOKE) is now recognized for 15 minutes.

THE HATFIELD-McGOVERN "END THE WAR" AMENDMENT

Mr. BROOKE. Mr. President, the prolonged war in Vietnam is a source of deep anguish for every American. It has divided our people as no other issue. In spite of earnest efforts and honest intentions, the peace we seek has eluded us.

Yet we have always known that the goal for which we struggle—the right of the people of South Vietnam to determine their own political fate—is one which can only be attained by the Vietnamese themselves. The United States can play no more than a supportive role.

To many, the vast power we have brought to bear has seemed disproportionate to the limited mission we proclaimed. Seeing the immense drain on our national resources, on our military, economic, and social well-being, millions of Americans have despaired.

The remedy for that despair lies in a clear recognition that we have fulfilled our limited commitment, and in a deliberate program for orderly disengagement of American forces from the conflict.

The President has made a historic beginning on such a program. He has reversed the direction of the war. He has reduced American casualties. He has cut the cost of the war virtually in half. He has begun to withdraw hundreds of thousands of U.S. troops. He has exerted strong persuasion on the South Vietnamese to meet their obligations for self-defense. He has launched vital diplomatic initiatives in quest of a negotiated settlement. These efforts vividly demonstrate the President's determined search for a just peace.

However, in my judgment the time has come to reinforce the President's commendable new directions by lending congressional sanction to a responsible program for turning the burdens of this conflict back to the Vietnamese people.

The modified amendment offered by my distinguished colleagues, Senators HATFIELD and McGOVERN, and others, represents such a program. Their proposal is the product of many months of discussion. It provides a reasonable and flexible means for harmonizing legislative and executive policy on this perplexing issue. I support it and I hope the Senate will adopt it. What are the likely effects of its adoption?

The conclusion that we have satisfied our commitment to the Vietnamese, coupled with an extended timetable for troop withdrawal, could invigorate the efforts of the South Vietnamese to stand on their own. Hopefully it will heighten the willingness of all parties to negotiate an early political settlement.

The establishment of a firm timetable for U.S. disengagement would remove Hanoi's principal stated objection to serious diplomacy. It should also reduce Saigon's unstated reliance on the prospect of an indefinite American stay to avoid coming to grips with the hard political realities which must shape any final settlement.

Mr. President, if the military situation should deteriorate, if the lives of our men in Vietnam are endangered, there is no question we will come to their defense. And I am persuaded that the Hatfield-McGovern amendment fully provides for such a contingency. If the President finds that members of the American Armed Forces are exposed to clear and present danger, he may suspend the application of this amendment for up to 60 days. The date of final withdrawal may even be changed, if the President recommends

such action to the Congress, and wins its concurrence in his judgment. This affords ample flexibility to extend our military presence, if such an extension proves necessary.

Mr. President, every Member of this body has given much thought to this grave issue. We know that we must try to balance our important international objectives with our essential domestic goals. And the first of those goals, as the bitter experience of the 1960's has shown, must be at least a minimal consensus in support of our Nation's foreign policies. We all know that the cost of Vietnam is measured not only in lives and dollars and dreams foregone, but in a steep decline in the confidence our people vest in their public institutions.

Wise and independent leadership by this Congress on this issue can do much to restore trust in our political institutions. The Congress should share with the President the awesome burdens and risks he bears in shaping our Nation's policy in Asia.

That is the fundamental advantage of this amendment. It can bolster the President in the policy he has undertaken. It can strengthen the chances for peace in Vietnam. It can open the path to reconciliation for the American people. So vital and so promising a proposal deserves the approval of the Senate and the approbation of those we serve. I respectfully commend it to my colleagues.

NEW ENGLAND'S OIL CUSTOMERS GET HIT AGAIN

Mr. McINTYRE. Mr. President, last week was sad indeed for the consumers of New England.

Announcements were issued, one from Washington and two from islands in the Caribbean, which will mean that the homeowners of New England will probably pay higher prices for their fuel in the coming winter. The announcement in Washington came from General Lincoln, Director of the Office of Emergency Preparedness and Chairman of the Oil Policy Committee, stating that President Nixon was abandoning all consideration of the tariff plan proposed by the Cabinet Task Force on Oil Import Control earlier this year. That announcement means perpetuation, for the forseeable future, of the program which costs each and every family in New England well over $100 per year in added costs of gasoline and home heating oil. In brief, the President said to the consumers of the Nation:

> You don't have the power that the big oil companies have.

The other announcements came from two of the largest and richest oil companies in the world—Standard Oil of New Jersey and Shell—that they were raising the price of No. 2 fuel—home heating—oil from their vast Caribbean refineries by a penny per gallon. This announcement would normally go unnoticed except for the fact that we in New England were looking to the Caribbean area for some relief from the continuing escalation of prices for the vital product that heats our homes. As the Members of the Senate know, on June 17 President Nixon allocated 40,000 barrels of No. 2 imports for the northeastern part of the United States. While this level of imports is far from sufficient, we in New England viewed it as a good start. We hoped that these imports would enable independent fuel oil dealers to halt the continuing escalation in No. 2 fuel oil prices, and there were strong indications that they would.

Our hope was based on the level of No. 2 fuel oil prices that then existed in the Caribbean. Last June the posted Caribbean price of No. 2 fuel oil was 6.5 cents per gallon. That price prevailed until early this month, when Esso and Shell, the major and dominant marketers of the product in the Caribbean area, raised the price to 7.5 cents per gallon. Then last week, as I have indicated, Esso and Shell announced a further price increase to 8.5 cents per gallon. Thus, within the space of a few weeks, the major oil companies have increased the price of home heating oil at the cargo level in the Caribbean by 31 percent. This price increase of 2 cents per gallon—or 84 cents per barrel—means that the oil brought into New England under the new allocation program will be nearly equal in price to domestic oil, and that fuel oil dealers cannot pass on to the consumers savings that might have been realized from the new import program.

I am sure that the major oil companies' response will be that demand for No. 2 fuel oil is high and this is simply one of the results of a free market system. First of all, I would reply that demand simply cannot be high enough to justify a 31-percent increase in the price of a product so essential to the American consumer; and second, because the import allocations under the new program are limited to the Caribbean area, something of a "closed market" does exist. Therefore, it is fair, I believe, to ask whether the large international major oil companies, particularly Esso and Shell, have not raised the price simply to take advantage of the new program and to put increased profits of more than $6 million over the next 4 months into their pockets, while denying any of the benefits of lower priced product to the consumers of the Northeast.

If this were truly a free market situation, I could understand it. But it is not.

If there were no fuel oil shortage looming in this country, I might better understand the motives of the major oil companies. But a fuel crisis is upon us.

And I might add that these same two companies joined the other major oil companies 2 years ago in opposing and killing a plan to build a New England refinery to provide substantial quantities of lower priced home heating oil and residual fuel oil.

They callously killed any chance for relief 2 years ago, and are doing the same thing once again.

If crude oil prices in the Caribbean had risen sharply over the past several weeks, I could understand the reason for this sharp increase in No. 2 fuel oil. But crude oil prices have remained stable.

If the major oil companies did not enjoy so many benefits from the U.S. Government, including protection from real competition, I could understand their callous disregard for the public interest. But the industry receives vast benefits and protection from the U.S. Government and owes that Government, and its people, a special responsibility.

There are no good reasons for these inflationary price increases, and one can only interpret last week's action by these companies as a crass act of profiteering. It will mean more money for them, and higher heating prices for New England.

They could not have done this in a normal market situation; they could not have done this if they did not enjoy protection from the U.S. Government; they could not have done this if New Englanders were free to purchase their oil in any part of the world.

Once again, we in New England are paying the price of being a captive market, a captive market for the world's largest industry.

Mr. President, the Office of Emergency Preparedness has a specific responsibility under instructions from the Senate Appropriations Committee issued on June 24, 1970, as follows:

> The funds (for the OEP) will provide the resources needed to monitor the supply and price changes resulting from the June 17 proclamation providing 40,000 barrels a day of No. 2 fuel oil for New England. In this connection, the committee cannot urge too strongly the effect of fuel oil prices on the New England area, and recommends that the Office of Emergency Preparedness give particular attention to the problem in this area.

In addition, the Director of the OEP has a specified responsibility under section 6(a) of Proclamation 3279, which established the oil import program, to "maintain a constant surveillance of imports of petroleum" and "in the event prices of crude oil or its products or derivatives should be increased" such surveillance shall include a determination as to whether such increase or increases are necessary to accomplish the national security objectives of the oil import program.

And in a letter of comment on the proposed regulations governing the new No. 2 fuel oil program, filed with the Oil Import Administration on July 20, a number of Senators from the Northeastern States also made the following comments regarding Caribbean fuel oil prices:

> We urge that as part of the continuing surveillance requested by the Senate Appropriations Committee, the Office of Emergency Preparedness carefully monitor No. 2 fuel oil prices in the Caribbean. If any increase occur in this marketing area, where supplies must be purchased, the anti-inflationary impact of the new program, which is minimal at least, will be completely eliminated and heating oil prices in the Northeast will be forced upward once again. If there are significant increases in posted or spot prices in the Caribbean in the months ahead, we would expect the Oil Policy Committee to take such increases into account in assessing the impact of the new program on prices in the Northeast.

The President, and in particular, the Director of the Office of Emergency Preparedness, who is also chairman of the Oil Policy Committee, thus have a re-

sponsibility to determine the causes of the recent No. 2 fuel oil price increases, their impact on the Northeastern home heating oil market, and on the accomplishment of the objectives of Proclamation 3990, and, most important, to recommend steps which will lead to a recission of these inflationary and predatory actions. I would hope that the Oil Policy Committee could recommend steps that will lead to a permanent, substantial increase in the level of No. 2 fuel oil imports, and during this emergency, allow such increased imports of No. 2 fuel oil to be purchased in the Caribbean, Europe, and elsewhere.

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

Mr. McINTYRE. I am happy to yield to the distinguished Senator from Massachusetts.

Mr. BROOKE. Mr. President, I certainly wish to commend the distinguished Senator from New Hampshire for making this very timely statement on the condition of the fuel oil supply in the New England States. The Senator has been in the forefront of this battle to see that the many, many consumers of fuel oil in New England will not be discriminated against.

There is no question that we are paying more for fuel oil than we should. But even worse than that, there is a services shortage of fuel oil at the present time which gives us great concern.

There is no question that there is need for a free trade zone and a refinery in New England. The Senator has been one of the leaders in the battle to acquire this free trade zone. We have worked together, as have our other colleagues in New England. I think we have had unanimity in the New England congressional delegation in fighting for a free trade zone and a refinery in New England. But still there is none after many years. Long before I came to the Senate, and I think before the distinguished Senator from New Hampshire came to the Senate, we had this problem of shortages, high prices, and high costs, particularly for No. 2 fuel oil in the New England States.

Could the Senator enlighten me as to the status of the application for a free trade zone at the present time? When we last discussed this matter, as I recall, there had been a unanimous vote or recommendation on the part of some advisory body.

Mr. McINTYRE. As the distinguished Senator from Massachusetts knows, this is one of the mysteries of the times. During the Johnson administration we got the runaround, the State of Maine got the runaround, and it has been continuing. If one reads the law that sets up the free trade zones he cannot help but wonder how in the name of heaven the State of Maine has not been given more prerogative under the law. There is nothing in the law that says this matter can be delayed.

I believe it was Mr. Smith of the Department of Commerce who said:

> We will have to hold up on this because there are large policy questions involved.

But nothing in the law says the application should not be processed because of policy considerations. Machiasport has now become a symbol of our overall fuel oil needs. The State of Maine is still hoping for this free trade zone but we see little glimmer of hope at the present time.

In the meantime, while all of us shoulder to shoulder in this battle against obstacles which at times seem insurmountable, and which frustrate me terribly, shortages and high prices will undoubtedly mean another beautiful but cold winter in New England.

Mr. BROOKE. We are waiting for the President's commission to make a further report and recommendations. Of course, it did make an initial report and recommendations, but it is my understanding now that there is a very large oil company that has a proposal for a refinery, the exact location of which I do not know. Its original site was Machiasport or some place else in New England, but it is my understanding this large oil company has come forth with plans and very shortly it is hopeful of getting a decision on the free trade zone and the location of a refinery which might bring us some relief.

But that will not help us in the heating season of 1970–71. It seems as if every year we are talking about the next year. Even if the application were to be approved the relief would not be forthcoming, for several heating seasons.

In our part of the country we are already only a few days away from the heating season. So it is hoped we could get some emergency relief.

One Massachusetts city—put out a contract for bidding, to heat the city buildings. There was only one bid, and that was only for 50 percent of its contract needs.

So we have a serious problem up there, and I am afraid it is going to get worse this year.

I am happy that the Senator has raised this question. We are going to have to redouble our efforts.

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

Mr. McINTYRE. Mr. President, I ask unanimous consent to have 1 additional minute.

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

Mr. McINTYRE. The application of the State of Maine is still before the Foreign Trade Zone Board and before Secretary of Commerce Stans, Secretary of the Treasury Kennedy, and Secretary of the Army Resor. As a matter of interest to the Senator from Massachusetts, I understand Northeast Petroleum, of Tiverton, R.I., has applied for a refinery at Tiverton, R.I., which would operate without a trade zone.

Mr. BROOKE. I was referring to Occidental Oil Co. The Senator may recall that Occidental Oil was interested initially. At that time there was some question of some preference need. There was much opposition from the oil companies and others. It is my understanding that Occidental has a proposal which will not require preferential treatment at all. I do not know where the location will be, if it is approved. We ought to look into that.

Mr. McINTYRE. I thank the Senator.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be without prejudice to the able Senator from Ohio (Mr. YOUNG) under the previous order.

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

Under previous order, the Senator from Ohio (Mr. YOUNG) is recognized for 10 minutes.

SPIRO, PLEASE COME HOME

Mr. YOUNG of Ohio. Mr. President, the Constitution gives the Vice President of the United States an important duty. In fact, the only mention regarding the Vice President in our Constitution is:

> The Vice-President of the United States shall be President of the senate, but shall have no vote, unless they be equally divided.

If I were to shock easily, Mr. President, I would express surprise that Vice President AGNEW has presided over the Senate from January 19 to August 26 only 14 hours and 50 minutes. Bear in mind, Mr. President, the Senate has been in session approximately 950 hours during this period.

During these days since January 19 I note that many Senators have presided many more hours than has the Vice President. For example, my colleague Senator QUENTIN BURDICK of North Dakota, although a candidate for re-election, has presided 16½ hours. He has presided over the Senate more hours than the man whose duty it is to preside over our Senate sessions. He is doing this at a time when he is a candidate for reelection as U.S. Senator from his State and has many requests from political leaders there to spend many weekends in North Dakota campaigning for reelection.

Senator JAMES ALLEN of Alabama has presided more than 90 hours as against Vice President AGNEW'S 14 hours and 50 minutes. Also Senator TOM EAGLETON of Missouri has presided over the Senate more than 53 hours. Senator HAROLD HUGHES of Iowa more than 51 hours, and the senior Senator from Ohio, who is now speaking in criticism of the Vice President, has presided more than 16 hours against 14 hours and 50 minutes for the Vice President.

Reading in the Cleveland Plain Dealer of August 25, I find that Vice President AGNEW in Seoul, Korea, promised South Korea more war planes—not proposing to sell them to South Korea but as giveaways. He has generously promised to supply as gifts many more aircraft for

South Korea. Then, unfortunately for American taxpayers, the Vice President manifested his tremendous generosity by announcing for Cambodia an economic aid program of $200 million in the coming year. This also as an outright gift.

SPIRO, please come home.

It is discouraging and frustrating to read in today's newspapers and hear in newscasts that the Vice President, following leaving South Korea, said:

It will take five years or more before American troops will be withdrawn from South Korea.

It is further discouraging to learn that the Vice President's next stop is Thailand. One wonders how many millions of dollars for military and economic aid he will offer Thailand. We have approximately 42,000 soldiers and airmen in Thailand. Will he pledge their remaining there for another "5 years or more" fattening the economy of that nation?

We have approximately 56,800 men of our Armed Forces in South Korea. This despite the fact that South Korea now has a regular army of 550,000 well-trained men. This is the fifth largest standing army in the world. North Korea has a standing army of 350,000. In the South Korean navy there are 17,000 officers and men. Only 9,500 in the North Korean navy. South Korea has 30,000 well-trained marines. North Korea none. South Korea with a population of 31 million has 2 million officers and men in its active reserve. They drill at least twice weekly.

North Korea has a population of only 13 million and has a reserve force of but 1,200,000 men.

Now that the Vice President has promised to give American military aircraft to Korea, the air force of South Korea will be at least equal in combat strength with that of North Korea.

Due to our generosity South Korea has attained huge economic growth in recent years. Its prosperity is booming. North Korea is a poverty-stricken backward nation in comparison.

SPIRO, please come home.

Americans should say SPIRO, please come home. SPIRO, preside over the Senate. Unfortunately, we Americans have been giving away billions of dollars of taxpayers' money in recent years so SPIRO AGNEW, please do not do this to us. SPIRO, please come home.

SAME AID DIRECTOR DISGRACED IN VIETNAM NOW IN CHARGE IN CAMBODIA

Mr. YOUNG of Ohio. Mr. President, in the New York Post of Tuesday, August 25, and other metropolitan newspapers in our country, the nationally known columnists Frank Mankiewicz and Tom Braden exposed the Nixon administration leaders for pledging $200 million in economic aid for Cambodia involving the first year alone. This evidently is one of the achievements of Vice President AGNEW in his present trip to Southeast Asia. This is most unfortunate for the American people. This massive economic aid proposal of $200 million is in addition to the military aid program of $50 million to Cambodia to try to maintain the Lon Nol government in power.

This despite the statement of President Nixon that our intrusion in Cambodia was only temporary. Furthermore, it is amazing that this economic aid program for Cambodia is to be under the direction of Charles Mann who was in charge at one time of economic aid in Vietnam and dismissed from that position due to maladministration and corruption—in fact downright thievery of supplies, machinery and equipment which had cost American taxpayers some millions of dollars.

Mr. President, in their column Tom Braden and Frank Mankiewicz exposed this astonishing give-away program under the management of Charles Mann and Mr. President, I ask unanimous consent that the entire column of Tom Braden and Frank Mankiewicz be inserted in the RECORD at this point as a part of my remarks.

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

THE "VETERAN"

(By Frank Mankiewicz and Tom Braden)

WASHINGTON.—An economic aid program for Cambodia, involving up to $200 million in the first year, is in the works, and the man now set to turn it is the same man who ran the aid program in Vietnam until forced out in disgrace after a series of Congressional investigations.

Charles Mann was the director of aid in Saigon in 1966 when a devastating report was made by a House subcommittee led by Rep. John Moss (D-Cal.). The Moss report led to Mann's dismissal from the Saigon post, but he has remained close to the foreign aid scene and recently surfaced as the director of our economic mission in Laos.

From Laos, Mann recently surveyed the Cambodian economy and has recommended a $200 million annual program, strikingly similar to the one he administered in Saigon, which the Moss committee called a "device for such forms of corruption as profiteering through speculation, fraud, smuggling, theft, overpricing and kickbacks, under-the-table payments, false certification for origin of commodities and diversion to the Viet Cong."

The massive economic aid proposal will be in addition to the recently announced military aid program amounting to $50 million. The Cambodian economy cannot survive more than a few months in the aftermath of the great U.S. "victory" and the resultant Communist gains in the country.

Mann's administration of economic aid in Indochina was criticized in Congress even before the Moss committee made the charges stated. An earlier watchdog committee over foreign aid, headed by former Rep. Porter Hardy (D-Va.), was equally critical of Mann when he was aid director in Cambodia before 1963. But it is precisely this same job to which the Nixon administration now proposes to assign Mann.

Moss is alarmed at the prospect. "We will be watching every move," he says and adds with some understatement: "We do not believe there should be a program in Cambodia similiar to the one in Vietnam, and we do not believe Mann is competent to administer it."

But Mann's proposals for Cambodia, now "under study" at the State Department and the White House, call for a duplication in Cambodia of the program which caused such scandal in Saigon. Direct "budget supplement" is an element of it—that is a polite way to refer to large gifts of U.S. cash to make up any difference between expenditures and receipts.

A second element of the Mann proposal involves an international fund to support the Cambodian currency, a device which in Vietnam has resulted in an artificial rate of exchange which robs the American serviceman and the American taxpayer officially almost as much as local graft robs them unofficially.

But the major feature of Mann's plan involves the institution in Cambodia of a commodity import program (CIP). This is the device by which Vietnamese businessmen were kept friendly to the Thieu-Ky government by the granting of permits to import commodities for the civilian market, with the cost footed by American taxpayers. The goods were then resold at whatever the traffic would bear—either to wealthy Vietnamese or to other countries or—on occasion—to Communist China or to the enemy.

It was this CIP program, accounting for billions of dollars of U.S. aid to Saigon, which caused Moss' committee to blow the whistle on Mann in language rarely seen in an official report, and it is this program which—Moss and many of his colleagues believe—causes the Thieu government to resist so bitterly any negotiation which might end the war.

The CIP, according to the committee, "encouraged speculation, windfall profits and corruption, fed inflation and deprived the United States of maximum benefit from its assistance programs." If it is to be repeated for the Cambodians, their hearts and minds will never be the same.

PRESIDENT NIXON WILL NOT BE THE FIRST

Mr. YOUNG of Ohio. Mr. President, on several occasions President Nixon has been quoted as stating, "I do not intend to be the first U.S. President to lose a war." Apparently he has forgotten some American history taught him at Whittier High School. Very definitely, any student of history knows we Americans did not win the War of 1812. We Americans came out on the losing side.

President James Madison, spurred on by the warhawks of that period, went to war in 1812 with Great Britain. This followed a declaration of war which passed the U.S. Senate by a vote of but 19 to 13. The war cry and slogan of that period was sailors' rights and freedom of seas. Incensed citizens of our new Republic demanded that Great Britain be compelled to guarantee freedom of the seas for American merchant ships and an end to impressment of sailors from American ships by officers of English warships boarding our merchant ships removing sailors who they claimed had deserted British warships. The gazettes of that period and Americans generally demanded war against England for freedom of the seas and sailors' rights.

Great Britain maintained ships of line and frigates off Boston, in the Chesapeake Bay and, in fact, all along our eastern seaboard. Its officers were arrogant in their actions as if the United States was still a British colony. They stopped merchant ships and impressed members of the crew they claimed had deserted from English merchant vessels or warships.

Sailors from English frigates had been for years before our declaration of war boarding American merchant ships, removing seamen they claimed had deserted and were impressing them into the British Navy.

In a particularly provocative incident, the English frigate, *Leopard*, in 1807 followed our frigate, *Chesapeake* outside our 3-mile limit, fired a shot across its bow. Then the English commander demanded the right to board our ship and muster the crew to determine whether four deserters from the English squadron were aboard.

The *Chesapeake* was bound for the Mediterranean. Its cannon had not been mounted. Commodore Barron, the vessel's commander, incensed over delays in outfitting this frigate, then the pride of our Navy, decided to save valuable time by putting the ship in shape on the voyage.

Commodore Barron rejected the demand to permit British officers to board our frigate and muster its crew. The English demand was repeated through a trumpet "The Vice Admiral's orders must be obeyed."

When no response was forthcoming, the *Leopard* crossed the *Chesapeake's* bow, riddled her hull with cannon fire. Commodore Barron finally ordered a hot coal carried from the galley and the only cannon in place was fired. Our flag was then hauled down. The British boarded the *Chesapeake*, removed four deserters they found hiding in its hold.

This outrageous attack caused an uproar throughout the new country. The gazettes of that time and citizens generally demanded a declaration of war. English ships of line and frigates were in great strength in the Atlantic. Wherever our merchant ships sailed, many were halted by British warships. Sailors were forcibly removed under the claim they were English deserters. These hostile acts on the high seas continued right up to 1812. Our infant Navy was small. Our Army was inadequate. Its general officers, as a rule, were overage. Many had fought in the Revolutionary War. Liberty-loving patriots demanded war. War was declared against the British Empire.

Later during the war this ill-omened frigate, *Chesapeake*, under Captain Lawrence, engaged in a duel with the British frigate, *Shannon*, off Boston. In this battle, Captain Lawrence, mortally wounded and taken below deck, gave his final order. This has been passed down to generation after generation of Americans and is part of the great history and noble tradition of our Navy. His immortal words were "Don't give up the ship."

The War of 1812 dragged on until the Peace of Ghent, signed by our envoys and the British, Christmas Eve, 1814. Throughout 2 years of war, our soldiers invading Canada met with one disaster after another. General Hull who had boasted that the United States would annex Canada surrendered Detroit without firing a shot from his fortifications; and to a force of Canadians and Indians inferior in number. Later in Canada our soldiers won some battles. They captured and burned the public buildings in York, Canada's capital. Generally speaking, however, our ground forces invading Canada were poorly led and met with one defeat after another.

Perry's victory near Put-in-Bay, Lake Erie, September 10, 1813, was a great naval victory. The British commander Barclay went into combat with one arm and came out with none. This was the first time in history of the world that an entire British squadron surrendered to an enemy. American schoolboys have always been thrilled by Commodore Perry's message:

> We have met the enemy and they are ours: two ships, two brigs, two schooners and a sloop.

Then on Lake Champlain, another naval victory followed. Finally, from one defeat after another in land fighting, the English, Canadians, and Indian Tecumseh, allied with the English, met with defeat. Our land forces, however, undertook no further offensive in Canada but withdrew across the border. Americans had boasted early in 1812 that the conquest of Canada was a mere matter of marching and then Canada was to be annexed to the United States. This claim proved absurd.

Toward the end of the war British naval vessels including ships of line and frigates had completely blockaded our shore. Most frigates and sloops of our small navy were practically interned in rivers while British ships of line, many with 74 guns and frigates with 44 guns, maintained a tight blockade. An English squadron under Admiral Cockburn sailed up the Chesapeake, landed soldiers and marines, routed our militia at Bladensburg, captured Washington and burned the White House and all Government buildings.

In the Peace of Ghent, no mention whatever was made of the cause of the war nor of the main American demand—freedom of the seas and sailors' rights. No guarantees or assurances whatever were asked of the English by our negotiators who were seeking peace. None were granted.

Our War of 1812 with England had been so overshadowed by the War Between the States, or the Civil War, and by the two World Wars which we fought, it is understandable that President Nixon failed to recall that the War of 1812 was the first and only war in the history of our Republic we lost.

Gen. Andrew Jackson's victory at New Orleans, January 8, 1815, was fought 2 weeks after the Treaty of Ghent had been signed and the war ended. News of the peace treaty of Ghent did not reach the United States for a number of days after January 8, 1815.

Sir Edward Packenham, brother-in-law to the Duke of Wellington, had landed his army composed of veterans of the peninsular war. This army, superior in number to the American forces made a frontal assault on the American lines. The Redcoats marched as if in a drill across a plain expecting to easily overwhelm the frontiersmen behind hastily erected ramparts. General Jackson and his officers had stationed our riflemen three deep behind the ramparts, riflemen in front to shoot while the riflemen behind loaded rifles and reloaded as quickly as those in front fired. In a few minutes the flower of the British army had been decimated by this rapid fire. In less than half an hour the field was covered with dead and wounded. The English retreated having suffered losses of 2,600 including Sir Edward Packenham, their commanding officer and five other generals who were killed. The American losses were 13.

President Nixon will not be the first President to lose a war for the valid reason that we Americans certainly did not win the war of 1812—we lost it and later in the war our militia was routed at Bladensburg and the victorious English captured the Capital of our country and burned the White House and Government buildings.

President Nixon must, however, accept the guilt for expanding and escalating the Vietnam war into Cambodia, Laos, and Thailand, and this fact has been acknowledged by Pentagon and White House officials who now term our expanded air and ground war as the Indochinese war. Unfortunately, our giant B–52 bombers are operating sorties around the clock in Cambodia and along the southern border of Thailand, and in Laos in addition to our continuing operations in Vietnam. This is an undeclared war that is unwinable.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Arizona (Mr. FANNIN) is recognized for 10 minutes.

THE FIGHT AGAINST ILLEGAL NARCOTICS

Mr. FANNIN. Mr. President, last April I told the Senate about one of several community projects in Arizona aimed at stopping the epidemic of illegal drug use among the young. Since that time, community antidrug efforts in my State have intensified. Parents especially are concerned about the illegal narcotics their children are being exposed to.

Many of the citizen groups fighting narcotics are making a splendid effort to bridge the so-called generation gap and to get across the perils of narcotics and marihuana.

These groups are showing the initiative and determination to solve their own problems—the spirit of the Old West.

However, young persons in my State and the rest of the Nation will continue to be tempted by peddlers of destructive drugs unless stronger action is taken both nationally and internationally to cut off the illicit trade.

As far as action at the Federal level is concerned, the administration has submitted to Congress legislation to further accelerate our battle against drugs. The measure, the Controlled Dangerous Substances Act, was passed by the Senate by an 82 to 0 vote on January 28, 1970, and is now pending in the House.

Internationally, we have the United Nations with its Commission on Narcotic Drugs, and the International Narcotics Control Board. We also have an international treaty on narcotic drugs, the Convention on Narcotic Drugs of 1961.

In describing the value of the convention in its report to Congress on May 3, 1967, the Senate Foreign Relations Committee stated:

The 1961 single convention is the culmination of more than 55 years of effort and progress in the field of international narcotics control.

The United States has ratified this international agreement, as have 79 other nations including France, Turkey, Mexico, and Burma.

Unfortunately, paper support and active support are two entirely different and unrelated matters. These international agreements on narcotics control all too often have proven ineffective in coping with major sources of illegal narcotics being sent to the United States. It is for this reason that I chose to cosponsor along with the Senator from California (Mr. MURPHY) and the Senator from Oregon (Mr. PACKWOOD) S. 4233, which promises to increase the active support of the United States in the international control of drug traffic, and hopefully will inspire other nations to cooperate in this needed activity.

This bill pledges that not less than 10 percent of the U.S. fiscal 1971 appropriations for voluntary contributions to the U.N. development program be spent to establish a multilateral fund to support activities designed to end the illegal international traffic in narcotics. It directs the President to support effective multilateral undertakings aimed at the eradication of illegal production and traffic in narcotics through U.S. representatives to international organizations.

It directs the President to support the strengthening of those powers presently given to the United Nations concerning narcotics. This would include investigation and publication of information relating to illegal production and traffic in narcotics, and a further convention concerning production and traffic in synthetic drugs, the so-called psychotropics.

Finally, this bill directs the President to withhold U.S. assistance to nations which refuse to cooperate with U.N. or U.S. programs aimed at suppressing illegal narcotics traffic. The bill requires that the President shall withhold assistance from any country which the President determines has refused—a—to cooperate with the United Nations or its agencies in carrying out programs to suppress international traffic in narcotics or—b—to take appropriate steps to prevent narcotic drugs produced in such country from entering the United States unlawfully.

Sources of the drugs are fairly well known. For example, 80 percent of the illicit heroin sold in this country is grown in Turkey and processed in France. Most of the rest comes from Mexico, with only a small percentage originating in the Burma, Thailand, Laos area.

Just last week the President of Mexico pledged to work with the United States in suppressing the illicit narcotics trade.

Attempts to convince foreign governments they should cut off the illegal production of narcotics are nothing new. But the U.S. Government intensified its efforts in July 1969 after President Nixon emphasized that the elimination of narcotics trafficking was a major matter of U.S. policy.

It was only a month later that the cooperation of U.S. narcotics agents with French agents resulted in the largest seizure of opium ever recorded in France.

Through efforts of the administration, a Franco-American Intergovernmental Committee on Drug Control has been formed. France has increased its force of narcotics agents.

One year ago this month, there was another important action. The United States made a $3 million loan to Turkey for two purposes: equipment of a 750-man narcotics force and the establishment of a crop rotation plan.

Although Turkey has now reduced the number of provinces where opium poppies may be grown from 21 to 7, there is a question as to how successful this program has been.

Despite these efforts, heroin continues to pour into the United States.

I believe the administration has pursued a vigorous course using all the tools available to it in trying to stem this tide.

But there still are weak links in the chain of international, national, and local efforts to eradicate the blight of narcotics which threatens to overwhelm the Nation.

That is why we need to give the President the authority to put effective pressure on uncooperative nations.

While American citizens, young and old, mobilize locally to discourage narcotics use, the Federal Government must make strong efforts to intercept the professional peddler, and foreign governments must move forcefully against clandestine fields and dope factories.

RUSSIANS TEST NEW MRV MISSILES

Mr. FANNIN. Mr. President, in view of the votes taken recently here in the Senate supporting the administration's limited expansion of the ABM system, there was a significant announcement yesterday by Secretary of Defense Melvin R. Laird.

He noted that the Russians have in the past few weeks tested an SS–11 intercontinental ballistics missile carrying a multiple warhead. The Russians have also tested an SS–15.

The major significance of these Russian developments lies in the fact that the SS–11 is only about a third as expensive for the Soviets to build as the larger SS–9. It is estimated the SS–11 costs about $10 million to deploy whereas the SS–9 costs about $30 million. The major disadvantage of the SS–11 up to now has been that it is smaller and therefore cannot carry so massive a warhead as the larger SS–9. If the MRV tests are, however, successful, this big disadvantage will be whittled down considerably. The Soviet attack force will be much more deadly and flexible.

I bring this to the attention of the Senate only because it helps to provide added evidence—if such evidence were needed—to support those Senators who voted in favor of the ABM system. Their votes proved to be farsighted indeed.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, with a limitation of 3 minutes on statements therein.

Mr. BROOKE. Mr. President, I ask unanimous consent that I may proceed for 3 additional minutes.

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

NEED TO WORK FOR HUMANE TREATMENT OF PRISONERS

Mr. BROOKE. Mr. President, for the past 4 months the Senate has spent much of its time considering and discussing the problems of the war in Vietnam. It is the earnest desire of all Senators—as it is the desire of all Americans—to bring this war to an early conclusion.

But in our eagerness to see an end to the fighting we must never lose sight of the high-priority consideration, and that is the problem of the Americans now being held prisoner of war in North Vietnam. We must do nothing that will make their bondage more difficult, nor that will postpone in any way their release and reunion with their families.

At the same time we must double and redouble our efforts, both as a Government and as American citizens, to win for them at least the minimum degree of humane treatment provided for by the Geneva accords on prisoners. Among the immediate goals is that of communication between the prisoners and their families without that process being made part of the Communist propaganda war effort.

These considerations must be uppermost always in our minds as we discuss these vital issues.

Mr. President, the distinguished Senator from West Virginia (Mr. BYRD) has been in the forefront of those in Congress who have been working very diligently in trying to alleviate the pains of the families of the 1,500 or more American prisoners of war still being held in camps in North Vietnam. The distinguished Senator from West Virginia and I have jointly filed a resolution with the Senate calling for a special joint committee to conduct hearings. We are hopeful that our resolution will soon be acted upon by the Committee on Foreign Relations, to which it has been referred.

In the meantime, Mr. President, the North Vietnamese still have not shown any inclination whatever to release any of our prisoners. To the best of our information, since the senior Senator from West Virginia and I entered into a rather lengthy colloquy on the floor of the Senate, there has been no improvement in the communication between the prisoners of war and their families in the United States. Unfortunately, many of the wives and mothers have had to go around the world in an attempt to get a message to Hanoi, in an attempt to have Hanoi recognize their responsibility in the treatment of prisoners of war. This is a very shameful circumstance, and one which we certainly hope will be alleviated.

The North Vietnamese must see that we have released prisoners of war, that the treatment of their prisoners has cer-

tainly been humane and they have been allowed to communicate with their families. We expect no less and we will stand for no less.

Mr. BYRD of West Virginia. I thank the able junior Senator from Massachusetts for again bringing this subject to the attention of the Senate. I join him in expressing the hope that the Committee on Foreign Relations will conduct an early hearing on the resolution.

It is pleasing to state that 40 Senators have cosponsored the resolution which has been jointly authored by the Senator from Massachusetts and me. I trust that the Committee on Foreign Relations will be able to give prompt and favorable action to the resolution. It will be my plan—I have discussed this with the Senator from Massachusetts only today—to discuss the resolution with the chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT), hopefully, at some point during the afternoon today.

Mr. BROOKE. I certainly thank the Senator from West Virginia. Jointly we want it to be known that we do not intend to let this matter drop, that we do not intend just to bring it up every 3 or 4 months, but that we intend to press it and press it and press it, until results are obtained and our American prisoners of war are released. In the interim period, we intend to do all in our power to see that they are treated humanely; and hopefully, that communication between them and their families will be permitted.

Mr. BYRD of West Virginia. I thank the Senator very much. He is performing a great service.

ECONOMY BEING REMOVED AS CAMPAIGN ISSUE

Mr. BROOKE. Mr. President, there is an old English saying that once may be an accident, twice a coincidence, but three times is a moral certainty.

Today it may be fair to go nearly that strong in suggesting that there are solid signs of an economic resurgence in the United States. These signs have come up without the simultaneous self-consuming flames of inflation destroying the effect of that economic upswing.

The latest indication that the economic climate is improving is the preliminary report by the Bureau of Labor Statistics that, for the first time since long before the Nixon administration took office, there is an actual decline in the wholesale price index. During August that index has declined by one-half of 1 percent. This is a major decline.

Newspaper accounts hasten to point out that the effects of this decline may be exaggerated—and I myself do not wish to over-emphasize its importance. But, taken together with the optimistic reports we have been receiving from the Council of Economic Advisers, we now have solid evidence to support the contention that the inflationary spiral has been broken.

It may be weeks, or a month or more, before the wholesale index decline is followed by lower prices at the marketplace. But it now appears assured that this will follow and that for the first time in a decade the buying power of the American dollar will actually show a slight increase instead of a continual erosion.

Of course, there will be economists who scoff at this indication of something better in the offing. It is to their political advantage to scoff, and so we should expect them to scoff. There are those who maintain that the Nation's economy will be in poor condition, and that this will be the biggest single issue during this fall's election. Those who make it such an issue obviously hope to gain votes by doing so.

To gain such votes they will put emphasis on gloom and predictions of disaster, of recession or even depression. There has already been some considerable talk by certain officeseekers of a recession in the midst of inflation, and so forth.

These self-serving predictors of economic doom will continue to preach along this vein.

The facts, however, again—and now more than ever—appear to belie their words.

They will have to find some other issue upon which to run for office; the one to which they now cling is too slender to hold their weight. For their own purposes they have wished the Nation's economy to decline. They have wanted people to believe that inflation means a good economy, that a lessened purchasing ability is good because, for some, it may be accompanied by more, though cheaper, dollars in the pocket. They are being proved wrong. The stability of our economic fabric is being restored. The benefits to all are apparent.

The decline in the wholesale price index is only one more of a series of indications that the policy of fiscal responsibility is working.

COMMUNICATION FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. BYRD of West Virginia) laid before the Senate the following letter, which was referred as indicated:

APPROVAL OF LOAN TO ARKANSAS VALLEY G. & T., INC., OF PUEBLO, COLO.

A letter from the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, transmitting, pursuant to Senate report No. 497, information relating to the approval of a loan to Arkansas Valley G. & T., Inc. of Pueblo, Colo., for the financing of certain transmission facilities (with an accompanying paper); to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MAGNUSON, from the Committee on Commerce, without amendment:

H.R. 17133. An act to extend the provisions of title XIII of the Federal Aviation Act of 1958, as amended, relating to war risk insurance (Rept. No. 91–1140).

By Mr. ALLOTT, from the Committee on Interior and Insular Affairs, without amendment:

S. 3997. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Confederated Bands of Ute Indians in Court of Claims case 47567, and a judgment in favor of the Ute Tribe of the Uintah and Ouray Reservation for and on behalf of the Uncompahgre Band of Ute Indians in Indian Claims Commission docket No. 349, and for other purposes (Rept. No. 91–1141).

By Mr. FANNIN, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 13434. An act to provide for the disposition of judgment funds on deposit to the credit of the Hualapai Tribe of the Hualapai Reservation, Ariz., in Indian Claims Commission dockets Nos. 90 and 122, and for other purposes (Rept. No. 91–1147).

By Mr. MOSS, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 16416. An act to reimburse the Ute Tribe of the Uintah and Ouray Reservation for tribal funds that were used to construct, operate, and maintain the Uintah Indian irrigation project, Utah, and for other purposes (Rept. No. 91–1148).

By Mr. BELLMON, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 14097. An act to authorize the use of funds arising from a judgment in favor of the Citizen Band of Potawatomi Indians of Oklahoma in Indian Claims Commission docket No. 96, and for other purposes (Rept. No. 91–1149); and

H.R. 14827. An act to provide for the disposition of funds to pay a judgment in favor of the Sac and Fox Tribes of Oklahoma in Indian Claims Commission docket No. 220, and for other purposes (Rept. No. 91–1150).

By Mr. HANSEN, from the Committee on Interior and Insular Affairs, with an amendment:

S. 2735. A bill to provide for the conveyance of certain public lands in Wyoming to the occupants of the land (Rept. No. 91–1142).

By Mr. BIBLE, from the Committee on Interior and Insular Affairs, with an amendment:

S. 3196. A bill to declare that certain federally owned lands in the State of Nevada are held by the United States in trust for Reno-Sparks Indian Colony, and for other purposes (Rept. No. 91–1143).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with an amendment:

S. 4078. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Snohomish Tribe in Indians Claims Commission docket No. 125, the Upper Skagit Tribe in Indian Claims Commission docket No. 92, and the Snoqualmie and Skykomish Tribes in Indian Claims Commission docket No. 93, and for other purposes (Rept. No. 91–1144).

By Mr. FANNIN, from the Committee on Interior and Insular Affairs, with amendments:

S. 4033. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Chemehuevi Tribe of Indians (Rept. No. 91–1145).

By Mr. CHURCH, from the Committee on Interior and Insular Affairs, with amendments:

S. 3487. A bill to authorize the sale and exchange of certain lands on the Coeur d'Alene Indian Reservation, and for other purposes (Rept. No. 91–1146).

HEALTH INSURANCE LEGISLATION—REPORTS OF A COMMITTEE

Mr. BURDICK. Mr. President, from the Committee on Post Office and Civil Service, I report favorably, two bills relating to the Government contribution toward the cost of the Federal employees health insurance program. The

bill (S. 1772) is reported with amendments, and I submit a report (No. 91-1151) thereon. The second bill (H.R. 16968) is reported without amendment, and has no written report.

Under existing law, the Government contributes approximately 28 percent of the average cost of high option health insurance. Under S. 1772, which the committee agreed upon some time ago, this contribution would increase, effective October 1, 1970, to 40 percent of the average cost. The House bill is virtually identical to the Senate bill except that it provides for a 50-percent contribution. The House bill is reported so that, when the Senate bill is acted upon, the action can then be vacated and the House bill can be amended with substitute language in the form of S. 1772, and a conference, if necessary, on a House-passed bill number can be arranged. I hope that, if the Senate agrees with the committee's recommendation, the House might be willing to go along with the lower figure of 40 percent, so that the bill can be quickly signed into law and become effective at the beginning of the first pay period in October 1970.

The PRESIDING OFFICER (Mr. HANSEN). The report will be received and the bills will be placed on the calendar; and the report will be printed.

BILLS INTRODUCED

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

By Mr. SCOTT:

S. 4292. A bill to provide for fiscal responsibility through the establishment of a limitation on budget expenditures and net lending (budget outlays) for the fiscal year 1971, and for other purposes; to the Committee on Finance.

S. 4293. A bill for the relief of Yung Suk Kang; to the Committee on the Judiciary.

By Mr. SPARKMAN:

S. 4294. A bill to amend the Federal Aviation Act of 1958 to authorize free or reduced rate transportation for widows, widowers, and minor children of employees who have died while employed by an air carrier or foreign air carrier after 25 or more years of such employment; to the Committee on Commerce.

By Mr. MILLER:

S. 4295. A bill to authorize appropriations for the fiscal years 1972 and 1973 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes; to the Committee on Public Works.

(The remarks of Mr. MILLER when he introduced the bill appear below under the appropriate heading.)

By Mr. CRANSTON (for himself, Mr. YARBOROUGH, Mr. HUGHES, Mr. JAVITS, Mr. KENNEDY, Mr. NELSON, Mr. SCHWEIKER, and Mr. WILLIAMS of New Jersey):

S. 4296. A bill to amend title VII of the Public Health Service Act to meet the need for additional personnel in the health professions by encouraging and assisting disadvantaged individuals to pursue training designed to prepare them to engage in the practice of such professions, and for other purposes; to the Committee on Labor and Public Welfare.

(The remarks of Mr. CRANSTON when he introduced the bill appear below under the appropriate heading.)

By Mr. KENNEDY (for himself, Mr. YARBOROUGH, Mr. COOPER, Mr. SAXBE, Mr. MCGOVERN, Mr. MONDALE, Mr. PELL, Mr. YOUNG of Ohio, Mr. HART, Mr. CRANSTON, Mr. HUGHES, Mr. BAYH, Mr. METCALF, Mr. MUSKIE, and Mr. MCCARTHY):

S. 4297. A bill to create a health security program; to the Committee on Finance.

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

By Mr. SMITH of Illinois:

S. 4298. A bill to authorize a White House Conference on Education in 1972; to the Committee on Labor and Public Welfare.

S. 4299. A bill to authorize the Secretary of the Interior to erect an historical marker in or near the Woodlawn Cemetery, Carbondale, Ill., designating such Cemetery as the site of the first recorded planned Memorial Day observance; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. SMITH of Illinois when he introduced S. 4299 appear below under the appropriate heading.)

S. 4295—INTRODUCTION OF THE FEDERAL-AID HIGHWAY ACT OF 1970

Mr. MILLER. Mr. President, I introduce for printing and appropriate reference a bill to authorize appropriations for fiscal years 1972 and 1973 for the construction of certain highways and to extend the time for completion of the National System of Interstate and Defense Highways.

I understand that the Senate Public Works Committee has held several weeks of hearings on various aspects of the Federal-aid highway program. Many different proposals have been advocated regarding what should be done with highway trust funds. Both Senator RANDOLPH, chairman of the committee, and Senator COOPER, the ranking Republican member, have introduced bills on this subject and both have invited Senators to make their views known to the committee. I am using the means of introducing this bill to set forth my views on this subject.

The Interstate System in this country is now more than 70 percent complete. It is anticipated that it can be completed by 1976 or 1977. It is my belief that no major changes should be made in the trust fund revenues and their distribution while the Interstate System is still unfinished. After completion of the system there will be ample opportunity to consider whether any changes in the use of the trust funds should be made.

Therefore, I am introducing this bill today which would merely authorize appropriations for the Federal-aid highway program. It would also extend the date for completion of the National System of Interstate and Defense Highways from the current target date of 1974 to 1976 and would provide authorization of funds for those years. These provisions are the same as the corresponding ones in the administration bill.

The PRESIDING OFFICER (Mr. BYRD of Virginia). The bill will be received and appropriately referred.

The bill (S. 4295) to authorize appropriations for the fiscal years 1972 and 1973 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes, introduced by Mr. MILLER, was received, read twice by its title, and referred to the Committee on Public Works.

S. 4296—INTRODUCTION OF THE HEALTH PROFESSIONS ASSISTANCE AMENDMENTS OF 1970

Mr. CRANSTON. Mr. President, I introduce today, for myself and Senator YARBOROUGH, chairman of the Health Subcommittee, of the full Labor and Public Welfare Committee, and a leader of the Nation in health affairs, and for Senators HUGHES, JAVITS, KENNEDY, NELSON, SCHWEIKER, and WILLIAMS of New Jersey, a bill to "amend title VII of the Public Health Service Act to meet the need for additional personnel in the health professions by encouraging and assisting disadvantaged individuals to pursue training designed to prepare them to engage in the practice of such professions, and for other purposes." Its short title would be the "Health Professions Assistance Amendments of 1970."

I am delighted that six members of the Health Subcommittee have joined in cosponsorship of this bill.

The purpose of this legislation is to make important improvements in the health professions student loan and scholarship programs, to encourage greater representation of the educationally and economically disadvantaged in the health professions, and to provide incentives for health professionals assisted through Federal student loans to practice in urban and rural poverty areas.

We face a critical shortage of health professionals in the United States today, including an estimated 50,000 physicians and 9,000 dentists. Adequate health care is simply not available to millions of Americans. And this inadequacy is the result not only of a poorly functioning delivery system but also of shortages in various critical categories of health manpower.

In December 1968, the report of the Carnegie Commission on the future of higher education recommended "a substantial program of Federal aid for medical education" in order to increase the supply of medical school graduates in response to the Nation's rapidly growing need for medical services. Unfortunately, since that time, Federal support for medical education has not expanded at a pace adequate to meet the need.

An important facet of the overall shortage of health professionals is the disproportionately low representation of minority groups in such professions; their representation falls far short of the proportions which such groups represent in the population as a whole. For example, although blacks make up 11 percent of our population, only 2 percent of the medical profession is black. There are only 6,000 black physicians in the entire Nation; one out of every 560 whites is a physician while the rate for blacks is one out of every 3,800. Although comparable nationwide data is not available, the representation of chicanos, Indians and those of oriental descent is estimated

to be even lower proportionately. For example, although chicanos comprised as of 1960 approximately 11 percent of the total population in the Southwestern States, chicanos comprise only 1 percent of the medical student bodies in those States.

This unequal representation is due in large part to two things: the lack of effective counseling to encourage and assist minority students to enter the health professions, and the inadequacy of existing financial aid programs to provide assistance at levels which would enable the disadvantaged to meet the enormous, exploding costs of undergraduate and graduate education in the health professions.

The shortage of health professionals is most apparent and most unfair among the poor, for whom the lack of decent medical care is a serious and growing problem. It is estimated that 10 million persons in this country receive no medical care and for another 20 million the care is substandard and minimal. One reason for the appalling lack of adequate health care among the poor—both rural and urban—is the shortage of health professionals in general. Another is the severe economic disadvantages for any health professional choosing to serve in a low-income community. Poverty areas offer neither the prestige nor the economic rewards attainable in suburban or midcity areas. Thus, not only are the disadvantaged deterred from following careers in the health professions by the prohibitive cost of the many years of schooling required, but those who do manage to become doctors, dentists or other health professionals are prevented from practicing in a poverty area by the necessity of repaying educational debts.

Many young health professionals—black, white, or brown, disadvantaged or not—who would otherwise find a worthy outlet for their idealism, energy and social commitment working in a poverty area find it is simply economically impossible to do so. So these professionals go into practice elsewhere, or they go into research, and the health needs of the poor go unmet.

An important new initiative in this area—which the bill I am introducing would complement and enlarge upon—is the health manpower development program of the National Urban Coalition. This new program is aimed at increasing the supply of doctors, dentists and other health providers in poverty areas, under a $2 million grant just made by the Office of Economic Opportunity. In announcing the new program, John W. Gardner, chairman of the coalition and former Secretary of Health, Education, and Welfare, said:

> There is a particular need to recruit more minority groups into the health professions. In the United States today, only two percent of our physicians are black. Many more members of the minority communities, not only black but Mexican-American and Puerto Rican, would like to pursue careers in health. Such opportunities are almost wholly dependent on the provision of adequate financial support. I cannot emphasize that point too strongly.

In order to assist disadvantaged students to enter the health professions, and to make other improvements in health professions student assistance programs, the bill proposes a number of important changes in the health professions loan and scholarship programs. These changes would benefit all students in need of financial assistance. The loan program, which expires in fiscal year 1971, would be extended through fiscal year 1976. The fiscal year 1971 authorization would be increased from $35 million to $45 million. The authorization for fiscal year 1972 would be $55 million with increases of $5 million for each of the next 4 fiscal years. The student loan maximum would be increased from $2,500 to $3,500 per year for all students. Estimates given to me by medical schools in California are that present student costs average about $6,000 per year and are expected to increase substantially over the next several years. The combination of a $3,500 loan and a $2,500 scholarship authorized under present law would, therefore, just about cover average costs at these schools right now. However, there are many schools where costs are higher than $6,000 per year, and that figure does not include the added expenses for married students with dependents.

For those who are educationally or economically disadvantaged due to socioeconomic factors, the maximum loan would be increased to $7,000 per year. A recent report to the Inter-Association Committee on Expanding Educational Opportunities in Medicine for Black and other Minority Students, by a task force of the American Association of Medical Colleges, concluded:

> The main barrier today for minority students is the inadequacy of financial aid. Coincident with increasing enrollment of minority students in medical schools, federal government and other sources of funds have been decreasing. The need is urgent for reversing this trend and establishing better mechanisms for utilizing available funds.

Another feature of the bill is a broadening of present loan forgiveness provisions. Under existing law, indebtedness on health professions loans is forgiven at the rate of only 15 percent for each year of practice in a rural poverty area. The bill recognizes the need to provide greater encouragement for health professionals to practice in areas where the need is greatest, including both urban and rural poverty areas. Under the bill, loans would be forgiven, up to the full amount of the loan plus accrued interest, at the rate of 33⅓ percent for each year in which a physician, dentist or optometrist practices in either an urban or rural poverty area. This provision for total loan obligation cancellation over 3 years would make cancellation for the first time an attractive alternative to private practice as a means of paying off a student loan. It would also dovetail nicely with Senator MAGNUSON's proposed pilot project National Health Service Corps, contained in S. 4106, which I am privileged to cosponsor.

In addition, in order to provide a greater inducement for medical and other health professions schools to admit larger numbers of disadvantaged students, the scholarship formula would be revised to provide substantial additional assistance to such schools based on the number of such students they enroll. Under present law, this formula is $2,000 times 10 percent of the full-time student population; that is, the school's scholarship fund receives $200 for each student enrolled. The bill would authorize an additional $2,500 to the scholarship fund based on each full-time student who is disadvantaged—as defined in the outreach program which I will discuss next. The maximum individual scholarship for such disadvantaged students would be increased from $2,500 to $5,000, and the scholarship program would be extended through fiscal year 1976.

Finally, the bill would add a new part H to title VII of the Public Health Service Act to provide for grants and contracts to schools and other public or nonprofit organizations for the purpose of identifying, encouraging, and assisting disadvantaged individuals with a potential for education or training in the health professions. Specifically included are those returning veterans with training or experience in the health field. Individuals would be assisted in enrolling, or in qualifying to enroll, in postsecondary education or training, including health professions schools. The outreach program would also provide for broad dissemination of information on sources of financial aid available for such postgraduate or postsecondary education and training.

To this extent, the bill's outreach provisions are similar to those contained in S. 3586, the Health Training Improvement Act of 1970 already passed by the Senate—section 205—as well as the version passed by the House regarding allied health professionals. However, our bill goes further and specifically would authorize the Secretary to fund such other programs as he determines would enhance the enrollment, pursuit, and completion of study by such disadvantaged persons once they are enrolled in medical and other health professions schools.

The bill would authorize appropriations of $5 million for fiscal year 1971, and $40 million over the next 4 fiscal years for this outreach and special assistance program.

This outreach concept was recommended in the AAMC report on expanding minority student opportunities in the health professions, which I referred to earlier. The report called for a network of regional centers to provide information about career opportunities for disadvantaged students in the health professions. Such a program, the report stated, would serve a vital motivational purpose in encouraging and assisting qualified disadvantaged students who were pursuing or considering education and training in the health professions. The fact is that many, many disadvantaged persons who could be effectively educated and trained for vital health professional roles never consider this as a viable possibility. This program would seek to change that and make clear the great possibilities which exist for them in this highly critical skill-shortage area.

The new outreach initiative which I

am proposing would respond to two of the three major needs identified in the AAMC report: First, recruitment of students into health professions education; and, second, retention of students already in the "educational pathway" leading to such professions.

Finally, I wish to point out that physicians' assistants would be assisted under the allied health professions programs contained in S. 3586, the Health Training Improvement Act of 1970, which passed the Senate on July 13. Physicians' assistants are specifically recognized in the Senate report on that bill as being one of several new and promising categories of health manpower. Physicians' assistants are not included under this bill which deals only with the more traditional categories of health professionals. However, I strongly believe that the physicians' assistant is a very important new category in the health manpower area, and must be assisted to the maximum possible extent.

As a member of the Labor and Public Welfare Committee's Health Subcommittee, and as chairman of its Veterans' Affairs Subcommittee, I am deeply involved in the committee's efforts to improve our health care delivery system and to expand our supply of health professionals. Meeting these goals requires increasing our commitment to and our financing of student assistance programs, institutional and special project grants to medical and health professions schools, construction funds and research. However, in expanding and improving these programs I believe we must give special attention to ways in which they can be utilized to improve educational opportunities for the disadvantaged and to improve health care in our poverty areas.

Although I have emphasized the benefits of this bill to disadvantaged health professions students, I would like to make very clear that this bill is also intended to provide general assistance to health professions schools and students by improving and enlarging the loan and scholarship funds available for all students at all medical and health professions schools. We took a major step in this discretion by authorizing the appropriation of $100 million in emergency relief for medical and dental schools in financial distress in S. 3586, the Health Training Improvement Act of 1970, already passed by the Senate. Under that bill, the Secretary would be authorized to make grants to medical and dental schools in dire financial straits as a result of their affirmative response to one or more of the following aspects of national health policy: First, increasing enrollment of students for the purpose of augmenting the supply of trained health professions personnel; second, improving the quality or delivery of health care and services to disadvantaged persons in urban or rural areas; third, providing care to substantial numbers of patients under medicare and medicaid; or fourth, maintaining enrollments and quality in the face of rapidly rising costs.

Another example of the effort being made to meet the health professionals crisis is the action being taken by the University of California School of Medicine at Davis, where the first-year enrollment of medical students is to be increased from 52 to 100 next year. The 3-year-old school will apply for a 5-year, $5 million grant under the physician augmentation program, which provides grants to medical schools willing to make major increases in their first year enrollments. According to C. J. Tupper, dean of the school:

> The plan reflects the concern on the part of administrative and faculty members as to the school's responsibility in meeting the physician manpower shortage crisis.

The Davis medical school proposal is an ambitious one. In light of the very pressing needs and the long period of years before an entering medical student actually becomes an M.D., the timing is important and highly commendable. However, much of the success of the expansion will rest on the adequacy of Federal support in such areas as student assistance, institutional support and health facilities construction grants. It is important, therefore, that these vital programs of support for health professions education be maintained and expanded this year and in the coming years if such initiatives as that being undertaken at UC-Davis are to be productive in helping to solve the health manpower crisis.

Mr. President, I ask unanimous consent that there be printed in the RECORD at this point an analysis of the bill followed by the full text of the bill.

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

The bill (S. 4296) to amend title VII of the Public Health Service Act to meet the need for additional personnel in the health professions by encouraging and assisting disadvantaged individuals to pursue training designed to prepare them to engage in the practice of such professions, and for other purposes, introduced by Mr. CRANSTON (for himself and other Senators), was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 4296

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Health Professions Assistance Amendments of 1970".

SEC. 2. Title VII of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART II—GRANTS AND CONTRACTS TO ENCOURAGE FULL UTILIZATION OF EDUCATIONAL TALENT FOR THE HEALTH PROFESSIONS

"SEC. 799a. (a) To assist in meeting the need for additional professional personnel in the health professions (as defined in subsection (b)), the Secretary is authorized to make grants to State or local educational agencies or other public or nonprofit private agencies, institutions, and organizations, or enter into contracts (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)) for the purpose of—

"(1) identifying individuals with a potential for education or training in the health professions (including veterans of the Armed Forces of the United States with training or experience in the health field) who due to socioeconomic factors are financially or educationally disadvantaged, and encouraging and assisting them (A) to enroll in a school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, or public health which is accredited as provided in section 721(b)(1)(B); or (B) if they are not qualified to enroll in such a school, to undertake such postsecondary education or training as may be required to qualify them to enroll in such a school;

"(2) publicizing existing sources of financial aid available to persons enrolled in any such school or who are undertaking training necessary to qualify them to enroll in any such school; or

"(3) establishing such programs as the Secretary determines will enhance and facilitate the enrollment, pursuit, and completion of study by individuals referred to in clause (1) in schools referred to in clause (1)(A).

"(b) For purposes of this part, the term 'professional personnel in the health professions' refers to any of the following—

"(1) doctors of medicine;

"(2) doctors of dentistry or persons holding an equivalent degree;

"(3) doctors of osteopathy;

"(4) doctors of pharmacy or bachelors of science in pharmacy;

"(5) doctors of optometry or persons holding an equivalent degree;

"(6) doctors of podiatry or doctors of surgical chiropody;

"(7) doctors of veterinary medicine or persons holding an equivalent degree; or

"(8) graduates of schools of public health.

"(c) For the purpose of carrying out the provisions of this part, there is authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1971; $7,000,000 for the fiscal year ending June 30, 1972; $9,000,000 for the fiscal year ending June 30, 1973; $11,000,000 for the fiscal year ending June 30, 1974; and $13,000,000 for the fiscal year ending June 30, 1975."

SEC. 3. (a) Section 741(a) of the Public Health Service Act is amended—

(1) in the first sentence thereof, by striking out "Loans" and inserting in lieu thereof "except as otherwise provided in the succeeding sentence, loans";

(2) in the first sentence thereof, by striking out "$2,500" and inserting in lieu thereof "$3,500"; and

(3) by inserting after the first sentence thereof the following new sentence: "In the case of any student who is an individual referred to in section 799(a)(1) such loans may not exceed $7,000 for any such student for any such year."

(b) The second sentence of section 741(f) of such Act is amended—

(1) by striking out "15 per centum" and inserting in lieu thereof "33⅓ per centum";

(2) by striking out "a rural area" and inserting in lieu thereof "an urban or rural area"; and

(3) by striking out "an amount equal to an additional 50 per centum of the total amount of such loans plus interest may be canceled" and inserting in lieu thereof "an amount equal to the total amount of such loans plus interest may be canceled".

(c)(1) Effective in the case of fiscal years ending after June 30, 1970, the first sentence of section 742(a) of such Act is amended to read as follows: "There is authorized to be appropriated to the Secretary of Health, Education, and Welfare to carry out this part (other than section 744) $45,000,000 for the fiscal year ending June 30, 1971, $55,000,000 for the fiscal year ending June 30, 1972, $60,000,000 for the fiscal year ending June 30, 1973, $65,000,000 for the fiscal year ending June 30, 1974, $70,000,000 for the fiscal year ending June 30, 1975, and $75,000,000 for the fiscal year ending June 30, 1976.".

(2) The third sentence of such section 742(a) of such Act is amended—

(A) by striking out "1972" and inserting in lieu thereof "1977"; and

(B) by striking out "1971" and inserting in lieu thereof "1976".

SEC. 4. (a) Effective with respect to fiscal years ending after June 30, 1970, the first sentence of section 780(b) of the Public Health Service Act is amended to read as follows: "For the fiscal year ending June 30, 1971 and for each of the next five fiscal years, the amount of the grant under subsection (a) to each such school shall be equal to (1) $2,000 multiplied by one-tenth of the number of full-time students of such school, plus (2) $2,500 multiplied by the number of full-time students of such school who are individuals referred to in section 799a(a)(1)."

(b) The second sentence of such section 780(b) is amended—

(1) by striking out "1972" and inserting in lieu thereof "1977"; and

(2) by striking out "1971" and inserting in lieu thereof "1976".

(c)(1) Section 780(c)(1)(D) of such Act is amended by striking out "two" and inserting in lieu thereof "seven".

(2) Section 780(c)(1)(E) of such Act is amended—

(A) by striking out "1971" and inserting in lieu thereof "1976"; and

(B) by striking out "1972" and inserting in lieu thereof "1977".

(3) The second sentence of section 780(c)(2) of such Act is amended by striking out "$2,500" and inserting in lieu thereof $5,000 (in the case of any student who is an individual referred to in section 799a(a)(1)), or $2,500 (in the case of any other student).".

The analysis, presented by Mr. CRANSTON, is as follows:

ANALYSIS OF S. 4296—THE PROPOSED HEALTH PROFESSIONS ASSISTANCE AMENDMENTS OF 1970

I. GENERAL DESCRIPTION

The bill is designed to encourage and assist persons who are financially or educationally disadvantaged because of socio-economic factors to pursue training in the health professions. It would accomplish this by establishing a special outreach program to identify, encourage, and prepare disadvantaged persons to enroll in health professions schools and making grants to those schools once they enroll significant numbers of disadvantaged students. In addition, the present law concerning loans and scholarships for students in the health professions schools would be amended (1) to extend these two programs through fiscal year 1976; (2) to raise the maximum limits on loans for all students and on scholarships for disadvantaged persons; (3) to increase the authorizations of appropriations for the loan program; (4) to provide for substantial increases in the allocation of scholarship funds to schools in direct proportion to the number of disadvantaged students enrolled; and (5) to provide increased incentives for practice in urban or rural poverty areas by providing for full cancellation of student loans in return for three years of practice in those areas.

II. SHORT TITLE

Section 1 gives the Act the short title "Health Professions Assistance Amendments of 1970."

III. HEALTH PROFESSIONS OUTREACH PROGRAM

Section 2 of the bill would add a new Part H to Title VII of the Public Health Service Act. Title VII now includes provisions concerning training of professional health personnel. Part H would establish a new program to identify, encourage, and assist disadvantaged persons to prepare for, enter and complete training in the health professions. Part H consists of one section, 799a. It is analyzed by its three subsections. With the exception of clause (3), which is new, it is similar to the outreach provision contained in section 205 of S. 3586, the proposed "Health Training Improvement Act of 1970," passed by the Senate on July 13, 1970.

Subsection (a) of Sec. 799a. Clause (1) gives grant and contract authority to the Secretary of H.E.W. to establish, through public and private educational or other agencies, programs to identify potential health professions students who, due to socio-economic factors, are financially or educationally disadvantaged. (Veterans with training or experience in the health field are specifically included.) Such individuals would be encouraged and assisted to enroll if qualified, or to undertake such post-secondary work as is necessary to become qualified to enroll, in a health professions school.

Clause (2) specifies that a school's or organization's encouragement and assistance efforts would include publicizing existing sources of financial aid available to persons who are enrolled in health professions schools or are undertaking training necessary to qualify for enrollment in any such school.

Clause (3) of this subsection would provide for grants to or contracts with schools to establish programs which the Secretary determines will enhance and facilitate enrollment, pursuit, and completion of study by disadvantaged persons who are potential health professionals.

Subsection (b) of Sec. 799a. Defines "professional personnel in the health professions" as doctors of medicine, dentistry, osteopathy, pharmacy (or bachelor of science in pharmacy), optometry, podiatry or surgical chiropody, veterinary medicine or graduates of schools of public health. This definition is consistent with other parts of Title VII concerning types of health professions schools to which grants are made for construction, student loans and scholarships.

Subsection (c) of Sec. 799a. Would authorize appropriations for Part H from fiscal years 1971 through 1975. The initial authorization is $5,000,000 for FY 1971, and the authorization for each subsequent year is increased by $2,000,000 a year.

IV. STUDENT LOANS

Section 3 of the bill would amend the health professions student loan provisions of Title VII of the Public Health Service Act, 42 U.S.C. 294 a–b.

Loan Levels. Clauses (1) and (2) of subsection 3(a) would increase the present maximum loan level for all students from $2,500 to $3,500 per academic year.

Clause (3) would establish a maximum loan level of $7,000 for disadvantaged students described in the Outreach Provision (Part H of section 799a).

Cancellation of Loans. Subsection 3(b) of the bill would amend present law which cancels student loan indebtedness incurred by physicians, dentists, and optometrists at the rate of 15 percent for each year of practice in a rural poverty area. The annual rate of cancellation would be raised to 33⅓ percent, and the qualifying geographical areas would be expanded to include urban as well as rural poverty areas. The present provision permitting an additional 50 percent cancellation of the debt for work in a rural area is rephrased for clarity.

Student Loan Authorization. Clause (1) of Subsection 3(c) would amend the present student loan authorization section which now expires with an authorization of $35,000,000 in fiscal year 1971. The new schedule would begin with a fiscal year 1971 authorization of $45,000,000, rising to $55,000,000 for 1972, and increasing by $5,000,000 each fiscal year thereafter through fiscal 1976.

Clause (2) of subsection 2(c) would advance the dates but retain the present scheme for phasing out the student loan authorizations. For the three fiscal years following the last specific year's authorization, such sums would be authorized to be appropriated as are necessary to continue to provide loans to students who began their health profession training with a loan under this program.

V. SCHOLARSHIP GRANTS

Section 4 of the bill would (1) amend the present formula for scholarship grants, (2) extend the scholarship grant program through fiscal year 1976, and (3) raise from $2,500 to $5,000 the maximum limit on scholarships in the case of disadvantaged students described in the Outreach Program (Part H of section 799a).

Scholarship Grant Formula. Subsection 4(a) of the bill would change the formula for scholarship grants to schools. The present formula provides a sum equal to $2,000 multiplied by one-tenth of the enrollment, that is, $200 for the scholarship fund based on each student enrolled. This provision would add to the scholarship fund $2,500 based on each disadvantaged student enrolled. It also would extend the scholarship program beyond fiscal year 1971, the last year authorized in present law, to fiscal year 1976.

Scholarship Grant Authorization. Subsection 4(b) and clauses (1) and (2) of Subsection 4(c) provide, comparably to the provisions in section 3(c)(2) of the bill regarding the loan program, for extension of the dates of the scholarship program and for a gradual phasing out of the grants to ensure that a student who began his training with a scholarship may be assisted through to completion.

Scholarship Limit Raised. Clause (3) of Subsection 4(c) would increase the maximum scholarship which can be awarded during a school year from $2,500 to $5,000 in the case of disadvantaged students.

S. 4299—INTRODUCTION OF A BILL RELATING TO COMMEMORATION OF WOODLAWN CEMETERY, CARBONDALE, ILL., AS SITE OF FIRST RECORDED PLANNED MEMORIAL DAY OBSERVANCE

Mr. SMITH of Illinois. Mr. President, I am introducing today a bill to authorize the Secretary of the Interior to erect an historical marker in or near the Woodlawn Cemetery at Carbondale, Ill., designating such cemetery as the site of the first recorded planned Memorial Day observance.

It is especially fitting in my judgment that at this time of political division we should make a concrete demonstration of our dedication to this country. I can think of no more fitting tribute than to authorize the erection of a historic marker at Carbondale, Ill., the site of this, the first Memorial Day observance. According to the sketchy records still available, John A. Logan on April 29, 1866, spoke at that first observance. There for the first time a formal commemoration of the American war dead was made. On that first Memorial Day, 219 Civil War veterans met at the Carbondale Methodist Church and marched to the Woodlawn Cemetery to decorate the graves of their comrades who lost their lives in the War Between the States.

Mr. President, I believe it is especially appropriate that this marker be placed in Carbondale for another reason: Carbondale, Ill., is located in the southern part of Illinois. At the outbreak of the Civil War this town was subject to heavy pressure from both southern and northern sympathizers. In fact, a southern company was organized in that area, despite the fact that Illinois had earlier

declared for the Union. Significantly, when the war ended, survivors from both sides returned home and lived together in the same community.

I submit, Mr. President, that this example of rededication to the cause of national unity should be an example for us in remembering that first celebration. I am proud to introduce this bill for that very worthwhile goal.

I ask unanimous consent that a selection of newspaper clippings and other documents relating to the first celebration of Memorial Day in Carbondale, Ill., be printed in the RECORD at this point.

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

The bill (S. 4299) to authorize the Secretary of the Interior to erect an historical marker in or near the Woodlawn Cemetery, Carbondale, Ill., designating such cemetery as the site of the first recorded planned Memorial Day observance, introduced by Mr. SMITH of Iliinois, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

The articles, presented by Mr. SMITH of Illinois, are as follows:

THE 100TH MEMORIAL DAY, CARBONDALE, ILL., MAY 30, 1968

"Let us then, at the appointed time, gather around their sacred remains and garland the passionless mounds above them with the choicest flowers of springtime. Let us raise above them the dear old flag they saved from dishonor. Let us in this solemn presence renew our pledges to aid and assist those whom they have left among us, a sacred charge upon the nation's gratitude—the soldier's and sailor's widow and orphan."—General John A. Logan.

Memorial Day was established as a national holiday exactly a century ago, when the state of Illinois was celebrating its 50th anniversary as a member of that Union which so many Illinois men had lately died to save.

In 1868, discussions were in progress across the nation about some fitting way to honor the large number of soldiers who had been killed in the bloody battles of the Civil War, 1861–1865. General John A. Logan, second commander-in-chief of the Grand Army of the Republic, issued his famous general order which set the first Memorial Day observance in motion.

A date in May was selected so that quantities of flowers would be available—the 30th because the 31st happened to fall on Sunday in 1868.

Copies of the order were distributed across the nation by the Associated Press. Veterans belonging to the Grand Army of the Republic and other citizens responded enthusiastically in 27 states and the District of Columbia (where General James A. Garfield, later President, gave the principal address).

In subsequent years, the annual Memorial Day observance was broadened to honor those who died in other wars.

The City of Carbondale and Woodlawn Cemetery unite to provide a patriotic service for the families and friends of American Veterans.

Notice was taken some time ago to the fact that upon the death of a veteran, the arm of service of which he was a member, provides an American Flag which covers the casket during the funeral. Before interment, this flag is given to the veteran's family. It is rarely flown. Instead, it is put away and serves as a silent and sad reminder of a loved one.

In 1966, with John Allen, local historian, as its first president, the National Flag Bank was formed in Carbondale. Owners of memorial flags may send them to the Bank. Each flag is then assigned a period in which it is flown over Woodlawn, following which the donor receives an attractive certification of the act and the receipt of the flag, signed by the Mayor of Carbondale and the President of the Memorial Day Association. This year's president is Mr. Paul Biggers.

Flags may be given to non-profit groups needing them. When flags are worn out, they are destroyed with appropriate ceremony.

The Gold Book, kept available for examination at the City Hall, is a permanent record of the names and service histories of veterans for whom flags have been deposited, and the donors.

In the two years of its existence, over seventy flags, from many states, have been received and flown over Woodlawn.

GRAND ARMY OF THE REPUBLIC,
HEADQUARTERS,
Washington, D.C., May 5, 1868.

1. The 30th day of May, 1868, is designated for the purpose of strewing with flowers or otherwise decorating the graves of comrades who died in defense of their country during the late rebellion, and whose bodies now lie in almost every city, village and hamlet church yard in the land. In this observance no form or ceremony is prescribed but posts and comrades will in their own way arrange such fitting services and testimonials of respect as circumstances may permit.

We are organized, comrades, as our regulations tell us, for the purpose, among other things, of preserving and strengthening those kind and fraternal feelings which have bound together the soldiers, sailors and marines who united to suppress the late rebellion. What can aid more to assure this result than by cherishing tenderly the memory of our heroic dead, who made their breasts a barricade between our country and its foes? Their soldier lives were the reveille of freedom to a race in chains and their death a tattoo of rebellious tyranny in arms. We should guard their graves with sacred vigilance. All that the consecrated wealth and taste of the nation can add to their adornment and security is but a fitting tribute to the memory of her slain defenders. Let no wanton foot tread rudely on such hallowed ground. Let pleasant paths invite the coming and going to reverent visitors and fond mourners. Let no vandalism or avarice or neglect, no ravages of time, testify to the present or to the coming generations that we have forgotten as a people, the cost of a free and undivided republic.

If other eyes grow dull and other hands slack and other hearts cold in the solemn trust, ours shall keep it well as long as the light and warmth of life remain in us.

Let us then, at the appointed time, gather around their sacred remains and garland the passionless mounds above them with the choicest flowers of springtime. Let us raise above them the dear old flag they saved from dishonor. Let us in this solemn presence renew our pledges to aid and assist those whom they have left among us a sacred charge upon the nation's gratitude—the soldier's and sailor's widow and orphan.

2. It is the purpose of the commander-in-chief to inaugurate this observance with the hope that it will be kept up from year to year while a survivor of the war remains to honor the memory of his departed comrades. He earnestly desires the public press to call attention to this order, and lend its friendly aid in bringing it to the notice of comrades in all parts of the country in time for simultaneous compliance therewith.

3. Department commanders will use every effort to make this order effective.

JOHN A. LOGAN,
Commander-in-Chief.

By order of N. P. Chipman,
Adjutant-General.

"Every man's life belongs to his country and no man has a right to refuse it when his country calls for it."—John A. Logan, *April* 29, 1866.

SEXTON JOHN GREEN'S MEMO OF FIRST MEMORIAL DAY OBSERVANCE

Memo

Decration, Was held here April, A D 1866 the last Sunday. Speaker's Was John logan. J. W. lane, Methodist preacher Who led in prear. coneal Ingersall, Master of the Day hog,s furnished by Dillengers boys. bred by John borgher. 219 comrades in line of march one fight, branson and russel, "Every Man,s life belongs to his contry And no Man has A right to refuse It When his contry Calls for It" Logan.

THE FIRST MEMORIAL DAY

This is an account of the very local beginning of the American institution of Memorial Day.

Ambrose Crowell, Russell Winchester and Jonathan F. Wiseman, three returned veterans who had served together in the recently ended Civil War, were early arrivals for worship services at Crab Orchard Christian Church, one mile south and four west of Carbondale, Illinois on Sunday morning, April 15, 1866. While awaiting arrival of others they were seated on the steps of the church, talking.

No one of them could have suspected that they soon would witness a simple incident that would lead to the formation of a national institution.

Seated on the church steps, they saw the widow of a former comrade in arms and her two small children approaching on the roadway. They thought it somewhat strange that the mother and children were carrying bouquets of freshly gathered flowers. The little group passed near the steps where Crowell, Winchester and Wiseman were sitting and turned into nearby Hiller Cemetery. There the mother and children removed brush and weeds from a burial plot and arranged their bouquets upon an unmarked grave. The three men were deeply impressed by the simple incident they had observed.

After the worship services were ended people lingered to visit and talk, as was the custom at country churches. The three men who had watched the little family group decorate a comrade's grave before the church services, went into the cemetery and began to clean the graves of other comrades, among them those of Abraham Hiller and Samuel Caswell, both of whom had died while in military service. Some from the lingering group joined in the work while others went to gather flowers to decorate other soldier graves.

Before the three men parted, Crowell suggested to Winchester and Wiseman that the graves of other comrades buried in nearby cemeteries should be cleaned and decorated in like manner, saying it would be an appropriate mark of respect. The three accordingly went to Carbondale together on the next day to see if the people there would in like manner clean and decorate the graves of some twenty soldiers buried in Woodlawn Cemetery near the eastern edge of town.

When this self constituted committee came to Carbondale on Monday, they first went to see Colonel E. J. Ingersoll, prominent business man and civic leader. Colonel Ingersoll heartily approved. Colonel D. H. Brush and other leading citizens of the town enthusiastically approved the proposed plan. A meeting therefore was called for Tuesday evening at the Methodist Church.

At the Tuesday evening meeting it was decided that the observance should be an all-day affair. The last Sunday in April, falling that year on the twenty-ninth of the month, was selected as the date. Colonel

Ingersoll agreed to serve as marshal of the day. The Dillinger brothers, prominent farmers in the Carbondale vicinity, volunteered to furnish hogs for a barbecue. Other farmers gave stock for the same purpose. John Borger, the town's baker, agreed to bake the bread.

Colonel Daniel H. Brush allowed those selected to decorate graves to gather available blooms from his well planted grounds, that then comprised the entire block where Brush School and the United States postoffice now stand. Wreaths were prepared in the northeastern corner of Brush's ground where the postoffice now is.

General John A. Logan, an outstanding military figure of southern Illinois, was chosen to deliver the principal address of the day. Others were designated to take care of various details. Information concerning plans for the day were sent throughout the countryside. People entered heartily into the plan for an observance of the day.

Participants began to arrive in Carbondale early on the morning of the twenty-ninth. The number gathered doubtlessly was the largest in the history of the town. Men who had served in the armed forces of the recently ended conflict met at the Methodist Church. There they were formed in ranks by Col. Ingersoll and marched to the cemetery. Two hundred nineteen men were in the line of march. General Logan marched with them.

At the cemetery, the Reverend J. W. Lane, pastor of the Methodist Episcopal Church, led in prayer. Colonel Brush made a short talk, explaining the purposes and significance of the day. Colonel Ingersoll presented the speaker.

Logan, then forty years old and nearing the height of his influence in state and national affairs, was an eloquent and forceful speaker. He was particularly so when the elements of patriotism and tribute to the military were principal themes.

No copy of General Logan's speech is known to have survived.

Fragmentary written records indicate it as one of his supreme efforts. Only one quotation written then has been found. This one is of Josephus's *Antiquities of the Jews*, owned by James Green, a cousin of General Logan, and at that time caretaker of Woodlawn Cemetery.

It was Green's practice to record events on the margins and in blank spaces in his books. It was upon the flyleaf of the book mentioned recorded with other information about the events of the day in a copy that he made the entry concerning the 1866 Memorial Day services.

The sentence recorded must have been the climax of Logan's speech and impressively delivered to have been chosen by Green as the one to be recorded in his book. It was "Every man's life belongs to his country and no man has a right to refuse it when his country calls for it."

After Logan's address and the decoration of veterans' graves, people departed. The first Memorial Day in Carbondale, and so far as available records reveal, the first community-wide, organized Memorial Day in America had become history.

Tradition relates that the next year, 1867, saw another observance of the day in Carbondale.

Logan wrote to his cousin, the previously mentioned James Green, that he was going to ask the G.A.R., of which he was then Commander-in-Chief, to sponsor Memorial Day services over the nation and that he would suggest May 30, as a suitable date on which the ceremony should be observed. Logan accordingly issued the now famous General Order No. 11 on May 5, 1868. It asked for a Memorial Day and asked that it be observed on each succeeding May 30.

In compliance with this order another observance of the day was held in Carbondale on May 30, 1868. At three-o'clock the church bells rang, and people gathered at the various churches while the soldiers, about 150 in number, gathered at Hindman's Corner. They were commanded by Captain Frank H. Riggs. Their line of march passed the churches where large numbers of citizens joined them. Proceeding to the cemetery they were addressed by Rev. Clark Braden, pastor of the Christian Church, and later president or principal of Southern Illinois College that occupied the site of present day Lincoln Junior High School.

Rev. Braden was an eloquent speaker and by all accounts made a most effective talk. The returned soldiers then proceeded under the leadership of Captain Riggs to "laurel the graves" of their departed comrades.

As they came to each grave Captain Riggs paused and called aloud the name of the buried comrade and the unit with which he had served. At the one unknown grave he proclaimed, "Here rests a stranger—All that we know is that he gave his life for his country."

These ceremonies were followed by the address of Captain Issac Clements that drew praise for its "eloquency, pathos and beauty of language."

Rev. Andrew Luce, pastor of the Presbyterian Church then spoke. He remarked that the God of Battles, who carried the country safely through four years of blood-shed, still guarded and protected all. After a prayer asking the blessings of God upon the country and its defenders, the procession reformed and marched to the Public Square, where they "broke ranks" and returned to their homes.

On April 13, 1869, Logan who had again been chosen to head the Grand Army of the Republic issued General Order 21, calling upon all posts to properly observe Memorial Day on May 30. The exact process of its observance was not prescribed. The press, the Congress of the United States, and all who had so freely helped in previous observances were thanked. Since May 30 occurred on Sunday, it was stated that the observance of the day might be made on Saturday, May 29, if such was desirable.

The New Era of Tuesday, May 25, 1869, carried the following item:

"At home—Gen. Logan arrived home on last Saturday, much improved in health. Thousands of true hearts welcomed the gallant Logan to his native hills."

According to previous arrangements a fourth observance of Memorial Day, that name then beginning to displace that of Decoration Day, was observed at Woodlawn Cemetery. The services had been arranged for Saturday, May 29, as G. O. No. 21 had indicated that they might, but rain forced their postponement to Sunday, May 30. Even then the weather threatened to prevent their being held. In the afternoon the sun came out and people began to gather. Hurried preparations were made and the planned program was carried out as nearly as was possible.

Soldiers met at the depot. Again they were formed in columns under the command of Col. E. J. Ingersoll. Once more they were joined there by Gen. Logan and marched to the cemetery. The glee club sang an ode, "Decoration Day" after this came a prayer offered by Chaplain Cole of the old 31st Illinois. The ceremony of decorating the graves of departed comrades was carried out. Following this twenty seven graves, names given, were decorated. Logan was next presented and addressed the crowd gathered. When he had finished, a closing hymn was sung and the benediction was invoked by Rev. J. W. (W. J.) Grant, pastor of the Methodist Episcopal Church. The people then departed, Carbondale had completed its fourth observance of Memorial or Decoration Day at Woodlawn Cemetery.

With some slight variances in dates, Memorial Day had become a national institution.

It is highly proper than this centennial of the 1866 observance be observed.

[From the Daily Egyptian, May 27, 1967]

PARADE BEGINS HOLIDAY: THREE CIVIL WAR VETERANS RECEIVE CREDIT FOR STARTING MEMORIAL DAY IN CARBONDALE

(By Barbara Wilson)

Organized Memorial Day services claim to have their beginning in 1866 in Carbondale, according to John W. Allen, SIU historian.

On a Sunday early in April of that year, three veterans of the War between the States were waiting for church services to begin at Crab Orchard Church. During their vigil, the men noticed the widow of one of their former comrades and her children entering the nearby cemetery.

As the three continued to watch, the mother and her children cleared off the soldier's grave and placed a bunch of flowers on it. So impressed by this incident were the three men that they, too, gathered flowers and decorated the graves of several other Civil War veterans buried in the cemetery.

Later, the men, Ambrose Crowell, Russel "Spade" Winchester, and Jonathan S. Wiseman, went to discuss with Colonel E. J. Ingersoll, prominent citizen of Carbondale, the possibility of decorating the graves of other veterans in the cemetery in Carbondale.

Soon plans were being made for an all-day affair, with Ingersoll elected marshal-of-the-day. Gen. John A. Logan was chosen to be the main speaker. April 27, 1866 was the day designated as the first Memorial Day, then known as Decoration Day.

On that day, under the direction of Colonel Ingersoll, 219 veterans in and around Carbondale formed into rank and marched to Woodlawn Cemetery. Opening the program with prayer was J. W. Lane, then pastor of the Methodist Episcopal Church. Col. Daniel H. Brush, Civil War veteran and prominent citizen of Carbondale, told of the purpose and significance of the occasion.

Logan, famous Illinois military man during the Civil War period, then gave his address. The only recorded quotation of his speech to be found is: "Every man's life belongs to his country, and no man has a right to refuse it when his country calls for it."

This year's Memorial Day observance will feature J. Lester Buford as the main speaker, with other activities being nearly the same as those initiated a century ago.

Carbondale's 101st Memorial Day celebration will start with a parade. Leaving the Carbondale Community High School at 9 a.m., the parade will march to Woodlawn Cemetery.

The prelude to the first Memorial Day, done in pantomime, will follow the introduction of David H. Keene, mayor of Carbondale.

Buford will give his address following Allen's speech on "Woodlawn's Place in History."

Several choral numbers will be presented by the Rockhill Baptist Church choir. There will also be the presentation of a book of records the "gold book", and the dedication of the "Woodman of the World" plaque.

Commemorating a practice which started with the first Decoration Day in 1866, wreaths will be placed on the graves of patriotic Americans. As with that first memorial observance, this year's Memorial Day program will close with a benediction given by one pastor representing all faiths.

[From the Southern Illinoisan, May 31, 1966]

MEMORIAL DAY CENTENNIAL OBSERVED: FLAGS FLY FOR WAR DEAD

(By Helen Coombs)

The first flag of the first National Flag Bank whipped in the freshening breeze in Carbondale Monday.

The Stars and Stripes was hauled to the top of the pole, then lowered to half mast.

A crowd was in Woodlawn Cemetery for the dedication of the memorial flag bank on the centennial anniversary of the founding of Memorial Day in the same cemetery.

A parade of bands, twirlers, scouts, veteran's groups and their auxiliaries and equestrians opened the day.

Cast members of the memorial pageant "Epilogue To Glory" in costumes of the Civil War era danced in the street at pauses along the parade route to the cemetery. They performed the pageant Monday afternoon and night.

It is good to recall and honor the past and to remember and honor and build from it, dedication speakers said.

"Give me a land with lays and legends," John Allen, president of the sponsoring Carbondale Memorial Day Association said.

"Woodlawn has its place in history."

For Allen the Memorial Day observance was the culmination of dreams from a lifetime study of history and legends of Southern Illinois.

The day was a finale to his helping establish Woodlawn's historic right to claim the first Memorial Day, and to his planning for Monday's observance.

Army Reserve Capt. Ernest Klein, a Special Forces chaplain from Huntington, Ind., dedicated the flag bank as a tribute to all American military men.

Capt. Klein, the Army's official authority on Memorial Day celebrations, said 18 other communities claim to have founded the day. But his historical research leads to Woodlawn Cemetery, he said.

State Rep. Clyde Choate, Anna, a Medal of Honor recipient, accepted the first flag from Mrs. Burrell Smith, Carbondale a founder of the flag bank.

Retired Army Brig. Gen. Oscar Koch read General Order No. 11 of the Grand Army of the Republic, signed by Gen. John A. Logan, which proclaimed Memorial Day almost a century ago. Koch has been the association's general coordinator.

Carbondale Mayor D. Blaney Miller was master of ceremonies. He introduced U.S. Rep. Kenneth J. Gray, D-West Frankfort, who later addressed guests at a Memorial Day luncheon.

Gray is working for the passage of a bill to declare Carbondale the official site of the first Memorial Day.

A choir from the Rock Hill Baptist Church had "The Battle Hymn of the Republic" among its selections.

Negro and white children together inched into the shade-speckled sunshine beneath the speakers' stand for a closer view of the flowered wreaths and flags.

At Pleasant Grove Memorial Cemetery between Murphysboro and Carbondale, 165 flags were displayed in honor of deceased veterans.

Joint memorial services were held in Marion by the Veterans of Foreign Wars and the American Legion.

Herrin Prairie American Legion Post and the Herrin VFW held joint services at the Doughboy statue in Herrin Park.

CARBONDALE MEMORIAL DAY ASSOCIATION, INC.

Carbondale, Ill.

The Carbondale Memorial Day Association requests the pleasure of your company at the observance of the 100th Anniversary of the Founding of Memorial Day at Carbondale, Illinois on Monday, May 30th, 1966.

The events of the day include a parade, starting at the Carbondale Community High School building at West Oak and North Springer Streets at 9:30 A.M., proceeding via Main Street to Woodlawn Cemetery where memorial services will be held.

To commemorate the historic founding as a "first" in the nation, the Association announces with pride another "first"—the dedication of the National Flag Bank at which the first flags donated to the bank will be honored. The services will feature the massed colors and guards of the services of the United States, the Army, Navy, Marine Corps, Coast Guard and Air Force. A national authority on Memorial Day will give a brief dedicatory talk; the flag will be raised by a holder of the coveted Congressional Medal of Honor; the inspiration of the first decoration day at Crab Orchard Christian Church will be presented in pantomime; suitable music and singing by a local choral group and martial airs by bands will complete the program.

In the afternoon and evening the Southern Illinois University Department of Theatre cooperates in presenting a historic pageant written and produced especially for the occasion at the theatre in the new Communications Building on campus. No seats will be reserved. Admission $1.00 (children under 12 years of age, matinee only, 50¢). As the theatre capacity is limited to 600 seats, advance reservations are urged.

A formal luncheon, honoring distinguished guests will be held immediately following the cemetery services, at the Southern Illinois University Ballroom University Center. Tickets by advance sale only, $2.00 per person, not later than May 23rd, 1966.

Please enclose self-addressed envelope with your reservation orders.

Yours sincerely,

JOHN W. ALLEN,
President.

[From the Southern Illinoisan, May 29, 1966]

GENERAL LOGAN SPOKE 100 YEARS AGO AT WOODLAWN: AREA TO HONOR WAR DEAD, OBSERVE DAY'S CENTENNIAL

(By Helen Coombs)

Civil War Gen. John A. Logan spoke of patriotism at what may have been the nation's first Memorial Day 100 years ago in Carbondale's Woodlawn Cemetery.

The same spirit of reverence for the military dead will guide memorial services Monday in the same cemetery.

This year Army Reserve Capt. Ernest C. Klein of Huntington, Ind., a chaplain attached to the Special Forces, is the main speaker.

He served with the 95th Infantry Division in Germany during World War II, and earned the Combat Infantry Badge as an enlisted man.

PARACHUTIST

At 31 he entered Army parachute jump school. Now a senior parachutist, he has made more than 40 jumps.

Capt. Klein was assigned to the Special Forces as a chaplain in 1963. The famous Green Beret now tops his uniform.

But his Green Beret is centered with a cross.

Born in Cullman, Ala., 42 years ago, Klein received his bachelor's degree at Franklin and Marshall University in Lancaster, Pa., and did graduate work at Edes Theological Seminary in Webster Groves, Mo.

He is now pastor of St. Peter's United Church of Christ in Huntington, Ind. His previous pastorate was in Centralia.

He is attached to the Army reserve group headquartered in Chicago and is the only Special Forces chaplain in the western part of the United States.

Capt. Klein came to the attention of the Carbondale Memorial Day Association for another reason as they worked to plan the centennial.

AUTHORITY ON DAY

He was referred to retired Army Brig. Gen. Oscar Koch, Carbondale, as the Army's authority on Memorial Day.

Koch became interested in Carbondale's claim to the first Memorial Day soon after he moved to the city about two years ago.

He and John Allen, Southern Illinois historian living in Carbondale, began an exhaustive investigation. They ended the study, and organized the Memorial Day Association, with the idea that Carbondale was the first.

Allen became president of the non-profit corporation. Koch has acted as general coordinator.

Cities in Virginia, Georgia, Mississippi and Pennsylvania had claimed to have had the first Memorial Day.

One of these was Boalsbury, Pa., where Capt. Klein served an early pastorate. It was there he began his hobby of Memorial Day study. He began his now massive, cross-indexed files.

His findings supported those of Koch and Allen.

SEXTON'S NOTE

The Memorial Day Association's documentary proof was a photograph of a notation by James Green, sexton at Woodlawn Cemetary.

Using the spelling typical of the educational level of the era, Green wrote in 1866:

"Decration was held here April 1866 . . ."

He continued to note a portion of Gen. Logan's speech:

"Every man's life belongs to his country and no man has a right to refuse it when his country calls for it."

The notation on the flyleaf of a book was found in 1930 and photographed for historical reference.

But the association's first concern is the spirit of Memorial Day rather than the absolute proof of the origin.

The morning parade and afternoon and evening performances of the pageant "Epilogue to Glory" have memorial themes.

Rep. Kenneth J. Gray, D–West Frankfort, will give a memorial speech at luncheon.

The highlight of the centennial will be Capt. Klein's morning dedication of flags donated to fly over Woodlawn Cemetary in memorial.

ADDITIONAL COSPONSORS OF BILLS

S. 3354

At the request of the Senator from Washington (Mr. JACKSON), the Senator from Oklahoma (Mr. HARRIS), the Senator from Montana (Mr. METCALF), and the Senator from Texas (Mr. YARBOROUGH) were added as cosponsors of S. 3354, to amend the Water Resources Planning Act (79 Stat. 244) to establish a National Land Use policy.

S. 3822

At the request of the Senator from Utah (Mr. BENNETT), the Senator from Michigan (Mr. GRIFFIN) was added as a cosponsor of S. 3822, the Credit Union Insurance bill.

S. 4106

At the request of the Senator from West Virginia (Mr. BYRD), on behalf of the Senator from Washington (Mr. MAGNUSON), the Senator from Maryland (Mr. TYDINGS) and the Senator from New Hampshire (Mr. MCINTYRE), were added as cosponsors of S. 4106, the National Health Service Corps Act of 1970.

S. 4154

At the request of the Senator from New Jersey (Mr. WILLIAMS), the Senator from Maine (Mr. MUSKIE) was added as a cosponsor of S. 4154, to assist in the provision of housing for the elderly, and for other purposes.

S. 4246

At the request of the Senator from New Jersey (Mr. WILLIAMS), the Senator

from Maine (Mr. MUSKIE), was added as a cosponsor of S. 4246, to authorize a special emphasis transportation research and demonstration project program.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 796 TO H.R. 16311

At the request of the Senator from Montana (Mr. METCALF), the Senator from Oklahoma (Mr. HARRIS) was added as a cosponsor of Amendment No. 796 to H.R. 16311, the Family Assistance Act.

AMENDMENT NO. 846 TO H.R. 18546

At the request of the Senator from Illinois (Mr. SMITH), the Senator from Colorado (Mr. ALLOTT), the Senator from Maryland (Mr. MATHIAS), and the Senator from Michigan (Mr. HART) were added as cosponsors of Amendment No. 846 to H.R. 18546, to establish improved programs for the benefit of producers and consumers of dairy products, wool, wheat, feed grains, cotton, and other commodities, to extend the Agricultural Trade Development and Assistance Act of 1954, as amended, and for other purposes.

NOTICE OF HEARING ON EXECUTIVE REORGANIZATION

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Connecticut (Mr. RIBICOFF), I announce that the Subcommittee on Executive Reorganization will hold a hearing on Reorganization Plan No. 4 of 1970, on September 1. The hearing will be in room 3302, New Senate Office Building at 10:30 a.m.

ADDITIONAL STATEMENTS OF SENATORS

A PLAN FOR PULLING BACK FROM SOUTHEAST ASIA

Mr. JORDAN of Idaho. Mr. President, when President Nixon took office in January of 1969 American foreign policy was bogged down throughout the world with an overburden of troop commitments. He inherited a war involving 536,000 Americans in South Vietnam and a total troop commitment of 912,000 throughout the Pacific and Asia. This is an overwhelming figure. It means that nearly 1 million American men were serving in the U.S. Armed Forces stationed for duty in the Far East.

Six months later, in June of 1969, on the island of Guam, President Nixon set forth the Nixon doctrine, a mature and far-reaching policy to untangle what had become a frighteningly vulnerable percentage of American Armed Forces committed into the Asian world. The Nixon doctrine outlined clearly that American policy will be to assist our friends and allies economically and materially to build themselves, withdrawing American military manpower so that our allies can have the opportunity to govern themselves, their area of the world, and to become equal partners with the United States in assuming the role of mediator for international stability.

The effects of this policy have already begun to be felt in Asia. The President has cut that initial figure of 912,000 American troops to 770,000 American troops and, if present estimates are correct, that figure will be reduced by the end of President Nixon's first term to 272,500 American troops. That figure would roughly mean that in a span of 4 years time the President will have cut our military committment by three-quarters of a million men. This return to a foreign policy which has guided the United States over nearly two centuries and kept her out of the business of other nations shows the concern the President has for the lives of the American people. And it shows as well the assessment by the administration that Asia is ready to shoulder the burden of her own foreign policy.

The U.S. News & World Report of August 31, 1970, contains an article breaking down this dramatic shift, country by country. I ask unanimous consent that the article be printed in the RECORD as being one of the clearest indications of the firm foreign policy upon which the United States is now embarked.

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

BEYOND AGNEW MISSION: A U.S. PLAN FOR PULLING BACK FROM ASIA

It was a clear and direct message that Vice President Spiro Agnew carried from the White House on his swing through the Far East and Southeast Asia. In sum:

The American role as guardian for all free Asia, constant since the end of World War II, is coming to an end more rapidly than most people think.

As the Pitcogram on these pages shows, plans are under way to reduce drastically the number of U.S. forces in the Far Pacific. As many as 500,000 of the 700,000 Americans now serving in that part of the world will probably be brought home by the end of 1972.

Force of the Nixon Doctrine: Asia allies are being told they must face up to the fact that the Nixon Doctrine, tentatively outlined in June a year ago by the President of Guam, now is the keystone of U.S. policy. That policy rests on the promise of material aid for allies in trouble, and a pledge of protection in case of attack by a nuclear power. But it also makes clear that the U.S. can no longer be counted on to furnish ground-combat troops for wars in Asia.

Four stops were on the Agnew schedule between Augucst 22 and 30—South Korea, Taiwan, South Vietnam and Thailand. All are key allies concerned with the U.S. pull-back.

South Korea, for example, fears that any sizable reduction in U.S. troop strength in that country—it totals 60,000 men in two divisions—will invite invasion by North Korea.

It was Mr. Agnew's mission to bolster the confidence of the South Koreans and other allies that, despite impending cuts, Asia was not being abandoned to the Reds.

In the case of South Korea, strategic U.S. studies have shown that a cut in U.S. troop strength, if balanced by an increase in U.S. air power in South Korea and more funds for modernizing Seoul's Army, will not weaken the South.

Importance of South Vietnam: Key to the pace of withdrawal throughout Asia depends on how fast the U.S. can bring remaining troops home from South Vietnam. Mr. Nixon has already cut strength there from 536,000 men to 400,000 and announced further reductions to 284,000 by next May. Administration sources hint strongly that the rate will be speeded up next spring, leaving a residual force of about 50,000 men in Vietnam at the end of 1972.

As fighting forces leave Vietnam, reductions will be permitted at air and naval bases, supply depots and hospitals in nearby countries. On Taiwan, for example, a reduction is forecast of at least 40 per cent in U.S. strength. U.S. forces in Thailand have already been trimmed by 6,000 men, and other reductions will follow as bombing missions supporting the war in Vietnam and Laos are cut back.

Okinawa, which the U.S. at one time hoped to retain as a strong point facing Red China, is being returned to Japan in an effort to end anti-American agitation there and in Tokyo, and U.S. forces could be cut by half by 1972.

In Japan itself, cuts are starting at military hospitals, airfields and supply centers. The U.S. will turn back 54 more bases in that country and may reduce strength to 20,000.

In the Philippines, withdrawal has been announced of 6,000 Americans by next June—and more will leave as Navy and Air Force support for Vietnam is diminished.

A year ago, some of these countries were clamoring for the U.S. to leave. Now the tune is changing. It was left to Mr. Agnew, in these circumstances, to explain that there is no turning back from the Nixon Doctrine, that two years from now the U.S. military role in Asia will be far different from the one Mr. Nixon inherited as President.

AMERICAN FORCES IN THE PACIFIC AND FAR EAST

	At start of Nixon administration	Today	At end of Nixon's term (estimate)
South Vietnam	536,000	400,000	50,000
South Korea	55,000	60,000	30,000
Thailand	45,000	42,000	10,000
Japan	41,000	39,000	20,000
Okinawa	40,000	55,000	30,000
Philippines	30,000	25,000	13,500
China (Taiwan)	15,000	9,000	9,000
Guam	10,000	10,000	10,000
Naval forces in Western Pacific	140,000	130,000	100,000

THE 221ST ANNIVERSARY OF BIRTH OF GOETHE

Mr. SCOTT. Mr. President, Friday marks the 221st anniversary of the birth of Johann Wolfgang von Goethe. One senses the deep emotion, feels the power, and experiences the vitality embedded in the words of this great German poet. Goethe transcends barriers of language, and establishes a catharsis with all who read his works.

Goethe's life, full of both disappointments and grand achievements, is reflected in his writings, ranging from the Anacreontic and pastoral poetry of his early life to the great perceptive dramas of "Faust" and "Egmont," written by a more somber, older Goethe.

But Goethe, more than a writer, was able to master most domains of human activity and knowledge. His was one of the last of universal minds, standing on the brink of an era of rapidly expanding knowledge which has made forever impossible the universality of interest and sympathy which distinguishes him. Goethe was an accomplished statesman, political economist, theater-director, drama critic, philosopher, and scientist.

This diversity is a tribute to his greatness. He is a poet, "for all time." He is universal; yet, he is still German. He puts into words the aspiration of peoples when he said:

Was du ererbt von deinen Vätern hast,
erwirb es, um es zu besitzen! (*Faust* P. 30).

Translated into English this means:

Earn what you have inherited from your forefathers if you would really possess it.

THE STEEL IMPORT THREAT

Mr. MOSS. Mr. President, the world trade situation in steel, as it affects the American steel industry, and all of its people, has reached a very critical posture.

I would like to review the situation for you, but first, I would like to recall that this is by no means the first time I have spoken in this body on the threat of steel imports to our domestic industry. I have also appeared a number of times before the Senate Finance Committee. The thrust of my comments in each instance has been the same—foreign steel imports must be kept within reasonable limits if our domestic steel industry is not to suffer serious harm.

I have been particularly concerned about the effect of the high level of imports from Japan on west coast markets because this imposes a special threat to the growth of the steel industry in Utah and in other Western States. The Geneva Steel Works, near Provo, traditionally has supplied about 25 percent of the total western steel market's need for structural, plate, hot rolled sheets, and tubular steel.

However, in the last few years the imports from Japan has expanded in these types of steel so tremendously that they have been cutting deeply into Geneva's markets. Unless firmer action is taken, steel import tonnage from Japan will reach a new record in 1970.

I would like to review with the Senate at this time three aspects of the world trade situation on steel.

First, I want to bring Senators up to date on the facts regarding total steel imports into, and steel exports from, this country;

Second, I shall review the economics of the steel trade situation as they bear on the industry;

Third, I wish to discuss the voluntary limitation program on steel imports and the urgent need either for a prompt strengthening of that program or, failing that, for legislative action.

In 1968, during a year of labor negotiations in steel, imports of steel surged to a record 18 million tons, almost 17 percent of consumption. That year, our steel trade deficit was $1.6 billion. In 1969, steel imports totaled 14 million tons, about 13.7 percent of consumption. That produced a steel trade deficit just below $1 billion.

With shipments for 1970 forecast at a level of about 90 million tons for the domestic steel industry, and with estimated imports of 13 million tons, we expect to continue to run a steel trade deficit just under $1 billion in 1970.

Despite the fact that our steel exports have increased to an expected 7 billion tons for the year, in response to a sharp increase in world demand, steel imports this year will be more than 13 percent of steel consumption.

The projected high percentage of imports to consumption and the projected high dollar deficit have been caused in part by an increase in steel prices in other major steel producing nations to a much greater extent than in this country. Accordingly, the value per ton of steel imports into the United States has risen. Additionally, a shift in imports to products of higher value has occurred with emphasis on speciality products, mainly stainless, alloy, and tool steels.

These factors, combined with the low value of our semifinished steel export products, will keep the dollar deficit in steel trade extremely high in 1970.

Thus, the impact of net steel imports in 1970, by market share and by dollar trade deficit, will be at about the same level as in 1969, the second highest year of steel import penetration on record.

The American steel industry faces important disadvantages in terms of foreign competition and steel imports into the United States. Forty-two percent of the world steel capacity outside the United States is government owned. In the free world, excluding the United States, 28 percent of steelmaking capacity is government owned in whole or in part. Because of these and other factors, foreign steel producers voluntarily agreed to limit their exports to the United States. Under the limitations, the European and Japanese producers estimated that the total imports of steel into the United States for 1969 would be 14 million net tons and pledged that there would be no significant shifts in product mix or geographic distribution. Steel imports in 1969 were 14 million tons, but changes occurred in the product mix principally in shifts to high-value steel products.

Specialty steel imports actually increased in 1969, rather than dropping 22 percent from the 1968 level, as was the case overall. In addition, the failure to distribute steel imports along existing prior geographic patterns adversely affected our western producers, who had imports in 1969 into the area 25 percent greater than the level anticipated under the limitations.

During the first quarter of 1970, the shift to products of higher dollar value has continued. Both stainless steel and tool steel imports increased in the first quarter.

The limitations, however, have not had an inflationary impact on steel prices or products. Steel prices have gone up less since the limitations began than the index for all metal products and steel profits were lower in 1969, and in 1970 to date, than in 1968.

Parenthetically, I note the industry had a net return of 7.9 percent on equity in 1968; 6.5 percent in 1969; and lower than that in the first half of 1970. Steel is still one of the lowest profit industries in America.

Moreover, since the inception of the voluntary limitation program in 1969, prices of steel in the United States have risen between January 1969 to May 1970 by 9.1 percent, while market prices of steel outside the United States have gone up by 19 percent in Germany; 13 percent in France; 18 percent in the United Kingdom; and in Japan 15 to 50 percent, depending on the product.

Mr. President, this situation regarding steel imports into the United States requires prompt Government action. Legislative action to impose quotas would far more effectively solve this critical problem than U.S. Government reliance on foreign industry commitments.

The product mix and geographical distribution commitments of the voluntary limitations were not adhered to and the resulting increase of steel imports in the West, as I have already indicated, is of particular concern to me.

In this Congress, as in past Congresses, I am one of the sponsors of bills before the Senate to limit steel imports.

On February 25, 1969, in the first few months of the first session I joined with 32 other Members of the Senate to sponsor S. 1164, a steel import bill introduced by Senator HARTKE.

I was very much interested to note that on July 28, 1970, my colleague from Utah in the House, Representative BURTON, introduced a bill which would have the same purpose. I welcome him aboard.

It is clear that we are fast approaching a point where the enactment of legislation to limit imports is the only effective answer. I hope that such action can be taken by both Houses of Congress this session—I shall certainly press for it.

PROBABLE SHORTAGES OF ENERGY

Mr. TOWER. Mr. President, on August 17, 1970, the Washington Post published an article entitled "Fuel-Short U.S. May Face Plant Closings, Rationing," written by Richard Harwood.

Mr. Harwood is to be praised for writing this timely article. In his comments, he explores the dimensions of the probable shortages of energy caused by various national and international influences.

The article should help to alert the public to the fact of probable shortages of energy in the months ahead. By being made aware of such shortages of energy and by knowing the reasons for these shortages. I hope that those affected will react in a calm and reasoned manner.

I ask unanimous consent that Mr. Harwood's article be printed in the RECORD.

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

FUEL-SHORT UNITED STATES MAY FACE PLANT CLOSINGS, RATIONING

(By Richard Harwood)

The Boston Gas Co. announced weeks ago that it would import fuel from Algeria to meet its needs for the coming winter. It could not buy in the United States the natural gas it required.

At about the same time, the town of Braintree, Mass., asked for bids on fuel oil to run its generating plant for another 12 months. No bids were received.

The East Ohio Gas Co., serving Cleveland and other industrial centers, last month issued a warning. If there is severe and widespread cold this winter, factories will have to shut down to provide gas to heat homes, schools and hospitals.

Hundreds of miles to the south, the country's largest electric producer—the Tennessee Valley Authority—is today desperately seeking coal to run its steam plants. Its

normal 60-day stockpiles have dwindled to an average supply level of only 11 days. Some large plants have only a four-day coal supply on hand.

These are symptoms of the fuel "crisis" in the United States today. All over America utility companies, pipeline distributors and oil, gas and coal producers are talking about energy shortages. Some forms of rationing already have been imposed. Other forms may become necessary if the fragile balance between fuel supply and demand is titled the wrong way.

Wildcat strikes in the coal fields, pipeline breakdowns, railroad car shortages, trouble in the Middle East, a maritime strike, or an unusually coal winter could produce severe fuel problems affecting large segments of the population.

Barring developments of that kind, however, most Americans are not likely to suffer from the fuel "crisis" this winter. The average homeowner will have the heat and electricity he has grown accustomed to, according to the Federal Power Commission and according to the utility companies.

But he may be affected in other ways. Factory shutdowns in some areas are a distinct possibility. They occurred last winter in Ohio, New York, Pennsylvania, South Carolina, Georgia, Florida and other states. General Motors, Ford, U.S. Steel, the Atomic Energy Commission, Sylvania Electric and public school systems were among those affected.

Higher utility bills are another likely prospect. The Tennessee Valley Authority recently announced electric rate increases that will add about 25 per cent to consumer utility bills. The prices of industrial fuels, the President's Council of Economic Advisers reported last week, "have advanced with exceptional rapidity during the past year and especially during the first half of 1970." Coal prices are rising at an annual rate of 56 per cent. Fuel oil has been going up at an annual rate of 48 per cent. Big increases in natural gas prices are expected. They may cost consumers $1 billion a year.

"Never before in this century," said John Emerson, an economist for the Chase Manhattan Bank, "have we faced such serious and widespread shortages of energy. These shortages are upon us now."

The chairman of the Federal Power Commission, John Nassikas, confirmed that assessment in a speech last week. The demand for natural gas in the winter of 1970–71, he said, will exceed the supply by 3 billion cubic feet per day. ". . . The basic fossil fuel shortage," he said, "is the most acute phase of our developing energy crisis."

That is evident from what is happening all over the country. Huge utility companies—in Chicago, Washington, Baltimore and other cities—have started rationing their output. In the case of Washington and Baltimore, no new industrial customer can get service if his requirements exceed 300,000 cubic feet of gas per day. No old customer can buy more than 300,000 cubic feet per day of additional gas.

In the past 10 months, East Ohio Gas has turned down orders by steel, chemical and rubber companies for an additional 27 billion cubic feet of gas. Panhandle Eastern Pipeline Company has warned its distributors in the industrialized Great Lakes region that "they have need for volumes of natural gas far in excess of our present ability to supply."

That that these shortages should have come about in a trillion-dollar, peacetime economy is inconceivable to many people. U.S. coal deposits are virtually inexhaustible. There are enormous untapped gas and oil reserves both in this country and abroad. Moreover, the United States has the most sophisticated and extensive fuel production and distribution systems in the world.

Still the squeeze is on and the explanations for it are as confusing as the fact of the squeeze itself.

The natural gas industry, with nearly 40 million residential and commercial customers, blames most of its problems on the Federal Power Commission. FPC price ceilings on interstate sales have been so low, the industry claims, that it has been unprofitable to find and produce the natural gas the country needs. That is the view of the industry's allies in Congress, including Sen. John Tower (R.-Tex.), who declared last week that the "most important reason for the decline (in natural gas production) has been 15 years of chaotic regulation by the Federal Power Commission."

The commission itself no longer rejects that argument out of hand. It has taken steps to permit certain price increases and is aware, Chairman Nassikas said last week, that it "must recognize the realities of the market . . . within a regulatory framework which recognizes the law of supply and demand."

A quite different explanation for the natural gas shortage has been suggested by Bruce Netschert, an economist with National Economic Research Associates.

He implied in recent testimony before a Senate subcommittee that the current shortages may be artificial. The industry, he said, has declined to hook up 500 producing wells in the Gulf of Louisiana to distribution pipelines. The inference was that a gas shortage adds clout to the industry's pleas for price increases.

The coal problem, the industry says, is largely the fault of the big electric utilities who became enchanted with the possibilities of nuclear power a few years ago and refused to sign long-term contracts for coal. Without such contracts, said the National Coal Association, mining companies were both unwilling and unable to expand production. When the nuclear boom failed to materialize and the utilities began clamoring for more coal, the capacity to produce it was simply not there, the association claims.

The fuel oil shortage is blamed primarily on events in the Middle East, which for many years has been a major supplier to the American East Coast. A bulldozer sliced through the Trans-Arabian pipeline—by accident or design—in Syria a few weeks ago. This cut off 500,000 barrels a day that were going to tankers in the Mediterranean Sea.

To take up that slack, oil is now being shipped from the Persian Gulf around the Cape of Good Hope, a trip that takes six to eight times as long as a voyage via the Mediterranean. The resulting demand for tankers has exceeded the supply and driven up the cost of East Coast deliveries tremendously.

Another development was the decision in May of the Libyan government to cut production by 575,000 barrels a day. This was low-sulfur oil, much in demand on the East Coast since stringent air pollution regulations were imposed.

These supply deficiencies are difficult for U.S. producers to overcome because their production of residual fuel oil has always been limited. It is a low-profit product.

The growing national concern with air and water pollution is another factor in the fuel "crisis".

The cleanest fuel is natural gas and the demand for it by utilities and industrial customers has risen as dramatically as the demand for clean air. The demand for low-sulfur coals and fuel oil has also grown rapidly; in some cases, more rapidly than the supply.

Concern over the effect of thermal power plants on water quality has slowed down their construction and has further added to the demands on conventional fuel supplies.

The broad outlook for the winter, according to the FPC, is for occasional industrial fuel shortages but no hardship for residential consumers. That forecast assumes no major interruptions in fuel deliveries.

AMERICAN CATTLEMEN SEEK WIDER EXPORT MARKETS

Mr. SYMINGTON. Mr. President, the cattle industry is an important sector of our agricultural economy, accounting for approximately 30 percent of the cash receipts of farmers and ranchers in my State of Missouri. This industry generates great income for the rural economy and provides an important source of food for our people.

The American cattleman can take credit for supplying the consumer with plentiful quantities of high quality meat and meat products at a reasonably low cost. Our cattlemen have been in the forefront in applying modern science and technology to the cattle business. Gone is the day when cattle were judged according to their appearance in the show ring.

Today, performance testing, detailed recordkeeping and computers are the tools used to produce a better meat animal. How many pounds of beef will an animal produce, of what quality and, above all, at what cost? These are the important questions which modern cattlemen seek to answer.

As a result of the technical and managerial superiority of our cattlemen, foreign cattlemen wishing to improve their own herds look more and more to the United States as a source of high quality breeding animals. But for a variety of reasons, the exporting of American breeding stock in international trade remains small. Often, arbitrary restrictions are placed against the importation of our cattle because of alleged disease problems. In other instances, even more questionable methods are employed by foreign governments to exclude our cattle.

There is much we can do, however, to improve and facilitate the movement of our cattle to overseas markets.

Cattlemen in this country are interested in obtaining better quarantine facilities for cattle exports and more reliable medical procedures for insuring the safe movement of cattle between countries. At the same time, foreign governments must be ready to accept the idea that our cattlemen are no longer in turn willing to accept foreign meat shipments to the United States without any reciprocity. By reciprocity, I mean allowing American cattlemen their fair share of the breeding cattle market overseas.

It would be my hope, therefore, that soon we could look forward to the day when breeding cattle exports would be a big source of dollar earnings for this country in international trade.

In this connection, I ask unanimous consent that an editorial written by Mr. Jerry Litton, from the Litton Charolais Ranch near Chillicothe, Mo., and published in a recent issue of the "Charolais Bull-O-Gram" be printed in the RECORD.

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

U.S. CATTLEMAN IS GETTING THE SHORT END OF THE STICK

Three weeks of visiting farms and attending livestock meetings in England, Wales, Scotland and France plus previous trips abroad has taught me that Americans, while being respected for their ingenuity and success, are also often times looked upon as "easy to be taken". And no group of Americans are being taken more in this area of world trade than U.S. cattlemen.

The failure of the U.S. Government to look out for the interests of the U.S. cattlemen as it does other interests in the country and the failure of U.S. cattlemen to stand up and fight has resulted in a deplorable situation for the American cattlemen.

Charolais had been raised in a small area of France for over 200 years without even spreading to other parts of France in any significant numbers. And then the U.S. cattlemen got hold of Charolais and showed the world what they could do. And yet, France, not the U.S., has benefitted from these efforts. In spite of the fact that more Charolais are being produced in the U.S. than France and it was the U.S. that brought the breed to the forefront after 200 years of largely unknown existence in France, it is France, and more recently England, Ireland, Japan and New Zealand, that is making money in the export market.

One of the biggest potential markets for breeding stock in the world is Australia and Australians want American Charolais because of easier calving. But Charolais or Charolais semen can't be exported from the U.S. to Australia. Instead the Charolais are sent from France to England, then New Zealand and eventually the progeny to Australia.

What would an export market to Australia mean to American Charolais producers? June 6, 1970 a Charolais sale was held in Australia. The sale consisted of Charolais crossbreeds brought in from New Zealand. Included in the offering were 9 half-blood bred heifers out of Angus cows and a Charolais bull. They sold for an average of $7,020 each. Just think what your half-blood heifers would be worth if they could be exported to Australia.

Five bred heifers with one ¼ Charolais blood sold for prices between $2,340 and $3,510 each. Twenty-four half-blood Charolais bulls (17 head were 10 month old calves) sold for figures from $3,000 to $6,000 each. Straight Angus cows which had been bred to Charolais in New Zealand (all they had going for them) brought as high as $1,700 each.

When one sees half-blood Charolais females worth $300 to $500 in the U.S. selling for an average of $7,020 in Australia it does make one's mouth water. And it is even more disheartening when you realize that Australians want American Charolais.

Here are some facts to keep in mind—and perhaps to write to your Congressman about:

1. The U.S. Congress has just passed a bill, Senate Bill 2306, authored by Senator Roman L. Hruska of Nebraska, to build a quarantine station at a cost of several million dollars on an offshore island for the purpose of making it possible to import breeding stock from countries which could not previously export to the United States because of hoof-and-mouth or rinderpest. I think it is fine to build a quarantine station to import breeding stock and provide the livestock industry with new genetic material. But, why shouldn't money also be spent to build a quarantine station for the U.S. to export or at least make some effort to set up export channels for U.S. cattlemen.

I am sure that cattlemen of other countries must appreciate the U.S. spending this kind of money to make it possible for them to export their product to the U.S. The question that must be asked is what is being done to make it possible for the U.S. cattlemen to export?

2. In 1969 the United States had by far the largest balance of payments deficit in its history—more than double that of any year in our history. For too long we have been interested in exporting U.S. dollars instead of U.S. products and it is catching up with us.

3. Of all farmers and ranchers in our agriculture complex in America the cattleman probably receives less in the way of subsidies than anyone else. Part of the reason is because he doesn't want it. His counterpart in England may get around $75 from the government to keep a cow a year (not bad when you consider the average cost of keeping a cow in the United States isn't much more than $100 a year). Even the Russian cattleman is subsidized. I couldn't find out how much you know how they are about giving out information. But the point to be made is that while the U.S. cattleman receives the least in subsidies, he is faced with the least amount of help in exporting and the most competition from imports.

Just think of the subsidies given to crop producers in the United States and on top of that the dollars the U.S. Government spends each year to export cotton, wheat, soybeans, etc. In spite of the fact that the United States is the biggest producer in the world of beef and in spite of the fact that while the cost of all goods and services have risen 40% in the past 20 years, a full hour's pay purchases 3½ pounds of beef today compared to 20 years ago showing the productivity of the American cattlemen, this country's cattlemen face more competition from beef imports than any cattlemen in the world. And we are going to get about 80 million more pounds this year than last year. The point is American cattlemen are doing more for less from the government and getting less consideration for it in comparison to producers of other agricultural commodities.

4. Australia and New Zealand account for a sizeable portion of the beef exported to the United States to compete with American cattle producers. And where do they go when it comes time to buy breeding stock—not the U.S. It is said that the existence of Blue Tongue disease in the U.S. and the fear that it will be transmitted from imported beef from the U.S. to sheep is the reason for barring all imports of breeding cattle from the U.S. But if a quarantine station can be built to bring in cattle to the U.S. from areas with dreaded disease like hoof-and-mouth, surely a quarantine station to admit cattle from the U.S. to Australia and New Zealand could be built.

5. We hear our Senators and Congressmen preach that trade is a two way street. Well, it isn't as far as the cattleman in the United States is concerned. In spite of being faced with competitive imports (more than any other country in the world) he can't reciprocate by selling breeding stock to these countries even though the cattlemen want to buy from us. They want to buy not only because of the recognized superiority of U.S. agricultural production and breeding methods and technology, but because it might also relieve some of the U.S. cattlemen pressure against their imported beef to the U.S. As it is they have to buy Charolais from countries who disagree to a great extent with American policy abroad.

6. Examine the lack of a two way street: England sells Charolais to the U.S. We cannot sell to England. Australia not only exports millions of pounds of beef to the U.S., but semen from Murrey Greys as well. Cattlemen in Austrlia say semen from American Charolais bulls would sell for $100 a vial in large quantities in Australia. Yet they send semen to us, but we can't send semen to them.

It was the U.S. cattlemen who really brought the attention of Charolais to the world and yet it is the rest of the world who is trading and profiting by it. England buys from France and sells to New Zealand who in turn sells to Australia. We can't sell to England, but Canada and France can. We can't sell to New Zealand, but England can. We can't sell to Australia, but New Zealand can. The U.S. is left out all the way around.

7. The AICA accepts a Charolais registered in the Charolais Herd Book of France, but will the Charolais Herd Book of France accept AICA papers? This is a question being posed to the Frenchmen now. You see a French Charolais herd wants to import an American Charolais bull (more details on that later) and the question is whether or not the French will accept AICA papers even though the AICA accepts French Herd Book papers. Another hurdle—according to the American Polled Hereford Association who recently exported some Polled Herefords to France after many obstacles, "There was and still is a French government restriction that the animals resulting from this cross must be slaughtered and not used or sold for breeding." In other words, they not only couldn't be registered, but their calves had to all be slaughtered. Now how's that for a two-way street in trade? We build a quarantine station at the cost of millions to import breeding stock from them and even if we did export to them, all the progeny would have to be slaughtered.

Tear this out and send it to your Congressman or Senator or write him a personal letter if you feel that U.S. cattlemen aren't getting a fair shake. Just write your U.S. Senator in care of the Senate Office Building, Washington, D.C. or your Congressman in care of the House Office Building, Washington, D.C. You would be surprised how much a letter from home means to an elected official. U.S. cattlemen haven't asked for much from the government in the past and they aren't asking for much now—just the opportunity to bring some U.S. dollars back home.

POLITICAL BROADCAST ADVERTISING

Mr. SCOTT. Mr. President, Congress, shortly after returning from its Labor Day recess, will be asked to approve or disapprove a political broadcast advertising conference report.

On August 18, 1970, WMAL–TV broadcast an editorial on the bill in question. I ask unanimous consent that the text of the editorial be printed in the RECORD.

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

POLITICAL BROADCAST ADVERTISING

The bill to limit political broadcast advertising is unfair. It is unfair to broadcasters, because it singles them out for restrictions. It is unfair to political candidates, because it keeps them from full use of their most effective weapon. And it is unfair to voters, because it suggests that somehow election campaigns will cost less.

The bill does not limit all campaign spending . . . just that on radio and television. The same political funds will simply be poured into other forms of advertising. The high cost of political campaigning is a national problem . . . but this bill won't solve it. The bill has advanced in Congress—we think—because it favors incumbents, who are already well-known. The outcry last week from one party shows the potential for political mischief. It is disgraceful that either party should favor such a bill in hopes of short-term or long-term political advantage. This highly discriminatory bill should be dropped. The voter will be best served by finding another solution to the problem of political campaign costs.

CULEBRA

Mr. JACKSON. Mr. President, as Senators are aware, I have initiated a detailed inquiry into the background of the necessity for, and alternatives to, the Navy's practice gunnery and bombing activities on the island of Culebra and adjoining cays.

The Senate is also aware that the junior Senator from New York (Mr. GOODELL) has proposed an amendment to the military procurement bill which would, in effect, terminate the Navy's use of Culebra. A number of Senators have joined in cosponsoring this amendment and many others have expressed deep concern over the Navy's use of Culebra. I wish to express my appreciation to Senator GOODELL for deferring action on his amendment while we search for a satisfactory solution to the present, unhappy situation on Culebra.

On August 11, 1970, the Secretary of the Navy, Hon. John H. Chaffee, Assistant Secretary of the Navy Frank P. Sanders, and other representatives of the Department of Defense appeared before the Armed Services Subcommittee on Military Construction to present a report on both the present and proposed Navy activities on Culebra. The committee's meeting was held in closed session not only because of the confidential nature of portions of the subject but also to encourage frank and open discussion of the present controversy.

Subsequent to the committee's meeting, I requested the Department of the Navy to respond to a number of questions on matters which I felt were not adequately covered during the hearing. I have requested that answers to these questions be made available to the committee no later than September 2, 1970. Among the matters of particular concern to me are the potential political ramifications of the Navy's present activities, the possibility of an accident endangering the lives and safety of the people on Culebra, a designation of alternative areas where the Navy's training requirements could be met without endangering national security, and the Navy's contingency plans for its training mission in the event that present activities should be prohibited.

I have also requested Secretary Hickel and the Department of the Interior to review lands in Federal ownership on Culebra and the adjoining cays and to provide me with a report on the suitability of using these lands for a national recreation area at some future date. This request, of course, assumes that it will be possible to find an alternative site or sites which will meet the Navy's requirements for coordinated training activities.

Mr. President, we have delayed too long coming to grips with the problem of Culebra. As a result of the Senate's concern, reflected by Senator GOODELL'S amendment and my investigation, there is some hope that the Navy is beginning to realize that the situation there is serious: That what is at stake is something more than the Navy's use of a training facility. In fact, what is at stake is the quality of life on Culebra and the Navy's right to decide how far it can go in affecting the lives and well-being of the people who live there.

I hope, Mr. President, that we will be able to resolve not only the immediate situation on Culebra but the broader question of what course the island's future development shall take.

NATIONAL SERVICE FRATERNITY WORKS TO ELIMINATE ARCHITECTURAL BARRIERS

Mr. DOLE. Mr. President, Alpha Phi Omega is a national service fraternity with over 500 chapters on college and university campuses throughout the United States. Alpha Phi Omega boasts a membership of over 119,000. This collegiate organization carries out a broad spectrum of meaningful service projects at the local, regional, and Federal levels.

Local service projects vary from providing Big Brothers for the community children's home and transportation for a handicapped classmate to caring for a university's cougar mascot. Phi Chapter at Syracuse University in Syracuse, N.Y., is promoting a nationwide architectural barriers project to alleviate physical barriers to the handicapped.

Public opinion polls have revealed that approximately two-thirds of the American public have not considered what a serious problem architectural barriers present in the Nation's handicapped, aged, and temporarily disabled.

One in every 10 persons is unable to use buildings and facilities designed for the able bodied. This fact prevents millions of American children from attending school and millions of adults from seeking higher education, training, and employment.

New facilities built and equipped to accommodate the handicapped cost little or no more than buildings designed only for the physically fit. Also, existing buildings are easily made barrier-free at only a nominal cost.

In short, inaccessibility is due simply to failure to think of the needs of the handicapped at the design and planning stage.

Mr. President, I commend Alpha Phi Omega for this public service project and ask unanimous consent that the article recently published in the spring 1970 issue of Torch and Trefoil be printed in the RECORD.

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

A NATIONAL SERVICE PROPOSAL—ARCHITECTURAL BARRIERS

One out of seven people in our nation has a permanent physical disability. A great many more—possibly you or a brother—will find himself temporarily confined to a wheelchair or crutches due to an injury or disease. These people look at simple structures from a different viewpoint than that of the physically fit. Stairs become obstacles, telephones and water fountains unreachable, and most buildings objects to be viewed, but impossible to enter. These people are being discriminated against and denied a chance to use their talents, unaffected by their handicap.

What is the problem? In many cases it is a lack of simple planning. A ramp, or a wider door can easily turn an impenetrable fortress back into a building. These cost little and are easy to plan for, but the general public is not aware of these problems. With a basic education program these barriers can be eliminated in all future buildings.

And what of those structures already built? Many may be expensive to reconvert, but some can be made accessible through very simple measures, such as widening one door, eliminating three steps, or putting up directions to a well-lighted, accessible service entrance. A simple guide to a city, published for the handicapped, can be of great help. Imagine yourself confined to a wheelchair, having to go to a strange city. Where will you stay?

How will you get around? Such a guide can easily free such a person from complete dependence upon others, allowing him to choose the best facilities available.

We feel the solution to many of these problems lies in a program of information and correction. There are various activities that can be adopted by the various chapters depending upon their size and interests. Each activity alone can be a separate service project.

INFORM THE PUBLIC

Make local people aware of the problem. This will not take the form of pressure, but rather informal presentations, using movies which are available. People usually are very cooperative and eager to help once they become aware of the problem. Government officials can be contacted regarding legislation, action, such as building codes. Businessmen and agencies controlling public buildings, such as the college administration, can be urged to improve their facilities, or consider architectural barriers when planning new ones. Offer specific solution based on your survey, including costs, actual work, and benefits to be derived. Community groups may be quite eager to start a new project on a much larger scale than can be done by a chapter. Such contacts will improve communications between the chapter and the community, and make the community aware of your chapter, paving the way for further help from the community.

Getting our article published about this in the local newspaper may cause citizens to act.

HAVE THE CHAPTER TAKE ACTION

A. Parking facilities

Arrange for special parking facilities for disabled students and faculty. Paint special signs and offer to police these areas.

B. Buildings

A universal symbol for accessible buildings is being designed, and should be ready by this summer. Offer to paint and erect such signs on all buildings you feel are accessible.

C. Orientation and registration

Many times publishing a guide book is not practical. A special orientation tour for disabled students can give them a basic idea of what barriers are present on campus. Find out what courses they would be taking, and arrange with the registrar for preregistration and scheduling of these courses in accessible buildings or on ground floors.

D. Minor construction

There may be some areas where a simple ramp, or minor adjustments can be made by the chapter. Build any corrective devices that may possibly be useful.

E. Think disabled

Make sure any service project carried out does not have built-in barriers. For example, a book exchange should be in an accessible area. Disabled persons should not be overlooked as possible donors in blood drives.

F. Get a guide book prepared

A guide for the handicapped can cover either the campus or community. A survey of all buildings included in the book should

be taken. Gathering all statistics regarding access, parking facilities, elevators, interior halls, doors, and facilities. Sample survey sheets are available from Phi Chapter. These are then reduced to a short description for each building and arranged in booklet form. Many times the cost of printing will be absorbed by a civil group or the printer. The books are distributed to all those who will be using the facilities covered, and can be used by disabled people to plan their activities. It also locates architectural barrier problems in your community that can be used as concrete examples, as well as ones that the chapter can attempt to solve.

NATIONAL COORDINATION

By coordinating this project on a national level, a great impact can be made on the lives of disabled persons. There must be one central location where all news of chapter activities can be compiled; one source for information of where architectural barrier projects are being carried out. Many civic groups have attempted to tackle the problems of architectural barriers, but without national coordination their work has been known by few and left unused.

The importance of this project has been impressed upon us through letters from Secretary Finch and other notable people. Reactions from the college administration and the Architectural Barriers Committee of Syracuse have been favorable, with substantial support. Phi Chapter has all necessary information and material for each portion of the program. Each chapter should try in the next year to adopt some part of this project. We want as many opinions and ideas as possible. We hope to formally propose adoption of architectural barriers as a national service project at the 1970 National Convention in Dallas. Before then, all opinions from other chapters would be greatly appreciated. This is a project Alpha Phi Omega, as a national fraternity, can tackle and solve—now!

THE SLOVAK DESIRE FOR FREEDOM

Mr. SCOTT. Mr. President, on June 19 of this year, representatives of Slovak organizations throughout the world held the first world congress of Slovaks in New York City. This congress adopted a resolution which reaffirms the Slovak desire for freedom. I ask unanimous consent that the declaration be printed in the RECORD.

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

DECLARATION OF THE FIRST WORLD CONGRESS OF SLOVAKS IN NEW YORK, N.Y., JUNE 19–21, 1970

Representatives of Slovak organizations throughout the world, as well as individuals of Slovak origin in the United States of America, Canada, Australia, Switzerland, Italy, Austria, Sweden, England, Argentina, Germany, Spain and Chile, assembled in New York City in order to lay the foundations for the creation of a world organization of Slovaks hereby declare that:

The struggle for freedom and self-fulfillment is the constant goal throughout Slovak history. Attainment of this objective has not been without encountering obstacles, nor without requiring the work and struggle of many generations and countless sacrifices. Particularly now, when the Slovak nation is unable to determine its own destiny freely, everyone must make great sacrifices.

Slovaks living throughout the entire world, many of whom were born in the United States and elsewhere, accept as a moral duty the necessity to unite in the struggle for the natural rights of the Slovak nation and for the complete freedom in the determination of its destinies. We consider it our obligation to present to the world a true picture of the life and aspirations of the Slovak nation for a free and democatic way of life.

Today we are more acutely aware of this duty in view of the fact that the regime which has been forced upon the Slovak nation is opposed to the national traditions of Slovakia and the country is occupied by the military forces of a foreign Great Power.

Therefore, in view of the foregoing:

We subscribe to the traditional values of Slovak history which have promoted the rebirth of our nation, its growth and its acceptance in western civilization among cultured nations;

We contend that the Slovak question is an international problem and therefore we request that international justice be done Slovakia, justice that would be expressed in full democratic statehood;

We take a positive attitude towards the process of integration in Europe and we demand that the Slovak nation be given the right to participate freely and directly in this process.

We desire and hope that the situation in Central and Eastern Europe will change so that there will no longer be any obstacle towards establishing and maintaining cultural exchanges between the Slovaks at home and abroad which present conditions in Slovakia either make completely impossible, or allow only in a restricted sense.

We recommend the establishment of a permanent organization for the realization of all these aspirations under the name of: Slovak World Congress, which shall embody the spirit of brotherhood and mutual respect. Religious affiliations or political views, insofar as they are not contrary to the spirit of democracy and the objectives mentioned above, will not bar anyone from membership or active participation in our organization. We consider it essential that our goals and methods as well as our activities follow democratic principles.

We shall endeavour to have the Slovak World Congress represent its members on all international scientific, cultural, religious or political forums in the interests of the Slovak nation as expressed in the Constitution and by-laws of the organization.

We urge that the Slovak World Congress devote itself towards promoting the spirit of unity and to co-ordinate all national efforts through constant contact with member organizations maintained through central secretariats, regional secretariats, committees and information bureaus in various countries around the world.

We ask the blessing of Almighty God in this undertaking in the firm hope that with the help and co-operation of all Slovaks we may successfully fulfill our role.

ANDREW GRUTKA, D.D.,
Chairman.
STEFAN D. ROMAN, LL.D.,
Cochairman.

WOMEN'S RIGHTS: THE ROAD AHEAD

Mr. PROXMIRE. Mr. President, yesterday marked the 50th anniversary of the ratification of the 19th amendment to the Constitution guaranteeing women the right to vote. The day was marked by marches, speeches, and other events at which women pressed for expanded rights and opportunities. Much of the activity was very constructive and served to bring to public attention the need for new guarantees of equality in employment, political rights, and other areas. Unfortunately 1 day of protest will not produce the permanent reforms which are necessary if these goals are to be achieved. Sustained political action will be required if women are to gain the guarantees they seek.

Recently the House approved an amendment to the Constitution which will guarantee equal rights for women. This amendment will come before the Senate very shortly. If it is to pass the Senate, concerted political action of the part of women's rights organizations will be necessary to obtain the necessary support.

Another very important issue in which women can exert political pressure is the ratification of the Political Rights for Women Convention. This convention has been before the Senate for many years, but no real consideration has been given to it simply because very little pressure has been placed on the Senate to act. Now is the time for women to organize and urge their Senators to support this convention. The time for Senate action is now—women can make sure that favorable action is taken on this treaty.

"MR. ED" MARKS 40 YEARS AS FREDERICK CAB DRIVER

Mr. MATHIAS. Mr. President, in some communities the transportation of young children to and from kindergarten is a source of great concern to mothers. The mothers of kindergarten children in Frederick, however, have found a solution to this problem in the person of Ed Saltzman. Ed, with his station wagon taxi, known to everyone in town as "Eddie's School Cab," has been driving children to and from kindergartens all over Frederick for 30 of his 40 years as a driver. His friendliness and good humor are remembered by his passengers long after they have finished school. Many a young man or woman can be seen in town waving to Eddie's passing cab, just as they did when they were 5 or 6. Eddie's fans are not limited to past and present kindergarten children though. Many of Frederick's older citizens also rely on Eddie; often refusing, in fact, any other drivers.

If any one person is known and loved by all of Frederick, it is Ed Saltzman. Monica Main, of the Frederick Post, recently recounted some of Eddie's anecdotes in a story in honor of his 40th year of driving. Mr. President, 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:

"MR. ED" MARKS 40 YEARS AS FREDERICK CAB DRIVER

(By Monica Main)

For more than 90 kindergarten and school children in Frederick, "Mr. Ed," the man with the big smile in the brown and yellow station wagon is an important part of their everyday life.

"Mr. Ed" is in reality, Edward K. Saltzman and the 1970 station wagon that he drives is known to mothers all over the city as

"Eddie's School Cab." The "cabbie" has transported generations of youngsters to and from their respective schools for 40 years.

In 1930, Saltzman began his colorful career in a 1930 Sedan.

"It was during fair week," Saltzman recalled. "Fair week was held in October in those days. I was living with my aunt and uncle. My uncle owned a cab service and asked if I would like to try my hand at driving. That's how it all began."

The school service became a routine part of his life as a cab driver in 1940. His school transportation began with 15 youngsters and has grown to a surprising 90 to 100 children today.

The oldest driver "in service years." Saltzman hauls children to Mrs. Corbin's Day Center, Church of the Brethren Kindergarten, Federated Children's Kindergarten, St. John's, Elm Street and North Frederick Schools.

"You learn so much," the father of seven declared, "especially from the children. I could write a book like Art Linkletter's 'Kids Say The Darndest Things.' Parents may not want me to repeat some of the amusing 'family tales' the children tell one another en route to school," he laughs.

For persons who feel cab driving is very dull work, consisting only of chauffeuring people around town, Saltzman describes several past experiences.

"I was once forced to take a pair of characters to Baltimore. I drove the distance with a gun in my back. Fortunately, I made it to Baltimore and they instructed me to return with mouth shut. I notified the police when I reached Frederick but the two were never apprehended."

Not all of Saltzman's mad-cap adventures occurred in the darkened evening hours.

"In broad daylight, after I had picked up two men who instructed me to transport them to Unionville, I was put out of my cab and forced to walk back to town. The state police, whom I reached after obtaining a ride with a passing motorist, were able to recover my cab but never were able to find the thieves. Money was taken, however, it was no great amount since I had just started my route."

Saltzman's passengers range from crooks to celebrities. On one incident a helicopter enroute to President Eisenhower's farm in Gettysburg, carrying the Secretary of Defense and his aides, broke down. Saltzman was summoned to transport the party to the farm and wait until the meeting had adjourned to drive them back to Washington.

"During the meeting," Saltzman explained, "the helicopter was repaired but I still waited because they hadn't paid their fare." When the meeting adjourned, the government workers paid their fare and President Eisenhower bid good day to the Frederick "cabbie."

During his 40 years of service, Saltzman has watched the growth of Frederick and the growth of cab fares.

"I can recall," the small man with graying temples reminisced, "when you could go anywhere in Frederick for 15 cents. Today the same trip will cost anywhere from $1.25-1.50."

Friendships form through a ride in "Eddie's cab." The smiling cabbie pointed out the late Harding sisters, who "wouldn't go anywhere without Eddie at the wheel."

Serving as a chauffeur and guide can be frustrating at times, he admits. Drinking customers give Saltzman reason for concern. "I am leery about taking them out of the city, and they sometimes have no idea where they want to go anyhow," he says.

Would he trade his job for another?

"No, I wouldn't," Saltzman states thoughtfully. "It's a great job. I love the children and most of my day is devoted to them. It's really great to transport children of the children I hauled in years past."

ENCOURAGEMENT IN SOUTHEAST ASIA

Mr. DOLE. Mr. President, encouraging news continues to come out of Vietnam, despite the efforts of some to minimize and belittle the President's efforts to bring about a just and lasting peace.

Today's encouraging news is that the newest casualty figure—the one for the week ending August 22—is 52 men, the lowest since the week ending December 3, 1966.

This, as Senators will recall, was in the early days of the period of the massive manpower buildups in South Vietnam under President Johnson.

It is always tragic to have to talk about encouraging news in terms of reduced casualties since one casualty is always one too many. Nobody, I can assure you, feels more strongly about that last statement than the President of the United States. And he is doing his level best to reach that 7-day period when we can report zero casualties.

There are those today who would do that by retreating or surrendering, but the President, whoever he may be, and in this case it is President Nixon, has the duty and responsibility to end this war in such a way that it insures peace throughout the world, not only today but also tomorrow, by maintaining America's credibility both with its allies and with its potential enemies.

That is what President Nixon is doing.

And that is what he was doing when he sent American troops into the North Vietnamese sanctuaries along the Cambodian border on May 1.

The success of the President's long-term approach as well as of the Cambodian operation is apparent in the figures released today.

Not only is this week's casualty figure the lowest in more than 3½ years, but also the casualty figure for the 8-week period ending August 22 is the lowest in 4½ years.

We have lost 560 men in the last 8 weeks. Not since the period ending February 12, 1966, when we lost 525 men, have we lost so few.

Another encouraging figure and one that emphasizes the worth of the Cambodian operation is the fact that every week in the 8 weeks since June 27, American casualties have run under the 100-a-week figure.

With these results, who can honestly say today that the Cambodian operation was not a success?

As I said earlier, any casualty is too many but the President is working desperately to end the war and to secure a lasting peace, one that will insure that our next generation of young men and women do not have to fight in either the jungles of Asia, or anywhere else in the world.

And, I am proud to say, the President is succeeding—succeeding despite the blind opposition of some who seek peace at any price and others, not so sincere, who seek to turn this terrible war into a political issue.

I assure you again, however, Mr. President, that it is President Nixon who will succeed and not the advocates of retreat and surrender. The American people have too much commonsense, too much love of and pride in their country, too much honor, and too much confidence in President Nixon to settle for less than a peace that embodies honor and justice and that gives the entire world a better chance for peace, not only today but also tomorrow and in the years ahead.

MARY EDITH WILROY, THE SUPERHOSTESS OF BLAIR HOUSE

Mr. MATHIAS. Mr. President, foreign heads of state, ambassadors, and dignitaries come and go in Washington with the assumption on the part of most of us that they are receiving the best in American hospitality. It is, of course, a valid assumption, due in large part to Mrs. Mary Edith Wilroy. Mrs. Wilroy is the hostess in charge of Blair House, which accommodates visiting kings, queens, presidents, diplomats, and other notables. She is charged with the care of these visitors, their meals, accommodations, and even drycleaning and appropriate flowers. The efficiency of Blair House under her guidance rivals the "neither rain, nor sleet, nor snow, nor dark of night" standard of the Post Office motto. Many an international crisis in the form of kitchen fires, and lost clothing and keys, has been expertly avoided by Mrs. Wilroy's outstanding ability.

Marylanders take great pride in being able to serve their Government, and a special debt of gratitude is certainly due Edith Wilroy, of Takoma Park. Her activities and personal insights were recently the subject of an article by Mary Finch Hoyt in Parade magazine. Mr. President, 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:

THE SUPERHOSTESS OF BLAIR HOUSE

(By Mary Finch Hoyt)

WASHINGTON, D.C.—Mary Edith Wilroy is a name that few Americans know. But she has probably entertained more heads of state than any other person in the world—and been paid for doing so. She is the discreet super-hostess who runs Blair House (catty-corner from the White House), the President's guest house for visiting kings, queens, presidents, prime ministers, diplomats and other notables.

During the terms of three Presidents, Mrs. Wilroy has been "protocol officer," tactical commander and fiscal genius for the gracious Georgian-style house, which is furnished with priceless Americana donated by individuals, women's clubs, history buffs and business firms.

"My job is to provide a setting in which international relations can flourish," says the handsome grandmother of seven. "Basically, I go about it like any housewife would."

This means that dinner for 20 or maybe 40 is ready, the housework in 35 rooms is done and she is standing by the door to meet foreign dignitaries who occasionally have been escorted across the street and introduced to her by the President of the United States.

It also means that she must be prepared for the worst. Like the time a dry cleaning truck was stuck in a raging snowstorm with the laundry and evening suits of a party of foreign diplomats who were due at the White House at 8 p.m. "The weather was so bad that I couldn't rent a helicopter, so I finally called the Chief of Police and told him we were headed for an international disaster," she says. "At precisely the right moment a

Black Maria drew up at the door with the clothes. The guests never knew the difference."

A QUIET FIRE ALARM

On another evening, she made sure that Washington officials being entertained in candlelit splendor by a visiting head of state were unaware that excessive heat in the kitchen had triggered an automatic fire alarm at a nearby fire station. Between soup and dessert, Mrs. Wilroy persuaded firemen to take down the ladders already stretched to the third floor and remove fire equipment that completely blocked traffic on Pennsylvania Avenue, without any of the guests being the wiser.

Already this year, Mary Wilroy and her staff of four have kept their cool during a dozen or so state visits. In April alone, for instance, four important foreign guests called Blair House home for three days each, and Cabinet members and State Department officials and their wives—who are entitled to use the mansion—entertained at various luncheons, receptions and dinners for from ten to 200 people.

Word about a state visit comes to Mrs. Wilroy's basement office in Blair House from the State Department's Office of Protocol, of which she is an officer. Next she receives an attaché case full of fact cards which often include not only cultural and geographical data about the country of the visitors, but pictures, biographies and information about their hobbies and interests.

Then she has the huge old mansion put into impeccable order by her staff. The furniture and the old glass and silver—including some made by Paul Revere—are polished to a sheen. Historical memorabilia are dusted. Fine old brass is scrubbed. Fresh, monogrammed linen for bed, bath and table is selected. Candles with pleasant odors are placed in strategic spots. And in each room the supply of souvenir pencils, pens and the blue embossed Blair House stationery is replenished, bowls of fresh fruit, dried fruit, candy, and salted nuts are set out, daily papers and current American and foreign-language magazines brought in.

INDIVIDUALIZED FLOWERS

Mrs. Wilroy may buy favorite white freesias for the bedside of a queen, or pick a special bouquet from her own garden in Takoma Park, Md. When India's Prime Minister Nehru stayed at Blair House, she presented him daily with a fresh rosebud to wear.

"There is simply no routine to fit each occasion," she says, adding that she keeps her own personal file about any visitor who has stayed at Blair House before—like whether he has a wife, a large entourage, medical problems, religious preferences, food considerations or allergies.

Menus are planned with Blair House chef William Dallas. Hot "American" corn sticks, corn muffins or spoonbread and big, U.S.-style breakfasts and an around-the-clock buffet are specialties of the house.

At the very last minute before her guests arrive, Mrs. Wilroy checks to see that embossed name cards have been slipped into special holders on the doors of up to 15 suites awaiting the foreign contingent (they also receive maps with room assignments), that the house is neither too warm nor too cold, that TV sets and light bulbs are working and that doors are hospitably ajar into the cozily lit rooms of the four-story wheat-colored, green-shuttered home.

Sometimes, of course, things go wrong. Recently, she was forced to leave a royal guest standing outside his suite while she searched frantically for keys borrowed by his own security aide, who had slipped upstairs earlier, checked out the rooms, turned off the lights and locked every door in sight.

Mary Wilroy has been chatelaine of 1651 Pennsylvania Avenue since 1961 when she was plucked out of an administrative protocol job in the State Department and told to "go over there and run it as if it were your home."

It was purchased in 1942 by the U.S. Government, fully furnished, from the family of Francis P. Blair, a member of President Jackson's "Kitchen Cabinet." The Blair-Lee house next door, which was built for Blair's daughter who married a cousin of Robert E. Lee, was bought the following year. Now the two homes are connected and used jointly—the doors were cut through when the Truman family lived there while the White House was being renovated.

In 1964, the 140-year-old structure needed a facelift. It had an antiquated kitchen, no central air-conditioning, termites, a leaky water system, hazardous wiring. With Government funds the mansion was modernized and with about $200,000 of contributions from individuals and organizations a massive redecoration project was started. It is still going on.

The AFL–CIO, for instance, paid for redecorating the Lincoln Room, a small, butter-yellow reception room in which Robert E. Lee declined command of the Union Army.

A "king's suite," a handsome red and black bedroom chamber and adjoining library was furnished with gifts from Ambassador and Mrs. Angier Biddle Duke, the Harcourt Amorys Jr., and former Governor and Mrs. W. Averell Harriman.

DIPLOMATIC BUDGET

Mary Wilroy declines to talk about the annual budget for entertaining the President's guests. "When we have company in our home," she says diplomatically, "we don't talk about how much it costs." But because of the wear and tear of constant use, the mansion is always being repaired, and enhanced by new acquisitions. All gifts are approved by a Fine Arts Committee headed by the wife of the Chief of Protocol, who is currently Mrs. Emil S. Mosbacher Jr.

But Mary Wilroy makes the hard decisions about lining up the plumbers, electricians, carpenters and painters who must work quickly when one guest leaves and before another arrives.

Now divorced, she says that the biggest challenge in her life was running her own home and raising her two sons and two daughters.

On some nights when Blair House is dark, Mary Wilroy is able to commute to her own big old house in the Maryland suburbs. But more often she is scurrying around the Blair House mansion offering the kind of American hospitality that calls for finding a rare digestive herb to calm a royal guest; finding the recipe for a very special Norwegian birthday cake for the Prime Minister of Norway, or a bed long enough to accommodate Charles de Gaulle.

"All of this would be pretty heady stuff," admits the hostess of Blair House, "if only there were time to stop and think about it."

ANNIVERSARY OF THE CZECHOSLOVAKIA INVASION

Mr. DOLE. Mr. President, on August 20 a unique protest meeting was held in Washington to commemorate the second anniversary of the Soviet invasion of Czechoslovakia. The organizations sponsoring the meeting represented thousands of Americans of Czechoslovak origin and Czech and Slovak refugees in this country. The proceedings were presided over by Dr. Joseph K. Hasek, president of the District of Columbia chapter of the Czechoslovak National Council of America.

One of the principal accomplishments of the meeting was the adoption of a proclamation by the assembled delegates which outlined the rise and extinction of progressive liberalism in Czechoslovakia in 1968.

Mr. President, this is a compelling and eloquent document, and lest the Senate forget the events of 1968 in Czechoslovakia, I ask unanimous consent that it be printed in the RECORD.

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

CZECHOSLOVAK NATIONAL COUNCIL OF AMERICA

On this sad occasion—the 2nd anniversary of the brutal Soviet-led invasion and occupation of the peaceful, freedom-loving country of our ancestors—we, American citizens of Czech, Slovak and Subcarpatho-Ruthenian descent, again remind the entire world of this Soviet violation of principles of international law, incorporated into the Charter of the United Nations.

The Soviet aggression and occupation of Czechoslovakia:

(1) violated the sovereignty of a member state of the United Nations (Article 2, Section 1);

(2) violated Article 2, Section 4, prohibiting the use of military force in the relations between individual members of the United Nations;

(3) violated the principle of self-determination of peoples (Article 1, Section 2);

(4) was in conflict with Article 2, Section 7, prohibiting outside intervention in matters essentially within the domestic jurisdiction of any state; and

(5) was in conflict with a number of resolutions of the General Assembly of the United Nations, particularly Resolution 2131 (XXI) adopted at the meeting of December 21, 1965, upon the Soviet Union's own motion. This resolution prohibits intervention in the domestic affairs of any state, and guarantees the protection of its independence and sovereignty.

The hopes that Czechoslovakia, following the Nazi occupation, would resume its splendid progress toward a modern democracy were first shattered by a communist coup in February, 1948. For the next 20 years, the communist regime lived on reserves accumulated by the 1918 generation, all the time deceiving the very ones in whose name communist revolutions occur: the working class. Czechoslovak workers never were given the promised factories; instead they became prey to communist state-capitalism and Soviet neo-colonialism. Wages gradually were reduced to only about half an adjusted pre-war level as compared to earnings being enjoyed by fellow-workers in the West. The whole nation was politically manipulated, and there was no freedom of press, expression or assembly permitted.

Soviet Russia forced Czechoslovakia to sign lopsided commercial treaties under which that country had to buy low-grade Russian raw materials at world-market prices but sell Russia manufactured goods at below market prices. This kind of operation understandably resulted in tremendous yearly losses for the Czechoslovak economy where foreign trade had been profitable and at least 75% western-oriented. Even under these conditions, Soviet Russia failed to fulfill its trade obligations, and by 1967 owed Czechoslovakia approximately $1 billion for excess deliveries.

The glorious spring of 1968 brought an end to oppression and hypocrisy. Without violence, united behind new, young leaders, Czechs and Slovaks began to expose and correct past blunders . . . until the Soviet war

machine mustered half a million troops and subdued a small, peace and freedom-loving country.

In Washington, on the first anniversary of that humiliating aggression and occupation, Czechoslovak democratic organizations called a Protest Meeting which was attended by many representatives of other exile and ethnic groups and won strong endorsement by many United States Senators, Governors, and Congressmen. That Meeting voted, by acclamation: August 21st shall henceforth be called the "Soviet Day of Shame." Similar meetings and demonstrations were held in Chicago and other cities in U.S.A. and throughout the world.

Now the continued Soviet occupation of Czechoslovakia is another crime against the right of a small country to determine its own destiny and aspirations. The invasion was an intervention by the forces of reactionary communism to prevent the Czechs and Slovaks from establishing their own social order . . . one that did not endanger anyone, and sought to contribute to the building of bridges of understanding across the discords of an ideologically divided world while lending aid to better understanding and cooperation among all nations on the basis of true progress and humanity.

The Soviet Union has tried, subsequently, to justify its crime by the so-called Brezhnev doctrine, which is—in fact—in direct conflict with the Charter of the United Nations. This doctrine tries to sanction aggression, and thereby deliver small countries to the "tender mercies" of the aggressive plans of Soviet imperialism.

The Czechoslovak people, however, are not resigning themselves to these aggressive plans of Moscow. They resisted, and continue to resist and reject, Moscow's claim to a right to intervene in the leadership of the State; they deny Soviet Russia the right to determine who should govern their country or represent it in foreign relations. August 21, in Czechoslovakia, is being commemorated as the "Soviet Day of Shame."

And those of us here in the United States who are joining our friends in Czechoslovakia, urge the whole civilized world to support the effort to achieve the withdrawal of Soviet troops from Czechoslovakia.

Especially at this time we remind representatives of free nations not to lose this opportunity to support the just demands of the people of Czechoslovakia in international meetings and bi-lateral negotiations. We are grateful to President Nixon for his statement of August 7, 1969, rejecting the Brezhnev doctrine and pointing out that he will not be guided by it in cooperating with countries of Eastern Europe. During the forthcoming General Assembly of the United Nations there will be many occasions for denouncing Soviet aggression and repeating demands for the withdrawal of Soviet forces from Czechoslovakia. We hope that representatives of all free nations will not let this opportunity be lost, but will help us solve a problem that endangers not only the peace in Europe but throughout the world.

AWARD OF DD–963 DESTROYER CONTRACT TO LITTON INDUSTRIES, INC.

Mrs. SMITH of Maine. Mr. President, on July 1, 1970, I asked the Comptroller General of the United States to have the General Accounting Office examine into the circumstances surrounding the recent award of a $2.1 billion contract to Litton Industries, Inc., for 30 DD–963 class destroyers. Yesterday I received a report from the Acting Comptroller General. Because of the great interest in this matter, I ask unanimous consent that his letter and report be printed at this point in the RECORD.

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

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 26, 1970.

Hon. MARGARET CHASE SMITH,
United States Senate.

DEAR SENATOR SMITH: This is in reference to your letter dated July 1, 1970, requesting that we examine into the circumstances surrounding the recent award of a $2.1 billion contract to Litton Industries, Inc., for 30 DD–963 class destroyers.

During our review of this matter, we examined records maintained by the Navy's DD–963 Project Managers Office; the Chief of Naval Operations DD–963 Program Coordinator; the Office of the Naval Ships System Command; Litton Industries, Inc., and Bath Iron Works, Inc. Although we did not obtain advance review comments on this letter from the Department of Defense, the Department of the Navy, or the companies, we discussed these matters with responsible Department of the Navy officials and company officials during the course of our review.

The DD–963 class destroyer program had its origin in late 1966 when officials of the Department of Defense, in recognition of the approaching obsolescence of segments of the Navy's surface fleet, initiated a new shipbuilding program. The primary missions of the DD–963 class destroyer are to (1) provide protection to attack carrier forces against the surface/submarine threat, (2) escort amphibious assault-preassault forces, and (3) conduct shore bombardment in support of amphibious assault or land warfare forces. The Navy inventory objective for destroyers of this type is 50 ships. A procurement program of 30 ships had been approved by the Secretary of Defense subject to congressional authorization. According to the Navy, no procurement action will be taken on the additional 20 ships until the 30 ship program has been funded. The Navy is procuring those destroyers through the concept formulation contract definition multi-year procurement process. A contract was awarded to Litton Industries on June 23, 1970.

FEATURES OF THE FPIS CONTRACT

The DD–963 destroyer contract is a multiyear fixed-price incentive, successive target (FPIS) contract. This type of contract provides for negotiating at the outset an initial target cost and an initial target profit (which make up the initial target price), a ceiling price, and a formula fixing the target profit at the target re-set point. At the re-set point a new formula may be negotiated. The target profit will be adjusted upward or downward fifteen percent (15%) of the difference between the total initial target cost and the re-set target cost, provided that in no event will re-set target profit be less than 6.53 percent ($107.5 million) or more than 10.87 percent ($178.9 million) of the total initial target cost. The ceiling price is not changed but remains at 130 percent of the initial target costs.

The initial target price for the Litton contract is $1.7892 billion. This consists of an initial target cost of $1.64607 billion and $143.13 million for initial target profit. The incentive price revision clause of the contract provides that the vessels being procured are subject to price revision within 90 days after the end of the 37th month after the execution date of the contract. It also provides that, in no event will the total re-set price exceed an established price ceiling of 130 percent of initial target costs, or $2.1399 billion.

The net effect of this is that at the target re-set point the estimate of costs for the 30 ships could have increased by $387 million (about $13 million per ship), and the contractor still would be entitled to a minimum profit of 6.53 percent of target cost or about $107.5 million unless the contractor exceeds the ceiling price.

IMPACT OF ESCALATION CONSIDERATIONS

The escalation features of this contract had a significant impact on the final price proposals of Litton and Bath. These features provided for quarterly labor and material escalation adjustments to be made automatically, based on changes in indices calculated by the Bureau of Labor Statistics without regard to changes in the bidder's actual costs. These automatic adjustments are determined by Navy tables included in the contract which apportion percentages of labor and materials to each individual quarter. The adjustments are made upward or downward and do not alter target cost, target profit, target price, or ceiling price.

In practice, the amount of escalation recoverable using the contract tables may differ from that which the contractor believes he may actually incur. Accordingly, he may include an adjustment for this difference in his price proposal which could either increase or decrease the price. It should be emphasized that the percentage increase either bidder would get from the escalation tables would be the same, since both would be based on the same table and the same index changes. The divergent views of the two bidders as to how economic price levels will perform over the life of this program and their ability to control their impact on their costs appear to have been the largest single point of difference between them in the fourth and final bid prices.

Litton, in its final proposal, estimated that its escalation recovery based on the Navy tables would be $143.7 million more than the escalation they would actually experience, and reduced their final proposal by this amount. Litton's estimate of their recovery of escalation on the third and fourth proposals are shown below in millions of dollars.

[In millions of dollars]

	Proposals	
	Feb. 2, 1970	Mar. 26, 1970
Estimated inflation	485.5	297.45
Estimated escalation payable by Navy	409.5	441.15
Total	76.0	----------
Less: Net escalation estimate included in proposal	72.0	----------
Estimated (under) or over-recovery of escalation	(4.0)	143.7

In reviewing the change in escalation with both DCAA and Litton, we were advised that this change resulted from new data and reconsideration of old data between February 2, and March 26, 1970. Four basic factors entered into this change:

1. Litton's estimates of economic inflation as it would apply under the Navy tables were revised upward to reflect the more recent increases in the labor and material indices. The effect of this was to increase the estimate of the amount of money that Litton would recover under the Navy tables.

2. Certain agreements were tentatively consummated with two primary suppliers that stabilized the exposure of Litton to escalation payments to these two suppliers. Although these agreements actually increased the expected amount payable for escalation, they also removed the risk of po-

tential increases in escalation payments to these two important suppliers.

3. A further analysis of the escalation exposure of a key Litton division heavily involved in this procurement resulted in adjustments in several areas and had the effect of substantially reducing the estimated net exposure of this subsidiary.

4. The fourth factor, which had by far the largest effect, was based on Litton's analysis of experiences in buying material on the LHA program. In effect, Litton believes that it will be able to write contracts without escalation clauses, because it had been successful in doing so in the LHA program, and will thereby substantially reduce its own escalation exposure.

Bath, in its final proposal estimated that its escalation recovery from the Navy tables would be $146.3 million less than it would incur. Bath's projected under-recovery from the tables is shown below in millions of dollars.

[In millions of dollars]

	Proposals	
	Feb. 2, 1970	Mar. 26, 1970
Estimated inflation	454.704	428.219
Estimated escalation payable by Navy	296.068	281.934
Estimated under-recovery of escalation	158.636	146.285

In effect, because Litton anticipated an over-recovery from the tables and Bath an under-recovery, the disparity between the two bids in total dollars was approximately $290 million. The impact of escalation was, therefore, a significant factor in the price competition for the 30 DD–963 destroyers.

If it is assumed that each bidder is correct on his own escalation and cost estimates, the final cost to the Government would be approximately five million dollars more per ship for Bath than for Litton regardless of which bidder's projection of escalation recovery proves to be correct. In Litton's case, should its projection of escalation recovery prove correct, the contract would be completed at about the initial target price, provided cost estimates are also reasonably accurate. If Bath's projection of escalation recovery from the Navy tables is correct, Litton will suffer some reduction in profit. If Bath had received the contract and Litton's projection of escalation recovery proves correct, then Bath would receive about $160 million more for escalation than it estimates. On the other hand, if Bath's projection proves correct, it would complete its contract at about its estimated target price, provided its cost estimates are also reasonably accurate.

REVIEWS OF FINAL PRICE PROPOSALS

Both bidders made substantial reductions in the prices proposed as between their third proposals and their "best and final" offers. Bath reduced its proposed target cost by about $3.6 million per ship, while Litton reduced its proposed target cost by about $9.8 million per ship. In the area of target profit, Bath made a reduction of about $1.3 million per ship compared with a $2.4 million per ship reduction made by Litton. The target price reductions amounted to about $5 million per ship for Bath and about $12 million per ship for Litton. Litton's $12 million per ship reduction was made up of (1) about $2.6 million in estimated material cost, (2) $7.2 million related to recovery of escalation, and (3) about $2.4 million in profit.

No audit of this reduction was conducted since it was the area of material costs that the Navy felt contained most of the contingencies in the February 2, 1970, offer. The Defense Contract Audit Agency (DCAA), in its audit of Litton's February 2nd proposal, had indicated that a material figure of $40.5 million per ship could be justified and that the difference between that figure and the $49.999 million included in the price offer was unsupportable. We were informed by the Navy that this difference, and the fact that a similar situation existed in the Bath offer, was one of the primary reasons why the Navy chose to request the "best and final" offer on the basis of a successive target contract. Thus, when Litton's reduction to $41.5 million per ship was received as the "best and final" offer, it was in reasonably close agreement with the recommendations of DCAA. Also, since there were no technical changes in the contract package between the third and fourth proposals which would affect the types and amounts of material involved, the Navy believed that it had sufficient confidence in the final price offer without further audit.

The ultimate contract price was agreed upon after the Navy had sought and received four specific proposals from the two competing companies. The first three proposals had been prepared on the basis that a firm-fixed price incentive contract would be awarded. The fourth proposal, a "best and final" offer, was prepared on the basis of a fixed-price, incentive contract with successive target prices. Reductions based on this change were made in a period of six days between the time the Navy asked for a "best and final" offer and the time the Navy required this offer to be submitted. Actually, four days had been allowed but this was extended to six as requested by Bath. This seems to us to be a very short period of time, but the Navy believed that each bidder was generally aware that such an offer would be required and was essentially prepared for it. They believe that this is borne out by the fact that both bidders were able to respond.

After we expressed concern that no formal audit was conducted of the changes in Litton's "best and final" offer, Navy, on August 12th, requested DCAA to audit these changes. DCAA's report susbtantially supported Litton's revised prices. However, it contained a qualification, to the effect that DCAA assumed Litton's estimate of the effect of economic inflation, and ability to control its own exposure, were accurate.

ALLOWANCE FOR RISK

Although the Navy maintains that the contractor's estimates of cost for the 30 ships are credible and very much in line with its own independently prepared estimates, the Navy did provide for sharing the risks of cost growth with the proposers. The Navy advised us that, although it believes that it has considerably reduced the technical risks in the procurement of this ship, it is also aware that all risks have been by no means eliminated. It was the intention of the Navy, through the early stages of contract definition, to award a fixed-price incentive contract. However, in its final assessment, it concluded that risks related to softness in major equipment vendor quotations and the additional detailed design work based on the performance type specifications made it unwise to award a fixed-price firm target contract. Any proposer would have to make provision for these risks, whether they did or did not develop. The 130 percent ceiling provision, in conjunction with the provision for a profit floor, permits an increase of $387 million above initial target cost, while still providing the contractor a profit of $107 million. This seems rather substantial. We recognize, however, that the precise amount of this allowance is a matter of judgment and the Navy points out that 30 percent is not unusual and has been used in other ship contracts.

OTHER RISKS ASSUMED BY THE NAVY

A risk assumed by the Navy—one that cannot be calculated—is the risk that in the future a situation might exist where the contractor cannot complete the contract for the ceiling price. The Navy considers this risk to be low in view of its planned close monitoring of technical, schedule, and cost aspects of the contract.

In addition, there is the risk that competition on future buys will be diminished considering the start-up and early learning costs in a procurement of this magnitude, assuming the same ground rules apply. The Navy is of the opinion that the risks are less than the expected advantages. The Navy believes that with other shipbuilding programs, such as the Maritime Administration's ten-year program to build 300 cargo ships, at least five firms, including Bath, will have an excellent opportunity to modernize and improve their competitive position for future destroyer programs. The above, of course, deal with subjective judgments, however, we believe that the Navy should be conscious of the fact that they are the only ones who build military-type ships since it, in essence, controls the military shipbuilding industry. This point is dealt with in the report of the Blue Ribbon Defense Panel, dated July 1, 1970. An extract from this report is attached as Appendix IV.

CONSIDERATION OF ALTERNATIVE MEANS OF BUYING SHIPS

While some consideration may have been given to alternative methods of procuring these ships, we saw no evidence that the Navy performed a thorough analysis of alternatives to awarding a contract of this magnitude to one supplier or of the potential consequences of this action. Whether or not it would have been to the Government's advantage to have these destroyers constructed in more than one yard does not appear to have been considered at that time and we have no firm data from which to assess that question. In anticipation of the possibility that there would be legislation requiring two or more awards, the Navy in the spring of 1969 prepared estimates showing that this would result in increased costs of $125 million to $150 million. Similar estimates made about a year later were $225 million. The production of destroyers of a single configuration will undoubtedly provide economy in both logistical support and in training of crews. Similarly, economy in production can normally be expected from volume production of identical items.

Recognizing that uncontrolled changes have, in past programs, resulted in significant cost growth, in schedule slippages, and in performance degradation, the Navy has taken extraordinary steps to control such changes as follows:

(a) All recommendations for changes must be analyzed and evaluated by several board reviews and by the Project Manager. Changes can be made only as specifically approved and directed by the Project Manager after complete analysis of cost, schedule and effectiveness. Changes which have adverse impact on characteristics or which increase cost or delay production schedule must be approved by the Chief of Naval Operations.

(b) The ship to be constructed is described in the contract. Should it be desired to make major ship system changes, it only can be done after the proposed new system has been thoroughly analyzed and justified to the Chief of Naval Operations, the Secretary of the Navy, the Secretary of Defense—through the Defense Systems Acquisition Review Council process—and then only after funds are obtained through congressional review and appropriation. Thus, major system changes in the ship must be fully funded before they are implemented.

Notwithstanding these efforts, the Navy's *past* experience over the years gives little encouragement that these destroyers really will be built to a single configuration. If, however, controls now planned by the Navy are strictly enforced, the changes in configuration should be kept to a minimum. Additionally, the concerns expressed herein regarding program risks and the procurement process apply regardless of whether Bath or Litton were the selected contractor.

Our specific responses to the matters raised in your letter are discussed in attachments to this letter.

In accordance with agreement reached with you that 24 hours after its delivery this letter could be released to the general public, we will make copies of this material available to those requesting it.

If you desire any further information on this matter, please let us know.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General.

ANALYSIS OF SPECIFIC POINTS RAISED IN THE LETTER FROM SENATOR SMITH

Point 1. The possibility that the contract pricing re-set provision, introduced as a last minute change after three rounds of prices had already been submitted and audited, may have permitted a contractor to take advantage of the regulations to lower estimated costs with full knowledge that costs can be negotiated upward several years after the award at a small sacrifice in profit—but at the expense of another substantial overrun to the Government.

EVENTS LEADING TO AWARD

During the negotiation period leading to the award, the Navy requested and received from the two bidders (Bath and Litton) an initial pricing proposal, two supplements and a "best and final" offer. There were substantial changes between the initial proposal and the second and third offers due largely to changes in the scope of work. The "best and final" offer did not involve a change in the scope of the work.

Bath and Litton responded to the Navy's January 5, 1970, request for a proposal supplement on February 2, 1970. This was each bidder's third round of price and technical proposals for construction of 30 DD–963 destroyers. Both bidders' February 2, 1970, price proposals were predicated on award of a fixed-price incentive contract with a firm target price.

Navy officials advised us that evaluation of these responses indicated that the basic ship designs of each contractor were satisfactory and no further technical changes were required. However, they stated that the type contract previously proposed—fixed-price incentive with firm target—was no longer considered suitable for the DD–963 procurement and that a change to a fixed-price incentive contract with successive targets was indicated. Navy officials stated that the rationale for changing the type of contract centered on their difficulty in obtaining auditable supporting data from both Bath and Litton subcontractors.

Bath officials also indicated that they were hampered by the short time allowed for responding to the Navy's request of March 20, 1970, for a "best and final" offer even though their only request for an extension was granted in full. Litton officials stated they had discussed internally the possibility that the Navy might request use of a successive-target type contract although they had no knowledge of this change until the March 20, 1970, notification. They stated that they had adequate time to prepare a revised price proposal on a successive-target contract.

Both bidders had the same options under the request for proposals. Each bidder reduced its price considerably between March 20 and March 26 when "best and final" offers were submitted. The possibility of obtaining substantial recovery of overruns of target costs up to the ceiling price at the expense of a relatively small reduction in target profit after 39 months of the contract period was available to both bidders. The situation of the Navy would be about the same regardless of whether Litton or Bath received the contract if either found itself in the position of not being able to build the ships within the ceiling price.

ANALYSIS OF PRICE PROPOSALS

In addition to its own price analyses of the bidders' price proposals the contracting officer requested the Defense Contract Audit Agency (DCAA) to review the first three price proposals.

Our review of DCAA reports on the first three rounds of proposals and discussions with DCAA representatives substantiates the Navy's contention in regard to difficulties with subcontractor cost data. For example, at the time of the November price submittal, the Government was questioning $800 million of Litton's proposed costs. By February 2, 1970, these exceptions had been reduced to $230 million. A substantial portion of the reductions was achieved by Litton's acceptance of DCAA's recommendations.

We were informed by the DCAA representatives assigned to the DD–963 project office that, in many instances, DCAA was unable to obtain any reliable source data to support the prices quoted which resulted in substantial amounts of unresolved costs in both bidders' proposals. We discussed the problem of the reliability of subcontractor estimates with officials of both Bath and Litton. Both contractors stated they were ready to accept an award on each of their first three proposals, despite the Navy's concern over the subcontractor estimates. It seemed to be the opinion of both bidders that the reliability of subcontractor quotations steadily improved during the course of the negotiations.

We also found that, because of the difficulty in obtaining reliable subcontract data, the Navy had considered use of a successive-target type contract as early as June 1969. At that time, a decision was reached to continue efforts to use a firm target contract, subject to change to a successive-target contract during final negotiations.

On March 20, 1970, the Navy requested Bath and Litton to submit their "best and final" offer for the DD–963 program. No changes in the scope of the work were specified but the bidders were requested to submit their price proposals on the basis of a fixed-price incentive successive-target contract.

Both bidders submitted revised price proposals to the Navy on March 26, 1970. A per ship comparison of the bidders' February 2 and March 26, 1970, offers is shown below.

[Dollars in millions]

	Bath		Litton	
	3d, Feb. 2, 1970	4th, Mar. 26, 1970	3d, Feb. 2, 1970	4th Mar. 26, 1970
Target cost	$64.9	$61.3	$64.7	$54.9
Target profit:				
Rate (percent)	(13.5)	(12.2)	(11.1)	(8.8)
Dollars	8.8	7.5	7.2	4.8
Target price	73.7	68.8	71.9	59.7
Ceiling price	81.1	79.7	80.8	71.3

We were advised by Navy officials that no audit was requested by the procurement contracting officers on the "best and final" offers. They indicated that their comparison of Bath and Litton's "best and final" offers with their own estimates showed a high degree of similarity in the estimates required engineering and labor hours and in the proposed material costs. They concluded from this comparison that Litton's prices were credible and felt that no audit was needed.

In view of the very substantial reductions in price in Litton's final offer, however, and particularly since there was no change in the scope of the work, we believed that a detailed analysis of the basis of these reductions should be made. On August 12, 1970, the Navy requested DCAA to perform an audit of the changes. The results of that review are discussed in the accompanying letter.

COST GROWTH

As with any such large program, the possibility of cost growth exists and the history of military procurement would indicate that it is more than a possibility. But the Navy feels very strongly that the nature of this procurement and the actions they have taken reduce the risk of cost growth substantially.

Essentially, the Navy believes the risk involved in this contract centers around the long term commitment of the Navy and the contractor, the substantial dollars involved, and the concentration of the work in one facility. In our judgment, there are other factors involved, such as the realism of the Navy commitment to a ship design that will not be materially changed over a long period of time, the fact that the ship has not actually been built, and the possibility that the contractor may not be able to complete the contract within the ceiling price.

The Navy believes that these possibilities have been considerably reduced by the action they have taken. For the most part, components being utilized are "off-the-shelf". A potential problem lies in the integration of the propulsion system. The Navy considers the individual components to be satisfactory, all of which have undergone extensive testing programs in similar applications.

Although the weapon componentry now specified for the ship is off-the-shelf, the Navy also has improved versions for much of it in R&D. The Navy has required that provision be made in the ships' design to allow for incorporating these improvements without great difficulty. Additionally, special procedures have been instituted which require the highest approval before any significant design changes can be made.

Whether these actions will provide the advantage envisioned by the Navy, no one can say at this time. But as indicated above the Navy obviously believes that the actions they have taken significantly reduce the risks.

In addition to these factors, the escalation provisions of the contract provide that these payments will not alter target or ceiling price. Litton estimates this recovery from the Government for escalation of $441.150 million. Should this be an accurate estimate, this amount could be incurred above the ceiling price of $2.139 billion.

OTHERS FACTORS CONSIDERED IN MAKING AWARD

The Navy rationale for awarding the contract to Litton Industries, in addition to price competition, was based on an exhaustive source selection process that extended from about April 1969 to April 1970. This evaluation included five major areas of inquiry in the categories of life cycle cost, ship system, management plans, military effectiveness and corporate qualifications. In the final assessment by the Source Selection

Authority, Litton was given a numerical rating superior to Bath for the following categories.

	Bath	Litton
Ship system	5.80	5.85
Management plans	4.20	5.07
Military effectiveness	6.00	6.68

In the Navy's rating system all of these were considered in the normal range. The records also show that estimates for life cycle cost were also higher as proposed by Bath, by about 5½ percent. With regard to the category of corporate qualifications, our review shows that Bath had considerable difficulty in providing a financial plan acceptable to the Navy; however, the insufficiency of the financial plan was corrected during the final stages of the evaluation. The Source Selection Advisory Council ultimately concluded that the proposal of either contractor would provide destroyers suitable for the future needs of the Navy. Based on the decision of the Source Selection Authority, as well as the lower price quoted by Litton in the best and final offer, the award to Litton Industries was made.

Point 2. "The rationale for awarding a $2 billion shipbuilding contract to a company already carrying the largest new ship construction backlog in the industry."

Point 3. "The dangers from the standpoint of the United States Government of contracting a large portion of our new shipbuilding programs—including $2 billion plus total package procurements—under one corporate entity in the very face of the problems engendered by doing this in the Lockheed Aircraft Corporation case."

Point 5. "The dangerous impact on future competition leading to higher procurement cost in award to a shipbuilding company which has already constructed a new shipyard on the basis of prior total package awards enabling it to drive out proven destroyer-building capability."

In light of the related substance of issues 2, 3, and 5, we felt it appropriate to respond to them collectively.

The Navy's rationale with respect to issue number 2 is related essentially to price. The Navy determined that either bidder could perform the work under the contract. In substance, the Navy maintains that Litton will build the ships cheaper and should not be penalized for its strong position in the industry. With respect to issue number 3, the Navy believes that large cost overruns are unlikely to occur because it doesn't visualize any significant problems in developing this ship. With respect to issue number 5, Navy believes there is sufficient future shipbuilding business (Navy cites the proposal for 300 Maritime vessels and their hope for obtaining 20 additional destroyers) to maintain a competitive industry. Each of these points was dealt with by the Navy in a memorandum prepared in response to a request by the staff consultant, Senate Preparedness Investigating Subcommittee, a copy of which is attached.

The Navy's objective is to build a single ship that will substantially reduce logistical and other problems that have plagued the Navy over the years. In the last analysis, this objective appears to have been the overriding and compelling consideration by the Navy throughout this whole procurement, and has been the primary reason for adhering to the concept of an award to a single contractor.

We think that the substance of the Navy's rationale comes down to the desire to solve what are long standing problems by a standardized ship and to reduce the cost of acquisition as well as operations. However, by contracting with one company that risk is present that the company may not be able to complete the contract at the agreed price. It is possible that the company at some point could come to the Navy and say it is unable to build the ship for the contract price. Under these circumstances, the Navy would find itself with few options. The Navy says it does not expect that this is a real possibility, but it has occurred under other long-range production programs.

We believe also that there is some danger to future competition. Given the Navy's premise of a single ship design (presumably Litton's) at the lowest price, it is difficult to see how another company will be able to compete pricewise with Litton on future orders. Start-up and early learning costs in such a program are substantial and, assuming the same ground rules are applied in the future, it seems questionable as to whether anyone will be able to compete with the successful contractor in this award, no matter how many additional ships the Navy plans to buy. We are told that the differences in commercial and military ships, even if the Maritime program should become a reality would not make the winner of these awards competitive for military ships.

Point 4. Use of the multiyear contract which requires that Congress pay tremendous cancellation charges should it decide in future years not to make appropriations for continuance of the program.

As we understand the contract, the cancellation clause gives the Navy the option of cancelling at the end of any program year, and none of the costs of any ship not included in that program year will be borne by the Navy. As an example, the Navy could cancel the contract after the third ship, and they would in no way be obligated to pay any of the costs of any ships thereafter. There would, of course, be start-up costs, such as design and development work that would apply to all ships and would be largely incurred before any ships are built. However, these costs would be incurred for the most part even if the Navy were to contract for only three ships in the first place.

We think, therefore, that the cancellation clause keeps the Navy or the Congress from being irrevocably committed to the entire ship program and the costs to the Government of buying a lesser number of ships would not be materially different under either method.

Mrs. SMITH of Maine. Mr. President, in my opinion, the most pertinent observations and conclusions of the report are those which are in agreement with the same observations that have been previously made by myself and those in the "Staff Report on Navy Ship Procurement and Construction" made to the Blue Ribbon Defense Panel and which I reported here on August 18, 1970. These observations point up the risks and dangers of concentration of so much ship procurement in a single yard.

When all the destroyer procurement is given to Litton, what options does the Navy Department have should Litton go broke—what options does the Navy Department have if the failure of Lockheed on the C–5 aircraft is repeated by Litton on the DD–963 destroyer?

When all the destroyer procurement is given to Litton, what does this do to future competition?

Apparently the Comptroller General and the General Accounting Office found that the Navy was very narrow minded in this procurement for on pages 6 and 7 of the letter-report are to be found these statements:

While some consideration may have been given alternative methods of procuring these ships, we saw no evidence that the Navy performed a thorough analysis of alternatives to awarding a contract of this magnitude to one supplier or of the potential consequences of this action. Whether or not it would have been to the Government's advantage to have these destroyers constructed in more than one yard does not appear to have been considered at that time and we have no firm data from which to assess that question.

And further:

Notwithstanding these efforts, the Navy's *past* experience over the years gives little encouragement that these destroyers really will be built to a single configuration.

Special attention is directed to pages 8 and 9 of attachment I of the report for these observations by the GAO say in substance that past history is contradictory to the Navy's professed objective in this matter. I call specific attention to that section which states:

The Navy's objective is to build a single ship that will substantially reduce logistical and other problems that have plagued the Navy over the years. In the last analysis, this objective appears to have been the overriding and compelling consideration by the Navy throughout this whole procurement, and has been the primary reason for adhering to the concept of an award to a single contractor.

We think that the substance of the Navy's rationale comes down to the desire to solve what are long standing problems by a standardized ship and to reduce the cost of acquisition as well as operations. However, by contracting with one company the risk is present that the company may not be able to complete the contract at the agreed price. It is possible that the company at some point could come to the Navy and say it is unable to build the ship for the contract price. Under these circumstances, the Navy would find itself with few options. The Navy says it does not expect that this is a real possibility, but it has occurred under other long-range production programs.

We believe also that there is some danger to future competition. Given the Navy's premise of a single ship design (presumably Litton's) at the lowest price, it is difficult to see how another company will be able to compete pricewise with Litton on future orders. Start-up and early learning costs in such a program are substantial and, assuming the same ground rules are applied in the future, it seems questionable as to whether anyone will be able to compete with the successful contractor in this award, no matter how many additional ships the Navy plans to buy. We are told that the differences in commercial and military ships, even if the Maritime program should become a reality, would not make the winner of these awards competitive for military ships.

Mr. President, with the filing of this GAO report, we now have the situation of common criticism of the Navy on the award of the entire contract to Litton being made not just by myself and other Senators, but more significantly by the staff report of the Department of Defense's own Blue Ribbon Defense Panel and the Comptroller General of the United States and the General Accounting Office—severe criticism on the very same basic points.

In view of this, I think that Congress should find great persuasion to split this procurement in the best interests of our national security.

SENATOR KENNEDY'S PERCEPTIVE ADDRESSES TO THE AMERICAN BAR ASSOCIATION ANNUAL MEETING IN ST. LOUIS

Mr. SYMINGTON. Mr. President, earlier this month the distinguished senior Senator from Massachusetts (Mr. KENNEDY) made an extraordinary trip to my State to attend the annual meeting of the American Bar Association in St. Louis. His trip was extraordinary, first, because he was invited to appear by four different units of the ABA and, second, because during his four appearances within a period of 24 hours, he impressed all those who heard him with the range of his experience and the depth of his knowledge in the vital areas he touched upon.

On Monday night, August 10, Senator KENNEDY was the featured speaker at the prestigious annual dinner in honor of the judiciary sponsored by the ABA section on judicial administration. His speech, entitled "At the New Interface of Justice: Challenge and Opportunity," was an incisive call to action for judicial reform especially at the State and local level, and Chief Justice Burger himself called it a perfect companion to his own "State of the Judiciary" address on Federal judicial reform given earlier the same day.

On Wednesday morning, August 11, Senator KENNEDY spent the breakfast hour answering questions from law stuents on topics ranging from polarization in society to the prospects for a constitutional convention.

Next, he was the keynote speaker at a panel on "Hunger" sponsored by the ABA's individual rights and responsibilities section, and he vividly described the urgent need for a massive national assault on hunger and malnutrition.

Finally, he was the featured speaker at a luncheon given by the ABA's standing committee on legal aid and indigent defendants and the National Legal Aid and Defender Association in honor of the 50th anniversary of the ABA's commitment to legal aid and the fifth anniversary of the ABA's support for OEO's legal services program. His speech on "Citizen Advocacy: Trends for the 1970's" projected the growth of legal services and the broader function of citizen advocacy into a future where they will be an integral part of good government.

I believe that all three of his speeches merit careful reading and close consideration by all of us. I ask for unanimous consent that they be printed in the RECORD.

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

AT THE NEW INTERFACE OF JUSTICE: CHALLENGE AND OPPORTUNITY

The separation of powers and the independent prerogatives of the three branches of government are basic and cherished keystones of our constitutional system, at both the federal and state levels.

Yet, for those of us in Congress, and especially in the Senate, in practice, our focus is on the interdependence of the branches; our activity is constantly at the interfaces between our branch and the other two.

And in recent years we have spent an extraordinary amount of time and effort interacting with the Federal Judiciary.

Our most direct and difficult responsibility has been our constitutionally assigned task of screening federal court appointments to assure their quality, and we have taken this responsibility seriously at every level of the federal court system.

We have also spent a great deal of time generating more business for the federal courts, in such fields as civil rights, organized crime, riots, and gun control, and through such government reforms as the Freedom of Information Act. We have fought battles in the halls of Congress over whether to protect or dilute judicial precedents on such issues as one-man, one-vote, and the First, Fourth, Fifth, and Sixth Amendments, and the outcome of these battles has either generated or precluded extensive federal litigation.

At the same time we have sought to help solve the problems of the federal courts. Although they are still the poor relations in the Federal Establishment, receiving less than 1/10 of 1% of the total Federal Budget of $200 billion, we have during the '60's expanded the federal court system by 185 judges, 2087 employees, and $77 million. And we have done much more. We have replaced the U.S. Commisioners with an upgraded system of U.S. Magistrates. In the Criminal Justice Act of 1964, and the Bail Reform Act of 1966, we have enhanced the fairness of federal criminal justice. We have provided new funds to train U.S. Attorneys, and new law clerks for our judges. We are processing legislation now to encourage the establishment of federal defender offices, and—with the particular guidance and support of the ABA and your President—to create the position of Court Administrator in each circuit.

Perhaps most important of all, we have provided the Federal Judiciary with a research and development arm in the Federal Judicial Center, a focal point for future efforts to modernize and reform federal court performance.

Thus, while we have created problems for our co-equal branch, we have also sought to help solve them in a manner that at least holds potential for success. Certainly the critical situation which Chief Justice Warren has described as "presently bad and ominous for the future" is still with us, but we can now approach it with much more hope, hope borne not only of the new resources and tools Congress has provided, but also of the continuing leadership of men like Chief Justice Warren, Justice Clark, and Chief Justice Burger, who have, in turn, stimulated the interest and support of federal judges everywhere. Certainly, the Chief Justice's eloquent statement today will add great impetus.

Yet, any sense of progress we may feel in the federal courts is dulled by our knowledge that they are only a small part of the entire machinery for administering justice in America, and that in the rest of the system, in the state and local courts which are the instruments of justice for most citizens, there is a worsening crisis of almost unmanageable proportions. In many courts, justice seems about to grind to a complete halt. Immense backlogs, intolerable delays, assembly-line treatment, constant confusion, understaffing, under-planning, and under-funding, have transformed civil litigation into marathons and criminal justice into a hollow game. You who labor on and in the courts know the crisis at first hand, and for you statistics are redundant. But the facts are no longer the exclusive property of the profession. The public is becoming aware that something is awry. Citizen concern has been increasing and this has been reflected in the past few weeks by detailed stories in such publications as Time, Life, and Fortune, which have painted a vivid and disturbing picture of our courts for all the world to see.

The message is not a new one, and it has not been lost on those of us in Congress. If we had not heard it before, we certainly heard it in 1967 in the report of the National Crime Commission, in which so many judges and ABA leaders played a vital role. "The courts are the pivot on which the criminal justice system turns," the Commission said. But pointing to a long line of warnings dating back over half a century, from Charles Evans Hughes through the Wickersham Commission, and others, the 1967 Commission found it "distressing to report that these warnings have gone largely unheeded."

The Ninetieth Congress, however, did not allow this latest warning to go unheeded. We acted decisively to create a mechanism to invest substantial new resources in the entire criminal justice system. In the Safe Streets Act of 1968, we created a new "interface of justice" where federal, state, and local governments could join together to combine their efforts to combat crime. Through the Law Enforcement Assistance Administration, we provided for massive block grants to carry out comprehensive state plans to reform and update every dimension of the criminal justice system from police to courts to corrections. And we authorized sizeable discretionary grants to focus additional funds on priority and innovative programs. We established a National Institute of Law Enforcement and Criminal Justice to develop and test new concepts in all of these fields, and to create a nationwide flow of current information on promising answers to old problems. And we created an Academic Assistance Program to support the education of those who will enter criminal justice careers and those already engaged in them.

It is on this interface that we will focus in the 70's for it reflects the nation's needs and the public's demands. It is an ambitious program, and hard work and close monitoring will be vital to its success. We have just passed the program's second anniversary, and as one who was intimately involved in its drafting and passage, and who has followed its implementation in detail, I must candidly report that it has been only a qualified success. Right now in the Judiciary Committee, we are considering the necessity for structural reforms in L.E.A.A., and the need for administrative reform within that agency is universally recognized. Nevertheless the basic concept of large-scale federal assistance to state and local law enforcement and criminal justice programs is sound, and we are optimistic enough about its future to jump from a funding level of $268 million last year to a figure which will probably be between $750 million and one billion in fiscal '71, and substantially more than a billion thereafter. In the context of the estimated present total national expenditures on crime prevention and control of some 5 to 6 billion dollars, the federal increment will be significant indeed.

Among the problems, however, is one which all those here should be fully apprised of. Thus far, the court's dimension of the Law Enforcement Assistance Program has been its least successful and most disappointing component. For a time, by L.E.A.A.'s own analysis, partial fault was at the federal level where the priorities placed on corrections and police components within the Law Enforcement Assistance Administration left its court division understaffed and somewhat neglected. But that temporary defect cannot explain the dismaying showing of the court systems in the State Plans filed in Washington by each of the State Criminal Justice Planning Agencies in 1969 and 1970.

The figures for 1969 are almost embarrassing. Out of 21 million dollars of block grants distributed to the States, the state plans included projects in the amount of only

$1,382,1000, or 5%, on court-related programs, including prosecution and defense services. This compares to a national rate of spending on courts of 11% of all criminal justice expenditures.

17 out of the 50 states, or over one-third, had no court component whatsoever in their 1969 state plans. Another 15 states had only one such program each. The analyst who reviewed the plans for the Justice Department concluded that:

Most of the reporting states had not focused sharply on their court problems;

The court grant proposals submitted were vague and lacked comprehensiveness;

There was too much emphasis on "studies" in court-related fields that have been well-studied already and are ripe for action;

The proposals indicated that not much innovative work was being planned.

If the 1969 results were all we had, we might attribute these failures to the fact that the program was new or that the '69 plans were prepared on a rush deadline, or that other areas of the Criminal Justice system had more quickly and easily definable needs and opportunities. But now the results for fiscal 1970 are in, and they are almost equally disappointing, with some notable exceptions. And it is the exceptions which prove how deficient the other plans are. For example, in the large and urbanized state of New York, $2 million of the block grant of $16.3 million, or 12.2%, will be spent on court-related projects. And in the small and largely rural state of Idaho, $143,281, out of $702,900, or 20.3% will be spent on courts.

Nevertheless, the average court component for all the state plans is only 6.74%, or $12,452,000 out of the $184,522,000 available for block grants. Twelve states have allocated less than 3% to their court programs. One state which will receive nearly a million dollars more in block grants than New York, will spend over a million dollars less of its grant on its courts.

Of course, there are differences in needs and in relative progress from state to state which may explain some of these disparities. But they do not justify the general pattern of apparent neglect of court programs in the state plans as a group. Moreover, even in the area of discretionary grants, where state and local agencies can apply directly to the Justice Department for federal funds without necessarily going through the state planning process, only 4.19% of the available $30½ million went to court-related projects in fiscal '70, largely because of lack of demand.

These facts have grave implications for all of our goals for the administration of justice in America. First they suggest that we lack either the skill or the will to translate our hopes for the court system itself into action. Second, they indicate that those who know the courts dimension of the criminal justice system best, the judges and the practicing lawyers, are not participating in the state and local criminal justice planning processes.

These conclusions are unacceptable, and it is up to every member of the bench and the bar to see to it that they are rebutted. We cannot afford to miss this opportunity to match the realities of justice to the ideals of justice in our courts. Even at the unjustifiably low 1970 rate of under 7% of block grants spent on courts, the amount available in 1971 will be 25 to 40 million dollars, and if the courts proportion doubles, as it should, there may be $50 to 90 million of new capital available to our court systems in the coming year. I believe that we have both the will and the skill to make that investment and to make it wisely.

Certainly we have the commitment. Members of the bench and bar have come to recognize that court reform must be an issue for widespread involvement and not just for a few high court judges or bar officials. The appellate court judges have accepted the fact that they cannot merely lock themselves in their own courtrooms, but that they must get out and observe for themselves the bargain basement of justice, both to assist the sensitivity and relevance of their own decision-making on cases deriving from lower courts, and to enable them to use their prestige in the battle for lower court reforms. And I think most judges have realized that they can and must delegate administrative authority over court business to management experts who can apply modern business methods to the flow of cases, the storage and retrieval of court information and the scheduling of witnesses, lawyers, jurors and judges. For those few who fear interference with the judicial process, Justice Warren's answer should be dispositive: "The judge's opportunity to apply his independent judgment to the facts and law in individual cases," he said, "is enhanced and strengthened by the proper administration of the courts." Similarly most judges now know that bankers' hours and school teachers' calendars are anachronisms for members of busy courts, and defense counsel and prosecutors as well, know that the time has come to terminate the shell game of continuances to accommodate marginal lawyer needs.

So we do have the will. And we have at least enough of the way to absorb many times the newly available amount of capital. First and most important, we know that we are going to invest heavily in court management and administration. We must bring modern business efficiency to bear on the business of running the courts. A nation as successful as we have been in national defense, in space, and in industry should have ample management and technical skills to get its system of justice working effectively.

And we are going to have to make the necessary changes in structures and habits and processes to render this management meaningful. If we bring a computer into a court that is a mess, and do nothing else, then we are going to have a computerized mess.

But we have other things to be done: Summons systems and station-house release to eliminate court steps for minor offenders. Bail reform, well-designed and intensively followed through, not only to enhance fairness, but to reduce the largely wasted annual expenditures for pre-trial jailing which the Crime Commission estimated at $100,000,000. We need more defender offices, more training for prosecutors, sentencing institutes for judges, and presentence investigation facilities.

More importantly, we must adopt and install more drastic methods for reducing the flow of cases. The Bowery Project in New York, and other programs, have demonstrated how to eliminate from the judicial process public intoxication cases, where the courts can provide neither deterrence nor rehabilitation to the defendants, and the stream of defendants only degrades and demeans the courts in the eyes of the citizenry. Even for some of those who are brought into the criminal justice system, we have seen that it can have its impact on them without the necessity for grinding every one of them through the guilt-determination function. In our federal and state Narcotics Addict Rehabilitation Acts and in our Juvenile Courts we have examples of constructive dispositions without guilt determinations. And in New York City, the Vera Institute's employment project has tested a system where all arrestees for certain types of offenses are screened and considered for job training and job placement, and for counselling by reformed ex-convicts. If they are selected for the program, the project goes to court on their behalf and requests continuances of their cases, so that the task of rehabilitation can begin immediately. Of course, such methods of providing the courts with new alternatives require welcoming into court at an early stage new kinds of resources and new kinds of people to focus efforts on accomplishing quickly the goals of the criminal process without going through all its forms. But as Justice Burger said, just "as war is too important to be left to the generals, so justice is far too important to be left exclusively to the technicians of the law."

There is, then, no barrier of either desire or demand which can justify the poor showing of the courts in the first two years of the Law Enforcement Assistance Program. And so it is on the other conclusion that we must take aim, the indication that judges and lawyers are not contributing to the comprehensive crime planning that is meant to be going on at the local and state level everywhere.

Certainly this state of affairs would be regrettable enough solely in terms of its impact on the courts proportion of LEAA. We know that police officials have been extremely aggressive in seeking funds, and that corrections administrators are well-organized for grantsmanship. Thus if the judicial systems and their friends are timid, we will see federal monies going to air condition paddy wagons in cities where nothing is being done to relieve unbearable court backlogs.

But there is a broader and more basic implication. Those who work on and in the courts do not work in isolation and cannot plan in isolation.

The idea, for example, that there is any problem with a judge's participating in a state or local anti-crime planning agency must be repudiated, and I hope that this Section and the Association will take a clear stand on that point. Judges have a unique and valuable perspective on the entire criminal justice system, and they *must* participate in the planning process, not only to assure adequate attention to the courts' needs, but also to interact with those from the other components of the system.

Indeed, as the Crime Commission and many others have long recognized, one of the key problems with our criminal justice system is that it is *not* a system. Rather it has been a series of separate, only slightly coordinated mechanisms, each with different goals and attitudes and approaches. In many places the various participants have only the most formal contacts with one another. Many judges, for example, believe it is improper for them to even speak to policemen outside of court, presumably because it might affect their judicial detachment. But if there are not more, and more informal contacts we have no change of building a real system. Each participant must understand and take into account the other. The lines of communication feedback must be strengthened. The judge must talk to the policeman, and they must both talk to the correctional administrator. They must all ask themselves hard questions about the impact of what they are doing. I wonder how many judges have asked themselves what fraction of arrests for serious offenses in their communities result in dispositions that make any sense for society. I wonder how many judges have thought about the viewpoint of the policeman who cares much more about arrests than he does about follow-through. And how often do judges get detailed feedback showing the ultimate results of their sentencing decisions. Asking and answering questions like these helps us to take a real system view, to reexamine our goals, and tactics, and assumptions, and then to accomplish meaningful change.

But this process can only go on if all parties to the system relate and interact with one another. And right now there is no better forum than in the state and local planning processes which the Safe Streets Act has spawned.

The questions are hard, harder than they have ever been, and the answers are more

disturbing than ever. Yet now we have the resources and the knowledge and the dedication to try at least to face up to those answers. We can make our courts efficient. We can make them relevant. We can make them both fair and productive. We can make them an integral part of a system that has continuity, strategy, and impact. But we not again have as favorable a setting as we do today, so we must act forcefully and quickly and together. That is our challenge, and that is our opportunity.

HUNGER—1970

I am very pleased to be able to take part, this morning, in the discussion on Freedom from Hunger. I know that hunger is a topic in this year's convention because of the guidance and direction provided to the members of the American Bar Association by Mr. Lloyd Cutler and Mr. Jerome Shestack. No other subject of national concern is more deserving of critical attention. The Section of Individual Rights and Responsibilities has properly focused on the hunger issue as one which should command the attention of all of us who work with our nation's legal and legislative councils.

Our concern about the national hunger scandal is properly emphasized in the report and recommendation of the Section of Individual Rights and Responsibilities. That report urges rapid elimination of hunger and malnutrition in this country.

That is certainly not a new pronouncement. It is not an exhortation directing attention to a new or undiscovered national crisis. But because hunger in America is terribly widespread and totally unnecessary, I fully support the basic tenets of your recommendations—that the continued existence of substantial conditions of hunger and malnutrition are inexcusable, humanly unconscionable and economically and socially shortsighted. For those reasons the battle against hunger must be continued. The repetition of the call to eliminate hunger, as you have done, must be sounded daily, until every American is guaranteed an adequate diet.

I wish to join you in repeating the call for an end to hunger and starvation. In this morning's session I hope to review briefly some of the things that have happened in Washington to assure that no citizen will be permitted to go hungry. At the same time I hope we can discuss what remains to be done and how we might be able to do those things.

In the summer of 1968, sixteen congressional hearings produced statements, accusations, and responses that seemed to hopelessly tangle the true picture of hunger in America.

The majority of congressional witnesses testified that hunger does exist in this prosperous country, in urban slums, in the hills of Appalachia, on the worn out fields of the South, in the barrios of the Southwest and on Indian reservations.

"People are being starved" said Doctor Gatch, a South Carolina physician. "They are being deliberately denied their health and well-being." Hunger USA, the statistically based report of a citizen's Board of Inquiry argued that "ten million Americans are chronically hungry".

In addition, countless studies and endless tours revealed that many children as well as adults are not getting enough food to sustain life. Physicians who visited rural Mississippi counties in 1967 found little children so ridden with disease they were beyond cure.

Indices of substantial malnutrition and hunger appear in the findings among 12,000 people studied by Dr. Arnold E. Schaefer in the National Nutrition Survey in 1968. Doctor Schaefer methodically and conclusively gathered information that proves to everyone, including those who may be doubters that many Americans have bad nutritional health. His studies also verified what many people have long suspected—that in America today there exists not only those who are hungry and malnourished—but also, those who are starving.

He uncovered cases that reveal children who are victims of Kwashiorkor, the tragically consuming and debilitating malady—which fades hair color to a dull red, distends the stomach like a blow-toad, and saps life and energy from the muscles.

From countless documented accounts in statistical summaries, we know what the sad dreary picture of hunger in America looks like:

Approximately 27 million people in this country live in poverty. One third of these people receive some kind of government assistance. The remaining 18 million are really abandoned, and we have not yet found it in our conscience to begin dealing with their problems.

Three million children in America go to bed each night without a decent meal. They always wake up hungry. For these kids each day means there are three strikes against them—their breakfast, their lunch and their dinner.

Among infants admitted to Children's Hospital in Cincinnati 40 years ago, 20 per cent were anemic. In 1944, the incidence was the same. In 1965, that hospital's admissions still had no change in the incidence of anemic infants.

Only ⅓ of poor children in this country receive free or substantially reduced price school lunches.

Too many slum schools in our big cities have no school lunch program.

Food assistance programs are deliberately designed to provide only two-thirds the volume of food per person estimated to be an absolute minimum for nutritional health.

In 1968, 2.3 million farmers received Federal farm subsidies.

If those subsidies had been made on the same skimpy basis that food stamps are issued to the needy poor—only 193,000 farmers would have been subsidized.

Suppose the Defense Department provided adequate diets for just 16 percent of all military units; that was the percentage in 1968, of counties with hungry poor that got food stamps.

A strong correlation exists between prenatal and natal protein deficiency and mental retardation.

5.1 million Americans live in families whose yearly income is less than $1200 a year for a family of four.

Another 9.3 million Americans have incomes less than $2400 per year for a family of four.

Unless they have food assistance, these 14.4 million Americans are hungry because they are poor. This is the group that Federal food programs must help.

Yet as late as last summer, the principal Federal food assistance programs, the food stamp and commodity distribution programs, served only 3.2 million poor people. That amounts to 6.4 million of the estimated 27 million poor and 13 million near poor. Thus, the two programs combined serve a maximum of only 44 percent of the 14.4 million Americans who are so poor that they must have assistance if they are to escape malnutrition.

In short, these programs have never succeeded in reaching a significant proportion of those in need of help.

The participation gap in these food assistance programs is significant—but is often ignored by those who blame the poor for their plight.

In the average food stamp county only 10 percent of the poor actually receive food stamps. A poor family has only one chance in three of living in a county with a stamp program. And if the family happens to live in such a county, it still has only one chance in six of participating in the program.

It is clear from this capsule view that Federal family food assistance programs reach only a small portion of the poor. Moreover, the dollar value of food benefits provided by these aids and the need for food income for poor people is between $2 billion and $4 billion.

The poor can never get all of the things needed for a minimum level of subsistence in our economy. As one witness told Ben Heineman, Chairman of the President's Commission on Income Maintenance Programs, "I either eat good and smell bad, or smell good and don't eat."

For the most part what we hear and read about the poor comes to us in the cold faceless form of statistics. But the people who suffer because they have inadequate incomes are real and personable.

They include: A woman of 72, room bound in a grimy cold flat. A miner with one lung, and no electricity in his mountain shanty. A former farm hand, cotton chopper, orange picker, who has been made obsolete at 32 by mechanization or minimum wage laws. A deserted mother of six in a county that doesn't believe in welfare and doesn't have a food stamp or commodity food program. A slum child in a big city whose father works every day, but earns just $1.40 an hour.

Millions of the hungry of America thus receive no welfare help. They are deprived of nourishment in a country teeming with abundance. Most of us have yet to admit that existing assistance programs do not provide the means to insure even minimum well-being for the unfortunate. The notion that an abundantly adequate subsidy for the "worthy" factors of our economy has not yet spilled over to the care we allocate for the poor.

This is not a problem, however, that is insoluble. Many experts agree that Federal Food Assistance Programs are not bad devices. With enough money and flexibility they can be effective.

Dr. Jean Mayer of the Harvard School of Public Health, suggests that the Food Stamp program be federalized and computerized. According to his proposal, needy people would simply make a statement declaring their requirement and family needs. Then, food stamps would be distributed much the way we now issue assistance through the Social Security Program.

Doctor Mayer and a number of others believe that ultimately food programs ought to be recognized as income supplements and become part of an income maintenance system.

I agree.

The shortage of food in the homes of the poor is not a matter of agriculture. It is a natural and understandable product of a system that thrives on profits. But that system cannot serve effectively the poor people in our population because they offer no means to produce a profit. The obvious and the only way to do that is to improve the income of the poor.

Current action in the Congress and Public concern for the need to revise our national policies of welfare assistance will hopefully be able to do that.

In the past, programs and laws designated to assist the unfortunate were not necessarily planned to provide for protection of their nutritional health.

We have aid to the blind; aid to the permanently and totally disabled; and aid to dependent children. The very names indicate that one must be more than just poor to receive assistance. But none of these programs protect the hungry among the poor.

Laws that were nominally designed to assist the hungry only provide aid to them as an incidental side effect. Even when the nation has conscientiously tried to help the poor it has done so only to the benefit of the so-called "worthy" factors of the economy.

The Agricultural Act of 1935 resulted in benefits as favorable or the farmer as the

Smoot-Hawley Tariff act has been for the manufacturer.

Section 32 of the Agricultural Act encouraged the over production of farm goods in the embarrassingly large quantities that we have today. Each year more than $100 million is spent buying up fresh milk—presumably for consumption by children of all economic classes. But the expressed purpose of the program is frankly not to be construed as a program for the benefit of children, but as one primarily for the milk producers.

Also under the Agricultural Act of the Thirties was the authorization for the initial food stamp program. It was designed to satisfy the grocers' claim for special subsidy consideration. After the start of World War II, food stamps were abandoned, partly because we learned how poorly it served the needs of the hungry.

But in the fifties, we again heard the grocers' pleas for special consideration.

They regarded those who received food from surplus commodity distribution program as lost customers. Conveniently, they ignored the fact that people getting the trickle of surplus commodities were too poor to be viable customers in the first place. The nation's response to the grocers' plea was to revive the old food stamp plan of the thirties.

But again this provides evidence that we reverted to the food stamp program for the benefit of the grocer, not for service to the hungry.

Indeed there is ample evidence that stamp purchase and benefit levels were designed purely for the convenience of program administration and producer profit. The typical food stamp participant family must pay between 37 and 50 percent of its monthly income for food. Which by the way, is the proportion spent for food in many communist countries. While the average American housewife spends 17 percent of the family's money for food.

The Food Stamp Program has little relevance to the family wage earner who follows the crops, does day work, seeks unsuccessfully for a better job, or, while having physical and educational handicaps, tries to retain the family unit and thus is denied welfare.

Other food programs are not much better. Reams of Congressional testimony show similar flaws in the surplus commodity program and in the School Lunch Program. Poor people's needs are consistently the last consideration made in the developing design of such assistance devices.

And so it is, that it can fairly be said, all current laws enacted to bring an end to hunger are suspect in the hollow-eyed stare of the hungry. This, in a country that has shown great ingenuity in responding to human and material emergencies.

If there is a flood or a hurricane, we have a national disaster procedure for the President to employ.

If an entire continent is destroyed by war, we devise a Marshall Plan.

If there is an earthquake in Peru, we send a member of the first family and plane loads of supplies.

If we deem a nation in Southeast Asia vital to our security, we go to war.

There is no end to our ingenuity and resources when the determination is made that a real problem exists, either here or abroad.

But what of the hungry among us. I submit that our response has not been sufficient.

Since Senator Robert Kennedy and Senator Joseph Clark made their tour of several Mississippi counties in 1967, considerable public attention has been focused on the hunger crisis. The public reacted to the CBS documentary "Hunger in America" with considerable furor. That was an encouraging response.

Public debate over the issue of hunger was startling. Lawsuits were filed. The White House and Congress were deluged with mail. The rigid disinterest of middle-class America was shattered. And the history of political manipulation entered an era of critical scrutiny.

Congress got the word. Quickly but carefully, legislation was prepared in the House—two Bills pertaining to school lunches and one proposing a Hunger Commission.

In the Senate the issue of hunger was met head on—first, action was taken to authorize Section 32 funds to feed more poor children. It then acted to create the Select Committee on Nutrition and Human Needs. The Senate mandated that Committee "to conduct a complete study of all matters pertaining to the food, medical and other related basic needs among the American people".

Through participation as a member of that Committee, I watched and studied repeated evidences of the existence of chronic hunger and malnutrition in the United States.

Yet, throughout the hearings the committee heard witness after witness complain about the administration of Federal food assistance programs.

Last Fall I was deeply involved, along with others in the Senate, to insure passage of two food assistance measures:

The first, S. 2547—amended the food stamp Act to provide for more money and to liberalize administration of that program.

After action by the House that introduced a work requirement, and removed the Senate passed provisions authorizing free food stamps to the very needy, that bill was signed into law on May 14.

The second, S. 2548, amended the National School Lunch Act and the Child Nutrition Act of 1966. Final House action on that bill is expected very soon.

My efforts in working for the passage of those bills were aimed at increasing the level of funds available to feed poor people.

In my view, both of these bills are critically vital in the struggle against the deteriorating conditions of chronic hunger. But, Federal legislation, no matter how sincerely or how compassionately it is founded, can be totally ineffective if it is not accompanied by systematic and humane standards at the point where the service is brought to the intended recipient.

Last summer, two professors from the U.S. Military Academy at West Point, conducted a study of food distribution programs at the request of the White House.

They visited fifteen counties in four states in different parts of the country.

In their report of food assistance programs, Captain Terrance Goggin and Captain Clifford Hendrix told of the many subtle and overt schemes local officials use to deny food to the poor:

If you're Black in Mississippi you can't eat. For the mother who bears more than her "quota" of illegitimate children, she and the children will go hungry. And if you work only during the harvest season to pick beets or grapes or oranges, you can't meet the residence requirements for food assistance.

The food issue is a perfect unhappy example of the dangers of the latest fad of local control. Local governments request and run food assistance programs. But the sad repressive result is that those hometown officials who are least responsive to the needs of the poor can also deny them federally proffered food. According to Goggin and Hendrix, federally funded food assistance programs are directly influenced by and are vulnerable to—the parochial attitudes and prejudices of local officials.

It is in this area of local program operation that members of the ABA can have an impact on the crisis of hunger and malnutrition. For, you can stir the benign calm and arouse public compassion. Already because of the cases brought to court concerning food programs, there is an increase in public awareness and interest in this problem.

I can only hope that for my presence here today to be of value on the struggle to insure "Freedom From Hunger" that you will continue with the kind of litigation and administrative action that we have come to call "poverty law" in the hunger area. The advent of the Federal poverty program brought with it legal aid practitioners who are effectively changing the concept of legal action in the area of social welfare. So far, the Columbia Center on Law and Social Policy and the California Rural Legal Assistance Program have been the sources of most legal action in the field of hunger. I believe that to make a lasting impact for hungry Americans that kind of advocacy effort must continue. But litigation, in a sense, is a kind of a last resort in the search for solutions to man's problems. What is really needed is a cold analytical look at the problem of feeding the poor. By training, lawyers are expert at problem solving. They are best when asking questions, questions that haven't been asked before.

Probing questions that would shatter the traditional attitudes about food distribution can arouse the food industry so that there will be less apprehension about change. A lot more can be done to feed the poor efficiently and inexpensively. Surely, from the ingenuity of that great combine called "agribusiness" there can emerge creative methods to "get some food down there" to the poor.

When asked by the space agencies, food companies devised fantastic ways to pack meals for astronauts.

Modern day private catering feeds thousands of people in hospitals, factories and most spectacularly, in airplanes.

We know that there is more than enough food produced by American farmers to feed all of our citizens. It is not because of mechanical or industrial failures that Americans go hungry. People are hungry because of what happens to men in management and policy making positions in government and in industry.

Public debates about the country's ability to feed the poor pointlessly end in a wrangle about money, loss of personal incentives and concern over proving the relationship between good nutrition and desired productivity.

Yet, in our nation's largest Federal assisted food program operated by the Department of Defense these irrelevant concerns are never debated.

The Pentagon spent over $4 billion last year to feed 3.5 million servicemen. That was an annual rate of more than $1100 per person.

While the administration budget for food assistance for the poor amounted to $1.2 billion to feed 8 million people, at a rate of $145 per person.

It has been easier to stir sustained national concern over hunger in Biafra than for places at home for which we are more directly responsible.

The problems of hunger, malnutrition and starvation in this country are looked at in terms of the workings of the system, and the way we have always done things. Unfortunately, they have not been looked at in terms of the problems of feeding hungry people. Decent men continue to sit and discuss statistical reliability and administrative neatness while people still go hungry. I urge you here today to use all your resources, your training and your skill to make the system guarantee an adequate diet for every American. You can help end a hunger emergency in America if you will probe for new and modern responses to this problem.

CITIZEN ADVOCACY: TRENDS FOR THE 1970'S

Nineteen Sixty-Five was a memorable year for all of us.

The Selma-Montgomery march and the Voting Rights Act, Watts and the McCone Commission Report. The great blackout in the Northeast. LBJ started his first full term.

Nick Katzenbach became Attorney General. Sarge Shriver was running OEO by day and the Peace Corps by night. Only 4.3 million dollars was going into legal aid societies nationwide that year, and only 600,000 of the nation's 32 million were getting any kind of assistance in criminal or civil legal matters. And "Murphy" was still a bed, or a woman who made chowder.

But for those of us here, one event that year stands out very clearly. The February meeting of the ABA House of Delegates made its historic pledge on behalf of the ABA "to cooperate with the Office of Economic Opportunity and other appropriate groups in the development of services to indigents and persons of low income." Of course that historic act was a continuation and a vindication of Reginald Heber Smith's dramatic challenge 45 years earlier, on the occasion of the founding of the Committee on Legal Aid Work.

"Let us assume leadership," he said, "by declaring here and now that henceforth within the field of law, the mighty power of the organized American Bar stands pledged to champion the rights of the poor, the weak, and the defenseless."

We come together today to celebrate both of these anniversaries, and we have much to celebrate. The forty-five years of active association between the Bar and the Legal Aid movement have led to five years of the most fruitful partnership in American society today.

Through its support of OEO's Legal Services program the Bar has helped keep itself dynamic and relevant. It has enhanced the attractiveness of law as a career for the new generation of altruistic and activist young Americans. It has helped build new bridges between the poor and the affluent, between the disenfranchised and our institutions, between young and old, between black and brown and red and white. It has sustained what we lawyers like to think of as our built-in conservatism, with a small "c," by proving the durability, adaptability, responsiveness, and capacity of the system and its traditional institutions, but it has done so by producing some radical changes in the system's operations. It has given support to legal services at the local level, getting programs started, educating local bar groups to overcome their timidity, helping to shield programs against local political and economic pressures. At the national level the support of the Bar has been the lifeblood of the Legal Services program, with the ABA leading the fight for authorizing legislation and annual appropriations, and manning the battle stations to ward off the persistent attacks by the enemies of equal justice for all, and by those who wish to dilute the lawyer's independence and the integrity of the lawyer-client relationship. The Congressional rejection of the Murphy Amendment last winter marked the coming of age of the ABA-OEO partnership, although the defensive machinery will have to be kept well-oiled to resist attempts to sneak the substance of the amendment in the side door of an Oklahoma plan or through subordination of Legal Services in the process of OEO regionalization.

We can see the signs of maturity as OEO Legal Services enters a phase where the focus is on quality as well as quantity, where the goal is not just to get money out and offices going, but to see that the lawyers are working with a rational sense of priorities, that they have a real impact, not just an existence.

All of you know at first hand that the growth of legal services means much more than just the 53 million dollars and the 3,950 people now in legal services offices. It means a new source of hope in hundreds of communities, law as a tool for all the people, David and Goliath victories in food stamps, housing, welfare, and the other fields where precedents are vital to the poor.

And with this security and maturity and success, perhaps it is time to pause, to ask what we have learned, and where we want to go. Here is one man's opinion.

First, I think we must begin to look at Legal Services not as an isolated function or a unique instrument, not only as a vital facet of life for the poor, but also as a prototype and model for, and as a subsystem of, a broader function of Citizen Advocacy, of skilled representation for all those who need it to deal with the powerful, sluggish institutions of society, whether in Washington or at City Hall. Obviously, such advocacy has produced a startling change in the lives of the poor. It is their sword to accelerate the flow of the basic ingredients of life—food, shelter, clothing. It is their shield against draconian legal interventions, like eviction and repossession. But in essence, it is really their lever to make the impersonal institutions that control their lives respond to their needs.

Yet, the poor are not the only ones in our society who are disenfranchised and underrepresented and powerless in their relations with the mighty institutions of modern living. We have seen that the same unresponsiveness and irrelevance and blindness and insensitivity to human needs and values, which have made the lives of the poor miserable, are also spoiling the lives of the non-poor. On one ground or another, the majority of Americans are disaffected with the quality of life imposed upon them by forces they cannot see or grasp or do anything about. The city dweller is fed up with traffic and air pollution and crimes; the homeowner with high interest rates and high taxes; the car owner with insurance and repair costs, the elderly with medicare and social security limitations, the middle-income American with the high rent and low quality in available housing. Then there's airport noise and dirty rivers and polluted beaches. And there are whole ranges of institution decisions that vitally affect our lives that we hardly even know about—fuel supply and pricing policies, t.v. programming decisions, aviation safety rules, car safety design, food additives, and hundreds of other conditions of modern living chosen for us mysteriously by unknown forces in unknown ways.

The problems for the non-poor may be different from those of the poor, and they may be generally less urgent—although they can be matters of health and safety and life and death—but they stem from the same roots of institutional malfunctioning, public and private, and in large part they will yield to the same approaches. The theories and principles of Jean and Edgar Cahn are as much blueprints for action for Nader's Raiders as they were for Bellow's Fellows. And any Legal Services Attorney worth his salt is going to have to study closely the Nader techniques and results. The past of the Neighborhood Lawyer and the Consumer Advocate is a shared past, and the future will be a shared future whether we try to make it so or not. But if we consciously make it so, if they share resources and knowledge and ideas, it will be a more fruitful future for all the citizen advocates and for the citizens they represent.

This commonality will be seen clearly, I believe, in a healthy refocussing, during the 70's, of citizen advocacy away from litigation as a primary tool.

In the field of legal services for the poor, the principal avenue of progress has been litigation, but the very successes in this field have taught us that litigation is not the only answer nor the best answer for the citizen advocate. Many of us lawyers like litigation. It can be exciting and competitive, gratifying to the ego; it works under clear rules and within strict bounds; it can produce clean-cut and visible victories. But of course the goal of every corporation lawyer and government lawyer is to stay out of court, to resolve issues before they become irreconciliable conflicts. For litigation in our crowded courts is slow, expensive and frequently undeterminative. It deals only with the pathology of institutions and not with their effective functioning. Most often a single case deals with a single fact situation, and it takes as much work to translate a precedent into a general rule of actual practice as to obtain the precedent. In short, it is too late, too little, and too limited.

Thus our emphasis on the "test case" as the key element of "reform" in the field of citizen advocacy—especially for the poor—may soon become obsolete.

Of course, the bar as a whole must continue to place high priority on vindicating fully in court the rights of the unpopular, and the discriminated against, and the oppressed, and the indigent accused, for when their rights are compromised we all lose a share of our liberty. And it must continue to service the day-to-day litigation needs of the poor, who must be represented fully if the legal system is not to be a cruel hoax to them. But at the same time we must focus our attention earlier in the process of institutional decision-making and actions. We must direct our efforts to the basic sources of agency malfunctions and not just at their symptoms.

We are going to do this in two ways. First, we are just going to do it. That is, even if the structures stay the same, the citizen advocate will have to introduce himself earlier and earlier into the processes of governmental—and corporate—decisionmaking. At the threshold he is going to have to open up these processes to public scrutiny. He is going to have to find out where and when and by whom the key decisions are made, the quiet decisions that really count, and what inputs and pressures go into those decisions. Then he is going to have to marshal his facts and his law and his logic and whatever political support he can muster, to make sure that there are adequate and articulate citizen inputs at the stages where priorities are set, where resources are allocated, where policies are determined, where discretion is exercised, as well as the stages where policy is interpreted, and applied, and implemented. When a court gets a lawsuit involving an agency decision, it can ordinarily ask only two questions—did the agency follow the correct procedure, and was there a sufficient factual basis on which that decision could have been reached within controlling law? But if the citizen advocate enters the picture before the decision is made, the slate is clean. He can affect the choice among a range of alternatives, all of which would be unassailable in court. He can ask—and answer—the questions "why" and "why not" and "what ought to be" about housing and welfare regulations, about auto safety and water pollution rules, or, for that matter, about the OEO guidelines.

Given the existing structures and attitudes, accomplishing this kind of citizen input is not an easy task. Sometimes it takes years just to understand what the dynamics of a government policy are, and to identify the avenues for change. Even with all the advantages we in Congress have when we perform the citizen advocate function—which we frequently do—it was ten years after the adoption of the Oil Import Control program, for example, before we learned where it was vulnerable and how to attack it at the policy-making stage.

And so, the second way we are going to have to approach the task of increasing citizen inputs is by changing the structures and practices of our institutions, so that they welcome and encourage representation of the public interest at the earliest possible stage.

Certainly the federal government has become too big and too complex and spread out for a few top managers to know or affect

what really happens at the delivery end of government programs. And the mushrooming problems and programs at the state and local government stretch the talents and time of officials at those levels to their limits. At this point in history, therefore, public interest advocacy is an absolutely essential element of good government, and government must act accordingly. We must write into every new program, and amend onto every old program, the most effective citizen input mechanisms we can devise. We will have to experiment with different modes, but the task should not be difficult. Most of our federal agencies have had no difficulty designing input mechanisms for industry interests or other special interests, so they should have no trouble innovating in the field of citizen inputs.

In some programs the course is self-evident. The Law Enforcement Assistance Administration, for example, will distribute close to a billion dollars in fiscal 1971. Most of the money will go from the Justice Department to State Anti-Crime Planning Agencies to spend in accordance with the state plans they have submitted. Most of that money will go to cities and counties in accordance with plans and applications they have submitted to the state, or in some cases to regional agencies within the state under plans these agencies have submitted. At no step in the pyramid is there required any citizen input, other than the possibility that a mayor or two may be on the state or regional planning group. There is no stipulation that the plans or applications be released for public comment before they are submitted, and thus we are very likely to see the spectacle of a city getting money to buy a more elaborate harbor patrol launch when it does not have an adequate police-community relations program. In that one program alone there is a fertile field for citizen advocacy on behalf of both the poor and non-poor alike all across the nation.

Under this view the citizen advocates wear many hats. They are policy advisors, substantive evaluators, fiscal auditors, quality control checkers, agents of the legislature to see that its mandates are carried out. And since these functions are quasi-governmental, it is totally appropriate that the government not only be open and hospitable to the citizen advocates, not only require that their inputs on behalf of the public be sought and received, but also assist and, in one form or another, finance the process of citizen advocacy.

The idea of investing public funds in public interest advocacy is not a new one. We have done it with the citizen advisory groups in model cities. In San Francisco, the urban renewal grants include financing for community representatives to participate in the planning and relocation functions. And, of course, the best example is OEO Legal Services, where we have funded in umbrella fashion a wide range of citizen advocates to audit and attack and elevate the functioning of institutions of every type, federal, state, local, and private, whose activities affect the most unrepresented groups of all, the poor. Perhaps Dr. Heard also qualifies as an example of a federally funded and stimulated citizen advocate. And the OEO investment in the National Clients Council, as a gadfly to OEO Legal Services itself, is a perfect example of what can be done by those who sponsor and support a program to make sure that program produces.

Thus the Murphy and Ruckleshaus incidents were the last gasps of an effort to turn the clock back, for the clock will inexorably turn forward to increasing—not stifling—government supported advocacy of government reform. The number of bills before the Ninety-First Congress which will enhance the federal role in financing assaults on federal decision-making is probably in the dozens. I have just held hearings on a bill I introduced to establish a Public Counsel Corporation to provide or fund the provision of representation for the unrepresented public in federal agency rulemaking proceedings, broadly defined. My bill may be one of the least expansive—and I hope most feasible. But it certainly reflects the direction we are moving in, and the direction states, and cities, and corporations must move in, if they are to meet the demands of the times.

Of course, if this prognosis, or expression of hope, proves accurate it is going to create some problems. There is going to be a sudden jump in demand for citizen advocate services, and our law schools and law firms will have to respond to that demand. Right now the citizen advocate bar consists of Legal Services and Legal Aid offices and centers, a few organizations like Inc. Fund and the A.C.L.U., and a handful of foundation-sponsored advocacy centers in Washington, a few public interest law firms, and the ad hoc, pro bono work performed by private lawyers for various citizen groups. Even with all the talent presently centered in Washington, the citizen advocates there cannot properly monitor all the federal agencies. And for each agency that decentralizes, there will be ten Washingtons around the nation where policies are set and executed and will need citizen inputs. For every block grant program there will be fifty Washingtons, and many times that if the state programs are subregionalized. So it will take many "Washington" type lawyers all over the country just to monitor the federal programs, not to mention state and local and corporate activities. They will need a new range of talents from grantsmanship to the Administrative Procedure Act, and from the Hatch Act to Freedom of Information. Thus the law schools will have to assist with new kinds of training. And the law firms will have to help make the manpower available.

Perhaps this is all a big order. And the steps for getting it filled are still wide open for discussion. Yet if we are to be able to stand behind our promises that the system can work in a responsive and responsible manner, then it is an order we had better fill. The Legal Services program has really blazed the trail in this direction, proving clearly the viability of taxpayer funded citizen advocacy. Now it is up to us to follow through.

THE HEALTH COSTS OF AIR POLLUTION

Mr. MUSKIE. Mr. President, last week the Subcommittee on Air and Water Pollution completed action on major amendments to the Clean Air Act. The bill sent to the full committee is a strong piece of legislation. It will, when enacted, have a major impact on the way we live. The subcommittee did not act in haste. It held some 20 days of hearings and 12 executive sessions over the course of the summer.

One of the bill's innovations is the requirement levels of air quality necessary to protect public health be achieved within a period of time set by the statute. This must be done regardless of cost but costs works both ways.

Air pollution costs the American people billions of dollars in health losses, property damage, increased accidents, and in the deterioration of the quality of life. A paper by Lester Lave and Eugene P. Seskin entitled "Air Pollution and Human Health" appeared recently in the publication of the American Association for the Advancement of Sciences. In that paper the authors calculate the health costs of air pollution to the American people.

Mr. President, the costs presented were made without regard to increased accidents, property damage, psychological effects, esthetic values, or effects on vegetation or wildlife. The paper concludes that 50 percent reduction in air pollution levels in this country would produce a health savings to the American people of some $2.1 billion annually.

The concluding paragraphs from this paper summarize what I consider to be important and relevant information as the Senate prepares to consider air pollution legislation. It demonstrates the need to act immediately to provide protection of the public health:

We estimate the total annual cost that would be saved by a 50 percent reduction in air-pollution levels in major urban areas, in terms of decreased morbidity and mortality, to be $2080 million. A more relevant indication of the cost would be the estimate that 4.5 percent of all economic costs associated with morbidity and mortality would be saved by a 50 percent reduction in air pollution in major urban areas (64). This percentage estimate is a robust figure; it is not sensitive to the exact figures chosen for calculating the economic cost of ill health.

Mr. President, I ask unanimous consent that the paper by Messrs. Lave and Seskin be printed in the RECORD.

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

AIR POLLUTION AND HUMAN HEALTH

(By Lester B. Lave and Eugene P. Seskin)

The quantitative effect, with an estimate of the dollar benefit of pollution abatement, is considered.

Air pollution is a problem of growing importance; public interest seems to have risen faster than the level of pollution in recent years. Presidential messages and news stories have reflected the opinion of scientists and civic leaders that pollution must be abated. This concern has manifested itself in tightened local ordinances (and, more importantly, in increased enforcement of existing ordinances), in federal legislation, and in extensive research to find ways of controlling the emission of pollutants from automobiles and smokestacks. Pollutants are natural constituents of the air. Even without man and his technology, plants, animals, and natural activity would cause some pollution. For example, animals vent carbon dioxide, volcanic action produces sulfur oxides, and wind movement insures that there will be suspended particulates; there is no possibility of removing all pollution from the air. Instead, the problem is one of balancing the need of polluters to vent residuals against the damage suffered by society as a result of the increased pollution (1). To find an optimum level, we must know the marginal costs and marginal benefits associated with abatement. This article is focused on measuring one aspect of the benefit of pollution abatement.

Polluted air affects the health of human beings and of all animals and plants (2). It soils and deteriorates property, impairs various production processes (for example, the widespread use of "clean rooms" is an attempt to reduce contamination from the air), raises the rate of automobile and airline accidents (3), and generally makes living things less comfortable and less happy. Some of these effects are quite definite and measurable, but most are ill-defined and difficult to measure, even conceptually. Thus, scientists still disagree on the quantitative effect of pollution on animals, plants, and materials. Some estimates of the cost of the

soiling and deterioration of property have been made, but the estimates are only a step beyond guesses (4). We conjecture that the major benefit of pollution abatement will be found in a general increase in human happiness or improvement in the "quality of life," rather than in one of the specific, more easily measurable categories. Nonetheless, the "hard" costs are real and at least theoretically measurable.

In this article we report an investigation of the effect of air pollution on human health; we characterize the problem of isolating health effects; we derive quantitative estimates of the effect of air pollution on various diseases and point out reasons for viewing some earlier estimates with caution; we discuss the economic costs of ill health; and we estimate the costs of effects attributed to air pollution.

THE EFFECT OF AIR POLLUTION ON HUMAN HEALTH

In no area of the world is the mean annual level of air pollution high enough to cause continuous acute health problems. Emitted pollutants are diluted in the atmosphere and swept away by winds, except during an inversion; then, for a period that varies from a few hours to a week or more, pollutants are trapped and the dilution process is impeded. When an inversion persists for a week or more, pollution increases substantially, and there is an accompanying increase in the death rate.

Much time has been spent in investigating short-term episodes of air pollution (5). We are more concerned with the long-term effects of growing up in, and living in, a polluted atmosphere. Few scientists would be surprised to find that air pollution is associated with respiratory diseases of many sorts, including lung cancer and emphysema. A number of studies have established a qualitative link between air pollution and ill health.

A qualitative link, however, is of little use. To estimate the benefit of pollution abatement, we must know how the incidence of a disease varies with the level of pollution. The number of studies that allow one to infer a quantitative association is much smaller.

Quantifying the relation. Our objective is to determine the amount of morbidity and mortality for specific diseases that can be ascribed to air pollution. The state of one's health depends on factors (both present and past) such as inherited characteristics (that cause a predisposition to certain diseases), personal habits such as smoking and exercise, general physical condition, diet (including the amount of pollutants ingested with food), living conditions, urban and occupational air pollution, and water pollution (6, 7). Health is a complex matter, and it is exceedingly difficult to sort out the contributions of the various factors. In trying to determine the contribution of any single factor one must be careful neither to include spurious effects nor to conclude on the basis of a single insignificant correlation that there is no association. Laboratory experimentation is of little help in the sorting process (8).

The model implicit in the studies we have examined is a simple linear equation wherein the mortality or morbidity rate is a linear function of the measured level of pollution and, possibly, of an additional socioeconomic variable. In only a few cases do the investigators go beyond calculating a simple or partial correlation.

A number of criticisms can be leveled at this simple model. No account is taken of possibly important factors such as occupational exposure to air pollution and personal habits. These and other factors influencing health must be uncorrelated with the level of pollution, if the estimated effect of pollution is to be an unbiased estimate. In addition, the linear form of the function is not very plausible, except insofar as one considers it a linear approximation over a small range.

Both because of the rather crude nature of the studies and because of the statistical estimation, there is a range of uncertainty concerning the quantitative effect of pollution on human health. This range is reflected in the estimate of the benefit of pollution abatement, discussed below.

Epidemiological studies. Epidemiological data are the kind of health data best adapted to the estimation of air pollution effects. These data are in the form of mortality (or morbidity) rates for a particular group, generally defined geographically (9). For example, an analyst may try to account for variations in the mortality rate among the various census tracts in a city. While these vital statistics are tabulated by the government and so are easily available, there are problems with the accuracy of the classification of the cause of death (since few diagnoses are verified by autopsy and not all physicians take equal care in finding the cause of death). Other problems stem from unmeasured variables such as smoking habits, occupations, occupational exposure to air pollution, and genetic health factors. Whenever a variable is unmeasured, the analyst is implicitly assuming either that it is constant across groups or else that it varies randomly with respect to the level of air pollution. Since there are many unmeasured variables, one should not be surprised to discover that some studies fail to find a significant relationship or that others find a spurious one. For the same reason, one should not expect the quantitative effect to be identical across various groups, even when the relationship in each group is statistically significant.

Sample surveys are a means of gathering a more complete set of data. For example, a retrospective analysis might begin with a sample of people who died from a particular disease. Through questionnaires and interviews, the smoking habits and residence patterns of the deceased can be established. The analysis would then consist of an attempt to find the factors implicated in the death of these individuals. Two types of problems arising from such a study are the proper measurement of variables such as exposure to air pollution (there are many pollutants and many patterns of lifetime exposure) and the possible contributions of variables which still are unobserved, such as occupational hazards, socioeconomic characteristics, and personal habits.

Whatever the source of data, the investigators must rest their cases by concluding that the associations which they find are so strong that it is extremely unlikely that omitted variables could have given rise to the observed correlations; they cannot account for all possible variables.

Episodic relationships. Another method of investigating the effects of pollution involves an attempt to relate daily or weekly morality (or morbidity) rates to indices of air pollution during the interval in question (10). The conclusions of these studies are of limited interest, for two reasons. First, someone who is killed by an increase in air pollution is likely to be gravely ill. Air pollution is a rather subtle irritant, and it is unlikely that a healthy 25-year-old will succumb to a rise in pollution levels. Our interest should be focused on the initial cause of illness rather than on the factor that is the immediate determinant of death. Thus, morbidity data are more useful than mortality data. Second (and more important for the morbidity studies), there are many factors that affect the daily morbidity rate or daily rate of employee absences. Absence rates tend to be high on Mondays and Fridays for reasons that have nothing to do with air pollution or illness. One would expect little change in these absence rates if air pollution were reduced. Other factors, such as absence around holidays, give rise to spurious variation; this can be handled by ignoring the periods in question or by gathering enough data so that this spurious variation is averaged away. Some of these factors (such as high absence rates on Fridays and seasonal absence rates) may be correlated with variations in air pollution and no amount of data or of averaging will separate the effects. We have chosen to disregard the results of these episodic studies, with a few exceptions, cited below.

It is difficult to isolate the pollutants that have the most important effects on health on the basis of the studies we survey here. Measurement techniques have been crude, and there has been a tendency to base concentration figures on a single measurement for a large area. A more important problem is the fact that in most of these studies only a single pollutant was reported. Discovering which pollutants are most harmful is an important area, where further exploration is necessary. We have tried, nevertheless, to differentiate among pollutants in the survey that follows (11). The problem is complicated, since pollution has increased over time, and since lifetime exposure might bear little relation to currently measured levels. These problems are discussed elsewhere (12).

A REVIEW OF THE LITERATURE

We will proceed with a detailed review of studies made in an attempt to find an association between mortality or morbidity and air pollution indices.

Air pollution and bronchitis. Studies link morbidity and mortality from bronchitis to air pollution in England (13), the United States (14, 15), Japan (16), and other countries (17). Mortality rates by country boroughs in England and Wales have been correlated with pollution (as measured by the sulfation rate, total concentration of solids in the air, a deposit index, and the density of suspended particulates) and with socioeconomic variables (such as population density and social class). The smoking habits of the individuals studied have also been investigated. The conclusion of these studies is that air pollution accounts for a doubling of the bronchitis mortality rate for urban, as compared to rural, areas.

We took data reported by Stocks (18, 19) and by Ashley (20) and performed a multiple regression analysis, as shown in Table 1. We fit the following equation to the data $MR_i = a_0 + a_1 P_i + a_2 S_i + e_i$ (1) where MR_i is the mortality rate for a particular disease, in country borough i, P_i is a measure of air pollution in that borough S_i is a measure of socioeconomic status in borough i, and e_i is an error term with a mean of zero. (We also fit other functional forms, as discussed below.) Under general assumptions, the estimated coefficients (a_0, a_1, a_2) will be best linear, unbiased estimates (21). Only if we want to perform significance tests must we make an assumption about the distribution of the error term (for example, the assumption that it is distributed normally).

The first regression in Table 1 relates the bronchitis mortality rate for men to a deposit index (see Table 1, footnote †), and the population density in each of 53 country boroughs. Thirty-nine percent of the variation in the mortality rate (across boroughs) is "explained" by the regression. It is estimated that a unit increase in the deposit index (1 gram per 100 square meters per month) leads to an increase of 0.18 percent in the bronchitis mortality rate (with population per acre held constant). An increase of 0.1 person per acre in the population density is estimated to lead to an increase of 0.02 percent in the mortality rate (with air pollution held constant). As indicated in Table 1 by the t statistics (the values in parentheses below the estimated coefficients), the air pollution variable is extremely important, whereas the socioeconomic variable contributes nothing to the explanatory power of the regression.

TABLE 1.—MULTIPLE REGRESSIONS BASED ON DATA FROM ENGLAND. NUMBERS IN PARENTHESES ARE THE t STATISTIC

Category	R^2*	Index† Air pollution	Index† Socio-economic
Bronchitis mortality rate:			
1. Males, 53 county boroughs‡	0.386	0.182	0.016
Deposit index, persons/acre		(4.80)	(.22)
2. Females	.332	.182	−.031
		(4.55)	(−.42)
3. Males, 28 county boroughs§	.433	1.891	.180
Smoke, persons/acre		(3.79)	(1.86)
4. Females	.412	1.756	.252
		(3.23)	(2.40)
5. Males, 26 areas‖	.766	.310	.062
Smoke, persons/acre		(3.77)	(.53)
6. Females	.559	.303	−.038
		(2.85)	(−.25)
7. Males, 26 areas	.783	.301	.176
Smoke, social class		(5.86)	(1.44)
8. Females	.601	.213	.248
		(3.31)	(1.59)
9. Both sexes, 53 urban areas¶	.377	.199	.159
Smoke, persons/acre		(4.07)	(3.02)
10. Both sexes, 53 urban areas	.300	.161	.151
SO_2, persons/acre		(3.05)	(2.64)
Lung cancer mortality rate:			
11. 53 county boroughs	.445	.041	.154
Deposit index, persons/acre		(2.09)	(4.23)
12. 28 county boroughs	.576	.864	.161
Smoke, persons/acre		(4.08)	(3.89)
13. Male, 26 areas	.781	.137	.115
Smoke, persons/acre		(2.86)	(1.70)
14. Male, 26 areas	.805	.161	.172
Smoke, social class		(5.62)	(2.47)
15. 53 urban areas	.344	−.086	.184
Smoke, persons/acre		(−2.42)	(4.83)
16. 53 urban areas	.378	−.105	.197
SO_2, persons/acre		−3.00	(5.23)
Other cancers:			
17. Stomach, male, 53 county boroughs	0.167	0.070	0.005
Deposit index, persons/acre		(3.08)	(.12)
18. Stomach, female	.175	.070	−.023
		(3.08)	(−.58)
19. Stomach, male, 28 county boroughs	.257	.714	.065
Smoke, persons/acre		(2.57)	(1.21)
20. Stomach, female	.454	.883	.066
		(4.13)	(1.60)
21. Intestinal, 53 county boroughs	.041	.018	−.012
Deposit index, persons/acre		(1.45)	(−.52)
22. Intestinal, 28 county boroughs	.129	.174	.036
Smoke, persons/acre		(1.26)	(1.35)
23. Other cancer, male, 26 areas	.454	.019	.073
Smoke, persons/acre		(.59)	(1.60)
24. Other cancer, female, 26 areas	.044	.039	−.062
Smoke, persons/acre		(.93)	(−1.03)
25. Other cancer, male, 26 areas	.396	.060	.017
Smoke, social class		(2.75)	(.33)
26. Other cancer, female, 26 areas	.002	.005	−.013
Smoke, social class		(.17)	(−.19)
Pneumonia mortality rate:			
27. Male, 26 areas	.477	.118	.121
Smoke, persons/acre		(1.34)	(.97)
28. Female	.253	.068	.137
		(.58)	(.83)
29. Male, 26 areas	.475	.158	.126
Smoke, social class		(2.82)	(.93)
30. Female	.242	.124	.106
		(1.65)	(.58)

*The coefficient of determination: a value of .386 indicates a multiple correlation coefficient of .62, and indicates that 39 percent of the variation in the death rate is "explained" by the regression.

†The t statistic: for a one-tailed t-test with 23 degrees of freedom, a value of 1.71 indicates significance at the .05 level; for 25 or 50 degrees of freedom, the critical values are 1.71 and 1.68.

‡Data for 53 county boroughs in England and Wales as reported by Stocks (18). Air pollution is measured by a deposit index (in grams per 100 square meters per month) whose observed range is 96 to 731, with a mean of 375. The socioeconomic index is expressed in numbers of persons per acre (multiplied by 10); the range is 69 to 364, and the mean is 163. Death rates are measured as index numbers, with the mean for all boroughs in England and Wales equal to 100. Ranges within this sample are as follows: bronchitis (males), 73 to 259; bronchitis (females), 72 to 268; lung cancer, 70 to 159; stomach cancer (males), 67 to 168; stomach cancer (females), 84 to 161; intestinal cancer, 87 to 123.

§Data for 28 county boroughs in England and Wales as reported by Stocks (18). Air pollution is measured by a smoke index (suspended matter, in milligrams per 100 cubic meters); the range is 6 to 49. Again, the socioeconomic index is expressed in numbers of persons per acre (×10) the range is 83 to 342.

‖Data for 26 areas in northern England and Wales as reported in Stocks (19). Air pollution is measured by a smoke index, as for category 3; the range is 15 to 562 mg/1000m³ and the mean is 260. One socioeconomic variable is the number of persons per acre (×10); the range is 1 to 342 and the mean is 102. The other socioeconomic variable is social class; the range is 61 to 295. Death rates are measured as for category 1; within this sample, the range for lung cancer is 23 to 165; for other cancer, 6 to 122 (males) and 88 to 154 (females); for bronchitis, 18 to 259 (males) and 12 to 240 (females); for pneumonia, 61 to 227 (males) and 40 to 245 (females).

¶Data for 53 areas as reported by Ashley (20). Air pollution is measured (i) by a smoke index (as for category 3), with a range of 23 to 261 $\mu g/m^3$ and a mean of 124, or (ii) by an SO_2 index (apparently in the same units), with a range of 33 to 277 and a mean of 124. Death rates are measured as for category 1; within this sample, the range for lung cancer is 70 to 146, and for bronchitis, 64 to 186.

The first ten regressions in Table 1 are an attempt to explain the bronchitis death rate. Four different data sets are used, along with three measures of pollution and two socioeconomic variables. The coefficient of determination, R^2 (the proportion of the variation in the mortality rate explained by the regression), ranges from .3 to .8. Air pollution is a significant explanatory variable in all cases. In only three cases is the socioeconomic variable significant.

The implication of the first regression is that a 10 percent decrease in the deposit rate (38 g 100 m^{-2} month $^{-1}$) would lead to a 7 percent decrease in the bronchitis death rate. Another way of illustrating the effect of air pollution on health is to note that, if all the boroughs were to improve the quality of their air to that enjoyed by the borough having the best air of all those in the sample (a standard deposit rate for all boroughs of 96 g 100 m^{-2} month $^{-1}$), the average mortality rate (for this sample) would fall from 129 to 77. Thus, cleaning the air to the level of cleanliness enjoyed by the area with the best air would mean a 40 percent drop in the bronchitis death rate among males. In the fifth regression the pollution index is a smoke index (Table 1, footnote §), and a different set of areas is considered. This is a more successful regression in terms of the percentage of variation explained. As before, the air pollution coefficient is extremely significant, and the implication is that cleaning the air to the level of cleanliness currently enjoyed by the area with the best air (15 mg/100 m^3) would lower the average bronchitis mortality rate from 106 to 30, a drop of 70 percent. Results of the other regression analyses based on bronchitis mortality data have similar implications. Note that the effect is almost the same for males and females. This indicates reliability and suggests that the effect is independent of occupational exposure.

Winkelstein *et al* (14) collected data on 21 areas in and around Buffalo, New York. A cross tabulation of census tracts by income level and pollution level shows that the mortality rate for asthma, bronchitis, and emphysema (in white males 50 to 69 years old) increases by more than 100 percent as pollution rises from level 1 to level 4 (see 22).

These studies indicate a strong relationship between bronchitis mortality and a number of indices of air pollution. We conclude that bronchitis mortality could be reduced by from 25 to 50 percent depending on the particular location and deposit index, by reducing pollution to the lowest level currently prevailing in these regions. For example, if the air in all of Buffalo were made as clean as the air in those parts of the area that have the best air, a reduction of approximately 50 percent in bronchitis mortality would probably result.

Air pollution and lung cancer. The rate of death from lung cancer has been correlated with several indices of pollution and socioeconomic variables in studies that provided controls for smoking habits and other factors. For English nonsmokers, Stocks and Campbell (23, 24) found a tenfold difference between the death rates for rural and urban areas. Daly (25), in comparing death rates in urban and rural areas of England and Wales, found the urban rate twice as high. Evidence for other parts of Europe also shows an association between lung cancer and air pollution (26).

Regressions 11 through 16 (Table 1) show our reworking of the data for lung cancer mortality for England and Wales (there is no control for smoking). Regressions 11 through 14 imply that, if the quality of air of all boroughs were improved to that of the borough with the best air, the rate of death from lung cancer would fall by between 11 and 44 percent. Regressions 15 and 16 show a relationship between air pollution and lung cancer which is either insignificant or inverse. The only contrary results come from Ashley's data. In the absence of more complete evidence, we must remain curious about these results. Use of such small samples and inadequate controls is certain to lead to some contrary results, but they are disconcerting when they appear.

In a study of 187,783 white American males (50 to 69 years old), Hammond and Horn (27) reported that the age-standardized rate of death due to lung cancer was 34 (per 100,000) in rural areas as compared to 56 in cities of population over 50,000. When standardized with respect both to smoking habits and to age, the rate was 39 in rural areas and 52 in cities of over 50,000.

Haenszel *et al.* (28) analyzed 2191 lung cancer deaths among white American males, that had occurred in 46 states, and data for a control group consisting of males who died from other causes. They found the crude rate of death from lung cancer to have been 1.56 times as high in the urban areas of their study as in the rural areas in 1958 and 1.82 times as high in the period 1948–49 (in subjects 35 years and older, with adjustments made for age). When adjustments are made for both age and smoking history, the ratio is 1.43. Also the ratio increased with duration of residence in the urban or rural area, from 1.08 for residence of less than 1 year to 2.00 for lifetime residence. Haenszel and Taeuber (29) report similar results for white American females. In a number of additional studies the association between air pollution and lung cancer is examained (30).

Buell and Dunn (31) review the evidence

on lung cancer and air pollution; a summary of their findings is given in Table 2. For smokers, death rates (adjusted for age and smoking) ranged from 25 to 123 percent higher in urban areas than in rural areas. For nonsmokers, all differences exceed 120 percent. "The etiological roles for lung cancer of urban living and cigarette smoking seem each to be complete," they say, "in that the urban factor is evident when viewing nonsmokers exclusively, and the smoking factor is evident when viewing rural dwellers exclusively." They argue that differences in the quality of diagnosis could not account for the observed differences for urban and rural areas.

TABLE 2.—A SUMMARY OF LUNG CANCER MORTALITY STUDIES. NUMBER OF DEATHS FROM LUNG CANCER PER 100,000 POPULATION [FROM BUELL AND DUNN (31)]

Study	Standardized for age and smoking			Nonsmokers		
	Urban	Rural	Urban/rural	Urban	Rural	Urban/rural
Buell, Dunn, and Breslow (67) [1]	101	80	1.26	36	11	3.27
Hammond and Horn (68) [2]	52	39	1.33	15	0	8
Stocks (69) [3]	189	85	2.23	50	22	2.27
Dean (70) [4]				38	10	3.80
Golledge and Wicken (71) [5]	149	69	2.15	23	29	.79
Haenszel et al. (72) [6]	100	50	2.00	16	5	3.20

[1] California men; death rates by counties.
[2] American men.
[3] England and Wales.
[4] Northern Ireland.
[5] England land; no adjustment for smoking.
[6] American men.

Nonrespiratory-tract cancers and air pollution. Our reworking of data from England on rates of death from non-respiratory-tract cancer is presented in Table 1 (regressions 17 through 26). In the regressions, stomach cancer is significantly related to a deposit index and a smoke index. The effects are nearly identical for males and females. Intestinal cancer appears to be only marginally related to indices of either deposit or smoke. For 26 areas in northern England and Wales, there appears to be little relationship between nonrespiratory-tract cancers and a smoke index. The single exception in the four regressions occurs for males when the socioeconomic variable is social class; here the smoke index explains a significant amount of the variation in the cancer mortality rate. (Apparently population density and smoke index are so highly related in these 26 areas that neither has significant power to explain such variation).

Winkelstein and Kantor (32) investigated rates of mortality from stomach cancer in Buffalo, New York, and the immediate environs. Their measure of pollution is an index of suspended particulates averaged over a 2-year period. They found the rate of mortality due to stomach cancer to be more than twice as great in areas of high pollution as in areas of low pollution (33).

Hagstrom *et al.* (34) tabulated rates of death from cancer among white middle class residents of Nashville, Tennessee, between 1949 and 1960, using four measures of air pollution. They found the cancer mortality rate to be 25 percent higher in polluted areas than in areas of relatively clean air (35). They also found significant mortality-rate increases associated with individual categories of cancer, such as stomach cancer, cancer of the esophagus, and cancer of the bladder. The individual mortality rates are more closely related to air pollution after the data are broken down by sex and race.

Levin *et al.* (36) report, for all types of cancer, these relationships: The age-adjusted cancer-incidence rates for urban males was 24 percent higher than that for rural males in New York State (exclusive of New York City) (1949–51), 36 percent higher in Connecticut (1947–51), and 40 percent higher in Iowa (1950); the incidence rate for urban females was 14 percent higher than that for rural females in New York State, 28 percent higher in Connecticut, and 34 percent higher in Iowa. For both males and females, the incidence rate for each of 16 categories of cancer was higher in urban than in rural areas.

Cardiovascular disease and air pollution. Enterline et al. (37) found that mortality from heart disease is higher in central-city counties than in suburban counties, and, in turn, higher in suburban counties than in nonmetropolitan counties. Ziedberg *et al.* (38) found that both morbidity and mortality rates for heart disease are associated with air pollution levels in Nashville. The morbidity rate was about twice as high in areas of polluted air as in areas of clean air. The mortality rate was less closely associated; it was 10 to 20 percent higher in areas of polluted air than in areas of clear air (39).

Friedman (40) correlated the rate of mortality from coronary heart disease in white males aged 45 to 64 with the proportion of this group living in urban areas. The simple correlation for 33 states is .79. When cigarette consumption is held constant, the partial correlation is .67.

On the basis of these studies we conclude that a substantial abatement of air pollution would lead to 10 to 15 percent reduction in the mortality and morbidity rates for heart disease. We caution the reader that the evidence relating cardiovascular disease to air pollution is less comprehensive than that linking bronchitis and lung cancer to air pollution.

Total respiratory disease (41). Daly (25) found significant correlations between air pollution and death rates for all respiratory diseases (and for nonrespiratory diseases as well) in England. Douglas and Waller (42) found significant relationships between air pollution and respiratory disease in 3866 British school children. Fairbairn and Reid (43) found significant correlations between air pollution and morbidity rates (for bronchitis, pneumonia, pulmonary tuberculosis, and lung cancer) in England. Regressions 27 through 30 in Table 1 show pneumonia mortality to be related only marginally to a smoke index.

Zeidberg *et al.* (44) questioned 9313 Nashville residents about recent illnesses. Among males aged 55 and older from white middle-class families, the numbers of illnesses per respondent during the past year were 1.92, 1.15, and 1.26 for areas of high, moderate, and low pollution, respectively. There are a number of other comparisons, based on other measures of air pollution and on data for females and nonwhites (some of these are given in 45). However, we should add a word of caution: although the sample size in this study was large enough and controls for many socio-economic variables were included, many important factors were ignored—for example, smoking habits and length of residence. Nonetheless, the finding is extremely strong and seems unlikely to be an artifact of unmeasured variables.

Hammond (46) studied over 50,000 men to find the relationships between emphysema, age, occupational exposure to pollution, urban exposure, and smoking. His results indicated that the effect of air pollution is significant and that heavy smokers have a much higher morbidity rate in cities than in rural areas; the effect becomes more marked as age increases.

Ishikawa *et al.* (47) estimated the incidence of emphysema in Winnipeg (Canada) and St. Louis. They examined the lungs of 300 corpses in each city (the samples were comparable). Findings for each age group (over 25 years old) indicated that the incidence and severity of emphysema is higher in St. Louis, the city with the more polluted air. (In the 45-year-old group 5 percent of those in Winnipeg and 46 percent of those in St. Louis showed evidence of emphysema.)

A number of studies have been made in England on homogeneous occupational groups, such as postmen. The results are relatively pure in that all members of the sample have comparable incomes, working conditions, and social status. Holland and Reid (48) found that the rates of occurrence of severe respiratory symptoms were 25 to 50 percent higher for London postmen than for small-town postmen (sample size, 770), Reid (49) found that, in the postmen of his study, absences due to bronchitis rose from an index number of 100 for the area of least air pollution, to 120 for an area of moderate pollution, to 250 and 283 for the areas of highest pollution. Corresponding figures for absences due to other respiratory illness were 100, 100, 150, and 151, respectively, and for absences due to infectious and parasitic diseases, 100, 115, 130, and 140. Cornwall and Raffle (50) made a similar study of bus drivers in London. They found that 20 to 35 percent of absences due to sickness of any kind could be ascribed to air pollution (they used a fog index as a measure of pollution). Fairbairn and (Reid (43) tabulated absences due to sickness of pollution). Fairbairn and Reid (43) tabulated absences due to sickness for postmen, for males working indoors, and for females working indoors. They found that the age-standardized morbidity rate for bronchitis and pneumonia in the postmen of their study rose from 40 man-years, per 100 man-years, for the area of lowest air pollution (of the four areas studied) to 122 for the area of highest air pollution. Corresponding figures for morbidity from colds were 75 and 171 man-years, and for morbidity from influenza, 131 and 184 man-years. For males working indoors, the low and high morbidity rates were as follows: bronchitis and pneumonia, 32 and 39; colds, 53 and 64; influenza, 88 and 102.

Dohan (fifty-one) studied absences (of more than 7 days) of female employees in eight Radio Corporation of America plants. He found a correlation of .96 between atmospheric concentrations of SO_3 and absences due to respiratory disease in the five cities for which complete data were available. During Asian flu epidemics there was a 200 percent increase in illness in cities with polluted air and only a 20 percent increase in those with relatively unpolluted air.

Infant mortality and total mortality rates. Sprague and Hagstrom (fifty-two) compared air-pollution date for Nashville with fetal and infant mortality rates for Nashville as given in census tracts (for 1955 through 1960). Controls for socioeconomic factors were not included. For infant death rates (ages 28 days to 11 months), the highest correlation was with atmospheric concentrations of SO_3 (in milligrams per 100 square centimeters per day) and was .70. For the neonatal death rates (ages 1 day to 27 days), the highest correlation was with dustfall and was .49. For infants dying during their first day whose death certificate includes mention of immaturity, the highest correlation was with dustfall and was .45. The correlation of the fetal death rate with dustfall was .58.

In a study just being completed (fifty-three), we have collected data for 114 Standard Metropolitan Statistical Areas in the United States and have attempted to

relate total death rates and infant mortality rates to air pollution and other factors. Socioeconomic data, death rates, and air-pollution data were taken from U.S. government publications (fifty-four). Regression 1 (Table 3) shows how the total death rate in 1960 varies with air pollution levels and with socioeconomic factors. As the (biweekly) minimum level of suspended particulates increases, the death rate rises significantly. Moreover, the death rate increases with (i) the density of population of the area, (ii) the proportion of nonwhites, (iii) the proportion of people over age 65, and (iv) the proportion of poor families. Eighty percent of the variation in the death rate across these 114 statistical areas is explained by the regression.

TABLE 3.—REGRESSIONS RELATING INFANT AND TOTAL MORTALITY RATES FOR 114 STANDARD METROPOLITAN STATISTICAL AREAS IN THE UNITED STATES TO AIR POLLUTION AND OTHER FACTORS. FOR MEANS AND STANDARD DEVIATIONS (S.D.) OF THE VARIABLES, SEE †

Category	R^2‡	Air pollution (minimum) concentrations)	Socioeconomic			
			P/m²§	Nonwhite (percent)	Over 65 (percent)	Poor (percent)
TOTAL DEATH RATE						
1. Particulates	0.804	0.102	0.001	0.032	0.682	0.013
t statistic*		(2.83)	(2.58)	(3.42)	(18.37)	(.93)
2. Sulfates	.813	.085	.001	.033	.652	.006
t statistic*		(3.73)	(1.86)	(3.56)	(17.60)	(.49)
DEATH RATE FOR INFANTS OF LESS THAN 1 YEAR						
3. Particulates	.545	.393	----------	.190	----------	.150
t statistic*		(3.07)	----------	(6.63)	----------	(3.28)
4. Sulfates	.522	.150	----------	.200	----------	.123
t statistic*		(1.91)	----------	(6.83)	----------	(2.70)
DEATH RATE FOR INFANTS LESS THAN 28 DAYS OLD						
5. Particulates	0.260	0.273	----------	0.089	----------	0.063
t statistic*		(2.48)	----------	(3.61)	----------	(1.60)
6. Sulfates	.263	.170	----------	.097	----------	.047
t statistic*		(2.57)	----------	(3.96)	----------	(1.23)
FETAL DEATH RATE						
7. Particulates	.434	.274	.004	.171	----------	.106
t statistic*		(2.02)	(2.01)	(5.70)	----------	(2.11)
8. Sulfates	.434	.171	.004	.181	----------	.085
t statistic*		(1.95)	(1.82)	(5.87)	----------	(1.71)

*The t statistic: for a one-tailed t-test, a value of 1.65 indicates significance at the .05 level.
†Total death rate per 10,000: mean, 91.5; S.D., 15.2. Infant death rate (age, <1 year) per 10,000 live births: mean, 255.1; S.D., 36.1. Infant death rate (age, <28 days) per 10,000 live births: mean, 188.0; S.D., 24.4 Fetal death rate per 10,000 live births: mean, 153.9; S.D., 34.4. Suspended particulates ($\mu g/m^3$), minimum reading for a biweekly period: mean, 45.2; S.D., 18.7. Total sulfates ($\mu g/m^3$) (× 10), minimum reading for a biweekly period: mean, 46.9; S.D., 30.6. Persons per square mile: mean, 763.4; S.D., 1387.9. Percentage of nonwhites in population (× 10): mean, 125.2; S.D., 102.8. Percentage of population over 65 (× 10): mean, 84.2; S.D., 21.2. Percentage of families with incomes under $3000 (× 10): mean, 181.6; S.D., 65.7.
‡The coefficient of determination: a value of .804 indicates a multiple correlation coefficient of .90, and indicates that 80 percent of the variation in the death rate is "explained" by the regression.
§Persons per square mile.

Regression 3 shows how the 1960 infant death rate (age, less than 1 year) varies. A smaller proportion (55 percent) of the variation in the death rate is explained by the regression, although the minimum air-pollution level, the percentage of nonwhites, and the proportion of poor families continue to be significant explanatory variables. Regression 5 is an attempt to explain variation in the neonatal death rate. The results are quite similar to those of regression 3. The fetal death rate is examined in regression 7. Here the minimum air-pollution level, population density, the percentage of nonwhites, and the percentage of poor families are all significant explanatory variables.

Regressions 2, 4, 6, and 8 are an attempt to relate these death rates to the atmospheric concentrations of sulfates for the 114 statistical areas of the study. Regression 2 shows that the total death rate is significantly related to the minimum level of sulfate pollution, to population density, and to the percentage of people over age 65; 81 percent of the variation is explained. Regressions 4, 6, and 8 show that the minimum atmospheric concentration of sulfates is a significant explanatory variable in three categories of infant death rates.

One might put these results in perspective by noting estimates on how small decreases in the air-pollution level affect the various death rates. A 10 percent decrease in the minimum concentration of measured particulates would decrease the total death rate by 0.5 percent, the infant death rate by 0.7 percent, the neonatal death rate by 0.6 percent, and the fetal death rate by 0.9 percent. Note that a 10 percent decrease in the percentage of poor families would decrease the total death rate by 0.2 percent and the fetal death rate by 2 percent. A 10 percent decrease in the minimum concentration of sulfates would decrease the total death rate by 0.4 percent, the infant mortality rate by 0.3 percent, the neonatal death rate by 0.4 percent, and the fetal death rate by 0.5 percent.

Each of the relations in Tables 1 and 3 was estimated in alternative ways, including transformation into logarithms, a general quadratic, and a "piecewise" linear form as documented elsewhere (12). The implications about the roles of air pollution and of the socioeconomic variables were unchanged by use of the different functional forms. Another result to be stressed is that, in Table 1, comparable regressions for males and females show almost precisely the same effects for air pollution. This suggests that occupational exposure does not affect these results; the result lends credence to the estimates. A result that we document elsewhere (53) is that it is the minimum level of air pollution that is important, not the occasional peaks. People dealing with this problem should worry about abating air pollution at all times, instead of confining their concern to increased pollution during inversions.

SOME CAVEATS

In preceding sections we have described a number of studies which quantify the relationship between air pollution and both morbidity and mortality. Is the evidence conclusive? Is it possible for a reasonable man still to object that there is no evidence of a substantial quantitative association? We believe that there is conclusive evidence of such association (55).

In the studies discussed, a number of countries are considered, and differences in morbidity and mortality rates among different geographical areas, among people within an occupational group, and among children are examined. Various methods are used, ranging from individual medical examinations and interviews to questionnaires and tabulations of existing data. While individual studies may be attacked on the grounds that none manages to provide controls for all causes of ill health, the number of studies and the variety of approaches are persuasive. It is difficult to imagine how factors such as general habits, inherited characteristics, and lifetime exercise patterns could be taken into account.

To discredit the results, a critic would have to argue that the relationships found by the investigators are spurious because the level of air pollution is correlated with a third factor, which is the "real" cause of ill health. For example, many studies do not take into account smoking habits, occupational exposure, and the general pace of life. Perhaps city dwellers smoke more, get less exercise, tend to be more overweight, and generally live a more strained, tense life than rural dwellers. If so, morbidity and mortality rates would be higher for city dwellers, yet air pollution would be irrelevant. This explanation cannot account for the relationships found.

Apparently there is little systemic relationship between relevant "third" factors and the level of air pollution. An English study (19) in which smoking habits are examined reveals little evidence of differences by residence. There is evidence in the United States that smoking is more prevalent among lower socioeconomic groups (56) but income or other socioeconomic variables would account for this effect and still leave the pollution coefficient unbiased. More importantly, the correlations between air pollution and mortality are better when one is comparing areas within a city (where more factors are held constant) than when one is comparing rural and urban areas (57). It is especially hard to believe that the apparent relation between air pollution and ill health is spurious when significant effects are found in studies comparing individuals within strictly defined occupational groups, such as postmen or bus drivers (where incomes and working conditions are comparable and unmeasured habits are likely to be similar).

When there are uncontrolled factors, some studies may show inconclusive or even negative results; only by collecting samples large enough to "average away" spurious effects can dependable results be guaranteed. In the main, each of the studies cited above was based on a substantial sample. It is the body of studies as a whole that we find persuasive.

An examination of contrary results. Uncontrolled factors, together with small samples, are certain to lead to some results contrary to the weight of evidence and to our expectations. For example, in some studies (58) no attempt is made to control even for income or social status. From the evidence of studies which did provide such controls, we know that failure to control for income leads to biased results, and so we place little credence in either the positive or negative findings of studies lacking these controls.

Sampling error can be extremely important. For example, Zeidberg *et al.* (59) find mixed results in cross-tabulating respiratory disease mortality with level of air pollution and with income class. In general the relationships are in the expected direction, but they are often insignificant. Insignificant results might occur often, if the samples are small, even if air pollution is extremely sig-

nificant, since sampling errors dominate the explanatory variables.

Another study in which sampling error is important is reported by Ferris and Whittenberger (7). They compared individuals in Berlin, New Hampshire, with residents of Chilliwack (British Columbia), Canada, and—not surprisingly in view of the small samples—failed to find significant differences in the occurrence of respiratory disease. Prindle *et al.* (60) compared two Pennsylvania towns in the same fashion. These two studies are admirable in that individuals were subjected to careful medical examinations. However, only a few hundred individuals were studied, and this means that sampling errors tend to obscure the effects of air pollution. Moreover, there were no controls for other factors, such as smoking. Also, one must be careful to control for a host of other variables if the sample is small. For example, the ethnic origins of the population and their general habits and occupations are known to affect mortality rate. It is exceedingly difficult to control for these factors; use of carefully constructed large samples seems the best answer. Finally, air pollution is measured currently, and it is generally assumed that relative levels have been constant over time and that people have lived at their present addresses for a long period. It is hardly surprising that statistical significance is not always obtained when such assumptions are necessary.

Since investigators are more reluctant to publish negative results than positive ones, and since it is more difficult to get negative results published, it is probable that we are unaware of other studies that fail to find a strong association between air pollution and ill health. We are somewhat reluctant to come to strong conclusions without knowledge of such negative results. However, there seems to be no reasonable alternative to evaluating the evidence at hand and allowing for uncertainty. Thus, we conclude that an objective observer would have to agree that there is an important association between air pollution and various morbidity and mortality rates.

THE ECONOMIC COSTS OF DISEASE

Having found a quantitative association between air pollution and both morbidity and mortality, the next question is that of translating the increased sickness and death into dollar units. The relevant question is, How much is society willing to spend to improve health (to lower the incidence of disease)? In other words, how much is it worth to society to relieve painful symptoms, increase the level of comfort of suffers, prevent disability, and prolong life? It has become common practice to estimate what society is willing to pay by totaling the amount that is spent on medical care and the value of earnings "forgone" as a result of the disability or death (61). This cost seems a vast underestimate for the United States in the late 1960's. Society seems willing to spend substantial sums to prolong life or relieve pain. For example, someone with kidney failure can be kept alive by renal dialysis at a cost of $15,000 to $25,000 per year; this sum is substantially in excess of forgone earnings, but today many kidney patients receive this treatment. Another example is leukemia in children; enormous sums are spent to prolong life for a few months, with no economic benefit to society. If ways could be found to keep patients with chronic bronchitis alive and active longer, it seems likely that people would be willing to spend sums substantially greater than the foregone earnings of those helped. So far as preventing disease is concerned, society is willing to spend considerable sums for public health programs such as chest x-rays, inoculation, fluoridation, pure water, and garbage disposal and for private health care programs such as annual physical checkups.

While we believe that the value of earnings forgone as a result of morbidity and mortality provides a gross underestimate of the amount society is willing to pay to lessen pain and premature death caused by disease, we have no other way of deriving numerical estimates of the dollar value of air-pollution abatement. Thus, we proceed with a conventional benefit calculation, using these forgone earnings despite our reservations.

Direct and indirect costs. Our figures for the cost of disease are based on *Estimating the Cost of Illness*, by Dorothy P. Rice (61). Unfortunately, Rice calculated disease costs in quite aggregate terms, and so the category "diseases of the respiratory system" must be broken down. It seems reasonable to assume that both direct and indirect costs would be proportional to the period of hospitalization (total patient-days in hospitals) by disease category (62).

Rice defines a category of direct disease costs as including expenditures for hospital and nursing home care and for services of physicians, dentists, and members of other health professions. "Other direct costs" (which would add about 50 percent to those just enumerated) consist of a variety of personal and nonpersonal expenditures (such as drugs, eyeglasses, and appliances), school health services, industrial in-plant health services, medical activities in federal units other than hospitals, medical research, construction of medical facilities, government public health activities, administrative expenditures of voluntary health agencies, and the net cost of insurance. Since Rice does not allocate "other direct costs" among diseases, we omit it from our cost estimates. However, we conjecture that respiratory diseases represent a substantial portion of this category. Thus, our direct cost estimate is likely to be a substantial underestimate of "true" direct costs (probably more than 50 percent too low).

Estimating indirect cost is an attempt to measure the losses to the nation's economy caused by illness, disability, and premature death. We would argue that such a calculation gives a lower bound for the amount people would be willing to pay to lower the morbidity and mortality rates. These costs are calculated in terms of the earnings forgone by those who are sick, disabled, or prematurely dead (63).

THE HEALTH COST OF AIR POLLUTION

The studies cited earlier in this article show a close association between air pollution and ill health. The evidence is extremely good for some diseases (such as bronchitis and lung cancer) and only suggestive for others (such as cardiovascular disease and nonrespiratory-tract cancers.) Not all factors have been taken into account, but we argue that an unbiased observer would have to concede the association. More effort can and should be spent on refining the estimates. However, the point of this exercise is to estimate the health cost of air pollution. We believe that the evidence is sufficiently complete to allow us to infer, roughly, the quantitative associations. We do so with caution, and proceed to translate the effects into dollars. We have attempted to choose our point estimates from the conservative end of the range.

We interpret the studies cited as indicating that mortality from bronchitis would be reduced by about 50 percent if air pollution were lowered to levels currently prevailing in urban areas with relatively clean air. We therefore make the assumption that there would be a 25 to 50 percent reduction in morbidity and mortality due to bronchitis if air pollution in the major urban areas were abated by about 50 percent. Since the cost of bronchitis (in terms of forgone income and current medical expenditures) is $930 million per year, we conclude that from $250 million to $500 million per year would be saved by a 50 percent abatement of air pollution in the major urban areas.

Approximately 25 percent of mortality from lung cancer can be saved by a 50 percent reduction in air pollution, according to the studies cited above. This amounts to an annual cost of about $33 million.

The studies document a strong relationship between all respiratory disease and air pollution. It seems likely that 25 percent of all morbidity and mortality due to respiratory disease could be saved by a 50 percent abatement in air pollution levels. Since the annual cost of respiratory disease is $4887 million, the amount saved by a 50 percent reduction in air pollution in major urban areas would be $1222 million.

There is evidence that over 20 percent of cardiovascular morbidity and about 20 percent of cardiovascular mortality could be saved if air pollution were reduced by 50 percent. We have chosen to put this saving at only 10 percent—that is, $468 million per year.

Finally, there is a good deal of evidence connecting all mortality from cancer with air pollution. It is difficult to arrive at a single figure, but we have estimated that 15 percent of the cost of cancer would be saved by a 50 percent reduction in air pollution—a total of $390 million per year.

Not all of these cost estimates are equally certain. The connection between bronchitis or lung cancer and air pollution is much better documented than the connection between all cancers or all cardiovascular disease and air pollution. The reader may aggregate the costs as he chooses.

We estimate the total amount annual cost that would be saved by a 50 percent reduction in air-pollution levels in major urban areas, in terms of decreased morbidity and mortality, to be $2080 million. A more relevant indication of the cost would be the estimate that 4.5 percent of all economic costs associated with morbidity and mortality would be saved by a 50 percent reduction in air pollution in major urban areas (64). This percentage estimate is a robust figure; it is not sensitive to the exact figures chosen for calculating the economic cost of ill health.

A final point is that these dollar figures are surely underestimates of the relevant costs. The relevant measure is what people would be willing to pay to reduce morbidity and mortality (for example, to reduce lung cancer by 25 percent). It seems evident that the value used for forgone earnings is a gross underestimate of the actual amount. An additional argument is that many health effects have not been considered in arriving at these costs. For example, relatively low levels of carbon monoxide can affect the central nervous system sufficiently to reduce work efficiency and increase the accident rate (65). Psychological and esthetic effects are likely to be important, and additional costs associated with the effect of air pollution on vegetation, cleanliness, and the deterioration of materials have not been included in these estimates (66).

REFERENCES AND NOTES

1. For a general discussion of inherent problems in handling residuals, see R. U. Ayres and A. V. Kneese, *Amer. Econ Rev.* 59, 282 (1969).

2. For summaries of studies relating air pollution to health, see J. R. Goldsmith, in *Air Pollution*, vol. 1; *Air Pollution and Its Effects*, A. Stern, Ed. (Academic Press, New York, 1968), p. 547; E. C. Hammond, paper presented at the 60th annual meeting of the Air Pollution Control Association, 1967; H. Heimann, *Arch. Environ. Health* 14, 488 (1967). For more general reviews of the literature, see A. G. Cooper, "Sulfur Oxides and other Sulfur Compounds," *U.S. Public Health Serv. Publ. No. 1093* (1965);———, "Carbon Monoxide," *U.S. Public Health Serv. Publ. No. 1503* (1966); "The Oxides of Nitrogen in Air Pollution," *Calif. Dep. Public Health Publ.* (1966); "Air Quantity Criteria for Sulfur Oxides," *U.S. Public Health Serv. Publ.*

No. 1619 (1967); *Effects of Chronic Exposure to Low Levels of Carbon Monoxide on Human Health, Behavior, and Performance* (National Academy of Sciences and National Academy of Engineering, Washington, D.C., 1969):

3. *Public Health (Johannesburg)* 63, 30 (1963); D. M. Johnson, *Good Housekeeping* 1961, 49 (June 1961).

4. See A. V. Kneese, in *Social Sciences and the Environment; Conference on the Present and Potential Contribution of the Social Sciences to Research and Policy Formulation in the Quality of the Physical Environment*, M. E. Garnsey and J. R. Hibbs, Eds. (Univ. of Colorado Press, Boulder, 1967), p. 165; R. G. Ridker, *Economic Costs of Air Pollution* (Praeger, New York, 1967); "Air Quality Criteria for Sulfur Oxides, *U.S. Public Health Serv. Publ. No. 1619* (1967), pp. 54–57.

5. L. Greenburg, M. B. Jacobs, B. M. Drolette, F. Field, M. M. Braverman, *Public Health* Rep. 77, 7 (1962); M. McCarroll and W. Bradley, *Amer. J. Public Health Nat. Health* 56, 1933 (1966); J. Firket, *Trans. Faraday Soc.* 32, 1192 (1936); H. H. Schrenk, H. Heimann, G. D. Clayton, W. M. Gafafer, H. Wexler, "Air Pollution in Donora, Pennsylvania," *Public Health Bull. No. 306* (1949).

6. See J. R. Goldsmith, *Med. Thoracalis* 22, 1 (1965).

7. B. G. Ferris, Jr., and J. L. Whittenberger, *N. Engl. J. Med.* 275, 1413 (1966).

8. For a summary of laboratory experiments see "Air Quality Criteria for Sulfur Oxides," *U.S. Public Health Serv. Publ. No. 1619* (1967), pp. 79–93.

9. Chronic effects, where the incidence of the disease is small, can be studied only for large samples (millions of man-years of exposure); see J. R. Goldsmith, *Arch. Environ. Health* 18, 516 (1969); J. Rumford, *Amer. J. Public Health* 51, 165 (1961). Morbidity data would be more useful than mortality data, since death may result from a cause having no direct relationship to the original pollution-induced disease.

10. For example, M. McCarroll and W. Bradley [*Amer. J. Public Health Nat. Health* 56, 1933 (1966)] correlate the daily mortality rate in New York City with daily pollution indices. See also J. R. McCarroll, E. J. Cassell, W. A. B. Ingram, D. Wolter, "Distribution of families in the Cornell air pollution study" and "Health profiles vs. environmental pollutants," papers presented at the 92nd annual meeting of the American Public Health Association, New York, 1964; ———, *Arch. Environ. Health* 10, 357 (1965); W. Ingram, J. R. McCarroll, E. J. Cassell, D. Wolter, *ibid.*, p. 364; E. J. Cassell, J. R. McCarroll, W. Ingram, D. Wolter, *ibid.*, p. 367. Other workers have attempted to explain daily variations in hospital admissions [see L. Greenburg, F. Field, J. I. Reed, C. L. Erhardt, *J. Amer. Med. Ass.* 182, 161 (1962); W. W. Holland, C. C. Spicer, J. M. G. Wilson, *Lancet* 1961–II, 338 (1961); G. F. Abercrombie, *ibid.* 1953–I, 234 (1953); A. E. Martin, *Mon. Bull. Min. Publ. Health Lab. Serv. Directed Med. Res. Counc.* 20, 42 (1961); R. Lewis, M. M. Gilkeson, Jr., R. O. McCaldin, *Public Health Rep.* 77, 947 (1962); T. D. Sterling, S. V. Pollack, D. A. Schumsky, I. Degroot, *Arch. Environ. Health* 13, 158 (1966); T. D. Sterling, S. V. Pollack, J. Weinkam, *ibid.* 18, 462 (1969)]; absence rates (see J. Ipsen, F. E. Ingenito, M. Deane, *ibid.*, p. 462); symptoms in school children [see B. Paccagnella, R. Pavanello, R. Pesarin, *ibid.*, p. 495; T. Toyama, *ibid.* 8, 153 (1964)]; the incidence of asthma attacks [see L. D. Zeidberg, R. A. Prindle, E. Landau, *Amer. Rev. Resp. Dis.* 84, 489 (1961); C. E. Schoettlin and E. Landau, *Public Health Rep.* 76, 545 (1961); R. Lewis, *J. La. State Med. Soc.* 115, 300 (1963)]; and other morbidity [see J. T. Boyd, *Brit. J. Prev. Soc. Med.* 14, 123 (1960); R. G. Loudon and J. F. Kilpatrick, *Arch. Environ. Health* 18, 641 (1969)].

11. The most complete investigation of various pollutants was that of the Nashville studies. See L. D. Zeidberg, R. A. Prindle, E. Landau, *Amer. Rev. Resp. Dis.* 84, 489 (1961); L. D. Zeidberg and R. A. Prindle, *Amer. J. Public Health* 53, 185 (1963); L. D. Zeidberg, R. A. Prindle, E. Landau, *ibid.* 54, 85 (1964); L. D. Zeidberg, R. J. M. Horton, E. Landau, *Arch. Environ. Health* 15, 214 (1967); ———, *ibid.*, p. 225; R. M. Hagstrom, H. A. Sprague, E. Landau, *ibid.*, p. 237; H. A. Sprague and R. Hagstrom, *ibid.* 18, 503 (1969). It is conceptually possible to differentiate among pollutants, since, for example, the correlation between mean level of suspended particulates and mean level of sulfates for 114 U.S. Standard Metropolitan Statistical Areas is only .20.

12. L. B. Lave, "Air pollution damage" in *Research on Environmental Quality*, A. Kneese, Ed. (Johns Hopkins Press, Baltimore, in press).

13. D. J. B. Ashley, *Brit. J. Cancer* 21, 243 (1967); C. Daly, *Brit. J. Prev. Soc. Med.* 13, 14 (1959); J. Pemberton and C. Goldberg, *Brit. Med. J.* 2, 567 (1954); P. Stocks, *ibid.* 1, 74 (1959); R. E. Waller and P. J. Lawther, *ibid.* 2, 1356 (1955); ———, *ibid* 4, 1473 (1957); P. J. Lawther, *Proc. Roy. Soc. Med.* 51, 262 (1958); ———, *Nat. Acad. Sci. Nat. Res. Counc. Publ. No. 652* (1959), pp. 88–96; ———, *Instrum. Prac.* 11, 611 (1957); J. Pemberton, *J. Hyg. Epidemiol. Microbiol. Immunol. (Prague)* 5, 189 (1961); J. L. Burn and J. Pemberton, *Int. J. Air Water Pollut.* 7, 5 (1963); E. Gorham, *Lancet* 1958-I, 691 (1958); P. Stocks, *Brit. J. Cancer* 14, 397 (1960). These studies are updated and summarized in S. F. Buck and D. A. Brown, *Tobacco Res. Counc. Res. Paper No. 7* (1964).

14. W. Winkelstein, Jr., S. Kantor, E. W. Davis, C. S. Maneri, W. E. Mosher, *Arch. Environ. Health* 14, 162 (1967).

15. International Joint Commission U.S. and Canada, "Report on the pollution of the atmosphere in the Detroit River Area" (Washington and Ottawa, 1960).

16. T. Toyama, *Arch. Environ. Health* 8, 153 (1964).

17. F. L. Petrilli, G. Agnese, S. Kanitz, *ibid.* 12, 733 (1966); A. Bell, in *Air Pollution by Mettallurgical Industries*, A. Bell and J. L. Sullivan, Eds. (Department of Public Health, Sydney, Australia, 1962), pp. 2:1–2: 144.

18. P. Stocks, *Brit. Med. J.* 1, 74 (1959).

19. ———, *Brit. J. Cancer* 14, 397 (1960).

20. D. J. B. Ashley, *ibid.* 21, 243 (1967).

21. That the least-squares method provides the best linear unbiased estimates is the conclusion of the Gauss-Markov theorem, for which $E(ee') = \sigma^2 I$ and $E(e) = 0$ are the basic assumptions. These assumptions are that the basic model must be linear and that the distribution of the errors must have an expected value of zero, have finite variance, have a constant distribution over the various observations, and be independent. In addition, no explanatory variables may be omitted which are correlated with included variables. It is also convenient to assume that the explanatory variables are measured without error, although the framework can easily be adusted to handle errors. In order to perform significance tests, one must make an assumption about the distribution of the error term. For all the relations we estimated, we plotted the residuals and discovered that all distributions were unimodel, symmetric, and basically consistent with the normal distribution. Thus, in the discussion that follows, we have assumed that the error term is distributed normally.

22. For example, for economic level 1 (defined below), the death rates (per 100,000) for pollution levels 2 to 4 (defined below) are 126, 271, and 392. For economic level 2, the death rates for air pollution levels 1 to 4 are 136, 154, 172, and 199. For economic level 4, the death rates for pollution levels 1 to 3 are 70, 80, and 177. The five economic levels, based on median family income in a census tract, are as follows: $3005–$5007; $5175–$6004; $6013–$6614; $6618–$7347; and $7431–$11,792. The four air pollution levels (in micrograms) of suspended particulates (per cubic meter per 24 hours) are as follows: less than 80, 80–100, 100–135, and more than 135.

23. P. Stocks and J. M. Campbell, *Brit Med. J.* 2, 923 (1955).

24. In most of the early studies, pollution measures were not available, and so urban mortality rates were contrasted with rural rates. In these studies a substantial "urban factor" was found, which, unfortunately, was a compound of air pollution and many other factors. In the later studies the portion ascribable to air pollution is separated out.

25. C. Daly, *Brit. J. Prev. Soc. Med.* 13, 14 (1959).

26. Buck and Brown [*Tobacco Res. Counc. Res. Paper No. 7* (1964)], in examining data from England, control for population per acre, for social class, and for smoking habits. They find no relationship between smoking and lung cancer, and a relationship between SO_2 and lung cancer that is not consistent. Stocks uses three sets of data to isolate the effect of air pollution on lung cancer. Contrasting data for eight northern European cities, he finds a correlation between lung cancer and air pollution of .60, and correlations between lung cancer and smoking that range between .27 and .36. Contrasting data for 19 countries, he finds that an index of solid fuel consumption is a much stronger variable than cigarette consumption per capita. Finally, with data from northern England, he finds confirmation of an association between lung cancer and air pollution. See P. Stocks, *Brit. J. Prev. Soc. Med.* 21, 181 (1966).

27. E. C. Hammond and D. Horn, *J. Amer Med Ass.* 166, 1294 (1958).

28. W. Haenszel, D. B. Loveland, M. G. Sirken, *J. Nat Cancer Inst.* 28, 947 (1962).

29. Haenszel and Taeuber analyzed data for 683 white American females who died of lung cancer, and for a control group. They found the crude rate of death from lung cancer to be 1.32 times as high in urban areas as in rural areas for 1958–1959 and 1.29 times as high for 1948–1949 (in subjects 35 years and older, with adjustments made for age). When adjustments were made for both age and smoking history, the ratio was 1.27. This ratio increased with the duration of residence in the urban or rural area, from 0.80 for residence of less than 1 year to 1.76 for lifetime residence. See W. Haenszel and K. E. Taeuber, *J. Nat. Cancer Inst.* 32, 803 (1964).

30. L. D. Zeidberg, R. J. Horton, and E. Landau [*Arch. Environ. Health* 15, 214 (1967)] are not able to isolate an air pollution effect on mortality from lung cancer from data for Nashville for the years 1949 through 1960; C. A. Mills [*Amer. J. Med. Sci.* 239, 316 (1960)] investigated rates of death from lung cancer in Ohio. Stratifying according to the amount of driving done by the deceased, he found that the death rate varied with driving and urban exposure; L. Greenburg, F. Field, J. I. Reed, M. Glasser [*Arch. Environ. Health* 15, 356 (1967)] investigated 1190 cancer deaths that occurred on Staten Island between 1959 and 1961 and found a relationship between lung cancer and pollution; M. L. Levin, W. Haenszel, B. E. Carroll, P. R. Gerhardt, V. H. Handy, S. C. Ingraham II [*J. Nat. Cancer Inst.* 24, 1243 (1960)] found significant differences between urban and rural mortality rates (for periods around 1950) in New York State, Connecticut, and Iowa. For males, the death rates were 41 percent higher in urban areas in New York, 57 percent higher in Connecticut, and 184 percent higher in Iowa. For females, the differences were 7 percent, 24 percent, and 47 percent, respectively; P. Buell, J. E. Dunn, L. Breslow [*Cancer* 20, 2139 (1967)] utilized 69,868 questionnaires covering 336,571 man-years, in their study of lung cancer in California veterans. They found rates of death from lung cancer (adjusted for differences in age and smoking habits) to be 25

percent higher in the major metropolitan areas than in the less urbanized areas. Among nonsmokers, the rates of death from lung cancer were 2.8 to 4.4 times as high for major metropolitan areas as for more rural areas.

31. P. Buell and J. E. Dunn, Jr., *Arch. Environ. Health* 15, 291 (1967).

32. W. Winkelstein, Jr., and S. Kantor, *ibid.* 18, 544 (1969).

33. For economic level 2 (see 22), the mortality rate per 100,000 for gastric cancer in white males 50 to 69 years old changed from 45 to 41, 48 and 84 as the pollution level (see 22) rose. For economic level 4, the rates were 15, 38, and 63 for the first three pollution levels. For white women 50 to 69 years old, the death rates for economic level 2 were 8, 18, 25, and 40 per 100,000. For economic level 4, the death rates were 5 and 21 for the first two pollution levels.

34. R. M. Hagstrom, H. A. Sprague, E. Landau, *Arch. Environ. Health* 15, 237 (1967).

35. The four measures of pollution are suspended particulates (soiling), dustfall, SO_3 and SO_2. For all cancer deaths, the number per 100,000 for middle class residents (defined to include about 75 percent of all residents) fell from 153 for high-pollution areas, to 130 per moderate-pollution areas, to 124 for low-pollution areas when a soiling index (concentration of haze and smoke per 1000 linear feet) was used to classify air pollution. When SO_3 (milligrams per 100 square centimeters per day) was used as a basis for classification, the corresponding death rates were 150, 129, and 145, respectively. With dustfall as a measure, the figures were 145, 130, and 131, and with 24-hour SO_2, in parts per million, they were 141, 129, and 138.

36. M. L. Levin, W. Haenszel, B. E. Carroll, P. R. Gerhardt, V. H. Handy, S. C. Ingraham II, *J. Nat. Cancer Inst.* 24, 1243 (1960).

37. P. E. Enterline, A. E. Rikli, H. I. Sauer, M. Hyman, *Public Health Rep.* 75, 759 (1960).

38. L. D. Zeidberg, R. J. M. Horton, E. Landau, *Arch. Environ. Health* 15, 225 (1967).

39. When air-pollution level was measured on the basis of sulfation (SO_3, in milligrams per 100 square centimeters per day), the morbidity rates (for white, middle-class males aged 55 and older) were 64.0 man-years per 1000 man-years for high-pollution areas, 34.1 for moderate-pollution areas, and 36.8 for low-pollution areas. Measurement of air pollution on the basis of 24-hour concentrations of SO_2 gave morbidity rates of 47.2, 36.8, and 22.2, respectively. For these same white, middle-class males, in areas of high atmospheric concentrations of SO_3, the mortality rate was 425.6 per 100,000 population; in moderate-concentration areas, 327.41; and in low-concentration areas, 361.97. With SO_2 concentrations as a measure, the corresponding figures were 424.87, 319.19, and 364.93. When soiling (smoke or suspended particles) was used as the pollution index, the figures were 376.65, 339.13, and 399.88, respectively.

40. G. Friedman, *J. Chronic Dis.* 20, 769 (1967).

41. The effect of air pollution on pneumonia, tuberculosis, and asthma has also been investigated. C. Daly (see 25) reports simple correlations of .60 for pneumonia mortality and pollution from domestic fuel and .52 for pneumonia mortality and pollution from industrial fuel. For tuberculosis mortality the correlations are .59 and .22, respectively. The death rates for pneumonia rise from 30 to 52 per 100,000, and those for tuberculosis rise from 47 to 89, as one goes from rural settings to conurbations. Stocks (19) reports data on pneumonia mortality, by sex, for 26 areas of northern England and Wales. As shown by regressions 27 through 30 in Table 1, there appears to be a strong relationship between a smoke index and pneumonia mortality. The relationship is much stronger for men than for women. C. A. Mills [*Amer. J. Hyg.* 37, 131 (1943)] in a classic study of wards in Pittsburgh and Cincinnati for 1929–30, reports substantial correlation between pneumonia death rates and local pollution indices. He found the correlation between dustfall and rates for pneumonia mortality in white males to be .47 for Pittsburgh and .79 for Cincinnati. The actual variation in these death rates is 41 to 165 per 100,000 population for Cincinnati and 0 to 7852 for Pittsburgh. Mills argues that omitted socioeconomic variables could not account for these correlations, but he made no attempt to control for such variables in his studies. He also found that death rates fell significantly as the altitude of an individual's residence increased; there was a drop of approximately 10 percent in death rate for every 100 feet (30 meters) of elevation [see also C. A. Mills, *Amer. J. Med. Sci.* 224, 403 (1952); E. Gorham, *Lancet* 1959–II, 287 (1959)]. Zeidberg, Prindle, and Landau [*Amer. Rev. Resp. Dis.* 84, 489 (1961)] studied 49 adult and 35 child asthma patients for a year. They found that the attack rate (attacks per person per day) for adults rose from .070 during days when atmospheric concentrations of sulfates were low to .216 when concentrations were high. In children, the effect of increased concentration of sulfates was insignificant. Schoettlin and Landau [*Public Health Rep.* 76, 545 (1961)] investigated 137 asthma patients in Los Angeles during the fall months. They found that 14 percent of the variance in daily attacks (n—3435) could be explained by the maximum atmospheric concentrations of oxidants for that day. These two studies document a strong relationship between asthma and air pollution; Lewis, Gilkeson, and McCaldin [*Public Health Rep. 77,* 947 (1962)] found no association between the daily frequency of visits to charity hospitals for treatment of asthma attacks and measures of air pollution.

42. J. W. B. Douglas and R. E. Waller, *Brit. J. Prev. Soc. Med.* 20, 1 (1966).

43. A. S. Fairbairn and D. D. Reid, *ibid,* 12, 94 (1958).

44. L. D. Zeidberg, R. A. Prindle, E. Landau, *Amer. J. Public Health 54,* 85 (1964).

45. Morbidity rates associated with a soiling index were 140, 122, and 96, respectively, for high, moderate, and low pollution; corresponding rates associated with an SO_2 index were 177, 117, and 81. For white females, morbidity rates associated with an SO_3 index were 169, 134, and 160; with a soiling index, 158, 139, and 127; and with an SO_2 index, 172, 136, and 116. For nonwhite males, the morbidity rates asosciated with an SO_3 index were 86 for high concentrations and 84 for moderate and low concentrations; corresponding rates associated with a soiling index were 94 and 67, and with an SO_2 index, 84 and 88. For nonwhite females, morbidity rates of 136 and 140 were associated with high and with moderate and low SO_3 concentrations, respectively; corresponding rates associated with soiling were 140 and 129, and with SO_2 concentrations, 145 and 126. The effects for working women and for housewives, between the ages of 14 and 65, were similar.

46. E. C. Hammond, paper presented at the 60th annual meeting of the Air Pollution Control Association, 1967.

47. S. Ishikawa, D. H. Bowen, V. Fisher, J. P. Wyatt, *Arch. Environ. Health* 18, 660 (1969).

48. W. W. Holland and D. D. Reid, *Lancet* 1965-I, 445 (1965).

49. D. D. Reid, *ibid.* 1958-I 1289 (1958).

50. C. J. Cornwall and P. A. B. Raffle, *Brit. J. Ind. Med.* 18, 24 (1961).

51. F. C. Dohan, *Arch. Environ. Health* 3, 387 (1961; ——— and E. W. Taylor, *Amer. J. Med. Sci.* 240, 337 (1960).

52. H. A. Sprague and R. Hagstrom, *Arch.*

53. L. B. Lave and E. P. Seskin, in preparation.

54. "County and City Data Book," *U.S. Dep. Commerce Publ.* (1962); "Analysis of Suspended Particulates, 1957–61," *U.S. Public Health Serv. Publ. No. 978* (1962); "Vital Statistics of the United States (1960)," *U.S. Dep. Health Educ. Welf. Publ.* (1963); "Vital Statistics of the United States (1961)," *U.S. Dep. Health Educ. Welf. Publ.* (1963).

55. For a discussion of the limitations of these studies, see B. G. Ferris, Jr., and J. L. Whittenberger (7) and J. R. Goldsmith, *Arch. Environ. Health* 18, 516 (1969).

56. See "Smoking and Health Report of the Advisory Committee to the Surgeon General of the Public Health Service," *U.S. Public Health Serv. Publ. No. 1103* (1964), p. 362.

57. This might be explained by noting that farmers tend to be exposed to a high level of pollution in the course of their work (from fertilizers, insecticides, and the exhaust fumes from farm equipment), which causes more deaths from respiratory disease than would be expected from the low level of general air pollution in rural areas.

58. See, for example, T. Toyama (*16*) and F. L. Petrilli, G. Agnese, S. Kanitz, *Arch. Environ. Health* 12, 733 (1966).

59. L. D. Zeidberg, R. J. M. Horton, E. Landau, *Arch. Environ. Health* 15, 214 (1967).

60. R. A. Prindle, G. W. Wright, R. O. McCaldin, S. C. Marcus, T. C. Lloyd, W. E. Bye, *Amer. J. Public Health,* 53, 200 (1963).

61. D. P. Rice, "Estimating the Cost of Illness," *Public Health Serv. Publ. No. 947–6* (1966).

62. The category "diseases of the respiratory system" encompasses numbers 470 through 527 of the 1962 International Classification of Diseases, Adapted (ICDA). A report of the Commission on Professional and Hospital Activities, entitled *Length of Stay in Short-Term General Hospitals (1963–1964)* (McGraw-Hill, New York, 1966), gives details on the average lengths of stay and number of patients in 319 U.S. general hospitals for 1963 and 1964 by specific ICDA classifications. From these figures we were able to compute the ratio of total hospitalization by specific disease to total hospitalization for all respiratory diseases. Of the 2,410,900 inpatient days for all respiratory diseases, 232,222 were for acute bronchitis and 177,232 were for "bronchitis, chronic and unspecified." Thus, approximately 17 percent of all inpatient days for respiratory diseases were for some form of bronchitis. On the basis of current hospitalization rates, we find the direct cost of diseases of the respiratory system to be $1581 million annually. An estimated 17 percent of this amount is due to bronchitis; thus, the direct cost of bronchitis is about $268.8 million annually.

63. To calculate the indirect cost of bronchitis, we must do more than take 17 percent of the total indirect cost ($3,305,700) of all diseases of the respiratory system. Almost 50 percent of respiratory disease patients are hospitalized for "hypertrophy of tonsils and adenoids" (ICDA 510). Hospitalization is categorized by age of patient in the Commission on Professional and Hospital Activities report, and we note that 80 percent of these "tonsils and adenoid" patients were under 20 years of age. Thus, it seems clear that the "forgone earnings" of these patients is negligible, and so no indirect costs should be allocated to this group. We therefore excluded the hospitalization of "tonsil and adenoid" patients before computing the percentage of hospitalization due to bronchities. Thus, we estimated that 20 percent of the indirect cost of respiratory disease can be ascribed to bronchitis.

64. There is one bit of evidence that 25 to 50 percent of total morbidity (and therefore mortality) can be associated with air pollution; see L. D. Zeidberg, R. A. Prindle, E. Landau, *Amer. J. Public Health* 54, 85 (1964). If one accepted this evidence as conclusive, it would follow that the annual cost of air pollution, because of health effects, would run between $14 billion and $29 billion.

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73. The research discussed in this article was supported by a grant from Resources for the Future, Inc. We thank Morton Corn, Allen Kneese, and John Goldsmith for helpful comments. Any opinions and remaining errors are ours.

BILL TO BAN POLLUTING CARS BY 1975 GAINS IN SENATE

WASHINGTON, August 20.—A Senate subcommittee has approved an air pollution bill that would halt sales of new cars on Jan. 1, 1975, if they did not eliminate 90 per cent of the exhaust contaminants allowed in 1970 cars.

Senator Edmund S. Muskie, Democrat of Maine, announced today that his Subcommittee on Air and Water Pollution of the Public Works Committee approved yesterday "a tough piece of legislation" designed to achieve clean air for breathing within five and a half years after its enactment.

He called the automobile "a pollution monster" that consumed most of the subcommittee's deliberations. And he called upon American ingenuity to meet the challenge of the problem, which auto manufacturers have previously said would be difficult to solve before 1980.

Senator Muskie expressed confidence that the measure would pass the full committee next Thursday and the Senate after Labor Day, substantially unchanged or with stronger provisions.

Senator J. Caleb Boggs, Republican of Delaware, appeared at the news conference with him to demonstrate the bi-partisan support Senator Muskie says his bill has in the Senate.

However, the House has already passed an antipollution bill that sets no deadline on the development of cleaner automobiles although it contains many other stringent measures similar to those in the Senator's subcommittee bill.

Representative Ancher Nelsen, Republican of Minnesota, doubted that the House would accept the 1975 deadline in a House-Senate conference, but he would not rule out the possibility.

"Some of us feel that it can't be done by setting any specific target date because the auto industry is perplexed and has told us it doesn't know when it can achieve such standards," he said. "It's like trying to set a date next week, or next month to pull out of Vietnam. It can't be done that way."

The automotive industry and the Department of Transportation officially declined to comment on the Muskie bill until they had time to study it.

But a source at General Motors in Detroit suggested that the industry was not impossibly far from meeting the demands by 1975 for an auto that would be almost pollution free.

He said that two approaches were being followed in research in an attempt to "take autos out of the pollution business." One involves the development of a catalytic muffler that would chemically clean exhausts. The other seeks to develop a new exhaust manifold that would be hot enough to burn off unused fuels.

Publicly, internal combustion experts have taken the position that such developments would take a number of years at a marked increase in the cost of automobiles.

Senator Muskie said the urgency for moving up a target date for low-pollution cars from 1980 to 1975 was the length of time it took to eliminate used cars that would still be polluters.

He said that if new cars did not become minimal polluters until 1980, then it would not be until 1990 that a sufficient number of used cars would be eliminated from the roads to meet public health standards.

AIR STANDARDS CITED

And he suggested that some localities might have to decide to limit or ban automobiles to meet the national air qualities standards his bill would require the Federal Government to establish.

Subcommittee sources said that the high levels of air pollution emitted during rush hour traffic movements into major cities such as New York, Los Angeles and Washington were such that these cities would have to cut such traffic significantly to meet even minimal air standards.

"We will have to do whatever needs to be done to protect the public health," Senator Muskie said. "Tough decisions are going to have to be made."

Other major provisions of the measure would require the following:

Establishment of national air quality standards to protect human health and welfare "from any known or anticipated effects."

Plans by the states to meet these standards after they are promulgated. The plans would have to be prepared in nine months with public hearings and they would have to be designed to achieve air quality standards within three years.

Approval by the Secretary of Health, Education, and Welfare of such plans within four months or preparation of a plan by the Secretary if no plan or an unacceptable one should be submitted.

Achievement by new major-industry plants of a standard of emission consistent with national standards and use of the latest available technology.

Preparation of emission standards for aircraft and vessels and regulations for used commercial vehicles.

The Muskie bill would also allow citizen suits against polluters, including the Federal Government, and establish tough new penalties up to $50,000 and two years in jail for criminal violations and up to $10,000 for civil violations. It would also finance emission research at $450-million during the next three fiscal years.

A major difference between the House-approved bill and the measure reported by Senator Muskie's subcommittee is in the establishment of air-quality control regions.

The Muskie measure would have the Secretary of Health, Education, and Welfare establish interstate and intrastate regions within 90 days of the bill's enactment.

The House bill establishes each state as an air quality region and Representative Paul G. Rogers, Florida Democrat who is generally considered to be the author of the House bill, said on the telephone today that he expected a fight over this issue when the bill reached conference.

He posed no objection to the 1975 deadline for ending sales of polluting cars "if that is a possible accomplishment" but questioned the need for air quality regions that would require new structures.

AMENDMENT TO END THE WAR: VIETNAMESE WAR CASUALTIES AND IMPLICATIONS FOR U.S. POLICY

Mr. HATFIELD. Mr. President, I submit today the fifth in a series of articles dealing with U.S. involvement in Southeast Asia. The article, entitled "Vietnamese War Casualties and Implications for U.S. Policy," was written by Charles P. Shirkey for the Congress of Young Professionals for Political Action.

As a former staff member of the Office of the Assistant Secretary of Defense, Systems Analysis, Mr. Shirkey is well qualified to comment upon the Government projections of reprisals in the event that the Vietcong should gain control in South Vietnam. With concise facts and clear reason he refutes the emotion-laden charges that have been raised about the prospect of a "blood bath," and points out how the only real blood bath will be the continuation of the war. Such information is of utmost importance to the debate on American involvement in Southeast Asia.

I ask unanimous consent that "Vietnamese War Casualties and Implications for U.S. Policy" be printed in the RECORD.

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

VIETNAMESE WAR CASUALTIES AND IMPLICATIONS FOR U.S. POLICY

(By Charles P. Shirkey [1])

This paper examines two recent government-sponsored studies which are often quoted in the press as definitive projections of the likely level of reprisals if the Viet Cong should gain control of South Vietnam. During the past year the "bloodbath" argument has been cited by many, including the President, as justification for the Administration's policy on the future U.S. role in Vietnam. In particular, it has been used by the Administration as sufficient reason why U.S. forces should not be withdrawn fully during the next twelve months. These two studies imply that the Administration is justified in arriving at that conclusion. Thus in addition to examining the empirical basis for the "bloodbath" argument put forth in these two studies, this paper addresses the implications for U.S. policy, particularly the timing of withdrawal.[2]

To clarify the various elements of the "bloodbath" argument, it is useful to distinguish between the following:

A deliberate policy of violent reprisal by a Communist regime in control of South Vietnam;

A post-war Communist policy of assassination and execution; following a *de facto* or negotiated cease-fire;

The current war-time Viet Cong policy of assassination and execution; and

The toll of the war itself.

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[1] The author is a former staff member of the Office of the Assistant Secretary of Defense (System Analysis).

[2] For a discussion of the historical basis for the "bloodbath" argument, see D. Gareth Porter and Len E. Ackland, "Vietnam: The Bloodbath Argument," *Christian Century*, November 5, 1969.

In a monograph on "The Viet-Cong Strategy of Terror" published in February for the U.S. Mission in Saigon, Douglas Pike states, that

"If the communists win decisively in South Viet-Nam (and the key word is decisively) . . . All political opposition, actual or potential would be systematically eliminated." Elsewhere, he quotes Col. Tran Van Dac (the highest ranking Communist officer to come in under South Vietnam's Chieu Hoi program) as stating in the course of a Saigon-sponsored press conference in 1969, that "There are three million South Vietnamese on the (communist) blood debt list" (or blacklist). Thus Mr. Pike concludes, that "Considering the integral part terror plays in communist social change, it does not follow that the quick and sure route to peace, to a moratorium on death, is to permit the communists to assume power." Mr. Pike fails to note, however, that in response to a question a year earlier about what would happen to officials of the Saigon government if the Communists succeeded in Vietnam, Col. Dac responded,

"They would imprison them, send them to concentration camps under this or that pretext . . . to reeducate them . . . so that they can adapt themselves better to the new social order . . . former high officers, educated people, landlords, or property owners . . . are carefully watched." [3]

Another analyst, Stephen T. Hosmer, is somewhat less certain of the likelihood and extent of reprisals under a Communist regime in South Vietnam. In a RAND Corporation report on "Viet Cong Repression and Its Implications for the Future," [4] published in May for the Pentagon's Advanced Research Projects Agency (ARPA), he underlines for emphasis the observation that, *"any discussion of possible Communist behavior must obviously be considered highly speculative."* However, he "finds it difficult to believe that the number (of executions alone) would be much less than 100,000. Indeed, it might well be considerably higher." He notes that both the Saigon government and the Viet Cong fear reprisals should the other side ultimately win. But there is nothing in the entire study which supports a figure of 100,000, much less a figure "considerably higher."

Both authors confuse the past and current use of assassination and execution as a Viet Cong instrument of warfare with (a) the post-war policies which the Communists might adopt or (b) the policies of a Communist regime in control of South Vietnam. They imply that the only reason the Viet Cong have received support from Vietnamese peasants to date has been because of the use of terror. It therefore seems to follow that the Viet Cong could retain control only by continuing such tactics. But this is not consistent with Viet Cong objectives or capabilities. Mr. Pike notes that the use of terror tactics by the Viet Cong to date is designed:

"To prove that the Government of Viet-Nam (GVN) in Saigon is a mere facade propped up by the Americans and will collapse when American disengagement reaches a certain point" and

"To destroy the various political, social, economic and militia-type programs the GVN has underway in the country's 2,500 villages—collectively known as the Pacification Program—thus destroying or minimizing any faith and trust villagers might have in the Saigon government."

Moreover, the use of assassination and execution has been more common in areas outside firm Viet Cong control. Hence, the evidence suggests that the objective of terror is not to maintain control; rather, it is designed to weaken Saigon's authority, particularly in the countryside.

Furthermore, the Viet Cong could readily increase the number of assassinations and executions. Yet they have chosen not to increase them and, in fact, deliberately use restraint. For example, both Mr. Pike and Mr. Hosmer note that all executions must be approved by higher Viet Cong headquarters, a procedure which tends to have a restraining influence. In any event, the mere use of assassination and execution by the Communists in fighting a war does not mean that the same methods would be used to control the country if they were to win. Indeed, Mr. Hosmer notes that the Communists would have strong political reasons to hold down the level of violent reprisals: (1) Disintegration of the Saigon regime would have removed a major reason for reprisals; (2) Needing to run the country, a Communist regime "presumably would want to avoid actions that might hamper its major task of political consolidation and mobilization . . . in particular, to eschew the kind of indiscriminate mass reprisals that might permanently alienate much of the population;" and (3) A Communist regime might fear the excessive reprisals would breed "adverse reactions in other Communist states or parties and among the uncommitted nations."

In addition to confusing the current Viet Cong tactic with a policy which might be pursued by a Communist regime, Mr. Hosmer also appears to confuse (a) the deaths arising from the struggle for power with (b) the deaths that might occur once the Communists are in power. The situation under which one could expect a "bloodbath" of very large proportions is cited as the one in which the struggle for control is long and drawn out. This would apparently result in what Mr. Pike refers to as a "decisive" Communist victory. One would have to agree that any war, conventional or non-conventional, is likely to be bloody if it is long drawn out. Also, the "bloodbath" in this sense would have occurred regardless of whether the Viet Cong or the Saigon government should be the winner.

To the extent that the "bloodbath" argument reflects a genuine concern to reduce the number of Vietnamese deaths in this war, or merely the American complicity, it is worth while to put current and prospective Viet Cong assassinations and executions in the context of the total war. Table I shows that about 1,000,000 Vietnamese have died over the past 5½ years as a direct result of the war. (This would be equivalent to about 5.0 million Americans being killed over a similar period. By comparison, the Vietnamese have lost during the past five years alone four times more, as a percent of population, than we did during the five years of our Civil War—the bloodiest war in our history.) It is estimated that about 330,000 of this total were civilians. About 10%, or about 32,000, of the civilians killed were the victims of Viet Cong assassinations and executions.

[3] This interview dated May 18, 1968, was distributed in mimeographed form by the Joint U.S. Public Affairs Office, Saigon. It is interesting to note that this statement was made *after* the Tet offensive; Mr. Pike maintains that the killings at Hue during Tet support his "bloodbath" argument.

[4] Mr. Hosmer uses the word "repression" to include assassinations and executions.

TABLE I.—TOTAL VIETNAMESE CASUALTIES (DEATHS IN PARENTHESES) JANUARY 1960–JUNE 1970

[Calendar years; casualty estimates in thousands]

	Total 1960–64	1965	1966	1967	1968	1969	Total 1965–69	January–June 1970
Civilians:								
Non-Communist South Vietnamese [1]	NA	100.0	150.0	175.0	300.0	225.0	950.0	110.0
		(33.0)	(45.0)	(53.0)	(100.0)	(68.0)	(300.0)	(30.0)
Includes Viet Cong assassinations and executions [2]	[3] (6.0)	[4] (2.0)	(1.8)	(3.7)	[5] (15.4)	(6.1)	(29.0)	(3.0)
North Vietnamese [6]	NA	NA	NA	NA	NA	NA	NA	NA
Subtotal civilians	NA	100.0	150.0	175.0	300.0	225.0	950.0	110.0
		(33.0)	(45.0)	(53.0)	(100.0)	(68.0)	(300.0)	(30.0)
Combatants:								
South Vietnamese Forces [7]	67.8	34.4	32.9	42.0	98.6	87.1	295.2	48.3
	(23.8)	(11.2)	(12.0)	(12.7)	(27.9)	(21.8)	(85.7)	(11.8)
Viet Cong/North Vietnamese forces	191.0	89.0	139.0	220.0	453.0	392.0	1,293.0	92.9
	(76.0)	(35.0)	(56.0)	(88.0)	(181.0)	(157.0)	(517.0)	(37.1)
Includes: U.S. and South Vietnamese assassinations of Viet Cong (project Phoenix) [8]	NA	NA	NA	NA	[9] (2.3)	[2] (6.2)	NA	NA
Subtotal combatants	248.8	123.4	171.9	262.2	551.6	479.1	1,588.2	141.2
	(99.8)	(46.2)	(68.0)	(100.7)	(208.9)	(178.8)	(602.7)	(48.0)
Total Vietnamese	NA	225.0	325.0	440.0	855.0	702.0	2,540.0	251.2
		(80.0)	(115.0)	(155.0)	(310.0)	(250.0)	(900.0)	(78.9)
Includes: Non-Communist South Vietnamese	NA	135.0	185.0	220.0	400.0	310.0	1,245.0	158.3
		(44.0)	(57.0)	(66.0)	(128.0)	(90.0)	(386.0)	(41.8)

[1] "Report on Civilian Casualty and Refugee Problems in South Vietnam," the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees, May 9, 1968. The estimates were subsequently updated and inserted in the Congressional Record, vol. 115, pt. 30, p. 40623.

[2] Official estimates of the Military Departments and MACV.

[3] An approximation based on the U.S. mission estimate of 9,700 assassinations during 1958–65.

[4] U.S. official estimate cited by Senator Dole, Congressional Record, vol. 115, pt. 30, p. 40620. In 1966, however, Senator Dole's estimate is considerably higher than the MACV estimate cited by Mr. Hosmer.

[5] Ibid.; includes 10,000 civilians reportedly executed by the Viet Cong during Tet.

[6] To the knowledge of this author, no official estimates have been released by the Government of North Vietnam.

[7] Includes para-military forces beginning in 1968.

[8] This program did not begin officially until 1966 but some assassinations of Viet Cong no doubt took place before that time.

[9] Estimates cited in "Vietnam: December 1969," Staff Report, Senate Committee on Foreign Relations, Feb. 2, 1970 (p. 4).

These statistics are rough, but on balance they tend to be conservative. The body count of Viet Cong and North Vietnamese forces are probably inflated and often include civilians, as they did most notably at My Lai. But then estimates of North Vietnamese killed during the bombing of the North are not available and no attempt has been made to estimate the number.

In any event, numbers of deaths alone grossly understate the cost in human suffering that this war has visited on the Vietnamese people. Any discussion of "bloodbath" should also address the 1.6 million wounded—many of whom are maimed for life, and the 4.0 million refugees in South Vietnam alone.[5] In addition, one should include the Laotians and Cambodians who have been killed, wounded or made homeless, since they cannot escape the war.

Setting aside for the moment the question of when and how the Communists might gain control of South Vietnam and whether a Communist regime might pursue a policy of violent reprisals, the number of Vietnamese deaths and casualties over the next five years will depend on three variables:

The level of military engagement (which depends largely on the size of U.S. forces in Southeast Asia, whether engaged in direct combat or in support of the South Vietnamese forces);

The timing of a cease-fire and thus the duration of military hostilities (whether before or after a U.S. full or partial withdrawal); and

The level of Viet Cong and South Vietnamese assassinations and executions prior to a cease-fire, and the level (if any) after cease-fire.

Over the past year, five out of every 1,000 South Vietnamese were killed. For both Vietnams, there were six deaths per 1,000 population. (This would be equivalent to about one million Americans being killed in one year alone). Table II shows projections of Vietnamese casualties over the next five years under various assumptions. If the Administration continues to withdraw troops at the current rate of 50,000 men per quarter (see Case 2), we can expect about 96,000 non-Communist South Vietnamese and 265,000 more total Vietnamese to be killed during the next two years. This will include about 72,000 South Vietnamese civilians. Thus, unless the troop withdrawal rate is accelerated, 100,000 more *will* be killed:

By April 1975, if we count South Vietnamese civilians only and assuming we leave no residual U.S. forces in Vietnam;

By September 1972, if we count total non-Communist South Vietnamese (including South Vietnamese forces); and

By December 1970, if we count total Vietnamese (including Viet Cong and North Vietnamese forces).

Of course, the figure of 100,000 will be reached sooner if (a) there is any delay in the withdrawal schedule (compare Cases 3 and 4) and/or (b) any residual U.S. forces (50,000 or more) are left to support the South Vietnamese forces (see Cases 3, 4 and 5). Alternatively, an accelerated and total withdrawal (see Case 1) will result in fewer deaths over the same periods of time.

TABLE II.—PROJECTED VIETNAMESE CASUALTIES JULY 1970 THROUGH JUNE 1975[1]

[In thousands]

U.S. troop withdrawal options[2]	Non-Communist South Vietnamese only		Total Vietnamese	
	Deaths	Total casualties	Deaths	Total casualties
Case 1: Accelerated withdrawal date; out by Dec. 31, 1971 (Hatfield-McGovern amendment)	130	500	370	1,045
Case 2: Current withdrawal rate; out by early fiscal year 1973	140	540	400	1,130
Case 3: Current withdrawal rate; residual force of 50,000 men	195	750	555	1,565
Case 4: Withdrawal delayed in fiscal year 1972; residual force of 50,000 men	215	810	600	1,695
Case 6: Continuing force of over 200,000 men[3]	265	960	715	2,025

[1] Based on recent monthly averages as shown in appendix A.

[2] All projections assume a level of deaths and casualties at 20 percent the current annual rate when U.S. forces withdraw (i.e., the level of hostilities the South Vietnamese alone could sustain). The remaining 80 percent is assumed to vary in direct proportion to U.S. force levels in Vietnam. Cases are those used in a paper by Arnold Kuzmack, "Casualty and Cost Projections for Different Withdrawal Plans," inserted in the Congressional Record, Aug. 24, 1970, p. 29849.

[3] To date, President Nixon has stated he would withdraw only combat troops; the remaining combat support and logistic support troops number more than 200,000. On the other hand, if the President makes no further withdrawals than those announced to date, there would be about 275,000 men left in Vietnam. These cases would tend to lower or increase the projections respectively.

IMPLICATIONS FOR U.S. POLICY

At his news conference on May 8, Mr. Nixon noted that it is a "moot question" whether the war had been worthwhile, but "now that America is there, if . . . we withdraw from Vietnam and allow the enemy to come into Vietnam and massacre the civilians there by the millions, as they would, if we do that, let me say that America is finished insofar as the peacekeeper in the Asian world is concerned."

Most recently, Vice President Agnew raised the "bloodbath" spectre in an August 17 speech to the Veterans of Foreign Wars Convention in Miami Beach, stating that withdrawal of United States forces would result in the "collapse of the Government, chaos in the country—ultimately the kind of Communism that literally decimated the civilian population of Hue in the Tet offensive".

The "bloodbath" argument has been an integral part of the Administration's position on U.S. withdrawal from South Vietnam since the President first alluded to it in a talk on May 14, 1969. Curiously, the current Adminstration's position is very similar to the position held by Vietnamese officials in Saigon for many years.

Convinced of a "bloodbath" should the Communists take over in South Vietnam, the Administration appears to want to reduce the probability of a Communist victory by keeping U.S. forces in Vietnam until they have a higher confidence than they do now that Vietnamization will work. It does not appear that the Administration expects to have that higher confidence in the near future, given the current rate of withdrawal and the possibility of a residual force.

But the thrust of the Administration's position is contrary to what is being said about the success of the Vietnamization program and the claim that the allied sweep of the sanctuaries in Cambodia resulted in a severe set-back for the Viet Cong and North Vietnamese forces. Indeed, a combined North Vietnamese and Viet Cong force of about 220,000 (backed up by 400,000 regular forces in North Vietnam) would be confronted with a 1,100,000-man South Vietnamese force, having been upgraded by the Vietnamization program, plus about 500,000 Regional and Popular Forces and 2,000,000 Peoples' Self-Defense Force.[6] Moreover, the Administration's position fails to recognize the huge toll in human life that continuation of the war *will* impose on the Vietnamese people. This current bloodbath will continue to be the direct result of American action so long as U.S. troops continue to support large-scale combat operations against the Viet Cong and North Vietnamese forces. Finally, even as Mr. Hosmer notes in his study, the longer the war continues, the greater likelihood of violent reprisals by the Communists should they be the ultimate victors.

The alternative of a fixed timetable for withdrawal, as proposed by the Hatfield-McGovern Amendment (Senate Amendment 609), would insure the lowering and early termination of the current Vietnamese casualty rate, as shown in Case 1 in Table II. The increase in U.S. withdrawals would reduce the level of combat activity prior to a cease-fire. Moreover, it would increase the likelihood of a cease-fire, since the present intransigence of the Saigon government to talks on a cease-fire and coalition is bolstered by the seemingly interminable presence of U.S. forces carrying a major share of the combat duties.

Even if one believes the "bloodbath" argument, the U.S. could offer asylum to those South Vietnamese citizens who might fear reprisals. Senate Amendment 609 provides funds for this very purpose. In the past we have granted asylum to over ½ million Cubans, thousands of Hungarian and others in Communist countries.

[5] Source: Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees.

[6] General W. C. Westmoreland, remarks before the Atlanta Rotary Club, July 27, 1970.

APPENDIX A.—RECENT VIETNAMESE CASUALTY RATES

[In thousands]

	Recent monthly averages			Annual rate		
	Deaths	Nonfatal casualties	Total casualties	Deaths	Nonfatal casualties	Total casualties
Non-Communist South Vietnamese:						
Civilians[1] (including VC assassinations)[2]	(5.7	13.1	18.8	60.0	160.0	220.0
	(.5)		(.5)	(6.0)		(6.0)
South Vietnamese regular and para-military forces[2]	1.7	[3] 4.8	6.6	20.0	60.0	80.0
Subtotal	7.4	17.9	25.3	80.0	220.0	300.0
Vietcong/North Vietnamese forces	11.1	16.6	27.7	140.0	190.0	300.0
Total Vietnamese	18.5	34.6	53.0	220.0	410.0	630.0
U.S. forces (for comparison)[2]	.2-.4	1.7-2.6	1.9-2.9	2.5-3.9	20.1-30.8	22.6-34

[1] Estimates for January–October 1969 by the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees.

[2] Official MACV statistics for July 1969–May 1970.

[3] Official MACV statistics for July 1969–March 1970.

Note.—Totals may not add due to rounding.

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STRATEGIC ARMS LIMITATION TALKS—ARTICLE BY GEORGE BUNN

Mr. NELSON. Mr. President, the Strategic Arms Limitation Talks in Vienna have been termed by some as the most important negotiations in the history of mankind. Whether so or not is probably yet to be determined. Nevertheless no one would doubt the great importance of these talks.

Many articles have been written about the SALT talks, and many more will no doubt appear as the talks continue. One of the most informative and perceptive articles appeared in the Columbia Law Review. In the article entitled "Missile Limitation: By Treaty or Otherwise?" the author, Mr. George Bunn, visiting professor of law, University of Wisconsin, and formerly General Counsel of the Arms Control and Disarmament Agency, discusses the importance of congressional involvement if agreement is ever to be reached in the SALT talks. He also calls for appointing congressional advisers to the American delegation and the creation of an advisory committee composed of Senators from the Foreign Relations Committee, the Armed Services Committee, and the Joint Committee on Atomic Energy.

I ask unanimous consent that this timely article be printed in the RECORD.

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

MISSILE LIMITATION: BY TREATY OR OTHERWISE?

(By George Bunn)

INTRODUCTION

With the opening of the Strategic Arms Limitation Talks (SALT), a fleeting opportunity to halt the "mad momentum" of the missile race is finally at hand. For over a decade arms control negotiators have been trying to find a way to end this competition. During the first several years of discussions, missile proposals were part of comprehensive package plans requiring agreement on a broad range of other weapons before the stockpiling of missiles could be stopped. Wide differences existed between the Americans and the Soviets over inspection, the rates of reduction of various weapons on each side, and the institutional arrangements for keeping the peace as arms were reduced.

In 1964, American negotiators decided to separate strategic nuclear delivery vehicles from the other weapons of the package plans in hopes that a simplified goal could produce agreement more easily. Their proposal was for a "freeze" on the numbers and characteristics of the long-range missiles and aircraft held by each side. The verification system was to be less onerous because it would focus on missile production, the institutional requirements were much reduced, and the arguments over the rate of reduction were to be postponed by negotiating a simple "freeze" agreement in the first instance.

This proposal, and its later modifications, were all rejected by the Soviet Union, probably for two basic reasons. First, the proposal required that inspectors enter the Soviet Union to check on whether its factories were producing missiles. Soviet political leaders found such inspection intolerable. Second, the Soviets had fewer intercontinental missiles than we had, and they did not want to enter negotiations which might reveal that fact to the world or freeze them into a position of inferiority.

By late 1966, an end to these two obstacles was in sight. Intelligence had improved to the point where long-range detection devices could determine with reasonable accuracy the number of fixed intercontinental missiles stationed on the ground. Therefore, if the arms control measure were changed to limit the deployment of these missiles rather than their production, it could be verified without on-site inspection in the Soviet Union. At the same time, the growth of the Soviet stockpile was such that a period of rough American-Soviet parity in numbers of land-based intercontinental ballistic missiles seemed fast approaching. There were, of course, other kinds of nuclear delivery vehicles and other ways of measuring strategic nuclear strength. For example, the United States was thought to have superiority in numbers of deliverable nuclear warheads while the Soviet Union was thought to have superiority in total deliverable nuclear megatonnage. Nonetheless a nuclear exchange between the two would produce about 100 million dead on both sides no matter which attacked first. Because each side had more than enough strength to knock out the other even after suffering a first strike, questions of exact equality were of little relevance. We had become "scorpions in a bottle, able to sting each other only at the price of death."

Private discussions in late 1966 and early 1967 produced an announcement in March of 1967 by President Johnson that Chairman Kosygin had confirmed the willingness of the Soviet Union to enter bilateral talks "to discuss means of limiting the arms race in offensive and defense (*sic*) nuclear missiles." It was two and a half years, however, before the talks began. Completion of the Non-Proliferation Treaty, and apparent Soviet caution, delayed the setting of a date for talks until August of 1968. At that point, the planned announcement of date and place was canceled by the United States after Soviet troops invaded Czechoslovakia. Then, reconsideration by the new Nixon Administration and further hesitation by the Soviet Union delayed things still further. Finally, on November 17, 1969, preliminary talks began in Helsinki. These produced agreement to begin substantive SALT negotiations on April 16, 1970 in Vienna.

The missile race continues unabated, however, and with it, developments in technology which threaten to re-erect the two obstacles which stood in the way of realistic negotiations earlier: the need for on-site inspection and the fear of inferiority, perhaps even of vulnerability.

Without on-site inspection, long-range detection devices may soon be unable to verify compliance with "standstill" agreements freeing certain new weapons both sides now plan to deploy. For example, a missile armed with the newly developed "Multiple Independently-Targeted Reentry Vehicles" (MIRVs), looks from a distance like a missile armed with one reentry vehicle. If both countries install MIRVs, each will have difficulty, without on-site inspection, knowing how many deliverable warheads the other has. Whether a missile system is a defensive anti-ballistic missile (ABM) system, and whether, if so, it is effective, are likewise difficult to determine at great distances. Deployment of ABM systems, therefore, further complicates the problem of verification. New intercontinental missiles which can be fired from railroad flatcars or truck trailers (rather than massive concrete and steel launching pads) can be hidden from view in large warehouses. If these are deployed, inspectors may also be needed. Thus, the new weapons are likely to raise the inspection problem all over again.

The development of new weapons may also cause each side to doubt whether it still has sufficient missile strength to deter the other's first strike. Neither will have an accurate means of knowing how many warheads the other side has. Just as we might interpret the growing Soviet intercontinental missile strength as aimed at our second-strike capability, they could interpret our desire to

[7] Reprinted (in full or excerpt) in the CONGRESSIONAL RECORD, May 26, 1970. pp. 17073–17078.

increase our reentry vehicles by geometric proportions through MIRV's as a threat to their second-strike capability, and our planned thin ABM as a defense against those few Soviet missiles that might survive our first strike. If either side seriously believes that its second-strike capability might be jeopardized, it may well redouble its efforts to deploy more missiles rather than talking seriously at the negotiating table. If one side suspects that the other is trying to take every advantage of the latest technology in order to freeze the first into a position of inferiority, further delay is probable. If both insist upon negotiating from a position of superiority, the talks are not likely to get far.

Assuming, however, that both sides exercise some restraint, the negotiators will continue to be plagued by the problem of advancing technology. They may find it possible to halt deployment of new missiles, but they can not stop political change or the advancement of science. Almost inevitably, a specific limitation on particular kinds of missiles will have to be revised in the future to prevent evasion by new kinds. Almost inevitably, the negotiating problem will be so complex that a first agreement will be able to deal with only part of it. Almost inevitably, what the parties first agree to live with will be changed over time by such developments as mounting Chinese stockpiles, increasing tension or conflict over the Middle East or other unforeseen crises. Almost inevitably, new information about one side's plans will prompt the other to change its own.

The missile race cannot be ended with one bold stroke of the negotiator's pen on a single comprehensive and lasting treaty. I foresee instead a continuing negotiation, a continuing exchange of information on weapon plans and a continuing series of agreements. This article suggests possible structures for such a dialogue, given the division of power over the conduct of foreign policy between the Executive and the Congress.

I. THE PROBLEM—TO PROVIDE EXECUTIVE FLEXIBILITY WITH CONGRESSIONAL PARTICIPATION

Most members of Congress probably assume that any missile agreement will be expressed in the form of a formal treaty to be submitted to the Senate for approval, a treaty which deals with all aspects of the problem and which can only be changed with the consent of the Senate. But, if what I have said already is correct, a number of agreements may be necessary, and they may need frequent revision. To require formal Senate consent to each agreement and to each revision as if each were a separate treaty makes very litle sense in view of the Senate's many other responsibilities.

1963, a vintage year for arms control, illustrates the strain which too many important treaties could put upon the Senate's procedures. The Senate gave expedited treatment that year to the Test Ban Treaty, a modest measure in comparison to a limit on the number of deployed American and Soviet strategic missiles. Yet the advise and consent process occupied most of the Senate's time for about two months. Because Senate action was still required on appropriations and other legislation that year, President Kennedy decided that a prohibition on "bombs in orbit" should not be in treaty form. As a consequence the ban on stationing nuclear weapons in space was not presented as a treaty until 1967.

Not only is two months sometimes too long to wait for approval of a treaty dealing with rapidly changing conditions, but the Senate simply cannot devote very many two-month periods in any year to missile agreements. Moreover, even if a single, comprehensive treaty could be negotiated, its submission to the Senate could run the risk of a damaging defeat—a defeat of the kind suffered in the Senate by the Covenant of the League of Nations. A better method would be informal, interim agreements of narrow scope which would not need formal approval by the Senate but which could be followed by a treaty.

In addition, after almost eight years of worrying about Congressional support for arms control measures, I believe that in carrying out an effective plan of arms control the necessary cooperation between the Executive and the Senate could be improved. Sometimes the Executive does not take the Senate sufficiently into its confidence until the negotiations are so advanced that changes are difficult. On the other hand, the Senate's division of responsibility for arms control is not the best structure for close cooperation with the Executive during negotiations. The Foreign Relations Committee has responsibility for treaties, including those on arms control. The Armed Services Committee and the Senate members of the Joint Committee on Atomic Energy also claim a legitimate interest. At the same time, because theirs is not the sole committee with responsibility, many Senators on these committees feel no real responsibility to advise themselves sufficiently to pass informed judgment on an arms control problem. As a consequence, there is no one comimttee which, if properly involved in the negotiations and satisfied with their progress, could really give any assurance that a two-thirds vote of the Senate could be obtained on an important arms control agreement. The Executive therefore, has less to gain from close consultation than might otherwise be the case.

The framers of the Constitution probably anticipated that the Senate would participate actively from the beginning of treaty negotiations. They appear to have assumed that the Senate would normally act as an "executive council," advising the President and his negotiators on the positions they should take during the negotiations. This method of procedure was tried during George Washington's administration and abandoned when it foundered on tension and disagreement between the President and the Senate. It has not been tried again.

The amount of consultation concerning ongoing treaty negotiations between the Senate and the executive branch has varied considerably since Washington's time depending upon the current state of relations between the executive branch and the Senate and upon the subject matter of the treaty. In some cases, the Foreign Relations Committee, other committees having responsibility for the area covered by the treaty, and the Senate leadership have been consulted before negotiations were begun; in some cases they have not. Later, when agreement becomes close, consultation is, of course, more common.

During arms control negotiations, consultation has generally been more than routine. Perhaps because of the Senate's failure to ratify the League of Nations Covenant, President Harding sent Senators Lodge and Underwood as delegates to the 1921 conference on the Limitation of Armaments and added Senator Root as well to the delegation to the 1922 Naval Limitation Conference. In recent years, members of both House and Senate have served as advisors to American delegations to the Geneva Disarmament Conference. However, their other duties in Washington and the slow pace of negotiations have resulted in their appearance at the conference for a day or two at most, perhaps once or twice a year. As a consequence, the more meaningful consultations have taken place in Washington. During the lengthy negotiations before conclusion of the Test Ban and Non-Proliferation Treaties, for example, informal consultations and formal hearings with the Joint Committee on Atomic Energy were frequent. Committee members took an active interest, committee staff became experts, and the Committee directly influenced the American position, sometimes holding the Executive Branch back from agreements which the Committee thought unwise. The Foreign Relations Committee and its Disarmament Subcommittee were also active, many members urging the negotiators forward toward agreement. A subcommittee of the Armed Services Committee also held hearings, but most of its members were, at best, lukewarm toward successful conclusion of the negotiations. After hearings or informal consultations with members or staff of these committees and often with the Senate leaderhip, the Executive Branch would draft instructions to the negotiators. It would sometimes revise its position in light of the consultations, and sometimes go ahead with the position it had tentatively prepared before the consultations.

During the course of both the Test Ban and Non-Proliferation Treaty negotiations, two crucial issues arose on which large numbers of Senators took a position on the negotiations. The Dodd-Humphrey resolution expressed wide bipartisan support for a treaty banning nuclear tests everywhere but underground at a time when our test ban negotiators were still attempting to gain Soviet agreement to a ban on all tests, including those underground. Before this resolution, the differences over the number and nature of inspections necessary to monitor underground tests had made agreement impossible. The eventual Test Ban Treaty contained no ban on underground tests and therefore no inspection provisions. Similarly, negotiation of a Non-Proliferation Treaty was at a standstill for several years in large part because of our attempt to create, with some of our allies, a Multilateral Force (MLF) having nuclear weapons. It was during hearings before the Joint Committee on Atomic Energy, that the hostility of key members of that Committee to the MLF became publicly clear. Soon after the Senate overwhelmingly adopted the Pastore Resolution urging conclusion of such a Non-Proliferation treaty, serious negotiations began.

It is my belief that both resolutions helped the executive branch choose between conflicting goals and reassured the Soviets that a two-thirds vote of the Senate could probably be obtained. When these two treaties were finally negotiated and submitted to the Senate, the earlier resolutions may well have been of some help in producing such a vote. Probably of much greater importance, however, were the detailed knowledge and dedicated support of key Senators such as Fulbright of Foreign Relations and Pastore of Atomic Energy. This knowledge and support were, of course, the result of the many consultations and hearings going back over a number of years.

Some procedure of this sort will be necessary for the present missile talks. Given our constitutional division of powers and the need for continuing broad public support for arms control, congressional cooperation will be necessary for successful conclusion of binding agreements. Moreover, such agreements will probably require frequent changes. Under the Test Ban Treaty, pressures for change—largely in connection with the venting of radioactive debris from underground shots—have been accommodated entirely by interpretation of its terms. The Non-Proliferation Treaty permits flexibility in the narrowly defined safeguards area through further negotiations not subject to Senate approval. These are ways to accommodate change, and may be useful precedent for future missile agreements, but they should be accompanied by improved procedures for Congressional liaison, perhaps including the designation of one select Senate

Committee with primary responsibility to follow the negotiations. These and other methods of providing, at the same time, both executive flexibility and congressional participation are the subject of more extensive discussion in the pages that follow.

II. PERMISSIBLE FORMS OF AGREEMENT FOR A MISSILE LIMITATION

There can be little doubt that missile limitation is one of the "proper subjects of negotiation between our government and the governments of other nations . . ." which may be dealt with in a treaty. Disarmament is clearly a matter of international concern and has been at least since Isaiah. Arms control has been the subject of treaties to which the United States was a party from the 1817 Rush-Bagot Agreement which limited naval ships on the Great Lakes, to the 1922 Naval Armament Treaty which limited the number of battleships and aircraft carriers of major sea powers, to the 1968 Non-Proliferation Treaty which limits the spread of nuclear weapons to additional countries.

A treaty is not only a proper form for a missile limitation, but it has become the expected form for a final, lasting arms control agreement. Other forms are, however, available, and they should be considered.

A. Executive agreement not authorized or approved by Congress

In addition to treaties, binding international agreements may be made by executive agreement. An executive agreement may be negotiated pursuant to prior statutory authorization of Congress. It may be entered into pursuant to the terms of a treaty approved earlier by the Senate or subject to the later approval of both houses of Congress by joint resolution. Or, it may be made without any basis in congressional action.

The last of these—the most often criticized, form of executive agreement—is one which the President makes by virtue of his authority as Commander-in-Chief and as possessor of the government's "executive power." The federal courts have not considered many executive agreements which have no basis in congressional action, but they upheld several important ones and have given them the same effect as if they had been treaties. The question therefore arises whether a missile limitation agreement could be in this form. An argument can be made that the President's authority as Commander-in-Chief and chief executive would permit him to direct the Secretary of Defense not to add any more strategic missiles to our arsenal. Therefore, the argument runs, he could agree with another country not to do so, and he would not have to submit the agreement to Congress for approval. This argument, however, denigrates the constitutional power of Congress to provide for the common defense, to raise and support an army, and to raise and maintain a navy, as well as the power of the Senate to advise and consent to treaties.

Furthermore, the Arms Control and Disarmament Act of 1961 prohibits the Executive from taking action under any law to "obligate the United States to disarm or to reduce or to limit the . . . armaments of the United States, except pursuant to the treaty making power of the President under the Constitution or unless authorized by further affirmative legislation by the Congress of the United States." Thus, any missile limitation not authorized by Congress or approved by the Senate which *obligates* the United States *to reduce or limit* armaments is barred by this statute, assuming its constitutionality. Moreover, the President would have a fight on his hands if he agreed to reduce or limit missiles without seeking further congressional approval at some point. After the lengthy controversy resulting in the recent Fulbright Resolution against "national commitments" without congressional sanction, the senatorial criticism of secret "commitments" to Laos and Thailand, and the divisive debate over the ABM, this would seem unwise.

The only modern arms control obligation in executive agreement form, other than armistice agreements, is the "Hot Line," and it does not obligate the United States to reduce or limit any arms. Finally, no major missile reduction or limitation is likely to receive the continuing support of public opinion—which it needs to be lasting—if it ignores Congress altogether. Thus, for reasons as much political as constitutional, it would be unwise to seek, as the preferred framework for obligations reducing or limiting missiles, an executive agreement which is not to be approved by the Senate or Congress and not to be succeeded by a treaty.

B. Executive agreement approved by resolution or authorized by statute

Another form for an arms control measure is an executive agreement subject to later approval by Congress or negotiated pursuant to the express provisions of a statute. A joint House-Senate resolution approving an already-negotiated agreement has been used occasionally to approve such things as an American agreement to become a member of an international organization. An advantage from the Executive's point of view is that only a majority vote is required in the Senate and the House. On the other hand, opponents of a missile agreement could argue that the Executive had chosen to seek a joint resolution in order to avoid the need to secure a two-thirds vote in the Senate. They might attempt to arouse senatorial ire against the participation of the House in what Senators probably would think should be a treaty. Without advance congressional authorization to use this form, any voting advantage of the joint resolution might well be dissipated by such criticism.

This problem could be avoided by prior statutory authorization for the negotiation of the agreement. International postal agreements have been negotiated pursuant to statute since 1874, and reciprocal trade agreements since 1934. The 1934 Reciprocal Trade Agreements Act contained specific limits on executive discretion, such as a prohibition against cutting any tariff more than 50 per cent. As the years went by, and the Act was renewed, Congress increased the tariff-cutting authority of the Executive, but added other limitations on the negotiating power of the Executive. The 1962 Trade Expansion Act, which authorized the Kennedy Round of tariff negotiations, made innovations in providing expressly for congressional members of the American delegation, but it also contained many explicit restraints upon the negotiators.

Reciprocal trade agreements are a useful precedent for congressional authorization for future executive negotiations. But there is not now enough experience with missile talks to know what kinds of limits should be imposed in advance by Congress. I find it almost inconceivable that Congress would authorize the Executive to enter into a missile limitation agreement not subject to later congressional review unless severe statutory restrictions were imposed on executive discretion beforehand. Without more knowledge of the kind of agreement which might be possible, Congress would probably hold the negotiators under such tight reins as to prevent serious talks from getting started. But the procedure is worth considering for the future. Perhaps the negotiation of agreements requiring a "standstill" in missile deployment by the United States and the Soviet Union would give enough experience to provide the basis for congressional authorization of future negotiation of reductions in missile strength.

Other relevant examples of executive agreements authorized by statute are the "agreements for cooperation" with other nations in the atomic energy field. These are based upon the Atomic Energy Act of 1954 and its 1958 amendments. The 1954 Act authorized the negotiation of agreements for the distribution abroad of uranium and other nuclear materials as well as specified information on nuclear processing and reactors, all of which were to be used for peaceful nuclear programs under prescribed conditions. These conditions are much tighter than those imposed by Congress under the first Reciprocal Trade Agreements Act in 1934.

The 1958 Atomic Energy Act Amendments authorized the negotiation of agreements for the transfer to our NATO allies of non-nuclear parts of atomic weapons systems which would not contribute to their atomic weapons capability, the transfer of certain other equipment and material for military application, and the transfer of classified information of the kind necessary, for example, for the development of defense plans and the training of military personnel. The purpose of these agreements was to improve our allies' state of training and readiness to participate in their defense against attack by nuclear weapons, or to use such weapons themselves if authorized by the President to do so after the outbreak of war in Europe. The 1958 Amendments also authorized the executive to provide both classified information on atomic weapons and non-nuclear parts of atomic weapons to allies (at that time only Britain) which had made substantial progress in the development of atomic weapons. The restrictions upon executive discretion in the 1958 Amendments were even tighter than those in the 1954 Act.

Both the 1954 Act and the 1958 amendments contained a substitute for the Constitutional procedure of advice and consent to treaties, a substitute not utilized to review trade negotiations. This is the requirement that the agreement itself be submitted to Congress for a special waiting period before it can go into effect. In the case of agreements for cooperation for peaceful purposes authorized by the 1954 Act, the submission is actually to the Joint Committee on Atomic Energy, the designated watchdog over the executive in atomic energy matters. In this case, the waiting period is thirty days. For the more sensitive agreements for cooperation for military purposes authorized by the 1958 amendments, the submission is to the Congress itself, and the waiting period is sixty days.

Legislative opportunities to "veto" executive action through procedures such as this have been critized as an invasion of executive prerogatives by the legislature. But none of the many agreements for cooperation negotiated under the 1954 Act or the 1958 amendments has even been rejected by Congress. The procedure is tight; both executive and legislature have defined roles; and the Joint Committee has been diligent as a watchdog of the system, yet effective as a defender of its products. The precedent is therefore a useful one for arms control.

For the moment, however, the lack of executive experience with missile talks probably precludes enactment of detailed legislation such as the Atomic Energy or Trade Agreements Acts to authorize the negotiations. At some future time, such legislation can be considered. A key to its success, as in the case of the Atomic Energy Act, will no doubt be the designation of a diligent watchdog committe which has the confidence of other members of Congress. This may present jurisdictional problems since the Foreign Relations Committee claim treaties, the Armed Services Committee claims military affairs, and the Joint Committee on Atomic Energy claims atomic energy matters. The Test Ban Treaty was, however, considered by the members of all three committees sitting together,

and a Disarmament Subcommittee composed of members of all three once existed. So the problem is not insuperable.

C. Executive agreement authorized by treaty

A third form of executive agreement which has seen frequent service is that which is expressly authorized by treaty. This form has, for example, been used for some of the important "status of forces" agreements with our allies. These agreements establish who has jurisdiction over American servicemen charged with law violation abroad. Some of these agreements are treaties; others are executive agreements authorized by treaty. Both have the same international legal effect.

The executive agreement authorized by treaty avoids the problem of a premature congressional enactment based on inadequate negotiating experience. Presumably the negotiation of the treaty will provide sufficient information on future negotiating possibilities to give general guidelines for later executive agreements to be made pursuant to the treaty. By seeking a treaty, the more traditional form of arms control agreement, the executive would avoid the criticism which often accompanies executive agreements without basis in congressional action. Tradition is usually an important consideration in the executive's choice between the treaty and other forms of international agreement. Probably the treaty is the best goal to pursue for a lasting international obligation reducing or limiting missiles. The flexibility for executive action which can be provided within the treaty's framework is therefore discussed in some detail in a later section.

III. THE FIRST STEP: EXECUTIVE ACTION PENDING TREATY NEGOTIATION AND ENTRY INTO FORCE

While a treaty like the one described above may be the best form for the arms limitation agreement, the ideal often suffers when exposed to the practical. Such a treaty may take a good deal of time both to negotiate and to bring into force after negotiation through constitutional ratification procedures. Negotiation of the treaty may indeed turn out to be impossible. We must, therefore, consider other forms of agreement which can serve either in the interim or as a substitute should the treaty negotiations fail.

A. Executive agreement

After negotiating a treaty, states often enter into agreements to govern their relationship in the area dealt with by the treaty pending is ratification and entry into force. On signature of the 1936 Naval Armament Treaty, for example, the parties agreed that if the treaty had not entered into force by January 1, 1937, they would nevertheless observe one of its important obligations until it did, unless entry took longer than six months from that date. This agreement was to be effective as an executive agreement if the Senate did not act by January 1. Similarly, when the treaty creating the International Atomic Energy Agency (IAEA) was signed, the negotiating parties signed an annex providing for a Preparatory Commission which would lay the groundwork for the Agency and remain in existence until the treaty came into force. The annex was submitted to the Senate with the treaty even though it went into force as an executive agreement on the date of signature. Its purpose was to provide for what should be done while the Senate and other parliaments were considering the treaty. A like agreement produced a Provisional International Civil Aviation Organization which operated for two years before the treaty creating the International Civil Aviation Organization became effective.

Executive agreements without benefit of any congressional sanction are thus frequently used to cover the period between negotiation of a treaty and its entry into force. There are, in addition, a number of precedents for executive agreements to cover the earlier period between the beginning of negotiations and their successful conclusion. For example, certain features of an 1871 fisheries agreement which had been formally terminated by Congress were continued in force by the executive pending negotiation of a new treaty in order not to lose the benefits of the old agreement during the then current fishing season.

Armistice agreements, usually of the highest importance to the United States, typically enter into force immediately upon signature by the Executive and are not submitted to the Senate. These agreements may not only terminate hostilities but also lay down political conditions for the belligerents, establish obligations controlling armed forces and armaments and even adumbrate the terms of the final peace treaty. For example, the agreement signed by the Secretary of State on behalf of President McKinley suspending hostilities in the Spanish-American War provided that Spain should relinquish her claim to sovereignty over Cuba, cede Puerto Rico and an island in the Ladrones to the United States and allow the United States to occupy the city, bay and harbor of Manila, pending the final disposition of the Philippines at the peace conference. The armistice of 1918 not only determined military conditions for ending the fighting, but embodied President Wilson's famous "Fourteen Points." The armistice agreements signed with the German satellites after World War II contained provisions for such things as human rights, restitution of property, reparations and boundary adjustments, all of which influenced the pattern of the final peace treaties.

Few would suggest that the Executive lacks power to make armistice agreements and that hostilities should continue pending negotiation of a treaty and approval by the Senate. At the time it is negotiated, an armistice is assumed to be a temporary agreement which will be followed by a definitive treaty of peace to be submitted to the Senate. In some instances, however, as in Korea, no treaty ever is concluded. The armistice agreement then continues in force so long as it is observed, even though it was intended only as a temporary executive agreement. The President's broad authority to negotiate armistice agreements is based upon his powers as Commander-in-Chief and Chief Executive. These are the same Constitutional powers which could provide the basis for an interim executive agreement halting the strategic missile race pending negotiation of a treaty.

B. Conscious parallelism

Interim arms agreements may be informal as well as formal. Countries have restricted the deployment and testing of new weapons by executive action subject to parallel restraint by other countries but without formal agreement to do so. Examples of conscious parallelism include informal agreements relating to nuclear testing, "bombs in orbit," military spending and fissionable material. The examples are discussed below.

1. *Moratorium on nuclear tests—1958–61.* During the period of public debate over a test ban treaty but before negotiations began, the Supreme Soviet ordered all nuclear tests ended in the Soviet Union, reserving its freedom of action if other powers continued testing. The United States was in the midst of a test series and did not then respond. On August 22, 1958, however, after an international conference of experts had agreed to a report on the detection of nuclear tests, President Eisenhower proposed prompt conclusion of a treaty and offered to withhold further American testing for a period of one year from the beginning of negotiations, if the United Kingdom and the Soviet Union would do so. The Soviet Union did not then reply. The last United States test was on October 31, 1958, but the Soviet Union set off nuclear explosions on November 1 and 3. President Eisenhower promptly announced that the United States was thereby relieved "from any obligation under its offer to suspend nuclear weapons tests." He said, however, he would continue the test suspension for the time being and hoped the Soviet Union would also suspend. So far as the United States could determine, the Soviet Union did not conduct a test after this announcement for a period of almost three years. During 1959, there were statements by the United States that, while it regarded itself free to test, it would not do so without first making an announcement to that effect. There were also statements by the Soviet Union that it would not be the first to resume testing. While, on August 30, 1961, the Soviets did resume before we did, they did so after a number of French tests.

In 1963, after both sides had conducted further atmospheric tests and new test ban negotiations in Moscow had been scheduled, President Kennedy announced that "the United States does not propose to conduct nuclear tests in the atmosphere so long as other states do not do so. * * * Such a declaration is not a substitute for a formal binding treaty, but I hope it will help us achieve one." This second test ban moratorium continued for several months—until it was replaced by the Test Ban Treaty.

At no time during either moratorium was there any legal obligation on either side to refrain from testing. From an American constitutional point of view, two presidents had exercised their powers as Commander-in-Chief to order a suspension of tests, but neither had entered into an executive agreement to refrain from doing so. Both had stated that their goal was negotiation of a binding treaty.

2. *Parallel statements of intention on "bombs in orbit"*—1963–67. During 1962, there were public statements by spokesmen for the United States disclosing that thermonuclear weapons could be placed in orbit around the earth subject to reentry on command over target. These statements declared that the United States had no intention of so deploying its nuclear weapons unless the Soviet Union did so, and suggested that the Soviet Union refrain from doing so. During the same year there were private discussions with Soviet representatives on the subject. In 1963, Foreign Mnister Gromyko responded by proposing an "agreement with the United States Government to ban the placing into orbit of objects with nuclear weapons on board." President Kennedy's affirmative reply came the next day.

The Kennedy and Gromyko statements were made in September of 1963 toward the end of a two-month period of Senate consideration and national debate on the Test Ban Treaty. President Kennedy had made clear to his subordinates his desire not to submit another arms control treaty to the Senate that year because of the time, effort and commitments expended to secure a favorable vote on the Test Ban Treaty, Consequently, American and Soviet negotiators agreed upon statements which each side would make to the General Assembly renouncing any "intention of placing in orbit around the earth any weapons of mass destruction, of installing such weapons on celestial bodies, or of stationing such weapons in outer space in any other manner." They agreed upon the text of a resolution which was then adopted by acclamation by the General Assembly. It welcomed the expressions of intention and called upon all states to refrain from the proscribed conduct.

The net result was a moratorium on "bombs in orbit" until 1967 when the Outer Space Treaty was finally concluded. The Treaty constitutes an international obligation to refrain from the conduct which had been renounced in the General Assembly in

1963. By preventing placement of nuclear weapons in space between 1963 and 1967, the President exercised his executive and Commander-in-Chief powers, but did not obligate the United States.

3. *Parallel military budget reduction*—1963–64. In an interview December 31, 1963, Premier Khrushchev said:

"The Supreme Soviet of the USSR has already decided to reduce our military appropriations under the 1964 budget. It would be a good thing if other states acted in a similar way. I am convinced that the peoples of the world would whole-heartily [sic] approve such a policy—I would call it a policy of reciprocal example—in the matter of reducing of the armaments race."

Three days later Secretary of State Rusk announced that there were indications that "the two sides will not be pressing their defense budgets upward into new levels of competition during this next year." President Johnson, in his State of the Union Message, made clear that the U.S. defense budget would be reduced for the fiscal year beginning the following July; in his January message to the Geneva Disarmament Conference, he said that the atmosphere for disarmament negotiations had been brightened by "recent Soviet and American announcements of reductions of military spending . . ."

These announcements were, of course, preceded by private American-Soviet talks. No commitment was made by either side, but each decided that its own interests would be served by parallel announcements of budget cuts. The escalation of the Viet Nam war in late 1964 and in 1965 required supplemental appropriations which increased our military budget for the fiscal year in question. The Soviets believed we had gone back on our word, but in fact there was no obligation.

In a situation where changing events and problems of verification made a commitment unwise even for a year, the parallel action technique was used instead. Had events turned in another direction, the technique might have been repeated and a significant reduction in military expenditures produced over a period of time. No treaty dealing with military expenditures was then being negotiated, but a budget freeze or reduction might have restrained both sides from escalating the nuclear arms race pending negotiations of an agreement applying more directly to nuclear weapons or their carriers.

4. *Parallel announcement of cutbacks of fissionable material production—1964.* The United States has repeatedly advocated a treaty in which some or all of the nuclear powers, particularly the United States and the Soviet Union, would cut off the production of fissionable material for use in nuclear weapons. Negotiation of such a treaty has never begun because the Soviet Union rejected all such proposals. By 1964, however, President Johnson decided we were producing more weapons-grade fissionable material than we needed. "Even in the absence of agreement," he said in his State of the Union Message, "we must not stockpile arms beyond our needs or seek an excess of military power that could be provocative as well as wasteful." He therefore announced a cutback in production of enriched uranium and plutonium, and called on other nuclear powers to do the same. Two weeks later, in a message to the Geneva Disarmament Conference, he proposed that this process be continued by an inspected, plant-by-plant shutdown in the Soviet Union and the United States, leading to a verified agreement to halt all production of fissionable materials for nuclear weapons.

On April 20 and 21, 1964, after consulations among their representatives, President Johnson, Prime Minister Douglas-Home and Premier Krushchev made parallel announcements that they were reducing production or planned production of fissionable material for use in nuclear weapons. Doubt was later expressed by Senator Jackson, chairman of two Senate subcommittees having nuclear weapon responsibilities, whether the Soviet Union was in fact reducing its production. Moreover, the Soviet Union continued adamantly to oppose a verified halt in the production of fissonable materials for weapon purposes. When later cutbacks in American production were announced, no attempt was made to secure parallel Soviet limitations on production.

The President's power to order a cutback was reflected in provisions of the Atomic Energy Act authorizing him to set the amount of fissionable material to be produced. And President Johnson's announcements of production cutbacks were premised upon Amerian needs—with or without any corresponding reduction by the Soviet Union. By announcing a cutback at the same time as did the heads of government of the Soviet Union and the United Kingdom he did not enter into any international obligation. Yet, if the simultaneous announcements had led to successful negotiation of a treaty cuting off production of fissionable materials for making nuclear weapons, they would have been very useful steps toward a restriction on the growth of nuclear stockpiles.

5. *The legality of parallel actions.* None of the parallel actions on nuclear testing, bombs in orbit, military budgets or fissionable material violated the prohibition of the Arms Control and Disarmament Act on executive action "that will *obligate* the United States . . . except pursuant to the treaty-making power of the President under the Constitution or unless authorized by further affirmative legislation by the Congress of the United States." None of them did so, first, because none constituted an *obligation* of the United States, and second, because they did not "reduce or . . . limit . . . armaments of the United States." The test ban moratorium limited the testing of nuclear weapons, not the weapons themselves. The outer space declarations of intention restricted deployment of nuclear weapons, but not the size of the stockpile. The budget announcements reduced military expenditures, but not necessarily armaments. The fissionable material cutbacks dealt with the "ammunition" for nuclear weapons, but not the weapons themselves. None of these four parallel actions thus constituted an "obligation" to "reduce or limit" armaments.

Nor did any of the four parallel actions contravene the Constitution. Each was based on power the President can exercise alone as the Executive and Commander-in-Chief. In any event, each of them could have been described at the time as a step designed to lead toward negotiation of a treaty which would ultimately be submitted to the Senate. Two of the four were, in fact, succeeded by such treaties.

President Nixon has announced that the executive branch is considering a "moratorium" on the testing of multiple independently - targeted reentry vehicles (MIRV's) as a measure which might come out of the missile talks. A moratorium on further testing or deployment of particular missiles by parallel executive restraints pending negotiation of a treaty is amply supoprted by the foregoing precedents and well within President Nixon's power. Moreover, following the example of the preparatory commission created by executive agreement pending the effectiveness of a treaty, an organization to implement the moratorium could also be established by executive action. For the reasons already indicated, technological developments, unforeseen political problems and new information on the other side's plans will probably prompt repeated requests for changes in the specific limitations of the moratorium. Furthermore, one of the basic objectives of the talks is to reduce the risk of nuclear war "through a dialogue about issues arising from the strategic situation." Moreover, the experience with the four parallel actions described above might have been better had there been a forum for everyday exchange of information and negotiation concerning the moratorium.

Assuming, then, that a moratorium can provide necessary interim restraint pending negotiation and entry into force of a treaty, let us look at the ways in which a modern treaty could provide later flexibility for change short of formal amendment of, or withdrawal from, the treaty.

IV. THE SECOND STEP: A TREATY PERMITTING CHANGE BY EXECUTIVE ACTION WITHOUT TREATY AMENDMENT OR WITHDRAWAL

The United Nations Charter and the Test Ban Treaty are examples of two quite different methods of accommodating future developments. Both provide for formal treaty amendment by future agreement which must be submitted to the Senate for its advice and consent. But the Charter goes still further. It gives the Security Council "primary responsibility for the maintenance of international peace and security" in a changing world, and requires members to accept the Council's decisions. The General Assembly has a more limited but nevertheless important role in implementing the Charter in light of new circumstances. Either organ may pass resolutions significantly affecting future conduct of states in particular circumstances.

In the case of the Test Ban Treaty, however, no international organization was created to oversee operation of its provisions. After possibilities for interpretation have been exhausted, the only safety valve it contains aside from the article on treaty amendment, is language permitting a party to withdraw whenever "it decides that extraordinary events, related to the subject maer of his Treaty" (e.g., atmospheric testing by a non-party) have "jeopardized the supreme interests of its country."

These two treaties illustrate two extremes in the range of flexible provisions which can be found in modern treaties to which we are party—treaties which affect our national interests in important ways. It is my view that the Test Ban's provisions are inadequate to meet the needs of missile agreements which will probably need frequent review and revision. On the other hand, the Charter's provision for multilateral decision-making organs are inappropriate for essentially bilateral missile agreements. Most multilateral organizations seem poor precedents for an American-Soviet arrangement to provide flexibility in an agreement to halt future missile deployment. Neither country is likely to admit other countries into the strategic decision-making process. Neither is likely to trust its security to third party mediation or settlement, whether the third parties are international staff or other countries. How could they, without providing the third party with much of the technical, classified information upon which each will act in making its own decisions? Consequently, most precedents involving international legislation within specialized agencies seem inapposite. An examination must be made of other methods for accommodating change within the framework of a treaty affecting important United States interests without either amending the treaty or withdrawing from it.

Both the U.N. Charter and the Test Ban Treaty were in the best tradition of cooperation between the executive branch and the Senate. Both resulted from negotiations in which Senators were involved through advance consultations, hearings, and participation as advisers or members of the American delegation. The Senate could and should devote as much time and attention to one, all-inclusive strategic arms treaty if one could be negotiated. But assuming there are a number of lesser agreements, and that even these will need continuing revision, the manner of congressional participation ap-

propriate for the U.N. Charter and the Test Ban Treaty may not be appropriate for missile agreements. Experience under other treaties should, therefore, be examined.

A. Rush-Bagot Agreement of 1817

The Rush-Bagot Agreement limits naval armament on the Great Lakes and was the first disarmament treaty entered into by the United States. It continues to stand for the principle of Great Lakes disarmament even if the wars, economic growth, and technological development of a century and a half have made its specific restrictions on naval armament obsolete. Lacking any provision for change except for a six-month withdrawal clause, it demonstrates clearly the need for flexibility in such an agreement. Without the executive discretion assumed by the foreign offices of Canada and the United States, the Treaty would now be a dead letter rather than a symbol of international friendship and successful arms control.

The basic provisions of the Agreement were:

(1) The Great Lakes naval force on each side should be confined to four ships, one each on two lakes, and two for the others.

(2) None of these should weigh more than 100 tons or be armed with more than "one eighteen pound cannon."

(3) No other vessels of war should be "there built or armed."

None of these provisions now remains in force in the terms in which it was written. Executive agreements have modified and modernized their content. Any Great Lakes naval vessel of either side can be stationed on any of the Lakes and all limit has been removed on the number of vessels used for training, provided that each side notify the other of the functions, disposition and armament of all training vessels. The 100 ton restriction—designed not for steel but wooden hulls—has been removed. The eighteen-pound limit for guns has been transformed into a more modern four-inch limit. Both countries are now able to build and arm war vessels on the Great Lakes, provided full information is exchanged, the armament is incapable of immediate use and the vessels are promptly removed from the Great Lakes after completion.

These executive agreements came out of the close cooperation of two world wars, but they were preceded by a history of relations between the two countries which was not so amicable. The Rush-Bagot Agreement itself followed the War of 1812 with Britain. Both the United States and Britain were anxious to avoid the economic strain and the risk of collision of a large naval force on the Great Lakes. They dismantled their Great Lakes war vessels and, for approximately twenty years following ratification, closely adhered to the terms of the Agreement. This state of affairs lasted only until the late 1830's and the Canadian Rebellion. During the rebellion, the British government seized and burned an American ship which had been rented to the rebels as a supply ship. Both countries began making preparations for war. By 1841, the British had two steam frigates in the Great Lakes. They removed these in 1843 after protest from the Americans, who in the meantime had begun work on their own warship, the 685-ton, 2-gun ship, the *Michigan*, which remained on the lakes until the early 1920's.

A great deal of informal negotiation went on between the diplomats on both sides. Each side informed the other when it increased its naval forces for purposes of "self-defense," as the British did during the Canadian Rebellion and the United States did during the Civil War. Actions which appeared to endanger the security of the other nation drew sharp protests. In 1864, the United States went so far as to give notice of its intention to terminate the agreement after six months so that shipyards might be built on Great Lakes shores as a defense measure against Confederate raids from Canada. The notice of termination was withdrawn within the six-month period, as the course of the war changed, and the Secretary of State instructed our ambassador in Great Britain to tell the British that the United States wanted to Rush-Bagot Agreement to remain in force and "hoped" the British would not arm vessels in excess of the agreed force. Although the notice of termination had been the subject of a House resolution, there is no indication that the withdrawal of the notice was ever referred back to the House or Senate for its approval. Throughout the life of the Agreement, the negotiation of terms and modifications has been primarily the work of the Executive, although some of the impetus for negotiation may have been made necessary by congressional concern. In the 1890's when there was renewed pressure on the Congress to allow naval shipbuilding on the Great Lakes, the United States attempted to negotiate an exception to the Agreement permitting shipbuilding. The Canadian Governmen refused to agree to such a modification at that time. However, the common needs of the two world wars produced such agreement later. Indeed, by 1942, the two governments had agreed that the new ships built on the Lakes could be tested on the Lakes so that they would be ready for combat as soon as they reached the sea.

During the period of great concern about the Navy's shipbuilding budget in the early 1920's, Canada and the United States met to discuss amendment of the Agreement to make it conform more closely to modern conditions. One of the provisions that both sides wished to include in the new treaty was a clause making the numerical limit on ships subject to executive agreement. This clearly resulted from the lengthy history of changing naval requirements on the Great Lakes. However, although drafts were prepared and exchanged, no final action was ever taken.

The lesson which both foreign offices had learned from the Rush-Bagot experience by the 1920's is still instructive today. A provision permitting changes in specific terms by executive agreement, perhaps reserving for treaty amendment any modification which might alter the purpose of the agreement, would have sanctioned what actually happened and produced a workable, realistic treaty.

B. Boundary commissions

The deficiency of Rush-Bagot—the lack of any provision for change short of amendment or withdrawal—is not present in the treaties governing settlement of disputes about our national boundaries. Yet territory is often as important a national interest as military security and territorial disputes have been a leading cause of wars. From the point of view of Senator Fulbright and the Senate Foreign Relations Committee, "the transfer of territory," like the sending of American troops abroad, is a matter of "really great importance that required the most serious thought" and therefore should clearly be dealt with by treaty. How responsibility for boundary changes is divided between the legislative and executive branches, therefore, seems instructive for the drafting of future arms control agreements.

Senator Fulbright is of course correct in thinking that our boundaries with Canada and Mexico are largely established by treaty. But the everyday problems which arise under these treaties are dealt with by the executive branch alone; only major differences such as the recent Chamizal settlement with Mexico are submitted to Congress for formal approval. On our Canadian border, the recurrent problems of consequence are water diversion, pollution and obstruction. On the Mexican border, the meandering Rio Grande continues to create territorial changes. In both cases, boundary commissions composed of members from each side reach agreements and thereby make decisions which can become binding on their governments without submission to the Senate.

1. *Canadian Border.* A 1909 treaty gives three American and three Canadian Commissioners compulsory jurisdiction over all cases involving the use, obstruction or diversion of boundary waters.[1] Except where the two governments conclude a special agreement, which could of course be submitted to the Senate, the International Joint Commission approves or disapproves all applications which either government may forward to it concerning use, obstruction or diversion.[1] Decisions on these applications are made by majority vote and bind the two governments. In certain other cases, the Commission makes recommendations which are not binding. And, on matters of such importance as the building of the St. Lawrence Seaway, lengthy congressional consideration is of course required.[1]

2. *Mexican Border.* For more than 60 years, the American Commissioner of the International Boundary and Water Commission, United States and Mexico, has had authority to negotiate and settle differences in the application of treaties concerning the location of the shifting boundary line formed by the Rio Grande and the Colorado Rivers. Under an 1889 treaty with Mexico, joint decisions of the United States and Mexican Commissioners are submitted to their two governments for a one month waiting period.[1] If there is no objection by either within that period, the decision on the boundary is binding on both governments. One month is sufficient time for consultation with interested Members of Congress by the officers of the Executive Branch who must make the decision. But it is not usually adequate for formal advice and consent by the Senate. Later treaties, legislation and practice make clear that unusual decisions involving large areas and populations must be submitted to Congress, but everyday matters involving smaller areas and populations need not be. And the practice of executive agreement by the Boundary Commissioners subject to a 30-day waiting period in Washington has been extended to other matters, including the division of irrigation waters between Mexico and the United States pursuant to treaty.[1]

C. Naval limitation treaties

Between the two world wars, three important treaties limiting naval ships and armaments were negotiated: the first in 1922, the second in 1930, and the third in 1936.[1] The 1922 treaty dealt with battleships and aircraft carriers. It established a 5:5:3 ratio for these ships for the United States, the United Kingdom and Japan. The 1930 treaty limited the building of smaller vessels, such as cruisers, destroyers and submarines. The 1936 treaty attempted to regulate only the size and armaments of naval vessels. It did not deal with the number of ships each country could have because Japan, desiring parity in battleships and carriers with America and Britain, walked out of the conference when they would not accede to her demands. Because of the "gathering storm" of war, however, the 1936 treaty was short lived.[1]

None of the three treaties created by international organization to implement its terms. The treaties did, however, contain successively more elaborate provisions for dealing with changed circumstances. While all incorporated formal treaty amendment articles, the later treaties went considerably beyond such provisions.

The 1922 treaty called for a conference to be held in 1930 to consider "what changes, if any, in the treaty may be necessary" in

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Footnotes at end of article.

view of "possible technical and scientific developments." If any of the parties believed, before then, that "the requirements of [its] . . . national security . . . in respect of naval defense are . . . materially affected by any change of circumstances," it could call for a conference of the parties. In either of these conferences, change was to be accommodated by amending the treaty which, of course, required ratification by each government in accordance with its own constitutional processes. Finally, if any party became "engaged in a war which in its opinion affects the naval defense of its national security" it could "suspend for the period of hostilities" most of its obligations upon notice to the other parties. In that event, the other parties were to "consult together with a view to agreement as to what temporary modifications, if any, should be made in the Treaty as between themselves." If no agreement were reached, any of the other parties could suspend its obligations for the period of hostilities. Temporary modification of the treaty would presumably have required submission to the Senate, but suspension would not.

The 1930 Treaty was an amendment to the 1922 Treaty and it continued in effect the relatively traditional provisions for change in the earlier treaty. Additional language was necessary, however, because France and Italy had declined to accept limitations on their cruisers, destroyers and submarines. Britain, Japan and the United States therefore agreed that if the "requirements of national security" of any of them in respect of cruisers, destroyers, or submarines was "materially affected by new construction by any power other than" the three, any of the three could notify the others of the "increase required to be made in its tonnages" of cruisers, destroyers or submarines. Without further agreement, without amending the treaty, and without submitting any amendment to its parliament for approval, the notifying power could make the increase it had specified. The other two would then be permitted to make proportionate increases, provided each of them notified the other.

A provision of the 1930 Treaty called for a conference in 1935 to frame a new treaty. Although both the 1922 Treaty and the 1930 Treaty were scheduled to expire at the end of 1936, the conference was not convened until March of 1936. After the Japanese walked out, Britain, France and the United States drafted a new treaty imposing restrictions on the size and armaments of their battleships, aircraft carriers, lighter surface vessels, and submarines. More significant for our purposes, they agreed to elaborate provisions for the exchange of information on their annual programs for naval construction and acquisition. Throughout the year, notification was to be given of changes in these programs, of various specifications of the vessels to be built, of the dates when keels were laid down, of modifications during construction, and of major over-hauling of older vessels. No vessels within prescribed categories were to be laid down, otherwise acquired or modified in important respect until four months after notification. The provisions appear designed to permit each party to check his intelligence estimates against the declared plans of another party, and to respond to the other's plans by trying to talk him out of it, or by changing his own plans. A fairly continuous exchange of information was required, and a great deal of informal negotiations was possible.

The 1936 Treaty contained authorization somewhat similar to that of the 1930 Treaty to depart from the limits prescribed in the Treaty or in the party's declared annual program if non-parties built vessels not in compliance with the treaty, or if the party felt its "national security" to be "materially affected by any change of circumstances" other than those provided for in the Treaty. As under the comparable provisions of the 1930 Treaty, a departure could be made without amending the Treaty. Such departure was more difficult, however, because of a three month waiting period and a requirement that the parties "consult together and endeavor to reach an agreement with a view to reducing to a minimum the extent of the departures which may be made." Finally, the 1936 Treaty included an article permitting suspension in event of war, an article which was exercised by Britain on the very day in 1939 that she declared war on Germany. The other parties soon followed Britain's suit.

These provisions, according to the American negotiator, were designed to give the agreement sufficient "flexibility" so that it could change to meet the needs of the times. Although they met the needs of war time by permitting immediate suspension, they were not in effect long enough during peacetime to demonstrate their flexibility in such circumstances.

One of the significant precedents for a missile limitation in the 1936 Treaty is the information-exchange requirement giving each party details on the declared annual program of the others and providing a waiting period before new starts were made. During the delay the other parties could respond by negotiating to eliminate or reduce the new starts, and, at the same time, by planning the changes in their own programs which might be necessary if the new starts went ahead on schedule. If negotiation successfully prevented the new start, a formal treaty amendment deflecting that agreement could be negotiated, assuming of course that a moratorium existed until it was ratified. Or, since the departures were from the annual program and not from the Treaty, the parties could simply accept notices from each other of changes in their declared programs.

Another useful precedent from the 1936 arrangement is the authority to change one's annual program in response to the construction by non-signing parties of ships covered by the Treaty. Again, the notice requirement and waiting period afforded opportunity for negotiation within the framework of the treaty to eliminate or reduce new starts without any requirement for formal treaty amendment.

D. Antarctic Treaty

The 1959 Antarctic Treaty, which also permits change with or without treaty amendment, proclaims that Antarctica "shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons." In addition, nuclear explosions are explicitly prohibited in Antarctica.

The Treaty did not create any international organization to implement these terms. It did, however, authorize executive agreement to carry out their purposes. Representatives of the 12 original parties meet periodically to consult and recommend to their Government *"measures in furtherance of the principles and objectives of the treaty,* including measures regarding: (a) use of Antarctica for peaceful purposes only. . . ." These recommendations become effective as an international agreement when approved by each of the governments entitled to participate in the meeting. An American representative ordinarily goes to such a conference with instructions from the State Department worked out with other agencies. Depending upon the importance of the matter, he consults with appropriate members or committees of Congress before departing. During and after the meeting, he reports to the State Department what the agreed recommendations are. The State Department then places the recommendations before officials of other interested government agencies, including members or committees of Congress, before giving its approval. The executive can then bind the United States to these recommendations without further action by Congerss.

At the first consultative meeting, the Antarctic representatives made recommendations to implement a number of the Treaty's provisions, including the Treaty's requirement for prior notice by any party of "any military personnel or equipment intended to be introduced by it into Antarctica. . . ." The recommendation specified the time and manner for furnishing the information and stated that it should include "names, types, numbers, descriptions and armaments of ships, aircraft and other vehicles, introduced, or to be introduced into Antarctica, and information on military equipment, if any, and its location in Antarctica; . . . the number of personnel who are members of the military services . . .; the number and types of armaments possessed by personnel. . . ." These recommendations became effective as an agreement nine months after the meeting without submission to the Senate.

While arms in the Antarctic seem unlikely at the moment to jeopardize our security, the Soviet Union has claims there, and missiles based there could threaten our South American allies as well as ourselves. Consequently, implementation of the Treaty's prohibition on military installation is of some consequence to us. In addition, the Treaty is one of the handful of arms control agreements to which both the United States and the Soviet Union are parties. The Antarctic Treaty's provisions for change are, therefore, relevant precedents.

E. Control of nuclear materials used for peaceful purposes in nonnuclear countries

To control nuclear materials in use by other countries, Congress has worked out new institutional arrangements which give the executive branch considerable leeway in negotiating arrangements. While traditional treaty procedures are not used, executive branch discretion is exercised under the close scrutiny of an alert watchdog committee, the Joint Committee on Atomic Energy.

1. *American-made Fissionable Material.* American cooperation with other countries in the peaceful uses of atomic energy derives largely from President Eisenhower's 1953 "Atoms for Peace" proposal to the United Nations. He announced that the United States would assist other countries in their development of nuclear energy, provided they gave adequate assurance that this assistance would not be misued for military purposes. implementing legislation was enacted in 1954. It authorized the U.S. Atomic Energy Commission to distribute nuclear materials to other nations pursuant to international agreements containing guaranties that the material would not be used for atomic weapons or other military purposes. Such agreements are submitted first to the President for approval, and then to the Joint Committee on Atomic Energy, where they must lie for 30 days while the Congress is in session. Unless the Congress takes steps to disapprove an agreement during the thirty-day period, no further Congressional action is required.

The first agreements for cooperation which the United States entered into with other countries contained detailed language describing the safeguards which would be imposed, and provided for inspection by American nuclear experts. Later, two important international atomic energy organizations were created, one regional (Euratom), and one world-wide (International Atomic Energy Agency). Since 1962, the responsibility for safeguarding nuclear materials from the United States in the reactors of other countries has been gradually transferred to these two agencies—with the support of Congress.

At the present time, the United States relies upon the IAEA's Safeguards System to police the agreements by which we transfer uranium to most countries other than the Euratom Six. Yet, the IAEA regulations creating this system were not submitted to the Congress or any of its committees for formal approval.

This reliance upon the IAEA came about through the following arrangements which the Congress helped to create:

The 1957 International Atomic Energy Agency Statute, a treaty to which the Senate gave its consent, authorizes the Agency to "establish and administer safeguards designed to ensure that special fissionable and other materials . . . are not used in such a way as to further any military purposes. . . ." The statute also contains certain standards or specifications for these safeguards. The regulations creating the IAEA Safeguards Systems were worked out under the direction of the Board because the Statute gives it the major power for running the Agency. The Board is so structured that the United States, with help from its friends and allies, can usually wield a veto on important issues.

The regulations creating the IAEA's Safeguards System were drafted initially by the IAEA's international staff and later drastically revised by the Board of Governors. They were largely the product of lengthy negotiations between nations and not majority voting by the Board. In these negotiations, the United States and, to a lesser extent, the Soviet Union played important roles. Their common interest in effective safeguards to prevent the emergence of new nuclear powers is obvious. On the whole, they have worked fairly well together in the IAEA in recent years.

Congressional participation did not stop with the Senate's vote approving the IAEA Statute. An IAEA Participation Act requires that the American representative, who among other things, sits on the IAEA's Board, shall be appointed with the advice and consent of the Senate and shall take positions based upon instructions from Washington. The first head of the IAEA itself was former Chairman of the Joint Committee, Congressman Sterling Cole. Congressional advisers, usually members of the Joint Committee, attend some of its meetings every year. The Atomic Energy Commission, which has a close relationship to the Joint Committee, supplies experts to the IAEA and to American delegations to IAEA meetings. Instructions from Washington to the American representative are frequently discussed with the Joint Committee before they are transmitted. The AEC has a major role in developing and implementing U.S. policy in this area. It is required by law to keep the Joint Committee "fully and currently informed." Finally, as indicated above, the individual agreements providing for transfer of American nuclear materials to other countries must lay before the Joint Committee for 30 days. If the Congress becomes dissatisfied with the safeguards the IAEA provides, it can require a gradual shift back to inspections by U.S. nationals as particular agreements of cooperation between the United States and other countries come up for renewal. Congress could not in this fashion require the IAEA to change its standards for IAEA safeguard agreements, but it could require American inspectors and higher American standards as the price for American assistance.

2. *Foreign-made Fissionable Material.* The Non-Proliferation Treaty will extend the obligation to accept IAEA-supervised safeguards to nuclear materials which have not been supplied by the United States. In consenting to its inspection article, the Senate refrained from interfering with the present practice of executive discretion, under congressional security, to accommodate future inspection developments.

The inspection article required the application of international safeguards on all nuclear material employed in the peaceful nuclear activities of nonnuclear parties. The safeguards are to be those "set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system." These safeguards are intended to verify the Treaty's prohibition on the manufacture of nuclear weapons by non-nuclear states.

This inspection clause has been criticized as an "agreement to agree" which the Senate should not approve without first reviewing the inspection agreements which individual countries were going to negotiate with the IAEA. The United States, however, was not to be a party to agreements not involving its materials or equipment, the non-nuclear countries had no obligation to negotiate the inspection agreements until the Treaty went into force, and the Treaty could not go into force until the Senate gave its consent. The Senate decided to rely upon the executive branch, and the watchful eye of the Joint Committee, to see that effective safeguards were ultimately required in the negotiations. The Joint Committee will have all the means for working its will described above—except that the safeguards agreements between the IAEA and other countries covering material not supplied by the United States will not be submitted to the Joint Committee since we will not be party to them.

The IAEA and Non-Proliferation treaties are instructive in showing the extent to which the Senate is prepared to permit the executive branch to negotiate important changes within the framework of a treaty to meet future security needs without repeatedly submitting treaty amendments provided that a committee in which the Senate has confidence is overseeing the negotiations. For our purposes, the participation of a multilateral international organization, the IAEA is probably not the key. An international organization is not what the Senate relies upon and it is not likely to be used for a missile limitation agreement, at least not at the beginning. The relevance of the experience is to show how a treaty giving broad guidelines may result in delegation to the Executive of negotiating power not subject to formal Senate consent, at least where a watchdog committee has been designated to oversee the negotiations and where it does so, effectively.

F. Mutual defense alliances

The executive branch has exercised a great deal of independent authority under our collective defense treaties, which involve forty-two countries. It has even entered into what the Senate Foreign Relations Committee seems to regard as a military alliance with Spain without submitting any treaty to the Senate. Executive promises without Congressional sanction to assist a foreign country by use of the American armed forces or finances have run into frequent Senatorial criticism, culminating recently in the adoption of the Fulbright "National Commitments" resolution. Putting such promises aside, however, arrangements amounting to effective obligations have taken place within the framework of treaty alliances as the result of executive action without clear and explicit Congressional sanction, yet with general Congressional support NATO is the most important case in point.

In NATO, the growth of executive discretion has been directly related to the growth of an institution, the North Atlantic Council. The basis for this institution is Article 9 of the North Atlantic Treaty which establishes a "council" of the parties "to consider matters concerning the implementation of this Treaty." This rudimentary provision was given little further elaboration in the Treaty. According to the 1949 report on the Treaty by the Senate Foreign Relations Committee, this was so because it was "preferable that the specific organization may be evolved in the light of need and experience."

When it gave its consent to Article 9, the Senate may not have foreseen the extent of the institutional evolution which was to follow. But the North Atlantic Treaty was as much a creature of the Senate as it was of the executive branch. It has received strong, bipartisan support in the Senate ever since. It has even acquired an auxiliary organization of legislators from NATO countries who confer once each year.

After the invasion of South Korea in 1950, the United States and other NATO members agreed to the then revolutionary idea of an integrated North Atlantic international military command during time of peace. The North Atlantic Council decided to draw on the forces of its members to increase NATO's military strength, and to place the forces under unified command in Europe. It requested President Truman to designate General Eisenhower to serve as the Supreme Commander.

With the prospect of several more divisions of American troops being sent to Europe while a war was being fought in Korea, the Senate injected itself into the decision-making process. It disagreed with Secretary of State Acheson's claim that the President had constitutional authority as Commander-in-Chief to send U.S. forces to Europe and that "this authority may not be interfered with by the Congress in the exercise of powers which it has under the Constitution. By resolution, it approved President Truman's order sending General Eisenhower to Europe as Supreme Allied Commander and it approved his plans to send more divisions. But it expressed the "sense of the Senate" that Congressional approval was necessary before deploying American troops to Europe pursuant to the North Atlantic Treaty, and that no more troops should be so deployed without further approval.

Except for troop deployment abroad, however, Congress has been relatively content to let executive branch discretion and NATO decision-making machinery grow—gradually but effectively. After General Eisenhower became Supreme Allied Commander, the North Atlantic Council transformed itself into a permanent body which met regularly. The legal status of the staff, of the permanent representatives to the Council, of the NATO military forces and of the NATO headquarters were regularized by a series of international agreements. As part of the arrangements for bringing Germany into NATO, all forces of NATO members on the continent, with a few exceptions, were placed under the Supreme Allied Commander by resolution of the Council. In large measure as the result of implementation of the North Atlantic Treaty by this and later Council resolutions (none of which were submitted to the Senate for its consent), NATO "has evolved into . . . an international organization which . . . has acquired a marked influence over national forces and defense policies in the Atlantic area . . . and has become a center of decision-making which, although still essentially subject to the principle of unanimity, is nevertheless capable of influencing the allocation of resources in a vital sector through informal and formal procedures in the collegiate bodies, and through the working of its hierarchic military organs.

There are three areas of interest in which this is probably true. In the first, the military infrastructure built up to support the Treaty, the arrangements have evolved to the point where an excellent argument can be made that France violated multilateral international obligations created in large measure by resolutions of the Council when she "with-

drew" from the organization without withdrawing from the Treaty.

Second, within the broad outlines of the Treaty and the 1951 Senate resolution authorizing deployment of United States forces under NATO command, specific annual obligations are made by the executive branch through NATO with respect to the size of our troop commitment, and with respect to national force levels. NATO has devised an annual review procedure for prodding its members toward meeting their treaty obligation to "maintain and develop their individual and collective capacity to resist armed attack." As this procedure now works, a NATO committee recommends certain "force goals" to NATO members; they submit "country plans" which are analyzed by NATO military authorties and international staff; and the differences between the "country plans" and the "force goals" are negotiated out at various levels ending with the defense ministers of each country. Ultimately a five-year plan is adopted for each country with the understanding that it is "firmly committed" to only the first year. "Never before in peace or war have members of an Alliance agreed to exchange systematically such detailed and precise information on the military, economic and financial programmes and to submit these programmes to the examination and criticism of their partners."

Third, executive branch participation in NATO may to some degree limit our freedom of action with respect to our strategic nuclear deterrent. A 1962 NATO communique—which the State Department regards as a "defense commitment or assurance"—reports that our representative to a Council of Ministers meeting gave "firm assurances that [United States] strategic forces will continue to provide defense against threats to the Alliance beyond the capability of NATO-committed forces to deal with." And in 1966, a "nuclear planning group was established to make the first international study of nuclear deterrence and plan for the management of the Western deterrent." Partly as a result of the work of this committee, during the ministers' meeting in December 1967, the North Atlantic Council "adopted" Secretary McNamara's revised strategic concept of a "flexible and balanced range of appropriate responses, conventional and nuclear."

No NATO decision of this kind which we did not support would, of course, bind us to take any action. This is particularly true in the case of an armed attack when "each" member is to take action "individually and in concert" with others as "it deems necessary." But much has been accomplished by consulting in the Council and acting in concert thereafter.

[E]ven if one takes the view that the NATO Council . . . is nothing more than a conference of member states and has no power to make authoritative decisions, there can be no question . . . that certain resolutions agreed upon unanimously by the national representatives in the Council would constitute *international agreements* creating international obligations for the member states.

There are also many times when a "consensus" is achieved which may not impose an international obligation on us but which nevertheless guides our future action.

The North Atlantic Treaty experience is instructive in showing how a forum designed essentially for consultation and negotiation can evolve into an organization providing the basis for a good deal of executive branch discretion to negotiate agreements affecting major national interests, agreements which lie within the broad outlines of a treaty but which go beyond the treaty and are not submitted to the Senate for its consent. This could probably not have happened but for strong Congressional support for the North Atlantic Treaty, executive branch briefing of key committees and members of Congress, congressional participation in some NATO affairs (including visits to European installations) and the watchful eye of the Joint Committee on the nuclear arrangements.

CONCLUSION

When dealing with weapons, closer cooperation with the Soviets than with our NATO allies is not to be expected. To assume that an American-Soviet council to limit missiles could quickly acquire the power to create obligations that is now possessed by the North Atlantic Council is unrealistic. But the kind of cooperation and congressional support which exist in NATO should be our goal if SALT agreements are to achieve the flexibility necessary for stability in a changing world.

A broad exchange of information on national military programs is essential as a check on the intelligence estimates which will form the initial basis for negotiating positions. Precedent for this exists not only under the North Atlantic Treaty, but also under the Naval Limitation Treaties and the Rush-Bagot Agreement. Executive authority to negotiate modifications of missile limitations within guidelines established by Congress or the Senate finds similar precedent in the atomic energy agreements, the Antarctic Treaty, and the later Naval Treaties—as well as in NATO.

For constitutional and political reasons, the best framework for lasting agreement is probably a treaty—as soon as one can be negotiated. In the interim, however, an executive agreement or a moratorium can halt further escalation of the missile race. To implement and revise such a measure, and to provide a continuing forum for strategic dialogue, a preparatory commission can be established.

Appointing congressional advisers to the American delegation will help keep Congress involved, but it will not substitute for the creation of a single committee with Senators from the Foreign Relations Committee, the Armed Services Committee and the Joint Committee on Atomic Energy. If the Senate reposes its confidence in a diligent, responsible and discreet committee, that committee should receive the same kind of information and opportunity to influence the SALT negotiations which the Joint Committee now has in atomic energy activities. The joint participation contemplated by the Constitution and required to sustain wide public support for the negotiations, clearly justifies the greater effort necessary on both sides.

THE DEFENSE OF FORT McHENRY

Mr. MATHIAS. Mr. President, the story of the writing of the national anthem of the United States is familiar to every schoolboy. During the battle for Baltimore, Francis Scott Key, a native of my own Frederick County, Md., wrote a poem, "The Defense of Fort McHenry," which was soon to be known as "The Star-Spangled Banner." In 1931, President Hoover signed the legislation which established this popular song as our National Anthem.

I was pleased to see the tale recounted in the September 1970 Army Digest, the official magazine of the Department of Army.

In addition to retelling the history of the War of 1812, the narrative should remind all of us of the proximity of Fort McHenry National Monument in the Baltimore harbor. Daily between 8 a.m. and 8 p.m., this historic landmark is open for all to inspect and tour its museums.

On September 13, 1970, Defenders' Day, a special celebration is planned. Starting at 7:30 p.m., there will be music, military drill, fireworks and bombardment of the fort.

I ask unanimous consent that the article published in the September 1970, issue of Army Digest, be printed in the RECORD.

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

BY THE DAWN'S EARLY LIGHT . . . "AN INSPIRATION NOT TO BE RESISTED"

Several miles offshore, a young lawyer stands anxiously on the pitching deck of a small boat, watching helplessly, fearfully, as bomb and shell and rocket send their fiery trails converging on the beleaguered fort.

It is dawn of September 14, 1814, on the Patapsco River, just outside Baltimore, where 16 British warships ride safely, smugly, at anchor as their superior firepower puts them outside the range of the American batteries in Fort McHenry. All that night they had poured shot and shell into the fort, while a landing party attempted to assault it from the rear.

On the tiny American ship the young lawyer, Francis Scott Key, and a companion can only speculate on conditions in the fort. Is the bombardment smashing it to pieces? Did the landing party penetrate its walls? Does it still stand?

Bursts of rockets through the night had lit up the flag. Then, finally, the first rays of the sun pierce the darkness and the black powder smog, and pick up the red, white, and blue of the flag—a flag that shows rips, tears, holes, but still a flag that shows that the fort still stands. Defiantly, it still whipped in the early morning breeze over the frowning walls of the star-shaped, and star-destined, fort.

The sight of the flag still flying over the walls told the men in the little boat—and the British in their men-of-war—and the world generally—that the fort still stood, that invading land troops had been beaten off, that through the long, blazing night, the young Republic had successfully defended its freedom.

It was then that the poem which would become the National Anthem of the United States burst practically full blown from the mind and imagination of the young lawyer-poet.

Who was he, and what was he doing offshore, in a little boat, in the midst of a bombardment on which hung the fate of the new Nation that had been born in war just over a quarter of a century previously?

LAWYER AND POET

Francis Scott Key was a native of Frederick County, Md., where he practiced law and took a deep interest in political matters. (He would later become the prosecuting attorney for the city of Washington.) For relaxation, the young lawyer wrote poetry and verse. A romantic by nature, he never took his verse-making very seriously, although one of his hymns, "Lord, with Glowing Heart I'd Praise Thee," is still to be found in hymnals. Intensely patriotic, he still did not believe that the long-standing crisis with England should have come to actual war.

In this feeling he was far from alone. The country was badly divided, sometimes almost on the brink of dissolution, over issues stemming from the prosecuting of the War of 1812.

When England became embroiled in the Napoleonic wars, she imposed a blockade of the entire European Continent. Napoleon retaliated with a blockade of his own. U.S. shipping and commercial interests were caught in the middle. England insisted on stopping U.S. merchantmen and taking off sailors that

she claimed were deserters from the Royal Navy—and when England even insisted that U.S. ships put into English ports to be taxed, relations became extremely strained.

To complicate matters, the United States tried to embargo all shipping out of U.S. ports, and forbade English and French ships from entering to carry on any sort of trade. The New England merchants were being hurt badly, and there was even talk of resisting this edict by force of arms.

Finally, the wily Napoleon announced that he was lifting his blockade, so American shipping was allowed to resume trade with France. Actually, he kept up his blockade, but the public excuse was honored by the American government. Quite naturally, Great Britain contested the whole idea, and relations were strained to the breaking point.

The clamor for war against England grew in the United States. The so-called "war-hawks" prevailed upon President Madison to send a "war message" to Congress, which reluctantly issued a declaration of war in June 1812.

New England opposed the war from the start and did very little to support it in the way of troops or finances. The frontier elements clamored for land invasion of Canada, but the attempts bogged down. The poorly trained militia of the day, largely under political leaders, often refused to march across state boundaries. In an attempt to invade across the Niagara River, some state troops stood by while other American contingents were mowed down. Not until Winfield Scott, Jacob Brown, Andrew Jackson, and a few other professionals were given commands did American troops begin to measure up to the British regulars.

WAR COMES TO AMERICA

Events dragged on with one disaster following another on land until the hot summer of 1814 when Napoleon fled to Elba, and the British could turn their full attention to punishing their erstwhile colonies. Thousands of battle-hardened troops loaded on transports and sailed for America. The British fleet came up the Chesapeake, burned the fledging capital at Washington, sent President Madison and his government fleeing, and then turned its attention on Baltimore.

While the burning of Washington was a military debacle, it wasn't as disastrous as it might have been. The town was little more than a village; many of the government buildings were only half completed; and the White House had been occupied for only a few years. Baltimore, however, was a different matter—larger, wealthier, more important militarily and strategically and commercially than Washington, the city was a hotbed of anti-British sentiment. From its harbor sailed the vastly effective blockade runners, which continually outsmarted the heavy British men-of-war. Seizure of this city would quite probably end all American resistance.

During the general confusion of battles and burning and flights and alarms and ship movements, the British had taken captive Dr. William Beanes, a physician of Upper Marlboro, Md., and had transferred him with other prisoners to a ship. The doctor was a friend of Key's, and when Key learned of his friend's capture, he enlisted the aid of Colonel John S. Skinner, government agent for arranging exchange of prisoners. The two set out in their little boat to free Dr. Beanes. They were courteously received on the British flagship, and even had dinner with the admiral who released Dr. Beanes.

However, it was pointed out, with apologies, that the true party just simply couldn't be permitted to return to Baltimore. There was the matter of an immediate attack on the city; obviously, it would be highly inconvenient to allow intelligence of the fleet, its strength, its movements, and so on to be carried to the Americans. And since the lawyer and the colonel and the doctor were not prisoners, it would not be proper for them to remain on the British flagship. So would they please take to their little truce ship and stand behind the fleet? The admiral trusts that the gentlemen understood. They did.

THE LONG VIEW

Thus it was that Francis Scott Key and his friends found themselves, bobbing in their small boat, watching and listening through the long night, exulting as the Stars and Stripes appeared through the murk and smoke and dust of battle.

Four miles out, even for a young lawyer-poet, was a long way to see, but the flag itself was no little thing. As though made especially for a show of defiance, it was 42 by 30 feet. The red and white stripes were a full 2 feet wide. There were 15 of them for, at that time, a stripe as well as a star was added for each new state admitted to the Union, and Ohio and Florida had recently been added to the original 13 states.

Writing about the episode in later years, Key said, "Through the clouds of the war the stars of that banner shone in my view, and I saw the discomfited host of its assailants driven back in ignominy to their ships.

"Then in that hour of deliverance and joyful triumph, my heart spoke; and Does not such a country and such defenders of their country deserve a song? was its question. With it came an inspiration not to be resisted."

It was in a celebrating city that Key landed with the first rough draft of his poem already scribbled on paper. He managed to find a place to stay the night, and he polished the poem, which he called "The Defense of Fort McHenry."

In those days, long before instant communications, it was customary for balladeers to write poems about current events. Many would be set to music—usually well-known tunes—and there was frequently a brisk sale for popular items. Key set his verses to an English drinking song, "To Anacreon in Heaven."

Key took the four stanzas of his poem—to which Oliver Wendell Holmes would later add another stanza—to a friend, a judge in Baltimore. The judge took it to a print shop, and shortly it was being circulated as a handbill. It was instantly popular, and soon everybody was singing it. A music publisher is said to be responsible for calling it "The Star-Spangled Banner" rather than the more prosaic "Defense of Fort McHenry."

From the start, the song was immensely popular. It appeared for years in song books, and both the Army and Navy used it on ceremonial occasions. During the Civil War, it was claimed by both sides.

For many years The Star-Spangled Banner and the other venerated tune "America" were interchangeably used in schools and at patriotic events as the National Anthem. Finally, in 1931, a Maryland member of Congress proposed that Francis Scott Key's poem be made the official National Anthem. There was some opposition, however; many felt that the high notes were too difficult for the average singer. Some even believed that the song might jeopardize relations with Britain because of a line in the third stanza which stated: "Their blood has wash't out their foul footstep's pollution." Then again, there were advocates of another popular tune, "Yankee Doodle," originally written by a British officer as a jibe against the bucolic militia of the Revolution. Still others favored "America"—which echoed another old English tune, recognized in England as "God Save the King."

At any rate, the Congress finally voted for "The Star-Spangled Banner," and in 1931 the bill was signed by the President.

Today, offshore from Fort McHenry, the flag still flies just as Key saw it. It is easy for anybody who happens to be out there in the Patapsco River to understand how Key's "inspiration not to be resisted" struck him. Today, there may be no fog of war—only the smog of an industrial city—but through the murk of a dawn, the light in which Key saw the flag remains the same. The ideal it symbolizes still prevails in a troubled world. Today, the defenders of "the home of the brave and the land of the free" may be half way around the world instead of in the old brick fort, but through Key's inspiration, they and the entire Nation have a song which speaks eloquently for freedom.

AMENDMENT TO END THE WAR: ALTERNATIVE VIETNAM WITHDRAWAL PLANS AND BUDGET DEFICITS IN FISCAL YEARS 1971–72

Mr. HATFIELD. Mr. President, I submit today the sixth in a series of articles dealing with U.S. involvement in Southeast Asia. The article entitled, "Alternative Vietnam Withdrawal Plans and Budget Deficits in Fiscal Years 1971–72," was written by Charles P. Shirkey. As a former staff member of the Office of the Assistant Secretary of Defense, Systems Analysis, Mr. Shirkey is extremely knowledgeable about the implications of our future policy in Southeast Asia, particularly its effects upon the fiscal policy of this Government.

Mr. Shirkey clearly points out in this article that an extended commitment of American troops in Vietnam will continue to produce the budget deficits which the President wishes to prevent. This paper also implies that the primary means of curbing the inflationary spiral in this country is the reduction of military spending for the war in Vietnam. In the present debate on the future course of American involvement in Southeast Asia, Mr. Shirkey's paper provides an excellent dilineation of the domestic, economic effects of various policy alternatives.

I ask unanimous consent that "Alternative Vietnam Withdrawal Plans and Budget Deficits in Fiscal Years 1971–72" be printed in the RECORD.

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

ALTERNATIVE VIETNAM WITHDRAWAL PLANS AND BUDGET DEFICITS IN FISCAL YEAR 1971–72

(By Charles P. Shirkey)

INTRODUCTION

Currently, the Administration is facing budget deficits of at least $12 billion in fiscal year (FY) 1971 and $11 billion in FY 1972. This paper attempts to show the budget and policy implications of alternative Vietnam withdrawal plans, given the Administration's desire to reduce the deficits and to show a surplus, if possible.

Full withdrawal from Vietnam by January 1972 as proposed by the Hatfield-McGovern Amendment (Senate Amendment 609) would save (and reduce the deficits by) about $2.5 billion in FY 71 and $8 billion in FY 72 from the cost of the current Administration plan. This is the most feasible alternative for large savings in the cost of the war during the next two years.

Without the Hatfield-McGovern Amend-

ment, the Administration has some uncomfortable choices to reduce the deficits by similar amounts in FY 71 and 72. The President has left for himself one or a combination of the following options:

Request an extension of a 3% income tax surcharge in FY 71 and an 8% surcharge in FY 72—a total of $37 for every $1,000 in individual income tax over the next three years, in addition to the surcharge on corporate income;

Cancel any new and expanded civilian programs and reduce current programs—a net decrease in spending on civilian programs in constant dollars; or

Reduce the pre-Vietnam "baseline" force levels below the level which this Administration probably planned for the "1½ war" strategy (such as cutting 3⅓ divisions, 3 carriers (CVAs), and 5 tactical air wings) *and* cancel or defer R&D and procurement of new weapons systems (such as ABM, F–14, C–5, F–111, F–15, DD–963, CVAN–70, SSNs, etc.)

The political and economic cost of such measures must be weighed against the desirability of continuing the war beyond December 1971.

Of course, the Administration (together with the Federal Reserve Board) can change its economic philosophy. Various measures can be taken to hold down wage and price increases at the same time that there are large budget deficits and lower interest rates. However, such a change does not appear likely. In any event, it would not justify a continuation of the war beyond December 1971. The $2.5 billion and $8 billion saved in FY 71 and 72 respectively by adoption of the Hatfield-McGovern Amendment could be used for productive investment in the economy and for needed social programs.

BUDGET DEFICITS IN FISCAL YEAR 1971–72

In January the Administration estimated a budget surplus of $1.3 billion in FY 1971. This was revised in May by Budget Director Robert Mayo to an estimated $1.3 billion deficit. However, current estimates indicate a potential deficit of $12.3 billion in FY 71, as shown in Table I. Outlays are now estimated to increase about $12.5 billion over the President's initial request, and revenues are likely to be more than $1 billion less than the January estimate.

TABLE I.—*Potential deficit in fiscal year 1971*

[In billions of dollars]

President's budget (January 1970)—surplus in fiscal year 1971	+1.3
Plus:	
Additional revenue proposals and revisions	+2.2
Less:	
Interest on national debt	—3.0
Workload increases (current programs)	—0.5
Government pay increase	—4.7
Current proposed program increases	—0.2
Equals: Fiscal year 1971 deficit before Congressional increases	—4.9
Less:	
House and Senate passed increases	—4.0
Proposed revenue increases unlikely to get Congressional approval	—3.4
Equals: Revised fiscal year 1971 deficit	—12.3

Source: Based on Appendix A.

The prospects for FY 72 are about the same. As shown in Table II, the Administration is confronted with a potential deficit in FY 72 of about $9.5 billion, excluding any new and expanded programs and collections. If the proposed draft reform favored by the Administration is funded next year, the potential deficit in FY 72 is about $11 billion.

TABLE II.—*Potential deficit in fiscal year 1972*

[In billions of dollars]

Potential deficit in fiscal year 1971	—12.3
Less:	
Workload and price increases (current programs)	—6.0
Government pay increases	—4.5
Current proposed program increases	—6.8
Impact of Tax Reform Act of 1969	—1.5
Plus:	
Revenue increase (current tax laws)	+16.0
Withdrawals announced to date	+0.9
Current proposed revenue increases	+4.7
Equals: Fiscal year 1972 deficit before new and expanded programs	—10.4
Less: New and expanded programs (net)	—1.7
Equals: Potential deficit in fiscal year 1972	—11.2

Source: Based on Appendix A

These projections can be scaled up or down by varying the assumptions. For example, Representative Mahon estimates a deficit of about 13.5 billion in FY 71; adding on the increases voted by the House and Senate during this session runs Mr. Mahon's estimate to about $17 billion.[1] The deficit in FY 72 would be even greater. But whatever the assumptions, the deficits will be large enough to force some uncomfortable decisions.

Budget deficits are not necessarily bad. To many economists, the issue is not whether we should have deficits or not, but what size deficits are needed in FY 71–72 to stimulate the economy and reduce unemployment. However, the Nixon Administration has a conservative economic philosophy and would like to balance the budget or to show a small budget surplus for political reasons alone. The Administration clearly wants to reduce the pressure on capital markets and ease monetary restraints, and maintains that this can be accomplished only by fiscal restraint. Lower interest rates are particularly important if housing construction is to recover from the current depressed levels.

Were it not for the war in Vietnam, President Nixon could have almost balanced budgets in FY 71–72. The FY 71 budget includes about $11 billion for the incremental costs of the war. If the President makes no further withdrawals, other than those which he has already announced, the war will cost about $11 billion again in FY 72. Hence, President Nixon's current budget problems stem largely from the fact that he decided to continue the war when he came into office and plans to keep forces in Vietnam beyond December 1971.

A full withdrawal of U.S. forces from Vietnam during the next 16 months, as proposed by the Hatfield-McGovern Amendment (Senate Amendment 609), would save $2.6 billion in FY 71 and $8.2 billion in FY 72 from the current Administration plan.[2] Thus, in the current budget context, a relevant question is what options has the President left for himself to reduce the deficits by $2.6 billion in FY 71 and $8.2 billion in FY 72. (The remaining $10 billion and $3 billion needed to balance the budgets in FY 71 and 72, and the actions which the President would have to take to do so, are a separable issue of fiscal and monetary policy.)

[1] Hobart Rowen, "Vision of Red Ink Sends Panic Through White House Officials," *The Washington Post*, August 2, 1970.

[2] See Appendix B for a comparison of current estimated budget deficits and those which would result if the Hatfield-McGovern Amendment were adopted.

Unless the President decides to make further withdrawals and/or accelerate withdrawals, he can reduce the deficits by $2.6 billion and $8.2 billion in FY 71 and 72 respectively only by increasing taxes, reducing outlays, or some combination of the two.

TAX INCREASE IN FISCAL YEAR 1971–72

The Tax Reform Act of 1969 terminated the 5% income tax surcharge at the end of FY 70. Any call by the Administration for an increase in taxes in FY 71–72 would probably be a continuation of the surcharge. Given the tax base resulting from the Tax Reform Act of 1969, the Administration would need to request a continuation of a 3% surcharge through December 1970 and for the first half of 1971 to increase revenues by $2.6 billion in FY 71. To increase revenues by $8.2 billion in FY 72, the Administration would need to request an 8% income tax surcharge from July 1971 through June 1972.

As with the income tax surcharge to date, the burden would probably be spread between individuals and corporations. To the individual taxpayer, however, the cost of President Nixon's Vietnam policy would be $15 for every $1,000 in income tax paid in 1970, $55 in 1971 and $40 in 1972. An individual or family paying $4,500 annually in income tax, for example, would pay an additional $500 over the next three years. In addition, there would be a surcharge on corporate income.

The Nixon Administration would clearly like to avoid tax increases if at all possible. Conservative advisors to the President, including Federal Reserve Chairman Burns, believe the tax burden is already too high. Even if President Nixon decided to ask Congress for more taxes, which he has suggested he might do, it would jeopardize Republican prospects in the coming elections. It would be difficult to deny that the need for increased taxes, and the reason there is a deficit at all, is the Administration's policy on the Vietnam war—an issue many would like to avoid this Fall.

EXPENDITURE REDUCTIONS IN FISCAL YEAR 1971–72

If an increase in taxes is not an acceptable option to pay for the President's Vietnam policy, the only remaining alternative to decrease deficits is large expenditure cuts. However, the President's flexibility to reduce outlays is limited by the fact that a sizable portion of the budget—including such mandatory spending programs as interest on the National Debt, Social Security benefits, Medicare, etc.—is not subject to executive control. Any change in these programs, other than certain changes already provided for in the legislation, require Congressional action. The so-called "uncontrollables" account for about $114 billion or 42 percent of total outlays in FY 72. The uncontrollables are higher in FY 71 and account for about $143 billion or 67% of total outlays this fiscal year, since outlays from prior year contracts and obligations are virtually uncontrollable once a particular fiscal year has begun. Table III shows the composition of "controllable" outlays in FY 71–72 out of which the President could cut $2.6 billion and $8.2 billion respectively.

Actually, the President's flexibility is limited further in FY 71 than Table III suggests, because full savings can never be realized in the first year of a reduction. It takes time to terminate programs and get people off the payrolls. If reductions are initiated before December, the Administration would need to cut above $5.0 billion to $5.5 billion in annual spending levels to save $2.6 billion this fiscal year. Thus, the expenditure cuts made in FY 71 alone would save upwards to $6 billion in current estimated outlays in FY 72 (including pay and price increases avoided).

TABLE III.—CONTROLLABLE OUTLAYS IN FISCAL YEARS 1971–72

[In billions of current dollars]

	Fiscal year 1971	Fiscal year 1972	Percent of fiscal year 1972 total
Civilian programs:			
Existing programs [1]	38.9	43.8	35
New or expanded programs	2.5		
Subtotal, civilian programs	41.4	43.8	35
National defense:			
War in Vietnam (incremental cost).[2]	11.2	11.1	9
Pre-Vietnam "baseline" strategic forces [3]	17.4	18.9	15
Pre-Vietnam "baseline" general purpose forces [3]	42.7	47.5	38
Draft reform (volunteer Army)	.2	2.5	2
Subtotal, military	71.5	79.0	63
Other (AEC, MAP, etc.)	2.4	2.5	2
Subtotal, national defense	73.9	81.5	65
Total, controllable outlays	[4] 115.3	125.3	100

[1] The level of existing programs depends on whether some or all of the House- and Senate-passed increases are enacted.

[2] Based on fiscal year 1971 funding level and withdrawals announced to date. For the impact of alternative Vietnam withdrawal schedules in fiscal year 1971–72, see app. D.

[3] Based on end fiscal year 1965 force levels, before the buildup in Vietnam.

[4] If outlays from prior year contracts and obligations are regarded as uncontrollable in the current fiscal year, controllable outlays would be $76,400,000,000 in fiscal year 1971; see footnote (f) to app. C. This includes about $26,000,000,000 in civilian programs and about $50,000,000,000 in national defense, including about $4,000,000,000 in Vietnam war costs.

Source: Author's estimates based on Appendixes A and C. Estimates include pay and price increases, workload increases, and the average (as of July 31, 1970) of House- and Senate-passed controllable increases to the 1971 budget. Totals may not add due to rounding.

This is significant, for the cuts in FY 71 would have a far greater impact on programs than the additional cuts needed in FY 72. This is so even though the savings needed in FY 71 are considerably smaller. In terms of the FY 72 budget, the cuts needed this year would reduce the FY 72 budget plan by about $6 billion. Thus, only $2.2 billion would need to be cut next year to save $8.2 billion in FY 72.

The implications of this fact for withdrawals from Vietnam are particularly important. First, savings in Vietnam war costs this fiscal year would have a greater impact on other programs than comparable savings next year. Only plans to accelerate withdrawals in FY 71 will save money this year. If the Hatfield-McGovern Amendment is passed, non-Vietnam programs would not need to be cut $6 billion. Second, unless the Administration accelerates withdrawals and saves money in FY 71, only an additional $2.2 billion would need to be saved in FY 72. This the President could do by withdrawing as few as 73,000 men next year and retaining a residual force of about 200,000 men in Vietnam. Or he could continue the current withdrawal rate of 50,000 per quarter, saving $5.3 billion in FY 72, and apply the extra $3.1 billion saved to the balance of next year's budget deficit. Yet non-Vietnam programs would already have been cut $6 billion. Of course, the Hatfield-McGovern Amendment would not only avoid the need to cut non-Vietnam programs by $6 billion but also would save the additional $2.2 billion in FY 72.[3]

IMPACT ON CIVILIAN PROGRAMS

In order to save $2.6 billion and $8.2 billion in FY 71 and 72, the President would need (a) to sustain his veto of the increases in the education bill and other spending increases voted by the House and Senate during this session and (b) to withdraw the Administration's proposed increase in Social Security benefits or the Family Assistance Plan, or both. It is unlikely that such a course of action would succeed. Even to propose it would weaken relations with Congress in a mid-term election year and jeopardize the Administration's desire to take a lead in reordering national priorities. Moreover, it would provide no guarantee of reductions in FY 71, since the Administration proposals have a small impact on outlays this year. As was the case with the Hill-Burton Act and more recently the education bill, once the President has vetoed a measure, he has no control over its ultimate disposition. Even the final H.U.D. bill may include some (if not all) of the increases originally proposed. Still, the savings could amount to about $2.6 billion in FY 71 and $8.2 billion in FY 72. However, the President would have given up not only two politically important proposals this year, but also any flexibility for new and expanded programs in next year's budget.

The alternative would be to reduce ongoing programs. This would have money in FY 71. However, it would require reductions amounting to $6 billion to $8 billion in the FY 72 budget—a reduction of 14–19% in controllable civilian outlays. This would represent a large lay-off of government employees and have a severe impact on urban areas, since the greatest savings are in manpower and operations rather than big investment programs. Following on the heels of other cancellations, deferrals and economy measures, which the Administration might make in pursuit of balanced budgets, this could result in the first net reduction in spending on civilian programs since World War II.[4]

IMPACT ON PRE-VIETNAM "BASELINE" DEFENSE FORCES [5]

If an increase in taxes and large reductions in civilian programs are not acceptable and feasible options to pay for the President's Vietnam policy, there is but one alternative left to reduce deficits in FY 71 and 72; namely, large reductions in the pre-Vietnam "baseline" forces. How much depends on (a) the chances for a tax increase, (b) the size of reductions in civilian programs, and (c) the success of Vietnamization and the potential for withdrawals over and above the announced 150,000. From the President's current perspective, all three are uncertain, particularly in FY 71. A proposed tax increase would have to run the Congressional gauntlet—a problematic venture at best. On the other hand, the potential for sizeable reductions in civilian programs is very uncertain in FY 71, and the probability of success of the President's Indochina policy over the next two years cannot be accurately determined at this time. The President's control of pre-Vietnam "baseline" defense budgets is far more certain.

To cut expenditures and reduce the budget deficit by $2.6 billion in FY 71 and hedge against the need for an additional $2.2 billion next year, the Administration would need to plan now for a reduction in outlays of at least $9 billion in FY 72 and begin to implement the reduction in FY 71. This would translate into about $8 billion in 1971 dollars. Pay and price increases account for about $600 million. Moreover, savings have traditionally been overestimated and costs underestimated. Thus, planning for a $9 billion expenditure reduction now would assure that real savings would be about $2.6 billion in FY 71 and about $8.2 billion next year. As a minimum, the President would need to cut about $6 billion in pre-Vietnam "baseline" forces in next year's program, to save $2.6 billion in FY 71.

The impact of a $9 billion cut in pre-Vietnam "baseline" forces is shown in Table IV. It should be noted that these illustrative reductions do not necessarily represent the full amount of reductions in FY 71 and 72. The President is likely to make sizeable reductions anyway in order to reduce the budget deficits and implement the "1½ war" strategy. However, these additional cuts would not be needed *now*, if the Hatfield-McGovern Amendment were adopted, thereby permitting force planning and budget planning to proceed at a more orderly pace.

TABLE IV.—*Illustrative reductions in pre-Vietnam "baseline" defense forces in fiscal year 1971–72 in lieu of full withdrawal from Vietnam by end fiscal year 1971*

[Outlays in billions of current dollars]

	Fiscal year 1972 Savings
Army:	
Deactivate 3⅓ 48,000-man division forces and reduce pre-Vietnam "baseline" force level to 13 divisions	2.1
Cancel Safeguard	.9
Subtotal, Army	3.0
Navy:	
Deactivate 3 carrier task forces (about 30 ships) and reduce pre-Vietnam "baseline" force level to 12 carriers (CVAs)	1.1
Deactivate all 4 ASW carriers (CVS's)	0.3
Reduce amphibious ship forces by 25 percent to lift for one Marine division/wing (or MEF)	0.4
Cut shipbuilding by $1 billion in TOA—cancel/defer LHA, DD–963, CVAN–70, SSNs, etc	0.1
Cancel S–3A ASW aircraft	0.3
Cancel F–14 aircraft	0.8
Subtotal, Navy	3.0
Air Force:	
Deactivate 5 tactical air wings and reduce pre-Vietnam "baseline" force level to 16 wings	1.2
Deactivate some strategic bombers and air defense forces	1.0
Cut aircraft procurement by $1 billion in TOA—cancel/defer C–5, F–111, A–7, etc	0.5
Cancel F–15	0.3
Subtotal, Air Force	3.0
Total	[1] 9.0

[1] About two-thirds of this amount or about $6 billion (in 1972 prices) would need to be implemented this year to save $2.6 billion in FY 71.

Source: Author's estimates; *Authorization for Military Procurement, Research and Development, Fiscal Year 1971, and Reserve Strength*, Hearings before the Senate Committee on Armed Services, 91 Cong. 2 sess., Parts 2 and 3. Costs of forces are derived from total costs, which include direct operations, investment, and indirect support. However, savings in operating forces are assumed to be about 80% of total cost, excluding on-going investment and indirect support. Out-year savings would include these, thereby raising the total savings to about $10.4 billion (in 1972 prices).

[3] See Appendix D for the costs and savings of alternative withdrawal plans.

[4] Non-military spending has increased every year since World War II. See statement of Robert C. Moot in *The Military Budget and National Economic Priorities*, Hearings before the Subcommittee on Economy in Government of the Joint Economic Committee, 91 Con. 1 sess., 1969, Part 1, p. 319.

[5] Based on end-FY 65 force levels, before the buildup in Vietnam, which included 16⅓ active Army divisions, 3 active Marine division/wing teams, 15 aircraft carriers, 21 Air Force tactical air wings, and a total military manpower strength of 2.7 million.

The major impact would probably be on general purpose force levels. In FY 72, the pre-Vietnam "baseline" forces would cost about $71 billion, which includes about $45 billion for operations (including $2.5 billion for draft reform) and $26 billion for investment. Since most of the outlays for investment result from prior year contracts and obligations, most of the cuts would have to be made in operations. In short, the largest savings are realized in manpower reductions. This was equally true of the $6 billion expenditure cuts in FY 69–70, which eliminated a considerable amount of the so-called "fat" in the defense budget. Thus, a $9 billion cut would result in sizeable reductions in major force levels, particularly general purpose force levels, since they account for almost 75% of outlays for pre-Vietnam "baseline" forces.

The illustrative incremental reductions shown in Table IV actually result in a cut of at least $10 billion in pre-Vietnam "baseline" forces over the next few years, since savings in the associated investment (procurement and construction) and particularly indirect support cannot be fully realized in the first 18 months. Therefore, pre-Vietnam "baseline" forces would be reduced to about $54 billion (in 1971 prices) from the current $64 billion level.

These reductions, together with any other cuts which the President might make in pursuit of balanced budgets, would probably result in a far more drastic change in military posture than originally planned by the Administration when it adopted the "1½ war" strategy. Even though some (and perhaps even large) reductions in pre-Vietnam "baseline" forces may be desirable it would be preferable to phase such a change over several years. The Nixon Administration planned to begin reducing pre-Vietnam "baseline" forces in FY 72 after a thorough review of the force requirements. The FY 71 budget was intended to be a 'transition" budget. A rapid cut of this size now ($6 billion in programs in FY 71 alone) would be inefficient and could result in imbalanced force capabilities, which might take several years to rectify. Moreover, such a large, rapid cut could be misinterpreted both at home and abroad. The Administration is already sensitive to the political impact of the FY 69–70 expenditure cuts on certain sectors in the economy, U.S. military preparedness and relations with allies. In addition, the President cannot afford to discount totally Soviet interpretation of such reductions.

CONCLUSION

If the Hatfield-McGovern Amendment is adopted, these awesome choices would not be necessary. The savings resulting from a full withdrawal by December 1971, from the cost of the current Administration plan, would reduce the budget deficits by about $2.6 billion in FY 71 and $8.2 billion in FY 72. Unless the Hatfield-McGovern Amendment is adopted, similar savings can be achieved only by increasing taxes and/or cutting expenditures. Thus, the awesome choices needed to reduce the deficits by $2.6 billion and $8.2 billion in FY 71 and 72 are the price of the President's Vietnam policy.

So long as this Administration pursues balanced budgets, the measures needed to pay for the President's Vietnam policy are drastic. The tax burden in this country is not excessive compared to other industrialized countries, and many would accept a tax increase for productive social programs. But no one today wants to have his taxes increased by 3–8% to pay for a prolongation of the war. Nor is there great enthusiasm for large cuts in urgently needed government expenditures in the fields of air and water pollution, housing, urban transportation, medical research and education. For a public who has seen domestic programs slighted during the past five years, the prospect of the first net reduction in spending on civilian programs since World War II is totally unacceptable.

Pre-Vietnam "baseline" forces can be reduced; the Nixon Administration intended to do so anyway, but not until FY 72. However, the $10 billion in program cuts needed to pay for the President's Vietnam policy during the next few years will require larger force reductions than the Administration probably planned for the new "1½ war" strategy. Moreover, such large cuts in such a relatively short period of time jeopardize orderly defense planning and are vulnerable to the charge of irresponsibility both at home and abroad.

In the final analysis, dollars cannot measure fully the price of the President's Vietnam policy or the savings resulting from the Hatfield-McGovern Amendment. The Administration's case for prolonging the war must be weighed against the desirability of the plans and programs which must be sacrificed to do so.

APPENDIX A

Potential deficits in fiscal years 1971–72 [1]

[In billions of dollars]

Estimate of outlays in 1971:	
President's budget (January 1970)	200.8
Interest on national debt	+3.0
Workload increases (current programs)	+0.5
Government pay increase	+4.7
Current proposed program increases: Draft reform [2]	+0.2
New and expanded programs: Average of House and Senate appropriation action	+4.0
Revised estimate	213.2
Estimate of revenues in 1971:	
President's budget (January 1970)	202.1
Subsequent Administration proposals	+3.1
Subsequent Administration estimate revisions	−0.9
Unlikely Congressional approval:	
User charges	−0.3
Tax on leaded gas; estate and gift tax	−3.1
Revised estimate	200.9
Potential deficit in 1971	−12.3
Estimate of outlays in 1972:	
Revised estimate for 1971	213.2
Workload and price increases (current programs)	+6.0
Government pay increase	+4.5
Current proposed program increases:	
Social security benefits	+2.4
Family assistance plan	+4.4
New and expanded programs: Draft reform [2]	+2.5
Withdrawals announced to date	−0.9
Revised estimate	232.1
Estimate of revenues in 1972:	
Revised estimate for 1971	200.9
Revenue and price increase (under current tax laws)	+16.0
Currently proposed increases: Social security and other collections	+4.7
New revenues: Feedback from draft reform [2]	+0.8
Impact of Tax Reform Act of 1969	−1.5
Revised estimate	220.9
Potential deficit in 1972	−11.2

[1] Estimates as of August 1, 1970.

[2] The phased approach to the "Volunteer" Army favored by the Administration.

Source: Author's estimates; *The Budget of the United States Government, Fiscal Year 1971*, p. 10; Leonard S. Silk, "Nixon's Bugaboo," *The New York Times*, June 15, 1970; Hobart Rowen, "Vision of Red Ink Sends Panic Through White House Officials," *The Washington Post*, August 2, 1970.

APPENDIX B—BUDGET ESTIMATES AND FISCAL DIVIDEND FOR FISCAL YEAR 1971–72

[In billions of current dollars]

	Fiscal year 1971			Fiscal year 1972		
	President's budget (January 1970)	Current estimate	Full withdrawal from Vietnam by January 1972	Before new or expanded programs/revenues	Including new or expanded program revenues [3]	Full withdrawal from Vietnam by January 1972
Unified budget:						
Revenues	202.1	200.9	200.9	220.1	220.9	220.9
Outlays	200.8	[1] 213.2	210.6	[3] 229.6	[3] 232.1	[3] 223.9
Deficit (−)	+1.3	−12.3	−9.7	−9.5	−11.2	−3.0
High employment surplus (+) [4]	+14.0	+2.0	+4.0	+5.0	+3.0	+11.0
Less: Budget surplus at high employment levels, probably needed to permit moderate monetary policy while avoiding inflation	8.0	8.0	8.0	8.0	8.0	8.0
Equals: Fiscal dividend [5]	+6.0	−6.0	−4.0	−3.0	−5.0	+3.0

[1] Estimates as of Aug. 1, 1970.

[2] Currently includes only the expanded draft reform—the phased approach to the "volunteer" Army favored by the administration.

[3] Includes $4,000,000,000—the average as of July 31, 1970, of House and Senate appropriation action on civilian programs—which exceeds the President's request. It is unlikely the President will veto all of these increases. However, should the President sustain a veto of some of these increases, outlays would decrease and the deficit, high employment surplus and fiscal dividend would change accordingly.

[4] This represents the potential budget surplus (potential revenues less current outlays) if the economy were operating at a high employment level. Potential revenues are estimated at $215,000,000,000 in fiscal year 1971, and $235,000,000,000 in fiscal year 1972 under current tax laws, assuming a potential GNP of $1,078,000,000,000 and $1,180,000,000,000 respectively with unemployment at 3.8 percent.

[5] A positive fiscal dividend can be used in 1 or a combination of 4 ways: (1) to expand existing programs; (2) to undertake new public programs; (3) to run a budget surplus for purposes of economic stability, lower interest rates, and a relatively buoyant housing market; and (4) to cut taxes. A negative fiscal dividend implies the reverse of one or some combination of these.

Source: Author's estimates; app. D; The Budget of the U.S. Government, fiscal year 1971, p. 10; Charles L. Schultze, Setting National Priorities: The 1971 Budget, The Brookings Institution, Washington, D.C., 1970, pp. 178–190.

APPENDIX C—CONTROLLABILITY OF POTENTIAL OUTLAYS IN FISCAL YEARS 1971–72[1]

[In billions of current dollars]

	Fiscal year 1971			Fiscal year 1972	
	President's budget (January 1970)	Net increase[2]	Current estimate	Net increase[2]	Current estimate
Uncontrollable:					
Civilian programs	96.3	+5.0	101.3	+9.7	111.0
National defense (military retired pay)	3.2	----------	3.2	+.1	3.3
Subtotal, uncontrollable	99.5	+5.0	104.5	----------	114.3
Controllable:					
Civilian programs	[3] 37.5	+3.9	41.4	+2.4	43.8
National defense:					
War in Vietnam (incremental cost)[4]	11.0	(+.2)	11.2	(−.1)	11.1
Pre-Vietnam "baseline" strategic forces[5]	16.5	(+.9)	17.4	(+2.2)	19.6
Pre-Vietnam "baseline" general purpose forces[5]	40.5	(+2.4)	42.9	(+5.4)	48.3
Subtotal, military	68.0	+3.5	71.5	7.5	79.0
Other (AEC, MAP, etc.)	2.4	----------	2.4	+.1	2.5
Subtotal, controllable	[6] 107.9	+7.4	[6] 115.3	+10.0	125.3
Undistributed intragovernmental transactions	−6.6	----------	−6.6	----------	−6.6
Total outlays	200.8	+12.4	213.2	+19.8	233.0

Source: Author's estimates; Budget of the United States Government, Fiscal Year 1971, p. 44; statement of Robert C. Moot in Department of Defense Appropriations for 1971, hearings before a subcommittee of the House Committee on Appropriations, 91 Cong. 2d sess. (1970), pt. I, p. 493; Charles L. Schultze, Setting National Priorities: The 1971 Budget, the Brookings Institution, Washington, D.C., 1970, p. 19; Leonard S. Silk, "Nixon's Bugaboo," the New York Times, June 15, 1970.

[1] Estimates as of Aug. 1, 1970.

[2] See app. A. Attribution of increases are based on author's estimates.

[3] Includes a net amount of $200,000,000 for the proposed pay raise ($1,400,000,000) less the proposed postal rate increase (—$1,200,000,000).

[4] Based on fiscal year 1971 funding level and withdrawals announced to date. For the impact of alternative Vietnam withdrawal schedules in fiscal years 1971–72, see app. D.

[5] Based on end fiscal year 1965 force levels, before the buildup in Vietnam.

[6] Not all of this amount is controllable now in the same sense that the fiscal year 1972 estimates are but have been presented in this format for comparison with the fiscal year 1972 estimates. If outlays from prior years contracts and obligations are regarded as uncontrollable in the current fiscal year, the estimates of uncontrollable and controllable outlays in fiscal year 1971 would be as follows:

[In billions]

	President's budget	Current estimate
Uncontrollable	$138.4	$143.4
Controllable	69.0	76.4
Undistributed intragovernmental transactions	−6.6	−6.6
Total outlays	200.8	213.2

Of the $76,000,000,000 controllables in fiscal year 1971, about $26,000,000,000 is in civilian programs and about $50,000,000,000 in national defense, including about $4,000,000,000 in Vietnam war costs.

APPENDIX D—COST AND SAVINGS OF ALTERNATIVE VIETNAM WITHDRAWAL PLANS[1]

[In billions of current dollars]

	Fiscal year 1971		Fiscal year 1972[2]	
	Incremental cost	Savings (−) from current administration plan	Incremental cost	Savings (−) from current administration plan
Current administration plan: Current fiscal year 1971 funding level and withdrawals announced to date (150,000 out in fiscal year 1971)[3]	11.2	----------	11.1	----------
Alternative 1: 223,000 residual force end fiscal year 1972	11.4	----------	9.2	−1.7
Alternative 2: 50,000 residual force end fiscal year 1972	11.2	----------	5.9	−5.2
Alternative 3: Continue current withdrawal rate; all out by early fiscal year 1973	11.2	----------	5.8	−5.3
Alternative 4: Total withdrawal by January 1972 (Hatfield-McGovern amendment)	8.6	−2.6	2.6	−8.2

[1] All of these calculations are based on troop level reductions below the actual figure of 538,000 men in Vietnam at end fiscal year 1969, before the first withdrawal was announced. Thus at ene end of the latest 150,000 reduction, the level will be 273,000. Recent statements by Secretary Laird are based on troop ceilings, which were 549,000 at end fiscal year 1969 and will be 284,000 when the latest 150,000 are withdrawn. The incremental costs are the additional costs, all of which could be saved if we were not in Vietnam. All cost estimates include about $1,000,000,000 for military assistance to South Vietnam.

[2] Assumes a 7 percent price deflator in fiscal year 1972 to reflect pay and price increases.

[3] Announced by President Nixon in his televised address on Apr. 20, 1970.

Source: Author's estimates; Arnold M. Kuzmack, "Casualty and Cost Projections for Different Vietnam Withdrawal Plans," monograph inserted in the Congressional Record, Aug. 24, 1970; p. S14076; Charles L. Schultze, Setting National Priorities: The 1971 Budget, The Brookings Institution, Washington, D.C., 1970, p. 19.

TELEVISION DOCUMENTARY ON MIGRANTS TO BE SHOWN IN BALTIMORE

Mr. MONDALE. Mr. President, at the time last month when the NBC television network scheduled a national viewing of their documentary, "Migrant—An NBC White Paper," several network affiliates chose not to show the film. Among the areas where it was not shown were Dallas-Fort Worth, some parts of upper New York State, and in Baltimore, Md.

I now understand that consistent with their public interest obligations, Baltimore Channel 13—WJZ–TV—has arranged to borrow the film from NBC in order that Baltimore area residents can see it. The documentary will be broadcast Saturday, August 29, at 9:30 p.m. Channel 13 will follow the film with an indepth examination on the problems of Maryland and Virginia migrant workers at 10:30 p.m.

I commend Channel 13 for showing this film, for it is consistent with the public's right to know about farmworker living and working conditions existing in this country.

I call this filming to the attention of Senators and to the residents of the surrounding Baltimore-Washington area, in the hope that all those who did not see the documentary last July 16 will have an opportunity to view this extraordinary study of the conditions of migrant and seasonal farmworkers on the east coast.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. KENNEDY). 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.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The PRESIDING OFFICER. Under the previous order the Chair lays before the Senate the unfinished business which will be stated by title.

The assistant legislative clerk read as follows:

A 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 PRESIDING OFFICER. The Senator from New York is recognized.

AMENDMENT NO. 863

Mr. GOODELL. Mr. President, I call up amendment No. 863.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as

follows: The Senator from New York (Mr. GOODELL) for himself and the Senator from Wisconsin (Mr. NELSON) proposes an amendment, No. 863, as follows:

At the end of the bill insert a new section as follows:

"SEC. . PROHIBITIONS ON CROP DESTRUCTION WARFARE.

"No part of any amount authorized or appropriated pursuant to this Act or any other law shall be expended for the purpose of—

"(1) engaging directly in the military application of antiplant chemicals for the purpose of crop destruction;

"(2) entering into or carrying out any contract or agreement to provide agents, delivery systems, dissemination equipment or instruction for the military application of antiplant chemicals for the purpose of crop destruction."

The PRESIDING OFFICER. Under the previous order, the amendment is subject to a time limitation of 40 minutes, the time to be equally divided between the Senator from New York (Mr. GOODELL) and the Senator from Mississippi (Mr. STENNIS). How much time does the Senator yield himself?

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

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

CROP DESTRUCTION WARFARE

Mr. GOODELL. Mr. President, yesterday, the Senate voted on the amendment which I coauthored with the Senator from Wisconsin (Mr. NELSON) to prohibit environmental warfare.

Our amendment outlawed use by this country of antiplant chemical weapons. It banned the possibility of proxy use by preventing the transfer of our chemical herbicide capability to other countries. It also called for the dismantling of our antiplant chemical weapons arsenal.

As such, our amendment provided a basis in law for nonuse, nonproliferation, and disarmament of antiplant chemical weapons.

Our amendment aimed at putting these three principles into practice under the binding obligation of law. It was in the form of law that we sought to prohibit environmental warfare as contrasted to a "Sense of the Senate" resolution which would express opinion without the force of law.

This amendment failed to pass the Senate by a vote of 62 to 22.

Today, Senator NELSON and I are offering another amendment in an attempt to put some limitation on this country's use of chemical herbicides in war.

Crop destruction is one purpose of chemical herbicide use. The military objective is to deny an enemy food.

The amendment we are offering today prohibits the use of antiplant chemical weapons for the purpose of destroying food crops. In addition, it prohibits the transfer of a chemical herbicide capability for the purpose of crop destruction.

Mr. President, in 1962, the first year of actual defoliation operations in Vietnam, anticrop missions accounted for 5 percent of the total number of defoliation missions. In 3 years, the missions for crop destruction increased more than eightfold reaching 42 percent of total defoliation missions in 1965. Over the past 2 years, crop destruction missions have decreased to the 1962 level of 5 percent.

The fact that the Defense Department itself has reduced the number of missions for crop destruction over the last 5 years provides an additional reason to question whether destroying food crops is really contributing to military objectives.

The basic issues before us are clear and can be stated simply: Is the United States to engage or disengage from the military practice of crop destruction? Should the United States retain the option to engage in crop destruction as a tactic of war or should it relinquish this option?

If crop destruction should continue, the burden of proof is on the Defense Department to justify its continuance.

This amendment is quite different from that of yesterday. A great many arguments were raised in the debate on the environmental warfare amendment with reference to the military value of defoliation in protecting our troops.

The evidence available to us was to the effect that this is of very marginal value. As a matter of fact, it could be replaced by other methods with no difficulty at all and avoid the tremendous hazards to which we are subjecting the Vietnamese people and avoid the negative repercussions from the use of defoliation in Vietnam.

The amendment we have under consideration today aims directly at a specific aspect of our use of chemicals in Vietnam—that is the use of chemicals against crops, to destroy the crops of "the enemy." We all know that the end effect of crop destruction has had a very, very small impact percentagewise on the enemy.

The vast majority of the crops we have destroyed have not been enemy crops, but South Vietnamese crops or North Vietnamese crops that affected the civilian population.

War is uncivilized in many ways. However, certainly this country that likes to pride itself on being the most civilized country in the world should not be engaged in war against a civilian population. That is, in effect, what a crop destruction program is.

A year ago last February, I visited Biafra. I was appalled that in the Nigerian civil war there was evidence that the participants—both the Biafrans and the Nigerians—were willing to see civilians, mainly women and children, suffer the primary consequences of war. The best estimate is that 2.5 million people in Biafra starved during that horrible 2 years of civil war.

Mr. President, I look with grave concern upon our responsibilities in this matter. The United States, with reference to Biafra and Nigeria, tried very hard to get food over there. We refused to take a position, and rightly so, on the civil war. We refused to aid either party in the civil war in Nigeria.

Look at what is happening in Vietnam. We are undertaking there a program of crop destruction, the main impact of which is on the civilian population. A significant impact from the program is on the Vietnamese people and the small farmers. It is significantly counter-productive of our whole effort in Vietnamization.

I do not suppose that there are many things that turn off the Vietnamese population more than our crop destruction program. Obviously the heavy bombings in certain areas and mistakes that are made result in mass destruction, whether intentionally or unintentionally, through the weapons of war and cause a paralysis of the population.

The argument can be made that we are fighting a war.

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

Mr. GOODELL. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 additional minute.

Mr. GOODELL. It is not inevitable that we destroy the crops of a civilian population that is striving to feed itself and develop its rural economy. These programs have a direct impact on people. They are counterproductive.

The amendment is a clean, precise amendment aimed only at chemical warfare against crops. It does not cover the alleged military significance of antidefoliants along highways or in other areas to meet the threat of ambushes and make it easier to deal with the enemy.

It is very difficult to make any argument of military significance in favor of crop destruction except perhaps that this country is going to hurt the crops so much it will have an impact on the North Vietnamese Government, and that is not the way we should proceed.

Mr. STENNIS. Mr. President, I yield myself 3 minutes, after which I propose to yield more time to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, the measure before us today is no different than the measure yesterday with respect to humanitarianism. No one wants to destroy life under any circumstances. This is not a war against the South Vietnamese; of course not. We had this issue before us yesterday and I commend the Senator from New York and the Senator from Wisconsin for the very fine way they handled their subject and themselves in debate. But when we got right down to the issue there were 22 votes for their broad amendment and 62 votes against it, solely on the one point, and that is, when we send our boys into battle that may cost them their lives we are not going to put restrictions on them.

"War is hell," as General Sherman said. War is war, but we are in it. We are methodically getting out, but we know we are going to be there a while, and I strongly urge now that we not put any more impediments—we are already fighting a defensive war—on the boys and decrease their chances to survive rather than to increase them.

This is not being used to extensively destroy crops and food under any circumstances. It is used merely where it is thought it will be effective in reducing the effectiveness of the enemy, the Vietcong or the North Vietnamese, if they

are in that particular area. It has been helpful to them in taking advantage of the breaks there.

Mr. President, we feed people all over the world. Our AID program illustrates that. That is not the issue here. We are trying to destroy the means of making war, and that is why we have this very limited use of these herbicides as they might affect growing crops.

Mr. President, I yield 10 minutes to the Senator from New Hampshire.

Mr. McINTYRE. Mr. President, I thank my distinguished chairman.

Today the United States is committed to a program of pacification and Vietnamization of the conflict in Vietnam with the purpose of returning our forces to our country while allowing the Vietnamese to determine their mode of government free of outside coercion. The wisdom of this policy is one question. Doing all we can to insure its success—while we are committed to it—is another. As I said yesterday, the safety of American troops in Vietnam and their speediest possible withdrawal must remain our paramount consideration.

The amendment proposed by the distinguished Senator from New York would undoubtedly lessen the chances for success of Vietnamization and lengthen its course. The amendment to desist in the program to reduce the food resources of the Vietcong and the units of the North Vietnamese Army in the Republic of South Vietnam would substantially reduce the military pressure we now place upon the enemy.

I would like to describe this program in some detail to you. First, it must be realized that it is not a large-scale attempt to starve major segments of the population or major geographical areas of the country. Each year since the beginning of the program the amount of crops destroyed has never exceeded 1 percent of the annual food production in Vietnam. The normal variation in food production in the various areas is far greater than this small amount. Despite the shrill cries of the critics, despite the warnings of impending doom, the fact is that there is no evidence of widespread starvation or malnutrition in the Vietnamese population.

Second, this program has been one of the most carefully controlled of any of our military operations in Vietnam. Each and every crop destruction request must originate with the Vietnam province chief. This request 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. Each request then must get the approval of the Chief of the Vietnamese Joint General Staff. When the Vietnamese request is received at Headquarters of the U.S. Military Assistance Command Vietnam—MACV—it is staffed along with supporting papers submitted through U.S. advisory channels to MACV. During staffing the request is reviewed by the Civil Operations and Revolutionary Development Support—Cords—the U.S. Agency for International Development—USAID—the U.S. Public Affairs Office, the American Embassy and MACV. The important point is that crop destruction is not a decision that is relegated to the lower levels of command, but is considered in detail by civil and military officials at high levels in both the governments of Vietnam and the United States. Finally, 24 to 48 hours before the actual mission, the province chief is given an opportunity to approve or reject the operation depending on the actual situation at that time. The procedures and the safeguards they provide are not careless, not irresponsible, not indifferent.

Third, attack on crops has been restricted to areas of small population and known to be controlled by the North Vietnamese or Vietcong. Rice fields around villages are not attacked—but rice fields around known enemy troop concentrations, fields which are miles from known habitations and known to feed enemy troops, are attacked. Of course, mistakes may have been made, and the crops of friendly people may have been damaged. The incidence of these has been small. At times it has been necessary for the Vietnamese Government to relocate hamlets and villages when it could no longer offer protection from the Vietcong. Their crops were destroyed rather than let them fall into the hands of the enemy. They could have been ploughed into the ground, perhaps they could have been burned, but they were destroyed by herbicides because that is the quickest method using the least resources. It is nothing but the scorched earth policy used by military forces since time immemorial.

Let me now turn to the central issue of the question before us—the military effectiveness of the crop destruction program. The Vietcong and North Vietnamese units are operating in a theater far removed from their base of support. The weapons, the ammunition, the supplies necessary to maintain units in the field must be trucked or carried over long trails in the jungle. One of the immediate results of denying local food products to these units is that they are forced to devote a significant part of their logistical capability to carrying food instead of weapons and ammunition. This curtails their ability to carry out combat missions against U.S. and Allied troops, and it means less casualties to our American soldiers, marines, and other forces.

Another result of denying food resources to the enemy is that it forces him to spend a considerable part of his time growing food or foraging for it. We know from captured documents that many North Vietnamese and Vietcong units have been ordered to grow their own food. The destruction of local crops and the interdiction of supply routes has made it impossible in many cases for the enemy to supply its units with both weapons and food, so it has resorted to supplying weapons and telling its forces to grow food. This process further detracts from the time the enemy units have for combat missions—many have become full-time farmers and part-time fighters.

Another result has been the location, identification and capture of many enemy troops. The necessity to clear land and plant crops leads to identification. If aerial reconnaissance suddenly shows a number of small rice plots scattered along a strip of previously uninhabited countryside, then we know several things. One thing we know is that people are working there who are not part of the known area population. We also know that an infiltration trail or an enemy base camp is defined by the location of the food plots, and we can direct military activities against these areas. I can assure you that a significant number of infiltration routes have been disclosed in just this way.

There is a great deal of evidence that the lack of food is one of the primary factors with which the enemy must contend. There are captured documents, interrogations of prisoners, and a swelling tide of defectors who rally to the government of the Republic of Vietnam.

Let me give you an example or two from the field:

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

Now I think that it is very important that the enemy has been forced to establish battalions solely for the purpose of producing food—not for the purpose of attacking our troops, but simply for producing food for their forces:

> 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 NVA/VC. During a recent three month period in one province, 237 such garden plots were located. Many individuals have defected from these areas, and enemy units report low morale because of food shortages.

These are not isolated instances. There is report after report that the enemy units are receiving less and less food as time goes on. Many of them are at bare subsistence levels or less, and their military effectiveness is very substantially degraded.

The program to deny food to the enemy in Vietnam has been an important part of our military operations, and as the cumulative effect of all of these operations grows, the crop destruction becomes more important. Critics predict that dire things could happen as a result. They fail to say whether there is a 50–50 chance of this or that consequence, or that it is highly likely or unlikely—just that it could happen. But these things have not happened. There has been no mass starvation, there has been no massive movement away from the Saigon government as a result, but rather there has been a steady decline in the area controlled by enemy troops and their effectiveness.

Our crop destruction attacks in Vietnam are conducted primarily with agent blue, a solution of cacodylic acid. Cacodylic acid 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 coconut 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.

The PRESIDING OFFICER (Mr. BYRD of West Virginia). The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield the Senator from New Hampshire 2 minutes.

Mr. McINTYRE. Mr. President, the amendment we are considering today is unnecessary. It is unnecessary because it would stop a military operation which is an effective and important part of our total military effort in Vietnam.

If we allow the enemy to obtain food easily and with less expenditure of manpower than he is now forced to use, he will be able to carry out increased military attacks. Each enemy soldier released from growing food is a soldier who can attack our troops. An end to the crop destruction program would increase the number of security forces we would have to maintain, and it would increase the number of casualties that those American forces would sustain.

For these reasons, Mr. President, I must vote against the present amendment and urge my colleagues to do the same.

Mr. GOODELL. Mr. President, I yield 5 minutes to the Senator from Wisconsin (Mr. NELSON).

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 5 minutes.

Mr. NELSON. Mr. President, the Senator from New Hampshire says the use of herbicides for crop destruction is not on a large scale. I suppose, considering the percentage of the agricultural land involved, that is correct. However, that really is not the point. We are using a weapon that we ought not to use, not only on a large scale or small scale, but not at all. The fact is that we have sprayed 500,000 acres with an anticrop herbicide which contains 54 percent arsenic. The fact is that we are procuring for this year 600,000 gallons which would cover 200,000 acres, which is a substantial amount of land.

The Senator says there is no starvation. I do not know that anybody would argue that there is any starvation. So far as the civilians are concerned. If they do not have any food they go to refugee camps; and many of them are in refugee camps.

With respect to the program, the one independent study I know of commissioned by the Department of Defense, made by the Rand Corp., stated that the program was counterproductive because of the morale factor involved. As a matter of fact, as the Senator said in his own speech:

> A Rand Corporation study conducted at the Department's request concluded that the program was largely counterproductive given its alienation of the civilian population.

Then, of course, the Senator states that the military disagrees with that. I do not know why it commissioned the report if the department was not going to follow what the report concluded.

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

Mr. NELSON. I yield.

Mr. GOODELL. There was a study in 1967. This practice has been going on for some time. There was a later study in 1970 which indicated that this program is an anathema to the people of North Vietnam and South Vietnam—again, a study out of the Defense Department, commissioned by the Defense Department.

Is there any wonder that it is anathema? I am appalled that this country is engaging in warfare in the sense of using food as a weapon of war. We all know that soldiers end up getting the food. When the civilian population is deprived of food, the enemy soldiers get the food. They take it away from the civilians. That is the nature of guerrilla warfare. That is exactly what happens. The more we deprive the soldiers of food, the more they are going to take it away from the civilian population.

So, instead of growing crops on their land, the civilians go to the refugee camps.

Nobody is saying we are starving them, but we are saying we are turning the land off, making it of marginal value, in a sense—in other words, counterproductive.

I thank the Senator for yielding.

Mr. NELSON. Another point made by the Senator from New Hampshire is that there is no proof of damage. I respectfully suggest that the Senator is wrong about that; 2,4,5-T, as the Senator knows, is teratogenic. It has the capacity to and does deform the fetuses of the animal creatures on which it has been tested. That ought to be alarming enough. As I mentioned the other day, thalidomide was another fetus-deforming drug which had been fairly widely used in Europe and South America and resulted in thousands of cases of children being born without arms and legs.

I do not see how the Senator can suggest that to spread 2,4,5-T and 2,4-D over Vietnam in massive doses does not——

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

Mr. GOODELL. Mr. President, I yield 5 minutes to the Senator.

Mr. NELSON. Does not expose Vietnam to the great risk of serious, major environmental disruption.

I think we all recognize that when you start to medicate—and that is what it is—all the creatures in a large area by spewing these potent chemicals into the atmosphere, you are running a grave risk, and every time we have done it with any pesticide or any herbicide, it has had disastrous results, the most common example of which is DDT.

However, that part of the argument that it denies food to the enemy raises an important question of principle. What is the implication of this country validating, giving the status of legality to chemical environmental warfare? What are the implications of it?

The military interpretation, in their manual on the law of land warfare, states that the relevant treaty position is that it is especially forbidden to employ poisoned weapons. "The foregoing rule does not prohibit measures being taken to destroy, through chemical or bacterial agents harmless to man, crops intended solely for consumption by the armed forces, if that can be determined."

Now, if, as the military says, we can use, first, only chemicals harmless to man, there is no proof that these chemicals are harmless to man. In fact all evidence available indicated that they are harmful to man. Whatever evidence we have indicates they are harmful. So the use of these herbicides is a violation of the military's own interpretation of the rules. I think that interpretation is wrong on its face, anyway, but it is wrong based on their own interpretation.

Then, second, what is the next implication of using it as a food denial program? Well, half the people on earth get their protein from marine creatures, crustaceans of various kinds and fish. Half the people. If food denied to the enemy is a valid military tactic, and the use of chemicals to accomplish it is a valid military method, then what is to stop a country from poisoning the marine esturaries and the breeding grounds for the fish and the marine creatures on which some countries rely for a major portion of their protein? What are the implications, as we develop more and more and a greater variety of poisonous chemicals that have adverse effects on the flora and fauna? The implications are that some country is going to decide that if the food denial program, which we have validated by our usage in Vietnam, is all right for plants, it is all right for other foods, too, because fish and crustaceans are crops used by countries, just as rice is.

I just wonder what kind of a principle of warfare we are establishing by the use of this food denial program. For no matter what its size may be, it is the principle that counts.

As I mentioned earlier, several times the argument has been made here that we are reducing the program. I am glad to hear that, except that, as I look at the procurement——

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

Mr. NELSON. One more minute.

Mr. GOODELL. I yield the Senator 1 minute.

Mr. NELSON. As I look at the procurement, the Department of Defense is procuring 600,000 gallons of agent blue which is the anticrop agent and that will cover about 200,000 acres. If they procure it, I assume they are procuring it to use it. If they use it, they will be back up to about the level they were in 1967.

I would hope that at least today we would establish the principle that America is not going to engage in chemical warfare in a food denial program which has grave implications, in my judgment, for the future in terms of warfare, it being a weapon that is cheap and simple and can be used by any country, not only

with disastrous effects upon the edible marine creatures, but upon the whole life system within the ocean itself.

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

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

Mr. McINTYRE. Mr. President, the distinguished Senator from New York mentions the Rand report.

It was the Rand report's finding that as of December 1967 this crop destruction program had led to occasional destruction of civilian food crops. This finding led to careful restructuring of the program. I am informed by the Defense Department that since 1968 no crops have been destroyed in any areas known to be inhabited by civilians, be it a Vietcong hamlet, a Saigon hamlet, a Montagnard hamlet, or otherwise.

This crop destruction program, moreover, is now the most closely controlled of all our activities in Vietnam. The herbicide activities we have talked about are subject to the decision of the corps commander, who can decide whether defoliation will take place. But crop destruction operations have to be approved personally by General Abrams, Ambassador Bunker and high-ranking Vietnamese counterparts.

If we allow the enemy to obtain food easily and with less expenditure of manpower than he is now forced to use, he will be able to carry out increased military attacks. Each enemy soldier released from growing food is a soldier who can attack our troops. An end to the crop destruction program would increase the number of security forces we would have to maintain, and it would increase the number of casualties that those American forces would inevitably sustain.

Fortunately, Mr. President, since 1968, there has been a substantial increase in the geographical areas that have come under the ARVN and South Vietnamese control. They are much greater than they were in 1968. That is why we have been able to greatly curtail this program. It is strictly controlled, and with all due deference to the distinguished proponents of the amendment, we went over the same ground yesterday and decided then that the safety of our troops was the paramount consideration.

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

Mr. McINTYRE. I will have to yield on the Senator's time.

Mr. STENNIS. Mr. President, I yield to the Senator from New Hampshire 1 minute, if he needs it for himself.

I yield to the Senator from New York 1 minute for colloquy.

Mr. GOODELL. First of all, it seems to me that the Senator is trying to have it both ways. As the Senator from Wisconsin indicated, we are very glad to hear they are reducing this program. The Senator from New Hampshire says it is a very important program, that must be used in a major way to protect our troops, so that the enemy must carry their food in, and we deny them food on the spot.

Why are we reducing it, if it is so important? I wonder where this contradiction comes in, that we are increasing the amount of money for it? Can the Senator from New Hampshire explain why they are asking for enough to spray 200,000 acres in the coming year?

Mr. McINTYRE. I am not at all sure that they intend to use in the near future all that they are procuring at the present time. This may well be a bulk purchase for long-term needs.

The PRESIDING OFFICER. The time of the Senator from New Hampshire has expired.

Mr. McINTYRE. DOD is frank to admit that there were some mistakes prior to 1968. Those mistakes have resulted in stricter controls, which I have already gone into.

Second, many areas that were VC controlled in 1967 are now not VC controlled, so there is no need for this crop spraying. So these two elements are working together: First, the ARVN and South Vietnamese forces are controlling vastly greater areas than they were in 1967——

Mr. GOODELL. May I ask the Senator if this can be used in Cambodia?

Mr. McINTYRE. I beg the Senator's pardon?

Mr. GOODELL. Can this be used in Cambodia by South Vietnamese troops?

Mr. STENNIS. No.

Mr. McINTYRE. Not to my knowledge. Not for destruction of crops in Cambodia. There has been some accidental defoliation of rubber plantations in that country by U.S. forces, but I do not know of any crops being destroyed, either by South Vietnamese or Americans.

Mr. GOODELL. We have read of chemicals being used against rubber plantations. I just wondered if there is a prohibition against these chemicals being used by the South Vietnamese against crops or rubber, which is a crop, in Cambodia.

Mr. McINTYRE. I do not believe it has ever been used purposely on crops in Cambodia.

Mr. GOODELL. I do not believe there is any prohibition on it. I do not say that I know it has ben used.

Mr. McINTYRE. There has not been any of this activity intentionally.

Mr. STENNIS. If the Senator will yield, I know of no such use, and I do not think any such use is contemplated.

Mr. GOODELL. But there is no prohibition in the law against it.

Mr. STENNIS. Not that I know of, expressly.

Mr. President, I yield one-half minute to the Senator from South Carolina. I regret that I do not have more time to yield to him.

Mr. THURMOND. Mr. President, I rise in opposition to the pending amendment No. 863 to the 1971 military authorization bill which would prohibit the use of antiplant chemicals by our military men in Vietnam to destroy enemy crop fields.

One of the chief problems facing the North Vietnamese troops in South Vietnam is the availability of food. The enemy soldiers facing our troops and those of our allies have come a long way to fight and have therefore stretched their supply lines considerably.

The enemy has tried to overcome this disadvantage by producing their own crops in some inaccessible areas of South Vietnam and in areas where few South Vietnamese civilians are located. Furthermore, in some areas enemy soldiers have taken over crops and land belonging to South Vietnamese civilians.

To counter this means of providing food supplies to the enemy, our forces have engaged in selected crop destruction. By destroying the fields planted or controlled by the enemy, we have made it more difficult for them to provide food for their soldiers. In turn, these forces have been reduced in number and are therefore less effective in killing Americans and our allies in this war-ravaged country.

Mr. President, this program of destroying selected crops in certain areas of South Vietnam has been carefully controlled and even at the height of the war did not result in the destruction of more than 1 percent of the annual food production of Vietnam.

Thus, when one compares that statistic with the success of our crop destruction program in handicapping enemy forces, it is easy to see how unwise it would be to discontinue this effort. The interrogation of enemy prisoners reveals that food shortages are among the most critical problems facing the North Vietnamese. These same prisoners attest to the effectiveness of the crop destruction program as it applies to the overall food shortage among enemy soldiers.

Mr. President, the same two reasons I gave yesterday to the initial herbicide amendment offered by my colleagues apply to this amendment. While I recognize their good intentions in offering this latest amendment, it must be stated again that its passage would indirectly cost American lives in this war. Further, the use of antiplant herbicides on enemy crops is not causing any harmful effects to the ecology of South Vietnam according to studies we have made.

For these reasons, Mr. President, I urge the Members of the Senate to reject this amendment.

Mr. STENNIS. I thank the Senator from South Carolina.

I yield myself the remainder of my time.

Mr. President, I certainly hope that the Members of the Senate understand that this is essentially the same question we voted on yesterday, which was rejected by a vote of almost 3 to 1—that is, yesterday's vote included the item at issue now.

Second, there is no vast, extensive use of this matter; but where it has been used most effectively, it has driven them to use more of their people for the growing of food and crops, thus taking them away from other support of the military and taking them away from the actual fighting.

As I have said, we have decided this matter primarily on the ground that we are over there trying to defend this vast area of that country from the Communists, and our boys need every reasonable thing, every possible thing we can supply them to protect themselves. This is jungle warfare at its worst. I think we have enough restrictions now on them as policy. Let us not tie their hands mili-

tarily with respect to every conceivable item, small as this is.

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

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

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. GOODELL. Mr. President, with 1 minute remaining, let me simply emphasize that this amendment is quite different from the amendment of yesterday, with all due deference to the Senator from Mississippi. The amendment yesterday was a broad-based amendment that would deny the use of defoliants for any purpose, and many arguments were raised, I believe sincerely, that there was some kind of military significance to defoliating areas where the enemy might be ambushing. That is not involved in this amendment. This amendment is against the use of chemicals for the denial of food. It is the use of chemicals to deny the enemy food—the spraying of crops.

I would say to the Senator from New Hampshire that we have later evidence than 1967, a 1970 report of the Defense Department, which says that it is anathema to the people of South Vietnam.

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

Mr. STENNIS. Mr. President, has all time for debate expired?

The PRESIDING OFFICER. All time for debate has expired.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MONDALE. Mr. President, the war in Vietnam has been a series of mistakes and an unquestioned tragedy. In passing this amendment, we have an opportunity to halt one of our most mistaken policies and prevent prolonged destruction among the Vietnamese people far beyond the end of the war.

The American people by nature recoil from the horrors of war. The Vietnam war especially has forced us to question ends and means. Though we have not yet been able to withdraw from bloodshed, we are increasingly questioning such techniques as massive bombing, napalm, and search and destroy missions. One can hope that public consideration of such destruction will help us exert world leadership away from the use of force and violence.

But for some time the United States has had a revulsion and a very clear policy against employment of other weapons of certain types. Since World War I and the days of poison gas in the trenches, we have had a policy against the tactical use of weapons which affect total populations, poison slowly, contaminate land, and destroy organic life chains.

Public concern for these issues has been reflected in controversies involving biological warfare research, nausea and tear gas deployment, nerve gas, and tactical nuclear weapons.

But it is clear now that we have unthinkingly employed destructive materials in Vietnam which deliver all of these catastrophic effects: Anticrop chemicals. Senator NELSON has explained the poison content of these herbicides, especially cacodylic acid. The possibilities of poison buildup in animals and man have been shown in the case of DDT in the United States.

The long-term obliteration of vegetation and botanical cycles is an obvious contamination of the land. The destruction of interdependent plant and animal chains is truly appalling, and will plague the people of Vietnam for years after the war. The research finding that the defoliant chemical 2,4,5-T causes fetal deformities in animals should arouse humanitarian protest against all herbicides, just as we have always opposed biological warfare and tactical nuclear weapons.

The destruction of food crops is a seriously mistaken policy. The Senator from Wisconsin has shown that, in guerrilla warfare, this tactic affects the civil populace primarily and has little impact on the guerrilla enemy. By 1967, the war had already caused the loss of over 600,000 acres of riceland, and created thousands of helpless refugees. The loss of another half million acres due to chemical attack is a civil disaster which cannot but hinder pacification and reduce support for the United States.

It is clear that the administration's delay in submitting the Geneva protocol against chemical and biological warfare to the Senate until August 19, after promising prompt action in November 1969, has become an international embarrassment to the United States; 9 months after the U.N. General Assembly voted 80 to 3 against us, to prohibit use of chemicals under the Geneva Treaty, we still exist under the cloud of herbicide use in Southeast Asia.

Congress has the obligation to act to stop this mistaken policy.

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

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

Mr. STENNIS. Mr. President, we request the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, what is the question before the Senate?

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from New York (Mr. GOODELL) and the Senator from Wisconsin (Mr. NELSON). The yeas and nays have been ordered.

Mr. STENNIS. As I understand, Senators who favor the amendment will vote "yea," and those who are opposed will vote "nay."

The PRESIDING OFFICER. The Senator is correct. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that 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 Oklahoma (Mr. HARRIS), 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 Georgia (Mr. RUSSELL) are necessarily absent.

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

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. FONG), the Senator from California (Mr. MURPHY), 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.

The Senator from Oregon (Mr. PACKWOOD) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from Maryland (Mr. MATHIAS) are detained on official business.

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 33, nays 48, as follows:

[No. 274 Leg.]

YEAS—33

Bayh	Hughes	Pastore
Burdick	Javits	Percy
Byrd, W. Va.	Kennedy	Proxmire
Case	Magnuson	Randolph
Church	Mansfield	Ribicoff
Cooper	McGovern	Smith, Ill.
Cranston	Metcalf	Symington
Eagleton	Mondale	Tydings
Goodell	Moss	Williams, N.J.
Hart	Muskie	Yarborough
Hatfield	Nelson	Young, Ohio

NAYS—48

Aiken	Eastland	McIntyre
Allen	Ellender	Miller
Allott	Ervin	Pearson
Anderson	Fannin	Pell
Baker	Griffin	Prouty
Bellmon	Gurney	Schweiker
Bennett	Hansen	Scott
Bible	Holland	Smith, Maine
Boggs	Hollings	Sparkman
Brooke	Hruska	Spong
Byrd, Va.	Jackson	Stennis
Cook	Jordan, N.C.	Talmadge
Cotton	Jordan, Idaho	Thurmond
Curtis	Long	Tower
Dole	McClellan	Williams, Del.
Dominick	McGee	Young, N. Dak.

NOT VOTING—19

Cannon	Harris	Murphy
Dodd	Hartke	Packwood
Fong	Inouye	Russell
Fulbright	Mathias	Saxbe
Goldwater	McCarthy	Stevens
Gore	Montoya	
Gravel	Mundt	

So the Goodell-Nelson amendment (No. 863) was rejected.

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

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 15351) to authorize additional funds for the operation of the

Franklin Delano Roosevelt Memorial Commission, and it was signed by the Acting President pro tempore.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of amendment No. 860 which the clerk will state.

The LEGISLATIVE CLERK read as follows: The Senator from Illinois (Mr. PERCY) proposes an amendment as follows:

AMENDMENT NO. 860

On page 26, immediately after line 4, insert the following:

"(d) On and after the date of enactment of this Act, no chemical or biological warfare agent shall be disposed of within or outside the United States unless such agent has been detoxified or made harmless to man and his environment."

The PRESIDING OFFICER. There is a time limitation of 1 hour on the amendment, 30 minutes to the side.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time on the amendment?

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

Mr. STENNIS. Mr. President, may we have quiet?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, on Sunday, August 16, 1970, two private tugboats under Navy contract towed the hulk of a World War II Liberty ship, the *Lebaron Russell Briggs*, out to sea from a North Carolina port. Destination for the tugs and the old Liberty ship was a point in the Atlantic Ocean, 282 miles east of Cape Kennedy.

Mr. STENNIS. Mr. President, the Senate is not in order. This is not a parliamentary body as it is now. Will the Chair protect Senators who wish to hear?

The PRESIDING OFFICER. The Senate will be in order. Senators will be seated.

Mr. PERCY. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, at that point the Liberty ship was to be scuttled in order to dispose of 12,540 concrete-encased nerve gas rockets she was carrying. Some of the rockets contained the powerful and long-lasting VX nerve gas, others the more soluble GB nerve gas. The rockets had been secured in concrete in 1967 and 1968, but now the concrete cases were deteriorating and the Army decided they better be dumped at sea.

The decision had caused a national protest. The Army was unable to convince the public that there were no dangers in transporting the concrete "coffins" by rail across the South or that the gas would not be released into the sea, endangering marine life.

The mayor of Macon, Ga., had vowed that the train would not go through his city. The Environmental Defense Fund and the Governor of Florida had gone to the courts for a permanent injunction against the dumping at sea. The government of the Bahamas, only 165 miles to the southwest of the dumping site, had protested strongly.

In the end, the mayor of Macon relented, the legal action failed, and the government of the Bahamas fell silent again. The concrete "coffins" were loaded aboard trains and moved slowly through the South to an Army military ocean terminal on the appropriately named Cape Fear River at Sunny Point, N.C. There the old Liberty ship was loaded with its deadly cargo.

There has been much consternation because the dumping was allowed to take place despite widely expressed public objection. However, it seemed as though the Army had no alternative. The nerve gas rockets could not be removed from their concrete cases and detoxified. Dumping at sea was a safer solution than burying on land. Because of deterioration, no time could be lost in developing a new method to deal with them. To Secretary Laird the issue was clear. He said that it would never happen again.

The fact of the matter was this: the "live" nerve gas rockets should never have been put in concrete without being detoxified first. This is now agreed by all concerned, and the Army has abandoned that procedure. Chemical weapons are now detoxified, and biological weapons sterilized, in entirely different ways. Live chemical and biological weapons will no longer be transported for disposal.

The committee bill recognizes the problem by including disposal, for the first time, in the HEW safeguards program on chemical and biological weapons. Only transportation and testing had been covered in Public Law 91–121, which was approved on November 19, 1969.

Mr. President, I ask unanimous consent that section 409(b) be printed in the RECORD.

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

SECTION 409(b) None of the funds authorized to be appropriated by this Act or any other Act may be used for the transportation of any lethal chemical or any biological warfare agent to or from any military installation in the United States, or the open air testing of any such agent within the United States until the following procedures have been implemented:

(1) the Secretary of Defense (hereafter referred to in this section as the "Secretary") has determined that the transportation or testing proposed to be made is necessary in the interests of national security;

(2) the Secretary has brought particulars of the proposed transportation or testing to the attention of the Secretary of Health, Education, and Welfare, who in turn may direct the Surgeon General of the Public Health Service and other qualified persons to review such particulars with respect to any hazards to public health and safety which such transportation or testing may pose and to recommned what precautionary measures are necessary to protect the public health and safety;

(3) the Secretary has implemented any precautionary measures recommended in accordance with paragraph (2) above (including, where practicable, the detoxification of any such agent, if such agent is to be transported to or from a military installation for disposal): *Provided, however,* That in the event the Secretary finds the recommendation submitted by the Surgeon General would have the effect of preventing the proposed transportation or testing, the President may determine that overriding considerations of national security require such transportation or testing be conducted. Any transportation or testing conducted pursuant to such a Presidential determination shall be carried out in the safest practicable manner, and the President shall report his determination and an explanation thereof to the President of the Senate and the Speaker of the House of Representatives as far in advance as practicable; and

(4) the Secretary has provided notification that the transportation or testing will take place, except where a Presidential determination has been made: (A) to the President of the Senate and the Speaker of the House of Representatives at least 10 days before any such transportation will be commenced and at least 30 days before any such testing will be commenced; (B) to the Governor of any State through which such agents will be transported, such notification to be provided appropriately in advance of any such transportation.

Mr. PERCY. Mr. President, in the pending bill, the Military Procurement Authorization Act, section 506 amends Public Law 91–121, section 409(b), by inserting in lieu of the words "transportation and testing" the words "transportation, testing, or disposal." This makes clear the committee's intention to extend existing safeguards to the disposal problem.

However, at this time when public concern is so great in regard to the disposal problem, I think it makes sense for the Senate to express itself even more explicitly on this question. Therefore, I am calling up my amendment No. 860, which specifies that—on and after the date of enactment of this act—no chemical or biological warfare agent shall be disposed of within or outside the United States unless such agent has been detoxified or made harmless to man and his environment.

In anticipation of calling up this amendment, I wrote to Secretary Laird on August 20, 1970, to inform him of my intention and to request the advice of the Department of Defense on this matter. I have now been advised that the Department of Defense has no objection to the amendment or to its wording.

Mr. President, in calling up this amendment, I do not in any way doubt the firm pledge and word given by our Secretary of Defense, Melvin Laird. He is a man who always adheres to his word and pledge. In my letter to him I pointed out that he would not always be Secretary of Defense and when we make a policy decision which would be supported overwhelmingly by the country, and I believe responded to very favorably by the rest of the world, we should embody that decision in law.

I ask support of Senators and the chairman of the committee in extending this policy into law.

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

Mr. PERCY. I am happy to yield to the distinguished Senator from Florida.

Mr. GURNEY. Mr. President, I com-

mend the distinguished Senator from Illinois for offering this amendment.

I can testify to the fact that there was great consternation in my State of Florida when the news broke on the proposed dumping of this nerve gas off our shores. I inquired into it, and, of course, I discovered the same information the Senator from Illinois and others did: That the gas could not be detoxified because it was encased in concrete and had reached such an unstable condition that the only practical means of disposing of it was to dump it in the ocean. I had urged that it be detoxified, and certainly that should be the way to dispose of these sorts of chemicals and gases of warfare from now on.

The amendment is certainly a worthy measure. I think everyone around the country calls for action of this sort. I think the matter should be spelled out in law so that we will be reassured that disposals will be made in this way in the future.

When I talked to the Army people who briefed me on this matter, I got the distinct impression that what had happened in this instance was something that amounted to what I found when I served in the Army: It had been done this way in the past for a long period of time, so it was continued into the future. I think we need to change these procedures and detoxify these gases.

Mr. President, I support the amendment and I hope the Senate will agree to it.

Mr. PERCY. Mr. President, I thank my distinguished colleague who maintained vigilance with respect to this matter. The Governor of his State was one of those who was very much concerned.

It is my understanding that these gases, when they are used, cause the paralysis or continuous contraction of the muscles by which we breathe by attacking enzymes involved in the transmission of nerve impulses through the body.

It is a very interesting but tragic fact that in Johnson City, Tenn., according to the New York Times, the Kentucky train passed within sight of a veterans hospital where aging veterans of World War I, some of whom had suffered the only large-scale use of poison gas in modern history, were still being treated.

The alarm and concern expressed by the citizens of Florida, the Governor of Florida, and the junior Senator from Florida were well founded.

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

Mr. PERCY. Mr. President, I yield myself 2 additional minutes.

The concern evidenced by these distinguished public servants was certainly well warranted.

Because I believe so strongly that no chemical or biological warfare agents should be disposed of before being rendered harmless, and because I believe the American people demand and deserve such assurance, I ask the support of my colleagues in enacting this policy into law.

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

Mr. PERCY. I yield.

Mr. GURNEY. The Senator certainly has pointed out the very dangerous toxic effect of these gases. That is the main reason why we should detoxify them and not lug them hither and yon around the country and not dispose of them in the ocean or in any other place.

This amendment should be agreed to.

Mr. STENNIS. Mr. President, I yield myself 10 minutes on the amendment.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, in the first place, we have seen in the last few weeks what a problem is presented to the Army and the military in properly disposing of these chemicals and biological warfare agents. I think it was very unfortunate, and I imagine a very expensive proposition, to have this long train trip and all the publicity it got. But, met with the situation it was faced with, it already having been encased, this was the only thing the Department could do.

As I understand it, the Department of Defense has already met the situation by adopting as policy what this amendment spells out as proposed law.

There is a problem left here, however, that the amendment does not cover, which I imagine the Senator would want covered; that is, a proviso at the end reading as follows:

Unless immediate disposal is immediately necessary in an emergency to safeguard human life.

Those are strong words. It provides a really hard test to meet before they could get out from under the language of the Senator from Illinois. I feel that I should propose that language as an amendment to the Senator's amendment, and with that language added, would be glad to support his amendment.

Would the Senator respond to that, on my time?

Mr. PERCY. Mr. President, I am very happy to respond. I appreciate very much that the distinguished Senator from Mississippi has raised this point. My office has been in contact, in working out this amendment, with a number of people, and I would like to express my appreciation to Dr. Quimby, of the Library of Congress Science Division; Colonel Cannon, Department of Defense liaison officer; Mr. Nissel of the Department of Defense General Counsel's Office; and Mr. Haywood, of the Department of Defense R. & E., and Mr. Hy Fine of the Preparedness Subcommittee.

It is my understanding that it is the feeling of both Mr. Haywood, of the Department of Defense R. & E. and of Mr. Hy Fine, of the Preparedness Subcommittee, that the Army's request would be fully taken care of if we established in the legislative history the point that there may be some flexibility in emergency situations where immediate action may be necessary to save lives. For example, if a munitions ship caught fire, for the safety of the crew it might be necessary to jettison the cargo without detoxification if CBW agents in the cargo might be released. The Army says that such situations are improbable and, should one occur, the Department of Defense would file an immediate report to Congress. I find this understanding to be entirely satisfactory.

I feel, in view of the fact that both Mr. Haywood, of the Defense Department R. & E., and Mr. Hy Fine, of the Preparedness Subcommittee, feel it would be perfectly appropriate and adequate for this to be included in the legislative history, rather than an amendment which would be subject to further interpretation beyond the explanation I have given, and which is all the Department of Defense has asked for, I would earnestly suggest to the distinguished chairman that we establish this legislative history, with which I thoroughly agree, rather than amend the amendment.

Mr. STENNIS. Mr. President, responding to the Senator and making great allowance for his belief in the proposal he has made, I have found by experience that legislative history means almost anything that the interpreter wants it to mean. It is loose. It should not be. We know what we want, and should spell it out, and not leave a lot of things to different interpretations.

Let me comment on the words I have suggested. "Unless immediate disposal." That word "immediate" is a very strong word. "Immediate disposal" is clear. "Necessary" means the utmost. "Immediately necessary in an emergency." They could not go out and just willfully do it because they wanted to; it would have to be a real emergency to safeguard, not property, but human life.

I do not think we could have more restrictive words than these.

The amendment seems to be generally acceptable. It has gotten down to the question now of whether we put it into the law or leave it to the vagaries of interpretation of legislative history. I feel, especially in a matter like this, when we expect absolute obedience here, that we ought to spell it out and say what we mean. The 100 Members of this body are the legislators. We ought to say what we mean.

Mr. THURMOND. Mr. President, will the Senator yield

Mr. STENNIS. I yield to the Senator from South Carolina.

Mr. THURMOND. I commend the distinguished Senator from Mississippi for the point he has just made because if, for instance, a munitions ship should catch fire at sea, something would have to be done. The amendment the distinguished Senator from Mississippi has recommended seems to be a very just, fair, and necessary amendment. Otherwise, there might be hesitancy on the part of the commander of a ship to take action necessary to save human lives. There should not be. On the other hand, unless there is authority to do it, if the law says he cannot do it and there is no authority in an emergency to do it, I can see where great harm could result and human lives would be lost.

I hope the Senator from Illinois would not seriously object to this amendment, because it would seem to be a very essential and necessary amendment. I hope he will accept the amendment to the amendment.

Mr. STENNIS. Mr. President, I yield

now to the Senator from New Hampshire, who has worked on this subject matter so much and has really become an authority on it.

Mr. McINTYRE. Mr. President, in my visits to the Fort Detrick Biological Center and also to Edgewood Arsenal, I have been constantly impressed with the safety precautions in existence, and I doubt whether emergencies will ever arise. But I believe that the language the Senator from Mississippi is suggesting should be made part of the law, because an emergency cannot be ruled out.

Situations just might arise where the personnel in our research centers might be in danger of their lives if they had to go through an elaborate process of detoxification before disposing of a given agent.

So I would concur with the chairman of the committee and urge the Senator from Illinois to accept as part of his amendment the emergency escape clause we are discussing.

Mr. STENNIS. I thank the Senator very much. I now yield as much of my time as he wishes to the Senator from Illinois.

Mr. PERCY. Mr. President, I feel that the distinguished Senator has a very good point, and I am impressed by the support that he has from very knowledgeable Members of this body.

I would like to ask the Senator this question. If we add the words "unless immediate disposal is clearly necessary, in an emergency, to safeguard human life," would the Senator agree to adding the following sentence, which has already been agreed to by the Department of Defense in principle, as follows:

An immediate report should be made to Congress in the event of such disposal.

Mr. STENNIS. I think that is a very good additional safeguard.

Mr. PERCY. I would be very pleased to accept this as a part, then, of the law, as an amendment to the amendment, and I wish to express my appreciation to the distinguished chairman of the Committee on Armed Services, on the basis of his experience, feeling that this would be better as a part of the law rather than a part of our colloquy and the legislative history.

The PRESIDING OFFICER (Mr. RIBICOFF). Does the Senator from Illinois wish the Senate to act on this as a modification of his own amendment, or as an amendment to his amendment? What is the Senator's wish?

Mr. PERCY. As a modification.

The PRESIDING OFFICER. Will the Senator please send his modification to the desk?

Mr. PERCY. Yes. Mr. President, I send to the desk a modification of the amendment, as follows:

At the end of the amendment, add the following language: "unless immediate disposal is clearly necessary, in an emergency, to safeguard human life. An immediate report should be made to Congress in the event of such disposal."

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. PERCY's amendment (No. 860), as modified, is as follows:

On page 26, immediately after line 4, insert the following:

"(d) On and after the date of enactment of this Act, no chemical or biological warfare agent shall be disposed of within or outside the United States unless such agent has been detoxified or made harmless to man and his environment, unless immediate disposal is clearly necessary, in an emergency, to safeguard human life. An immediate report should be made to Congress in the event of such disposal."

Mr. STENNIS. Mr. President, in its present form I support the amendment.

Mr. THURMOND. Mr. President——

Mr. STENNIS. Mr. President, I yield to the Senator from South Carolina such time as he wishes.

Mr. THURMOND. Mr. President, as the ranking member on the minority side, since the amendment has been modified by the distinguished Senator from Illinois, I shall be pleased to support the amendment.

The PRESIDING OFFICER. Do Senators yield back their remaining time?

Mr. PERCY. Mr. President, I yield myself 2 additional minutes.

Mr. President, I should like to comment briefly on one aspect of this matter which we should not and would not want to overlook.

I think it was pointed out very clearly in a Christian Science Monitor editorial on August 19, 1970. That editorial stated:

We are witnessing today a remarkable sharpening of mankind's concern and conscience in matters touching upon life's livability on Earth.

The Christian Science Monitor said further:

The worry over the gas was but part and parcel of a far wider concern over many of today's challenges to a secure, pleasant, orderly life.

In view of the fact that the people of the world were deeply alarmed about the action that we were taking, in view of the fact that the citizens of the United States were deeply alarmed over it, and the Members of Congress were deeply concerned, I believe that the action taken today—and several Senators have indicated that they felt the same—is so important that even if the distinguished chairman of the Armed Services Committee accepts the amendment—and with his prestige and power in this body, whenever he accepts an amendment I would expect a unanimous vote on it—even though it might be a unanimous vote, it was the feeling of a number of Senators that nevertheless this matter was so important, in its relationship to our efforts in this body, and the efforts of all legislative bodies throughout the world, to try to preserve the environment in which we live and make this earth habitable and a pleasant, safe, and secure place in which to live, that we ought to have a record vote.

I feel the action we are taking today is most significant, and I thank my distinguished colleague, the highly respected chairman of the Armed Services Committee, for the suggestion that the modification be embodied in the law. The change, I feel, takes care of the possibility of an emergency situation which the Department of Defense pointed out.

Mr. President, I yield back the remainder of my time.

Mr. STENNIS. Mr. President, I am authorized by the Senator from New Hampshire, who is so well versed in this policy, to say that he supports the amendment in its present form.

I commend the Senator from Illinois for the timeliness and the substance of his amendment. I think it meets the situation in a friendly fashion. Frankly, it is something of which I would like to have been the author of myself, to try to meet this situation in a straightforward and effective manner.

I have no complaint at all about a rollcall—and this comment is not directed to the Senator from Illinois—but, Mr. President, I have just observed that some years ago you could not get a rollcall here unless you had something that was considered, by an appreciable number of Senators, to have a good deal of substance in it. We moved on to other things, and had standing votes. I think that is the way it ought to be done, as a matter of procedure. But I am not directing my remarks to the Senator.

It is no wonder we get along so slowly, if we have to have a rollcall vote now, and stop everyone in committees, on a matter that might well be unanimous. If the Senator insists, I want him to understand I am not directing these remarks toward him.

Mr. PERCY. Mr. President, I fully appreciate the spirit of the Senator's comments, and I do realize that this is somewhat unusual, but my colleagues who have spoken to me about it have expressed this feeling, and it was originally my intention to take it up early next week, when I would have had a little more time to prepare and send out memorandums. But I acceded to the request of the majority and minority leaders that we move this forward. I then cut the time down from 2 hours to 1 hour. So, feeling that the perhaps a quarter of an hour we would consume on a matter of this significance and importance would clearly announce to the world that the Senate of the United States supports fully the position stated by the Department of Defense and Secretary Laird on a matter that has alarmed the whole world, I think the extra 15 minutes or so would be well warranted.

Mr. STENNIS. I yield back the remainder of my time.

Mr. PERCY. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. RIBICOFF). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Illinois (Mr. PERCY), as modified. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that 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 New Mexico (Mr. MONTOYA), the Senator

from Georgia (Mr. RUSSELL), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

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

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. FONG), the Senator from California (Mr. MURPHY), 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.

The Senator from Oregon (Mr. PACKWOOD) is absent on official business.

The Senator from Maryland (Mr. MATHIAS) is detained on official business.

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

The result was announced—yeas 82, nays 1, as follows:

[No. 275 Leg.]

YEAS—82

Aiken	Goodell	Muskie
Allen	Griffin	Nelson
Allott	Gurney	Pastore
Anderson	Hansen	Pearson
Baker	Harris	Pell
Bayh	Hart	Percy
Bennett	Hatfield	Prouty
Bible	Holland	Proxmire
Boggs	Hollings	Randolph
Brooke	Hruska	Ribicoff
Burdick	Hughes	Schweiker
Byrd, Va.	Jackson	Scott
Byrd, W. Va.	Javits	Smith, Maine
Case	Jordan, N.C.	Smith, Ill.
Church	Jordan, Idaho	Sparkman
Cook	Kennedy	Spong
Cooper	Long	Stennis
Cotton	Magnuson	Symington
Cranston	Mansfield	Talmadge
Curtis	McCarthy	Thurmond
Dole	McClellan	Tower
Dominick	McGee	Williams, N.J.
Eagleton	McGovern	Williams, Del.
Eastland	McIntyre	Yarborough
Ellender	Metcalf	Young, N. Dak.
Ervin	Miller	Young, Ohio
Fannin	Mondale	
Goldwater	Moss	

NAYS—1

Bellmon

NOT VOTING—17

Cannon	Hartke	Packwood
Dodd	Inouye	Russell
Fong	Mathias	Saxbe
Fulbright	Montoya	Stevens
Gore	Mundt	Tydings
Gravel	Murphy	

So Mr. PERCY's amendment, as modified, was agreed to.

The PRESIDING OFFICER (Mr. EAGLETON). The question now recurs on amendment No. 862 of the Senator from South Dakota (Mr. MCGOVERN), the so-called end-the-war amendment.

DISPOSAL OF MUNITIONS IN INTERNATIONAL WATERS

Mr. PELL. Mr. President, last year the Senate unanimously passed amendments designed to regulate the disposal of chemical and biological weapons. Included among those amendments was my own amendment which required prior determination by the Department of State that the plans of the Department of Defense to dump chemical and biological materials in the ocean do not violate international law.

Last week the Department of Defense announced that a ship loaded with obsolete munitions would be sunk in international waters off the coast of Maryland.

Mr. STENNIS. Mr. President, I think we have to insist on this conference in the Chamber coming to an end and the Senate getting back into session. The Senator from Rhode Island has an important matter to discuss.

The PRESIDING OFFICER. May we have order so that we may hear the Senator from Rhode Island.

Mr. PELL. Mr. President, newspaper reports indicated that in the same area where conventional weapons and munitions were being dumped, nerve gas had been dumped at an earlier stage in our history. Obviously it would be a mistake to have them then dumped in the same place.

The office of the legal adviser at the State Department informed my office that the munitions dumping was planned without a determination by the Department of State that there is no legal reason why it should not be dumped there.

Yet, the Secretary of State has the responsibility for interpreting international law and securing the adherence of this country to international protocols and understandings.

While there is, unfortunately, no specific law which would prohibit completely dumpings of munitions in international waters there are provisions such as article 25 of the 1958 Geneva Convention on the High Seas which require certain notification procedures to be followed when harmful agents are dumped in international waters.

Article 25 reads as follows: "Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations; and

"All States shall cooperate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents."

Moreover, the common law of the sea does require countries dumping pollutants in international waters to give due regard to other countries' interests. For example, dumpings cannot take place in international sea lanes, fishing grounds, or on top of underwater cables. Also, when dumpings do take place certain hydrographic notices and warnings have to be delivered to international organizations concerned with ocean navigation.

These tasks are the responsibility of the Secretary of State. The Secretary of State cannot fulfill his responsibilities unless the Department of Defense secures his cooperation for their proposed ocean disposals.

The amendment I offer insures that such procedures are followed.

My amendment simply requires that dumpings of munitions, as well as dumpings of chemical and biological weapons, be cleared with the Secretary of State before the Department of Defense actually dumps their obsolete weapons in international waters in order that the Secretary of State can determine the dumpings do not violate international law.

I ask unanimous consent that my amendment and section 409(c)2 of Public Law 91–121 be printed in the RECORD at this point.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes the following amendment: On page 25, between lines 6 and 7, insert the following:

(3) The first sentence of section 409(c)(2) of such public law is amended by inserting ", or for the disposal of any munitions in international waters," immediately after "outside the United States".

The PRESIDING OFFICER. The Chair wishes to advise the Senator from Rhode Island that if he wishes to call up his amendment, it would take unanimous consent.

Mr. PELL. Mr. President, I ask unanimous consent that the amendment which I have described be called up.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Without objection, the section of the statute referred to will be printed in the RECORD.

Section 409(c)2, ordered to be printed in the RECORD, is as follows:

None of the funds authorized by this Act or any other Act shall be used for the future testing, development, transportation, storage, or disposal of any lethal chemical or biological warfare agent outside the United States if the Secretary of State, after appropriate notice by the Secretary whenever any such action is contemplated, determines that such testing, development, transportation, storage, or disposal will violate international law. The Secretary of State shall report all determinations made by him under this paragraph to the President of the Senate and the Speaker of the House of Representatives, and to all appropriate international organizations, or organs thereof, in the event such report is required by treaty or other international agreement.

Mr. PELL. Mr. President, I also ask unanimous consent that an article describing certain dumping of explosives off the coast of Maryland be printed in the RECORD at this point.

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

NAVY TO DUMP EXPLOSIVES OFF MARYLAND

(By Aaron Latham)

At dawn this morning, the U.S. Navy is scheduled to dump 5,000 tons of explosive off the Maryland coast of the Atlantic Ocean.

Originally, the explosives were to have been deposited off the New Jersey Coast—almost on top of two sunken ships filled with mustard gas.

The Navy said it shifted the site because of "public concern," but maintained that, even if its old bombs had exploded near the poison gas, there would have been "no danger."

The old liberty ship Davis Hughes—similar to the one used to dump 67 tons of nerve

gas off the coast of Florida on Tuesday—left Earle, N.J., yesterday noon on its way to a site 135 miles off the coast of Maryland.

Navy spokesmen said that the ship was scheduled to go down in 7,200 feet of water and that the intense pressure might trigger an explosion near the bottom.

Maryland Gov. Marvin Mandel said at Baltimore press conference yesterday that he had not been notified of the dumping, that he had first learned of it reading the newspapers, and that he was still not sure just what was being sunk off his state's coast.

"I don't know enough about it to know whether we could even object to it or not because there was no information furnished to us," the governor said. He added that he planned to make further inquiries in Washington.

Before the change of plans, the Davis Hughes—with its cargo of conventional (nonnuclear) bombs, fuses, small arms, gun and rocket ammunition—had been scheduled to go down less than a mile from two sunken ships loaded with mustard gas.

One of these ships with gas on board was scuttled 150 miles east of Barnegat Light, N.J. in May, 1967, the other in June, 1968.

The Navy admitted that an explosion could have ruptured the poison gas cannisters but said that there would have been no danger because the gas solidifies at a depth of 6,500 feet.

The new site off the coast of Maryland is 68 miles southwest of the sunken gas.

The munitions ship was towed from Earle yesterday by the Coast Guard tug Tomoroa, accompanied by the U.S.S. Cromwell, a destroyer escort.

The Navy's press desk at the Pentagon could not say yesterday how old the explosives were or exactly what kind of bombs and ammunition was being sunk. A spokesman said he did not know what type of explosive the bombs contained.

He said the munitions were "conventional" and "obsolete."

Today's dumping will be the 20th of "Operation Chase"—the Navy's code words for the continuing removal of unstable explosives to the safety of the ocean floor. Four of the ships have been laden with gas and chemical devices; the rest with "standard explosive hardware," a Navy spokesman said.

Rep. Clarence D. Long (D-Md.) yesterday wired the Secretary of the Navy to urge the suspension of the dumping. "If New Jersey was the wrong place for dumping these explosives, why is Maryland more appropriate," Long asked.

Mr. PELL. Mr. President, I hope that the distinguished Senator from Mississippi (Mr. STENNIS) might be willing to accept the amendment. It has not received any protest or objection so far as I know from any quarter.

Mr. STENNIS. Mr. President, will the Senator restate the purpose and the import and the meaning of his amendment? Frankly, I have been approached by other Senators with regard to other amendments and I did not hear all of the Senator's statement.

Mr. PELL. Mr. President, the purpose of the amendment is to insure that when conventional munitions are dumped in international waters, the Department of State is notified beforehand in order to achieve two objectives.

The first is to make sure that there has not previously been some other kind of dumping in the same place, where we would not want to dump conventional weapons.

The newspaper reports indicated that we were going to dump conventional munitions where mustard gas had previously been dumped. One obviously would not want to dump explosives on top of mustard gas.

Second, the Department of State has the responsibility of notifying foreign offices and the United Nations when dumping has occurred so that mariners, fishermen, and people laying cables will be aware of the places where there have been dumpings.

It is not only the Defense Department that might engage in dumping. Other groups also engage in this practice. When it comes to determining whether these dumpings are in compliance with international law this responsibility is centralized in the Department of State.

It is for this reason that I have offered the amendment.

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

Mr. PELL. I yield.

Mr. HOLLAND. Mr. President, do I understand that the amendment applies not only to the dumping of conventional weapons that are obsolete or need to be disposed of, but also to conventional ammunition?

Mr. PELL. The amendment applies to the dumping of conventional munitions. I think the definition of munitions means explosives. It does not apply to the dumping of old rifles or cannons, which would not be dumped anyway. It refers to explosives.

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

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

Mr. PELL. I yield.

Mr. STENNIS. Mr. President, does the Senator have a formal statement about this matter?

Mr. PELL. Yes. I have just read it and would be glad to reread it.

Mr. STENNIS. Mr. President, what is the customary procedure now? How are these matters handled?

I know that the military does quite a bit—of course, gas is a new matter—of dumping and getting rid of items that are no longer useful.

Mr. PELL. Mr. President, as I understand it, when obsolete ammunition is surveyed—I recall just prior to World War II when we were still occasionally using World War I ammunition, perhaps that should have been surveyed a long time before—what the Defense Department does is to simply dump the ammunition or put them in an old hull and scuttle that vessel in what it considers to be appropriate international waters. That has been the procedure followed to date.

My amendment would permit the same process to be continued, but would make sure that there is State Department clearance to insure that first there had not been some other kind of dumping that would clash with this dumping, second that our country comply with the 1958 Geneva Convention on the High Seas, and third that our country comply with other requirements of international protocol.

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

Mr. PELL. I yield.

Mr. THURMOND. Mr. President, would the distinguished Senator agree to modifying his amendment so as to require the approval of the President, rather than the State Department? I feel it would be more desirable.

Mr. PELL. I would think that if we were to give to the President the responsibility for the notification of other nations, that would raise the level of responsibility. I do not think that it is necessary.

I think that the Secretary of State could normally handle this responsibility. I would think that this is a responsibility that the President would be reluctant to have put upon him.

Mr. THURMOND. I suppose that the distinguished Senator from Rhode Island is relying on the fact that the Secretary of State would refer the matter to the President if there were any question involved, since he is under the President, and the President could object if he saw fit.

Mr. PELL. Absolutely. The Secretary of State is merely an official, and he reports directly to the President and is subservient to him.

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

Mr. PELL. I yield.

Mr. MANSFIELD. The Secretary is the agent of the President, and what he does, he does in the President's name, by the President's authority, and with his consent. They are one and the same.

Mr. PELL. I thank the Senator.

Mr. THURMOND. They are both under the President. In other words, the President is Commander in Chief. He is the President of the United States, and all executive agencies are under him.

Mr. PELL. That is correct.

Mr. THURMOND. As I understand it, the Senator feels that notice given to the Department of State would be sufficient so far as the President is concerned; that the Secretary of State would confer with the President if there were any question concerning it.

Mr. PELL. That would be my understanding.

Mr. THURMOND. I thank the Senator.

Mr. STENNIS. Mr. President, I think this amendment has merit. My present intention is not to object to it. At the same time it has never been printed. It could have implications that are overlooked. I have a request from the Senator from Kentucky that he would like to go into it further.

There has been an agreement to vote, but it certainly was entered into when the Senator from Mississippi was not in the Chamber. I do not blame anyone for that except myself.

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

Mr. STENNIS. I yield.

Mr. MANSFIELD. This appears to me to be a very reasonable amendment. There are no gimmicks in it, and nothing is hidden.

It involves a question which has received a great deal of prominence recently. I noticed that the Senator from Florida raised some question because off the coast of his State, and off the Bahamas, there was a sinking of nerve gas which caused the American people and Congress a great deal of concern.

This measure is so simple I do not know what further detail there would be to go into. It is a way to face up to a problem that has confronted us for some time, and in this way other nations will know our intentions.

The Senator from Rhode Island referred to the fact, at least in passing, that the Army was going to dump munitions off the coast of New Jersey. Those in charge found they had dumped other material there previously and decided to come down and dump them off the coast of Maryland. In the case of that material being dumped, something did happen; although there was no apparent damage. But the ship broke up, or something to that effect.

This is a most serious matter, and I think this proposal will be most helpful to the administration.

Mr. PELL. The danger was in dumping munitions where there had been a dumping before. That was why the dumping had to be moved from the coast of New Jersey.

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

Mr. STENNIS. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

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

Mr. PELL. I yield.

Mr. COOK. Mr. President, I wish to state to the distinguished majority leader that the only reason I had any hesitation was that I wanted to see where in section 409 of the public law the language was to be inserted. I would like to read the section in its entirety. It does make good sense.

Under section 409 of Public Law 91–121 it would state:

"(2) None of the funds authorized by this Act or any other Act shall be used for the future testing, development, transportation, storage, or disposal of any lethal chemical or any biological warfare agent outside the United States, or for the disposal of any munitions in international waters, if the Secretary of State, after appropriate notice by the Secretary whenever any such action is contemplated, determines that such testing, development, transportation, storage, or disposal will violate international law. The Secretary of State shall report all determinations made by him under this paragraph to the President of the Senate and the Speaker of the House of Representatives, and to all appropriate international organizations, or organs thereof, in the event such report is required by treaty or other international agreement.

I certainly have no objection to that.

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

Mr. PELL. I yield.

Mr. MANSFIELD. I know from speaking with the President that he was very much disturbed about the situation which developed in relation to the nerve gas crisis in this country, and what he did was the best he could do under the circumstances to find a solution to a most difficult and embarrassing problem.

I thank the Senator.

Mr. COOK. The only reason I asked the question—and I have no objection to the language—is that the section referred to in the present bill makes other technical changes in the subsection and I wanted to read this in context.

Mr. PELL. I thank the Senator. I think the Senator clarified the objective.

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

Mr. PELL. I yield.

Mr. HOLLAND. Mr. President, I have no objection to the amendment, but I call attention to the fact that not only has our Nation disposed of gases and chemicals—which seem to be pretty well covered by the Percy amendment, as amended, and munitions, as would be covered by the Senator's amendment—but it has also sunk a good many ships in international waters.

I remember that after World War I we sank the mainstay of our large fleet and I am simply suggesting that at some stage in this bill and in connection with this amendment it might be well to consider that we are probably going to be doing that same thing. I suggest that the amendment might be made broader and that it might be a helpful addition to the Senator's amendment. I have no objection to it at all as it is worded.

Mr. PELL. I thank the Senator from Florida. His thought has great merit.

Off the coast of New York now, barges dump conventional garbage in huge amounts and pollute the water there. On the other hand, this bill deals with the Department of Defense, and I do not think a more broad amendment, as much as I would like to see it, would be appropriate. I believe that would come in connection with another bill.

Mr. HOLLAND. I was thinking particularly about naval ships, either obsolete ships or those to be disposed of under some international agreement; and this might be the appropriate place to add them.

I am not going to object to the amendment. It seems to me that while we are considering the subject of dumping we must remember that we sank—and I cannot give the exact number—a large number of naval ships after World War I; and we have sunk some obsolete ships since that time. It might be that this is the appropriate place to add that.

I do not object to the amendment.

Mr. PELL. Mr. President, in reply to the excellent suggestion of the Senator from Florida, there is also a positive value here in that as we develop in the exploitation of the oceans, it is becoming increasingly apparent that ships or automobiles when dumped in the seabed can have a positive good in the right place because they encourage the breeding of fish. So this has not only a negative effect but a positive value.

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

Mr. PELL. I yield.

Mr. HOLLAND. My State has been using that method of encouraging production of fish in connection with the disposal of old automobiles for some years.

Mr. PELL. Exactly.

Mr. HOLLAND. But my understanding is that we are talking about the disposal in deep water of things having to do with the defense of our country.

Mr. PELL. The Senator is correct.

Mr. HOLLAND. It occurred to me that the Senator might accept the idea of including ships, but I am not pressing that matter.

I thank the Senator for yielding.

Mr. STENNIS. Mr. President, if I may have the floor in my own right, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 5 minutes.

Mr. STENNIS. Mr. President, this is my impression of this matter and I shall have a proposal to make at the end of my remarks. I think this is a subject matter that is highly urgent, and that we should have more information, and more study, and that something be done about it.

I am constitutionally opposed to any amendment that has possible implications, as this measure could have, being taken up, considered, and agreed to without even being in writing; and especially on a bill like this one. In addition, this matter involves international law.

Nevertheless, I think the subject matter is urgent and I would like to see some progress made. I would like to have the Senator's amendment adopted in its present form, with the understanding that before we complete the conference on this bill, he and others—I will request some departments to participate—will analyze it and make a study of the subject matter and the problem. The conferees will be vested with discretion. They already have discretion, of course, but I am suggesting with a special discretion with reference to this subject matter.

We will do the best we can to bring out something of value but we will not feel bound necessarily just to be unyielding.

What is the Senator's response to that suggestion? I yield to the Senator from Rhode Island.

Mr. PELL. I am glad the Senator is going to accept the amendment. I have, as a general rule, had very bad experiences in the past with amendments that have been qualifiedly accepted. I would hope that this will be the great exception.

Mr. STENNIS. I have not accepted very many. I do not know of more than one or two that I have accepted. I have explained my position. I think the problem is broader than the Senator's amendment. I would propose that more is being done than the Senator's amendment does.

Mr. PELL. As the Senator from Florida suggested.

Mr. STENNIS. Yes; but we want to get into a further study of it and then make a determination and final decision. But it is necessary to get started, and I favor the Senator's amendment.

Mr. President, I yield back my time.

Mr. PELL. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

REFORM OF OUR WELFARE SYSTEM

Mr. MUSKIE. Mr. President, the reform of our welfare system must be one of our highest national priorities. And

we should begin that reform in this session of Congress.

Not only must we alleviate the desperate living conditions of millions of Americans, although that would be reason enough for welfare reform. But we must also relieve State governments from the excessive financial pressures which the present welfare system exerts upon them—and we must stop spending billions of tax dollars on programs which encourage families to break apart.

That is why I support the Nixon administration's initiative in offering a major welfare reform proposal—why I hope that the Finance Committee will soon report out a welfare reform bill we can act upon—and why I urge a full and searching debate by the Senate on this issue which has been neglected far too long.

Of the more than 9 million Americans who now receive some form of welfare assistance from the Federal Government almost 3 million are elderly, blind, or disabled; another 4½ million are children who are poor; and the remaining 1½ million are their parents who live with them, who are out of work, and 94 percent of whom are mothers.

The defects of the present welfare system have become increasingly obvious in recent years—to rich as well as poor, white as well as black, conservative as well as liberal.

It is an undignified system. Destitute people are subjected to erratic and demeaning bureaucratic procedures.

It is an inadequate system. Many of those who depend on welfare exist on pitifully small incomes, and millions of equally poor people receive no help at all.

It is an unsound system. Heads of families are discouraged from seeking jobs, and many wives and children are better off financially if their husbands and fathers leave them.

Welfare reform is long overdue, even though it has its own limitations.

Welfare reform will never be an ultimate solution to the problems of old age or physical handicap. But it can help support our needy senior citizens and disabled citizens in a manner which respects their dignity as individual human beings.

Welfare reform will not absolve the States of their fundamental responsibility to provide social services for the poor. But it can help State governments free the money they need to provide better services for all their citizens.

Welfare reform will not even be the final answer to the question of how to end poverty. But it can help us marshal our resources to start breaking the cycle of despair between one generation and the next.

And so I regard the passage of a welfare reform bill by the House of Representatives as the first major congressional step toward welfare realism in years.

That bill would provide:

A minimum level of Federal support for all needy families with children, including the working poor;

A basic income for the aged, blind, and disabled of $110 a month;

An incentive for present welfare recipients to work, by permitting them to keep more of their earnings than would be deducted from their welfare allotments;

An increase in job training opportunities and the establishment of day care centers.

Certainly we can question whether the proposed level of income support is sufficient. But we can no longer quarrel with the concept of a basic minimum standard.

We can ask whether the family assistance program should not also include poor couples without children. But we can no longer quarrel with the concept of covering all poor families with children.

We can inquire whether mothers who are poor should not be free to choose between working and taking care of their children during the day. But we can no longer quarrel with the concept of making job opportunities and day care centers available to them.

I believe that the House-passed bill is a beginning—that work opportunities and work incentives can be strengthened even further—and that future legislation may indeed be necessary to improve upon the reforms we are able to enact this year.

But we should not disregard the constructive nature of the administration's proposal. And we cannot ignore the need to start reforming our welfare system now, so that it ultimately—assures minimum standards of decent living for all those in need; promotes job opportunities as well as the desire to work; treats poor people fairly in all parts of the country; and removes the burden of welfare cost from State taxing authorities.

We must design a system which aspires to two principal objectives—objectives which the present system does not advance—first, providing adequately for those who cannot do more to help themselves; and second, providing reasonable incentives to self-reliance for those who can help themselves.

And we must of course recognize a third and even more significant objective—that of eliminating, to the greatest extent possible, the need for any welfare assistance at all.

That means improving our schools, developing children's skills and abilities early, and building their motivation and self-respect.

It means developing a comprehensive health care system, making adequate health services available to all Americans, and working to prevent the hardships of illness and the damage of malnutrition.

It means sustaining a satisfactory rate of economic growth to keep employment at a maximum, creating new kinds of rewarding and socially useful jobs, training men and women to fill them, and offering them the opportunity to accept those jobs wherever they are available.

And it means a common and unqualified commitment to shape a whole society in this land which has a place in it for every American, whoever he or she may be.

These are objectives which belong at the top of the national agenda. And the time to start working on that agenda is now.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. EAGLETON). The Chair, on behalf of the Vice President, appoints the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Kansas (Mr. DOLE) to the 16th General Conference of the United Nations Educational, Scientific, and Cultural Organization, to be held in Paris, October 12 to November 14, 1970.

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

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

THE "END THE WAR" AMENDMENT

Mr. PELL. Mr. President, I congratulate the Senator from South Dakota and the Senator from Oregon on the leadership they have shown in the amendment that is under discussion.

I have reluctantly come to the conclusion that the approach of providing a specific timetable with a certain escape clause, as contained in the amendment as presently written, if there are untoward military events, is necessary. I have been willing to cosponsor it and support it for some time. However, many of us in the Foreign Relations Committee feel very much the same way, and there has been a good deal of consultation back and forth between the members of the Foreign Relations Committee and the sponsors of this amendment.

The sponsors of this amendment have carried this fight to the people. They have made a tremendous effort, we believe, and deserve the full credit for the impact that this amendment has caused and, I hope, for securing its adoption.

After consultation between the two groups, it was decided that the language might be broadened a little, and by doing so, we hoped it might secure the support of a majority of the members of the Foreign Relations Committee and secure more votes within the Senate.

The interesting thing in my mind is that the Committee on Foreign Relations, which started out, to the best of my recollection—at least, when I became a member of it in 1964—as being without any particular view with regard to Indochina, had no real opinion on this subject one way or the other. But this group of Senators who have had more responsibility with regard to the conduct of the Foreign Relations Committee and the setting up of policies abroad than any other group of men, as they gradually studied the problem, as they gradually bore into the problem, became increasingly of the view that our policies in Vietnam and Indochina were a disaster, that the war was a disaster, and that

the sooner it was terminated, the better off we all would be.

This is very much the same process, to my mind, that Secretary of Defense Clark Clifford went through. He came to his job as an intelligent, convinced hawk, a believer in the merit and correctness of our policies in Indochina, but one who had not studied the problem in any great detail. Then he did what is rarely done, I regret to say, in government: He asked questions, and applied the cold light of commonsense and of reason to the policies we were following. The more questions he asked, the more answers he got that were unsatisfactory. As we all know, he went through a complete 180-degree turn in his views in this matter.

Generally speaking, one has found that those with responsibility for policy, who study it analytically, very often come out with this change of view. In the beginning, in the Foreign Relations Committee had no view. There are other groups of men, with perhaps not as much responsibility for foreign policy but more responsibility for defense requirements or more responsibility for a variety of other factors in our government life, who started out with a different view or different premises.

But one point that I think the public press and Nation as a whole have not perceived enough is the process that caused a group of 15 or 17 men, with no preconceived views, to come out as they have in general opposition to the war. The process that was responsible was careful study and evaluation.

Because of this, I felt it was a good idea that there should be as much cooperation as possible between Foreign Relations Committee and the sponsors of this amendment. We have had these conversations together; and, as a member of the Foreign Relations Committee, I wanted to express at this time my support for this amendment and to urge very much its adoption.

Mr. McGOVERN. Mr. President, I want to express my appreciation to the Senator from Rhode Island not only for what he has just said on the floor about the amendment but also for the role he personally has played as a member of the Foreign Relations Committee in helping us to devise language that would win the concurrence of a number of members of the Foreign Relations Committee in support of our amendment.

As I said yesterday, we are very hopeful when the chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT), returns—he is attending the funeral of a member of his family—the committee can be convened, and that a majority of them will come out in support of the revised language.

The Senator from Rhode Island (Mr. PELL) has been the leader on the majority side of the Foreign Relations Committee in working out the revised language that was submitted yesterday, which is the pending amendment, supported on the minority side by the Senator from New York (Mr. JAVITS). We are most grateful for the efforts they have made, and we believe that their support strengthens the foundations of the amendment.

So I thank the Senator both for his supporting words on the floor this afternoon and for the very substantial work he has done in helping us with the language of the various provisions of the amendment.

I might ask the Senator if he could take just a moment to explain the thinking of various members of the Foreign Relations Committee with reference to the provision for the 60-day leeway we have given the President beyond the time certain deadline which is set in other sections of the bill for the withdrawal of American forces.

Mr. PELL. I would add that we realized that this leeway was accepted with considerable reluctance by the sponsors of the original amendment. But we are very grateful that they bear with this thought—the thought that some untoward military escalation on the part of the North Vietnamese could take place as we were withdrawing which might necessitate, from a military viewpoint, a slowdown or some reversal of course on the part of the President.

The 60-day clause means that the President has this opportunity of delay, provided he is in communication with Congress. It seems to me an eminently sensible provision.

If the policy of our Government is the liquidation of our armed manpower on the mainland of Asia, with the exception of Korea—and I have read in today's newspaper that we hope to liquidate that, too—it would seem to me that this is absolutely in line with that policy. This might well be the objective of our President. Perhaps the liquidation of our commitment there is in the back of the minds of the administration. But some pressure, some direction, some timetable is necessary in order to keep us moving along this course.

As the Senator and I are well aware, many forces in the country have a diametrically opposite view and will press the President not to carry out this liquidation. I know I was critized by my State VFW. I think the Senator from South Dakota was the object of some barbs from the National VFW. There are other groups around the country who would equate patriotism and a love of the American flag with gung ho-ism in Indochina.

No Senator here fought a more gallant war than did the Senator from South Dakota. I came back in a hospital ship—sick, not wounded—in World War II. Yet, none of us here feel that any group has a monopoly on patriotism. When I see the American flag flying, it fills my soul with as much joy and my eyes well up when I think of what it means just as much or more than anyone else. So we have drawn up this amendment to appeal to a broad variety of people.

Mr. McGOVERN. On tomorrow, I hope to discuss the constitutional issues raised by the amendment and make what I believe will be one of the strongest arguments for the amendment; namely, that it provides a formula whereby the Senate can discharge its obligations under the Constitution and share in the decisions of war and peace.

One of the most tragic aspects of the entire involvement in Vietnam and Indochina is that so much of it has been carried on without a clear declaration of congressional intent. Certainly the Constitution makes it clear that Congress has some obligation to share in the decisions about whether American forces should be committed and, once committed, how long they should stay there.

The amendment will give every Senator an opportunity to exercise his constitutional authority and register his best judgment as to whether we should set a timetable beyond which American forces could not stay in Indochina.

Mr. PELL. In his argument, would the Senator enlarge on the thought that the executive branch means exactly that, that the executive executes policy, guidelines, and the laws set forth by Congress?

I believe that I am correct in saying that Senators like the Senator from South Dakota and me are among the minority in the Senate, in that we are not lawyers, but this is a clear point which has all too rarely been brought out; namely, when we talk about the different branches of the Government and their responsibilities, we know what the judiciary does. It judges. We know what the legislative does. It legislates or writes the laws. I think we know what the executive branch is to do, which is to execute, to execute the laws written by the legislature and the decisions of the judiciary. Yet, in fact, we find increasingly that the executive, while not taking over the prerogatives of the judiciary, is really exercising many of the functions that the founders of the Constitution thought belonged to the legislative branch.

The legislation should be the board of directors and the executive the manager of the plant.

I hope that this is an argument that the Senator would see fit to develop, because I think it is a simple argument that any newspaper reader, television viewer, or 6th grade child knows, that the responsibility of the executive is to execute policy or instructions. When we think of the executive branch, that is exactly what we think of, that it executes what we in the legislative body have set forth as policy.

Mr. McGOVERN. The Senator is right. He has put his finger on the fundamental distinction between the war powers of the Congress as against the powers of the executive. The Constitution and especially the history of the constitutional debates—the Madison papers and those of others who kept records of the constitutional debates—make clear that what the framers intended to do was to give Congress the power to declare war and to decide whether the country would commit American forces to a foreign conflict, and for how long; and the Commander in Chief, the President, was given the power to direct those forces, once committed to battle. But the time limit and decisions as to what forces should be committed were vested in Congress. So there is no possible way anyone can make a compelling case that Congress is stepping beyond its constitutional authority when it sets a time limit

on the commitment of American forces to a particular war.

Mr. PELL. My recollection may be faulty, but I think I recall that in one of the original drafts of the Constitution, it was proposed that Congress should have the power "to make war," and then it was realized that Congress could not make war or conduct a war because we could not have a group of argumentative men conducting a war by committee. It would be too difficult. But the decision, as the Senator said to engage in or "to declare war"—which is the phrase finally adopted—was agreed on at that time, underlining exactly the very valid point the Senator is making.

Mr. McGOVERN. The Senator is correct. In that connection, the faculty and students of the Boston University Law School published a special issue of the Law Review in the spring of 1970 on the subject of U.S. intervention in Cambodia, legal analyses of the event, and its domestic repercussions. This special issue contains an article on the point the Senator from Rhode Island has just raised, authored by two constitutional lawyers, Francis L. Coolidge, Jr., and Joel David Sharrow. I ask unanimous consent that the article entitled "Warmaking Powers, The Intentions of Our Framers in the Light of Parliamentary History" be printed in the RECORD.

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

THE WAR-MAKING POWERS: THE INTENTIONS OF THE FRAMERS IN THE LIGHT OF PARLIAMENTARY HISTORY

I. INTRODUCTION AND SCOPE

Of the many unique aspects of the Constitution, one of the most often commented upon is its ability to endure and adapt to the changing times. This concept of the living Constitution,[1] however, has been subject to diverse interpretation. There are those who would virtually ignore the written document and relying on its "spirit," adopt a more or less behavioralist approach. Professor Charles Merriam has stated that,

"[t]he Constitution is not an idol but a spirit; not a form of words but a set of political attitudes and habits of behavior. Those who worship the text, worship in reality their own attitudes which they fondly hope the interpretation of the text may produce.[2]

This broad view of the Constitution ignores the fact that the document is constructed of both general phrases, *e.g.*, "due process," and more precise terms, *e.g.*, "bill of attainder." Cardozo recognized this difference in *The Nature of the Judicial Process*, where he wrote that what varies from age to age in the Constitution are the "great generalities." [3] Even these more general phrases, however, may not be interpreted with judicial abandon. Justice Holmes has written that in interpreting the Constitution, it is important to remember that it is a frame of government within whose bounds the coequal branches must operate.[4] When a more precise meaning of words of art as defined by the Founding Fathers can be discerned, the tendency has been to resist reinterpretation and to apply the original definitions so that the purpose of having a *written* Constitution is not subverted.

It is the dual purpose of this Note to explain why the Founding Fathers segregated the different aspects of military power into coequal branches of the national government, and to discern the meanings given to the phrases "to declare war" and "commander-in-chief."

II. RELEVANT PARLIAMENTARY HISTORY

Before any discussion of the Constitutional Convention can be undertaken though, the parliamentary antecedents must be examined, along with the relevant aspects of English political history, since the Framers relied on these to a great extent in drafting the Constitution.[5] For the purpose of this Note, these precedents can be broken into the following three headings: Parliament's exclusive power to tax and make appropriations, Parliament's power to oversee the military, and the royal prerogative as commander in chief.

A. Parliament's power of the purse

Of all the great powers of Parliament, perhaps the oldest and most significant, in terms of its development, is the power of the purse,[6] which includes both the right to tax and to make appropriations. Before Parliament had any authority in the running of the military, its taxing powers were at least theoretically established. In 1297, Edward I, in the Confirmation of the Charters, affirmed the exclusive right of Parliament to authorize or refuse taxes.

And for so much as divers people of our realm are in fear, that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and good will, howsoever they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and [likewise for] the praises taken throughout the realm by our ministers; we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom, for any thing that hath been done heretofore, [be it by roll or any other precedent that may be founden].

Moreover we have granted for us and our heirs as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the communality of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.[7]

But the parliamentary appropriations power was far from secure in practice, and not until 1353 did Parliament authorize its first specific appropriation, empowering the King to levy and collect a tax on wool to be used for the King's war.[8] At the same time, Parliament began examining the collector's books,[9] presumably to insure that they knew how much revenue they were granting to the King. This would incidentally ensure that the King was not levying taxes beyond the parliamentary authorization. Although the subsequent Plantaganets did not fully observe the parliamentary right,[10] there was continued theoretical acquiescence in the rule that all taxes had to be confirmed by Parliament.[11] Under succeeding Kings this rule was further consolidated, and in 1407 Commons lay claim to the right of first considering all money bills before Lord.[12] Not until the time of the Stuarts did Parliament secure in practice, the power that it theoretically possessed for over three hundred years.

Parliament's exclusive appropriations power continued unchallenged until the reign of James I, when Parliament's great struggle with the Monarchy began over the power of the purse. As early as 1606, the King had attempted to levy money by raising duties,[13] and thereby entered into a protracted dispute with Commons. During his reign, and that of his son Charles I, this controversy increased, leading to the great Petition of Rights in which it was stated:

. . . it is declared and enacted, that from thenceforth no person shall be compelled to make any loans to the king against his will, . . . your subjects have inherited this freedom that they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by common consent in Parliament.[14]

With the arrival of the Civil War [15] and the Protectorate,[16] Parliament's control of taxation was assured, and despite the efforts of the later Stuarts it was not seriously challenged again. In 1665, Parliament specified how tax money was to be spent,[17] and this custom continued from then on. At the same time, military money bills were made annual so the Parliament could keep tight control over any standing army.[18] A further important step was made in 1678, when Parliament so reduced the military appropriation that the King was forced to disband a portion of the army.[19] The next year Parliament voted a special appropriation for the sole purpose of disbanding the army,[20] and thereby imposed a veto on the King's prerogative as commander in chief. In 1688, William and Mary reconfirmed Parliament's power of the purse in the Bill of Rights: [21]

. . . levying money for or to the use of the Crowne by pretence of prerogative without grant of Parlyament for longer time or in other manner then the same is or shall be granted is illegal.

Finally, in 1706 Parliament ruled that only military money bills requested by the Crown would be considered.[22] This is the reverse of the rule in the United States, where any member of the House can initiate an appropriation bill.[23] The change was prompted by the many pay bills petitioned for by military officers, but also served as a royal veto on appropriations.[24] The Framers of the Constitution were therefore accustomed to a system whereby the legislature, through the power of the purse, could check the executive's use of the military by refusing to appropriate the funds needed to carry on a campaign.

B. Parliament's power to control the military

Unlike the power of the purse, Parliament's power to oversee the military was a late development, and was not marked by any clear evolutionary process. As early as 1311, Parliament asserted:

Whereas the king, on account of the many perils that he and his kingdom may incur, ought not to undertake an act of war against any one, or to go out of the kingdom, without the common assent of his baronage, we ordain that henceforth the king shall neither go out of the kingdom nor undertake an act of war against any one without the common assent of his baronage, and that in parliament.[25]

But this seems to have been an unwarranted assumption of the power to declare war by Parliament. Under Edward III, Parliament, either on its own initiative or at the request of the Monarch, advised the King on war and peace,[26] although it does not appear that it claimed any right in this area. Such consultations were continued under the Lancasters, and Parliament was assured, by reason of the Treaty of Troyes, that no negotiations with France would be carried on without its consent.[27] The right to declare war and make peace was never formally vested in Parliament, however, and until the seventeenth century, there seems to have been a general accceptance of the theory that the power to both declare and make war was the King's prerogative.[28]

In 1641, Parliament tried to secure the war-making power by giving control of the standing army to the Earl of Essex, who was under its authority,[29] and when in the next year Charles I refused to give up control of the militia, the Civil War resulted.[30] With the restoration though, the command of the

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military was returned to the Monarch. 13 Car. II, c. 6 (1664) stated:

[T]he sole supreme government, command and disposition of the militia and of all forces by sea and land and of all forts and places of strength is and by the laws of England ever was the undoubted right of his Majesty and his royal predecessors, Kings and Queens of England, and that both or either of the Houses of Parliament cannot nor ought to pretend to the same.

Thereafter, Parliament's control of the military took the form not of any right to declare or make war or peace, but rather of the authority to levy and maintain a standing army. This was of course different from the de facto control Parliament could exercise through the power of the purse. In the Bill of Rights, this power to authorize an army was accepted in the statement:

. . . the raising or keeping a standing army within the kingdome in time of peace unlesse it be with consent of parlyament is against law.[31]

Later, Parliament's war-making powers were further consolidated when it secured the exclusive right to grant military commissions.[32]

Thus, through the power to make annual appropriations, the power to authorize armies, and the power to grant and remove commissions,[33] Parliament was able to control the military. Also, the rise of the Cabinet Council between 1689 and 1714 [34] and the inclusion therein of the Secretaries of State and War [35] meant that by the time of the American Revolution, Parliament had assumed almost complete practical control over the military, while the King merely retained the theoretical power to declare and make war.

C. The Sovereign's prerogative as Commander in Chief

Of all the royal powers, one of the last significant ones to be lost was the right of the Monarch to be commander in chief of the armed forces. Although the King could not raise armies without Parliament's consent, up to the eighteenth century, once the forces were mustered they were under his sole authority. Both Charles II and William III were careful to retain this power, and, although the former made Monks, and later Monmouth, Captain-Generals, Charles still kept supreme command.[36] This can be ascribed to two main causes: first, a single individual is always better able to control military operations than a large group. This was well demonstrated during the Civil War, and even when the Monarch lost command around 1700, it fell not to Parliament, *per se*, but rather to Marlborough and the Cabinet Councils.[37] Secondly, the Crown had developed a more efficient means of running the military during the Civil War, through the use of Secretaries of State and War who were solely responsible to the King; [38] indeed, the Crown might well have retained its prerogative as commander in chief but for the accident that Anne came to the throne just as the War of the Spanish Succession was beginning.[39] Since neither she nor her husband were competent to lead troops, the command fell to Marlborough, who raised the office of Captain-General to great heights by reason of his military genius.[40] At the same time, the Cabinet was evolving as the central organ of executive power, and Marlborough was a member of it.[41] Likewise, the Secretaries of State became responsible to the Cabinet more and more [42] so that it, rather than the Monarch, exercised the real command. It is interesting to note that Parliament, *per se*, never really commanded the army; instead it was the Cabinet. At the time of the American Revolution, therefore, although the King no longer commanded, control was still vested not in the legislative branch, but rather in the newly formed executive.

Given this background one can easily see why, in the United States, the various military powers were given to different branches of the Government, Congress being vested with the power to make military appropriations and declare war, while the President was vested with the authority to wage the war. It remains to be seen how closely the Framers followed the pattern that had evolved in England during the preceding century.

III. THE CONVENTION

A. Separating the powers of declaring and conducting war

When the Philadelphia Convention convened on Monday, May 14, 1787, the delegates had ostensibly gathered for the purpose of amending the Articles of Confederation,[43] which was deemed to be defective because the States were able to act as autonomous bodies, and the national government was unable to enforce its regulations.[44] Therefore, it was essential that the powers of the national government be altered and enlarged.[45] However, even before the Convention commenced work, the idea of drafting a constitution for a new system of government was being discussed.[46] Under the Articles of Confederation, the only existent organ of national government was the Confederation Congress. [47] Since the Congress exercised all the powers of the national government, there was no need for the Articles of Confederation to distinguish between executive and legislative powers.[48] But because this was the major failing of the Articles, the first task undertaken by the Convention was to segregate the different powers of government into three coequal branches [49] and change the form of government at its very roots. With the existence of coequal branches, the Convention separated the power to declare war from the power to conduct war, [50] delegating the former to the legislation branch and the latter to the executive branch.[51]

On May 29, 1787, William Randolph of the Virginia delegation put forward fifteen resolutions as a basis on which the Convention could frame a new system of government. These resolutions, presented to the Convention during the first meeting held to discuss substantive matters, attempted to separate legislative from executive functions.[52] Randolph's sixth resolution gave the National Legislature the authority "to enjoy the legislative rights vested in Congress by the Confederation," [53] while the seventh resolution gave the National Executive the "general authority to execute the national laws," as well as "the executive rights vested in Congress by the Confederation." [54] All fifteen of Randolph's resolutions were referred to the Committee of the Whole.[55]

On June 1, the Convention, sitting as the Committee of the Whole, began deliberations on Randolph's seventh proposition, which delegated to the National Executive the authority to execute the national laws. During the debate as to whether the National Executive should be composed of a single or a multiple magistrate, it was suggested that if the National Executive was composed of a single magistrate, it would not be wise to give him the powers of war and peace, which powers in England were vested in the King.[56] If a single magistrate, being a vigorous executive, had the powers of war and peace, it was feared that he would be an elective monarch.[57] However, Mr. Wilson, in rebuttal to this view, agreed with Mr. Sherman that the only function of the Executive was to execute the laws passed by the Legislature.[58] Thus, even at this early date during the Convention's deliberations, it can be seen that the Founding Fathers were afraid of allowing a vigorous Executive the powers of war and peace, which, in England, meant the power to declare war.[59]

On June 15, William Patterson from New Jersey proposed a plan designed to amend the Articles of Confederation,[60] as an alternative to Randolph's plan, which required the Convention to discard the Articles and formulate a new system of government. The authority of the Executive under Patterson's plan was limited to directing military activities,[61] implying that the Congress would retain the authority to declare war.[62] Three days later, Alexander Hamilton submitted and read, but did not move to adopt, eleven propositions to be substituted for those of Randolph. While Hamilton's fourth article authorized the Executive to direct "war when authorized or begun," his sixth article gave the Senate "the sole power of declaring war." [63] Although the Convention returned to Randolph's propositions as a basis for deliberations when next sitting as the Committee of the Whole [64] and ignored both the Patterson and Hamilton plans, it is important to recognize that both these plans gave only limited military power to the Executive.

On Monday, August 6, John Rutledge of South Carolina delivered the report of the Committee of Detail,[65] a subcommittee of the Committee of the Whole. The report was the first draft of a Constitution that the Convention actually deliberated upon; previously, the only plan that the Convention worked with was Randolph's propositions, the proposals of Pinckney and Hamilton not having been dealt with. This first draft explicitly differentiated between the Executive's military power and the military power of the Legislature,[66] authorizing the Executive to be commander in chief, while authorizing the Legislature to "make" war.[67] On August 17, the Convention amended the seventh article, substituting the word "declare" for "make" in the clause delegating the power to the Legislature "to make war." This substitution was made for definitional purposes.

Mr. Pinckney 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 the 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 a 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* [emphasis added].

Mr. Madison and Mr. Gerry moved to insert "declare," striking out "make," war [emphasis in original]; leaving to the Executive the power to repel sudden attacks.

Mr. Sherman thought it stood very well. The Executive should be able to repel, and not to commence, war. "Make" is 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* [emphasis in original]. 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 negociaations [sic].

Mr. Mason was against giving the power of war to the Executive, because not safely to be

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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* [emphasis added]. He preferred *"declare"* to *"make"* [emphasis on original].

On the motion to insert *"declare"* in place of *"make"* it was agreed to . . . [emphasis in original].[68]

This debate makes the point that only the Legislature was intended to commence or declare war.[69] The Executive, as the commander in chief, was given the authority only to "repel sudden attacks," which, by reading Madison's and Gerry's motion together with Sherman's and Gerry's comments, was defined as "making" war. Butler's idea that the Executive would make war only when the nation will support it, and therefore should have the authority to commence a war, was rejected. The Congress as a whole, the branch that Mason recognized to be the truly representative branch of Government,[70] was the only organ of the new national government that would have the authority to involve the nation in a foreign war.

The Executive, however, was not stripped of all military authority.[71] Aside from having the power to repel sudden attacks, the Executive, as commander in chief, was empowered to direct the conduct and execution of war, much as a general or an admiral would do.[72] When the Constitution was finally submitted to the States for ratification,[73] the sections relating to the congressional power to declare war [74] and the executive power as commander in chief [75] appeared as they had been reported by the Committee of Detail on August 6, except for the substitution of "declare" for "make" in what eventually became article I, section 8, clause 11 of the Constitution.

Thus, the constitutional language, when seen in the light of the relevant Convention history, makes clear the nature of the separation of military powers intended by the Framers.

B. The power of the purse

In order to curb the possible expansion of executive military power, and to preserve in Congress the legal authority to commence war, Congress was given the exclusive power to make military appropriations. Although it is true that the general appropriations power was awarded Congress in article I, section 8, clause 1, only the military appropriations power was separated from the general grant and circumscribed by an extremely revealing limitation; article I, section 8, clause 12 places a two-year limitation on the period for which appropriations to raise and support an army may be made.[76]

The existence of a standing army was seen to be such a serious threat to liberty [77] that there were even objections expressed to making the period of review biennially instead of annually, as was the English custom.

To the second clause [allowing military appropriations for a two-year term] Mr. Gerry objected, that it admitted of appropriations to an army for two years, instead of one; for which he could not conceive a reason; that it implied there was to be a standing army, which he inveighed against, as dangerous to liberty—as unnecessary even for so great an extent of country as this—and if necessary, some restriction on the number and duration ought to be provided. Nor was this a proper time for such an innovation. The people would not bear it.

Mr. Sherman remarked, that the appropriations were permitted only, not required to be for two years. As the Legislature is to be biennially elected, it would be inconvenient to require appropriations to be for one year, as there might be no session within the time necessary to renew them. He should himself, he said, like a reasonable restriction on the number and continuance of an army in time of peace.

The second clause was then agreed to . . .[78]

It is important to note that the two-year limitation on military appropriations was not meant to require the Congress to replenish the military fund.[79] Congress is empowered to permit military appropriations to expire at the end of a given period, and their judgment is not subject to executive review.[80] Thus, by exercising the power of the purse, which the Framers intended to be an effective check on a vigorous Executive,[81] the Congress can diminish or deny military appropriations and constitutionally do away with the Executive's power of the sword.

IV. CONCLUSION

With the English parliamentary experience in focus, the nature of the separation of the war-making powers between the President and Congress becomes more understandable. The Congress was vested with the authority to commence war,[82] as well as the power to continue the war or make the peace. With the exception of a situation permitting the Executive to repel a sudden attack,[83] the President was given authority only to prosecute conflicts initiated by Congress.[84]

Because of the importance of a decision to enter into a war, the Framers felt it critical to have the people unified behind that purpose. The best way to ensure the presence of that consensus was to vest the power to declare war in the most representative branch, the Congress.[85] On the other hand, a vigorous Executive with broad military powers was seen to pose a threat to individual liberty,[86] and to vest that Executive with the power to initiate war would reduce the likelihood that his judgment would represent the unified purpose of the people.

To ensure the separation of military power as envisioned,[87] Congress was vested with the power of the purse.[88] Further, to require close scrutiny of executive military power and to reduce the threat that a standing army posed to individual liberty, Congress was empowered to make military appropriations only for two-year periods.[89] Thus, the precise nature of the separation of powers was effected largely in response to the fears of the Framers, fears that have materialized in the minds of many today.

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FOOTNOTES

[1] H. McBain, The Living Constitution (1927).

[2] C. Merriam, The Written Constitution and the Unwritten Attitude 30 (1931).

[3] B. Cardozo, The Nature of the Judicial Process 17 (1921).

[4] Opinion of the Justices, 160 Mass. 586, 594 (1894) (Holmes, J.).

[5] No one familiar with the common law of England can read the Constitution of the United States without observing the great desire of the Convention which framed that instrument to make it conform as far as possible with that law. One would suppose that the leaders of a revolutionary movement of eight years' duration or more, the purpose of which was to emancipate the newly formed States from the dominion of Great Britain, would have come out of that struggle with resentments arising from a sense of injury at the hands of that government which would have created a prejudice against its laws and their system of administration. On the contrary, it seems obvious from the instrument, which they produced as the fundamental and organic law of a new government for a new country, that their attachment for the old laws and even for the old general form of political government remained almost unaffected.

S. Miller, Lectures on the Constitution of the United States 486 (1893). See generally C. Stevens, Sources of the Constitution of the United States (2d ed. 1927) [hereinafter cited as C. Stevens].

[6] See T. Taswell-Langmead, English Constitutional History 237–41 (9th ed. A. Poole 1929) [hereinafter cited as T. Taswell-Langmead].

[7] (Confirmation of the Charters) 25 Edw. 1, c. 5, 6 (1297).

[8] Rot. Parl., ii 271. See T. Taswell-Langmead 239.

[9] Rot. Parl., ii 130. Taswell-Langmead thinks that the commission of examiners was initially established so that Parliament could ascertain statistics as to the number of parishes. T. Taswell-Langmead 239–40.

[10] T. Taswell-Langmead 237.

[11] Presumably tax bills were requested by the Crown only, and did not initiate in Parliament. Id.

[12] Id. at 275. This was of course carried over into the Constitution, which provides that all money bills should originate in the House of Representatives. U.S. Const. art. I, § 7.

[13] T. Taswell-Langmead 463.

[14] 3 Car. 1, c. 1, § 1 (1628), in T. Taswell-Langmead 501–02.

[15] 1642–1649. As a result of the Civil War, Charles I was beheaded and the Monarchy overthrown.

[16] The Protectorate was the form of government that ruled England from the end of the Civil War until 1660, when the Monarchy was restored.

[17] J. Omond, Parliament and the Army 1642–1904, at 30–31 (1933) [hereinafter cited as J. Omond]. Despite the example set in 1353, it would appear that Parliament had become accustomed to making general appropriations.

[18] Id. at 30.

[19] F. Allen, The Supreme Command in England, 1640–1780, at 138 (1966) [hereinafter cited as F. Allen].

[20] Id.

[21] 1 W. & M. sess. 2, c. 2 (1688).

[22] J. Omond 33.

[23] See note 10 supra.

[24] The general prerogative of the Monarch to veto acts of Parliament had virtually disappeared, Queen Anne having used it once in 1707 to veto the Scotch Militia Bill. It has never been used since. T. Taswell-Langmead 665–66. In this country, the President has always had a definite veto power, so no similar restriction would be necessary.

[25] 4 Edw. 2 Ordinances of 1311, in C. Stephenson & F. Marcham, Sources of English Constitutional History 194 (1937).

[26] T. Taswell-Langmead 247–48.

[27] Id. at 281.

[28] Stevens thinks that Congress' power to declare war came not directly from the English example but rather from the colonial legislatures. C. Stevens 110 n.2.

[29] J. Omond 7.

[30] Id. at 7–8.

[31] 1 W. & M. sess. 2, c. 2 (1969).

[32] See J. Omond 45–46; F. Allen 138.

[33] See J. Omond 45–46; F. Allen 138.

[34] F. Allen 142–43.

[35] Id. at 142, 148.

[36] Id. at 120–27.

[37] Id. at 147–61.

[38] Id. at 134–35, 139.

[39] Both the Queen's reign and the War of the Spanish Succession began in 1702.

[40] F. Allen 126–27.

[41] Id. at 144.

[42] See generally M. Thomason, The Secretaries of State 1681–1782 (1932).

[43] "[Y]our Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, if the States by whom they have been respectively delegated would themselves concur, and use their endeavors to procure the concurrence of the other States, . . . to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union. . . ." Hamilton's recommendation drafted at the close of the Annapolis Convention in 1786, quoted in 2 The Madison Papers 702–03 (1840). On May

30, 1787, the day after William Randolph of Virginia had put forth fifteen Resolutions for a new government, "General Pinckney expressed a doubt whether the act of Congress recommending the Convention, or the commissions of the Deputies to it, would authorize a discussion of a system founded on different principles from the Federal Constitution." 2 The Madison Papers 748 (1840).

[44] "[T]he radical infirmity of the 'Articles of Confederation' was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so many independent communities, each consulting more or less its particular interests and convenience, and distrusting the compliance of the others." 2 The Madison Papers 692 (1840).

[45] Virginia was the first state to respond to Hamilton's recommendation, and passed a statute delegating authority to her deputies to join with the deputies of the other states to devise and discuss " 'all such alterations and farther provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union . . . .' " Id. at 706. See also id. at 703–07.

[46] "In the winter of 1784–5, Noah Webster, whose political and other valuable writings had made him known to the public, proposed, in one of his publications [Sketches of American Policy], 'a new system of government which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect.' " 2 The Madison Papers 708 (1840) (footnote omitted). In a letter to Edmund Randolph, James Madison briefly sketched out a plan for a new system of government. Id. at 630–34.

[47] "The one central organ of the newly established government was a congress, which might well have been termed a congress of states . . . . Executive there was none, beyond the committees which the congress might establish to work under its own direction . . . ." M. Farrand, The Framing of the Constitution 3–4 (1913) [hereinafter cited as M. Farrand]. See also The Articles of Confederation, in id. at 211–24.

[48] See, e.g., Articles of Confederation art. IX, para. 4, in M. Farrand 219, which gave the "united states in congress assembled" the authority to make "rules for the government and regulation of the . . . land and naval forces [a legislative function], and directing their operations [an executive function]."

[49] "Some of the more superficial observers were inclined to ascribe the difficulties of the confederation to the defective organization of the government. Montesquieu, whose writings were taken as political gospel, had shown the absolute necessity of separating the legislative, executive, and judicial powers. There ought, therefore, to be a separate executive which should be able to take the initiative when occasion demanded, which should be capable of action in foreign relations. . . ." M. Farrand 49–50. Hamilton, writing in The Federalist No. 71, espoused as one of the advantages of the new Constitution the fact that the partition of the Government was proper, and that the different branches should be independent of each other. The Federalist and Other Constitutional Papers 393–94 (E. Scott ed. 1898) [hereinafter cited as Scott].

[50] See 3 The Madison Papers 1351–52 (1840).

[51] President John Q. Adams believed that the two powers are inherently different in nature. "The respective powers of the President and Congress of the United States, in the case of war with foreign powers, are yet undetermined. Perhaps they can never be defined. The Constitution expressly gives to Congress the power of *declaring* war, and that act can of course never be performed by the President alone. But war is often made without being declared. War is a state in which nations are placed not alone by their own acts, but by the acts of other nations. The *declaration* of war is in its nature a legislative act, but the conduct of war is and must be executive." J. Q. Adams, The Lives of Madison and Monroe 58–59 (1850) (emphasis in original). Compare with the Articles of Confederation, which placed both powers under the auspices of the Confederation Congress. "No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state . . . till the united states in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled . . . ." Articles of Confederation art. VI, para. 5, quoted in M. Farrand 215. "The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war . . . ." Articles of Confederation art. IX, para. 1, quoted in id. at 216.

[52] 2 The Madison Papers 732, 733 (1840).

[53] Id. at 732.

[54] Id. at 733. It should be pointed out that executive functions are concerned with carrying out a rule or regulation to its full extent, as opposed to promulgating that rule or regulation, which is essentially a legislative function.

[55] A Committee of the Whole is a committee composed of all the members of an organization, usually a legislative body, which operates under flexible and informal rules, addressing itself to certain specific questions.

Shortly after Randolph submitted his resolution, Charles Pinckney of South Carolina put before the Convention a draft of a constitution that he had prepared, but he did not refer it to the Committee of the Whole. Although this draft was not referred to again, there is similarity between it and the Constitution as finally drafted by the Convention. Compare Pinckney's draft, 2 The Madison Papers 735–46 (1840), with the Constitution as submitted by the Convention to the States for ratification, 3 The Madison Papers 1605–22 (1840).

The sixth article of Pinckney's Constitution gave power to the National Legislature to raise armies and a fleet; the seventh article gave the Senate the "sole and exclusive power to declare war"; the eighth article set out the authority and powers of a National Executive. The National Executive was given the duty to "take care that the laws of the United States be duly executed. . . . He shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States. . . ." 2 The Madison Papers 740, 742–43 (1840).

[56] See p. 8 supra. See also Wilson's remarks, 2 The Madison Papers 763 (1840).

[57] See 2 Madison Papers 762–63 (1840): "Mr. Pinckney was for a vigorous Executive, but was afraid the executive powers of the existing Congress might extend to peace and war, &c.; which would render the Executive a monarchy of the worst kind, to wit, an elective one.

"Mr. Wilson moved that the Executive consist of a single person. Mr. C. Pinckney seconded the motion . . . .

" . . . .

"Mr. Rutledge . . . was for vesting the executive power in a single person, though he was not for giving him the power of war and peace. A single man would feel the greatest responsibility, and administer the public affairs best.

"Mr. Sherman said, he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect . . . .

"Mr. Wilson preferred a single magistrate, as giving most energy, dispatch and responsibility to the office. He did not consider the prerogatives of the British monarch as a proper guide in defining the executive powers. Some of these prerogatives were of a legislative nature; among others, that of war and peace, &c. The only powers he considered strictly executive were those of executing the laws . . . ."

[58] Id.

[59] See note 56 supra; The Federalist No. 69 (A. Hamilton), in Scott 379.

[60] See 2 The Madison Papers 863 (1840).

[61] Resolution No. 4 stated, inter alia, that the Executive was "to direct all military operations; provided, that none of the persons composing the Federal Executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as General, or in any other capacity." Id. at 865.

[62] Article IX of the Articles of Confederation gave the Confederation Congress "the sole and exclusive right and power of determining on peace and war . . . ." M. Farrand 216.

[63] 2 The Madison Papers 891 (1840).

[64] Id. at 904.

[65] Id. at 1226.

[66] Compare the tenth article of this Constitution, which made the Executive the "Commander-in-chief of the army and navy of the United States, and of the militia of the several States," with the seventh article, which authorized the legislature to make war; to raise armies; to build and equip fleets; and to call the forth the aid of the militia. Id. at 1237, 1233.

[67] Id.

[68] 3 The Madison Papers 1351–52 (1840).

[69] "[T]hat it is the peculiar and exclusive province of Congress, *when the nation is at peace* to change that state into a state of war; whether from calculations of policy or from provocations, or injuries received; in other words, it belongs to Congress only, *to go to war*. But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by the very fact *already at war*, and any declaration on the part of Congress is nugatory; it is at least unnecessary." Works (A. Hamilton ed.), VII, 745–48 (1801), quoted in E. Corwin, The President: Office and Powers, 1787–1957, at 199 (4th rev. ed. 1957) (emphasis in original) (footnote omitted).

[70] See Mason's reasons for refusing to give the power of commencing war to either the Executive or to the Senate. However, the Virginia delegation with Mason a member thereof voted in favor of authorizing the legislature as a whole to declare war. 3 The Madison Papers 1352–53 (1840).

[71] "Additional testimony as to the purely military significance originally attached to the clause is afforded by Story's statement in his *Commentaries*, written nearly half a century later, that the only objection leveled against it in the states' ratifying conventions was that 'it would be dangerous to let him [the President] [sic] command in person.' 'The propriety,' Story adds, 'of admitting the President to be Commander-in-Chief, so far as to give orders and have a general superintendency, was admitted.' " E. Corwin, supra note 69, at 228 (footnote omitted). The President's "duty and . . . power are purely military. As commander-in-chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy." Fleming v. Page, 50 U.S. (9 How.) 603, 615 (1850).

[72] "The President is to be Commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much in-

ferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy; while that of the British king extends to the *declaring* of war, and to the *raising* and *regulating* of fleets and armies; all which, by the Constitution under consideration, would appertain to the Legislature." The Federalist No. 49 (A. Hamilton), quoted in Scott 379 (emphasis in original) (footnote omitted). "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war, implies the direction of the common strength; and the power of directing and employing the common strength, forms an usual and essential part in the definition of the Executive authority." The Federalist No. 74 (A. Hamilton), in id. at 407.

[73] The Convention submitted its final draft and adjourned on September 17, 1787. 3 The Madison Papers 1624 (1840).

[74] U.S. Const. art. I, § 8, cl. 11.

[75] U.S. Const. art. II, § 2, cl. 1.

[76] "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 . . . ." U.S. Const. art. I, § 8, cl. 12.

[77] "The military should, however, be regarded with a watchful eye; for it is a profession that is liable to dangerous pervision. But the powers vested in the federal government do not go the length which has been said. A standing army is not granted or intended, for there can be no provision for its continuing three years, much less for its permanent establishment. Two years are the utmost time for which money can be given. It will be under all the restrictions which wisdom and jealously can suggest, and the original grant of the supplies must be made by the House of representatives, the immediate delegates of the people." T. Coxe, An Examination (1788), in Scott 769.

[78] 3 The Madison Papers 1495 (1840).

[79] "The Legislature of the United States will be *obliged*, by this provision, 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." The Federalist No. 26 (A. Hamilton), quoted in Scott 143 (emphasis in original). Cf. id.: "They [the Congress] are not *at liberty* to vest in the Executive department, permanent funds for the support of an army; if they were even incautious enough to be willing to repose in it so improper a confidence." (emphasis in original).

[80] Mr. Dawes, speaking in the Massachusetts Legislature, espousing ratification of the Constitution stated: "The army must expire of itself in two years after it shall be raised, unless renewed by representatives, who at that time will have just come fresh from the body of the people. It will share the same fate as that of a temporary law, which dies at the time mentioned in the act itself, unless revived by some future legislature." 1 The Debates, Resolutions, and other Proceedings, in Convention, on the Adoption of the Federal Constitution 109 (J. Elliot ed. 1827).

[81] The delegates to the Convention recognized that Congress had the power of the purse, especially as related to war. See, e.g., Wilson's views, 3 The Madison Papers 1309 (1840).

[82] "The grant of the war making power to the Legislature constituted an innovation in Government. In all other countries that power had been vested in the Executive." C. Warren, The Making of the Constitution 480–81 (1928) [hereinafter cited as Warren].

[83] See Madison's and Gerry's view of what is meant by allowing the commander in chief to "make" war, in 3 The Madison Papers 1352 (1840).

[84] See C. Stevens, supra note 5, at 162–64: "In time of war, he [the President] has all the powers recognized by the laws and usages of war. The right to declare war being confined to Congress, he can only proclaim it when Congress has acted."

[85] See Senator Sumner's remarks, Cong. Globe, 37th Cong., 2d Sess. 2188–93 (June 27, 1862), quoted in E. Corwin, supra note 69, at 232–33: "The government of the United States appears most completely in an Act of Congress. Therefore war is declared, armies are raised, rules concerning captures are made, and all articles of war regulating the conduct of war are established by Act of Congress. It is by Act of Congress that the War Powers are all put in motion. When once in motion, the President must execute them. But he is only the instrument of Congress, under the Constitution."

[86] "Jefferson wrote to Madison, Sept. 6, 1789: 'We have already given, in example, one effectual check to the dog of war, by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay." Warren 481 B 1.

[87] See 2 The Madison Papers 763 (1840), where James Wilson refers to the British King's prerogative of war and peace as being "of a legislative nature." See also J.Q. Adams, supra note 51, at 58–5 (1850) ("[t]he *declaration* of war is in its nature a legislative act, but the conduct of war is and must be executive"); Col. Mason's comment, June 6, 1787, in 2 The Madison Papers 811 (1840) ("[t]he purse and the sword ought never to get into the same hands whether legislative or executive").

[88] U.S. Const. art. I, § 8, cl. 1.

[89] U.S. Const. art. I, § 8, cl. 12.

Mr. McGOVERN. Mr. President, there is a second article written by Henry Monaghan, which deals with the President's warmaking powers under the Constitution, and I ask unanimous consent to have that article printed in the RECORD.

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

PRESIDENTIAL WAR-MAKING

(By Henry P. Monaghan*)

The Vietnam "war" has convinced many persons that the president of the United States claims apparently unlimited power to commit this country to war. Not surprisingly, therefore, considerable interest has focused on the powers that inhere in the presidency. And many critics of the war—those who in other times and in other contexts might have been sympathetic to a spacious conception of presidential power—have concluded that the Vietnam conflict is not only a tragic error, but is the direct result of unconstitutional conduct by the president. I cannot accept this view; at bottom, it seems to me yet another example of the American propensity to substitute "for the question of the beneficial *use* of the powers of government . . . the question of their *existence*."[1] In view of what has already been written,[2] I shall confine myself to the considerations that impress me as controlling. Since my concern is with the constitutional relationship between the president and congress, I shall give no consideration to the consistency of the president's action with American treaty obligations or with international law generally.[3]

I

If one examines the text of the constitution, he is at once struck by the differences between the powers conferred upon congress by article I and those given to the president by article II. The great powers that one identifies with the national government are conferred upon congress: the powers to tax and to spend, to regulate commerce, to raise armies and navies, and to declare war.[4] By contrast, the textual powers conferred upon the president are both few and of uncertain dimension. Some are plainly of a trivial character.[5] The few more open-ended clauses upon which "strong" presidents have based their authority are as follows:

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 a 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, providing 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, other public Ministers and Consuls. . . .

Section 3. [H]e shall take Care that the Laws be faithfully executed . . .[6]

But, textually, none of these powers need be read as a significantly independent, substantive power. For example, the grant of the "executive power" in section 1 can be understood simply as creating a unitary executive department that, in turn, will possess the powers subsequently enumerated in sections 2 and 3.[7] The power to receive ambassadors might mean no more than that, as the nation's symbolic head, the president has a ministerial, non-discretionary duty to receive foreign representatives. The president's power as commander in chief, so heavily relied upon by modern presidents, could be read only as constituting the president, in Hamilton's phrase, "the first general and admiral of the confederacy,"[8] and not as an independent authority for making decisions that, in turn, require use of the armed forces to back them up.[9] Finally, the "take care" clause could be taken as simply declaratory of a presidential obligation to enforce existing congressional policy. Not surprisingly, therefore, the presidency was not originally viewed as a great office. The dominant mood was that of legislative prerogative.

But the measure of presidential power cannot be gleaned simply from the words of article II alone, nor from references by eighteenth century statesmen as to the appropriate distribution of legislative and executive power. For reasons that are beyond the scope of this paper to examine, there has been a vast accretion of power in the presidency, particularly in this century.[10] Moreover, there has been a sharp decline in congressional power. The amount of political power in any society is not a fixed, determinate sum; it can expand or contract as a society changes. Accordingly, congressional as well as presidential power could have significantly increased as American society and the entire world became more complicated and interdependent. It did not do so largely because of congress' increasing inability to deal with national and international problems.[11] "Presidential government" has, therefore, emerged as the dominant aspect of modern American political life;[12] it is to the presidency, not congress, that we look for realization of the aspirations of a "great society."

I doubt whether the emergence of presidential government is a process capable of significant reversal; an apparently universal characteristic of twentieth century government has been the growth of "executive" power and the relative decline of the legislative process. Whether this result is desirable is, of course, an issue of major contemporary importance.[13] Whether it "defeats" the framers' intention is, however, a profitless speculation.[14] We do not and cannot know,

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what, specifically, they would have thought about a world so different from their own. Nor would we really care.[15] The central fact is that the framers left us with a structure of government sufficiently fluid to accommodate a good deal of shifting power between congress and the president. The relative balance of power between the branches has varied over the course of our history. But the long era of "congressional government,"[16] which extended from the civil war to the end of the nineteenth century, has now given way to an era of presidential dominance.

By and large the broad expansion of presidential power has occurred as a result of large, open-ended legislative grants from congress itself. At least with respect to internal matters, presidents have seldom been forced to rely upon any claim of "inherent" presidential powers.[17] However, appeals to this source have not been lacking. Pointing to the grant of the executive power, as well as the "commander-in-chief" and the "take care" clauses, "strong" presidents have always asserted the power to act in the absence of statute where there was an emergency. And despite the loose manner in which the case is sometimes read, the *Steel Seizure* case[18] fully supports their claim. There, the secretary of commerce, acting under the direction of the president, seized the steel mills during the height of the Korean conflict in order to prevent interruption of vital supports for the war effort. A lower court injunction against the seizure was affirmed in the supreme court by a six-to-three vote. To be sure, in his brief "opinion for the court" Mr. Justice Black rejected the proposition that the president could act without congressional authorization;[19] in so doing, he ignored innumerable instances to the contrary, as the dissenting opinion convincingly demonstrated.[20] More importantly Mr. Justice Black spoke only for himself and Mr. Justice Douglas. Four concurring and three dissenting justices—seven of the nine members of the court—either reserved judgment on the issue or expressly recognized that the president had inherent power to act in an emergency so long as he did not contravene a specific congressional mandate. Analysis of the opinions shows that the real division within the court was over the far narrower issue of whether the president's act did in fact contravene existing federal statutes.[21]

I seems to me indefensible to assert that even on internal matters the president must invaribly point to a statute to justify his conduct. Should an emergency arise, the president must and will act so as to protect the nations interest as he conceives it. To require the existance of a statute would leave an enormous gap in the nation's power to meet an emergency, a doctrine not likely to commend itself to men of affairs. And I would add that the existance of an emergency is larely a political not a judicial question. If the president abuses that power, the only recourse is subsequent congressional action and, ultimately, the displeasure of the electorate.

As it does with respect to internal matters, the constitutional text assigns broad powers to congress in the area of foreign affairs: congress is given power to regulate commerce with foreign nations; to define and punish offenses against the law of nations; to declare war, to advise and consent to treaties (the senate); to raise and support the army and navy; and finally, it has control over the purse strings.[23] The president is also expressly vested with some powers bearing on foreign relations, principally the power to make treaties (with the advice and consent of the senate) and the power to receive foreign envoys.[24] More importantly, from the beginning the Hamiltonian contention[25] that the president possessed broad "inherent" powers in representing the nation in our foreign relations gained considerable currency. Thus Marshall could refer to the president as "the sole organ of the nation in its external relations, and its sole representative with foreign nations.[26] By 1935 the supreme court, undoubtedly influenced by the long and steady growth of presidential activity, characterized the presidential prerogative to conduct foreign affairs as "delicate, plenary and exclusive."[27]

Not surprisingly, therefore, most writers recognize that the respective ambits of congressional and executive powers in controlling the direction of American policy cannot be resolved simply by an appeal to the constitutional text. That document "is remarkably inexact concerning the distribution of responsibilities . . . for the making of foreign policy";[28] it seems to permit the exercise of considerable power over this subject matter in both branches.[29] Writing in 1957, Professor Corwin accurately summarized the situation:

"[C]onsidered only for its affirmative grants of powers capable of affecting the issue, [the constitution] is an invitation to struggle for the privilege of directing American foreign policy. In such a struggle the President has, it is true, certain great advantages, which are pointed out by Jay in *The Federalist:* the *unity* of the office, its capacity for *secrecy* and *dispatch*, and its superior sources of *information;* to which should be added the fact that it is always on hand and ready for action, whereas the houses of Congress are in adjournment much of the time. But despite all this, actual *practice* under the Constitution has shown that, while the President is usually in a position to *propose*, the Senate and Congress are often in a technical position at least to *dispose*. The verdict of history, in short, is that the power to determine the substantive content of American foreign policy is a *divided* power, with the lion's share falling usually, though by no means always, to the President."[30]

Accordingly, even if one were inclined to accept Mr. Justice Black's view that presidential action within the United States must be grounded in a statute, there is no basis for applying such a rigid concept of separation of powers past our shorelines.

The general view for which I have been contending is that analysis of the doctrine of separation of powers should focus more on a recognition that often what is being separated are institutions and not necessarily "powers."[31] To some degree these institutions have unique powers; one would not expect the president to promulgate an income tax code merely because in his judgment congress should have done so. But there are gray areas where joint power exists—where both branches have tremendous and overlapping power and where any "conflict" must be resolved on the political not the legal level.[32] This seems to me indisputably true in the area of foreign affairs. And the consequences of this view are of course evident: the existence of the congressional power over the subject of foreign affairs will not support a narrow definition of presidential power. Absent congressional action, the president has (to use a conclusory term) "inherent" constitutional power in the conduct of our foreign affairs. *It is, therefore, an error of considerable significance to adopt uncritically an "either-or" logic—to assume that the doctrine of separation of powers requires that power must be either in, and only in, congress or in the president.* Such a rigid, mechanical view has never accurately described the relationship between congress and the presidency even with respect to internal affairs; it is wholly insupportable in the area of foreign affairs. The fact is that power may inhere in both branches.

Necessity, of course, requires that the president have the major responsibility for day-to-day conduct of foreign affairs. Coupled with the institutional weakness of congress[33] this fact gives modern presidents tremendous leverage in any struggle with congress for control over the direction of American foreign policy. A determined president can confront congress with a *fait accompli;* nonetheless, congress is under no constitutional compulsion to back it up.[34] Thus, while it lacks the institutional capacity to play a sustained affirmative role in shaping American foreign policy, a sufficiently determined congress[35] can exercise considerable direction over at least specific aspects of that policy.

It is, I submit, with the foregoing general considerations in mind that one should commence any assessment of presidential power to commit the armed forces to hostilities without prior congressional authorization.

II

The occasions on which presidents have refused to take military action abroad because of a lack of prior congressional authorization are few in number and increasingly rare.[36] From the beginning of our constitutional history, presidents have both deployed the armed forces abroad and committed them to actual hostilities without explicit congressional authorization. In excess of one hundred and twenty instances of such action exist.[37] The precedents extend back to Washington and include that great "strict constructionist" Jefferson; they run through the nineteenth century;[38] and with the emergence of the United States as a global power in this century, they become sharper and more spectacular. The presidencies of the two Roosevelts provide classic examples.[39] Moreover, no recent president has refused to commit the armed forces to actual hostilities because of a lack of congressional approval, as the conduct of Truman in Korea, Johnson in the Dominican Republic, and Kennedy, Johnson and Nixon in Southeast Asia demonstrate.[40] Thus, argues the state department, "practice and precedent have confirmed the constitutional authority of the president to commit the armed forces to battle without a declaration of war."[41]

The strength of the "practice and precedent" has, however, not gone unchallenged. Most writers who seek constitutionally based restrictions on the president's war-making power argue that the precedents are not compelling.[42] Indeed, it has been suggested that there is only one prior illustration of presidential commitment of armed forces to war without congressional authorization, namely, Korea.[43] The other instances cited, it is argued, were simply presidential responses to reprisals, or "relatively minor and short-lived occurrences [that] do not establish precedent for the massive and long-lasting [Vietnam] war . . .":[44] "minor" and "short-lived" from whose point of view? Certainly not from the perspective of those against whom the armed forces were employed; and certainly not from the presidents' view, since they generally brought about the results intended. To dismiss American interventions in Latin America as "minor" amounts to recognition of presidential power to wage war against weak opponents for limited purposes.

The validity of each of the precedents relied upon by the state department need not be separately defended. Taken as a whole, they seem to me to add up to the following: with ever-increasing frequency, presidents have employed that amount of force that they deemed necessary to accomplish their foreign policy objectives. When little force was needed (*e.g.,* in our incursions in Latin America), little was used; when larger commitments were necesary, they too were forthcoming. Whatever the intention of the framers, the military machine has become simply an instrument for the achievement of foreign policy goals,[45] which, in turn, have become

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a central responsibility of the presidency. Congress has seldom objected on legal grounds,[46] and so the only limitation upon presidential power has been that imposed by political considerations. That is the teaching of our history.

To be sure, various legal theories have been advanced in defense of presidential power. In good lawyer-like fashion these theories have been framed in terms no broader than necessary to justify the particular presidential action at issue.[47] For example, in the late nineteenth century, American troop interventions in Latin America were rationalized in terms of "inherent" presidential power "neutrality" to protect the rights of American citizens abroad during foreign disorders—a fiction that did not survive the turn of the century.[48] Since presidential use of armed forces abroad has assumed considerably enlarged dimension in this century, it is hardly surprisng that the supporting rationales have been constantly broadened and adjusted.[49] The rationales have, in a word, followed the practice.

Despite the foregoing history, most contemporary writers, deeply distressed by the Vietnam war, have insisted that presidential power over foreign affairs does not embrace the power to "make" war. And, they argue, committing the armed forces to hostilities on the scale that has occurred in Vietnam is "making" war. These writers argue that the decision to make war has such obviously far-reaching consequences that the framers wisely required that it must be made by a broadly representative body, namely, congress.[50] So stated, the argument has considerable appeal; nonetheless, I do not believe that it can provide an acceptable basis for developing constitutionally based restrictions upon use of military force as an instrument of presidential foreign policy.

All the commentators agree that the president has some "inherent" power to commit the armed forces to hostilities where necessary to repel "sudden attacks." And few, if any, would restrict that power to one of repelling attacks on American soil—thereby ignoring attacks on Canada and (in a highly interdependent world) attacks on NATO countries. Generally speaking, the commentators recognize that a president can take action with respect to any "sudden attack" where American interests are at stake.[51]

In its most rudimentary form, the "sudden attack" theory suggests a line between defensive and aggressive action. The president may take only that action necessary to defend American interests; he cannot go further and engage in the "aggressive" use of military force.[52] So conceived, the sudden attack theory has little to recommend it. A line between defensive and aggressive action might have been workable in the era of Jefferson and Madison; the vast expanse of two oceans and generally poor communications permitted some content to such a distinction. But that distinction can have little meaning for the president of a great global power in a highly complex and interdependent world. Modern presidents are faced with endless "emergencies" of varying duration and intensity, and the military apparatus has become an important instrument of their foreign policy. Given the evolution of the presidency, it is hardly surprising that in the twentieth century the presidential power to repel sudden attacks has "developed into an undefined power . . . to employ without Congressional authorization the armed forces in the protection of American rights and interest broad whenever necessary." [53]

Rejecting a narrow version of the "sudden attack" theory, several writers seek to articulate constitutional limitations on presidential war-making in terms of the president's opportunity to consult with congress.[54] Where an "emergency" precludes an opportunity to consult with congress the president may commit the armed forces to hostilities to the extent he deems necessary. A narrow definition of "emergency" could make this theory substantially equivalent to the sudden attack theory; but emergency can be conceived more generously so as to include any situation in which the president could conclude that quick, decisive use of force is necessary.[55] The important point of the theory is that the president must seek congressional authorization at the first available opportunity.

There are, however, differences among these writers who hold to this "congressional approval" theory. Some commentators apparently assume that any "major" foreign deployment of the armed services under circumstances that might constitute an act of war under international law should have congressional approval.[56] Others assert that only the actual commitment of the armed forces to hostilities requires congressional approval.[57] In turn, some writers believe that any commitment of the armed forces to battle requires approval; [58] others apparently assume that only "massive," "major" or "prolonged" use of the military requires congressional action.[59] The former position is at least clear; as previously indicated, the latter position amounts to a concession that the president is authorized to wage "quick" wars against weak opponents for limited objectives.

To ask, if possible, that the president obtain authorization from Congress before making any (major?) commitment of the armed forces to hostilities may represent desirable policy. That judgment depends largely on one's assessment of the respective institutional competence of Congress and the president.[60] But the central issue is whether such authorization is constitutionally required. To my mind, there are several objections to asserting that the proposed rule is of constitutional magnitude: (1) it is too uncertain in what it demands; (2) history has legitimated the practice of presidential war-making; and (3) the proposed rule stems from an unrealistic model of separation of powers.

First. It is unclear precisely what the ambit of any supposed congressional prerogative is. Can the president continue to act if Congress is too divided to act clearly either in support of or in opposiiton to the president's action? And what precisely is the president to ask of Congress? One commentator would apparently require a declaration of war or of "limited war." [61] These are drastic steps, which could have serious and damaging consequences both in our foreign relations [62] and internally.[63] But if Congress can authorize presidential action without such a declaration,[64] what is the textual basis of that power? And at what frequency or under what conditions must congressional approval be re-obtained?

Moreover, has Congress approved presidential action in Vietnam, either in the sweeping Gulf of Tonkin resolution or by implication in its monetary authorization bills? [65] If not, what further kind of congressional action is needed? [66] In any event, can it fairly be denied that, at least until recently, Congress has in fact overwhelmingly supported presidential policy in Vietnam? If such an informal consensus existed, is that sufficient "authorization"? In this regard it will not do to say that Congress has not approved presidential policy in Vietnam because its "choice" has been restricted by a presidential *fait accompli*. In view of the president's operational responsibility for foreign affairs and its own lack of institutional competence to play a sustained affirmative role, Congress necessarily must always act after the fact. Accordingly, Congress' function is essentially to check and disapprove presidential policy.[67] In Vietnam, United States involvement has been by way of slow, steady escalation in commitment; any *fait accompli* has occurred only over a considerable period of time. Congress has had considerable time to reverse the direction of presidential policy; until the Cambodian incident, it has made no serious effort to do so.

Second. In varying degrees the commentators present us with visibly strained efforts to minimize the long and ever-accumulating practice of presidential "war-making," if one prefers that term. For better or worse that practice seems to me clearly established, as I have indicated. To my mind, this historical development of our institutions has settled the legitimacy of "inherent" presidential power to commit the armed forces to hostilities. A practice so deeply embedded in our governmental structure should be treated as decisive of the constitutional issue. History and practice are not here being appealed to in order to freeze forever the scope of a constitutional guarantee framed in terms of individual liberty; [68] rather, this issue deals with the distribution of political power between the legislative and executive branches. Matters of this character are, in the words of Chief Justice Marshall, best left "to the practice of government." [69]

Third. The writers who advocate constitutionally based restraints on presidential war-making expend little effort on developing any comprehensive, realistic theory of the contemporary meaning of separation of powers. Much of their discussion seems to me premised on an eighteenth century model of the relationship between the legislative and executive branches. Not surprisingly, therefore, they do not come to grips with the evolution of our governmental practice, particularly the essentially fluid nature of the division between legislative and executive power in the area of foreign affairs, and the fact that, over time, the military machine has simply become an instrument for achieving presidential foreign policy objectives. Moreover, the danger of any all-out conflict between the executive and legislative branches is measurably reduced by the fact that the political parties cut across both institutions. Accordingly, as head of his party, the president can generally find strong support for his prerogatives inside congress itself.[70] In sum, therefore, these commentators' conception of separation of powers does not and cannot describe existing political reality.

Like federalism,[71] the doctrine of separation of powers should, at least in the area of foreign affairs, be viewed as essentially a political, not a legal, contract. The precise balance of power between congress and the president will reflect the dominant political realities of the times. So understanding the doctrine of separation of powers, I am not persuaded that recognition of presidential power to commit the armed forces to hostilities in order to achieve foreign policy objectives is constitutionally inconsistent with the existence of congressional power to declare war, or with any of the other congressional grants over foreign affairs.[72] Such tensions as may exist between the two branches of government occur because of overlapping power, and they must be resolved on the political, not the legal, level.

To my mind, therefore, any attempt to circumscribe on constitutional grounds the president's power to use the armed forces abroad confuses political with constitutional issues.[73] This seems to me all the more apparent when it is recognized that any president can engage in a wide range of conduct (such as severance of diplomatic relations, expulsion of ambassadors, treaty denunciation, etc.), which might easily force this country into war. Those who seek constitutional checks on the president place their trust in false gods. As Professor Burns has observed, the checks inherent in separation of powers do not operate in the making of war or even in the making of foreign policies that could precipitate war—for example, Franklin Roosevelt's instructions to the Navy

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Department in the months before Pearl Harbor. Yet these are almost irreversible decisions; if the President makes a collossal mistake, there is no institutional safeguard against its consequences. The President is actually checked by Congress only in making those decisions that could indeed be reversed if they turned out badly—for example, in social or economic policy. Thus the President might make a decision on taxes as irresponsible or daft as a decision for a showdown with a foreign power—but on the former matter there would always be a majority of the voters at the next election to repudiate his actions. A presidential course set for war cannot be reversed.

A nuclear holocaust would wipe out all the checks and balances—including the voters. In short, the whole concept of restraints in this area is topsy-turvey—a fact I sometimes reflect on dourly as I sit each fall teaching freshmen about the traditional checks and balances.

Still, the power of the President to make a catastrophic blunder while fatigued or under great stress is not the price we pay for the Presidency. It is the price we pay for living in the kind of world that we do. The only protection possible is the one the White House already affords: a group of men closely related to the President who can restrain him if need be. If power and decision making in the White House are collective, prudence is collective too.[74]

Absent a fundamental re-structuring of our governmental institutions, it seems to me impossible to characterize the president's conduct in Vietnam as unconstitutional, however unwise it may be. The Vietnam war is an instrument of presidential foreign policy. Those opposed to that policy can call upon congress to repudiate it, and congress has ample power to do so. There may be disagreement over the precise action that congress could take. But it seems difficult to deny that congress has the power to refuse to appropriate funds for carrying on the conflict.[75] Whether in that event the president could "requisition" other funds to continue the war need not be considered. No president could survive politically if he is seen acting in lawless defiance of a congressional command to end the war, even if he could escape impeachment. Accordingly, so far as Vietnam is concerned, if congress repudiates the war, it will come to an end.

I should perhaps conclude this summary discussion with a word about the role of the courts. Since the precise relationship between the executive and the legislative branches is a matter for the political process, I can of course see no role for the courts to play. A contention that the president of the United States must defend his decision to commit troops to combat before a federal district judge in Boston, Milwaukee or Seattle strikes me as wholly untenable.[76] I find it impossible to believe that the article III grant of "judicial power" to decide "cases or controversies" includes the power to resolve issues of this magnitude.[77]

HENRY P. MONAGHAN.

FOOTNOTES

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[1] Corwin, The Constitution as Instrument and as Symbol, 30 Am. Pol. Sci. Rev. 1071, 1077 (1936) (emphasis in original).

[2] Particularly helpful discussions are found in Note, Congress, The President, and The Power to Commit Forces to Combat, 81 Harv. L., Rev. 1771 (1968) and an earlier symposium, Legality of United States Participation in the Viet Nam Conflict: A Symposium, 75 Yale L.J. 1084 (1966). See also M. Pusey, The Way We Go To War (1969) for a lucid, nontechnical discussion of the relevant historical materials and of the events surrounding our involvement in Vietnam.

Of a more palemical character are F. Wormuth, The Vietnam War: The President versus the Constitution (April 1968) (Occasional Paper: Center for the Study of Democratic Institutions); Malawer, The Vietnam War Under the Constitution: Legal Issues Involved in the United States Military Involvement in Vietnam, 31 U. Pitt. L. Rev. 205 (1969); and Velvel, The War in Viet Nam: Unconstitutional, Justiciable, and Juridictionally Attackable, 16 Kan. L. Rev. 449 (1968).

There has been considerable debate in the senate on the constitutionality of the presidential action. See in particular: (1) Hearings on S. Res. 151 Before the Senate Comm. on Foreign Relations, 90th Cong., 1st Sess. (1967); (2) Senate Comm. on Foreign Relations, National Commitments, S. Rep. No. 797, 90th Cong., 1st Sess. (1967); (3) Senate Comm. on Foreign Relations, National Commitments, S. Rep. No. 129, 91st Cong., 1st Sess. (1969). More recently, the president's action in Cambodia has triggered another round of intense debate, largely in the context of two sets of proposals: Hatfield-McGovern Amendment, S. Amend. 609, 91st Cong., 2d Sess. (1970); Cooper-Church Amendments, S. Amend. 620, 91st Cong., 2d Sess. (1970).

[3] For a general collection of articles on this aspect of the Vietnam conflict see The Vietnam War and International Law (R. Falk. ed. 1968) and see R. Hull & J. Novogrod, Law and Vietnam (1968), most of which is devoted to the nonconstitutional law aspects of Vietnam. While I do not purport to have made a careful analysis of this aspect of the Vietnam conflict, I must say that the efforts to show that United States action in Vietnam violates accepted norms of international law seem quite insubstantial. Accordingly, I have not included any separate consideration on the restraint that accepted rules of international law imposed upon presidential war-making. That, however, is an issue that merits careful consideration.

[4] See U.S. Const. art. I, § 8, cls. 1–18. See also U.S. Const. amend. XIV, § 5.

[5] For example, the president "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." U.S. Const. art. II, § 2.

[6] U.S. Const. art. II, §§ 1–3.

[7] See C. Black, Perspectives in Constitutional Law 58 (1963).

[8] The Federalist No. 69 (A. Hamilton). See also Fleming v. Page, 50 U.S. (9 How.) 603, 615 (1850).

[9] Note, supra note 2, at 1775.

[10] This development stems from such diverse factors as the rise of political parties, the advent of mass communications, and the complexity and highly interdependent character of modern life. For particularly helpful discussions of the growth of and the present dimensions of the presidency see J. Burns, Presidential Government (1965); R. Neustadt, Presidential Power: The Politics of Leadership (1960).

[11] Kurland, The Impotence of Reticence, 1968 Duke L.J. 619, 634–36.

[12] Id. at 627–28. Professor Kurland, it should be noted, deeply laments this result.

[13] Increasing concern has been expressed whether, institutionally, the presidency has inadequate information on which grave decisions must be based. G. Reedy, The Twilight of the Presidency 24–29 (1970). Like many writers who are deeply disturbed by the concentration of power in the president, Mr. Reedy shows a preference for a strong senate.

[14] For a brief discussion of the view of the framers see E. Corwin, The President: Office and Powers 1787–1957, at 10–19 (4th rev. ed. 1957). It should be recalled that this discussion took place against a backdrop of the United States and of the world that bears little semblance to our times. Even so, Hamilton vigorously advanced the conception of a strong president.

[15] Missouri V. Holland, 252 U.S. 416, 433 (1920) (Holmes, J.):

[W]hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that the framers have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.

[16] J. Burns, supra note 10, at 70–71:

In the deepest sense congressional government was not really government. It was rather brokerage—a place for the adjustment of competing economic interests. The main interest in Congress, Bryce noted, related to the raising and spending of money. And the more the Presidency was drawn into the congressional orbit, the less the Presidency could be a place for the expression and realization of great dreams, programs, and conflicts.

[17] C. Black, supra note 7, at 57:

[W]ithout straining a single provision in the text, Congress might have made the President into a symbolic chef d'état. . . .

[C]ongress, instead of reducing the Executive to a formal status, has by its own laws steadily added to his power; most of the legally warrantable powers of the Presidency today come from statutes.

[18] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[19] Id. at 587–88. See also J. Smith & C. Cotter, Powers of the President During Crisis (1960).

[20] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 683–700 (1952).

[21] E.g., Kauper, The Steel Seizure Case: Congress, The President and The Supreme Court, 51 Mich. L. Rev. 141, 178 (1952). I do not mean to suggest that the division on this issue is unimportant. Congress had, after all, not *expressly* forbidden the president to seize the steel mills. See, e.g., C. Black, supra note 7, at 64.

[22] Mr. Justice Black's opinion has been widely criticized. Professor Black characterizes it as "unhistoric and unworkable." C. Black, supra note 7, at 63. "[T]he opinion," says Professor Corwin, "bears all the earmarks of hasty improvisation as well as of strong prepossession, being unquestionably contradicted by a long record of presidential pioneering in territory eventually occupied by Congress." E. Corwin, supra note 14, at 155. See also Corwin, The Steal Seizure Case: A Judicial Brick Without Straw, 53 Colum. L. Rev. 53 (1953); Kauper, supra note 21; Lea, The Steel Case: Presidential Seizure of Private Industry, 47 Nw. U.L. Rev. 289 (1952).

It has, of course, sometimes been suggested that, given a grave enough situation, the president can act *in disregard of a legislative command*. Lincoln put the matter sharply: "Are all the laws but *one* to go unexecuted, and the Government itself to pieces lest that one be violated?" Message to Congress, July 4, 1861 (emphasis in original), quoted in E. Corwin, supra note 14, at 252. See generally E. Corwin, supra note 14, at 228–30, 250–52. Despite the evident appeal in Lincoln's position it is difficult to frame any theory of separation of powers that would permit the president to claim inherent power to disregard congressional commands because he deemed an emergency to exist. Of course, there are techniques by which this issue can be avoided. It seems likely, for example, that existing statutes could generally

be construed in a manner so as not to present any conflict.

[23] U.S. Const. art. I, § 8, cls. 3, 10–14; U.S. Const. art. II, § 2.

[24] U.S. Const. art. II, §§ 2–3.

[25] The respective prerogatives of congress and the president were vigorously debated by Hamilton and Madison. See E. Corwin, supra note 14, at 177–84. Hamilton pressed for a particularly broad construction of presidential power to conduct foreign affairs. See id.

[26] Annals of Cong. 613 (1800).

[27] United States v. Curtis-Wright Export Corp., 299 U.S. 304, 320 (1936). Here, the court accepted the doctrine of "inherent" presidential power over foreign affairs. Id. at 319–20. See generally E. Corwin, supra note 14, at 170–226; G. Schubert. The Presidency in the Courts 101–36 (1957).

[28] L. Koenig, The Presidency and The Crisis 18 (1944).

[29] Professor Black argues, however, that the textual powers of the president to conduct foreign affairs are in fact minimal. Accordingly, he is of the opinion that the constitutional text presupposed congressional supremacy in the area of foreign affairs corresponding to a similar supremacy in internal affairs. C. Black, supra note 7, at 57–59. Professor Kurland is of the same view. Kurland, supra note 11, at 621–23. I tend to agree with this view. Historical necessity has, however, expanded the content of such terms as "executive power" and "commander in chief" and it has given sanction to the Hamiltonian view of "inherent" powers—i.e., to powers not in the constitutional text. See generally authorities cited in note 27 supra.

[30] E. Corwin, supra note 14, at 171 (emphasis in original) (footnote omitted).

[31] R. Neustadt, supra note 10, at 33: "The constitutional convention of 1787 is supposed to have created a government of 'separated powers.' It did nothing of the sort. Rather, it created a government of separated institutions *sharing* powers." (emphasis in original). See also S. Huntington, Political Order in Changing Societies 109–12, 115–21 (1968).

[32] There are numerous areas where clashes between the president and congress are not easily resolvable apart from the play of the political process. For example, there are no clear rules governing the power of the executive to withhold information from congress. Younger, Congressional Investigations and Executive Secrecy: A Study in the Separation of Powers, 20 U. Pitt. L. Rev. 755 (1959). See also the questions arising from the presidents asserted power to "impound" funds voted by congress for expenditures.

[33] The "conclusion is unavoidable that the national legislature, as it now plays its exacting role on the political stage, is remarkably ill-suited to exercise a wise control over the nation's foreign policy." R. Dahl, Congress and Foreign Policy 3 (1950). However, Professor Finer has voiced grave concern about the capacity of one man to respond in a rational manner to constant world crises and has suggested institutional restraints on the presidency. H. Finer, The Presidency: Crisis and Regeneration 198 (1960).

[34] E. Corwin, supra note 14, at 184–93.

[35] "Senate" should in all probability be substituted for "congress." But see J. Clark, The Senate Establishment 15 (1963) ("the Senate has become archaic, outmoded, obsolete as a meaningful democratic institution"). It is, I think, exceedingly difficult to imagine any real role in foreign affairs for the house of representatives.

[36] In recent times President Wilson alone seems to have been troubled by lack of congressional authorization. See Comment. The President, The Congress, and The Power to Declare War, 16 Kan. L. Rev. 82, 85 (1967). Nonetheless, he ordered the bombing of Vera Cruz without congressional authority. Id. at 84. Moreover, with respect to World War I, he took action that, he conceded, was quite likely to draw us into war.

[37] For a valuable collection of instances of such presidential action extending through 1941 see J. Rogers, World Policing and The Constitution 92–123 (1945). See also F. Wormuth, supra note 2, at 6-43; M. Pusey, supra note 2, at 41-114.

[38] Professor Commanger describes the post civil war instances as "so numerous as to be tedious." Commanger, Presidential Power: The Issue Analyzed, N.Y. Times, Jan. 14, 1951 § 6 (Magazine), at 23.

[39] For a detailed discussion of the conduct of Franklin Roosevelt see L. Koenig, supra note 28, 18-66.

[40] It should also be noted that President Eisenhower deployed 14,000 troops in Lebanon without statutory authority, and on the basis of his "inherent" constitutional power. See 104 Cong. Rec. 13, 903-04 (1958) (statement by President Eisenhower). Mention should also be made of President Kennedy's use of the navy in Cuba. See M. Pusey, supra note 2, at 9-10. Fortunately, in neither instance did actual hostilities occur. However, in each case the deployment of the armed forces may actually have constituted an act of war.

[41] U.S. Dept. of State, The Legality of United States Participation in the Defense of Viet Nam, 54 Dep't State Bull. 474, 488 (1966), reprinted in Legality of United States Participation in the Viet Nam Conflict: A Symposium, 75 Yale L.J. 1084, 1085 (1966).

[42] See, e.g., F. Wormuth, supra note 2. Not all the critics agree with this view. For example, Pusey writes that "[i]n recent years, however, the President has been exercising the power to make war with alarming consistency." M. Pusey, supra note 2, at 1.

[43] Malawer, supra note 2, at 224. See also Standard, United States Intervention in Vietnam Is Not Legal, 52 A.B.A.J. 627, 632 (1966). If a full-blown declaration of war is a necessary condition for presidential action, Korea cannot be distinguished by a reference to alleged United States obligations under the United Nations Charter, which is merely a treaty. Only congress, not the senate, can declare war.

[44] Malawer, supra note 2, at 213-14.

[45] Professor Wormuth argues that this radically distorts the intention of the framers. F. Wormuth, supra note 2, at 46. See also id. at 35. In the words of President Buchanan: " 'The executive government of this country in its intercourse with foreign nations is limited to the employment of diplomacy alone. When that 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.' " Id. at 17, quoting from 5 Messages and Papers of the Presidents, 1789–1908, at 516 (J. Richardson ed. 1908).

[46] L. Koenig, supra note 28, at 46: "Congress seldom has objected to the action of the President, as commander-in-chief, in sending abroad and maintaining the armed forces without its prior concurrence. The instances of objection are important, but the otherwise general consent has tacitly established the rule of practice. . . ."

[47] See Note, supra note 2, at 1776-85 for a discussion of the various theories advanced in support of presidential action.

[48] Id. at 1788-90.

[49] Id. at 1793.

[50] For an exposition of the view of the framers see M. Pusey, supra note 2, at 41–57.

[51] E.g., Velvel, supra note 2, at 453–55.

[52] Professor Malawer seems to assume this view, Malawer, supra note 2, at 223. See also Comment, The President, The Congress and The Power to Declare War, 16 Kan. L. Rev. 82, 94–95 (1967).

[53] Corwin, Who has the Power to Make War, N.Y. Times, July 31, 1949, § 6 (Magaine), at 14. See also R. Hull & J. Novogrod, supra note 3, at 171–72.

[54] E.g., Velvel, supra note 2 ,at 454–55, 499 n. 216; Note, supra note 2, at 1974–98.

[55] Velvel, supra note 2, at 545–55, 499 n. 216; Note, supra note 2, at 1794–98.

[56] Note, supra note 2, at 1798:

[I]nstead of assuming that the President may deploy American forces as he sees fit and only in the exceptional case need he seek congressional approval, the presumption should be that congressional collaboration is the general rule wherever the use of the military is involved, with presidential initiative being reserved for the exceptional case.

[57] Professor Velvel apparently assumes that the President has unlimited constitutional power to deploy the armed forces abroad. Velvel, supra note 2, at 471–72.

[58] Note, supra note 2, at 1797.

[59] M. Pusey, note 2, at 174. Professor Velvel seems concerned only with massive involvements. E.g., Velvel, supra note 2, at 468.

[60] For various views on the degree of institutional competence held by these two branches see notes 33 & 35 supra and authorities cited therein.

[61] Velvel, supra note 2, at 461–62.

[62] Since the end of World War II there have been no formal declarations of war by a nation. See Indochina: The Constitutional Crisis, 116 Cong. Rec. 7117, 7121 n.55 (daily ed. May 13, 1970). This memorandum was prepared by Yale Law School students and signed by Professor Bickel and others.

[63] A formal declaration of war would of course increase the reservoir of internal regulatory power possessed by the national government (if it can be increased over what is already possessed). For a list of legislation that becomes effective on the basis of a formal declaration of war see 116 Cong. Rec. 5122–23 (daily ed. June 3, 1970).

[64] See Note, supra note 2, at 1798: "An excessively wooden concept of what constitutes congressional exercise of its power to declare war would have the effect, not of preserving congressional authority, but of transferring more and more decisions to the more flexible executive branch."

[65] Not surprisingly, those opposed to the war find these actions insufficient. E.g., Malawer, supra note 2, at 227–31; Velvel, supra note 2, at 465–66, 472–79. Indeed, Professor Wormuth finds the Gulf of Tonkin resolution "unconstitutional." F. Wormuth, supra note 2, at 43–53.

[66] Note, supra note 2, at 1798–803 carefully considers this problem.

[67] This seems to me to dispose of arguments of the following character:

It has 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.

Indochina: The Constitutional Crisis, supra note 62, at 7119 (footnote omitted). The "presumption" of which these writers talk, if it ever existed, has no modern basis. Significantly, these writers make no effort to relate the alleged presumption to the present allocation of responsibility between Congress and the President in the conduct of foreign affairs.

[68] Compare Harper v. Virginia Bd. of Elections, 383 U.S. 663, 669–70 (1966).

[69] In McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), Chief Justice Marshall expressly recognized the importance of the historical practice of the political organs of the government in assessing the meaning of constitutional guarantees not involving guarantees of personal freedom. In sustaining congressional legislation creating a national bank, he wrote:

It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete

than this. But it is conceived, that a doubtful question, one on which human reason may pause, and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted; if not put at rest by the practice of the government, ought to receive a considerable impression from that practice. An exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded. Id. at 401.

[70] I do not think the views expressed by Professor Burns in his book Presidential Government (1965) are inconsistent with this statement.

[71] Recent decisions of the supreme court indicate to me that there are no federalism-derived constitutional limits on congressional legislative power. See, e.g., Katzenbach v. Morgan, 384 U.S. 641 (1966); Katzenbach v. McClung, 379 U.S. 294 (1964); and Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964), which demonstrates that the court will sustain an exercise of congressional power that is "rationally" related to any of the enumerated congressional grants. Professor Wechsler long ago reminded us that the actual structure of federalism is and should be governed by the dictates of political process, not by artificial legal doctrines. Wechsler, The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government, 54 Colum. L. Rev. 543 (1954).

[72] It is worth observing that "Congressional power to declare war' . . . does not, even semantically, exclude armed hostilities without such a formal declaration." 116 Cong. Rec. 8405 (daily ed. June 4, 1970) (letter of Professors Rostow, Winter and Bock to Senator Allott).

[73] The writers who seek constitutionally based restrictions are, of course, committed to the familiar—and psychologically comfortable—lawyer's task of "drawing lines." That mentality makes difficult the recognition of areas not governed (at least in form) by legal rules. Thus while one writer accurately frames "the real issues," how is the President's authority as Chief Executive and Commander in Chief to be reconciled with Congress' power to declare war?, his approach is an attempt to draw a line so as to create an exclusive congressional preserve, which the President may not trespass with permissiveness. Note, supra note 2, at 1771.

[74] J. Burns, supra note 10, at 298.

[75] See Indochina: The Constitutional Crisis, supra note 62, at 7119. Even Professor Rostow, et al., supra note 72, fall short of challenging this power.

[76] See C. Rossiter, The Supreme Court and the Commander in Chief 131 (1951): "As in the past, so in the future, President and Congress will fight our wars with little or no thought about a reckoning with the Supreme Court."

[77] See Mora v. McNamara, 389 U.S. 934 (1967). The sole limit of the courts' powers is, in my judgment, to announce that the matter must be resolved by the political branches of government. Contra, Schwartz & McCormack, The Justiciability of Legal Objections to the American Military Effort in Vietnam, 46 Tex. L. Rev. 1033, 1053 (1968); Velvel, supra note 2, at 479–503. Professor Velvel has had no success in convincing the courts. Velvel v. Nixon, 415 F.2d 236 (10th Cir. 1969), cert. denied, 396 U.S. 1042 (1970).

I recognize, of course, that not all presidential action is beyond judicial scrutiny. For a list of instances in which the supreme court has invalidated presidential action on constitutional ground see G. Schubert, supra note 27, at 361–65 (1957).

Mr. McGOVERN. Mr. President, I strongly recommend these articles to all Senators who want to refresh their minds at the beginning of this debate as to the constitutional obligations of Senators and the powers of the Commander in Chief under the same Constitution. They are scholarly, well done, carefully thought out pieces.

Again I want to thank the Senator from Rhode Island for his thoughts.

Mr. PELL. There is another thought or question I should like to raise with the Senator from South Dakota, and that is, I recognize, and I am sure he recognizes, too, that this is pretty strong medicine we recommend here by cutting the power of the purse. But those of us who have opposed the war for a period of time, have sought other routes and methods to achieve the result we are after from the viewpoint of general policy. We have had amendments that have been accepted, and there is, generally speaking, I think, an agreement, or the desire at least, to contract the war, as seen by the acceptance of the Cooper-Church amendment some time ago.

I think we should also recognize the fact that—when the majority of our legislative body, both House and Senate, come to the same conclusion that the Senator from South Dakota and I have, then the war is ended. It is that simple. But, as long as we represent the minority view, it would seem that the war would go on.

That very simple fact should be brought to the attention of the American people, that when the majority of their elected representatives want to terminate the war by the course of withholding funds, they can do so. And, until the majority of their elected representatives want to do it, I do not believe it will be terminated.

Mr. McGOVERN. In connection with the use of the authorization power to limit American military operations, the authors of the law review article, to which I have just referred, have very properly singled that out as one final, indisputable control Congress has over military operations.

The constitutional debate raged long and loud and clear on this particular point. There is no question at all that the Founding Fathers wrote in the power of the purse as the principal device by which Members of the Congress of the United States control the executive branch on matters relating to war and peace.

Let me read to the Senator one paragraph from this article by Mr. Cooley and Mr. Sherrill in which they say:

In order to curb the possible expansion of executive military power, and to preserve in Congress the legal authority to commence war, Congress was given the exclusive power to make military appropriations. Although it is true that the general appropriations power was awarded Congress in article I, section 8, clause 1, only the military appropriations power was separated from the general grant and circumscribed by an extremely revealing limitation; article I, section 8, clause 12 places a two-year limitation on the period for which appropriations to raise and support an army may be made.

As the Senator knows, no appropriations power for any purpose is limited to 2 years except for military appropriations. The reason for that, as it becomes clear to anyone reading the debate in the Constitutional Convention, is that the Founding Fathers wanted to make very sure that the power of the purse over the military operations was not extended out to the point where the Chief Executive could conduct war without reference to the Congress.

We are not engaged in a luxury when we look critically at military operations every 2 years. To avoid that would be to avoid the clear obligation we have under article 1, section 8, clause 2 of the Constitution which requires us to permit no military appropriations for more than 2 years without a critical review by Congress.

Mr. PELL. Mr. President, I would agree with the Senator. I would add a final point, if I may, and that is that many people in the present administration, including, I believe, our President, would like to see this war ended.

The problem is that a war acquires momentum, and vitality, and a force, and a constituency all of its own. In order to stop a war and the course of policy that has acquired roots and become dug in at this point, it is going to require many shoulders to the wheel and the efforts of many. The President needs help in this regard.

I have heard bandied about the phrase "eventual liquidation of our military manpower commitments in the southeastern part of Asia."

That may be the objective some in the administration would like to see and hope to see, but unless legislation along the lines of the legislation we support is passed, this policy will not be effectuated because the counter forces are in such strong opposition.

We should recognize that what we are doing here in a sense is helping to achieve this objective that I am sure many people in the administration want to achieve.

As one member of the Committee on Foreign Relations, I can assure the Senator that when we meet, we will do our best to get majority support for the amendment. If we succeed, I will be delighted, and I hope that we can induce a majority of the Senate to support it. If we do not succeed, I would be disappointed. However, I would still hope that the good sense of this amendment would prevail when it comes to a vote in the Senate.

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

Earlier today, the Senator from Massachusetts (Mr. BROOKE) made a statement on the floor of the Senate endorsing the amendment that is now pending, the amendment to end the war that is sponsored by the Senator from Oregon (Mr. HATFIELD), me, and other Senators. He made one statement that I would like to underscore at this time. He said:

The amendment provides a reasonable and flexible means for harmonizing legislative and executive policy on this perplexing issue. I support it and I hope the Senate will adopt it.

The Senator from Massachusetts then went on to say:

> The conclusion that we have satisfied our commitment to the Vietnamese, coupled with an extended timetable for troop withdrawal, could invigorate the efforts of the South Vietnamese to stand on their own. Hopefully it will heighten the willingness of all parties to negotiate an early political settlement.

The Senator from Massachusetts then said:

> The establishment of a firm timetable for U.S. disengagement would remove Hanoi's principal stated objection to serious diplomacy. It should also reduce Saigon's unstated reliance on the prospect of an indefinite American stay to avoid coming to grips with the hard political realities which must shape any final settlement.

I think that the Senator from Massachusetts, as well as the Senator from Rhode Island who has just left the floor, have both alluded to two very important aspects of the pending amendment. That is the impact that this amendment will have on both Hanoi and Saigon.

In the case of Hanoi, it meets the principal demands they have made all along, a demand which we think stands at the very heart of the stalemate that has kept us from making any progress in Paris. That concerns their insistence that we must agree not on the withdrawal of 150,000 or 180,000 troops, but must agree on the withdrawal of all American forces from Vietnamese soil.

This amendment does propose such an agreement, not because we think it is in the interest of Hanoi, but because we think it is in the interest of the United States. After 10 years of combat activities in Vietnam, and after 10 years prior to that of assisting the French and the South Vietnamese with military support, I think the time has come in our own interest to terminate this war.

The first possible impact of this amendment would be to help break the stalemate that has frozen the negotiating effort in Paris for the past 2 years. Nothing has been accomplished in those negotiations so far other than an agreement on the shape of the table, and that took many weeks of hard negotiations.

One of the principal stumbling blocks to the progress of the negotiations has been the insistence on the part of the other side that they are not interested in talking seriously about a final end of the war or the prisoner exchange issue or asylum or anything of that kind until the United States agrees to a definite time for the withdrawal of our forces.

If our amendment is agreed to, we think that great pressure will be brought on the North Vietnamese to sit down and work out arrangements about the other pending matters and especially the matters of prisoner exchange and some kind of arrangements for insuring the safety of the withdrawal process.

The other side of the amendment concerns the impact on Saigon. There is no question that the administration's most urgent hope is that the people of South Vietnam will somehow assume more responsibility for directing their own affairs and standing on their own feet.

For 16 years, ever since we made our first written commitment to South Vietnam, in October 1954, we have been hoping the same thing—that the South Vietnamese would assume a greater burden of the conflict themselves and that we would not have to carry the enormous load we have carried in blood and treasure in that conflict.

It seems to me the best way to make clear to the regime in Saigon that they must carry this responsibility on their own is to set a timetable for our withdrawal; not to say, as the President said, that we are going to stay there until they are ready to take over, which is just an invitation to the generals in Saigon not to be ready.

To the contrary, we should say that after December 31, 1971, they are on their own unless the President and Congress jointly decide that an extension of the withdrawal deadline is in order.

The third factor that seems to me of great importance in this amendment is the opportunity it provides to the President to share with the elected representatives of the people this decision for bringing the war to an end.

In the same sense that some 6 years ago President Johnson came to the Senate and asked for our concurrence in the Gulf of Tonkin resolution that preceded an escalation of the war, so it seems to me that it is logical for the President, looking at this very complex, divisive, and troublesome issue, to want to share with Congress the responsibility of ending the war.

I must say, speaking as one who has been in the political life of this country for a number of years, that it is difficult for me to understand why the President would not seize on that opportunity to share what will obviously be a very controversial and, perhaps, unpopular decision on his part, and that is to order the withdrawal of American forces at some point, stopping short of a military victory.

The President said that we are not trying for a military victory. He ruled that out as American policy. He said we are trying for a negotiated settlement; that we have long since given up the idea of a military decision. That being the case, it is quite clear there will be large numbers of Americans who will be looking for a scapegoat on which to blame what they will regard as an unacceptable settlement of the war, a settlement that stops short of a knockout punch of our adversary.

So it would seem to me that this being a decision of that kind, one that could set off continued debate and recriminations in the country, the more jointly we can share in the decision of the executive branch, the more we reduce the danger of the kind of "scapegoating" that could divide the Nation for years to come.

I do not think anyone has yet proposed a settlement of this war that will be enormously popular. There is no way to back away from a disaster of this kind, from the blunder we made in Indochina. The best we can do is end the blood bath and our involvement there as quickly as we can. No one has the wisdom to come up with a decision to make everyone happy.

Therefore, I plead with the President and his supporters to see this amendment not as something representing a slap in the face to the White House, the Department of State, or the executive branch of our Government, but as a formula well within the spirit and letter of the Constitution of the United States, which places in the Senate and in the Congress the obligation to make these decisions about the commitment of American forces and American military operations of all kinds.

It would seem to me that would be one of the most compelling arguments in support of the amendment.

Mr. President, the pending amendment to end American military involvement in the affairs of the Vietnamese people raises a number of important issues.

The first of these is that the amendment offers a practical formula for terminating our involvement in what seems to be an endless and futile conflict, and it does that by setting an announced timetable, by which we would agree to a particular time for the withdrawal of our forces.

The alternative of such an action is many more years of brutal and hopeless conflict, in which we can anticipate that thousands of young Americans, to say nothing of thousands of Asians, will be killed and crippled. Billions of dollars more in resources will be wasted, and there will be the further rending of our society.

It seems to me the burden of proof is on those who would gamble with an indefinite continuance of this war, and that it behooves them to demonstrate to us what we hope to gain as a country by continuing this war with no announced timetable for withdrawal of all of our forces. What would be gained by the sacrifice of several thousand additional American lives and many more billions of dollars, and the continued destruction of the people of Vietnam and their countryside?

If it is true, as the President has said—and I believe he means it—that we have given up hope for a military victory, what do we hope to accomplish by continuing this war month after month? What do we believe there is in our present policy to produce negotiations in Paris when that policy has produced no progress at the Paris negotiations session after session?

What evidence is there that the South Vietnamese regime in Saigon is prepared to have us withdraw American forces from their country? To be sure, the President talked in terms of another reduction of 150,000 men, but that still leaves us with 280,000 American forces committed to Vietnam; and with all the pressure remaining on the other side to make it just as difficult and painful for us to stay.

I think the burden is on those who defend the present policy, a policy that has not produced a military victory, a policy that has not produced a negotiated settlement, a policy that has not produced a willingness on the part of the government in Saigon to stand up on its own feet.

Advocates of the policy now being pursued in Vietnam maintain that they

have no dispute with the authors of this amendment in wanting the war to end. Surely, that must be the case. They argue further that the President is meeting the objectives of this amendment; that he is withdrawing troops and moving toward American disengagement; and they ask us why we tamper with the administration policies in view of troop reductions that have already taken place.

I would like to suggest, based on the incredible cost of this war, that we question those policies with all the wisdom and courage we can muster. It is my hope that as the debate proceeds today and continues Friday, Saturday, and Monday, with the vote coming on Tuesday, we can use this occasion as a kind of balancing off of the alternatives that are available to us; that we will consider very carefully the cost we can be expected to pay if we continue on our present course with no set timetable for withdrawal of our troops, against the background of all the likely effects of this amendment upon our own people and the contesting forces in Saigon and Hanoi.

I trust that we have not grown so accustomed to the killing and maiming of our young men that we now regard it as the natural order of things, to be changed or ended only upon the most compelling and convincing evidence. The natural order is for those young men to live. Many of them resent their forced participation in a war they regard as foolish and pointless.

The President has withdrawn troops. Yet, we cannot escape the fact that over 15,000 Americans have died since January of 1969, or that nearly 100,000 have been wounded. The terrible toll mounts each week.

Recently, a former Defense systems analyst prepared a study of the probable U.S. casualty rates we can expect under various policy alternatives. His conclusions are based upon past experience.

He found that in the absence of a definite timetable for withdrawal next year and if current withdrawal rates are continued so that all Americans are out in early fiscal 1973, we should be prepared to accept at least 5,400 more combat deaths and 42,500 combat wounded.

If withdrawals were to stop when the level of 50,000 troops is reached, some 7,200 Americans will be killed and another 57,100 will incur injuries by fiscal 1975.

If we maintain, as is widely expected under the President's program, a force level of about 225,000 men, some 14,700 will be killed and 115,000 wounded in the next 4 years. Meanwhile, the loss of Vietnamese life would continue on a much larger scale.

Other costs of the war seem almost insignificant next to the horrible sacrifice of human life and limb which is still being exacted. But they continue to tear at the very fabric of our society.

We have poured at least $115 billion directly into the conflict. It costs $57 million each day. One economist has calculated that hidden costs such as the loss of productive manpower bring the total cumulative price to $219 billion.

War-borne inflation has robbed the purchasing power of every dollar in circulation by as much as one-fourth since 1964. Real corporate profits have dropped by 17 percent since 1965. The real average income of U.S. production workers has dipped by 2 percent in the last 5 years. The war has brought a painfully unique experience to our economy—a combination of inflation and recession at the same time.

Meanwhile, domestic priorities—schools, housing, conservation, anticrime efforts, and others—have been forced to await the release of Vietnam funds. The needs of millions of Americans are given only half-hearted attention, while we invest our blood and treasure in an unrepresentative band of corrupt rulers in Saigon.

Beyond this and, in part, because of it, we have been forced to watch the deterioration of our national spirit. The violence practiced by a few self-styled revolutionaries has diverted attention from the quiet disillusionment and despair felt by millions of Americans, young and old. We cannot even begin to repair the deep divisions brought by the war until the war itself is ended.

It is on the basis of these enormous burdens that Congress must ask why the war goes on. If those who support current administration policy covet the title "Peacemaker," let them tell us what will be gained by pressing on with this hopeless venture; what we will have, at the end of more years of conflict, to justify the lives and bodies that will be destroyed for so long as it continues.

VIETNAMIZATION

We are told now that we pursue but one essential aim in Vietnam—to secure the right of "self-determination" for the South Vietnamese people. That is the President's description, often difficult to locate amidst the wildly ambitious claims of his supporters.

But even that single goal of Vietnamese self-determination is contradicted by our own actions. We define it in terms of the Thieu-Ky government, whose contempt for self-determination is exhibited almost daily. That regime jails its critics. It steadfastly refuses to conduct economic and social reforms which might broaden its political base. It excludes important non-Communist elements from any sort of political participation. Our embrace of that regime effectively denies to the Vietnamese people the very goal we profess to seek.

How can we sustain this claim while at the same time suppressing surveys indicating that if the South Vietnamese were afforded the opportunity to choose, the vast majority would ask that we leave their country while only a tiny percentage—one-twentieth—want us to stay. What are we to say about self-determination when a public opinion survey sponsored by American officials in South Vietnam this summer indicated that 65 percent of the Vietnamese people want us to leave their soil now, 30 percent had no opinion, and only 5 percent wished us to remain? Is it surprising that a red-faced U.S. command in Saigon suppressed this poll?

Regardless of how we view the objectives announced by the President, we must also question whether there is any hope that they can be achieved under the strategy he proposes to follow.

Today's military approach—Vietnamization—brings to mind previous attempts to turn the war over to the South Vietnamese. The following words might well be employed to describe the current approach:

> With a little more training, the Vietnamese army will be the equal of any other army in its ability to combat the enemy and will be able to defend itself against the Vietminh if attacked.

But they were spoken nearly 15 years ago by then Secretary of the Army Wilbur Bruckner. In truth, Vietnamization has always been our strategy, even before the progressive "Americanization" for the war. It is as barren now as it has always been.

We should be absolutely clear that Vietnamization is not a route toward peace or toward an end to U.S. involvement. At best it can do no more than reduce the number of American forces, and, perhaps, the number of casualties. But they will not end because the war will not end. On the battlefield, Vietnamization merely continues the policy of military attrition in the hope that the other side will eventually become discouraged and come to terms.

It is impossible to calculate the number of troops that can be safely withdrawn under this strategy. The main influence will be exerted by factors totally beyond our control—primarily the competence and dedication of South Vietnamization forces and the level of activity maintained by the adversary.

We do know, however, that our commanders in the field have been in constant dispute with administration civilian policymakers in this country over the withdrawal schedule. They want to slow it down now, even though some 400,000 Americans still remain. General Abrams was reported to resist the April announcement that 150,000 more would be taken out.

The concern expressed by military commanders is understandable. I share it. It is wholly unreasonable to expect our military to pursue the same goals with constantly shrinking numbers. In addition, it poses grave risks to our troops. Their capacity for self-defense is depleted and their dependence upon unreliable South Vietnamese forces grows each time more Americans are pulled out. And so long as there is no commitment to complete withdrawal, we can expect that our manpower will be primary targets of enemy attacks. I submit that Vietnamization exposes American men to more danger than virtually any other alternative. It literally invites the sort of defeat the administration fears so deeply.

Today, we have two fresh illustrations of the fragility of the Vietnamization program. The first is the fact that administration spokesmen almost without fail respond to our proposal for complete orderly withdrawal with alarmed predictions of the imminent collapse of South Vietnam. According to the Vice President, for example, withdrawal in a year's time, as we have proposed, would

bring "collapse of the government, chaos in the country—and ultimately the kind of communism that literally decimated the civilian population of Hue in the Tet offensive." We cannot avoid asking that if South Vietnam is in such dismal shape now, after all these years of help and with a numerical superiority of some 4 to 1 over enemy forces in the South, how can we believe that they will soon develop the capacity for their own defense.

The sequence of events in Cambodia since February of this year is a second clear indication that Vietnamization is a losing game. The administration denies that we have assumed any commitment to the wobbly new government in that country, just as it has denied all along that the decision to send troops on May 1, was inspired by a desire to prevent the collapse of that regime.

Yet, the presence or absence of a formal commitment is really irrelevant in the present context. What is relevant is the rationale for the new program of aid to Cambodia. According to the Vice President:

"We're going to do everything we can to help the Lon Nol government" because, "the whole matter of Cambodia is related to the security of our troops in Vietnam."

We should not be surprised by this statement. It reaffirms what the President said just 5 months ago:

> If this enemy effort succeeds, Cambodia would become a vast enemy staging area and a springboard for attacks on South Vietnam along 600 miles of frontier; a refuge where enemy troops could return from combat without fear of retaliation. North Vietnamese men and supplies could then be poured into that country jeopardizing not only the lives of our men, but the people of South Vietnam as well.

In truth, the administration has been saying throughout the Cambodian episode that the Vietnamization strategy will collapse if the Communists are successful next door. As the Vice President said so bluntly last weekend, the survival of the Lon Nol government has become a precondition to the success of the Vietnamization program and our withdrawal from Vietnam. A commitment to Vietnamization is in practical effect precisely the same thing as a commitment to insure the survival of Lon Nol. It means that we are now, in Cambodia, right back where we started in Vietnam a decade ago. The only difference is that thus far South Vietnamese forces are used to shore up the Cambodian Government while American manpower takes their place back in Vietnam. Yet, even as many as 40,000 ARVN troops are barely able to defend Phno Penh, while the Communists freely roam the countryside. In spite of the President's claim of a great American victory in Cambodia, the hard truth is that events in Cambodia have dealt a staggering blow to the whole Vietnamization strategy. The central Communist headquarters the President said we were attacking in Cambodia was never found, and the border sanctuaries he said we were eliminating have now spread over half of Cambodia.

If the battlefield outlook is alarming, there is perhaps even less reason for optimism about the prospects at the negotiating table.

The U.S. position remains essentially the same as announced in May of 1969. It calls for mutual withdrawal of all United States and North Vietnamese forces, to be followed by elections set up by a commission in which the National Liberation Front would participate.

North Vietnam and the NLF have steadfastly refused to accept these terms. They doubtless regard them as a method of assuring their exclusion from any postwar government. I suspect they see such a settlement as abandonment of the minimum objectives for which they have battled these many years. They insist upon prior U.S. withdrawal and a provisional coalition government preceding elections.

Regardless of whether we can discern reason in their position, we do know that they are not buying our plan and we do not have the power to force it on them. The Thieu-Ky government, meanwhile, adamantly refuses to share their power with any group, ruling out a coalition government which could be an alternative route toward free elections. And we allow them to dictate our own position on this score.

This is the stalemate which prevails in Paris. We cannot pose credible threats of military pressure while reducing our forces, whereas the adversary has 400,000 crack troops poised in North Vietnam not yet committed to battle. We cannot arrange acceptance of the coalition concept by the Thieu-Ky regime because they know we are committed to their political survival and they can therefore dictate our terms by exposing their own weaknesses. Our policy has been imprisoned, Saigon and Hanoi have the only keys, and they have no inclination to release us.

In sum, present policy combines the worst elements, and none of the attributes, of efforts to win and efforts to get out. It enfeebles our hand in Paris and emboldens the Thieu-Ky government to become even less accommodating. It continues the decimation of the Vietnamese people and their ravaged country. It invites the Thieu-Ky government to abuse our help.

Mr. President, this policy simply cannot succeed. To believe that it can defies all of our catastrophic experience in Vietnam, to say nothing of the nearly 20 years of struggle that went before.

THE LESSONS OF VIETNAM

What is perhaps most distressing about the course chosen by the administration is its failure to accept the wisdom which should flow naturally from a mistake as monumental as our early decision to become involved in Vietnamese affairs. Those lessons cry out desperately for our attention.

We should know by now first, that notwithstanding any preferences we might have, South Vietnam's form of government has no bearing at all on any critical interest of the United States. Our own freedoms will not be diminished regardless of what happens there. Surely, we must recognize that tiny North Vietnam could possess no designs upon our national safety.

Second, we must perceive that ideologies do not knock nations over like dominoes. Where governments are unrepresentative and unresponsive to the aspirations of their people, there is danger that Communist insurgency will attract significant support. Where the indigenous government is strong, it need not fear subversion. In either case, its fate will depend almost entirely on local conditions which we are powerless to control.

Third, for the same reasons, the theory of "exemplary wars," holding that by fighting in Vietnam we somehow discourage communist-inspired "wars of national liberation" elsewhere, is mere shadow. Perhaps it is enough to note that the President's pledge of "no more Vietnams" simply cannot coexist with the premise that the example of Vietnam will deter revolutionaries in other nations.

Fourth, the war in Vietnam is not and never has been, except in the imagination of American policymakers, a struggle between global powers. Neither China nor the Soviet Union has regarded Vietnam highly enough to risk direct involvement. It is as peripheral to them as it should be to us, and as much beyond their control.

Fifth, our involvement has been destined to fail from the outset, only in part because of the character of the leadership in Indochina with which we have become identified. In a nation inspired by a 20-year quest for independence, leaders who hold power solely because of the props of a foreign power cannot hope to win the confidence of their own people. They are the antithesis of independence.

Sixth, through our effort in Vietnam, coming on the heels of the French campaign to retain its colonial domination, we have probably done more to encourage communism in Asia than anything else we might have done; certainly more than that dismal ideology might have accomplished on its own.

We have offered it the power to identify with long-held aspirations for national independence, while our alternative is offered through the likes of Thieu and Ky. They, and the horrible, indiscriminate destruction rained by heavy bombing, free fire zones, and other characteristics of battle, are what we supply to the simple people of South Vietnam as a definition of liberty and democracy. They must regard our philosophy of government as something to be avoided at almost any cost. All Americans might well be indignant at the affront to our cherished principles which flows from our embrace of the despotic generals in Saigon.

Seventh, there can be no military solution to the Vietnam conflict—unless we are willing to inflict such incredible destruction that a "victory" would have no meaning for anyone. We can make things more difficult for the Vietcong and the North Vietnamese. We can, if we are to remain indefinitely, prevent a military victory by the other side. But such accomplishments are empty in a guerrilla war. Presidential advisor Henry Kissinger told us why in an article in January of last year:

The guerrilla wins if he does not lose. The conventional army loses if it does not win.

By his definition, the war has been lost for many years.

THE AMENDMENT TO END THE WAR

We must, therefore, define our choices in precise terms.

We do not ask the Senate to choose between withdrawal and victory in Vietnam. The choice is between withdrawal at a definite time—the end of 1971—and withdrawal later, at an unspecified time, after the terrible toll has mounted still further.

We do not pose a choice between abandoning and saving the Thieu-Ky government. Instead, the issue is whether we will let despots in another land—already the beneficiaries of unparallelled American generosity and sacrifice—continue to dictate American policy, or whether we will serve notice that it will soon be time for them to fight their own battles, or make their own peace, and stand on their own feet.

Nor is self-determination for the Vietnamese people at issue, unless we recognize that we will enhance their opportunity for self-determination if we stop imposing upon them a regime whose contempt for democratic process is flaunted every day.

The question is not whether we will hold or lose the credibility of our international commitments. It is whether or not we will begin to regain the international confidence in American wisdom and prudence that wanes each day the war goes on.

The policy we propose will save American lives. It will remove them from danger. And it must be compared to a policy which would leave dwindling numbers of troops increasingly vulnerable to attack and increasingly reliant upon unpredictable South Vietnamese forces for their defense.

Our proposal will improve the chances for release of American prisoners by removing the incentive to hold them and by making possible the creation of incentives to set them free. It stands against our present policy under which the number of prisoners will probably increase.

We suggest a serious search for a means of preventing political reprisals against South Vietnamese. It must be matched against a war in which tens of thousands of innocent civilians are killed each year, mostly by the indiscriminate firepower of United States and South Vietnamese forces.

Of critical importance, our plan offers some hope for meaningful negotiations by breaking down intransigence on both sides of warring Vietnamese. It stands against a policy that has produced only months of deadlock and that can promise nothing but more of the same.

I will discuss the very important constitutional issues involved in the amendment to end the war at a later time in the debate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McGOVERN. 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. McGOVERN. Mr. President, I would like to make note of the fact that in the printed version of our amendment that was submitted yesterday an error was made by the Printing Office. In the first subsection, the two words "in Vietnam," which should have appeared after the words "armed forces of the United States," were left out.

The error is being corrected by the Printing Office, but I wanted to mention it now to avoid any confusion that might take place as a result of that error.

This is the section of the bill that would limit the number of American forces in Vietnam to 280,000 after April 30 in Vietnam. Then following that April 30 deadline, the remaining 280,000 would have to be pulled out by December 31, 1971.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. 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. 799

Mr. BROOKE. Mr. President, on behalf of myself, the Senator from New Hampshire (Mr. McINTYRE), and the Senator from Michigan (Mr. HART), I call up amendment No. 799 to H.R. 17123, and ask that it be read.

The PRESIDING OFFICER. Does the Senator ask unanimous consent for its consideration?

Mr. BROOKE. I ask unanimous consent.

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

The amendment will be stated.

The legislative clerk read the amendment (No. 799) as follows:

On page 14, between lines—and —, insert a new section as follows:

"SEC. 206. The Secretary of Defense is authorized and directed to initiate a program of research to develop at the earliest possible date, a single reentry vehicle system for the Minuteman III missile and a single reentry vehicle system for the Poseidon missile. For purposes of this section "a single reentry vehicle system" is a system capable of only deploying a single reentry vehicle and its associated penetration aids. The funds to be expended in carrying out the provisions of this section shall be funds transferred from other projects by the Secretary pursuant to his authority under existing law to transfer funds from one project to another."

The PRESIDING OFFICER. Is it the Senator's understanding that the total time allotted to the Senator from Massachusetts on his two amendments is 3 hours?

Mr. BROOKE. No, I think there is a unanimous consent agreement for 3 hours on each of these amendments, Mr. President.

The PRESIDING OFFICER. The amendments are not numbered in the agreement.

Mr. BROOKE. I think there are 3 hours on each of the amendments. This one has 3 hours.

The PRESIDING OFFICER. The Senator may proceed. How much time does he yield himself?

Mr. BROOKE. I yield myself 15 minutes.

Mr. President, Senate consideration of the defense procurement authorization comes at a moment of extreme delicacy in many realms of national security policy—the strategic arms limitation talks are in a crucial phase, the strategic balance is poised at the edge of far-reaching changes, defense spending is tottering under the challenge of competing domestic demands. Among the many issues we must consider in this debate, none is more critical than that of MIRV—the multiple independently targetable reentry vehicles whose incipient deployment is drastically changing the composition and capabilities of American strategic forces.

As Members of the Senate may recall, I have long argued that our security and that of the Soviet Union would be best served by a mutual suspension of MIRV testing and deployment. If such weapons were deployed in large numbers and were developed to levels of very high accuracy, they could seriously threaten hardened missile silos and could undermine the stable deterrence on which both countries depend.

It is, of course, reassuring to know that any such hard-target MIRV systems are years away from being perfected and that the initial systems now being deployed do not in fact pose a threat to the Soviet Union's retaliatory forces. Yet, as has often been pointed out in this Chamber, unless clear safeguards are established, technical improvements could eventually transform the first-generation MIRV systems which are capable only of a retaliatory mission into more dangerous weapons which might seem capable of a first strike. This could only induce a larger arms race, as the Soviets would be obliged to increase the number of offensive weapons or take other countermeasures to insure their ability to deter us, just as we are determined to do whatever is necessary to guarantee that we can deter them.

Under these circumstances, how we resolve the dilemmas posed by the development of MIRV technology will do much to shape the stability of the strategic balance. I remain convinced

that a mutual ban on MIRV testing and deployment is the wisest course, and I am still hopeful that the SALT negotiations will eventually produce such an understanding. However, we do not know when, how, or if SALT will address the complicated problems of MIRV, and we must seek to shape a sound policy which will deal with two contingencies: Either, first, mutual limitation on MIRV in the SALT negotiations, or second, a continued deployment of MIRV in the absence of such a limitation.

In line with the sentiments voiced by the Senate in Senate Resolution 211, which urged a limitation on both offensive and defensive strategic weapons, particularly MIRV, we should do everything possible to facilitate a reasonable agreement on this difficult issue.

Toward this end I am today proposing an amendment which could make a major contribution to this objective. This amendment will authorize the Department of Defense to initiate development of single reentry vehicle systems for both the Minuteman III and the Poseidon missiles, which are presently designed specifically as MIRV launchers.

Mr. President, I ask unanimous consent to modify my amendment No. 799 to read as follows:

SEC. 206. The Secretary of Defense is authorized to initiate a program of research to develop at the earliest possible date, a single reentry vehicle system for the Minuteman III missile and a single reentry vehicle system for the Poseidon missile. For purposes of this section "a single reentry vehicle system" is a system capable of only deploying a single reentry vehicle and its associated penetration aids. The funds to be expended in carrying out the provisions of this section shall be funds transferred from other projects by the Secretary pursuant to his authority under existing law to transfer funds from one project to another.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

Mr. BROOKE. So long as the United States has only MIRV systems for deployment on these two missiles, a proposed MIRV limitation would be tantamount to a de facto reduction in U.S. strategic forces. This is an especially critical factor with regard to the Poseidon system, since a number of submarines are being converted to a carry this missile and a MIRV ban would mean that those subs could not be on station for a number of months, that is, until the Poseidon missile was altered or the boats refitted to Polaris missiles.

Thus, as a matter of simple prudence, the United States needs to prepare for the contingency of a MIRV limitation by developing single reentry vehicle systems which could be mounted on these weapons. Dr. John Foster and other Defense Department spokesmen have alluded to precisely this possibility in remarking that Minuteman III and Poseidon could be fitted for single warheads. It is important to delay no longer in undertaking the work to make this a live option. This amendment would explicitly authorize such work.

I should perhaps mention that there are several advantages to pursuing such a development. Mounting a single reentry vehicle on the Poseidon could permit the submarines to operate at greater ranges from their targets. By increasing the maneuvering room for the boats, this option would contribute substantially to their invulnerability to attack by antisubmarine warfare forces. This is a significant advantage in its own right, but it could become even more so if the United States were gradually to evolve toward heavier reliance on the so-called "blue-water option," that is, concentrating the largest fraction of its deterrent forces at sea and reducing or phasing out fixed-site land-based missiles. I consider it premature to elect this option at this time, since I believe it could best be pursued in the context of a larger strategic arms agreement which limited ASW forces as well as other weapons. If ASW forces were not so limited, the invulnerability of sea-based forces might erode over the longer term. Nevertheless, the blue-water option is a serious candidate for coming decades and there could be a special value in the added operating space which a single RV Poseidon would give our boats.

The purpose of this amendment is quite simple. If SALT produces a limit on MIRV systems, we will need to have the option of installing single reentry vehicles on the expensive Minuteman III and Poseidon missiles we are buying. I trust that the Senate will agree that the Department of Defense should be encouraged to prepare for that contingency, and I hope my colleagues will accept this modest amendment.

Mr. President, I trust that the distinguished chairman of the Armed Services Committee will seriously consider accepting this amendment, as modified, authorizing the Department of Defense to do the research for a single warhead weapons system.

Mr. STENNIS. I thank the Senator.

I yield myself 10 minutes.

I am familiar with the amendment and the modification that the Senator has made.

The Senator from Washington (Mr. JACKSON) must attend a hearing shortly, and I will yield the floor to him, if he wishes. I would like the Senator to make his remarks on this matter now, before he is compelled to leave the Chamber. I yield 10 minutes, or such time as he may wish, to the Senator from Washington.

Mr. JACKSON. I thank the distinguished chairman of the committee.

Mr. President, I commend my good friend, the Senator from Massachusetts, for the long and diligent effort he has been making to try to see whether there is some way in which we and the Soviets might reach an agreement to limit MIRV. I know that he has given much time and thought to this problem. May I say that I, too, want to see a secure agreement reached. I think the problem here is, How do you do it? How do you find a way and a means of resolving this terrible dilemma?

Mr. President, I think the first problem one faces is the attitude of the Soviet Union. If history bears me out, the Soviet Union has taken the position in the past that they will not reach an agreement on a weapons system that they do themselves possess. I remember well the Baruch-Acheson-Lilienthal proposal which we made to the United Nations in 1946. We offered at that time to turn over to the United Nations, under appropriate safeguards, our entire nuclear stockpile. The objective was to bring to a halt the proliferation of nuclear weapons. We all recall that when we made this proposal in the Security Council, it was vetoed by the Soviet Union. The Soviet Union was determined not to enter into an agreement in connection with a weapons capability it did not then possess.

To my knowledge, there have been no signals, direct or indirect, from the Soviet Union suggesting that they want now to reach an agreement to limit MIRV, to control it, to eliminate it, or otherwise to reach an agreement regarding the role that MIRV is to play in our respective deterrent systems.

This being the case, I am convinced that the Soviet Union is not about to reach an agreement or even discuss seriously the subject of MIRV until the Soviet Union has successfully developed and tested an operational MIRV capability.

Therefore, I think that the President—and the administration—should have available all options that might be of use in order to reach one day a verifiable agreement on MIRV.

I need not go into the difficult problems that pertain to reaching an agreement on MIRV. Obviously, if you are going to have an agreement that is at all secure under present circumstances, you must have onsite inspection. To my knowledge, the Soviet Union has not reached the point where they are willing to permit foreigners on their soil to carry out any role in connection with onsite or other means by which verification can be obtained.

This being the case, Mr. President, I want to reemphasize the importance of making available to the President all possible options, so that he is in a position to negotiate effectively when and if this subject should become a subject of negotiation in connection with the overall effort we are trying to make on a strategic arms limitation agreement.

I want to point out that, as the Senator from Massachusetts has so ably pointed out, this is permissive. The Secretary of Defense is authorized to initiate such a program at his discretion.

I would point out that the single reentry vehicle, as authorized here, would be similar to Minuteman I or to the original Polaris missile system. Of course, there is no limitation on the yield. It could be a much larger yield than is available under the present deployment in connection with single warhead systems. Moreover, the single warhead could well have a greater counterforce potential per booster than the present MIRV systems.

As I understand it, Mr. President, this does not in any manner detract from, nor does it add to, any existing authority that the Secretary of Defense has at the present time.

I fully understand that the Senator from Massachusetts is anxious to make sure that every conceivable signal is sent out from this country of our desire to reach an agreement in this matter.

I want to reach an agreement. But I do not think that we should stop our

efforts to deploy our own MIRV capability at this time. Certainly there is nothing even by implication in the amendment which would exclude our going ahead with MIRV. I would like to see the clearest signal sent to the Soviet Union to get them involved in talks and discussions on the subject of MIRV. I think we need to make clear in this country that we would like to see an agreement reached here, that we are interested in talking about this subject; but, so far, I want to say to the Senator, this has been a one-way street. I know that he is desirous of making clear, once again, our desire to try to get our adversary around to the point that he will discuss the subject.

I want to commend my good friend from Massachusetts for his sincerity, his dedication, and his determination to do everything possible to get something going here in the way of discussions and talks. So that, as I say, it has been very helpful and the Senator has been rendering a great service to the country in getting this issue out in the open.

I only hope there may be some signals coming across the way which would indicate a bilateral interest and not just a unilateral interest in the subject.

Mr. BROOKE. I certainly am grateful for the statement made by the distinguished chairman. I am well aware that he wants to do everything he can, as we all do, to bring about successful negotiations at SALT, and to send forth as clear a signal as possible to the Soviet Union that we are ready, willing, able, and desirous of reaching an arms limitation agreement.

I concur that we want to see some signals come back this way from the Soviet Union, that it should not all be going one way. The Senator from Washington could not help being encouraged—as am I—by the quality of the talks both at Helsinki and Vienna. Hopefully, when they meet again in Helsinki, the talks will continue at a comparable level. Without doubt, the total lack of propaganda emanating from either side in the talks has been extremely helpful.

It is important that we do all we can in the legislative branch as well as in the executive branch to let our adversary know our position in regard to the important negotiations at SALT.

This is a simple amendment which the Senator from Washington very clearly describes as permissive. There is no doubt about that. The Secretary of Defense is not being directed, but merely authorized, to proceed with a single warhead weapon, which I think the Department of Defense is well aware may be needed in the event the SALT talks are successful in calling for a ban on MIRV. We have already gone on record by a vote of 72 to 6 in this body calling for a mutual ban on MIRV—on all offensive and defensive nuclear weapons systems, for that matter. I would want to point out, however, that this single-warhead system, which would be researched and developed by the Department of Defense, could be essential to us in the event the ban is forthcoming on MIRV. As the Senator said, it should go to Minuteman III and to Poseidon. With this new warhead there would be some improvement, of course, in the penetration capabilities.

Mr. JACKSON. I was referring only to the single warhead concept. Since the original Polaris missile deployment, there have been, of course, a number of improvements in the state of the art. The further sophistication basically involves making the warhead smaller with a greater yield. This is the whole art of nuclear weapons technology. This has been accomplished over the years. But I was referring only to the nature of the single warhead.

Mr. BROOKE. I understand. We would be going back to the single warhead concept. But we would have improvements, as the Senator has stated. And now it would be possible to have even further improvement in the hardware itself.

Thus, I am hopeful that the distinguished chairman of the Armed Services Committee would accept this very modest and very simple amendment. And I am hopeful that the Department of Defense, acting under this authorization, would proceed with the vital research in order that we might have this single warhead system. I am most hopeful that the SALT talks will achieve this ban on MIRV, which I consider to be the most destabilizing element of our weapons technology, and something that certainly will not be helpful to us in achieving a mutual deterrent which we both so desperately seek at this time.

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

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The Senator from Mississippi is recognized for 10 minutes.

Mr. STENNIS. Mr. President, this amendment, No. 799, has already been modified by the author, the Senator from Massachusetts (Mr. BROOKE), to strike out on line 1 the word "and," and on line 2 the word "directed." Thus it would read:

> Section 206, the Secretary of Defense is authorized to initiate a program of research to develop at the earliest possible date a single entry vehicle system for the Minuteman III missile and a single reentry vehicle system for the Poseidon missile.

Well, Mr. President, of course this relates to MIRV that we had discussion on here at length last year. The Senator from Massachusetts has done a great deal of very fine work on the matter. As a member of the Armed Services Committee, he has presented various phases of the entire subject to us from time to time. On these matters, as I emphasized in the ABM debate, we must give great consideration and thought to the SALT talks that are going on now. I feel that none of us wants to do anything that would jeopardize the President's position at the talks, or diminish the backing that he deserves from the Nation as a whole. We disagreed as to whether the curtailment of the ABM would do that. However, that was a matter of judgment. That has all been settled.

The MIRV question is a big item at the SALT talk tables and I think it will be for some time.

This amendment authorizes the Secretary of Defense, but does not require him, to have a program for research regarding this single reentry system for Minuteman III. That is something I could not particularly have any objection to, the secretary having the discretionary authority to proceed or not as his judgment and that of his advisers might dictate.

It is rather clear that in the initial stage of these final matters, he has discretionary authority to proceed anyway as a general proposition. Until the research gets up to the certain stage of a line item, why the discretion is there for the Secretary.

This matter of the single reentry system is well known. It is not a new process.

If he was going to proceed on it, it is all right to have statutory authority. But I would not support it under any circumstances if it directed him and made it a requirement in view of all the situations at the SALT talks and for other reasons, too.

As we have it now, with the Minuteman and the Poseidon—and I direct this as a question to the Senator from Massachusetts—all the Senator intends, as this amendment now stands, is to give what I call discretionary authority for the Secretary of Defense to proceed only on a research and development program for this single reentry system. Is that correct?

Mr. BROOKE. The Senator is correct. The amendment is permissive in nature.

Mr. STENNIS. The Senator speaks, of course, for the other Senators on the amendment?

Mr. BROOKE. Yes, I do.

Mr. STENNIS. Mr. President, the Senator from Texas has asked me for time. I will yield such time as he might require to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, I thank my distinguished friend, the Senator from Mississippi. Actually, I think that all of the questions I had to raise have been answered.

I would like to restate the fact that this in no way puts DOD into a straitjacket insofar as dealing with research and development on the MIRV if they choose to do so. But it does authorize a change of direction, if they choose, to the improvement of a single warhead system.

Mr. BROOKE. Mr. President, the original amendment would have directed them to proceed with research and development on a single warhead system without any authorization or funds for such procedures.

The modified amendment does not direct the Secretary of Defense—but it does authorize him—to proceed with research and development of a single warhead weapons system.

Mr. TOWER. It does not preclude him from going ahead on the MIRV.

Mr. BROOKE. No. It has nothing to do with that at all.

I have always advocated and proposed a mutual ban of MIRV. But I have never advocated, nor have I ever proposed, a unilateral ban on MIRV.

Mr. TOWER. I understand. That question has already been answered. I wanted to restate that that is what we

are doing. I think I can say that I am authorized to state that this meets with the approval of the Executive.

Mr. BROOKE. I am delighted to have that information. I thank the Senator.

Mr. STENNIS. Mr. President, I yield 5 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 5 minutes.

Mr. THURMOND. Mr. President, before this amendment was amended, in my judgment, it was an unnecessary amendment and possibly a dangerous amendment. The way it is modified now, the Secretary of Defense is authorized to initiate a program of research, but is not directed to do so.

If we have to go to war, the Minuteman missile and the Poseidon missiles—the latter are missiles on our submarines—are going to be used against the enemy. If they are going to be used against the enemy, why should we not have a multiple-purpose warhead instead of a single warhead?

It does not make any sense to me if we are at war not to use all of our power to win the war and to win it quickly and get out and get through with it.

I am not going to oppose the amendment, because it has been modified. It merely authorizes the Secretary of Defense to initiate this program if he sees fit to do so.

The point I am making is why should we ever weaken our military strength in any way, shape, or form in the event we have to go to war?

Mr. BROOKE. Mr. President, will the distinguished Senator from South Carolina yield?

Mr. THURMOND. Mr. President, I would be very pleased to yield to the distinguished Senator from Massachusetts.

Mr. BROOKE. Mr. President, I think the distinguished Senator from South Carolina makes a very valid point. However, the question before us now under this amendment is simply one pertaining to the possibility of an agreement between the United States of America and the Soviet Union at SALT on banning MIRV.

If such an agreement is forthcoming—and I am sure the Senator would like to see such an agreement—then it would mean that MIRV would be banned and we would have then to rely upon a single warhead weapons system.

All this amendment does is to authorize the Secretary of Defense to initiate research and development on a single warhead system in the event that such a ban is forthcoming. If the ban is not forthcoming, then of course no one is suggesting that we give up our multiple warhead weapons system, namely MIRV.

If the ban does result, then we are back where we were initially with a single warhead concept for Polaris and under Minuteman I, and we do not have an upgrading and a stronger penetration or a larger penetration or a harder target capability.

The program I advocate will enable us, if we do have to fall back to the single warhead system, to have a strong, sound system. It will enable the Department of Defense to initiate research and development in this direction.

No one is suggesting that we give up any of our security or any of our strength or that we stop anything that we are presently doing so far as our MIRV is concerned. I can assure the distinguished Senator from South Carolina of that.

Mr. THURMOND. Mr. President, I thank the Senator from Massachusetts. The Minuteman III is a land-based missile. The Poseidon missile will be a submarine-based missile.

If we enter into an agreement with the Soviet Union, of course the Defense Department will have to conform its weapons to whatever agreement is entered into. But the best way to get an agreement and the best way to get the Soviets to agree to anything is to let them know that we have the power. That is all they know.

The goal of the Soviets is to take over the world. They are all over the world now. They directed and inspired the war in Vietnam. They are now inspiring and causing trouble in the Mideast.

Ever since World War II has ended, the trouble that has been caused in this peaceful world has been caused by the Soviet Union chiefly.

Red China has participated in some places, but not to any great extent compared with the Soviet Union. Red China today is revolutionary and they would like to spread communism throughout the world. But they do not have the power. The Soviet Union does have the power. It has tremendous power. But we will stand a better chance not to weaken our Defense Establishment in any way, shape, or form to get an agreement with the Soviet Union; and I hope we do nothing to indicate to them that we are weakening our Defense Establishment.

As I stated, since this amendment merely would authorize the Department of Defense to act on this subject, I am not going to oppose the amendment, but I see nothing to be gained under it. The only possible objection I would see would be perhaps a psychological effect. I do not want to see the Soviet Union get the idea we are going to weaken our Military Establishment in any way because that will encourage them to be more aggressive than ever before.

I am glad the distinguished Senator from Massachusetts explained the amendment and explained that it merely gives flexibility and that the purpose from his standpoint in offering it is to try to get an agreement from SALT.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. 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 myself 1 minute before we conclude the discussion on this proposal.

Under the circumstances of this amendment, the wording, the substance, and the legislative history, I am glad to join in the support of the amendment as amended.

I yield the floor.

Mr. BROOKE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Massachusetts (Mr. BROOKE), as amended.

The amendment was agreed to.

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

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

PROGRAM

Mr. MANSFIELD. Mr. President, for the information of the Senate, it appears that there is a very strong possibility that tomorrow, following the vote on the Proxmire amendment—for which there is a 3-hour limitation of time, and the time will expire not later than 12 noon—amendments by the distinguished Senator from Oklahoma (Mr. BELLMON), the distinguished Senator from Alaska (Mr. STEVENS), the distinguished Senator from New Hampshire (Mr. MCINTYRE), and others—the Muskie-Smith amendment excluded—can be considered expeditiously and very likely it will be possible to achieve a one-half hour time limitation on such amendments.

Then on Monday, beginning at noon, we have 5 hours of controlled time on the McGovern amendment, on which the Senate will vote on Tuesday morning, after 1 hour of debate on Tuesday morning, coming in at 9 a.m. and voting at 10 o'clock.

That is to be followed by the Proxmire amendment, on which a 1-hour limitation has already been granted.

Then the distinguished Senator from Arkansas (Mr. FULBRIGHT) will have an amendment which will not take too much time.

But it appears as though we will have a very busy session tomorrow, and votes, with Senators who have amendments cooperating to the best of their ability. There is the exception of one amendment, which will have to be worked out between the parties concerned and the manager of the bill.

RESCISSION OF ORDER FOR SATURDAY SESSION

Mr. MANSFIELD. So, Mr. President, with that in mind, and after consultation among the combined leadership, I ask unanimous consent to vacate the order which called for the Senate coming into session on Saturday next.

The PRESIDING OFFICER. Without objection it is so ordered.

ORDER FOR ADJOURNMENT TO TOMORROW AT 8:30 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to vacate the order for tomorrow, which called for the Senate to convene at 9 a.m., and ask unanimous consent that when the Senate completes its business tonight, it adjourn until 8:30 a.m. tomorrow.

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

ORDER FOR CALL OF LEGISLATIVE AND EXECUTIVE CALENDARS ON TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that tomorrow, after the prayer, unobjected-to items on the legislative calendar and the Executive Calendar be taken up.

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

ORDER FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that thereafter there be a brief period for the transaction of routine business, to expire precisely at, if not before, 9 a.m.

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

Mr. MANSFIELD. At which time the time limitation already agreed to by the Senate will begin to run on the Proxmire 3-hour amendment.

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

ORDER FOR RECESS FROM FRIDAY TO MONDAY, AUGUST 31, AT 9 A.M.

Mr. MANSFIELD. Mr. President, in order to expedite matters, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in recess until 9 a.m. Monday.

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

ORDER FOR RECESS FROM MONDAY TO TUESDAY NEXT AT 9 A.M.

Mr. MANSFIELD. Mr. President, just to make sure, I ask unanimous consent that when the Senate completes its business on Monday next, it stand in recess until 9 a.m., on Tuesday, September 1, 1970.

The PRESIDING OFFICER. Without objection, it is so ordered

Mr. SCOTT. Mr. President, if the majority leader will yield, I express the hope that, in view of the cooperation of the Senators involved, it will be possible to get third reading and passage of the pending bill sometime on Tuesday, under this schedule.

Mr. MANSFIELD. Yes; but do not bet on it. Prospects look good, but the way things happen in this body, anything could happen. Hopefully, we can do that.

Mr. SCOTT. I would like to bet on it, but not money.

Mr. MANSFIELD. It is a good possibility.

I would hope that attachés on both sides will notify each Senator individually about the change in plans for Saturday, because some of them had to cancel engagements, and that was the fault of the leadership, especially the Senator from Montana; and other Senators may have commitments which they now can keep.

So I would suggest to the respective secretaries to the majority and the minority that each Senator be notified immediately of the change in plans.

I thank the distinguished Senator from Massachusetts for yielding.

Mr. STENNIS. Mr. President, will the Senator yield? Will the Senator tell me briefly the change in plans? I was not present in the Chamber when the Senator made his statement.

Mr. MANSFIELD. We have received such good cooperation from Senators who have amendments—there is one exception, which the manager and other Senators will have to work out—that we think we can handle most of them tomorrow and Monday. Therefore, in view of that new factor, the Senate will not come in at 10 o'clock Saturday, but will instead go over until 8:30 a.m. tomorrow and then from tomorrow night until 9 o'clock Monday. In the first half hour tomorrow we will take up unobjected to matters on the calendar, the Executive Calendar, and brief morning business, but, as previously agreed to, beginning at 9 o'clock the 3-hour limitation on the Proxmire amendment will begin.

Mr. STENNIS. I thank the Senator.

The PRESIDING OFFICER. Did the Senator from Montana intend that the Senate recess or adjourn until 8:30 tomorrow morning?

Mr. MANSFIELD. Adjourn.

The PRESIDING OFFICER. Adjourn.

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. 798

Mr. BROOKE. Mr. President, I ask unanimous consent to call up my amendment No. 798.

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

The amendment will be stated.

The assistant legislative clerk read amendment No. 798 as follows:

At the end of the bill add a new section as follows:

"No funds authorized to be appropriated pursuant to this or any other Act may be used for operational development, testing, or procurement of any multiple independently targetable reentry vehicle (MIRV) system in which an individual reentry vehicle provides a capability to destroy a hardened target. For purposes of this section, 'a capability to destroy a hardened target' means that combination of warhead yield and accuracy required to generate the equivalent of one-third the level of blast overpressures and related effects considered necessary to enable a single warhead to neutralize a hardened missile silo."

Mr. BROOKE. Mr. President, I ask unanimous consent to modify my amendment No. 798.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The amendment will be stated.

The modified amendment was read as follows:

At the end of the bill add a new section as follows:

"No funds authorized to be appropriated pursuant to this Act may be used for operational development, testing, or procurement of any multiple independently targetable reentry vehicle (MIRV) system in which an individual reentry vehicle provides a capability to destroy a hardened target. For purposes of this section, 'a capability to destroy a hardened target' means that combination of warhead yield and accuracy required to generate the equivalent of one-third the level of blast overpressures and related effects considered necessary to enable a single warhead to neutralize a hardened missile silo."

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

Mr. BROOKE. Mr. President, I yield myself 20 minutes.

CONGRESSIONAL PREROGATIVES AND CONSTRUCTIVE POLICY: THE CASE OF MIRV

Mr. President, I have offered two amendments to H.R. 17123 which deal with U.S. MIRV programs. The second of these proposals would provide a statutory underpinning of a policy already established by the President and endorsed by the Armed Services Committee in its action limiting work on ABRES, the advanced ballistic reentry systems project. It would confirm the U.S. commitment to a retaliatory, rather than a first-strike MIRV program.

The Department of Defense has stated no objection to the policy expressed by this amendment or to the technical provisions it contains. Indeed, I should stress that this amendment was revised substantially in extended discussions with officials of the Department. It was changed to satisfy every technical or substantive issue raised by the Department. In consultation with DOD I have drawn this amendment with great care to be sure that it in no way impedes or disrupts existing or planned MIRV programs.

This amendment would simply implement existing national policy to refrain from a hard-target MIRV capability; it would establish a meaningful ceiling which the Department will surely agree affords ample latitude for a retaliatory MIRV, as in our present Minuteman III and Poseidon systems, and yet avoids the potential instabilities associated with a MIRV system capable of destroying hardened missile silos.

In short, this amendment would be a concrete congressional step to give content to the declaratory policy already long proclaimed by the executive branch; namely, that the United States is pursuing a strictly deterrent, second-strike strategy and will not seek destabilizing first-strike capabilities.

In stressing this point before the Armed Services Committee Secretary Laird testified that the President "has made it perfectly clear that we do not intend to develop counterforce capabilities which the Soviets could construe as having a first-strike potential." We can all appreciate the Secretary's own concern about the destabilizing implications of Soviet weapons with a counterforce potential against U.S. strategic forces. This no doubt makes him especially sensitive to the dangers of proceeding with an American hard-target program which would increase the risk that the Soviets might adopt a reckless "launch-on-warning policy" or undertake further offensive deployments.

Secretary Laird has, however, stated a procedural objection to this amendment on the basis that it allegedly sets "the precedent that Congress will establish the general characteristics of U.S. military systems."

Congressman Laird would never have agreed with Secretary Laird. Neither should anyone else who values the Legislature's constitutional responsibility and authority to determine overall policy for the American Armed Forces. While a Member of the House of Representatives, Mr. Laird repeatedly and vigorously fought for an affirmative congressional role in determining national strategic policy and in defining the weapons systems to implement that policy. For example, as a member of the House Appropriations Committee, Congressman Laird authored an amendment specifying that, rather than develop the mach 2.5 version of the TFX proposed by Secretary McNamara, the Department of Defense should develop and procure a mach 3 aircraft. Congressman Laird's proposal represented a far more detailed specification of weapon characteristics than is incorporated in either of my amendments regarding MIRV.

In 1967 Congressman Laird was one of the most prominent advocates of the view that Congress should press the Executive to expedite work on a supersonic strategic bomber as opposed to continued reliance upon subsonic aircraft for this mission. In addition to doubling the budget request for development of advanced manned strategic aircraft, the House Appropriations Committee sharply criticized the Executive for failure to heed previous congressional guidelines on the number of strategic bombers to be retained in active service, a complaint voiced strongly by Mr. Laird at that time.

Earlier, Mr. Laird had attempted to eliminate funds for several squadrons of Titan missiles, preferring to rely upon the smaller, solid-fuel Minuteman system. Once more, this act represented a clear judgment on his part that, as a Member of Congress, he could and should give preference to a weapons system whose characteristics he considered superior to those of a competitor.

Speaking in the House on June 25, 1963, Congressman Laird pointed to the work of his appropriations subcommittee on the Polaris nuclear submarine program and noted that, some 5 years before, the committee had approved more than was requested for leadtime items for that important system. He properly claimed, as have other knowledgeable Members of Congress, that the Legislature had served the national security well by expediting research, development, and deployment of the Polaris system. Clearly, this action represented an important attempt by the Congress to specify which weapons should be emphasized in composing America's strategic mix.

That same speech stressed that Congress and its committees must deal with defense matters on three interrelated levels. First that of strategy, second, that of tactics and, third, that of weapons, materiel and manpower. At no time did Congressman Laird shrink from the hard decisions on weapons characteristics or other issues which he then recognized were unavoidable if Congress was to meet its high responsibilities. For example, Mr. Laird was instrumental in the Defense appropriations subcommittee's approval of extra funds for preproduction activities on an anti-ballistic-missile system, concluding, in contradiction to the executive branch, that a system of the characteristics and functions of the Nike X should be expedited.

Similarly, Congressman Laird was a vigorous proponent of energetic development of a military space capability. He was instrumental in the Appropriations Committee's 1965 directive that the Department of Defense focus funds upon and accelerate the manned orbital laboratory program. This action by the Committee, no less than on other occasions, constituted a congressional attempt to set the general characteristics of U.S. military systems. Indeed, Mr. Laird's efforts in this case would have specified very far-reaching criteria for a military system, since it would have required emphasis on a system capable of operating in outer space and would have added the costly and controversial capability of including a man in the system.

In short, as Congressman Laird's own performance in the House illustrates, it is by no means unusual for Congress to "establish the general characteristics of U.S. military systems." In the Senate Armed Services Committee this year we have done it in a number of instances, favoring the AX aircraft over the Cheyenne helicopter system, limiting the ABM system deployment to defense of the deterrent instead of thin area defense, and taking comparable actions on numerous other systems.

A perennial issue of this character is the question of a nuclear navy, especially nuclear powered aircraft carriers. As Members of Congress know, the Legislature has had a great deal to do with the technical features of our naval fleets.

Unless the Congress addresses the composition and characteristics of the Armed Forces, its constitutional power is very nearly meaningless. Therefore, I am somewhat appalled that the Secretary would suggest that Congress should not establish the general characteristics of U.S. military systems. His very letter acknowledges that the policy set forth in the amendment parallels the administration's own declarations that the United States will refrain from a hard target MIRV capability program. In other words, the Department in no way suggests that this amendment contravenes existing policy. It does not disturb our present MIRV programs in any way. It is in fact a vital reinforcement to our commitment to successful negotiations in SALT and to stable nuclear deterrence based on a credible second strike capability.

As I have repeatedly stressed, this amendment would merely insure that any MIRV systems which are deployed are in fact compatible with our declared retaliatory policy and do not undermine strategic stability by becoming potential first-strike weapons.

I cannot believe that any Senator or national spokesman would call into question America's longstanding retaliatory posture by voting to pursue an unattainable and highly dangerous first-strike capability.

The important contribution of this amendment is to give meaning to our declarations that we will not develop capabilities threatening the Soviet retaliatory force. There has never been an explicit definition of what we mean when we say we will not pursue the hard-target MIRV capability. This amendment is essential if we are to make those declarations credible. No one could deny that the definition allows ample capability for the retaliatory mission. It would simply establish a threshold well below the level required to destroy hardened missile silos.

The distinction between these two types of capabilities is precisely the one which the Defense Department emphasizes in proclaiming that our first generation MIRV systems are strictly retaliatory, stabilizing, deterrent weapons not capable of a counterforce first strike. That is an accurate description of existing MIRV capabilities and the threshold suggested in this amendment in no way limits our development and deployment of a retaliatory MIRV system.

I know that during much of the 1960's Representative Laird was reluctant to forgo the option of an American counterforce capability. But Secretary Laird has wisely recognized that nuclear parity is a fact and that efforts by the Soviet Union or the United States to obtain a first-strike posture merely generate new pressures for an arms race and new dangers for world peace. Perhaps the best description of the purpose of the strategic arms limitations talks is contained in the phrase "institutionalization of strategic parity." Secretary Laird, more than anyone else, has emphasized how destabilizing potential counterforce systems are, in his repeated criticisms of the possible hard-target implications of the Soviet SS–9.

I find myself in complete agreement with the remarks made by Representative Laird 7 years ago when he said:

> Obviously, if the only capability we are serious about is a second strike capability, there seems to be no logical reason for spending vast sums of money for first strike weapons.

A second-strike policy is the confirmed position of the U.S. Government. It has been enunciated and endorsed by President Nixon as well as by the Secretary

of Defense and their predecessors. I believe it would be a great disservice to American security even to hint that the United States was inclined to seek, under some circumstances, a first-strike capability.

By adopting the proposals I have made regarding MIRV, Congress will be lending force and credence to our country's second-strike posture. We can contribute immensely to the long-term prospects of strategic arms limitation and nuclear stability.

In closing, I am moved to cite the sage counsel of one of the ablest military leaders of our time, Adm. Hyman Rickover. In congressional testimony 3 years ago, Admiral Rickover urged Congress to exercise independent judgment in matters of national security, to demand full information, and to assert its own prerogatives in the interest of forging sound national policy. Representative Laird himself inserted this critical comment by Admiral Rickover in the CONGRESSIONAL RECORD. The admiral expressed his deep concern about the tendency of Congress and its committees merely to accept the standard line of the executive branch:

> The theory is that "mother knows best"; that Government departments are best able to judge issues, setting up a party line and telling congressional committees, "This is it. We know the story, and there is no use going into it."
>
> You will find that it will become increasingly difficult to uncover the real pros and cons that are considered—or not considered—in arriving at the decisions presented to you for ratification. In other words, Congress is merely to listen to the official position. This is tantamount to saying that the Department is capable, but members of Congress are not capable of judging the issue; that the Department must do Congress' thinking for it; that the Department can make a better decision than Congress is able to do. Now, most members of Congress are lawyers or experienced professional and business people. I am sure you have enough wit and intelligence to judge things for yourselves.

Later in the same testimony, Admiral Rickover advised Congress to demand full information on which to base its own intelligent judgments. He said:

> Unless you maintain this right by exercising it, it will be lost—and I am afraid it is being lost. I am sure you are aware of the decline of parliamentary systems all over the world. I hope our Congress will take steps to prevent such a decline in the United States. We were the first to establish representative democracy in modern times; let us be the last to permit its decline.

Surely, Congress is not so contemptuous of its own capacities that it will hesitate to judge an important issue of national security on its merits. The Department of Defense has raised no objection to this amendment on the merits, and I am confident that Senators who study it will lend their support. With all respect for our good friend, Secretary Laird, the procedural point he has raised against these amendments is too weak for serious consideration. His record as a legislator makes clear that he would have rejected such a procedural contention while he was serving in Congress. He was right then and he is wrong now. In support of his wise policy of today—a secure second-strike capability for America—let us follow his wise counsel of yesterday—strong and explicit congressional leadership.

The PRESIDING OFFICER. The Senator's 20 minutes have expired.

Who yields time?

Mr. JACKSON. I yield myself 10 minutes.

Mr. President, I was pleased to join the Senator from Massachusetts and the distinguished chairman of the Committee on Armed Services in accepting the amendment authorizing research and development on a single reentry vehicle for the Minuteman III and Poseidon missiles. This addition to the bill has the effect, it seems to me, of indicating to the world that the Senate of the United States is concerned to keep options open in the configuration of our strategic forces. One such option, which could prove of significance if and when there is a real possibility of an agreement to limit MIRV, is suggested by the authority contained in the amendment. As I pointed out previously, however, the Department of Defense is already empowered, without specific authorization from Congress, to initiate programs of this sort that are essential to the maintenance of a sound defense program—a power limited by congressional review.

The second amendment, offered by the distinguished Senator from Massachusetts, and which is now pending, is much more problematic. This amendment would prohibit the improvement of MIRV yield and accuracy combination so as to keep them ineffective against hard targets. While we have no plans at present to undertake the programs that would be prohibited by this amendment, I am bound to say that a limitation of this kind would be unwise, indeed.

First, to the extent to which the amendment would impose a limitation of a technical nature—on, say, such programs as guidance technology—I oppose it on the ground that questions of this nature are best handled in the executive branch, or at the very least, after review by the Committee on Armed Services.

Second, to the extent to which the amendment is a technical means to the affirmation of a specific strategic doctrine, it should be opposed until there has been full and careful consideration of the doctrine itself. We are not pursuing counterforce programs at present, and I agree in this. But I would not consider it wise to enact a statute—by means of a technical amendment to a procurement act—that determines in law what our strategic policy ought to be, however much one might agree with the policy itself.

This is not, Mr. President, the manner in which questions of the utmost importance should be decided, and the nature of our strategic posture is such a question. We are now involved in serious negotiations with the Soviet Union aimed at the limitation of strategic arms. Our defense policies must now be viewed in the light of their possible impact on our effort to negotiate significant arms control agreements. An effort by which Congress joins with the executive, and acts with great care, in this common goal will brighten our hopes for the future.

Mr. President, I yield back the balance of the time that I reserved to our side.

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

Mr. JACKSON. All right, I will continue on my time. I yield to the Senator from Massachusetts.

Mr. BROOKE. The Senator from Washington stated that this is a subject matter that should be left to the executive branch. Is that correct? Is that a correct interpretation of his remarks?

Mr. JACKSON. That is correct. In connection with the pending negotiations, I do not believe that we should endeavor to put the President and his representatives under severe constraints in connection with those negotiations. The Senator knows that all of these problems are susceptible of being considered in connection with the SALT talks. I would not think it wise for the legislative branch to intervene by limiting the options of the President of the United States with regard to these negotiations.

Mr. BROOKE. The Senator is well aware of the fact that the President and the Secretary of Defense both stated publicly, and it is certainly well understood by the Soviet Union, that the United States does not seek a first strike capability. Is that not true?

Mr. JACKSON. That is correct.

Mr. BROOKE. And that the Secretary of Defense, before the Armed Services Committee, made it clear that it is the policy of the U.S. Government not to seek a first strike capability. As a matter of fact, a second strike capability is the foundation of our nuclear deterrence. Is that correct?

Mr. JACKSON. There is a vast difference between the indication that we do not seek this capability, and a statute preventing it. That is what we are really talking about.

Mr. BROOKE. Is there any question in the Senator's mind that the United States would, at any time, seek a first strike capability?

Mr. JACKSON. I do not think anyone can answer that question for all time except in the context of the kind of environments we might eventually face, perhaps as a result of failure to reach agreement. This is very much like a management-labor dispute. Can anyone imagine labor and management sitting down at a conference table with labor having given up its strike power—or part of it—before beginning talks or while they are underway, or management having first given up part of the inventory which it had built up in anticipation of the strike?

If we are going to get an agreement with the Soviet Union, and if it is to cover a wide spectrum of strategic options here, we simply have to leave all the options open.

I do not follow basically the reasoning here. Over a period of years we sent a signal to the Soviet Union, in which we indicated we were not developing a first strike capability.

Years ago we told the Soviet Union, in the development of our Minuteman force, that we were not going for any first strike capability. What has happened? While we have done this in good faith over the years, the Soviet Union, despite that clear signal from us—that we are

not trying to develop a capability to knock out Soviet hardened sites—their response is to deploy around 300 SS–9's each with a throw weight of 25 megatons or three 5 megaton multiples.

I do not know what kind of interpretation they will place on some statutory limitation, after we have, by a most positive act—that is, the way in which we have deployed our strategic forces—made it unequivocally clear that we do not seek a first strike capability.

Mr. BROOKE. Is it the Senator's contention that the Soviet Union is seeking a first strike capability?

Mr. JACKSON. I do not know how the Senator can interpret the capability, which they have developed, except as suggesting that they are working toward that objective. I am not saying that they now have such a capability; but, surely, if it is not for that eventual purpose, then I would say to my friend from Massachusetts they are making very unwise use of fissionable material and delivery capability because one would not use a 25-megaton warhead against a city or a populated area; he would use it only against hardened targets.

Mr. BROOKE. Could not the Soviet Union consider the MIRV'ing of our Minuteman III or the MIRV'ing of our Poseidon force as tantamount to securing for ourselves a first strike capability?

Mr. JACKSON. Let me answer that: Long before we ever talked about MIRV, they were going ahead with a 25-megaton warhead. I want to point out to the Senator that the Soviets cannot claim they went ahead on the SS–9 because of possible MIRVing capabilities on our part. Such a response makes no strategic sense. Our MIRV does not threaten their SS–9, and even if it did their response would not be to invest $9 billion in the SS–9 force.

Mr. BROOKE. Could we not go from a Minuteman force, plus the bomber fleet, to a submarine fleet? Do we not have several options which might, at some point in the future, be regarded by the Soviets as tantamount to a first strike capability?

Mr. JACKSON. No, sir. The bomber force has no first strike capability. The Polaris system does not have a first strike capability; neither does the Minuteman force.

Mr. BROOKE. Is the Senator prepared to say, in his opinion, that the Soviet Union has been aiming for a first strike capability on its part?

Mr. JACKSON. No, sir.

Mr. BROOKE. All right.

Mr. JACKSON. I made it very clear. I made the clear distinction. I said that they do not now have a first-strike capability. I did raise the question of whether they are moving toward a first-strike capability; otherwise, why would they be deploying the SS–9 in such numbers, a route that we avoided and, in fact, refused to follow a decade ago. That was a decision made in 1960–61.

Mr. BROOKE. The Senator has said that in his view the Soviet Union does not at this time have a first-strike capability, and that the United States at this time does not have a first-strike capability.

Mr. JACKSON. Yes.

Mr. BROOKE. Is it the Senator's contention that a first-strike capability is negotiable in the SALT talks?

Mr. JACKSON. Well, I would hope that mutual limits on the procurement of weapons capable of destroying hard targets are negotiable. This would be the most helpful limitation.

Mr. BROOKE. Would the Senator comment specifically with regard to a first-strike capability? Is this a subject of negotiation? Is it not very possible that if Soviet Union thinks that by refusing to deny ourselves a first-strike capability, we might proceed with a first-strike capability, they would then be tempted to fire without warning?

Mr. JACKSON. I am sure that if the Soviet Union would accept limits on the SS–9 deployment, we in turn could work out something in connection with the ABM deployment. The whole purpose of the ABM effort, in terms of the SALT talks, is to convince the Soviet Union that they should not continue with deployment of the SS–9, because they are spending $30 million for an SS–9 and we can counter that for a lot less.

Mr. BROOKE. If the United States and the Soviet Union both do not have a first strike capability—and we both agree that they do not—then it would seem to me there would be no opposition to an amendment which merely makes it statutory that the United States does not seek a first strike capability. I think the Senator from Washington will certainly agree that if either side possesses a first strike capability, it would be destabilizing. Is that correct?

Mr. JACKSON. Surely. I want all of this negotiated. And I hope that we can reach an effective and secure agreement to achieve what the Senator has in mind.

Mr. BROOKE. If that agreement is not reached during that negotiation, certainly the Senator does not want either side to continue toward a first strike capability.

Mr. JACKSON. Mr. President, the Senator is laying down a unilateral constraint which prevents the President of the United States, or his appropriate representatives, from negotiating this matter.

Mr. BROOKE. Mr. President, it only seems to me that if we secure a first strike capability and the Soviet Union knows about it, what we can expect of the Soviet Union is that they might fire without warning. We want to avoid this kind of destabilization.

Mr. JACKSON. Mr. President, let me say to my friend that the United States of America from that day in 1945, well into the early 1960's, had the means of utterly destroying the Soviet Union.

Mr. BROOKE. We know that.

Mr. JACKSON. Just a moment. Mr. President, to say that the United States, if it had a first strike capability, would attempt to strike the Soviet Union and that therefore the Soviets would strike the United States without warning does not make much sense.

The Soviet Union was aware that we had this capability from 1945 to the early 1960's, and we did nothing about it.

In that time, Mr. President, the Soviet Union took all sorts of risks. They kept pushing and pushing. We know what happened in Western Europe. We know what happened in Korea, and so on. They took these risks despite the fact that the United States had the means of totally destroying them.

We practiced restraint. No one is going to make a convincing argument that, because we go about trying to protect our deterrent, we are doing something which would cause the Soviet Union to make a first strike against us.

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

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

Mr. BROOKE. Mr. President, all I am saying is that there is a danger that if the United States would secure a first strike capability, the Soviet Union could fire without warning.

The Soviet Union should recognize this danger also. They must know that if they develop a first strike capability, then we change our policy to one of "fire without warning," even though we have shown this magnificent restraint to which the Senator referred.

Mr. JACKSON. Mr. President, I may say that we had a first strike capability from 1945 until 1962. We did not strike. If the shoe had been on the other foot, I wonder what would have been the situation.

Mr. BROOKE. We were not as close to parity then as we are now.

Mr. JACKSON. Mr. President, I yield to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, I think the Senator from Washington has stated his case with great restraint and in very tempered terms. I would perhaps go a little further and say it is true that neither country now possesses a first-strike capability. It is certain that the United States does not possess a first-strike policy. I think that is important.

The fact is that reading from our present intelligence, even on a nonclassified basis, it becomes obvious that what the Senator from Washington says is true, that they are building a first-strike capability.

By the mid 1970's they may very well have a first-strike capability to the extent that they could destroy our capability to retaliate with absolute impunity.

I think the term "first strike" has been thrown around too long. If the Soviet Union launched an attack against us and tried to destroy our capacity to retaliate, we might want the capacity to destroy that weapon held in reserve. That does not necessarily mean a first-strike policy.

I think it is perfectly obvious, as the Senator from Washington pointed out, the United States does not have a first-strike policy. The Senator from Massachusetts admitted that we acted with restraint. We have been sorely provoked time and time again. There is not one instance since World War II of U.S. provocation of the Soviet Union. However, there are numerous instances of the Soviet Union provocation of the United States. And we have acted with restraint.

The Senator from Washington would agree that in 1948 when we were sorely

provoked, we could have fought a preemptive war and won it hands down.

I think it is naive to think that we have to give some signal of sincerity and some evidence of good faith to the Soviet Union or else they will try to strike us without warning, thinking we have designs on them. They know we do not have designs on them.

The Western powers have spent a great deal of their energies and resources not only in liquidating their Colonial empires but also in trying to shore up their defenses to the greatest extent possible. On the other hand, the Soviet history in that period of time has been one of absolute imperialism.

I think we are fools if we think that simply by taking unilateral action to reduce our capacity, we will convince the Soviets and that they will do the same.

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

Mr. JACKSON. Mr. President, I yield an additional 5 minutes to the Senator from Texas.

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

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

Mr. TOWER. I yield for a question.

Mr. BROOKE. Mr. President, does the Senator agree that we have a second strike strategy?

Mr. TOWER. We have a second strike policy. I think that the configuration and deployment of our military forces make it adequately plain that we have no intention of having anything other than a second strike policy.

Mr. BROOKE. Mr. President, that in fact amounts to a second strike strategy.

Mr. TOWER. We do not intend to strike first. I can see no situation in which we would strike first.

Mr. BROOKE. Does the Senator agree that our second strike strategy might be less credible if we develop a first strike credibility?

Mr. TOWER. I would rather use the term "countercharge" in the course of the development of second strike capability. We may have to have a Nike system at the weapons sites. And I see nothing wrong with that.

I do not think that the Russians, even if we develop the capacity—which we will not do, and I do not suggest that we do—but even if we develop first strike capability across the board, I do not think that the Russians seriously believe we would ever use it.

The Russians read history and they do not read the history they put in the textbooks and teach their students. They read the unexpurgated version of it. They are no fools. I think they do have a sense of history. I think they do understand that psychologically they have been superior to us in terms of their waging of the cold war against us.

Mr. BROOKE. Mr. President, the Senator from Texas has indicated that there is a distinction between a first strike policy and a first strike capability. I think he has raised a point.

Mr. TOWER. Yes.

Mr. BROOKE. How can we be assured that the Soviet Union understands this distinction between first strike policy and first strike capability? How can the Soviet Union be sure that if we achieve, obtain, or develop first strike capability, the controlling factor will still be our second strike policy rather than our first strike capability?

Mr. TOWER. Mr. President, is the Senator suggesting that if we develop a first strike capability, the Soviet Union will assume that that is our policy?

Mr. BROOKE. Mr. President, is that not a possibility?

Mr. TOWER. I think it is a possibility. But I think it is highly improbable. As I say, based on history, experience, and our own restraint when we had actual superiority and when we had the capability to reduce the Soviet Union to a shambles, we did not do so.

Mr. BROOKE. Does the Senator from Texas feel the Soviet Union has not shown restraint?

Mr. TOWER. I do not think the Soviet Union has shown restraint. As a matter of fact, the Soviets are obviously afraid. They understand they cannot secure their hegemony in this world without resorting to military force. They proved it in Budapest; and they proved it in Prague. What was happening in Prague? Did the Czechs say they were going to abrogate the Warsaw pact or opt out of the Communist sphere, or establish a capitalist system? No. They asserted that their Government was still Communist and that their economic system was still socialist; but they wanted to liberalize some of their institutions. The Soviet Union feels so insecure in its ability to maintain its programs, that they had to resort to armed force.

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

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

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

Mr. JACKSON. We will divide the time equally.

Mr. BROOKE. The fact remains that in all the time we have been in Vietnam, to my knowledge, there has not been one Soviet soldier in Vietnam. Is that correct?

Mr. TOWER. Not to my knowledge. We have not discovered evidence of any.

Mr. BROOKE. We have not discovered evidence of any.

Mr. TOWER. Nor any Chinese soldiers, nor North Korean soldiers, nor Czechs, nor Albanians.

Mr. BROOKE. Which does indicate some restraint, does it not?

Mr. TOWER. No, it does not, because they operate a little differently than we operate. They establish a clandestine infrastructure with military arms. That is how they secure their ends. They have not extended their control over any territory or people beyond the use of military means, but they use clandestine infrastructures with military arms, or revolutionary warfare directed from the outside.

As long as they can direct this vast apparatus from the outside they do not need the overt action of troops from other countries. But we discovered the considerable presence of North Vietnamese troops in South Vietnam. Regardless of what is said about the Saigon government, the fact is there were apparently more North Vietnamese that wanted to live in the south than there were South Vietnamese who wanted to live in the north because there was no movement of South Vietnamese into North Vietnam after the DMZ was established, but about a million North Vietnamese left North Vietnam. One could consider that not only covert action but overt, as well.

Mr. BROOKE. It seems that whenever we get into a discussion of the nuclear arms race or relationships between the United States and the Soviet Union we become bogged down in the same old, rather hopeless approach to the problem.

I personally have taken great heart from the potential success of the SALT talks. I am sure the Senator from Texas has done the same thing.

Mr. TOWER. I am delighted with the progress.

Mr. BROOKE. The fact that these talks have been lacking in propaganda has been most encouraging. I have taken heart from the meeting of Willy Brandt in Moscow and the apparent agreement which resulted between the Soviet Union and the West German Government. I have taken heart from the ratification of the Nuclear Test Ban Treaty, and the Treaty for the Nonproliferation of Nuclear Weapons. There are many things that give us hope.

The other side of the coin is that we should not have any hope. There are some who say that we are going to be eternally suspicious of the Soviet Union and that the Soviet Union is going to be eternally suspicious of the United States. In the meantime, what is happening?

Since World War II the Government of the United States has spent more than $1 trillion in defense, and the Soviet Union is not lagging far behind in this expenditure. It seems to me we should be willing and eager to do all we can to control the arms race that is going on and that could lead to a nuclear war.

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

Mr. BROOKE. I yield.

Mr. TOWER. Talking about the relative expenditures of the Soviet Union with those of the United States, I might remind the Senator from Massachusetts that the Soviet Union gets everything it wants at cost, and their costs do not run as high as costs in our capitalist system where we pay our workers more money.

Then, look at it in terms of the gross national product which the Soviet Union spends on arms and the gross national product which we have spent on arms and one will find that they have been more active than we.

Mr. BROOKE. It does not matter if we are spending more of our gross national product or whether they are spending more of their gross national product. The fact is that we are both spending billions and billons of dollars in an insane nuclear arms race, and that it has to stop.

Mr. TOWER. We did not start it.

Mr. BROOKE. I do not care who started it, we or they. The fact is that it is still going on. The SALT talks give us some hope that it may be stopped.

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

Mr. BROOKE. Mr. President, I yield myself 5 additional minutes.

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

Mr. BROOKE. It seems to me there is an alternative to what the Senator from Texas has said. Maybe he does not agree with me; and the Senator from Washington may not agree with me. I am not suggesting that if we achieve a first strike capability, automatically the Soviet Union is going to fire first without warning. I pray to God that does not happen, for if it does the world will not be worth living in anyway; it will not matter who has superior weapons for neither side will be able to live on this earth.

Then, there is the other point. As we continue with our Minuteman II and III force, and Poseidon production, getting ever closer to a first strike capability, what will the Soviet Union have to do? It will have to respond by building more accurate SS–11's, SS–13's, SS–19's, and whatever one wants to call them with more megatonnage. And what will we have to do? We will have to get larger Minuteman III's or Minuteman IV's, and MIRV's. We will go on and on, and they will go on and on. We will spend trillions of dollars in an insane nuclear arms race.

What I am suggesting by this very modest amendment which I propose is that the legislative body—not the executive branch because the executive branch has already said it does not seek a first strike capability—but this legislative branch should say that we do not seek a first strike capability. Let it be known to the Soviet Union and to the world that we want to end this nuclear arms race in which we are engaged and which is causing so much suffering to millions of people, not only in the United States, but all over the world. That is all I propose.

Mr. TOWER. Mr. President, will the Senator yield to me for 3 minutes?

Mr. JACKSON. I yield to the Senator from Texas 5 minutes.

Mr. TOWER. Mr. President, I think basically there is a striking difference in the way we view the Soviet Union response to the things we do. I never for 1 minute would question the motivation of the distinguished Senator from Massachusetts. I think he is well motivated. I think he is a great patriot. He has already proved that in his personal life and in his personal experience. He has done more here for his country than I have and I want to make that adequately clear.

I think we have a different understanding of some things. But I do not accept the notion, and I think many of us do not accept the notion, that if we will take this situation and legally bind ourselves against making progress in some field of weapons development or deployment, we will convey to the Soviet Union a signal of good will and sincerity that will remove any suspicion they have of us and make them more amenable to the consideration of a limitation of strategic arms.

Further, it is said that if we show some restraint in the development of new arms systems, they will do likewise. I must say that I can accept neither of those premises. To begin with, we have exercised great restraint. In the past few years and the past decade we have slowed down our development of new weapons systems. We have not developed more than two or three significant new weapons systems in the last decade, and the Soviet Union has developed several.

We have not developed an air-to-air interceptor since 1955. The Russians have developed eight.

We have been dismantling our Navy. We have been retiring ships from operational duty. The Soviets, on the other hand, have gone into extensive expansion of their shipbuilding programs and the modernization of their navy.

We have stopped the deployment of intercontinental ballistic missiles at 1,054, and the Russians have now gone beyond that, and are still going.

We have never gone into extensive development toward a first strike capability that they have—not in recent years—and they continue apace to deploy the SS–9, which is a formidable piece of weapon.

It is my feeling that should we, through statutory action, legally preclude the United States from doing things which the Soviets are not precluded from doing legally, then they will interpret this as a sign of weakness and they will have little feeling but contempt for us; and that it will not hasten the day—indeed, it will postpone the day—when they will sit down and make some meaningful settlement with the United States on the limitation of arms. The only thing they understand is toughness.

One advantage they have over us, being a dictatorship, or an oligarchy, or whatever you want to call it—a country ruled by a very few and a country not subject to the restraints of constitutional, popular government—is that they can do anything they want to do; and we had better place ourselves in a position of being able to move with some degree of dispatch and lack of inhibition and restraint to develop new weapons systems if indeed it appears in the interests of the United States and the free world to do so.

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

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BROOKE. I wish to thank the distinguished Senator from Texas for his very kind reference to my patriotism, and to thank him for for entering into this colloquy. He is a very able and a very skillful debater and has great knowledge of our military weapons systems. I think the colloquy has been very helpful.

I would like at this time to direct a question to the able Senator from Washington (Mr. JACKSON): Is it just possible that the large SS–9's to which the Senator referred in our colloquy are designed for a so-called damage-limiting function—that is, weapons to be used against U.S. weapons in the event that war actually begins?

Mr. JACKSON. Mr. President, I suppose one could so speculate. That would not be the kind of conclusion I would come to, nor is it the conclusion which most strategic weapons experts—and I am not a strategic weapons expert—would come to.

I must say that most people who were hoping for some kind of signal from the Soviets that all they wanted was to protect their own interests—which is understandable—and to have a deterrent which was survivable, were somewhat dismayed—and I guess that would be putting it mildly—when the Soviets made a decision to go ahead with this huge missile system.

I, for the life of me, cannot understand what possible use they would have for the SS–9 other than to use it against very hard targets.

As I have said, I was involved, way back in the 1950's, when we discussed, in the Joint Committee on Atomic Energy, whether we should have available for our arsenal weapons with very substantial megatonnage. We made a decision not to go that route, even with our manned bombers.

I had hoped, of course, that the Soviet Union, in connection with their response, which was to be expected, to build up their own missiles, would have followed the route we followed. That certainly would have been a clear signal that they wanted to reach some kind of agreement.

When one stops to consider the amount of money that the Soviet Union has invested in the SS–9 alone, one cannot help but be disturbed. My recollection is that they have invested, based on the best evaluation that can be made, about $9 billion in the SS–9 force. This is an investment, of course, that is substantial indeed. This is an investment that it was not necessary for them to make if their sole purpose was to achieve parity and to have a force with which they could protect their own vital strategic interest. They have, after all, a wholly adequate deterrent force in their other land-based missiles—more than 1,000 of them.

I think the SS–9 simply cannot be explained away, when one just faces the cold, hard facts of its great size. It is hardly in keeping with the expected goal of a survivable force with which they have in mind only an ability to retaliate against a possible surprise attack by the United States.

I say they cannot, with any objectivity, assume that the United States is bent on a first-strike capability when one reviews the past history in which we had a monopoly and during which time they had a very small nuclear force.

The PRESIDING OFFICER. The 5 minutes of the Senator from Massachusetts have expired.

Mr. BROOKE. Mr. President, I yield myself 5 additional minutes.

I feel that the colloquy entered into by the most able and distinguished Senator from Washington and the very able and distinguished Senator from Texas have been very healthy and very helpful.

I feel very strongly that Congress has a joint responsibility with the President and the executive branch of Government to establish the general characteristics of military weapons systems. We must not shirk our responsibility. I think that, contrary to what Secretary Laird said in another statement to the distinguished chairman of the Armed Services Com-

mittee concerning both of the amendments I have offered today, this is a matter for the Congress as well as for the Department of Defense.

If that were not true, all we need do is act upon those recommendations submitted to us. Without question, the weapons systems and their characteristics would be decided upon solely by the Defense Department.

My amendments are an attempt to reassert the constitutional prerogatives of the Congress.

One of those amendments, of course, has been accepted with modifications. A second amendment, having to do with first strike capability, is one which deals with a very vital and very important subject—a matter which goes to the heart of the arms limitation talks, and really to the question of peace or extermination.

I feel that it is a most important subject. And I realize that on this highly technical matter we have not had an opportunity for hearing before the Armed Services Committee. Therefore, I would like to ask the distinguished chairman of the Armed Services Committee, who is present in the Chamber, whether we could have an agreement at some time to have hearings on the subject matter of the present amendment.

Mr. STENNIS. Well, I want to be frank with the Senator. I feel as though I have already said about all I can say now on hearings, and guaranteeing hearings. I would not say I was not going to have any, but we have got this bill for 1972 coming up, selective service coming up, the question of a voluntary army coming up, alleged rumors of more than one pay bill coming up, and a great deal many matters.

I am not indifferent to the Senator's request at all, but I just believe I ought not to make any commitment. We already have a subcommittee, headed by the Senator from Washington (Mr. JACKSON), on the SALT talks. Would the Senator from Washington care to respond?

Mr. JACKSON. Yes.

Mr. President, will the Senator yield?

Mr. BROOKE. I yield to the Senator from Washington.

Mr. STENNIS. On my time, if he cares to.

Mr. JACKSON. First, Mr. President, let me say, as I said in connection with the earlier amendment, that I compliment the able Senator from Massachusetts for bringing these matters before the Senate. I think it is healthy that we have a good colloquy and a good discussion. I know how sincere the Senator is, and I repeat what I said earlier: I disagree with the means the Senator has in mind of trying to accomplish the result which we all want to achieve, an agreement to limit strategic arms.

I shall be happy—it is not possible this fall, but after the first of the year—to go into this matter of MIRV and its role in the Strategic Arms Limitation Talks. As the Senator from Massachusetts knows, I would say that much of the discussion would have to be in executive session. We could have some open sessions where we have outside witnesses.

I would be happy to explore the whole area of MIRV and the ramifications of the pending amendment and other possible amendments that the Senator might have in mind for the future.

I think what has been said here today lays a foundation for an ongoing discussion in the Strategic Arms Limitation Subcommittee, of which the Senator from Massachusetts is a member. I would be very happy to get into it at an appropriate time after the first of the year.

Mr. BROOKE. Mr. President, I am very pleased that the distinguished chairman of the Subcommittee on SALT feels this way about this subject, and that he would be willing—if not before then certainly at the beginning of the next session—to have hearings on this important subject.

I think it is a matter we should not dismiss. It is a matter on which more of our colleagues should be thoroughly informed. It is something that is going to be with us for a long period of time, and it is something that deserves our very serious consideration, and as much knowledge as possible on the complex matters of MIRV technology.

Mr. JACKSON. Will the Senator yield at that point?

Mr. BROOKE. I yield.

Mr. JACKSON. Without getting into any of the classified aspects of our hearings before the subcommittee, I think it is fair to say that the distinguished Senator from Massachusetts has already raised questions about certain aspects of MIRV as it relates to the SALT talks. I think we are in a position to go on from there, and, especially based on the colloquy here today, to dig deeper and spend some appropriate amount of time on this subject.

Mr. BROOKE. Mr. President, I thank the very able Senator from Washington. Though he claims not to be an expert on these matters, he is perhaps as knowledgeable or more knowledgeable about them than any of the rest of us in the Senate. He has spent a great deal of time on them; he has done a lot of personal research, and I am very grateful that he has been willing to spend so much time in colloquy on both of these amendments today.

Mr. President, I feel very strongly about this matter. I frankly do not know what the outcome of a record vote would be. I do not think any of us do, we cannot predict what the Senate will do. But in the event the Senate did reject the amendment overwhelmingly, I would be very fearful that it might be misconstrued by the Soviet Union and by the negotiators at the SALT talks in a way that would be very harmful to us. It might be misconstrued as indicating that this meant we were seeking a first strike capability.

The able Senator from Washington, the able Senator from Texas, and all of us have agreed, as the President of the United States, Mr. Nixon, and the Secretary of Defense, Mr. Laird, did publicly, that the policy is not to seek a first strike capability, and that we are not seeking a first strike capability. The able Senator from Washington and the able Senator from Texas have indicated that they both hope we will not in the future seek a first strike capability. I think this should be clear to the Soviet Union and to the negotiators at SALT on both sides, that the United States is not seeking a first strike capability. That is why I am fearful that if we had a vote today, it could be misconstrued, and could be very harmful to the success of the SALT talks. That is certainly something none of us would want to happen.

Because of that concern, Mr. President, I ask unanimous consent that I may withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

Mr. BROOKE. Mr. President, before I withdraw the amendment, let me briefly summarize its merits. A grave contingency confronts us and it is imperative that the Congress prepare to meet it. That is the possibility—one might say the probability—that the initial MIRV deployments will continue and that these weapons will be in the arsenals of the United States and probably the Soviet Union for the indefinite future. If that trend continues, our fundamental concern must be to insure that the MIRV's that are deployed reinforce strategic stability. They can do so only if they are exclusively, explicitly, and credibly designed for the retaliatory, second strike mission. In short, we must erect standards which make clear that the United States will not deploy MIRV systems capable of threatening the Soviet strategic forces.

The United States has, of course, been committed to a second strike posture for many years. The task here is to see that the MIRV systems are compatible with that posture. President Nixon has consistently stressed this principle in his decisions and declarations on strategic weapons. For example, in proposing the Safeguard anti-ballistic-missile system, the President wisely underscored his concern to avoid actions which appeared to threaten the Soviet retaliatory forces. In his remarks of March 14, 1969—surely one of the most important and enlightened strategic statements by any statesman—Mr. Nixon repeatedly applied the American doctrine of deterrence. We rejected the possibility of a heavy ABM defense because:

> It might look to an opponent like the prelude to an offensive strategy threatening the Soviet deterrent.

He also decided against meeting the Soviet buildup by increasing U.S. offensive capabilities, since such an increase "could be misinterpreted by the Soviets as an attempt to threaten their deterrent. It would therefore stimulate an arms race." And the President partially justified the reorientation of the U.S. ABM system to defense of the Minuteman force by stating:

> The program is not provocative. The Soviet retaliatory capability is not affected by our decision.

President Nixon applied the same standard in his redirection of the U.S. MIRV program. As the Senate will recall, Mr. Nixon informed us some months ago that a proposed development of a hard-target MIRV system had not been approved and that the United States has no such program.

In testimony before the Armed Services Committee Secretary of Defense Laird further commented on this im-

portant decision by pointing out that the President "has made it perfectly clear that we do not intend to develop counterforce capabilities which the Soviets could construe as having a first-strike potential." I believe the Secretary, who has been so deeply concerned by the deployment of Soviet weapons with an evident potential for attacking U.S. ICBM's, must have a special appreciation of the hazards of such destabilizing weapons. It is clear to every careful analyst that weapons capable of counterforce attacks only make the existing strategic balance more dangerous and the ensuing arms race more costly.

There is, obviously, no disagreement that, if MIRV is required to penetrate a Soviet ABM system and to maintain a credible second strike capability, then this country will continue deploying such systems. However, the retaliatory mission can be performed with relatively modest yields and limited accuracies that would be unsuitable for any first strike against enemy missile forces. The truth of this simple axiom is apparent when one recalls that Hiroshima was almost obliterated by a 20-kiloton atomic bomb—much smaller than today's missile-borne payloads—delivered with an accuracy which has long since been surpassed.

The Armed Services Committee has expressed its concern about the implications of MIRV for the credibility of America's commitment to a second strike or mutual deterrence doctrine. In reducing the funds for the so-called ABRES—advanced ballistic reentry systems—program, the committee has stressed in its report that the reduction is related to "any future hard-target kill capability." The report points out that the strictly retaliatory objective "can be met with substantially less accuracy and more modest yields than needed for the counterforce mission." Thus, the committee has thoughtfully discouraged even preliminary development work which might be viewed as pointed toward a destabilizing counterforce capacity—a capacity that is unnecessary and indeed highly detrimental to deterrence.

In pursuit of this same objective, so clearly enunciated by the President, the Secretary of Defense, and the Armed Services Committee, I am proposing a second amendment setting the standards for deployment of a retaliatory MIRV capability. This amendment would prohibit the use of funds for operational development, testing or procurement of a hard-target MIRV system, and would specifically define what a hard-target MIRV system capability is.

Much discussion of this issue has been impeded by the absence of an agreed definition of hard-target capability. Obviously it is meaningless to declare that the United States will forego a capability to attack Soviet strategic forces unless that capability is defined in believable and understandable terms. Both in the interest of our own understanding, and even more, of Soviet perceptions of our intentions, this amendment would limit U.S. MIRV systems to yields and accuracies no greater than one-third the level considered necessary to enable a single warhead to neutralize a hardened missile silo.

I have developed this definition in extensive discussions with the Department of Defense and with colleagues in and out of Congress. As I am sure the Department of Defense agrees, it provides more than ample latitude for MIRV systems to meet the requirements of a second strike, while it establishes a threshold well below that which could jeopardize Soviet missile forces. I believe it to be an even more urgent provision than the first amendment I have presented. On the real likelihood that MIRV deployment may continue, we must have firm guidelines for our subsequent action in this field.

Because of their deep concern on this matter, more than half the members of the faculty of the Massachusetts Institute of Technology have individually joined in a petition to the President and the Senate to forgo any hard-target MIRV development. Growing numbers of responsible spokesmen in the technical community, including many proponents of MIRV, recognize that we do not need and in fact cannot afford to move toward hard-target MIRV's, since the result can only be a diminution in our own security. This amendment can be a decisive affirmation of our determination to avoid ambiguous or provocative improvements in MIRV systems.

The logic for this proposal is rooted in mutual deterrence itself, as President Nixon has so well indicated. Stable deterrence requires that neither side threaten the other side's capacity to retaliate. This is necessary not only to avoid endless cycles in the arms race, as one of the other side moves desperately to protect its retaliatory capacity. It is primarily important because, should a nation find its forces to be vulnerable, those weapons can only be used if they themselves are launched first. If they are withheld, they run the risk of destruction. This is the insight which years ago led Albert Wohlstetter and others to note that the "balance of terror" is delicate, and that security in the nuclear age demands that strategic weapons be invulnerable. Thus, U.S. security is in no way served by any capability to threaten Soviet strategic forces. Such a capability would only raise the prospect that Soviet weapons might be launched in some moment of crisis out of fear that otherwise they would be disarmed in a first strike. The same is no less true of any Soviet deployment threatening our retaliatory forces.

We cannot tolerate hair triggers in an era of instant and total devastation. The only sane policy for both countries is to refrain from such destabilizing systems and to take those measures which create unambiguous and invulnerable second strike forces.

That is the purpose of this amendment. By setting this criterion for American MIRV systems, we can enhance our own security and set a model for the Soviet Union to match. Even if they fail to do so, we will have insured that any American MIRV systems are compatible with the policy to which the United States is dedicated. We will also have struck a note of prudence which could resound very helpfully in the Strategic Arms Limitation Talks.

To sum up, the subject of MIRV is complex but the case for this amendment is itself quite simple. If MIRV deployment continues, we shall need to insure that the American MIRV systems remain strictly retaliatory weapons which do not undermine the stable deterrence on which our security rests.

Mr. President, I withdraw the amendment.

I yield back the remainder of my time.

Mr. JACKSON. I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I rise in distinct opposition to the proposed amendment, No. 861, which would require a $5 billion across-the-board reduction in military spending to the fiscal year 1971 defense authorization bill. Spending would be reduced from $71.2 to $66 billion. A $5 billion across-the-board cut would of necessity involve the termination or stretching out of many defense contracts. Either action could be disastrous both from a cost efficiency and military preparedness standpoint.

The Senate Armed Services Committee and the two special ad hoc subcommittees appointed by Chairman STENNIS reviewed the requests by the military departments over a span of months in painstaking detail. Senator STENNIS and Senator MCINTYRE I know will comment on their endeavors. I would like to comment specifically on the work and efforts of the Tactical Air Power Subcommittee, due to the temporary absence of Chairman CANNON.

On July 29, Senator CANNON presented to the Senate a detailed résumé of the work of the subcommittee. I do not intend to repeat that information today, but I am ready to discuss any of these programs today to reaffirm the basis for the actions recommended to the full committee.

In brief, 10 major aircraft programs and 12 major missile programs were examined. The funds requested for these weapon systems was $3.2 billion.

The subcommittee recommended reductions of $173.3 million—a reduction of 5.4 percent. Each member of this subcommittee took his job seriously. We were keenly aware that our national security interests, and the world in which we live today, presented a clear mandate that we not act hastily or arbitrarily. If we had attempted an arbitrary across-the-board cut as a method of procedure, it would not have been necessary for us to explore any of these programs in any detail. There would have been no need to do so. No matter what the justification presented by the Department of Defense with respect to any weapon systems, our minds would have been made up. The only question that we would have found necessary to resolve was the percentage cut we desired to inflict on the Defense Department requests.

Quite frankly, Mr. President, I do not think the subcommittee would have properly discharged its responsibility to the American people by resorting to such a course of action. We would have left the clear implication that we neither had the time nor the interest to review the validity or the merit with respect to the programs and weapon systems of the Department of Defense.

I am sure everyone would agree that it would not be a commendable performance for us to throw up our hands—state

the task was impossible—and thereby rubberstamp the entire financial requests of the Department of Defense. Not at all. The American taxpayers expects more of Congress than to merely rubberstamp the requests of any branch of the Government, including the Defense Department.

We then proceed to the precise opposite of a rubberstamp, which is resorting to an arbitrary cut in the request of the Defense Department.

This approach is wanting in both wisdom and logic. First of all, if we abrogate our responsibilities and fail to make the wisest judgments possible after a thorough review of the individual programs, we would be making an uninformed judgment. To determine the amount the Defense budget should be cut would invoke an arbitrary rule of thumb whose accuracy would be a sheer guess. Who could knowledgeably tell the American people that Defense expenditures should randomly be cut by $5 billion? What would make that figure any more correct than $1 billion or $2 billion? What would make $10 billion more exact than a $50 billion cut? The arbitrary figure would be based on guesswork rather than judged on merit.

Therefore, Mr. President, such a procedure was rejected during the Tactical Air Power Subcommittee's deliberation on the $3.2 billion in requests for tactical weapon systems as being entirely unfounded. There were no preconceived ideas or opinions on which programs would be supported or not supported. There were no preconceived ideas on the specific amount of money that should or should not be cut from the budget. It was our sole objective to let each program and the facts surrounding each program speak for itself and either justify or not justify the funds requested.

As Senator CANNON told the Senate on July 29, in presenting the recommendations of the subcommittee, he felt Secretary Laird's budget—which he characterized as a "rock bottom" budget—was a reasonable one. After all, the Secretary and hundreds of people in the Defense Department had worked long and diligently in its preparation. This, coupled with the importance of these programs to our national security, requires that we on the Armed Services Committee exercise the best possible judgment. It requires that we act with caution and restraint and obtain all relevant facts on each weapon system. Every effort was made to achieve this objective.

The full committee held hearings resulting in 2,715 pages of printed testimony. We in the Tactical Air Power Subcommittee had 1,367 pages of hearings in an effort to properly discharge our responsibilities. These classified hearings are available to any Senator who desires to review them and to explore the details relative to 22 major tactical aircraft and missile systems.

I know that the Armed Services Committee, under the excellent leadership of the distinguished Senator from Mississippi, shares with me this philosophy and approach toward handling the Defense Department's budget.

As we know, the full committee, after months of intensive hearings, presented to the Senate a budget which had been reduced by $1.3 billion, from $20.2 billion to $18.9 billion. This action was not done arbitrarily by the use of a percentage cut. It was done with deliberativeness and careful attention to the justification surrounding each of the major weapon systems. Questions raised on the floor with respect to the justification or lack thereof concerning any major weapon system were welcomed. Senators who wanted more facts received a prompt answer. However, now that many amendments dealing with specific weapons systems have been defeated after lengthy and extensive debate, I certainly do not believe the Senate should resort to an across-the-board reduction of $5 billion without any justification whatsoever to support this amendment.

In my judgment, wielding a large ax on military programs and to "cut for the sake of cutting" lacks wisdom and foresight. Our national security interests must not be abrogated or discounted in the pellmell rush to achieve economy. We must not permit the desire for economy to sweep everything before it. As long as we have our worldwide commitments and expect the military to be capable and responsible to meet them, we must provide them with the weapons and hardware; otherwise, we are only kidding ourselves.

There is an associated issue that has come in for considerable discussion on the floor. That issue underlies in some large degree the reasoning of the proponents of the amendment to make a flat $5 billion cut. That issue revolves around the principle of concurrency. As the term was used, it represents some degree of overlap between research and development and production.

The Tactical Air Power Subcommittee indirectly has been commended on the floor of the Senate for some of its actions in reducing the request for production funds where research and development had not shown sufficient progress. It is true. We did cut production funds for the Sparrow-Aim 7–F, the Maverick, and the Condor missile programs. However, we did not do so arbitrarily. Most importantly, we did not reduce these funds merely because research and development had not been completed. We did it after reviewing all the facts available and reaching a judgment that procurement funds could safely be deferred in order to obtain another year of intensive research and development. A satisfactory level of progress in research and development must be achieved before significant production is permitted to proceed. Frequently, these are difficult decisions. An informed judgment can be made only after the facts on each weapon system has been reviewed. It is not proper and fitting to jump to a conclusion that no procurement funds are warranted until research and development has been 100 percent completed. Unfortunately, Mr. President, that is the impression I have received from some of the statements made recently here on the floor.

Concurrency is a very important subject but one which is frequently misunderstood. As we have been discussing it, concurrency is the overlap at some point in time where some research and development is taking place simultaneously with production. First of all, there is nothing wrong with some concurrency as long as it is properly understood and properly applied.

The major factor that has to be realized and fairly evaluated is the "degree of risk" involved in a given program. If the "degree of risk" is deemed acceptable by the experts, then reasonable production funds should be approved and some production permitted. This applies in particular to the procurement of long-lead items. If we fail to authorize the procurement of long-lead items before research and development is completed then not only is valuable time lost, but the cost of the weapons system jumps enormously. I should say in passing that long-lead items are those complicated hard-to-get components of a weapons system that take the longest period of time on which to obtain delivery.

Every new weapons system should have a "degree of risk" involved. If there is no risk involved, we are not improving the state of the art. We are merely maintaining the status quo. We might as well purchase older military hardware that we have been buying over the years which has the inherent disadvantage of obsolescence. Every Senator should recognize, Mr. President, that new weapons systems involve risk. Risks cannot and should not be eliminated. The key issue to be determined is the "degree of risk." Where we deem the risk acceptable, we authorize the funds; and where we deem the risk unacceptable, we deny production funds.

I wonder if people who believe concurrency is "evil" have analyzed the enormous increases in cost that would be incurred if Congress were to insist that research and development be completed prior to authorizing any production funds. The slow rate of development and production on all weapons systems under this procedure would make most of them economically impossible to procure. None of them could pass the test of cost effectiveness.

Let us take a specific example. On the F–14 aircraft program there will be 12 research and development aircraft. These aircraft will be delivered between January and December 1971 at the rate of one per month. The first aircraft will fly ahead of schedule in December of this year under present plans. There was some misunderstanding on the floor the other day indicating that the 26 aircraft in this year's bill were prototype or development aircraft. This is not the case. They are production aircraft. Some people have suggested we finish F–14 research and development before buying the first production aircraft. On the surface, this may sound reasonable in theory, but in the world of reality, Mr. President, it would be terrible. Why is this so?

The Navy will not receive the 12th research and development aircraft until December 1971. Although research and development will go beyond that point, let us assume for the moment that research and development will be substantially completed with delivery of the 12th aircraft in December 1971. Then assume the administration acts with unprecedented speed and includes a procurement request in the fiscal year 1973 budget request which will come to the

Congress in January 1972. It would then be about September or October 1972 before the Congress completed action on the bill and hopefully the Navy would be in a position to let a contract by January of 1973. Meanwhile the contractor has had no production work or funds during 1972. His work force has of necessity been disbanded and the existing contract has been completely abrogated. The result would be an utter and complete procurement disaster.

Assuming that a contract was ultimately let we would not receive the first operational squadron until approximately 3 years later than the present program—namely, 1976. Under this approach, we could not protect our national security interest in any realistic manner. The F–4 requires replacement by 1975—there is no question or doubt about that.

We authorized 26 production F–14 aircraft this year. The first one will not be delivered until January 1972, more than 1 year after the first flight of the F–14. The balance will be delivered during 1972. Thus it is readily apparent that we will have spent very little of the funds authorized this year for the 26 aircraft until substantial flight test data has been accumulated.

Now let us examine some of the associated cost figures. If we require delivery of the 12 research and development aircraft prior to authorizing the procurement of any F–14 aircraft it would cost a staggering sum of money and a 2-year production gap. If we permitted a 2-year production gap, under the analysis previously mentioned, where we wait until the fiscal year 1973 budget year to authorize F–14 aircraft there is no accurate cost figure available. In my judgment, I feel confident the increased cost would exceed $2 billion over the present program. Why do I say this? The Navy has analyzed the cost impact for a 1-year production gap. The increased costs thereof were $896 million over the present program. I do not think the American taxpayer would knowingly support this concept of purchasing weapons systems if he is provided an awareness of the facts involved. We cannot and must not let simplistic or idealistic approaches be used to govern the procurement of complicated weapons systems. Any proposed changes must be thoroughly reviewed to determine their impact on any given program in time, cost, and impact on our national security position. Otherwise we do ourselves and the Nation a grave injustice.

I would add further, Mr. President, that the Tactical Air Power Subcommittee examined the impact of reducing the F–14 program this year from 26 to 15 aircraft. This would have incurred a minimum increase in cost of $64 million. In addition the unit cost of the 15 aircraft would have risen $9 million each for a total of $135 million more than necessary. Also, the unit cost of aircraft purchased in later years would be higher. I hasten to add that the unit cost figures are for this year only. The initial aircraft of any type costs more. The average price is less as additional planes are produced.

Mr. President, the subcommittee looked at an extreme example. Suppose the F–14 was a catastrophic failure at the time of first flight this December and the program was terminated shortly thereafter. The estimated Government liability for the 26 aircraft in this year's bill is $165 million. Its liability if it purchased 15 aircraft is $124 million. We did not feel that the difference as to potential Government liability was sufficient to justify reducing the program from 26 to 15 aircraft and to incur the minimum $64 million increase in cost as a consequence. We felt the "degree of risk" was such that we could justifiably authorize the 26 aircraft—and we did so.

It is possible, Mr. President, for anyone to conjure up all sorts of problems that may arise on the F–14 or any other weapons system for that matter. Quite frankly, I cannot support this premise. We endeavored to arrive at reasoned judgments based on the facts available and not on a hypothesis that some problem may arise. Problems will be incurred. This is no secret. They are incurred on any major weapons system where there are significant advances in the state-of-the-art. If we did not have problems we would have no degree of risk. But as to those programs that we have acted upon affirmatively, it was our judgment the degree of risk was acceptable.

In summary on this point, Mr. President, I cannot emphasize too strongly the enormous—extremely enormous—increase in price that the American taxpayer will have to pay for his defense if we resorted to the philosophy or management practice that concurrency by its very nature is wrong and should be completely avoided.

Another important area I feel compelled to comment on today is the fact that this bill which was brought to the floor after searching scrutiny and thorough work by the Committee on Armed Services now has had numerous amendments introduced to it and had they been adopted it would have resembled a "Christmas tree." Many of these amendments are germane and many are not. In my opinion, the amendments should principally deal with the justification or lack thereof for the funds dealing with the weapon systems involved. Many of the amendments introduced, in my opinion, should properly be the subject of separate and distinct legislation.

Another comment I feel compelled to make, Mr. President, is that the Congress over the years has earned the title of the most deliberative body in the world and I think we have eminently lived up to that title. This bill came to the Senate floor on July 24 and the certain end does not appear in sight.

The Department of Defense commenced a new fiscal year on July 1, hence it must operate under continuing resolutions. Of equal importance is the fact that it, of necessity, is already hard at work on the fiscal year 1972 budget, without any precise knowledge of what this bill will contain. This is an extremely difficult way in which to conduct the largest business in the world. We properly expect DOD officials to be most efficient in the administration of this department, but we seldom sit back and reflect on one of the most important reasons why their efficiency is reduced—because their budgets are given to them several months after the fiscal year commences. This is not an efficient or economical way to "run a railroad" and we all recognize it.

Every Member had a willingness this year to dispose of the appropriation bills early. We had every intention of doing so. Several issues arose which found us engaging in weeks of debate on nonappropriations issues. It is my earnest suggestion that the President and the Secretary of Defense give earnest consideration toward recommending to the Congress a change in the fiscal year covering the executive branch of the Government. I firmly believe that we should change to the calendar year basis so that our appropriation bills, and particularly that of the Defense Department, would be acted on by October or November—which has been the real world in recent times—for the calendar year commencing the following January 1 so a more efficient and orderly procedure of running our Government could be realized.

I want to say that I am not criticizing any individual or any amendment. I am sincerely convinced, however, that our system of doing business in the Congress must be materially improved upon. The American people and the executive branch of the Government are depending on us to legislate in a timely manner. I refer particularly to the appropriations bills which have encountered increased difficulties during recent years due to the presence of other major issues.

Finally, Mr. President, I do not believe the Senate can or should act as a "committee on the whole." Over the years we have established a very essential and invaluable element in the legislative process, known as the committee system without which we cannot operate or function effectively. I am sure every Member recognizes this fundamental premise. Yet, with respect to the military authorization bill, a good deal of debate on the floor has revolved around basic and fundamental questions—questions which have been explored thoroughly by the Committee on Armed Services. The hearing records are available to any Senator or his staff. Certainly they should have the information they desire, to make an informed judgment, but I do not think we can afford endless discussion to basic questions here on the floor. We must move ahead with this vital legislation and rely on the integrity of the committee system to a large extent.

In conclusion, Mr. President, I think that after we have debated at length amendments dealing with certain individual weapon systems, that it would be extremely unwise for the Senate to accept any across-the-board cut to this authorization bill. No one, no matter how well intentioned, can state with any degree of certitude what that reduction should be—in order to be completely equitable and objective—and more importantly, permit the protection of our vital national security interest.

In conclusion, I want to say there is nothing magic in the cuts we made or our recommendations to the Senate. I do state that we took our actions only after lengthy hearings, and a serious delibera-

tion of the available facts to reach our judgments. In my opinion, anyone who desires to cut our bill further should advance persuasive and specific facts to support their position.

Generalized expressions, feelings, and opinions are not, in my opinion, a sound basis for invoking additional cuts.

I would urge the Senate, Mr. President, to respectfully but summarily reject amendment No. 861 whose purpose is to pursue such a course of action by a cut of $5 billion.

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

The PRESIDING OFFICER (Mr. FANNIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 861

Mr. STENNIS. Mr. President, I speak now in opposition to amendment No. 861, which is the Proxmire-Mathias amendment, proposing a limitation of $66 billion on fiscal year 1971 budget outlays for military functions of the Department of Defense.

Mr. President, with all respect to the sponsors of the amendment, I am convinced that it does not have the merit that would make it deserving to be adopted, and, therefore, it should be rejected.

I am certain that the Senator from Wisconsin agrees that we should not spend 1 cent more on defense than is absolutely necessary. But we disagree on how much is necessary.

Thus far we have been debating the military procurement authorization bill for fiscal year 1971, for which the Committee on Armed Services has recommended $19.3 billion. This is a decrease of $1.3 billion, or 6.7 percent from the $20.6 billion requested.

The budget request upon which this bill is based represents only 29 percent of the total defense request for new obligatory authority.

Therefore, the proposed amendment goes far beyond this bill we have under consideration, and would impose an expenditure reduction of $5.2 billion on the entire defense budget, which is not before us, has not been debated, and has not been discussed.

In other words, this cut would apply to many other appropriations which are beyond the cognizance of the Committee on Armed Services and which have not been reported by the Committee on Appropriations of the Senate or of the House.

Here is a case where Appropriations Committees have been waiting for the passage of this bill, and now we come along in this authorization bill and cut appropriations that come in on the other bill, and which cannot come in until consideration of this bill is finished. It is an impossible situation we continue to get ourselves into. I believe this body will pay the cost in prestige, importance, and the fullest respect of informed people.

It is a matter of concern to me—and I am not talking about individual Senators—but we are getting the cart before the horse. We are reversing the procedure and making reductions before we ever get the bill, even before the bill is written.

I emphasize that the fiscal 1971 authorization is for new obligatory authority, and that only a small portion will normally be expended during 1971. For obvious reasons, Mr. President, these funds had to be authorized and the money appropriated in advance so that the Department of Defense, as to weaponry especially, will be in a position to proceed and make contracts so that these matters may move forward.

I have already mentioned the fact that this goes over into the business of appropriations that have not been written yet, much less presented to this body.

I have a communication before me from the chairman of the Committee on Appropriations. He is obviously concerned about this reversal of the processes. The letter is dated August 27, 1970, and is addressed to me as chairman of the committee. The letter reads:

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., August 27, 1970.

Hon. JOHN STENNIS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STENNIS: I am enclosing for your consideration a memorandum prepared by the staff of the Committee on the Proxmire-Mathias Amendment to the pending Department of Defense Procurement Authorization Bill (Amendment Number 861) imposing a limitation of $66 billion on fiscal year 1971 budget outlays for military functions of the Department of Defense.

Sincerely,

RICHARD B. RUSSELL,
Chairman.

Mr. President, the Senator from Georgia (Mr. RUSSELL) is chairman of the Committee on Appropriations and chairman of the Defense Subcommittee that handles that bill.

The memorandum is dated today and it is from the Chief of Staff and his able assistant. It sets forth the situation as to fiscal years 1969, 1970, and 1971, and it shows the enormous effect of this proposed amendment and how it cuts into several years' programs and bills that have not even been written up, much less that have come before the Senate.

Mr. President, I ask unanimous consent that the memorandum which was enclosed in the letter from the distinguished Senator from Georgia (Mr. RUSSELL) dated August 27, 1970, may be printed at this point in the RECORD.

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

Date: August 27, 1970.
Memorandum to: Chairman RUSSELL.
From: Tom Scott and Bill Woodruff.
Subject: The Proxmire-Mathias Amendment to the pending Department of Defense Procurement Authorization Bill (Amendment No. 861)

1. As requested by you, we have reviewed the Proxmire-Mathias Amendment, and in our opinion, the following points should be carefully considered before such an amendment is enacted:

a. The President's budget for fiscal year 1971 is based on budget outlays for "military functions" of the Department of Defense totaling $71.2 billion. The Proxmire-Mathias Amendment would impose a ceiling of $66 billion on such outlays—a reduction of $5.2 billion, or approximately 7.3%.

b. Attention is called to the fact that the estimated fiscal year 1971 outlays for military functions represents a reduction of $5.3 billion below the fiscal year 1970 level and $6.7 billion below the fiscal year 1969 level. However, when we look at these expenditure levels stated in constant fiscal year 1969 dollars, the decreases are even greater. Stated in fiscal year 1969 dollars, the fiscal year 1971 estimate for military functions is $65.3 billion—a reduction of $12.6 billion below the fiscal year 1969. These comparisons are set out in the following tabulation:

[In billions of dollars]

Fiscal year	Actual dollars	1969 dollars
1969	77.9	77.9
1970	76.5	71.8
1971	71.2	65.3

c. The pending bill relates only to a portion of military outlays. The Proxmire-Mathias Amendment applies to all outlays under military functions. A more appropriate and more timely measure for this type of limitation was the Second Supplemental Appropriation Bill, 1970, which included Section 501 imposing a limitation on total budget outlays for all departments and agencies for fiscal year 1971.

d. As reported by the Committee on Armed Services, the pending bill includes authorizations for fiscal year 1971 appropriations totaling $19.2 billion. If the Department of Defense Appropriation Bill includes 100% of these authorizations, the fiscal year 1971 budget outlays from these appropriations would only total approximately $6.5 billion.

e. In recent years, the Congress has not seen fit to impose a limitation on the outlays for specific programs of a single Department of the Executive Branch. While such a provision is workable, it should be enacted well before the beginning of the fiscal year in order that the appropriate plans and controls could be set up. However, in this instance, we are two months into the fiscal year with the likelihood that the provision will not be enacted for another month or so. To impose such a limitation this late in the year would create great management and administrative problems.

f. Of the estimated total of $71.2 billion for fiscal year 1971 budget outlays for military functions, approximately $26.5 billion is for the payment of obligations incurred under appropriations for prior years and for July and August under the existing Continuing Resolution, over which the Department of Defense can exercise very little control. When this fact is considered, we find that, of the $71.2 billion, only $44.7 billion is subject to control, and this $5.2 billion reduction would have to be made here—a reduction of approximately 12%.

Mr. STENNIS. Mr. President, the Senator from Wisconsin proposes a 7-percent reduction in outlays in fiscal year 1971. His description is that:

It is a reduction of almost the same percentage that the Senate Armed Services Committee cut the $20.5 billion military authorization bill. It carries over the same percentage cut to overall military spending that the Senate Armed Services Committee cut the military procurement authorization—

Mr. President, the committee cut the authorization request by 6.7 percent. That is a 6.7-percent cut in new money. We actually reduced outlays in fiscal year 1971 by less than 1 percent—three-tenths

of 1 percent to be more accurate. I want to emphasize that the committee cut 6.7 percent of the new obligational authority, not 6.7 percent of the outlays. To make a cut of 6.7 percent in outlays, the committee would have had to deny an amount representing practically the entire request.

Mr. President, I recognize that the Senator from Wisconsin leaves the specific items up to the executive branch. I want everyone to understand, though, that a cut in outlays in a given fiscal year translates into a significantly greater reduction in total program. This seemingly small 7 percent cut in outlays is not small in its effect on the defense program. I do not say "Defense Department" now. Everybody wants to criticize the Department. I am talking about the defense program. Consider also that 2 months of the fiscal year are gone and it will take even more of the fiscal year before plans can be put in effect to make the reduction. The Defense Department is already operating on what we call contingent authority. It is mighty bad business, but it is the best we have been able to do. As I have already said, the Department is now 60 days into the new fiscal year. The bill will not get to the President's desk for another month, so about one-fourth of the fiscal year will be gone before the contents of the bill are ever made available.

Mr. President, I must emphasize the severity of the proposed reduction in outlays. It will make a shambles of the Military Establishment.

The Senator from Wisconsin quoted Mr. Packard as saying:

> Frankly... in Defense Procurement we have a real mess on our hands.

Amendment No. 861 is not a solution. The solution will come from carefully considered planning and well executed programs—not from the precipitous action called for by the amendment under consideration.

It is one thing to say that area after area has been identified where cuts could be made. It is yet another thing to say cuts should be made, and still another to say that all the cuts should be made in this fiscal year. I can speak now only for the procurement and research and development areas. The committee has examined every major program in detail and that includes all the programs recommended for reduction by the Peace Through Law report. The Senate has already rejected the proposed ABM cuts. The committee adjusted the B–1 program. We are not rushing into production without building and testing prototypes. We have specifically addressed stretching the art in the authorization of new weapons systems. We are recommending only the urgent requirements this year. We are not "filling every request for dollars for defense and the Military Establishment."

Mr. President, military functions expenditures are budgeted at $71.2 billion for fiscal year 1971—$5.3 billion below fiscal year 1970.

The proposed amendment would reduce fiscal year 1971 expenditures another $5.2 billion—a total of $10.5 billion below fiscal year 1970 or almost 15 percent within 1 year. But the amendment is even more drastic. Even if it were enacted before the end of the first quarter of this fiscal year had passed, little, if any, of the reduction could be effective before January 1, 1971. This means that reductions in the last half of this fiscal year would have to be at a rate of over $10 billion to remain within the annual expenditure limitation.

Mr. President, with all deference to everyone, that is ridiculous. We have cuts that are going to operate on appropriation bills on which testimony has not been finished. They have never been written up by the committee. There are no reports here. They are not before the Senate. It is worse than what we call blind meat-ax cuts on a bill that has been heard and presented. This is reaching back and cutting bills that have never gotten here, and most of those reductions would have to be made within the last 6 months, rather than 12 months.

Congress is already 3 months behind in providing the means to operate the Government for 1971. It seems to me we could well stay our hand rather than, in effect, cut off 3 more months here and then require this unjustified, ill-considered, unmeasured reduction, all of it to occur within the last 6 months.

Because different areas of Defense programs spend at different rates in the year moneys are appropriated, an expenditure reduction at the rate of $10 billion for the last half year would represent a $25–$30 billion rate of program reduction in the last half of fiscal year 1971. For example, procurement accounts spend about 25 percent the first year; so for each dollar of procurement expenditure reduction, $4 of program authorization must be cut. Similarly, research, development, test and evaluation spends about 50 percent; thus, there is a two for one program reduction involved with research and development expenditures.

The impact of an expenditure reduction of $5 billion in the last half of fiscal year 1971—a $10 billion annual rate—would be chaotic. Expenditures programed for the last half of fiscal year 1971 are approximately $35 billion. This would be reduced by 14 percent during the 6-month period causing massive turmoil in personnel employment, and procurement and research and development programs.

A program reduction of $12 to $15 billion would be required on an annual basis. This would leave a Defense program in fiscal year 1971 of $60 billion or less. Converted to fiscal year 1964 dollars, this would represent a program level of $45 billion as compared to the fiscal year 1964 program of $49.6 billion. The program reduction required would represent a massive reduction in force levels, and procurement and research programs below pre-Vietnam levels. This is at a time when we have 400,000 men still deployed to South Vietnam, engaged in a war which will still cost at an annual incremental rate of $10.5 billion by the end of fiscal year 1971.

We would have to go back, disentangle the mess we had created, come back here, and recommend and have passed appropriations that would make up for what we would do under this drastic amendment.

Mr. President, my desires to reduce expenditures for the Department of Defense are well known. What we have been doing here last year and this year is well known. Many others have joined in it, including Secretary Laird. But there is a way to do it. I think the people want reductions to come about. At the same time, the people do not want our national security imperiled. They do not want our military might destroyed. They do not want to dismantle the Army, Navy, Marine Corps, and Air Force. They do not want to neglect our men when our policy still requires them to fight in Vietnam. The people want to have options in that. They want the best weapons, the best equipment possible, the most safety for the men doing the fighting, the most security for themselves and their children. As long as they think a reasonable effort is being made here to reduce those amounts and conserve our resources, but protect our security, they are going to be satisfied; and they have a right to expect the very things I have described.

Reductions of this magnitude would endanger the support of U.S. forces in South Vietnam. They would reduce our overall military readiness to such a degree as to seriously endanger the country. U.S. commitments would be defaulted and the support of our forces worldwide greatly jeopardized.

The proposed amendment should not be approved. Now, this is not an alarmist talking here. This is someone who has been trying to make some orderly, reasonable reductions. Our committee, not just the chairman but the entire committee, is familiar with this problem and knows something about the operations and what funds are required, and we have brought this money bill here and it has been under attack for days and days and days. Yet, while there has been a chance to debate these matters out, dollarwise I do not believe it has been changed one bit, unless it was on the basis that the subcommittee, on the discovery of additional facts, had agreed to it.

I state that as additional evidence that the committees have worked through these things from one side to the other, topside and bottom, for the purpose of taking the water out of it. But this is a meat-ax approach, to move in here, without rhyme or reason, in some cases without the bills even being before the Senate. This proposal is a drastic reduction that would take part of the bone and muscle away. Should we let this amendment become law, it would cost more to go in and repair the damage and restore the strength than the amendment would save.

Of course, I am for reduced military spending. At the same time, I am particularly concerned that we do not, in the name of economy, overly react to the winding down of the unpopular Vietnam war. I remember all too well the state of the military at the beginning of World War II and the Korean war. We were not prepared. I remember sitting right there in the seat behind the one I now occupy, near the beginning of the Korean war. I was sitting there when I learned, through a speech on this floor

by a Senator knowledgeable on the subject, that our airmen and our pilots who were having to fight in Korea in what we called fighter planes, were actually having to go up every day against a plane that we found out, all too late, was superior to our own.

I do not ever want to have that feeling again. No one does. There is no excuse for it any more. And I do not think, from that date until now, there has been any more neglect of our need to have the best weapon, whether it is a plane or a rifle.

But if we follow the meat-ax method, with amendments like this, we are going to tear down our strength, and have second-rate weapons, and the other man will have the best.

We were not prepared for World War II. We were not prepared for the Korean war. We lost huge chunks of territory because we were not strong enough. We fought a delaying action to buy time to train and equip military forces, at enormous cost in money and manpower. The unpardonable part was the lives of our fighting men that were lost to retake ground that should not have been lost in the first place.

National security is no accident—it results from sound planning and proper funding. Amendment 861 would abrogate all of the planning and analyses that have been accomplished within the executive branch. It would negate the careful and probing look at Defense programs by the appropriate congressional committees. It makes a judgment more on size than on commitments and requirements.

As President Eisenhower once stated:

Until war is eliminated from international relations, unpreparedness for it is well nigh as criminal as war itself.

In my opinion amendment No. 861 would push us perilously close to a state of national unpreparedness.

God forbid that, in our anxiety to reduce some military spending which is already being reduced at a very reasonable rate, in our zeal and our desire, that we run by and overlook some of the guidelines, some of the mileboards, and some of the cautions of time and experience, and have to pay for it in loss of our men on the battlefield, loss of first quality weapons, and a diminution and impairment of our national security.

I just do not believe it will happen. My only concern is that Senators get the facts, and that is why I am speaking here tonight to these empty chairs, in order to get this matter into the RECORD so that in some way, some of it will percolate through and get to their attention. I shall be back tomorrow, standing right here with additional facts and with a repetition of some of these, and we will hammer on, here, in an effort to get the facts through. If we do, the judgment of the Senate will be sound.

Mr. President, the question of manpower alone has been under discussion here. It is a question I am particularly interested in, also. But I want to state the facts on that subject tomorrow.

Mr. President, I do not know of anyone who wants the floor.

LIMITATION ON STATEMENTS DURING THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that statements made during the period for the transaction of routine morning business tomorrow be limited to 3 minutes.

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

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.

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. STENNIS. Mr. President, regarding the subject upon which I have just spoken—that is, the amendment providing for a $5.2 billion reduction in military expenditures for fiscal 1971—I have a copy of a letter dated today, addressed to each of my colleagues, regarding this amendment and its meaning, which I have had hand-delivered to them this afternoon. I ask unanimous consent to have it printed at this point in the RECORD.

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

AUGUST 27, 1970.

DEAR SENATOR: Tomorrow about twelve o'clock the Senate will vote on Amendment #861 which would place a spending ceiling on the Department of Defense on all Department of Defense activities for fiscal year 1971 in the amount of $66 billion. This would be $5.2 billion below the planned outlay of $71.2 billion. I strongly urge that you vote against this amendment in view of the facts I cite below:

(1) By placing a spending ceiling on all military functions, the amendment goes far beyond the scope of the pending procurement authorization bill. In fact, only $6.5 billion of the $19.2 billion in the pending bill would be affected by expenditure limitations in fiscal year 1971 although the total procurement program would necessarily be drastically cut.

(2) No one knows how the $5.2 billion reduction would be applied. I can only emphasize the chaotic results that could be anticipated in the Department of Defense especially in view of the various reductions already underway. This reduction is about 12% rather than 7% since $26.5 billion out of the $71.2 billion budget outlay for fiscal year 1971 has already been committed under continuing resolution authority leaving only $44.7 billion subject to control.

Even more important, this amendment would have an impact mainly in the last half of fiscal year 1971—January through June—and therefore would require a $10.4 billion reduced expenditure rate for this six-month period.

(3) The present budget calls for a manpower reduction of 311,000 (military and civilian) by June 30, 1971, resulting in a total of 4,051,000. If $3 billion of the $5.2 billion cut is applied to manpower, the total reduction would be an additional $1.2 million people or four times the present planned cut with catastrophic results on our defense posture in this period of time.

(4) If the remaining $2.2 billion is applied to procurement, the annual level of effort will be reduced by $12 billion per year because of lead-time and delivery problems. This costly disruption would affect about one million people in the defense industry.

Present and future budget pressures will restrict defense spending to the minimum without the necessity of the proposed amendment. I will set forth in detail on the Floor of the Senate the efforts already being made in this regard.

Sincerely,

JOHN C. STENNIS.

UNANIMOUS-CONSENT AGREEMENTS

Mr. BYRD of West Virginia. Mr. President, having discussed the unanimous-consent requests about to be made with the authors of the amendments and with the manager of the bill and the able assistant minority leader, I am authorized by the distinguished majority leader to ask unanimous consent that time on the amendment to be offered by the Senator from Oklahoma (Mr. BELLMON), amendment No. 857, be limited to 30 minutes, the time to be equally divided between the author of the amendment (Mr. BELLMON) and the manager of the bill (Mr. STENNIS); that if there be amendments thereto, the time on each amendment to be limited to 10 minutes, to be equally divided between the author of the amendment to the amendment and Mr. BELLMON, the author of the basic amendment.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on the amendment to be offered by the distinguished Senator from New Hampshire (Mr. MCINTYRE), the so-called NSF research amendment, be limited to 1 hour, the time to be equally divided between the author of the amendment and the manager of the bill (Mr. STENNIS); and that all amendments thereto be limited each to not to exceed 20 minutes, to be equally divided between the author of the amendment to the amendment and the author of the basic amendment (Mr. MCINTYRE).

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

The unanimous-consent agreements, subsequently reduced to writing, are as follows:

Debate on an amendment to be offered by the Senator from Oklahoma (Mr. BELLMON), numbered 857, to be laid down after the vote on the above amendment, to be limited to 30 minutes to be equally divided and con-

trolled by Mr. BELLMON and the Senator from Mississippi (Mr. STENNIS), with the time on any amendments thereto limited to 10 minutes each to be equally divided and controlled by the mover and Mr. BELLMON.

Debate on an amendment to be offered by the Senator from New Hampshire (Mr. McINTYRE), to be limited to 1 hour to be equally divided and controlled by Mr. McINTYRE and the Senator from Mississippi (Mr. STENNIS), with the time on any amendments thereto limited to 20 minutes each, to be equally divided and controlled by the mover and Mr. McINTYRE.

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

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

THE AMENDMENT TO END THE WAR

Mr. GOODELL. Mr. President, the war continues—carried by its own momentum and bereft of all purpose.

Having lost any other justification, the conflict in Vietnam has become justification for itself. We fight on, no longer to preserve any perceived stake in Indochina, but because we do not know how to end the fighting—because we cannot bear to accept any outcome short of the military success that perpetually eludes us.

The time has come for a national reckoning on the war. That reckoning shows the real interests of our Nation in preserving the present South Vietnamese Government by force of arms are marginal or nonexistent; that the human toll and the economic costs of preserving our military presence there clearly outweigh any benefit that would conceivably result from our continued commitment.

The time has come for complete termination of our military participation in the Indochina war.

ESSENTIAL ELEMENTS OF DISENGAGEMENT

Any viable plan for disengagement from this tragic war must include these elements:

First. It must be a plan for complete disengagement of all American military personnel—both combat and noncombat—from Vietnam. It cannot involve the indefinite retention of a residual force of any size in Indochina.

Second. It must set a firm, publicly announced target date for the completion of the withdrawal. Our final disengagement cannot be conditional and cannot be deferred by the decisions or actions of Hanoi or Saigon.

Third. The withdrawal should be accomplished with reasonable swiftness, in order to limit further loss of American lives and further disruption of American domestic priorities.

Finally, the target date for completion of the withdrawal should be established by law. Legislation should be adopted barring the expenditure of funds for the continuance of the American military presence in Indochina beyond that terminal date, except with the express prior consent of the Congress.

We—Senators McGOVERN, HATFIELD, CRANSTON, HUGHES, and myself—have endeavored to embody these principles in the amendment to end the war, now pending before the Senate. It is our view that Congress should share with the President the awesome responsibility of removing our military presence from Southeast Asia.

The amendment had its origin in a bill that I proposed in September of 1969—S. 3000, the Vietnam Disengagement Act.

My bill was the first legislation ever to be offered to mandate an end to the war. It spelled out, for the first time, the two basic concepts that are now central to the amendment:

Setting a fixed deadline for the withdrawal of all American forces from Vietnam; and

Enforcing that deadline through Congress' constitutional power of the purse, by providing for the cutoff of funds for any continuation of the American military presence in Vietnam after that deadline.

At the time I offered my bill, I encountered little support and much hostility. Only two Senators were ultimately willing to announce their support of the legislation. The President of the United States and the Governor of my own State denounced it. It was said that if the legislation came before the Senate, it would attract only a handful of votes. Time, the Cambodian invasion, and the continued bankruptcy of the policy of Vietnamization changed all that.

After the Cambodian invasion, four of my colleagues and I decided to combine our forces in offering a single legislative proposal to end the war.

Each of us had offered our own legislative plans for ending the conflict. Mine, S. 3000, was the earliest and had stated the basic ideas. Senators McGOVERN, HATFIELD, and CRANSTON had on the day of the invasion offered an amendment that prescribed separate disengagement timetables from Vietnam, Laos, and Cambodia. Senator HUGHES had introduced a resolution to cut off military aid to the Saigon government, if it failed to make specified reforms.

We decided to lay aside our differences and our individual proposals and develop a joint approach—one based on the concepts of my original legislation. Our product was the amendment to end the war.

We endeavored to persuade those of our colleagues who had spoken out against the war to support our amendment, rather than introducing variations of their own. Our objective was to avoid the fractionalization of effort that occurred in the prior year, when nearly a dozen Senators had offered their own differing legislative proposals on the war.

We wanted a measure that had force of law, not just another resolution that gave advice to a President who had already disregarded all similar advice.

We also wanted a measure that would actually be brought to a vote, not merely referred to a committee for study and probable oblivion.

We achieved the objectives.

The amendment has become the vehicle for legislating an end to the war.

It has attracted the cosponsorship of over one-fourth the membership of the Senate.

It now is up for a vote—the first congressional vote on the war.

It may become law.

The amendment requires all American Armed Forces to be withdrawn from all of Indochina by December 31, 1971. It enforces that deadline by barring the expenditure of funds for maintaining any U.S. troops in Indochina after that date.

The December 31, 1971, deadline provides a little more than a year for the completion of withdrawal. That is the time span which I envisioned when I introduced my original bill in September of last year, requiring withdrawal to be completed at the end of this year.

The amendment permits the President to extend the withdrawal deadline by 60 days if he finds our troops are exposed to "unanticipated clear and present danger"—in the words of the amendment—in meeting the December 1971 deadline. Any further extensions beyond the 80 days permitted to the President on his own behalf, however, would require express congressional authorization.

PROTECTION OF AMERICAN LIVES

A publicly announced deadline such as we have been proposing would make certain that after a specified date, no more American soldiers would die in Indochina. The vain sacrifice of thousands of American lives would be over.

After the Cambodian adventure, we heard much rhetoric from the administration that the invasion somehow had saved lives. It did not. Lives can only be lost—not preserved—by an extension of the war. If we are seriously concerned with saving American men, there is only one course—to bring them home.

We do not advocate—our amendment does not propose—the denial of funds for our combat troops while they are facing the enemy in the field. We urge, instead, the adoption by Congress of a deadline that provides sufficient time for our troops to be withdrawn in a safe, orderly fashion.

Throughout the period of withdrawal, the Commander in Chief should be permitted to utilize whatever tactics are necessary to insure that maximum safety is achieved. This would include all forms of defense against attack. The most prudent course might be to withdraw combat troops last, but in any case the entire range of protective options would be available to commanders.

The safety of our troops during the process of withdrawal will depend, at least in part, upon the response of North Vietnam and the Vietcong. It is difficult, however, to calculate a motive for them to attack troops that are in the process of being removed from the war. Something approaching an informal cease-fire during the withdrawal period is quite plausible, with a reduction in the overall level of violence.

THE NEGOTIATIONS

The Paris negotiations are bogged down, as everyone concedes. Two fundamental issues confront the Paris talks: The presence of U.S. troops on Vietnamese soil and the control of the Government of South Vietnam. There is stalemate on both issues.

Talks may well proceed. We hope that secret talks will begin again. The hope of any eventuality of agreement is very dim, however.

The North Vietnamese will not negotiate, according to all reports, without a firm commitment by the United States for a complete and rapid disengagement of its forces.

The United States refuses to give an unconditional commitment to withdraw. The President has spoken only of an "eventual" withdrawal of all American troops—and that conditioned on the pullout of all North Vietnamese forces and the assurance they will not return. Meanwhile, plans go forward for the retention of a residual force of American troops for an indefinite period until Vietnamization succeeds.

The North Vietnamese, in turn, are equally adamant in refusing to accept any "mutual withdrawal" plan, since it would leave its arch enemy the Saigon government—while still unable to win—in exclusive control of all governmental machinery in South Vietnam.

The political issue is still more tangled. Yet out of all the bickering about coalitions and elections, one thing stands out clearly. The Vietcong, backed by their North Vietnamese allies, demand a major voice—perhaps a controlling voice—in the Government of South Vietnam. The Thieu-Ky regime, backed by its American sponsors, remains adamant in refusing to share any real power with its enemy.

By announcing a timetable for complete withdrawal of its forces, the United States would break the deadlock on one of the two basic matters in dispute—the U.S. military presence in Indochina.

The other issue—control of the Government of South Vietnam—is more difficult to settle, as it depends principally upon the flexibility and reasonableness of Hanoi and Saigon. Announcing a timetable for our withdrawal would, however, create an environment more favorable to real practical political negotiations.

Our decision to withdraw would give the Saigon government a powerful incentive to seek a political accommodation, by meeting what is perhaps the central dilemma facing American policy. The Thieu-Ky administration has been vocally and embarrassingly unwilling to make any of the concessions necessary to break the deadlock. Its intransigence derives in large measure from our open-ended commitment to its preservation. No regime, born as this one in the heat of war, would be likely to hazard its fortunes in peacetime politics as long as it could enjoy the underwriting of the most powerful military nation in the world. Our commitment, in effect, gives Saigon an almost dictatorial power over the direction of U.S. policy. Paradoxically, it is a power best exercised by military and political failures. Palpably, the Thieu-Ky government's interests lie in continuing the conflict which keeps it in power, in retaining the hazards of war and avoiding the hazards of politics. To further this interest Saigon can prevent agreement indefinitely, unless the United States sets precise, unquestioned limits upon the extent and duration of its military commitment.

Our decision to withdraw would also provide an inducement for our adversaries to seek a political agreement. They have long benefited from the fact that we, as the foreign intruder, have polarized the political situation in the South and driven many nationalist elements underground or toward the NLF. Our withdrawal would foster a depolarization—that could place pressure on all factions, including the NLF, to seek to share power, rather than fight on.

If this route is followed, it is possible to conceive of a settlement which, while perhaps not reflecting the preferences of Saigon, would square fully with U.S. advocacy of self-determination for the Vietnamese people.

THE SURVIVAL OF SOUTH VIETNAM AFTER OUR WITHDRAWAL

A decision to terminate our military presence would neither abandon our South Vietnamese allies nor invite the destruction of the South Vietnamese people.

Our withdrawal would leave South Vietnam with roughly 1 million men under arms in the regular forces, plus perhaps another quarter million in the national police, all arrayed in combat against enemy forces only one-fourth to one-fifth as large. This numerical superiority would hold even if North Vietnamese troops held back thus far were committed to battle. The South Vietnamese Army is, in comparison to the North Vietnamese and Vietcong forces, elaborately equipped and trained. And South Vietnam would continue to be eligible to receive U.S. arms and economic aid in amounts to be determined by the Congress.

Mr. President, I wish to emphasize that we who advocate the amendment to end the war have never urged that we cut off all aid to South Vietnam. If they wish to go on fighting, and the President and Congress determine that it is in our interest to supply them, that is a separate decision to be made. The amendment to end the war would remove American forces from combat. The amendment would not bar military supplies or economic assistance from being sent to Vietnam, if Congress and the President so authorize.

Suggestions that South Vietnam would be overrun and its people slaughtered after withdrawal do not, therefore, reflect realities of existing power—unless the Saigon government is totally unable to marshal the support of its people so that no numerical superiority of forces and no amount of American aid can preserve it. To suppose that such a large force, operating in a defensive role, could simply be destroyed by a much smaller and less well-armed enemy assumes profound debilities in the South Vietnamese Army and Government—and this assumption, in turn, would mean that President Nixon's own plan to train South Vietnamese forces to take over the burden of the fighting would have virtually no chance of success in the foreseeable future.

Our withdrawal would not abandon the Saigon government. Rather, it would choices, based on realistic assessments of their own strength without the artificial inflation of an American guarantee. As noted, they might assume a more amenable posture in Paris. They might implement the kind of economic and political reforms long recognized by American advisers as essential to the achievement of broad indigenous support. They might adopt less ambitious military strategies aimed at defense of critical areas, instead of seeking to control the entire countryside and parts of other countries as well.

PRISONERS OF WAR

Whatever Vietnam policy is pursued by the United States cannot alter the fact that the North Vietnamese have life and death control over Americans shot down and captured over years of conflict. The same truth renders impossible a guarantee by advocates of any policy that the course—be it escalation, Vietnamization, or withdrawal—will result in the certain return of American prisoners.

The perpetuation of our military involvement in Indochina created, however, a strong incentive for the North Vietnamese to hold our prisoners. A decision to terminate our involvement will eliminate that incentive, and thus reduce much of the reason for their continued incarceration. Moreover, by enhancing the outlook of meaningful negotiations on all war-related issues, it will advance the resolution of this issue, which is essential to any acceptable settlement.

EFFECT ON U.S. GLOBAL POSTURE

An argument in favor of our continued military presence in Vietnam has been that disengagement there would somehow do irreparable injury to our entire global posture.

It is far more likely, however, that the opposite is true—that disengagement would enhance the return of this Nation's global standing and influence.

The war does not improve the U.S. position in Asia; it weakens it.

The Vietnam experience has clearly shown that the United States cannot establish a bridgehead in an Asian nation in defiance of indigenous forces of nationalism. A reason for our lack of success in Vietnam is that we permitted ourselves to become identified as the foreign occupier and the successor of the French colonialist in a country in which anticolonialist and nationalist sentiments far surpass the appeal of any other political ideology or system.

Nationalism is also the great catalyst in the rest of Southeast Asia—and for that reason our continued involvement in what is widely regarded as a colonial war has and will seriously undermine our credibility in the region.

The war has been advertised as a deterrent to Communist expansion in Asia, but thus far has succeeded chiefly in being a magnet for it. Our stand in Vietnam appears to have precipitated, rather than prevented, the spread of the war into the rest of Indochina. Our new involvement in the internal affairs of Cambodia has, for the first time, drawn the Communist Chinese into unequivocal support of a "war of national liberation" in that country.

The way to influence in Asia does not lie in continuation of the war and the propping up of unpopular regimes in

the face of the rising forces of nationalism. It lies, rather, in ending the war and forging strong economic and political links with independent and internally strong nations. We have much more to gain, for example, from improving our ties with Japan—now one of the world's leading industrial and economic powers—than in shoring up a sagging military dictatorship in Cambodia.

On a global basis, the war has been weakening, not strengthening, our influence and power. By tying down our resources, our military capacities, our energies and our attention to a futile and endless war in one corner of the world, it has drained our capacity to influence developments in Europe, in the Middle East and elsewhere, and damaged our credibility and prestige in the view of our allies.

Above all, the war has weakened us in the eyes of the world by dividing us internally. American power and resources were never in doubt—but our ability to utilize these capacities for global objectives have been placed in serious question by our profound internal split over Vietnam.

And if it is our moral leadership with which we are concerned this can only be enhanced by ending a war that the rest of the world largely regards as a futile and immoral effort to rescue a corrupt dictatorship.

Those who argue that disengagement would make us seem, in the President's words, a "pitiful helpless giant" have forgotten their recent history. The Russians themselves were compelled to disengage their missiles from Cuba in 1962—a move that certainly had the appearance of a setback, if not a defeat. Yet no one—least of all the architects of Vietnamization within the administration—ever discounted Russian power. The reverse in Cuba did not undermine that power because like our own, it was based upon overwhelming and incontestable economic and military resources. Similarly, the French termination of the colonial war in Algeria proved a prelude of a sudden resurgency of French prestige and influence. The same holds true of us, were we to terminate the war in Vietnam. No rational observer in the Kremlin or elsewhere would regard our Nation—with its armies and rockets and missiles and technology and riches, and with a sense of renewal born of the ending of a divisive and hopeless war—as anything but a force to be reckoned with.

THE RESPONSIBILITY OF CONGRESS

Mr. President, the amendment to end the war has the force of law. It is not merely advice to an administration that has ignored all similar advice in the past. If enacted, it would actually accomplish its stated objective of disengaging our Nation from this hopeless war.

The Constitution vests in Congress the power to declare war. Surely Congress should share with the President the responsibility for undeclaring a war that never was declared in the first place.

The President does not have the power of war and peace under the Constitution of the United States.

Our major role in the war began when Congress adopted the Gulf of Tonkin resolution, and President Johnson interpreted the resolution in a manner that deprived Congress of its responsibilities in the field of foreign affairs in Southeast Asia.

In the last 2 years, Congress has taken some significant steps in reclaiming its responsibilities. The Congress has barred the deployment of combat troops in Laos and Thailand. The Senate has repealed the Gulf of Tonkin resolution, and the House is expected to follow suit. The Senate has adopted the commitments resolution, requiring congressional consent for commitments of American military force abroad. And the Senate has approved the Church-Cooper amendment, restricting further direct or indirect U.S. incursions into Cambodia.

The enactment of legislation terminating the U.S. military presence in Indochina by a specified date, would restore Congress to its proper foreign affairs role.

There is yet another reason why Congress must cease being merely a bystander in the conflict and assume a partnership with the President in disengaging the Nation from Vietnam.

The ending of a major war inevitably involves extremely controversial and sensitive issues—and this is especially true of a war we have not won. If one man—the President, but also the leader of a political party—bears the responsibility of making these decisions alone, there is great danger that division and partisan recrimination will ensue. If this man shares the responsibility with the Members of Congress, who represent both parties and a wide spectrum of opinion, the chances of a solution which will command the confidence of the people are much improved.

President Roosevelt at Yalta took upon himself virtually the entire burden of deciding the peace settlement after World War II. The suspicion, bitterness, and partisan bickering that followed—typified by the Joseph McCarthy movement in the 1950's—is a matter of history. This time, since the issues are still more delicate, let us be sure the burden is shared.

The issue before us is not the constitutionality of the actions already taken by the President in expanding the war in Vietnam, Laos, and Cambodia, in the absence of a strong stand by the Congress.

The issue is whether Congress may now exercise its constitutional authority over appropriations, in order to require a termination of U.S. military activities in Indochina by a certain date.

Congress is supreme under the Constitution in its control of the expenditure of tax money. The military resources available to the President remain in the exclusive domain of Congress, along with its decisive share of the power to choose which objectives shall be pursued and which shall not. Legislation restricting the expenditure of tax money for war operates no differently than legislation restricting the expenditure of more money for foreign aid.

The Constitution, moreover, explicitly provides that military appropriations may never be made for a period exceeding 2 years. This provision was designed by the Founding Fathers to force a continuing, affirmative reexamination of the executive department in the military sphere.

Last year, in more direct parallel to the amendment to end the war, the Defense Appropriations Act of 1970 provides:

> None of the funds appropriated by this act shall be used to finance the introduction of American ground combat troops into Laos or Thailand.

The provision is an obvious limitation on the kinds of actions and the location in which the President may command the military forces made available to him. Its propriety under the Constitution is beyond question.

The kind of legislation we are proposing leaves the President with full discretion as Commander in Chief, to manage the removal of U.S. forces from Indochina. It does no more than exercise a power clearly held by the Congress to determine that military forces shall not be available for a particular purpose, and thus comports exactly with the constitutional arrangement.

THE FAILURE OF VIETNAMIZATION

Vietnamization is nothing new—it is as old as the Indochina war. It was attempted by the French, by the Kennedy administration, and by the Johnson administration in its first year. In each case this strategy—of arming, training, and directing the South Vietnamese armies—has not worked, and has proven the prelude to further military involvement.

Vietnamization is not, therefore, a true policy of disengagement. It is not a delayed version of the complete withdrawal policy we are urging. It is, at best, a troop reduction stratgey—a plan aimed at reducing the American presence to a level that would sustain the Saigon government and army and at the same time seem "acceptable" to American public opinion.

Last April, the President announced that he would withdraw 150,000 men from Vietnam within the period of about a year. Even if this schedule is followed, there will be over a quarter of a million American troops in Vietnam well into the third year of the Nixon administration's term in office. That is about the same as the American force level 4 years ago.

I commend the President once again for reversing the course of escalation, but I cannot be satisfied with that alone.

By all indications, the administration is contemplating the retention of a residual force in Vietnam for an unspecified and possibly indefinite period. Even a relatively low residual force figure represents a permanent troop commitment of the same order of magnitude as that which existed when we initiated bombing the North.

The price of this American commitment will be from 5,000 to 10,000 or more American dead by the end of 1972. It will be from 25,000 to 50,000 or more American wounded by that time—the most serious casualties of any war in our history. And the cost will be $30 to $50 billion or more—a cost that must be measured in the opportunities forgone to respond to urgent domestic needs.

No U.S. interest in Vietnam justifies

such sacrifice in this seemingly interminable war.

This is the staggering price if Vietnamization works as planned. And recent developments in Cambodia show that Vietnamization is plainly unlikely to work.

The South Vietnamese Army, whose capacity to defend even South Vietnam is still critically dependent upon American military forces, now seems intent upon spreading its resources even more thinly in long-term ground operations throughout Cambodia. It is clear that the number of Vietnamese soldiers available to relieve American manpower in Vietnam is significantly reduced. To extend assignment of Saigon's forces to wide areas of Cambodia make a travesty of whatever prospects for success Vietnamization might have enjoyed, had the role of Saigon's troops been confined to Vietnam. Since Vietnamization means substitution of Vietnamese soldiers for Americans, it is clear that the process set in motion by the Cambodian invasion works directly against prospects for achievement of that policy and bringing American soldiers home.

The loss of Cambodian neutrality thus presents a striking illustration of the fragility of a policy which relies upon military pressure in a widening war with shrinking numbers of men. Encouragement of an alliance between Saigon and Phnompenh will weaken rather than strengthen the U.S. position. It brings into the fray a dismally weak new military force on the allied side, while extending the battlefront over thousands more square miles of jungle. It offers both political and military advantage to the enemy by identifying American interests with a new narrow dictatorship and in opposition to a deposed leader enjoying broad respect and support among the populace.

In Cambodia, we have seen that—despite our supposedly successful invasion—the enemy has taken over the entire eastern and northeastern sections of the country, cut most of the major roads, and is able to menace the capital at any time it chooses.

The enemy response to the invasion has also threatened other areas of Southeast Asia not previously contested in earnest. North Vietnamese forces have recently expanded their position in southern Laos—seizing Attopeu and Saravene, both major strategic centers. U.S. intervention has invited the North Vietnamese to extend their operations anywhere in Cambodia, including districts opposite the Thai frontier. This, in turn, would threaten the security of Thailand whose open southeastern flank was previously protected by the existence of a neutralist Cambodia.

It is thus difficult, indeed, to perceive how Vietnamization has deterred the Communist "aggression" in Southeast Asia, of which the President so often speaks.

COSTS OF CONTINUING THE WAR

If the benefits of continuing the war are—as we have seen—minimal, the costs are staggering. It is this gross disproportion of benefits and costs that is, in my opinion, the most compelling argument for swift and complete disengagement.

In Vietnam, the war—ostensibly fought to prevent a bloodbath from occurring—has created a bloodbath of incredible proportions. To date, more than one million men, women, and children have died as a result of hostilities in Vietnam. If the war continues for 5 years more, another million people will die.

In Vietnam, the war—supposedly fought in the name of "self-determination"—has imposed on a people who want peace a brutal and corrupt military dictatorship that wants war.

Those are hard words, Mr. President, but I speak them advisedly, and I believe from the depths of my being they are true.

The overriding interest of a clear majority of the South Vietnamese people is to stop the killing, to stop the destruction of the cities, villages, and farms of Vietnam.

The overriding interest of the military regime of South Vietnam is the perpetuation of the war. Truly, the South Vietnamese people have become the "silenced majority" in South Vietnam.

It is the war that is the basis of the regime's absolute rule. It is the war that gives the regime the excuse to persecute, imprison, and even torture its non-Communist opponents. It is the war that gives the narrow clique undergirding the regime an artificially high standard of living based on war profits and commodity imports.

THE IMPACT OF THE WAR UPON OUR NATION

The loss caused by the war to our own Nation surpasses all reckoning. Human accounting would have to begin with the 50,000 Americans killed and the quarter of a million Americans injured—many of them maimed for life.

Perhaps some would have the war continue precisely because of this toll of life. But surely it is unacceptable to make further sacrifice in a futile cause, to give meaning to sacrifice already made. Instead of the casualties we can expect from further conflict, their memory can be best honored by the preservation of life.

If some bear the burdens of war most heavily, no one in America can escape its pervasive, pernicious influence. The economic crisis engendered by the war touches each of us.

The first half of the 1960's was a period of great economic promise—of sustained growth coupled with relatively stable prices. This came to an end when the United States began its involvement in the Vietnam conflict.

Because of the war, our economy has become plagued by the twin evils of inflation and unemployment. Because of the war, we have seen the dollar's value eroded to the point where any apparent growth in the economy has been offset by a decline in real worth.

The war has also warped our national priorities.

The money we should be spending to build housing in America is being used to destroy housing in Vietnam. The billions needed to restore our own environment are being spent to ruin the ecology of Vietnam.

Beyond these material costs, are the still more pernicious spiritual ones: the divsions within our Nation, the rise of violence and intolerance, the diminution of belief in our political processes.

Mr. President, the worst the enemy can do in the field does not compare with the injury this war is inflicting on the spirit of our Nation.

This war must end. This amendment will end it. I urge the adoption of the amendment.

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

Mr. GOODELL. I yield.

Mr. DOLE. Mr. President, first let me state that I have listened with great interest to the statement of the junior Senator from New York. There have been so many "amendments to end the war"—or, as I designate them "amendments to lose the peace"—that it is difficult for any of us to follow, from one day to the next, just what the subject matter of them may be.

I was encouraged today by a statement of the majority leader, the Senator from Montana (Mr. MANSFIELD), who was quoted as saying he was pleased with President Nixon's efforts to withdraw troops from Southeast Asia, the Senator said, quote:

> I think there should be further withdrawals from the Far East. In this regard I am pleased to note that President Nixon has already brought home a substantial number and I think our troops should be withdrawn from Western Europe as well.
>
> Agnew's statement is encouraging and Nixon's actions even more so. Since he has been in office, the President has withdrawn 167,000 troops from the Far East, including naval forces from the Western Pacific.
>
> The trend is there.

Mr. President, I believe that statement indicates recognition that there has been a marked change by this administration. I am not surprised that those who seek the Presidency on the Democrat side would now want to vote for an amendment to end the war, and then, of course, blame President Nixon for not withdrawing all the troops. Such a tactic makes political sense. But I might suggest, as we shall in the next few days, that what the sponsors of the so-called end the war amendment did initially was raise over half a million dollars on the wording of one amendment, and then, after raising nearly $600,000 by an appeal on national television to the American people on May 12, and after pleading for support of the so-called amendment to end the war or amendment to lose the peace, they have made radical changes in the amendment on two occasions, so the amendment, as I read it now, at least the latest version, introduced yesterday by the junior Senator from South Dakota, is in effect an endorsement of President Nixon's Vietnamization program, as compared with the amendment used to raise the $600,000.

I find it rather difficult, and will say so in the next few days, to know just what we are to believe. We have had, for the first time in history, Members of this body appealing to the public for funds, and using those funds, to lobby their own colleagues, if you will, in the various States, through paid political advertisements, through newspaper ads with a flag draped casket. The inference in this campaign is clear and is to the

effect that only those 25 Senators who are listed want peace, and that those who support President Nixon apparently enjoy the war and the killing.

I find now, Mr. President, that the revised so-called amendment to end the war—better designated the amendment to lose the peace—is, by and large, an endorsement of President Nixon's Vietnamization program.

Mr. GOODELL. Mr. President, will the Senator yield at that point?

Mr. DOLE. I yield.

Mr. GOODELL. I am intrigued by the Senator's interpretation, which is not my interpretation, of the amendment to end the war. If it is the interpretation of the Senator from Kansas that, in its present form, the amendment to end the war is an endorsement of President Nixon's policy, I would invite his vote in favor of it.

Mr. DOLE. Well, I think perhaps I could support it with some further changes.

The vast difference, of course, is that suddenly there are some in the Senate who say, "We want to determine when the war ends; we want to take that flexibility away from the President"—the only President I know of, since the war started, who has done anything about ending it.

Perhaps if we could make some additional amendments and, instead of saying "April 30, 1971" say "on a date determined by the President," and make some other changes, it might be worthwhile.

But I say to the Senator from New York that really, if he looks at the six or seven different versions introduced by the Senator from New York and others, he will find a very radical change between the first version and the latest one. We find one amendment offered for fundraising purposes, apparently, and then, following the raising of a half-million dollars, we find that amendment was changed. And it was changed again yesterday, and now we no longer talk about ending hostilities next April or next June. Now we are discussing, in this amendment, the end of February 1972. Of course, the President could still come to Congress and extend it beyond that date.

So there has been a rather marked change, I say to the Senator from New York, with respect to amendment No. 609 and the present amendment, No. 862.

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

Mr. DOLE. I yield.

Mr. GOODELL. There have been changes.

Mr. DOLE. Yes, radical changes.

Mr. GOODELL. I would not define them as radical changes.

Let me cite to the Senator from Kansas the fact that last September, I was the first Member of the Congress to introduce a bill to cut off funds by a fixed date. It was a very simple measure. It provided simply that no funds will be expended to support military personnel in Vietnam after December 1, 1970.

That basic approach has been retained throughout.

There are the two vital features of any proposed legislation to end the war: First, setting a fixed date by Congress, by law; and second, using Congress power over the purse to cut off funds after that date.

The amendment to end the war succeeded my S. 3000. It added other phrases. There were attempts to bring in other senatorial support. But never in any of the versions have we compromised the two basic features: Setting a fixed date and using congressional power to share the responsibility with the President by cutting off funds.

I might say to the Senator that when I went around the country last fall, last winter, and this spring, I faced many groups, particularly student groups, who would hop up and down and shout, "Out now!" I defied them.

I said, "You are asking for an instant tomorrow, an unrealistic objective. From my viewpoint, in the briefings I have had from the military and other experts in the Pentagon, it would take a minimum of about a year for a safe and orderly withdrawal of all American troops from Southeast Asia."

So my original proposal provided for complete withdrawal approximately a year hence. The amendment to end the war in the spring provided for it approximately a year hence, June 30, 1971. Time has elapsed.

Mr. DOLE. Eight months have not elapsed.

Mr. GOODELL. The pending amendment provides for final withdrawal by December 31, 1971. Anticipating delay in final enactment of the measure by Congress, the deadline is set in approximately a year, giving ample time for orderly and safe withdrawal. That has been the consistent approach since my original S. 3000.

In addition, we add to this measure—again, because of the concern of some Senators about the issue of Presidential prerogative and having an interim period for the President, as Commander in Chief, to exercise his discretion and come back to Congress—a 60-day extension, completely in the President's discretion. That is new. During that 60 days, he could come to Congress and make his case that some troops should remain there for a longer period of time. If he persuades Congress, Congress will approve.

But the two vital features—I might say three vital features—have been preserved: Setting a fixed date; fixing that date approximately a year hence from the date of enactment; and cutting off funds through congressional power. These features have been retained consistently throughout all amendments, and that was the appeal we made to the people for support for the amendment to end the war. It is the appeal we make for support today.

I thank the Senator for yielding.

Mr. DOLE. I thank the Senator from New York.

The basic question, the basic issue, is still, who shall determine when the last man is withdrawn from Indochina—and specifically, South Vietnam? Shall it be a committee of 100 or 535—Congress—or shall it be the President, whoever he might be?

Mr. GOODELL. I agree with that.

Mr. DOLE. That is the issue.

Mr. GOODELL. I agree with that. I think only Congress has the power to declare war.

Mr. DOLE. We are not declaring war.

Mr. GOODELL. We are trying to declare peace.

Mr. DOLE. As I recall, the Senator from New York did give some credit to President Nixon for changing direction in South Vietnam but charged that he was not proceeding quickly enough and that the Vietnamization program was a failure.

As I read the amendment, it is perfectly all right for Congress to say, in effect, not by name, that we can continue the Vietnamization program until the end of next February 1972. It is fine if Congress says that, if we are permitted to fix the date. The Senator does not call it Vietnamization, but he certainly does not deny that it is Vietnamization.

Let me point out one other significant fact. In amendment 609, which is referred to as the fundraising amendment, it is stated very specifically:

> Unless the Congress shall have declared war, no part of any funds appropriated pursuant to this Act or any other law shall be expended in Vietnam after December 31, 1970.

There has been a basic departure from that statement. We are now talking about February of 1972. So we are adding approximately 14 months. And the Senator from New York has just stated that nothing is intended to deny aid to South Vietnam or any other country. So that is a departure.

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

Mr. DOLE. I yield.

Mr GOODELL The latter point is not a departure at all. No amendment to end the war—my original S. 3000, the amendment to end the war offered in the spring during the Cambodian intrusion, and the modification today—as denied the continued supply of arms and training to the South Vietnamese. There has been no change in that.

The Senator points out that the dates for final and complete withdrawal have changed. The Senator very adroitly chooses to interpret that as an endorsement of Vietnamization. The reason why the dates have been changed is the practical reality of protecting the safety of our troops. We cannot remove them in a month. I do not believe they could be removed safely and in an orderly fashion in 3 months.

December 1, 1970, which was my first proposal, has become unrealistic, because we have not been able to get the amendment adopted. We have been consistent in saying that we want to protect our troops, the safety of our troops, and have them withdrawn in orderly fashion; and the best military evidence is that that will take approximately a year.

So, consistently, we have provided the final termination date as approximately 1 year hence.

Mr. DOLE. Let me say to the Senator from New York that I do not quarrel with his consistency, and I say so in all respect to the Senator from New York. I understand, as he understands, that the issue next Tuesday will be who makes the determination.

Mr. GOODELL. I agree.

Mr. DOLE. Shall it be the President?

Shall it be President Nixon, who is disengaging in Southeast Asia? Shall it be the President, who found this war on his doorstep on January 20, 1969, and who has thus far returned more than 120,000 Americans, and who will return another 150,000 by next May 1, which, I might say to the Senator from New York, is 15,000 more than advocated 2 years ago by the principal sponsor of this amendment, the junior Senator from South Dakota?

The point I seek to make is that President Nixon has kept his word with reference to South Vietnam. It would seem that we would do a great disservice to the President to say to him, and to signal the enemy in advance, that we fix the date, December 31, 1971, plus the 2-month grace period, beyond which the President is powerless to act in Southeast Asia. The President might have a faster timetable. I assume that this amendment would not require the President to continue the war, would it, until February 1972?

Mr. GOODELL. If the Senator will yield, he reminds me of the comment the President made last year—2 days after the introduction by me of S. 3000, the Vietnam Disengagement Act. That bill provided for final and complete withdrawal by December 1, 1970. At the time, it was a little more than a year beyond the date of enactment, if it were enacted.

The President's comment at the press conference was that my proposal was "defeatist". He wanted to get all those troops out before December 1, 1970. Of course, we all want to get them out as soon as possible. If we can withdraw them faster, the President is at full liberty to withdraw them faster.

I would say to the Senator that I agree with him that the question is who makes the decision, but I do not think it is a question of whether it is the President or Congress, it is a question of whether the President makes it alone or Congress shares that responsibility with the President. I believe that the Constitution provides Congress has that responsibility and that obligation.

I might say to the Senator from Kansas that he might welcome the posing of this issue. I welcome it. It would be my guess, much to my regret, that next Tuesday, the amendment to end the war will be defeated in the Senate, although I think there will be a substantial vote in favor of it. The Senator from Kansas can then go forth and interpret the vote by the Nation's elected representatives as being in support of the President's policy of withdrawal. I hope that all my colleagues understand that.

I, too, praise the President. I will go before any forum and say that President Nixon inherited this war. He has turned it around. He has withdrawn troops. But that does not mean that he has got the right policy. That does not mean that we have a vital interest in staying in the war and winding it down gradually while 20,000 to 30,000 more Americans die.

I am sure that whatever President Nixon's policy—and this is not a partisan matter, obviously, and it was not the Johnson administration's and it is not under President Nixon—while I prefer the Nixon policy to the Johnson policy, it is not the right policy in terms of the country, in terms of its vital interests.

Thus, I think that Congress should step forward and vote on it. I know that the Senator is ready and willing to vote on it. Other Senators, of course, will do so. The vote will be on the record and they can go before the people and defend their actions.

Mr. DOLE. I appreciate the Senator's comments. We have participated in the rather lengthy debate on past amendments and resolutions on this subject. I voted for the Church-Cooper resolution, after the extended debate on that measure, and I recognize the responsibility that Congress has. We must share the burdens, but I say again that, for some reason, the burdens were not shared when the conflict was escalated in 1964, 1965, 1966, and 1967.

Again I recognize that the Senator from New York has been consistent. He has been an active opponent of escalation. I applaud him for it. The point is, there was no rush at that time, by the Senate or the House, to limit the withdrawal date, or any escalation date, or any escalation figure, or any troop level, as this amendment does. It appears to me that we say, in effect, in fact, section (a) states:

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 two hundred and eighty thousand armed forces of the United States after April 30, 1971.

As the Senator knows, that is precisely what the troop level will be at that time; so there is no quarrel with that section. It is an endorsement of the program and the progress achieved by President Nixon. The sponsors of the amendment recognize that as President Nixon's achievement, and not in a partisan way. It is a recognition that the President has made progress.

Mr. GOODELL. I agree with that.

Mr. DOLE. The troop level will have gone from 485,000 odd men down to 280,000, or fewer, by May 1 of next year.

Mr. GOODELL. On that point let me say that I agree wholeheartedly with the Senator from Kansas in the point he has made, that no one proposed this before, that no one proposed a fixed date. I must say to the Senator from Kansas that I was in the House of Representatives at the time. There were 100 Senators here. Apparently, no one thought of it. I did not. The first time it was proposed was in 1969, after I had agonized for 9 months. I tried various approaches that would be a responsible exercise of legislative power, recognizing the realities of the conflict in South Vietnam, and I came up with this device.

I did not choose to vote against military appropriations because that would be voting against giving our troops the supplies and equipment they needed. At least it would be interpreted that way by many. Any effort to cut off funds immediately for the military would be interpreted as meaning we are not going to give our boys the ammunition and the guns they need after we have sent them over. Therefore, it occurred to me that the only way to approach it was to set a fixed date about a year away—by which time we would cut off all funds, which would give a warning to all the combatants, and notice to the President, that this was the date Congress felt should be observed.

I made that proposal on September 26 of last year and we see now a series of other proposals that use this device.

I must say to the Senator from Kansas that I agree with him, had I thought of it in 1967 or 1966, I hope and expect that I would have offered it as an alternative to the Johnson administration then in power.

Certainly my offering it on September 26, 1969, had nothing to do with the fact that the President of my party was in the White House. As a matter of fact, it made it more difficult. But it was my view that this question—and I know it is the view of the Senator from Kansas—was one in which politics did not enter. This is not a political debate, obviously, between the two of us.

Mr. DOLE. I appreciate that. I appreciate the Senator's responding. I am certain he agrees that every Member of this body wants the war to end today, wanted it to end years ago, 5 years ago, and wants it to end next week. But that is not the issue. It never has been and it never should be.

Mr. GOODELL. I agree. That reminds me of the point the Senator made earlier, regarding the advertisements which were printed and placed on the media. Anything that might have implied a lack of patriotism or a lack of concern for peace among those who supported the President, I disavow completely. It certainly was not my intent, and I am sure it was not the intent of the sponsors of the amendment to end the war. I respect the position of the Senator from Kansas. I respect the President's position. I know that they do not like the war, either. They want peace. It is a question between us—among us, if you will—how to attain the peace. That is where we differ.

Mr. DOLE. I agree with that statement and I am certain that the debate on Monday and Tuesday of next week will be on that level, as to how we can, through constructive debate, perhaps bring about an end to the conflict in South Vietnam perhaps 1 day sooner, or a month sooner, or a year sooner. But I do not agree with the response to this matter contained in the so-called amendment to end the war. The Senator from Kansas has great confidence that President Nixon is definitely trying to disengage and extricate us and to hold down the casualties. The Senator from Kansas happens to believe the President's plan is working. Perhaps there is a better plan. But I find no such policy enunciated in the most recent so-called amendment to end the war—or its recent modification.

Mr. GOODELL. I thank the Senator from Kansas very much.

THREE-PRONGED ATTACK

Mr. DOLE. Mr. President, I have today launched a three-pronged effort to block a recent ruling of the Federal Communications Commission.

The decision in question was issued on August 18 and dealt with the so-called fairness doctrine for presentation of conflicting viewpoints on major issues over radio and television.

The three points are:

An appeal taking the FCC into the U.S. Court of Appeals in Washington, D.C.

A motion with the Commission asking postponement of its decision until the court gives a ruling.

A letter to NBC President Julian Goodman asking that opposing spokesmen be allowed to answer an NBC program featuring Senators GEORGE McGOVERN and WILLIAM FULBRIGHT scheduled for broadcast on NBC August 31.

That, incidentally, is a day or two before the vote on the so-called amendment to end the war.

I was one of 11 U.S. Senators who unsuccessfully sought an FCC ruling to obtain free time on NBC to respond to a May 12, 1970, NBC television show promoting the McGovern-Hatfield so-called amendment to end the war. My petition, along with several other related cases concerning radio and TV coverage of controversial issues, was dealt with in one FCC opinion. In taking the Commission to the Court of Appeals, I have challenged portions of the FCC decision which require the major television networks to grant free prime time for opponents of the President's Southeast Asian policy to answer five televised Presidential addresses on the subject.

At the same time the court case was begun, a separate petition was filed asking postponement of FCC enforcement of its decision until a court ruling is obtained.

If the confusion the FCC has created is to be clarified and further misapplication of the law is to be avoided, we must have an authoritative decision by the courts. If the Commission's order is allowed to stand until the court can rule, the damage will have been done regardless of the court's final decision.

NBC announced on August 21 that it was making free broadcast time available to Senators McGOVERN and FULBRIGHT in response to the recent FCC decision.

In my letter to NBC President Goodman, I pointed out that the so-called end the war amendment would be voted on the morning after the McGovern-Fulbright program, and opponents would have no other chance to reply. I have asked that two additional Senators with opposing viewpoints be allowed to appear on the August 31 program.

Mr. President, I ask unanimous consent that the notice of appeal to the U.S. court of appeals, the motion to stay filed with the FCC, and a copy of my letter to Mr. Goodman may be printed at this point in the RECORD.

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

[In the United States Court of Appeals for the District of Columbia Circuit]

NOTICE OF APPEAL

ROBERT DOLE, appellant, *v.* Federal Communications Commission, appellee

Robert Dole, United States Senator, State of Kansas, pursuant to the provisions of Section 402 (b) of the Communications Act of 1934, as amended, hereby appeals from the actions of the Federal Communications Commission, as contained in a Memorandum Opinion and Order released August 18, 1970, FCC 70-881 (— FCC 2d—) entitled *In Re Complaint of Eleven United States Senators Against National Broadcasting Company, Inc.*, and other closely related and mutually dependent cases contained in the same Memorandum Opinion and Order. In its order, the Federal Communications Commission denied the complaint of the appellant, and ten other Senators, against the National Broadcasting Company (NBC) involving the May 12, 1970 program on NBC which supported the "Amendment to End the War." This matter is treated in what the FCC Memorandum Opinion and Order refers to as "Section D", Paragraphs 46 through 51.

Because portions of the Commission decision, Section B, "The Complaints that a Spokesman be Given Equal Opportunities to Respond When the President has Addressed the Nation on Broadcast Facilities," and Section C, "The Complaints that the Networks or Licensees Have Not Achieved Fairness in View of the Number of Presidential Broadcasts on the Indo-China War and Their Efforts to Present the Contrasting Viewpoint," are apparently interrelated in the Commission's rationale, contained in the Order, appeal is taken from these portions of the Order, also.

If the decision of the Commission in respect to Sections B, C and D is allowed to stand as the law, the rights of the Appellant, and many other similarly situated individuals, will be aggrieved and adversely affected. Broadcast licensees would be encouraged to act unreasonably and to fail to fulfill their obligations to the public which they serve.

Respectfully submitted,

ROBERT DOLE.

MOTION FOR STAY

(Before the Federal Communications Commission, 11 U.S. Senators against National Broadcasting Co., Inc.)

Re FCC 70-81, memorandum opinion and order released August 18, 1970.

To: The Commission

Robert Dole, United States Senator, State of Kansas, hereinafter referred to as Movant, by his attorney, respectfully submits this Motion for Stay of the Commission decision in the above captioned proceeding. In support of the Motion, Movant shows:

Movant was one of the eleven United States Senators filing a complaint with the Federal Communications Commission against the practices of the National Broadcasting Company, Inc. (hereinafter NBC). Said complaint was filed on July 13, 1970. Thereafter, on July 16, 1970, Movant and other United States Senators submitted a Brief in support of their request for time and their complaint against NBC. The latter filed a reply on July 30, 1970. The Federal Communications Commission released its Memorandum Opinion and Order on August 18, 1970, which denied the complaint of Movant and the other ten Senators. See Section D, Paragraphs 46 through 51 of said Memorandum Opinion and Order, pages 21 and 22.

As a party aggrieved and adversely affected, Movant has filed a notice of appeal with the United States Court of Appeals for the District of Columbia Circuit. The appeal raises questions of law involved with all aspects of the Commission's decision, save for that portion that dealt with the complaint of the Republican National Committee. In view of the pendency of the appeal, Movant asks that the Commission stay the effectiveness of its decision, until the United States Court of Appeals for the District of Columbia Circuit has had an opportnuity to pass upon all aspects of the appeal.

Specifically, the Commission should enter an order requiring that the parties preserve the *status quo* pending the outcome of the appeal before the United States Court of Appeals for the District of Columbia Circuit.

As will be shown below, a stay is vital in the instant case, in order to maintain the *status quo* and avoid disruption which would be of a substantial nature in the event the Commission declined to enter a stay of the effectiveness of its decision of August 18. If the appeal is successful before the Court, the National Broadcasting System would be required to grant thirty minutes of prime time to the Movant and the other Senators to respond to the program of May 12, 1970, presented by the "Committee to End the War" over the NBC network. The FCC decision recognizes that there was a controversial issue of public importance and that the Fairness Doctrine was applicable. No one has been permitted by NBC to answer that specific program on NBC. Instead, the Commission has merely relied upon vague generalities to the effect that the "Administration" has had opportunity to present a contrasting position.

Instead of the opportunity for Movant and other Senators to debate the issue, the effect of the FCC decision has been to permit, and encourage, NBC to grant further time to Senator McGovern, as well as Senator Fulbright, to overwhelm the public with their views, presented free over NBC.

A stay of the decision is necessary to avoid serious injury to the public and to nullify the overall effect of the Commission decision. The granting of a stay in this matter will not harm anyone. The lack of injury to the public dictates that the Commission stay the effectiveness of its decision.

In conclusion, the grant of a stay would protect the public interest as well as the interest of Movant and other United States Senators, pending a final decision by the United States Court of Appeals.

Note is taken of the fact that a petition for reconsideration of that portion of the decision dealing with the Republican National Committee complaint is pending before the Commission. A grant of the stay would simply permit the Commission to maintain orderly processes during the pendency of review, both by it and by the Court.

Respectfully submitted.

ROBERT DOLE.

Mr. JULIAN GOODMAN,
President, National Broadcasting Co.,
New York, N.Y.

DEAR MR. GOODMAN: I note that the National Broadcasting Company has announced a one-half hour program on August 31, 1970, featuring Senators Fulbright and McGovern as "spokesmen to present the contrasting viewpoint to the Administration" on the "issue" of the Indochina War. It has also been reported that NBC does not intend to appeal the August 18, 1970, decision of the Federal Communications Commission dealing with the Fairness Doctrine. I have also read your article in the *Wall Street Journal* of August 3, 1970, entitled, "TV: Formulas Won't Bring Fairness."

Taking the FCC decision the NBC announcement and your article together, I am concerned and alarmed at your failure:

1. To invite Senators, opposed to the positions espoused by Senators Fulbright and McGovern, to appear on the same program with them; or, alternatively.

2. To refrain from presenting Senators Fulbright and McGovern until all legal and administrative remedies have been exhausted.

In the first place, it is difficult to understand how you define the "issue" of the Indochina War, or what you have determined the "viewpoint of the Administration" to be or what *the* contrasting viewpoint to it is. Nonetheless, in the light of the importance of the issues involved, your actions appear to be incomplete and ill-considered.

Although the second above enumerated course of action does not have the greatest appeal, it does appear to be a possible way of complying with the letter and spirit of the

law, because the points of law raised by the August 18 FCC decision have not yet been finally determined by the Commission or the courts. It seems somewhat unusual that NBC would take this action under the August 18 ruling before all administrative and legal remedies have been exhausted.

I believe the first course outlined above would provide the greatest freedom of information and most complete discussion of the issues for the public. If you carry Senators Fulbright and McGovern on August 31, 1970, you will be obliged to present spokesmen opposing the views they will express. Under the circumstances surrounding this matter, the most reasonable and effective way to illuminate the controversial issues to be discussed by Senators McGovern and Fulbright would be to simultaneously present spokesmen from the U.S. Senate who hold opposing views.

You have stated that there is no formula and that there should be none for balancing Presidential appearances on television. You are certainly correct both as to Presidential statements and the general question of all controversial issues. In this case it is also important to remember that the Presidential appearances in question took place long before August 31, and that the circumstances and issues have changed considerably in the interval. Particularly important is the fact that the McGovern-Hatfield Amendment has twice been altered significantly within the past few days, and one would expect the latest version of this proposal to be the principal subject of discussion on August 31. Thus, the appearance of Senators Fulbright and McGovern will be the first discussion of a controversial issue (viz. the new version of the McGovern-Hatfield Amendment), to which opponents will have a clear right of reply. On this point it should also be noted that the Senate will vote on the McGovern-Hatfied Amendment on the morning following the appearance of Senators McGovern and Fulbright. Therefore, August 31 will be the last day any discussion of the opposition viewpoint would be relevant.

I call upon you to insure that the major portions on each issue presented on the August 31 NBC program are expressed by including in addition to Senators McGovern and Fulbright two other Senators who hold opposing viewpoints on the issues to be discussed.

You should also be aware that I am today taking an appeal of the August 18 FCC decision to the U.S. Court of Appeals for the District of Columbia and am filing a motion for stay of said decision with the FCC.

Sincerely yours,

BOB DOLE,
U.S. Senate.

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.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am about to propose a unanimous-consent request which has been cleared with all principal parties concerned, meaning the authors of the amendments, the manager of the bill, the able assistant minority leader, and the able majority leader.

Mr. President, I ask unanimous consent that on tomorrow, immediately following the vote on the amendment offered by the Senator from Wisconsin (Mr. PROXMIRE), the amendment of the Senator from Alabama (Mr. BELLMON), amendment No. 857, be laid before the Senate and made the pending business. A limitation of 30 minutes has already been agreed to on amendment No. 857.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that immediately following the vote on the amendment to be offered by the Senator from Oklahoma (Mr. BELLMON) on tomorrow, the amendment by the Senator from New Hampshire (Mr. MCINTYRE), the so-called NSF research amendment, be laid before the Senate and made the pending business. A limitation of 1 hour has already been agreed to.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be 5 hours of controlled time on the amendment which will be offered by the Senator from Maine (Mr. MUSKIE), the first 2 hours of controlled time to begin running on Monday next at 10 o'clock in the morning, and going until noon on Monday next, the 3 remaining hours of controlled time to begin running on Tuesday next, immediately following the vote which will occur on the amendment to be offered by the Senator from Wisconsin (Mr. PROXMIRE) with respect to draftees; that upon the conclusion of the 3 hours on Tuesday next, a vote occur on the amendment to be offered by the Senator from Maine (Mr. MUSKIE), the debate on the Muskie amendment both on Monday and Tuesday, to be equally divided and controlled by the able Senator from Maine (Mr. MUSKIE) and the manager of the bill, the Senator from Mississippi (Mr. STENNIS), and that any amendments thereto, appeals and motions, except a motion to lay on the table, be limited to 30 minutes, the time to be equally divided between the author of the amendment to the amendment and the author of the basic amendment, the Senator from Maine (Mr. MUSKIE), or if the Senator from Maine (Mr. MUSKIE) is not opposed to the amendment to the amendment, then the time in opposition to be under the control of the able manager of the bill, the Senator from Mississippi (Mr. STENNIS).

Mr. President, I ask unanimous consent further that, immediately upon the conclusion of the vote which will occur on Tuesday, circa 3 in the afternoon on the Muskie amendment, the bill be advanced to third reading, that there be 1 hour on the bill to be equally divided between the manager of the bill, the Senator from Mississippi (Mr. STENNIS), and the minority leader or his designee, and that a vote occur on final passage of the bill at the expiration of that 1 hour.

The PRESIDING OFFICER (Mr. BURDICK). Is there objection?

Mr. STENNIS. Mr. President, reserving the right to object—and I certainly do not intend to object—one point is not clear to me with reference to amendments to the Muskie amendment.

There was to be 30 minutes allowed on each amendment. Nevertheless the agreement says that a vote on the Muskie amendment shall come at 3 o'clock.

Mr. BYRD of West Virginia. I said circa 3 o'clock, approximately 3 o'clock.

Mr. STENNIS. All right. Reserving the right further to object, does that mean that if an amendment is to be offered and debated, a vote could be had on the amendment to the amendment at that time?

Mr. BYRD of West Virginia. If an amendment to the amendment is offered, a vote on the amendment to the amendment would occur only after all time had expired on the basic amendment. I think that is in accordance with the precedents, if I may inquire of the Chair.

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. Mr. President, it seems to me that it would lend confusion if a Senator should offer an amendment. During the rest of the debate, the debators and the listeners would be uncertain as to what was to be voted on, particularly whether it was the final version.

It seems to me that there ought to be some debate after it is known just what the Muskie amendment is going to be.

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

Mr. STENNIS. I yield.

Mr. MUSKIE. Mr. President, I think there is likely to be only one possible amendment to the amendment as it lies at the desk. If it is offered, it will be offered, I think, early in the 5 hours of controlled time to which the Senator from West Virginia has referred.

In my point of view, I do not think it is necessary to include any time for that amendment. From my point of view, I would be content to let the 5 hours of controlled time remain and we can take the time out of that to consider the other amendment that the Senator from Mississippi and I have discussed.

Mr. STENNIS. Mr. President, if the Senator would yield further, I certainly do not intend to be contentious.

My point is that I think in the final part of the debate, the debaters and the voters ought to all have their minds on the substance of the amendment in making up their minds—I do not know what form the Muskie amendment will take—and debate it before a vote is taken on the amendment to the amendment.

Perhaps the Senator would offer his amendment on Monday during the controlled time.

Mr. BYRD. of West Virginia. Mr. President, would this suggestion be agreeable and meet the point raised by the able Senator?

Would the Senator agree if I should ask unanimous consent that if any amendment to the Muskie amendment is offered, the 30 minutes on the amendment to the amendment start running immediately and that a vote thereon occur at the expiration of the 30 minutes allotted on the amendment to the amendment?

Mr. STENNIS. Mr. President, I would rather have it that way than the way

it was first stated. But the Senator from Maine has the key to this matter.

Mr. MUSKIE. Mr. President, I do not want to be locked in at this point to this unanimous-consent agreement. It is my feeling at this point that if the amendment is offered, I will offer it on Monday.

I think the Senator has made a valid point. On Tuesday we ought not to confuse the issue. It is going to be difficult enough to get the agreement of all Senators on the principal issues. I will give their personal assurance and clear it with all Senators.

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

Mr. BYRD of West Virginia. I yield.

Mr. STENNIS. Mr. President, I am satisfied with the Senator's assurance.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? The Chair hears no objection, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I wish to be sure we are clear on this point that has been raised.

I so revise my unanimous-consent request to take into consideration the possibility that an amendment to the amendment may be offered. I revise my unanimous-consent request to provide that the time on an amendment to the amendment start running immediately upon the submission of such amendment to the amendment, and that, at the conclusion of the 30 minutes on the amendment to the amendment, there be a vote on the amendment to the amendment.

The PRESIDING OFFICER. That it would be in order before all time is used?

Mr. BYRD of West Virginia. Yes.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I wish to express appreciation to the able assistant minority leader, who may have a question or some comment at this point, and also to the manager of the bill, the Senator from Mississippi (Mr. STENNIS), to the author of the amendment, the Senator from Maine (Mr. MUSKIE), and the coauthor of the amendment, the Senator from Maine (Mrs. SMITH), and to all other Senators who have cooperated so will in making it possible for these agreements to be effectuated.

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

Mr. BYRD of West Virginia. I yield.

Mr. STENNIS. We are indebted to the Senator from West Virginia and the Senator from Michigan, Mr. President. They worked out this matter.

Mr. BYRD of West Virginia. Mr. President, would the Senator yield to me for 30 additional seconds?

Mr. PROXMIRE. I yield.

Mr. BYRD of West Virginia. Mr. President, it has been called to my attention that in my unanimous-consent request I used the word "advanced" to third reading. I amend my statement to say that "the bill be read the third time."

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

AMENDMENT NO. 861

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

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

Mr. PROXMIRE. Mr. President, I call up my amendment, No. 861, and I ask that it be made the pending business.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill add a new section as follows:

"SEC. 508. (a) Notwithstanding any other provision of law, the aggregate amount that may be expended for Department of Defense—Military Functions for the fiscal year ending June 30, 1971, shall not exceed $66,000,000,000."

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the name of the Senator from Oklahoma (Mr. HARRIS) be added as a cosponsor of the amendment.

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

Mr. PROXMIRE. Mr. President, earlier today the distinguished chairman of the Committee on Armed Services, the Senator from Mississippi (Mr. STENNIS), made a strong, and, as he always does, a fair but powerful attack on this amendment. I wish to reply to some of the points he made because I disagree very strongly.

One of the points he makes is that this amendment would reverse the usual process, by acting before the Committee on Appropriations reports. What this amendment would do is not to say we can appropriate a certain amount. The amendment states that we would put a limit on the amount the President can spend.

Such a proposal has been voted for in the past and it has been supported in the past by a substantial majority of Senators who are here now. It is not a precedent and it is not a radical departure from past practice, in the sense it has not been done before. Further, the Committee on Appropriations can make any appropriations they wish but there is a limit on the amount the President can spend.

Then, the distinguished Senator from Mississippi objected to the amendment on the ground that already 2 months of the year have gone and although we would cut $5 billion it will have a different effect since the $5 billion has to be treated on a prorated basis of 9 months or 10 months, instead of 12 months. That is an interesting objection because the Senator meets himself coming back in that argument.

If the Senator is suggesting that I wait until the appropriation bill is before us, then it would not be a matter of 2 months or 3 months, but many more months, because the appropriation bill will not be before us until October. Then the Senator from Mississippi could make his argument even more strongly that we are treating the Department of Defense unfairly.

Although this amendment calls for a cut of $5.1 billion, or a reduction to $66 billion, I think all of us are realistic enough to recognize that this bill must go to conference. Unfortunately, Mr. RIVERS and the conferees on the other side are unlikely to share the enthusiasm of the Senator from Wisconsin for a cut of $5 billion. Therefore, I anticipate there will be some compromises in conference and, indeed, leeway, because the House did not make any cuts.

This is a limited, and as I shall demonstrate, a highly responsible proposal. There is no question the Department of Defense can live with the $66 billion. Last year we were told that if we reduced appropriations below President Nixon's request it would do great damage to our defense and that it would be a serious mistake insofar as our defense was concerned because President Nixon had already cut President Johnson's request. We cut President Nixon's defense request by more than $5 billion. What happened? We still have a military force. We still are fighting the war in Vietnam, and I am sure we are all unhappy about it. We still have 3 million men in the Armed Forces, over 400 major bases abroad, and we are still wasting money in procurement, as the Under Secretary of Defense testified in a speech the other night. So there is no question that we have not starved our military. Our military has not become too weak.

WHY THE PROXMIRE-MATHIAS AMENDMENT SHOULD BE PASSED

Mr. President, there are overwhelming reasons why the Proxmire-Mathias amendment should be agreed to. All the amendment does is to place a limitation on the money that can be spent this fiscal year for the "Department of Defense—military functions." It reduces spending by $5.2 billion or approximately 7 percent below the estimated outlays in the President's budget for these purposes. We would cut back the proposed $71.2 billion spending in fiscal 1971 for "military functions" to $66 billion. We do this by placing a ceiling on the amount which can be spent.

SIMPLE, DIRECT AMENDMENT

I think this is a direct, simple, straightforward way to do it. I know there will be all kinds of arguments—mostly irrelevant and procedural or nit-picking—which will be made against the amendment. But it is a direct, simple, and effective means to cut military spending this year. Senators should therefore vote on that issue rather than on some of the irrelevant and unimportant and extraneous issues which will be raised. Later, I will raise some of them myself in order to answer them and rebut them before attempts are made to canonize and cast them in bronze.

DEALS WITH SPENDING

One of the problems Congress faces when it passes an authorization bill or an appropriation bill is that it is the President who determines how much of an appropriation bill will be spent and when. The importance of this amendment is that we limit the actual spending. We can actually effect what is spent in this fiscal year for military functions by passing this amendment.

The Armed Services Committee itself has cut almost 7 percent in the procurement bill. That cut will certainly be

translated into at least that amount or more on the appropriation bill. What our amendment does in effect, is to make it possible to apply the 7-percent cut not only to procurement but the other items—the nonprocurement items—in military spending as well.

WHY AND WHERE WE SHOULD CUT

The amendment does not detail where the cuts should be made. It leaves that to the President and the Pentagon. There is very good reason for that. In the past when we have proposed amendments to specific weapons or for specific items, it is invariably argued that Senators do not have enough information and are not expert enough to second guess the military experts at the Pentagon on these issues. That is always and invariably said.

What our amendment does, however, is to limit the expenditures but tell the Pentagon, in effect, to make the cuts. They can make them where they want them within the limits of the law. They can choose the priorities and the places to cut, within, of course, the military budget.

But while we leave the actual cuts to them, we and others have made detailed suggestions where the cuts could be made and have provided extensive analysis and information as to where the waste lies. Let me be specific.

WASTE IN PROCUREMENT

There is no question whatsoever that there is fantastic fat and waste in the procurement of our weapons systems. And this along with manpower is where the big money is.

But until the debate last year and the debate this year, Pentagon spending was sacred. Finally, we have at least been able to criticize it and to develop what the problems are. That has been a healthy endeavor. But unless the Pentagon cuts and cuts hard, in the procurement area, as the committee itself has done in its 7-percent cut we will get no effective action. Our amendment contemplates that the Pentagon would carry out the committee cuts.

It is not only the Senator from Wisconsin who is critical of procurement. Almost any one who has looked at it objectively concludes that changes are needed. No less a person than Secretary Packard gave a scathing indictment of procurement practices before the Armed Forces Management Association in Los Angeles last week. Here are some of the things he said:

Frankly, gentlemen, in Defense procurement we have a real mess on our hands, and the question you and I have to face up to is what are we going to do to clean it up.

His criticism of routine defense procurement, as opposed to some examples of good procurement he cited, was devasting. After giving some examples of procurement carried out well when it was done outside the system and under good leadership, Secretary Packard had this to say:

On the other hand, when we are not in a hurry to get things done right, we over-organize, over-man, over-spend, and under-accomplish.

I congratulate the Secretary both for his frankness and for his courage in addressing those remarks to a meeting in the citadel of the so-called military-industrial complex.

In addition, the Secretary addressed himself to the problem of the new highly complex systems. This is where much of the trouble has been—in the black boxes, in the avionics, in the computer-radar systems. The Stubbing report brought this out dramatically over 18 months ago. But this is what the Secretary said to the management group:

The Defense Department has been led down the garden path for years on sophisticated systems that you promised would do all kinds of things for some optimistic cost. Too frequently we have been wrong in listening to you, and more frequently you have been unable to deliver on either of these promises—what it would do or what it would cost.

How right he is about that. We know from the General Accounting Office's report comparing the present cost of 38 major weapons systems with the estimates of their cost when the Pentagon originally asked for them, that they have increased by $23 billion or more than 50 percent in cost. And that, I can say, is a most modest and careful estimate.

The Secretary also gave some additional reasons why we are in the "mess" we are in. Let me quote him once again:

Let's face it—the fact is that there has been bad management of many defense programs in the past. We spend billions of the taxpayers dollars; sometimes we spend it badly. Part of this is due to basic uncertainties in the defense business. Some uncertainties will always exist. However most of it has been due to bad management; both in the Department of Defense and in the Defense Industry.

And we could provide example after example after example. The C–5A with its $2 billion overrun, its wing crack, and its late delivery is one.

There is the GAMA Goat, a combination land and water vehicle which the Pentagon assigned to a company which had no experience in making anything comparable. It rose in cost from $69.1 million as a planning estimate to $438.7 million now.

There is, of course, the case of the famous TFX—or F–111.

There is also the Submersible Rescue Vehicle—a vessel originally designed to rescue men from submarines. The original estimate was $36 million for 12 vessels, or $3 million each. Present estimates have risen to almost $80 million a unit. And the irony of it is that we have found that such a vessel might have been successfully used only twice since the 1920's.

BETTER USE OF FUNDS

We say this country could be stronger if we cut back on waste and used those funds in one or all of three ways.

First, those funds are vitally needed for our unmet needs here at home—for schools, for health, for housing, and to fight pollution. When the Congress has increased some of these funds even by small amounts over the President's budget, he has vetoed them with a stinging rebuke to us as "big spenders." But many of us believe that our priorities should be reordered—that we can pay for some or all of these increases in health, housing, education, and anti-pollution, by cutting back on military waste and on unnecessary military expenditures.

Second, there needs to be some reordering in the Pentagon itself. Many experts believe we would be far wiser to spend military funds on new fighter planes instead of the C–5A. Many believe fighters are far more important than a new manned bomber which past Secretaries of Defense said were out of date almost a decade ago.

Certainly we should be spending funds for submarines rather than aircraft carriers. Furthermore, we should be beefing up our combat divisions or our combat-ready divisions and cutting back on supply units, some reserve forces that sit around doing very little, and on the bureaucratic and logistic excesses which give us only one fighting man for every 15 men in the service.

Third, some of the savings we could make in a more efficient Defense Department—and more efficiency elsewhere too—should be returned to the taxpayers of this country who are now terribly overburdened with tremendous increases in their property taxes, sales taxes, and State income taxes.

Let us examine what the $2 billion overrun on the C–5A itself might have been used for.

The $2 billion, at $10,000 per man per year for the cost of a man in the service, would finance the pay and allowances and associated personnel costs for 200,000 combat troops, or more than 10 combat divisions, for a full year.

That fact is precisely why this country can be far stronger than it now is if we will get rid of military waste and redundancies.

Two billion dollars would finance the housing subsidies for some 3⅓ million families under the new homeownership provisions of the 1968 Housing Act for an entire year. Yet this country has the most desperate housing shortage in its history.

The $2 billion Lockheed overrun is five times as much as in last year's budget for rural electrification. It is almost 20 times the limit of $214 million for urban mass transit in the House appropriations bill. It was almost double on the 1970 funds for low- and moderate-income housing in the HUD budget. The $2 billion would have paid for almost all the non-service-connected pensions for all U.S. veterans in the last fiscal year. It is more than all the money we spend for veterans' hospitals and medical care for them.

We are talking only about the overrun on one weapons system. We must cut back on military waste. We must reorder our priorities.

Many people say, "We are against military waste, but how do you cut it back?" There is one way Congress can effectively cut it back, there is one congressional power that is respected, and that is to cut the amount of funds available. Secretary Packard said money available for spending for defense contracts in the past has been far too much. The only way we can provide discipline comparable to the discipline in the private sector is to reduce the funds available.

That is why this amendment is so important if we are going to get efficiency.

No one can doubt that if those who make procurement are limited in the amounts they have, they will have to exercise discipline and responsibility.

OVERSEAS BASES

A short time ago a major story in the New York Times reported that this country had 429 major and almost 3,000 minor bases scattered in 30 countries throughout the world.

Many of these were established for reasons now long forgotten. Many of them are redundant. Many of them should be reexamined to determine if they are really needed.

By remaining at some of them, we may in fact give the appearance of a commitment to deploy our military forces which has never been embodied in a detailed agreement, let alone a treaty consented to by the Senate.

The Senator from Missouri (Mr. SYMINGTON) is examining this question in great detail and with great perserverance. His initial findings alone are sufficient for us to know that a great many of them are redundant and should be closed.

May I make one further point in this regard? When Senators voted for the C–5A, some did so on the grounds that that plane would allow us to bring the boys home and to close down overseas bases and save hundreds of millions of dollars. Now that we have agreed to spend over $3.75 billion for only 42 C–5A's, we should start making some of those savings in the overseas bases which are redundant and out of date. The best way to do so is to put a ceiling on the Pentagon's spending so that they do not delay any longer in getting rid of those bases so unnecessary to our fundamental security.

SHIFT FROM TWO-PLUS TO ONE-PLUS WAR STRATEGY

Last year on the floor of the Senate, the distinguished Chairman of the Armed Services Committee argued against amendments we proposed to make specific cuts in defense procurement on the grounds that this could not be done until we shifted from the two-plus war strategy. That strategy said we should have enough troops and equipment to be able to fight a major land war in Europe and a major land war in Asia plus a minor war or contretemps somewhere else, all at the same time.

Now the policy has been changed. Secretary Laird has announced that we have done away with the two-plus war strategy and now are following a one-plus war strategy. But, this is not reflected in any significant budget cuts. When pressed on this issue, we are told that we had never fully funded the two-plus war strategy. Consequently, they argue, there are no savings.

This is an interesting argument, but there is ample proof that is it not true. There should be major cuts to reflect our shift in policy. The evidence is from a man who should know, namely Mr. Charles Schultze, formerly the Budget Director.

The one-plus strategy was "costed out" by the military departments when Mr. Schultze was Director of the Budget. Based on that knowledge and his own long experience, he has calculated that the one-plus war strategy should cost us $14 billion less than we are spending for strategic and general purpose forces this year. He made that estimate on the basis of his very considerable knowledge of the facts.

One could argue that there has not yet been time to put this $14 billion cut in effect, and I acknowledge that. But I do not see why we could not effect at least $5 billion of it, or along with savings in procurement and bases and other reforms, we could not make a $5 billion overall cut, now that the two-plus war strategy has been discarded and the one-plus strategy is in effect.

We should be getting some of the savings from this shift in policy this year. And a cut of $5 billion in overall military spending would help to bring it about.

MANPOWER

Manpower costs are the single biggest military expense. We now have slightly more than 3 million men and women under arms. Before Vietnam we had about 2.5 million. We should be aiming for that goal again, and soon. That would bring cuts larger in military personnel than are now proposed.

The costs per year for one man in uniform plus the logistics and supplies needed to support him, are variously estimated from about $10,000 per man, upwards to $25,000 per man if that man is in a combat unit in a war zone overseas.

The cutback in troops have thus far brought very slight reductions in costs. But they should have a large payoff soon. Unless we cut back hard on overall military spending, the Pentagon will usurp those savings and use them for their own purposes. That is why it is so important that we place a ceiling on expenditures this year.

ENOUGH IS ENOUGH

The members of Congress for Peace Through Law have published a major study on where savings could be made. Published a few weeks ago, that document has been pored over by the Defense Department attempting to find minor errors or mistakes by which to denigrate it. But they have failed to do so, and the basic substance of that report remains intact.

That report, along with the study by the Brookings Institution early in the year, came to essentially the same conclusions about our strategic forces. They found that we could reduce our strategic weapon expenditures from about $18 billion a year to $14 billion a year, and still continue to increase our strategic weapons and strength. We would increase them from 4,200 to 7,000 deliverable nuclear weapons.

We now have at least 4,200 force loadings—nuclear weapons which can be delivered on an enemy after a first strike by that enemy. This is our strategic deterrent.

According to the Pentagon damage tables published in 1968, 400 of these deliverable weapons could wipe out 74 million Russians and 75 percent of their industry. That is a damage which they would be unwilling and unable to sustain.

But we not only have 400 of these weapons, but we have 4,200 of these weapons—or 10 times as many. In addition, under the present programs, authorizations, and appropriations, we intend to increase the number to over 9,000. This would be done by MIRV'ing our Minutemen, providing for the new manned bomber, and shifting from the Polaris to the Poseidon submarine and its larger number of missiles.

Our intentions are to go from 10 times the number of nuclear weapons we need to over 20 times the number we need to wipe out 74 million Russians and 75 percent of their industry. Both Mr. Schultze and the report by members of Congress for Peace Through Law indicate that we could cut back our strategic spending to $14 billion or less, and still provide some 7,000 deliverable weapons in the near future. We could cut by $4 billion here and still carry out the research and development for the ABM, the B–1 bomber, and the ULMS system, while continuing but not speed up the Poseidon MIRV program.

That policy would soon provide some 7,000 deliverable nuclear weapons or force loadings.

That not only is a "sufficient" deterrent. That is an overwhelming deterrent.

OTHER SAVINGS

There are other savings which could be made as well. The new uniform accounting law, according to Admiral Rickover, should save at least $2 billion a year when fully in effect. I am proud to say that the Senate version was accepted in conference on the Defense Production Act and has now been signed into law. While it will take time to get underway, this should bring a big future saving.

There are numerous weapons and weapons systems which individual Senators and Members of the House have examined and found wanting. We question the MBT tank, the B–1 bomber, and the need for more carriers. There is duplication in our anti-submarine warfare efforts which should be consolidated. Furthermore, the Pentagon spends at least $40 million a year directly on public relations and many millions more indirectly. Reform in food procurement practices, and rotation and leave policies of the services, could effect long overdue reductions in expenses.

In fact, as the old saying goes about the local town imbiber, "He spills more liquor than he drinks."

We believe that a ceiling on Pentagon expenditures $5 billion below the amount now proposed to be spent, is the best possible means of forcing some financial discipline on the military services.

It is not only important to choose among military and civilian priorities. There must also be priorities within the Pentagon. The old programs, the wasteful practices, and excessively costly weapons systems must give way to new programs, more efficiency, and weapons which are built on time at a cost estimated reasonably accurately in advance, and which work when they are delivered.

STOCK ARGUMENTS

There are many more reasons why this amendment should be passed. But on the whole it will not be attacked on substantive grounds. We will hear the stock arguments and I will raise some of them now and answer them now.

It will be asked, why did you put it on this bill? Why did you not offer it at the time when the proposed ceiling on all expenditures was offered, or why do you not wait for the appropriation bill? Those arguments have been trotted out on the Senate floor already.

That is no argument against our proposal. It is in order now. We have a right to offer it now. It is relevant now. The word would go out tomorrow to the Pentagon that cuts were coming.

Furthermore, if we wait for the appropriations bill, our amendment would be the subject of a point of order.

The funds in the appropriations bill will not all be spent this year. What will be actually spent this year by the President will come from funds appropriated last year and funds in supplemental appropriations, as well as money appropriated this year. Since one cannot legislate on an appropriations bill, and since one can only limit the specific funds in an appropriation bill, our amendment to limit "spending" or put a ceiling on the spending in this fiscal year would be out of order on the military appropriations bill. That's why we are offering it now.

WHY THE OVERALL CUT?

Some will argue that against a general cut. "You should make specific cuts; you should not use the meat ax approach," it will be said.

That would be a good argument except for two things. When we tried it, the Pentagon supporters opposed it. In addition, more than 75 Members of the Senate—more than two-thirds—have voted for some form of general cut or to impose an overall ceiling on various bills in the previous two sessions of Congress. If a Senator says, "I am against the meat ax or general approach," one can almost invariably say to him, "But Senator, you voted for a general cut this year or last year or the year before." And interestingly enough, more than half of the handful of Members who have not voted for a general cut in recent sessions, are supporters of the amendment I have offered today.

Members should not be swayed by that argument.

It will be said that we are crippling the Pentagon. But they will still have $66 billion for military functions, and $68 billion overall. Mr. President, that is no crippling amount. The fact is that the Russian budget shows something like 17.5 billion rubles, which is the equivalent of about $20 billion, that they spend on their military. Taking into account the difference between the Russian cost of living and ours, the amount they pay their troops, and so on, the London Office of Strategic Studies reports that the Russians are spending now, this year, about $40 billion. We double-checked this figure with the experts who testified before the Joint Economic Committee on this very matter last year, to update their figures. They said that every evidence they have is that the Russian comparable military spending is still about $40 billion or $45 billion in the equivalent amount, and making do with what that $40 billion will buy.

So even if this amendment were enacted, we would still provide far more than half again as much as the Russians spend. As I say, the only way you can exercise discipline on any department, especially the military, where the waste has been demonstrated so vividly, is to cut the amount available. This is the one check that Congress really has.

CONCLUSION

This is a simple, straightforward vote. Are we willing to cut back military spending at a time when are asked to cut back on the money we appropriated for schools and health, or do we believe that the Pentagon should come first?

Are we willing to continue excesses and overruns and wasteful spending, or are we going to insist upon the discipline of the purse strings, which is the one discipline the Congress has?

Are we to have a top-heavy, gold-plated military, with redundant bases, excessive logistic and support personnel, and $40 million for propaganda, or do we want a lean, lithe, combat ready military force which operates efficiently and operates within its means?

Those are the real choices. The issues are clear. It is up to the Senate to decide.

SENATOR MATHIAS DISCUSSES DEFENSE SPENDING

My distinguished colleague from Maryland (Mr. MATHIAS), joins me in sponsoring this amendment. He has been called away this afternoon on a family emergency, but I would like to include in the RECORD remarks prepared by him in support of this amendment. I ask unanimous consent that Senator MATHIAS' comments be included at this point.

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

STATEMENT OF SENATOR MATHIAS

Mr. President, cutting a defense budget is not a job to be done with a dull blunt instrument. It is a job to be done with care, judgment and foresight. It is probably more of an art than a science.

Failure to recognize this fact is probably one of the reasons the efforts made to date in reducing defense costs have reacted unfavorably to overall security considerations and may cause some understandable concern. We have attempted to reduce total dollar cost without altering our pattern of operation. As a result we pour billions into obsolescing hardware items and into peripheral engagement in Vietnam, but neglect the very bedrock security factors upon which security depends. We might instead practice the doctrine of "fly before you buy" and produce limited numbers of prototypes before we place orders for procurement in the billion dollar category.

It is a little like the farmer who foregoes the purchase of next year's seed in order to gather this year's tares.

The Senate Armed Services Committee has wisely rejected some of the Pentagon requests. But at this time of crisis, when our technical lead is in jeopardy, we cannot afford to continue such expenditure on unnecessary or marginally useful systems. We must stabilize our economy and increase our investment in the educational and scientific programs on which our future security will be founded. Our future security will be based on current activity not at our missile sites but in our classrooms—and our educational system is now in crisis.

President Eisenhower was perhaps our wisest recent President on matters of national security. He kept the country strong and our society stable. Our deterrent is still essentially based on programs researched and developed during his administration while he resisted pressures to deploy unnecessary systems. I would like to quote his words here:

"No matter how much we spend for arms, there is no safety in arms alone. Our security is the total product of our economic, intellectual, moral, and military strengths . . .

"Let me elaborate on this great truth . . . It happens that defense is a field in which I have had varied experience over a lifetime, and if I have learned anything, it is that there is no way in which a country can satisfy the craving for absolute security—but it easily can bankrupt itself, morally and economically, in attempting to reach that illusory goal through arms alone. The Military Establishment, not productive of itself, necessarily must feed on the energy, productivity and brainpower of the country, and if it takes too much, our total strength declines."

I cannot improve on General Eisenhower's prophetic words. I can only say that they describe our current condition. And they dictate the kind of "severe scrutiny of the defense budget" for which another great Republican, Robert A. Taft, appealed in his last public speech. Such "severe scrutiny," I believe, would result in a cut at least as great as that currently contemplated. I urge such a cut solemnly, in the interests of national security and domestic peace.

It is not an easy decision for any member of Congress to advocate a curb on government spending when such a decision involves the vital area of national defense. But I do so in the strong conviction that the amendment is responsible in its substance and is made mandatory by the current economic situation.

The citizens of the United States and their elected representatives in Congress can no longer ignore the implications of the fiscal situation we face. Despite a few hopeful signs, inflation is literally eating the nation out of house and home. It is imperative that we review our priorities in light of this daily menace to our national and individual economic situations. We must act swiftly and decisively to restore fiscal order.

I speak of the eroding forces of inflation in general and the needless waste of defense funds in particular. The President is fighting inflation on a broad front. He is acutely aware of the need for economy. His recent veto of the education appropriations bill, although unpopular, was the only responsible course he had in calling the question of overall federal spending levels to the attention of Congress and the nation.

In addition, we have seen recently the commitment to continue an outdated farm subsidy program, the commitment to advance a premature antiballistic missile system and other, similar massive allocations of federal funds. It now appears that the hoped-for surplus of $1.3 billion in our national budget for the current year is disintegrating into a projected $10 billion to $15 billion deficit. If we are to win the war against inflation, we must come to the defense of our economy now. Until we control this slide, no amount of money, however large, will achieve its original purpose and, in fact, may only provide further fuel to the fires of inflation.

Such considerations gain added meaning when Deputy Secretary of Defense David Packard confirms publicly—as he did last week—what many of us have suspected about military procurement process for a long time. As Mr. Packard put it, "We have a real mess on our hands." Rather than more people and more supervision, he said, the Defense Department requires fewer people and a more concerted, economic approach to spending.

This is precisely what the pending amendment will do. It will save money and en-

courage more efficient managment. Inasmuch as military spending is essentially non-productive and inflationary by nature, we simply cannot afford the expenditure of a single dollar beyond our minimal needs. The Senate Armed Services Committee realized this when it cut nearly seven per cent from the military procurement authorization bill. The pending amendment would cut about 7.1 per cent from all military spending.

There are numerous precedents for Congress to legislate a general cut in spending for a particular department and to allow the administrators of the department involved to determine where to apply the cuts. As recently as February 27, the Senate adopted an amendment offered by the distinguished Senator from New Hampshire (Mr. COTTON) to cut by two per cent spending by agencies covered in the appropriation bill for the Health, Education and Welfare departments.

This amendment, would limit overall military spending this year to $66 billion, would leave to the President and the Defense Department the decisions as to where to impose spending cuts. Many members of the Senate, in debate on the pending bill and on other occasions, have pointed to specific areas where they felt cuts could be made. This amendment would leave the decision on cuts up to the executive agencies which in the past have opposed specific cuts on the ground that only the Pentagon knew where they should be made.

In making these cuts, moreover, I recommend that the Pentagon take special effort to assure that scientific and other technical manpower are not permanently lost to our national security programs. It is crucial that current retrenchments—like current expenditures—be designed with our long term security in mind. Conversion of our defense industry for peaceful purposes should not be considered as a part time concern. Conversion is a necessary instrument of intelligent defense planning, preserving our mobilization base for a future crisis.

In the future our defense spending should be maintained at a relatively steady and balanced level. We should not allow uncertain new appraisals of Soviet intentions and capabilities to panic us into erratic splurges of investment in untested systems.

The area where it is most important for the United States to retain a general advantage is in science and technology. The ultimate commentary on our defense policies in recent years is their failure to provide for leadership in this crucial realm, while entailing levels of expenditure far beyond the reach of our competitors in every other area.

Mr. PROXMIRE. 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.

ADJOURNMENT UNTIL 8:30 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 8:30 tomorrow morning.

The motion was agreed to; and (at 6:44 p.m.) the Senate adjourned until tomorrow, Friday, August 28, 1970, at 8:30 a.m.

EXTENSIONS OF REMARKS

AND WAITING JUSTICE SLEEPS

HON. ROBERT DOLE

OF KANSAS

IN THE SENATE OF THE UNITED STATES

Thursday, August 27, 1970

Mr. DOLE. Mr. President, Kansas City, Kans., recently marked the appointment of a new police chief with a community testimonial dinner. The man of the hour was Police Chief Boston Daniels, a well-known and highly respected law enforcement official in Kansas City for many years prior to becoming the head of the police department. His appointment was hailed by all segments of the community, for he has the respect and support of all age, ethnic, and political groups in the city.

The featured speaker at the dinner was George W. Haley, a native Kansas Citian who has recently come to Washington as Chief Counsel for the Urban Mass Transit Administration in the Department of Transportation. In his remarks Mr. Haley touched on several aspects of recent national trends and events which directly affect the atmosphere in which Chief Daniels undertakes his new responsibilities.

Because they are both timely and worthwhile, I ask unanimous consent that Mr. Haley's remarks be printed in the RECORD.

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

REMARKS BY GEORGE W. HALEY

There is no question but that I am glad to be here tonight. To be invited back home after ten months in Washington on this occasion is indeed a high moment in my life. My reflections—indeed the challenge I feel—on addressing you at this particular banquet—fills me with a great amount of anxiety.

I, of course, am happy to see all of you. To greet the Mayor and City Commissioners; County Commissioner Richard Walsh and Mrs. Walsh; to greet the Honorable Robert Dole, United States Senator from Kansas and the Honorable Larry Winn, Congressman from the 3rd District, both of whom I see in Washington frequently; to greet the Honorable Bruce Watkins, Clerk of the Jackson County Circuit Court; to greet the Honorable James P. Davis, eminent Kansas legislator and president of Progress, Inc. which is sponsoring this banquet and the political, workhorse, dynamo—Clyde A. Townsend, one of my very best friends; to greet Jim Browne, newly appointed director of the Board of Public Utilities (Kansas City is really making strides); and indeed, to greet Police Chief Boston Daniels and his charming and gracious lady, Rosemary; Indeed to greet all of the distinguished dignitaries and the more than six hundred of you—fills me with nostalgia. I confess my family and I are really homesick in Washington. If my wife had her way, we'd have already moved back to Kansas City.

Don't get me wrong. The work in Washington is challenging and exciting and worthwhile. The Department of Transportation, under Secretary John Volpe, may be the youngest Cabinet-level department but it's a sharp outfit with its work cut out for it.

And the Urban Mass Transportation Administration—where I hang my hat—we are really "where the action is". I know Mayor McDowell, the commissioners and many others of you are well aware of the great crisis of inner-city transportation. You know well the need for people from all walks of life to have easy and efficient access to jobs, to training centers, schools, hospitals, parks and good housing.

You know—as we do in Washington—that more and more public transportation must be looked upon as a public responsibility, just like public education, public health, and public safety. The right to basic mobility can no longer be satisfied with the building of sidewalks. America is a growing nation, a moving nation, and our cities must maintain an efficient flow of people and goods if they are to survive.

But I did not come here tonight to talk shop, as they say. Rather—I want with my friends to speak briefly about the times and the troubles that reach out and affect us all.

It seems long years ago in my high school glee club, I sang a Negro spiritual which troubled, I'm troubled in mind . . ." This said, among other things, "I'm troubled, I'm evening—distinguished citizens here assembled—I say to you with my deepest concern "I'm troubled, I'm troubled, I'm troubled in mind. . . ." For these are trying times in the area of law enforcement generally. The horrors of Kent State, Jackson College, Augusta, Georgia and even more recently, the late Leon Jordan of Kansas City, Missouri and two youths on separate occasions in Lawrence, Kansas are incredibly true. These killings cannot be allowed to continue unabated if this nation is to survive. They debase humanity and beget counter-killings on a scale that spells disaster for all of us, black and white alike. They return us to the anarchy and bestiality of that primeval condition in which every man is the enemy of every other man. My friends, these killings must be stopped.

Now I am not here this evening to deliver a speech . . . to go on at length about the crisis of stability that threatens this great nation. (I don't want you to think that I'm a Washington bureaucrat yet—who gives a 2 hour speech every time he gets to his feet!) But I would like to share with you—my friends—and particularly with Chief Daniels—a few words I like very much that happened across my desk the other day.

These words have nothing to do with Transportation, nothing to do with what I'm paid by the taxpayers to do. But they have everything to do with our gathering here tonight; they explain why we honor a man like Boston Daniels.

Let me read this passage to you:

"God give us men! A time like this demands
Strong minds, great hearts, true faith and ready hands . . .
Men whom the lust for office does not kill,
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honour—men who will not lie;
Men who can stand before a demagogue
And damn his treacherous flatteries without winking;
Tall men—sun-crowned—who live above the fog
In public duty and in private thinking.
For while the rabble, with their thumb-worn creeds,